Policy instruments to enhance compliance with equal treatment rules

Final report

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Preface

This report is the result of research commissioned by the Dutch Ministry of Social Affairs and Employment. The Hugo Sinzheimer Institute (HSI), the research centre of the University of Amsterdam that deals with 'labour and law', has analysed eight policy instruments that have been developed in five different EU Member States and are now in use there.

The instruments are described in terms of their characteristics, and are analysed both to assess their effectiveness and with regard to the conditions under which their relative effectiveness may have been achieved. The report should thus contribute to a better informed discussion on existing and potential ways of furthering compliance with equal treatment rules in EU Member States, taking due account of their different legal systems and their different systems of industrial relations.

Five researchers from the Hugo Sinzheimer Institute worked on the project: Tanja van den Berge, Marianne Grünell, Robert Knegt, Marian Schaapman and Ilse Zaal. Other duties eventually prevented Marianne Grünell from contributing to this report. We would like to thank Inge Piso of the Ministry of Social Affairs and Employment for her comments on draft versions of this report.

Amsterdam, 8 October 2004
R. Knegt (Director of HSI)

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1 Instruments Aimed at Furthering Compliance with Rules on Equal Treatment: Introduction

1.1 Introduction

In our efforts to achieve equal treatment on the shop floor, we have to recognise that the principle of equal treatment is not self-evidently part of the logic of organisational action. Neither in enterprises, where the rationality of business economics may advocate differentiation rather than equal treatment, nor in public organisations where social mechanisms of selection and exclusion may result in practices which are undesirable from an equal treatment perspective.
It is thus very important to counterbalance the logic of social practice, if and where it tends to result in unequal treatment, by establishing rules and principles to create a moral and legal framework for organisational action. Although initially this usually implies exerting external pressure on organisations to get them to adapt their modes of operation, in the long run there should be no particular tension between the principles of equal treatment and economic rationality. Enterprises and other organisations may, for instance, learn to integrate gender equality policies and only afterwards discover their economic advantages.

Issuing rules on equal treatment is one thing, ensuring that they are implemented is another, and achieving equality on the shop floor yet another. The problem, however, is not so much that of a 'gap' between rules and actual behaviour, but rather how to give substance to the intermediate process, how to structure the course of action that leads from rules to results. Policies that take equal treatment seriously should take account of the complexity of industrial or employment relations, and their rules and instruments should be attuned to their relevant peculiarities. Choices have to be made as to whether, and to what extent, to aim for dissemination of information, to mobilise both sides of industry by providing funds for equality initiatives, to oblige enterprises to pay special attention to equality issues, to force them to take certain measures, to establish a special Equality Authority, or to provide citizens with statutory remedies.

Several policy initiatives have been, or are being taken in EU Member States to give substance to this intermediate process. In this report we will look at eight different policy instruments that are aimed at furthering compliance with equal treatment rules. The Dutch Ministry of Social Affairs and Employment has chosen eight instruments from a wide array that seem to be promising and worthwhile analysing with regard to their characteristics, methods of implementation and effects. One might look at them, of course, as country-specific ways of attuning policies to the specific peculiarities of the national industrial relations system. Here, however, we will examine them as instruments that might, under certain conditions, lend themselves to a wider use than is now being made of them. Part of our project, as reported here, has therefore been to try to specify the conditions under which these instruments may be successful.
The present project developed the results of an international expert meeting, organised by the Dutch Ministry of Social Affairs and Employment on 13 and 14 November 2003 on "How to stimulate compliance with and enforcement of the law on equal treatment".

In the second section of this chapter we will summarise the research questions and the layout of our study. The third and final section deals with the issue of the 'effectiveness' of instruments and the problems of getting reliable empirical information on this matter.

1.2 Layout of the Study

The study focuses on eight different 'instruments':

1. Sweden: the 'gender equality plan'
2. Ireland: the Equality Authority
3. France: both sides of industry obliged to negotiate on equal treatment (Loi-Génisson)
4. United Kingdom: 'equal pay audits'

and four only as they are used in The Netherlands:

5. Codes of conduct and rights of complaint
6. Covenants
7. Contract compliance
8. Mainstreaming.

As 'instruments' of equal treatment policy these eight policy measures are rather diverse. As we will set out more extensively in the next chapters, some of them impose legal or moral duties on employers, or on both sides of industry to deal systematically with equal treatment issues. Others focus on inspecting compliance or the level of compliance achieved, or, to a certain extent, on enforcing equal treatment rules. In some of them government tries to negotiate arrangements with relevant players in the field that should contribute to compliance with these rules.
We have gathered relevant information on the characteristics of each of these instruments and on the way they have been, or are being implemented or applied. Besides this we have tried to acquire information on experience-based evaluations of the instrument by relevant players like employers' organisations, unions, representatives of equality-promoting organisations and independent experts.
In the course of our project we have made efforts to contact a substantial number of people representing different public bodies and organisations involved in, or affected by the implementation of these instruments. Our efforts have had varying success, which may partly be due to the time schedule of the project (they were concentrated in the summer months). Results of objective, empirical research on the effectiveness of instruments was available only in a few cases; an evaluation of the *Loi-Génisson*, due this autumn, could not be used for this report.

The questions that have guided us in the project are:

(a) What are the characteristics of the instrument?
(b) In what way, and to what extent is the instrument being implemented and which experiences have been gained in this process?
(c) What have been the effects of implementing the instrument for equal treatment 'on the shop floor'? Which conclusions can be drawn about its effectiveness?
(d) To the extent that the instrument has been successful, what conditions may be said to have particularly contributed to its success?

The ‘conditions’ (in question d) may refer to elements of the instrument itself or to elements of the context in which it is being implemented. The notion of ‘effectiveness’ (in question c) will receive special attention in the next section.

1.3 Effectiveness of Instruments

When we talk about the ‘effects’ or the ‘effectiveness’ of equal treatment policy instruments, it is useful to make a distinction between several types of ‘effectiveness’.
First of all, each of the instruments aims to reach a certain goal that is related to, but not necessarily identical to, equality rules. ‘Equal pay’, the goal of the ‘equal pay audits’ in the UK for instance, is a particularisation of the general principle of equal treatment.
Generally, an instrument can be ‘effective’ in three different senses. We will illustrate this here by referring to one of them, the French *Loi-Génisson*:

1. An instrument may be said to be *formally* effective if the means that the instrument provides are actually used. For instance, if employees actually lodge complaints where there is provision for a right of complaint. The *Loi-Génisson* is effective in this sense as it turns out that employers and unions do indeed place ‘equal treatment’ on the agenda in their annual negotiations, and actually discuss it.

2. An instrument may be said to be *behaviourally* effective if the means that the instrument provides – regardless of whether they are actually used or not – lead to, or induce compliant behaviour (‘compliant’ with the equal treatment rules the instrument is aiming for). The *Loi-Génisson* is in this sense effective as employers and unions do enter into agreements on measures to improve equality within enterprises.

3. An instrument may be said to be *substantially* effective if the means that the instrument provides actually contribute to ‘equality’ on the shop floor. The *Loi-Génisson* is in this sense effective as agreements made between employers and unions based on this law result in a higher level of actual equality in enterprises.

It should be clear that these three types form an ascending series when it comes to the difficulty of objectively establishing ‘effectiveness’.

We can further develop the way in which the ‘effectiveness’ of an instrument in these three senses can be assessed by making a distinction between three ‘points of application’: information, negotiation and compliance.

An instrument may, among other things, be directed at the provision of *information* (for instance the instruments numbered 1, 2 and 5 above). The policy hypothesis behind these instruments can be formulated as follows: the more information private parties have about the goals and legal duties of equal treatment, the more prone they will be to attach importance to these goals and duties when shaping employment relations in companies and organisations.
An instrument may in these cases be said to be formally effective if parties appear to be better informed about these goals and duties as a consequence of the instrument; behaviourally effective if they translate this information into agreements on employment conditions; and substantially effective if these agreements result in more equality on the shop floor.

An instrument may, secondly, be directed at changing some of the conditions under which *negotiation* on employment relations takes place between private parties (instruments 1, 3, 5, 6, 7 and 8). The policy hypothesis behind these instruments can be formulated as follows: if private parties are obliged or encouraged to meet certain external conditions relating to equal treatment in their negotiations on employment conditions, their agreements will to a larger extent be in conformity with equal treatment rules and, as a consequence, there will be more equality on the shop floor.
An instrument may in these cases be said to be formally effective if parties take cognisance of these external conditions; behaviourally effective if parties adapt their agreements to these external conditions as a consequence of the instrument; substantially effective if these agreements result in more equality on the shop floor.

An instrument may, finally, be directed at monitoring and enforcing *compliance* with equal treatment rules in individual cases (instruments 2, 4 and 5). The policy hypothesis behind these instruments can be formulated as follows: if individual cases of non-compliance meet with enforcement and the imposition of legal measures ('repressive effect'), the knowledge and awareness of equal treatment rules and principles will be strengthened, and, as a consequence, careful action by employers in equality matters will be furthered ('preventative effect'). An instrument can in these cases be said to be formally effective if non-compliance is actually enforced and legally sanctioned; behaviourally effective if careful action by employers is enhanced; substantially effective if this enhanced carefulness by employers results in more equality on the shop floor.

We will deal with the question of effectiveness for each of the eight instruments discussed in chapters 2 to 9 of this report. Each chapter starts with an introduction, followed by a description of the characteristics of the instrument. We set out the goals of the instrument, and the policy theory behind it, the way it has been, and is being implemented as well as the reactions from those involved in, and affected by the consequences of the introduction of the instrument. We then examine its effectiveness and we end by summing up the conditions that, if realised, would, we argue, contribute to its success.

2 Gender Equality Plans in Sweden

2.1 Introduction

The gender equality issue is very important in Swedish working life. Gender equality has been part of Swedish law since 1974. The government has taken extensive action in recent years to strengthen the position of women in employment and education by setting up vocational guidance programming and training programmes. Despite this history of active equality policy, Swedish society is still characterised by a gender-based power structure that places men and women in an asymmetric relationship in which power is divided unequally.

Sweden has a population of nearly 9 million of which 4.4 million belongs to the labour force. Women make up half of the population and almost half of the labour force[1].
Although women play a major part in the labour force they are still paid significantly less than men. The average wages for men are 22 per cent higher that the wages for women[2]. These wage differences are explained in part by differences between men and women in occupation, position, level of qualifications or age. After taking these factors into consideration, however, an unwarranted pay differential of between 1-8 per cent remains[3].

The Swedish labour market is segregated; women and men work in different categories, and do different jobs in the same sector. When a large group of women entered the labour market in the 1960s and 1970s, they were mainly recruited to occupations and sectors reflecting the traditional gender roles, such as child-care, nursing, care of the elderly and office jobs. Nowadays, women still work mostly in these sectors. Other inequalities between men and women are that most women work part-time and there are fewer women in high positions[4].

In 1980, the first Swedish Equal Opportunities Act came into operation (Jämställdhetslagen)[5]. In 1991, a new Act was adapted reflecting European Community legislation. The act prohibits sex discrimination in the labour market and requires all employers to actively promote equal opportunities for men and women. The Act is in three parts. The first part requires all employers to pursue equality between men and women in the workplace actively and in a goal-oriented manner. Employers must seek to create a working environment free from sexual harassment. The second part prohibits sex discrimination in working life in connection with recruitment, work management, wage setting and termination of employment. The third part of the act contains provisions relating to damages liable in the event of breaches of the law as well as the monitoring of compliance with the law and litigation in discrimination disputes[6]. One of the concrete measures the Act provides for individual employers to achieve gender equality in the workplace, is the obligation to draw up an annual equality plan.

[1] Equality between men and women, Swedish institute, http://www.sweden.se
[2] Pay equity guide, Equality Opportunities Ombudsman
[3] Report of the pay differential committee 1993
[4] Equality between men and women, Swedish institute, http://www.sweden.se
[5] The Equal Opportunities Act 199:433
[6] What are the duties of the Equal Opportunities Ombudsman http://www.jamombud.se

2.2 Description of Instrument

The Annual Equality Plans are regulated through the Swedish Equal Opportunities Act 1991 (Jämställdhetslagen). The Equal Opportunities Act requires every public or private employer with more than ten employees to draw up an Annual Equal Opportunities Plan[7] as well as an action plan for equal pay[8]. Larger companies may find it necessary to make partial plans adapted to meet the specific needs of each local branch; the plans should then be drawn up locally among the employees and the local management.

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The Annual Equal Opportunities Plan must contain three elements:

- The plan must list the active measures to promote equality that are necessary in order to comply with the act.
- The plan must present a survey of existing differences in pay between men and women; employers are obliged to carry out and indicate the measures to be taken on this basis
- The plan must provide a follow-up assessment of the success achieved in implementing the measures that were listed in the preceding year's plan.

Under Section 2 of the Equal Opportunities Act, employers are required to cooperate with employees in seeking gender equality in working life. In practice, this usually means cooperating with the local trade union in the workplace. There are no model plans available for employers to copy.

Procedure

According to the Equal Opportunities Act the following procedure should be taken into account when drawing up an equality plan:

Step one:
The procedure starts with an annual examination of the current situation. A survey is held within the organisation with the objective of exploring the existing situation concerning equality in the workplace. The survey focuses on six matters[9]:

- Working conditions that are suitable for both women and men
- Employment
- Combining employment with parenthood
- Prevention of sexual harassment
- Internal mobility
- Recruitment

Step two:
The employer has to use the results of the survey to set out the measures he plans to commence or implement during the coming year.

[7] Section 13 of the Equal Opportunities Act (SFS 1991:433)
[8] Section 11 of the Equal Opportunities Act (SFS 1991:433)
[9] Section 4-9 of the Equal Opportunities Act (SFS 1991,433)

The employer must annually survey and analyse regulations and practice concerning pay and other terms of employment as well as pay differentials between men and women performing equal work or work of equal value. The results of this survey have to be compiled in a plan of action for equal pay[10]. A summary of this plan for equal pay has to be included in the Gender Equality Plan. The Gender Equality Plan should also contain a report on how the measures outlined in the previous years' plan were implemented.

Monitoring

The Equality Plans have to be monitored internally by the employer (or HR personnel) and, from January 2001, the local trade unions. Under the Equal Opportunities Act a special equal opportunities ombudsman was appointed: Jämställdhetsombudsmannen (JämO). JämO is an independent governmental authority with 25 employees. It is in charge of different activities to promote and monitor equality in the workplace. One of its activities is to educate, advise and examine companies and public authorities on their equal opportunity work and annual equity plans. One of its main tasks is to monitor compliance with the Act. It is responsible for ensuring that employers draw up equality plans and review these plans. The Equal Opportunities Ombudsman will initially encourage employers to voluntarily comply with the provisions. He will also participate in other ways in endeavours to promote equality in work. To check that gender equality plans have in fact been drawn up and to ensure that they meet the legal requirements, the Ombudsman may make it mandatory for several hundred companies a year to send in their plans[11]. Sample plans are selected for an assessment by experts. Usually employers are chosen at random or because they are statistically representative of a particular industry or geographical area. The Ombudsman is also entitled to visit the workplace in order to check compliance with the law[12]. If an employer fails to comply with the obligation to draw up an equality plan or refuses to make improvements to the plan when instructed to do so by the ombudsman, the matter may be referred to the Equal Opportunities Commission who may order the employer to fulfil his obligations[13]. Trade Unions are also authorised to request that the Equal Opportunities Commission order a defaulting employer to comply with the legal requirements or risk facing a conditional fine. Before 1994 the provisions of collective agreements could replace the provisions of the Equal Opportunities Act. Since 1 July of that year employers have no longer been able to get around the law by signing collective agreements.

2.3 Goals of the Instrument

The purpose of the Equal Opportunities Act is to promote equal rights for women and men in matters relating to conditions of employment and other working conditions, and opportunities for development in work. The aim of the act is primarily to improve women's conditions in working life[14]. This is because the labour market in Sweden is still segregated and women are paid less. The act encourages cooperation between the Ombudsman, a governmental authority, employees' organisations and government to encourage individual employers to comply with the obligations in the Act. The obligation for employers to draw up Annual

[10] Section 10 of Equal Opportunities Act
[11] Section 31 of the Equal opportunities act (SFS 1991,433)
[12] What are the duties of the ombudsman http://www.jamombud.se.
[13] Section 35 of the Equal Opportunities Act (SFS 1991,433)
[14] Section 1 of the Equal Opportunities Act (SFS 1991:433)

Equality Plans is one of several active measures the Act provides for to achieve equality in the workplace.

2.4 Policy Theory

The goal of the equality plan is to raise awareness among employers of inequalities in their organisational environment and workplace. The procedure of drawing up an Equality Plan will help employers to recognise obstacles[15]. With the information employers gather from the surveys they can take active steps to help to create a situation in which women and men are paid the same wage for work of equal value, in which sexual harassment does not occur, in which employees can reconcile work and family life, in which women and men occupy jobs that they have chosen out of interest and not because of their gender and in which the experience and skills of all are accorded proper recognition. A good gender programme is considered to be the best way to prevent discrimination in the workplace[16].

2.5 Implementation of the Instrument

The employer is responsible for gender equality in the workplace but the Equal Opportunities Ombudsman recognises that it is very important that there is backing from the workforce. Employers and employees have to work together to achieve gender equality. In practice the employer works together with the trade unions to fulfil the obligation to draw up an Equality Plan. The Ombudsman recommends setting up a group with representatives from both sides. The union's task is to help ensure that the views and wishes of the employees are incorporated into the plan. The union also has a vital role in ensuring that the commitments made in the Gender Equality Plan are translated into action[17].

2.6 Responses to the Implementation

Government

Gender equality is still a major issue for the Swedish government. On 16 June 2004 the Ministry of Industry, Employment and Communication published the national plan for gender equality[18]. One of the main aims of the plan is that the gender-based power structure be combated because such a power structure makes women subordinate to men. The government wants to promote gender equality internationally. For the current electoral period the Swedish government is focusing on five areas:

- Representation; equal access to positions of power and influence
- Equal pay for equal work and work of equal value
- Violence committed by men against women, prostitution and trafficking in women for purposes of sexual exploitation
- Men and gender equality

[15] What are the duties of the Ombudsman http://www.jamombud.se
[16] What are the duties of employers, unions and universities http://www.jamombud.se
[17] What are the duties of employers, unions and universities? http://www.jamombud.se
[18] National action plan for gender equality, Ministry of Industry, Employment and Communication, article number N4009

- Sexualising in the public sphere.

Other legislation on the issue of equality includes the Act concerning the equal treatment of students in higher education. This act prohibits discrimination on grounds of sex, ethnic background, disability or sexual orientation in universities[19].

Ombudsman

According to the Ombudsman the employee organisations and individual employers need to start cooperating seriously to create equality in the work place. The Equal Opportunities Ombudsman says that the biggest mistake is to let one single person make the plan. Such plans usually end up as vague policy documents leading nowhere.
The Swedish Equal Opportunities Act places the initiative to draw up an Equality Plan on the employer, but the initiative could also come from the Equal Opportunities Ombudsman or the local trade unions.

Employers

The confederation of Swedish enterprise has interviewed 58 of its member organisations. The results of these interviews show that most of the employers have a negative view of the equality plans. The employers' most common reaction is that the plans are too prescriptive, complex and rigid. The plans are not suitable for each individual case. The employers would prefer to work with equality on a voluntary basis with the means of their own choosing. The conclusion from an employers' perspective is therefore that the equality plans cannot be regarded as an efficient instrument for obtaining equality.

2.7 Effectiveness of the Instrument

In 1999 JämO ordered a survey from Sweden Statistics on the extent of equality plans. The results showed that 25% of companies and 75% of public authorities had equality plans in line with the law. This means that 75% of private employers are not complying with the obligations of the Equal Opportunities Act. In 2002 JämO investigated eleven government authorities. At the end of the year only four plans had been accepted, although later in 2002 all eleven plans were approved[20]. It would appear that there are many companies (especially in the private sector) who are not fulfilling their obligations, so implementation in practice is poor. JämO would welcome more research on the effectiveness of the equality plans but has not got the facilities to undertake the studies on its own. There is also a report on Swedish experiences with legislation concerning wage surveys, analysis and action plans for equal pay. This report is not yet available in English. The Equal Opportunities Ombudsman is about to translate the report. A new report will be handed over to the government in October 2005.

The Equal Opportunities Commission has decided to impose a fine in four cases of non-compliance with the obligation to draw up an Equality Plan.

[19] Act concerning the equal treatment of students in higher education 2001,1286
[20] Questionnaire for EIRO comparative study on gender equality plans in the workplace-the case of Sweden, Annika Berg

2.8 Keys to Success

- Cooperation between trade unions and employers: the Ombudsman advises individual employers to cooperate with the unions when drawing up their Equality Plans. Involving trade unions has several advantages. Firstly, the employer can benefit from the experience and knowledge of the unions in relation to equality plans. Secondly, involving union representatives will create a basis for support among staff and this might prove essential for the successful implementation of Equality Plans.
- Installing an Equal Opportunities Ombudsman: apart from monitoring compliance with the obligation to draw up an Equality Plan, the Ombudsman advises and trains employers about drawing up an Equality Plan.
- Drawing up a gender equality plan enables individual employers to assess progress on equality issues within their company and take specific measures to combat existing inequalities. It raises awareness of the necessity to commence diversity policy.
- A model Equality Plan could be useful as an example for individual employers. Employers think that the plans are too prescriptive, complex and rigid and therefore it is difficult for them to draw up a good plan.

3 The Equality Authority in Ireland

3.1 Introduction

The Equality Authority (EA) was set up with the enactment of the Irish Employment Equality Act 1998 on 18 October 1999[21]. This new independent state-funded body replaced the Employment Equality Agency that was established in 1977. The new Employment Equality Act enlarged the scope of the Equality Authority significantly from two to nine discrimination grounds. The 1998 Act outlaws discrimination on nine grounds in relation to pay and other aspects of and related to employment. It also defines sexual harassment and harassment.

The Equality Authority's mandate covers nine discrimination grounds:

- Gender
- Marital Status
- Family Status
- Disability
- Sexual Orientation
- Age
- Religion
- Race
- Membership of the Traveller Community

The Employment Equality Act 1998 originated from the Belfast Agreement of April 1998, an agreement between the Government of the United Kingdom and Northern Ireland and the Government of Ireland. The two governments agreed to grant the people of Northern Ireland a free choice with regard to their status and further declared "that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos and aspirations of both communities"[22]. Parties to the agreement affirmed their commitment to mutual respect, civil rights and the religious liberties of everyone in their community with a particular focus on the freedom of religion, political thought and aspirations, freedom of residence, the right to equal opportunities regardless of class, creed, disability, gender or ethnicity, freedom from sectarian harassment and the right of women to full and equal political participation. Subsequently Irish equality legislation needed to be amended to bring it into line with these matters agreed upon and at the same time European legislative developments were included.

In Northern Ireland a single equality body was set up to advise on, validate and monitor the statutory equality legislation and investigate complaints. The Government of Ireland committed itself to ensuring at least an equivalent level of protection for human rights as in

[21] On 19 July 2004 the Employment Equality Act 2004 came into force transposing recent EU Equality Directives and amending the Employment Equality Act 1998. Since provisions in the Equality Authority have not been amended we will refer to the 1998 Act, as this is the Act that set up the Equality Authority.
[22] Belfast Agreement 1998, Article 1.

Northern Ireland. Thus with the Employment Equality Act 1998 the Equality Authority was established to guard those human rights.

The agreement further included the obligation for Ireland to introduce equal status legislation. In 2000, the Equal Status Act was enacted. This expanded the role of the EA beyond employment: the Act addresses discrimination on the same nine grounds as the Employment Equality Act 1998 in the provision of goods, services, facilities, accommodation and education. Irish equality legislation mandates the Equality Authority to promote equality and combat discrimination on a wide range of grounds and in a wide range of fields. These two Acts attribute various powers to the EA to enable them to reach these objectives.

In May 2003 the Minster of Justice, Equality and Law Reform announced the amendment of the two Acts to implement the employment and non-employment aspects of the Race Directive (2000/43/EC), the Framework Employment Directive (2000/78/EC) and the Gender Equal Treatment Directive (2002/73/EC). In July 2004 the Equality Act 2004 was enacted including amendments to both Acts.

3.2 Description of the Instrument

According to the Employment Equality Act 1998 the EA is charged with a statutory duty to work towards the elimination of discrimination and the promotion of equality of opportunity in employment on the nine discriminatory grounds covered by the Act[23]. The EA may prepare codes of practice, which, if approved by the Minister, are admissible in evidence before the courts and may be taken into account in proceedings concerning equality legislation[24]. Another important power attributed by the Employment Equality Act is the power to conduct Equality Reviews and draw up Action Plans[25]. The EA has over fifty staff members and the twelve-member Equality Authority Board consists of experts who come from a wide range of backgrounds and disciplines.

Services

Under the legislation the Equality Authority has four main functions:

- To work towards the elimination of discrimination in relation to the areas covered by the legislation
- To promote equality of opportunity in relation to the areas covered by the legislation
- To provide information to the public on the working of the Employment Equality Act, 2004, The Equal Status Act, 2000, The Maternity Protection Act, 1994 and the Adoptive Leave Act, 1995
- To monitor and review the operations of the Employment Equality Act, 1998, The Equal Status Act, 2000, The Maternity Protection Act, 1994 and the Adoptive Leave Act, 1995 and to keep under review the working of the Pensions Act, 1990 as regards the principle of equal treatment.

[23] Employment Equality Act 1998, section 38-39
[24] Employment Equality Act 1998, section 56
[25] Employment Equality Act 1998, section 69

According to its Strategic Plan 2003-2005, the Equality Authority is accorded explicit powers to implement its functions[26]. These powers are:

- To provide assistance at its discretion to people taking proceedings under the equality legislation
- To prepare draft codes of practice for submission to the Minister for Justice, Equality and Law Reform
- To invite a business to carry out an equality review and to prepare and implement an equality action plan or carry out such a review or prepare such an action plan on its own initiative
- To conduct inquiries for any purpose connected with its functions
- To appoint advisory committees to advise it on matters relating to its functions
- To undertake or sponsor research
- To undertake or sponsor activities relating to dissemination of information

The EA has translated its mandate and subsequent functions into the following services:

- Public information Centre
- Legal Service
- Development
- Research
- Communications
- Publications
- Events
- Library

Public Information Centre
The Public information Centre of the EA provides information to the public on the working of the Employment Equality Act 2004, the Equal Status Act 2000, the Maternity Protection Act 1994, the Adoptive Leave Act 1995 and the Parental Leave Act 1998. Information can be obtained by telephone or letter and from the website. All these services are free of charge.

Legal Service
The EA has an in-house legal service that provides free legal assistance to those making complaints about discrimination under the Employment Equality Act 2004 and the Equal Status Act 2000. Legal assistance can consist of legal advice, writing letters of complaint and notifications, advice and/or assistance with referral of a complaint to the Equality Tribunal and Labour Court, lodging of claims, advice on mediation and legal representation. It is not always necessary to bring a case to court, however: the EA may also communicate with an employer on behalf of a complainant and possibly settle the case on the basis of this contact.

Given the limits on available resources, the EA only assists those cases that are of *strategic importance*. It has set down criteria that a potential case has to meet before the EA will provide legal assistance[27]. Whether a case has strategic importance depends on e.g.:

[26]Strategic Plan 2003-2005: http://www.equality.ie/stored-files/PDF/Strategic%20Plan%2003-05.pdf
[27] Criteria for Section 67 (of Employment Equality Act 1998) Representation.

1. Criteria related to ability of the claimant:
- The capacity of the applicant to represent himself/herself
- The complexity of the case
- The availability of relevant material that will assist the claimant to represent him/herself
- The availability to the claimant of other suitable legal assistance by e.g. trade union or advocacy.
- Possible availability of alternative remedies.

2. Criteria related to the case and infringement:
- The extent to which serious injustice has been perpetrated against the applicant
- The impact/effect of the discrimination on the applicant
- The proceedings will have beneficial impact:
  . for other cases covered by the same or other grounds
  . for a change in practice by employers or service providers
  . for the development of equality policies and practices
- The geographic spread of similar cases
- The matter involves multiple grounds of discrimination
- The matter raises issues that have the multi-ground relevance (in particular health, education, welfare, accommodation and transport)
- The matter raises issues that refer to grounds where significant case law has not been developed
- The extent to which a substantial body of precedent has already been established in relation to the matter
- The matter raises an issue appropriate to be dealt with in the Circuit Court.

3. Other criteria:
- The applicant is reasonably likely to succeed in the proceedings
- The resources available to the Legal Section
- Such other matters as may appear to be relevant to the exercise of assistance

Most cases are referred to the Legal Section from the EA Public Information Centre. Applications for legal assistance may be filed with the EA. The Chief Executive Officer (CEO) will consider the request and may provide assistance to the claimant at his/her discretion. The decision may be based on one or more of the above-mentioned criteria. The decision as to the level and type of assistance will be reported to the claimant in writing. Claimants may apply to have the decision reviewed by the board. The CEO will review pending cases regularly, at least once a year, and decide whether to continue assistance.

Due to its limited resources, the EA provides legal assistance in only 10 per cent of the total of cases taken under Irish equality legislation. The EA only provides legal representation to cases that may establish new precedents. It is therefore concerned with supporting other sources of advocacy for claimants. It provides training and assistance for the trade union movement and community sector related to the provision of goods and services. It is also involved in developing an advocacy-pack, enabling trade unionists to represent their members in cases. In a number of instances the EA can institute proceedings without a claimant, e.g. where there is a general practice of discrimination, or when an individual has not been able to

refer a complaint for obvious reasons, or in case of discriminatory advertising under the equality legislation[28].

The EA represents claimants at the main organisation for hearing cases, the Office of the Director of Equality Investigation (ODEI). It can also bring cases before the Labour Court, the District Court and the Circuit Court[29].

Development
The legislation provides the EA with powers to support the development of a pro-active approach to equal opportunities in the workplace and in the provision of goods, facilities and services. The Development Section is engaged in number of activities including:

- Supporting equality strategies in the provision of education and health services
- Supporting the development of reasonable accommodation for people with disabilities
- Supporting equality/diversity aspects of the quality customer service initiative in the Civil Service
- Running an employment equality review and action plan scheme
- Initiating an annual anti-racism workplace initiative
- Building a planned and systematic approach to equality in employment and in-service provision across the nine grounds of the equality legislation
- Supporting the development of work-life balance initiatives

For example, in 2003, the EA launched a national Equality Review and Action Plan Scheme. The EA offered its assistance to public and private sectors to develop an equality review and action plan by placing an advertisement in the national press. The scheme provided funding for those organisations wishing to conduct such a review. The Government funded this initiative[30]. The EA is further represented on various committees, including national ones.

Research
Irish equality legislation gives the EA the power to undertake or sponsor research to advance its functions. The Research Section plans and implements research related to the EA's Strategic Plan[31]. Its activities involve:

- Planning, commissioning and managing externally contracted research projects
- Implementing the Equality Studies Unit, a technical assistance sub-measure of the Employment and Human Resources Development Operational Programme of the National Development Plan[32]
- Carrying out research on an in-house basis

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[28] Presentation by Niall Crowley, Chief Executive Officer of the Equality Authority, at the Irish Presidency Conference "Closing The Gap: Systematic Approaches to Promoting Equality and Diversity", Limerick, Ireland, 27-28 May 2004

[29] Ireland is divided into eight circuits for the purposes of the Circuit Court. One Circuit Judge is assigned to each circuit. The Circuit Court acts as an appeal court from the District Court in both civil and criminal matters. The appeal takes the form of a re-hearing and the decision of the Circuit Court is final and cannot be appealed against.

[30] Tony Dobbins, *Comparative Study on gender equality plans in the workplace – the case of Ireland*, EIRO March 2004: http://www.eiro.eurofound.eu.int/2004/02/word/ie0310202s.doc

[31] The Strategic Plan is a publication under which the EA focuses its mandate and resources across a limited and defined set of themes over a designated period of time. A new Strategic Plan is published every three years. So far: Strategic Plan 2000-2002 and Strategic Plan 2003-2005, The Equality Authority

[32] More information on the National Development plan on: http://www.ndp.ie/newndp/displayer?page=home_tmp

- Identifying policy implications of research findings and bringing these forward in relevant arenas
- Promoting initiatives seeking to develop a sound statistical base for research and policy
- Supporting the development of equality research and of the equality research infrastructure
- Developing links with relevant public bodies, research and academic organisations and institutions.

Communications
The EA Communication Unit is responsible for promoting the rights established by the legislation and for disseminating information and materials on equality. It works to ensure that the public is informed about the work and services of the EA and seeks to raise awareness among employers and service providers of their obligations to the promotion of equality. This Unit is involved in the development of a pro-active media strategy, a public education campaign, an interactive website[33], information on relevant legislation and training materials such as guides and videos, e.g. *Quality through Equality – how to build an equality infrastructure in the workplace*, a training video available free of charge for personnel managers and other executive staff. Two major campaigns have been carried out, one concerning family-friendly workplaces and one concerning the anti-racist workplace.

Publications
The EA publishes, both in hard copy and on its website, explanatory brochures on relevant legislation, a free quarterly newsletter and research and policy publications, codes of practice and good practice publications including a step-by-step guide for employers on how to establish an employment equality policy within their organisation. Some of the publications are available in various languages. It further publishes videos and a form (ODEI5) to be filled out by which a claim under the Equal Status Act can be prepared.

Events
Events include information stands, conferences, seminars, briefings, speakers and training on equality and discrimination developments.

Library
A reference library is available to the public by appointment.

Resources

In 2000, its first full year in operation, the EA received a budget of €1.56 million, these are non-pay costs only. In 2004 the budget was €3.149 million. Most of the budget goes on legal fees, research and development, publications and public awareness/publicity. Apart from this, separate projects can apply for funding. In 2004, for instance, the EA was allocated €300,000 for its Equality Reviews and Action Plans, which it is carrying out on behalf of the Government (National Economic and Social Forum). There are no self-generated financial resources.

[33] http://www.equality.ie

External Resources

The EA sometimes makes use of external legal expertise and researchers to conduct casework or assist in conducting surveys and research projects. It also calls for external input into other activities e.g. workshops and seminars.

Other Activities

Codes of Practice
One of its main functions is to draw up codes of practice on the elimination of discrimination on the nine grounds covered by the legislation and the promotion of equality of opportunity in employment[34]. For example, it has drawn up a code on sexual harassment and harassment on other grounds in 2002.

Equality Review and Action Plan
The EA may, if it thinks appropriate, carry out an equality review or both an equality review and an action plan in relation to a particular business, group of businesses or the businesses making up a particular industry or sector providing that they have more than fifty employees. An Equality Review is an audit of the level of equality of opportunity that exists in employment in a particular business, group of businesses or the businesses making up a particular industry or sector thereof. An Action Plan is a programme of actions to be undertaken in employment in a business or businesses to further the promotion of equality of opportunity in that employment. The EA may also invite them to do an equality review and/or action plan themselves[35]. The review or plan can either be directed at the generality of equality of opportunity or at a particular aspect of discrimination in employment. The EA is authorised to require an employer to provide information for the purpose of an equality review or action plan. If the employer fails to implement any provision of the action plan the EA has the power to first serve an advance notice in writing to comply with the action plan and, if the employer continues to fail to comply, to serve a substantive notice. The recipient may appeal to the Labour Court against the notice or any requirement of the notice within 42 days of the date of service. This notice can be enforced before the High or Circuit Court[36].

Political Decision Making
The EA acts as an independent and strategic body and is involved with Government departments, employers' and employees' organisations, equality organisations, public and private sector organisations and individual trade organisations. It has a considerable influence on government policy through providing input to the national action plan on social exclusion and the employment action plan. This partnership is further evident in the involvement of the various stakeholders into, for example, the research and development work of the EA.

The Equality Authority at European Level
At European level the EA is involved with the implementation of EU-level strategies within Ireland, e.g. the social inclusion strategy and the employment strategy and is involved in EU-level structures such as the Advisory Committee on Equality of Opportunity between women and men and with the RAXEN network of the European Union Monitoring Centre on Racism

[34] Employment Equality Act 1998, part V, section 56
[35] Employment Equality Act 1998, part VI, section 69
[36] Employment Equality Act 1998, part VI, section 70-72

and Xenophobia. The EA further cooperates with specialised equality bodies across the European Union.

Staff

The EA board is appointed by the Minster for Justice, Equality and Law Reform. It consists of twelve members of which at least five are male and five are female. From its members one is appointed as chairperson and one as vice-chair. The Employment Equality Act 1998 explicitly states that there will be two members, one male and one female drawn from both employer and employee organisations. The remaining members will be experts on consumer, social and equality issues, issues related to the provision of goods and services and other experts on relevant subject matter such as law, finance, management and administration The members of the board serve no more than a four-year period[37].
The five sections are staffed with people seconded from the Department of Justice, Equality and Law Reform with some externally recruited equality, research and legal experts. In 2003 a total of fifty-four people were working for the EA[38].

External Responsibility

According to section 54 of the Employment Equality Act 1998, the EA is obliged to submit an annual report to the Minister of Justice, Equality and Law Reform. It must include information on the performance of the functions of the EA in general and more specifically give an account of any equality reviews it made in the preceding year and include information concerning the implementation of equality action plans.

3.3 Goals of the Instrument

Goal and Functions

The EA was set up to work towards the elimination of discrimination and the promotion of equality of opportunity in employment and the provision of services and goods on the nine grounds covered by Irish equality legislation[39]. Its mission is to promote and defend the rights established in the equality legislation and to provide leadership in building commitment to addressing equality issues, celebrating the diversity of Irish society and mainstream equality considerations across all sectors[40].

Strategic Plan
The EA is required to prepare a Strategic Plan for a three-year period and submit it to the Minister for approval [41]. This plan states the main themes of focus of the EA activities. Due to limited resources and staff and its wide and complex range it is vital for the EA to manage and prioritise strategically. It needs to make hard choices when prioritising such themes. These choices have to fall within the nature of its mandate and before the themes can be established an intensive consultative process is held. This process involves trade unions, the community and voluntary sector, women's organisations, equal opportunity practitioners, the

[37] Employment Equality Act 1998, part V, section 44
[38] Equality Authority 2003 annual report, p. 90
[39] Equal Status Act 2000, part IV section 39 & Employment Equality Act 1994, part V section 39.
[40] Strategic Plan 2000-2002
[41] Employment Equality Act 1994, part V section 40

business sector, farming organisations, the Equality Commission for Northern Ireland and other equality institutions. Initial ambitions are established by the EA itself and then the various stakeholders are invited to contribute to and discuss these ambitions during a series of consultations. Finally, a draft plan is developed into a final version, which is submitted to the Minister. The Plan is further developed on an annual basis through the preparation of detailed business plans, which set out the deployment of resources and the specific actions in pursuit of each objective for that year and those are accounted for in annual reports. The Strategic Plan is the foundational element to the planning of work by the EA[42].

Whereas in its first Strategic Plan[43], *Equality in a Diverse Ireland*, which ran from 2000 to 2002, the EA took an open and expansive approach to its mandate, in its current Strategic Plan 2003-2005[44] the EA focuses its mandate and resources at a defined number of themes:

- Building equality in service provision that has an impact on the quality of people's lives
- Contributing to a more accessible workplace and labour market
- Developing initiatives specific to the disability ground, to the issues of carers under the family status ground, and to the issue of racism
- Supporting the development of effective equality strategies at national and local level
- Addressing the specific situation and experience of those within the nine grounds faced with additional barriers of poverty and exclusion
- Maintaining and developing the internal structures and systems of the Equality Authority.

The Strategic Plan is presented in the Houses of Oireachtas, part of the Irish Parliament, before the Joint Committee on Justice, Equality, Defence and Women's rights. Ordinary members can comment on the EA, its work and future plans.

3.4 Policy Theory

> *An integrated approach holds new potential for creativity and action. It involves an exploration of strands of exclusion that are common across the nine grounds. Such strands include denial of difference, economic marginalisation and powerlessness. It involves taking multiple identities as a starting point for action*[45]

With the enactment of the Employment Equality Act 1998 the range of discrimination grounds was expanded significantly for the first time in over twenty years. Since discrimination on the grounds of gender and marital status was outlawed in Ireland by the Employment Equality Act 1977, which was a response to European Legislation, there had been little legislative development in relation to other forms of discrimination. To bring the 1977 Act into line with obligations from the Belfast Agreement 1998[46] and European legislative developments as regards discrimination, it had to be revised and updated. The Irish legislator chose to include all these nine grounds in one single Act and appoint a single

[42] Equality Authority 2002 annual report
[43] Strategic Plan 2000-2002: http://www.equality.ie/stored-files/PDF/Strategi.pdf
[44] Strategic Plan 2003-2005: http://www.equality.ie/stored-files/PDF/Strategic%20Plan%2003-05.pdf
[45] *The Equality Authority Contributing To Gender Equality*, Presentation by Niall Crowley (CEO of EA) at National Women's Forum, June 2001
[46] see Introduction

independent state-funded body to inform the public on this new piece of legislation and its subsequent rights and monitor and review that same legislation. After long delays the new Act was finally approved and came into force in 1999. Part V, consisting of sections 38 to 61, subsumes the Employment Equality Agency, which was established under the Employment Equality Act 1977, into the Equality Authority. With the Equal Status Act 2000 the agenda of the EA went beyond employment and broadened to the provision of goods, services and facilities. According to the Chief Executive Officer of the EA it is necessary to have a broad focus on equality because the experience of discrimination is not confined to the workplace alone. The issue requires a more holistic approach and strategy. The EA thus takes a multiple identity approach as a starting point for action. In doing so the EA wishes to develop more effective equality strategies[47].

3.5 Reactions following Implementation

Government

Political commitment to the reduction of discrimination is evident. There is close cooperation between government, both sides of industry, the EA and other expert organisations. For example, the government together with employers' and employees' organisations set up the National Programme for Prosperity and Fairness, which put equality and social inclusion on the agenda of enterprises. This programme ran from 2000 to 2003. Negotiating parties were nineteen organisations, including both sides of industry and government. A national Framework Committee was established under this national programme bringing together the Irish Congress of Trade Unions (ICTU), the Irish Business and Employers Confederation (IBEC), the Department of Justice, Equality and Law Reform, the Department of Finance, the Health Service Employers Agency, the Equal Opportunities Network and the Local Government Management Services Board. It is chaired and supported by the EA. It sought to assist employers and trade unions to respond to challenges arising from implementation of the Equality Act and to promote equality in the workplace. It also published a guide for employers on employment policies[48]. Furthermore there is a political commitment to publish regular reviews of the operation of equality legislation and to ensure that the enforcement authorities are in a position to effectively carry out their duties.

Another example of a partnership to combat discrimination is the National Economic and Social Forum, which is the advisory body of the Irish Parliament on equality and social inclusion policies. It includes representatives from, for example, government departments, both sides of industry and public and private sector organisations. It regularly publishes reports on equality issues and makes recommendations related to, for example, equality legislation, the budgeting and staffing resources for equality institutions and the mainstreaming of equality issues.

Unions

The Unions' commitment to improving equality has resulted in equality being incorporated into successive centralised national agreements e.g. *Partnership 2000* and in May 2003

[47] *The Equality Authority Contributing To Gender Equality*, Presentation by Niall Crowley (CEO of EA) at National Women's Forum, June 2001
[48] *Guidelines for Employment Equality Policies in Enterprises*, The Equality Authority, IBEC and ICTU

Sustaining Progress. The latter contained a commitment to equality proofing. This entails the proofing of policies and services in the public sector to avoid discrimination and ensure policy coherence. Furthermore, as a result of trade unionists' lobbying, the Irish Congress of Trade Unions has adopted the document *Mainstreaming Equality*, which promotes the integration of equality issues nationally and locally within the trade union[49].

Employers

With respect to the work of the EA the Irish Congress of Trade Unions (ICTU) states that it values its two places on the board and it feels that the work of the Authority helps to set the equality agenda in Ireland. There is close cooperation between ICTU and the EA. ICTU is very positive about its experience. The only disadvantage seems to be that most of the scarce resources available for equality initiatives in Ireland seem to go to the EA. It is sometimes difficult for other organisations to access funds independently to pursue their own initiatives[50].

3.6 Effectiveness

Formal Effectiveness

Enquiries
In 2002 a total of 10,978 information enquiries were made to the EA, approximately 38,650 telephone calls were dealt with, there was a total of 195,900 hits on the EA website and 46,000 publications were downloaded from the site. This is a significant increase since 2000 during which a total of only 9,318 enquiries were made. The number of enquiries made in 2003 remained more or less the same as in 2002 while downloads went up to 65,109. In 2000 most of the enquiries were under the Employment Equality Act 1998 (3,214) showing a slight decrease in 2003 when a total of 3,011 enquiries about this act were made.

Legal Assistance
In 2001 a total of 1,080 cases were being handled by the EA, a significant increase compared with only 202 cases during 2000, whereas in 2003 a total of 1,353 were worked on. The EA states that it is difficult to compare the number of cases in 2003 to the past situation since the criteria for taking on a case were revised in 2002, leaving a large amount of claims unsupported. Whereas most cases in 2000 were on gender discrimination, during 2003 discrimination on the grounds of race and being a member of the Traveller Community dominated the case files[51]. During 2003 there were 43 applications for legal representation. A total of 36 were granted. There were 24 under the Employment Equality Act 1998 of which 8 on gender, 5 on race, 3 on disability, 3 on Traveller Community, 1 on age and 1 on victimisation, one case was a multiple ground case (gender and age) and two were refused.

[49] Enda Hannon and Jackie Sinclair, *The implications of the Employment Equality Act 1998*, EIRO Sept 1999: http://www.eiro.eurofound.eu.int/1999/09/feature/ie9909144f.html
[50] Interview by e-mail with David Joyce of the Irish Congress of Trade Unions
[51] Equality Authority 2000 annual report: http://www.equality.ie/stored-files/RTF/AR2000.rtf, Equality Authority 2001 annual report: http://www.equality.ie/stored-files/PDF/Annual%20Report%202001.pdf, annual report 2003: http://www.equality.ie/stored-files/PDF/Annual_Report_2003.pdf

There were 14 cases under the Equal Status Act 2000 of which 6 on Traveller Community and 8 on disability. In seven cases legal representation was refused[52].

Representation on Committees
During 2003 the EA was represented on a total of twenty-three policy committees such as the Educational Disadvantage Forum, Framework Committee for the Development of Equal Opportunities Policies at the level of the Enterprise, High Level Steering Group of the Know Racism programme and Equality for Lesbian, Gay and Bisexual People. It was further represented at eleven National Development Plan and Community Framework Operational Programme Monitoring Committees.[53]

Partnership Approach
That same year the EA cooperated with various government departments and organisations. The EA together with the Department of Education and Science developed information materials for schools. Together with the Irish Congress of Trade Unions and Irish Business and Employers Confederation it continued to work in the Equal Opportunities Framework Committee, the Work-Life Balance Framework Committee and the Anti-Racist Workplace Week. It worked with the Department of Enterprise, Trade and Employment to mainstream policy and practice learning from the EQUAL projects[54]. It worked on reasonable accommodation for disabled people together with the national coordinating committee for the European Year of People with Disabilities. Finally it developed a new approach to equality proofing the National Action Plan on Social Inclusion together with the Office of Social Inclusion.

The EA is further involved in many projects related to national agreements e.g. the development of models for equality proofing in public sector policy and services[55]. Another recent example is its work with both sides of industry, government and other organisations in the Framework Committee on Equal Opportunities at the Level of Enterprise established under the National Programme for Prosperity and Fairness 2000-2003.

Behavioural Effectiveness

The EA has a broad sphere of activity. It deals with discrimination not only in the workplace, but also in other contexts of public life. As this analysis focuses on compliance with equality legislation in the workplace we have only analysed material effectiveness related to employment.

In 2002, a survey among three hundred private sector, and one hundred public sector (excluding government departments) organisations, was conducted to identify what organisations are doing to promote equality[56]. The survey shows that over 70 per cent of all organisations have received information on the equality acts, but only around 46 per cent know what they involve. Further key findings were that less than half of all organisations

[52] 2003 EA Annual report, p. 48
[53] More information on Irish National Development Plan: www.ndp.ie
[54] The EQUAL Programme is funded by the European Social Fund (ESF) and tests new ways of tackling discrimination and inequality experienced by those in work and those looking for a job. More information on: http://europa.eu.int/comm/employment_social/equal/index_en.html
[55] National Agreement *Sustaining Progress*.
[56] Millward Brown IMS, *Towards a Workplace Equality Infrastructure*, An overview of the equality infrastructure in organisations with special reference to ethnic minority workers including members of the Traveller Community, 2002

have a formal written policy to deal with equality issues. In the private sector, 40 per cent of organisations and 63 per cent of the public sector claim to have a formal written policy. The approach tends to be a general written policy. Just over a quarter of all organisations claim to have one written policy that specifically covers anti-harassment and sexual harassment, employment equality and equal status equality. Only 12 per cent of all organisations have a specific anti-harassment policy. In the public sector, 24 per cent of organisations have a separate anti-harassment policy compared with only 10 per cent in the private sector. Nearly 80 per cent of organisations in the public and 69 per cent in the private sector claim to have informal plans and procedures to deal with equality issues.

The same survey states that there is limited evidence of an equality infrastructure beyond a formal written policy. Just over half of all organisations have nominated a staff member to deal with equality issues. A similar percentage of all organisations have identified where change is needed. Only 36 per cent of all organisations have organised equality awareness and training for staff while a mere 15 per cent of all organisations have established a committee to deal with equality issues.

Conclusions on Effectiveness

When looking at the total number of information enquiries to the EA, which in four years time increased from just 9,000 in 2000 to over more than 300,000 enquiries in 2003, it seems that the EA supplies a need. For instance, in the three months following the enactment of the Equal Status Act 2000 the EA received more than 900 enquiries on this piece of legislation[57]. It thus seems to fulfil its informative task quite well. The existence of an up-to-date, user-friendly and well-stocked website is especially helpful to the EA in establishing this goal. Nowadays the World Wide Web is a useful means to inform the public. The EA seems to make good use of it. In 2003 alone, members of the public downloaded over 65,000 publications from the site, such as guides to equality legislation and research reports. Around 70 per cent of employers have information on equality legislation. Although it is not clear whether they received it from the EA or through other channels, the promotion of equality seems to be well on its way. The EA cooperates with many organisations to achieve its ambitions and is involved in many specialised committees. The EA seems to be on good working terms with many governmental departments, both sides of industry and expert organisations and seems to have a considerable influence on the equality agenda of both sides of industry and government equality policy.

3.7 Keys to Success

- The EA applies an integrated approach to the elimination of discrimination. The Irish legislator chose to have a single institution to implement, monitor and review its equality legislation. Its mandate covers nine grounds of discrimination in various areas of Irish society. Due to its representation on the committees of many specialised equality organisations it can draw knowledge and practical experience with the legislation from those organisations and, conversely, can pass information and experience on to them.
- The board and staff of the EA are made up of people seconded from the Ministry, employers' and employees' organisations and people from expert organisations. This

[57] Equality Authority Annual Report 2000: http://www.equality.ie/stored-files/RTF/AR2000.rtf

implicates joint and close cooperation of different stakeholders in the elimination of discrimination and promotion of equality. All these stakeholders are actively involved in drawing up its three-year Strategy Plan, which enables those stakeholders to influence the equality agenda and its focus.

- The EA only provides legal assistance in cases of *strategic importance*. This allows the EA able to focus on those cases that may establish precedents and may subsequently have more impact on the elimination of discrimination in society as a whole. The remaining cases are referred, for instance, to the trade unions. The EA assists the union representatives by providing necessary training.
- The EA develops initiatives with a multiple identity approach. The EA acknowledges the multiple identities held by many people and the fact that people can be located in more than one of the grounds named in the legislation. Because its mandate covers nine grounds it can therefore seek to address parallels that seem to exist between discrimination on all nine grounds and develop these simultaneously.

4 The Legal Obligation for Both Sides of Industry in France to Negotiate on Equal Treatment for Men and Women

4.1 Introduction

The introduction of a legal obligation for both sides of industry in France to negotiate on equal treatment for men and women must be seen both within the legal context of collective bargaining in France and within the historical context of French equality legislation and its implementation.

The Obligation to Bargain in French Collective Bargaining Law

According to a law of 13 November 1982, collective bargaining in France is not merely a recognised freedom held by both sides of industry. This law introduced legal obligations relating to bargaining on specified issues. Some of these obligations are industry-wide, for example the obligation to negotiate on pay on an annual basis and the obligation to examine the need to revise job classifications every five years. In particular, however, these obligations relate to the individual enterprise and cover subjects such as pay, working hours, patterns of working time and training. Besides the actual obligations to bargain on certain subjects, the law also states that compulsory examinations should be conducted regularly and that there is an obligation to give notice of certain events, particularly in the public sector (termination of collective agreement, strike). The duty to bargain is directed at employers and employers' organisations that are responsible for initiating the bargaining, proposing a timetable and providing the information required. It does not amount to an obligation to conclude a collective agreement. If negotiations break down, the failure to agree must be formally recorded, including the respective proposals put forward by the parties and the measures that the employer unilaterally intends to adopt. The employer is then bound by these measures as a unilateral commitment.

French Equality Law and the Position of Women in the Labour Market

The introduction of an obligation to bargain on matters of equality between men and women in the labour market is closely related to the history of French equality law and, more specifically, to its failure to be implemented and its poor results, so that inequalities in the labour market between men and women nonetheless persisted.
After having introduced equal pay legislation in 1972, the law of 13 July 1983 (Roudy Act), inspired by the European Directive 76/207/EEC of 9 February 1976 (on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions) was the first legislative instrument in France aimed at bolstering gender equality at work. It consolidated the principle of equal rights (non-discrimination) and opened up the possibility of taking positive action in favour of women with the aim of remedying existing inequalities by amending the Labour Code. The Act includes the obligation for companies with more than 50 employees to present an annual written report on the comparative employment situations of men and women to be assessed by the Works Council, or, if no such body exists, the staff delegates. It also opens the possibility for both sides of industry to negotiate, at enterprise level, on equality between men and women.

In 1999, however, a report by Catherine Génisson, commissioned by the Prime Minister, Lionel Jospin, highlighted persistent gender inequalities in the workplace, in terms of recruitment, pay, access to training and career development.[58] Moreover, it turned out that both the possibilities and the obligations of the Roudy Act were poorly applied in practice. Among other things, Génisson recommended that rather than introduce new or excessive new legislation, the means provided by the Roudy Act should be reinforced particularly by empowering both sides of industry.

4.2 Description of the Instrument[59]

The act of 9 May 2001, the *Loi-Génisson* or Génisson Act[60], which introduced new amendments to the Labour Code, aims to incorporate the concept of occupational equality into all bargaining. It therefore:

- Makes bargaining an obligation for employers at both company and sector level, rather than an option to be applied on a voluntary basis
- Introduces sanctions in the event of non-compliance
- Improves the content of the compulsory annual comparative report as a basis for the negotiations, by making extra demands on the report
- Creates the obligation for large companies (200 or more employees) to install an occupational equality committee, charged with preparing for the deliberations of the Works Council on the comparative report
- Introduces the principle of proportional representation of men and women on the lists of candidates for the elections of the *conseils des prud'hommes*, the works council and the employee delegates.

The government has created different forms of financial incentives to support equality bargaining.

Specific and Integrated Negotiations at Two Different Levels

The Génisson Act makes bargaining on occupational equality between men and women compulsory. It creates two kinds of obligations for employers, both at sector level as well as at company level, to bargain on occupational equality between men and women:

- The obligation to negotiate *specifically* on the issue of occupational equality between men and women (*negotiation spécifique*).

Individual employers of companies with 50 or more employees are obliged to enter into negotiations with union representatives at company level on the objectives with respect to occupational equality between men and women in the company as well as on the measures to be taken to attain that equality. These negotiations have to take place on an annual basis. The obligation does not amount to a duty to conclude a collective agreement, but if such an agreement is made, the compulsory frequency of the negotiations drops to once in every three

[58] C. Génisson (1999), *Femmes, hommes: quelle égalité professionnelle? La mixité professionnelle pour plus d'égalité entre hommes et femmes*, Paris: Ministère du Travail.
[59] This paragraph is based not only on the text of the Génisson Act, but also on information from the websites of the union confederations CFDT and CFTC, www.cfdt.fr and www.cftc.fr and on the French contribution to an EIRO comparative study on gender equality plans in the workplace: C. Meilland, 2001, *Gender equality plans in the workplace – the case of France*, www.eiro.eurofound.eu.int.
[60] Loi no 2001-397 du 9 mai 2001 relative à l'égalité professionnelle entre les femmes et les hommes.

years. The negotiations are based on the compulsory annual report on the comparative situations of men and women in the company.
If the employer neglects to initiate negotiations a year after the last ones have taken place, any representative union organisation can demand that negotiations be started. The employer then has to inform the other representative unions and send them a summons within a period of eight days.
If the negotiations are successful an agreement is signed between the employer and at least one union representative at company level, which has to be deposited at the Departmental Directorate of Labour, Employment and Vocational Training and at the Secretariat of the *conseil des prud'hommes.* If negotiations fail to amount to an agreement, at least one of the parties, which records the respective proposals put forward by the parties and the measures which the employer unilaterally intends to adopt, must formally record the failure to agree. This formal record of a failure to agree also has to be deposited at the offices mentioned.

The Génisson Act created the same obligation at *sector level*, although not on an annual basis but with intervals of three years. The negotiations at sector level also have to take a report on the comparative situations of men and women in the sector as their starting point.

- The obligation to *integrate* the issue of occupational equality between men and women into other obligatory negotiations.

Individual employers thus have to take the issue into account in their annual negotiations on pay, working hours, patterns of working time, training, etc. At *sector level*, the issue of occupational equality between men and women has to be taken into account during the obligatory annual negotiations on pay and the obligatory negotiations on job classification and training schemes that take place every five years.

Preconditions and Supportive Measures

Comparative report
The companies that are obliged to engage in the negotiations as explained above – that is companies with at least 50 employees – have to draw up an annual report on the comparative situations of men and women in the company. The Génisson Act, in contrast to the former Roudy Act, makes more demands on the content of the report. The report has to be based on an analysis of relevant variables, in figures, that are defined by a governmental enactment of 12 September 2001, and may eventually be supplemented by more specific variables that take into account the particular situation of the company.
The figures defined by the governmental enactment of 12 September 2001 have to provide an insight into the differences that exist between men and women, and will eventually have to provide an insight into factors that account for changes that have been achieved or developments that are anticipated. They are divided into four categories:

- General employment conditions
- Wages (categorised both by sex as well as according to job categories)
- Education and training (by sex)
- Working conditions.

The specific variables mentioned in the Génisson Act that take into account the particular situation of the company, relate to its sphere of activity, its culture and its geographic location. The comparative report has to be assessed by the Works Council (or, if no such body exists, the staff delegates) that has to give its well-motivated opinion. It also has to be made known to the employees in the workplace.

Occupational equality committee
In companies with 200 or more employees, the Works Council is obliged to install an occupational equality committee. It is charged with preparing for the deliberations in the Works Council on the comparative report.

Financial Incentives to Equality Bargaining

Financial incentives have been created by the government to support equality bargaining both at sector and company level:

- Companies with fewer than 300 employees can benefit from advisory support (*aide au conseil*) to clarify the company's choices by doing research on the possibilities of ameliorating women's positions. A contract has to be signed between local government officials and the employer, after assessment by the Works Council.
- Companies with fewer than 600 employees can profit from financial aid in the context of gender balance contracts (*contrats de mixité*). They allow women, on an individual basis, to take on traditionally male jobs. The contract may cover the funding of a training course, but also a complete overhaul of working conditions, equipment and facilities to increase levels of take-up of posts by women. The contracts are concluded between the (local) government, the employer and the female employee.
- Both specific as well as integrated collective agreements on occupational equality between men and women may be the object of financial support if they contain exemplary measures to support women's positions. A contract has to be signed between the government and the sector or employer, after assessment by the union organisations (*contrat d'égalité*).

Sanctions

Neglecting to comply with the obligation to negotiate on occupational equality is equated with the offence of obstructing the right to found a union. An employer risks criminal sanctions:

- If he neglects to take any initiative to negotiate within a period of twelve months after the former specific negotiations.
- If he does not convene the union organisations within the term of 15 days after one of them has requested negotiations.

The sanctions are:

- One year's imprisonment
- And /or a fine of € 3811.23.

4.3 Goals of the Instrument

The objective of the legal obligation on both sides of industry at sector and company level to negotiate once every three years on equal treatment for men and women in the labour market is to integrate the equality issue into all bargaining. In other words, it is a measure aimed at gender mainstreaming in industrial relations, meant to lead to more gender-aware collective agreements. That is, collective agreements that take into account the specific situation of both women and men and that are no longer based on the assumption of a male model of work.

Génisson stresses the aim of equality legislation in France in her report[62], that is, complete and real professional equality for women and men as well as the possibility of reconciling professional life with family life. This is in contrast to goals pursued or achieved in other countries, for example the adaptation of working conditions to the needs of women (Nordic countries, the Netherlands), the creation of opportunities to choose between family life and working life (Germany, Austria) or the opportunity to enter into the higher professional ranks only at the expense of family life (Greece, Italy, Portugal).

4.4 Policy Theory

Experience with the Roudy Act proved that voluntary measures are inadequate as a means of persuading both sides of industry to take up the issue of equality in collective bargaining in a satisfactory manner, that is, on a regular basis, at all levels, with respect to all bargaining issues. It is assumed that by introducing an obligation on both sides of industry to bargain on equality instead of simply giving them the possibility to do so as formulated in the Roudy Act, the frequency of equality bargaining will increase. By creating both specific negotiations on the issue of occupational equality between men and women as well as integrating equality bargaining into all bargaining, the issue of equality bargaining cannot be tucked away in a few agenda items, but serves as an analytical tool in all negotiations (the gender mainstreaming principle).

4.5 Implementation of Instrument

National Level

Although the obligation to negotiate on occupational equality between men and women in the labour market, as formulated in the Génisson Act, is aimed at sector and company level, an important step in implementing it has recently been made at national level.[63] On 7 April 2004, after nine months of negotiating, a national intersectoral agreement on gender equality and gender balance in the workforce was signed by the main employers' organisations[64] and the five representative trade union confederations[65].

The agreement is intentional in character, not mentioning any statistical targets or sanctions. Its aim is to lay down parameters for future sector and company level bargaining. It is a framework agreement that must be adapted at sector and company levels.

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[62] Ibidem.
[63] C. Meilland, *Intersectoral Agreement signed on gender equality*, www.eiro.eurofound.eu.int/2004/04/feature/fr0404104f.html
[64] The Movement of French Enterprises (*Mouvement des Entreprises de France*, MEDEF), the General Confederation of Small and Medium-sized Enterprises (*Confédération générale des petites et moyennes enterprises*, CGPME) and the Craftwork Employers' Association (*Union professionnelle artinanale*, UPA).
[65] The General Confederations of Labour (*Confédération générale du travail*, CGT), the French Democratic Confederation of Labour (*Confédération francaise démocratique du travail*, CFDT), the General Confederation of Labour Force ouvrière (*Confédération générale du travail-Force ouvrière*, CGT-FO), the French Christian Workers' Confederation (*Confédération francaise des travailleurs chrétiens*, CFTC) and the French Confederation of Professional and Managerial Staff-General Confederation of Professional and Managerial Staff (*Confédération francaise de l'encadrement-Confédération générale des cadres*, CFE-CGC).

The agreement means a reinforcement of the Génisson Act in that it stipulates which issues have to be negotiated on and it sets out certain methods for reaching equal treatment. For example, it agrees that motherhood may not hinder a women's career, and to ensure this, a link with the company must be maintained during the period of maternity leave, and the employer must offer a special interview before and after the period of leave. Furthermore, the agreement states that unjustified gender-based pay discrepancies must be corrected, stereotypes surrounding employment areas thought of as 'women's work' should be tackled, and access to training must be the same for everyone. By specifically focussing on these issues and methods, the national agreement sets the agenda for negotiations at sector and company level.

The absence of any statistical targets in the agreement, especially on the reduction of pay inequalities, was regretted heavily by one of the union confederations, the French Democratic Confederation of Labour (CFDT). The confederation points to a European Directive that imposes an obligation on the member states to reduce this difference by 50% before 2010. The agreement is supplemented by a jointly drafted letter sent to the government on 7 July 2004, since some of the agreement's provisions require state intervention.

Sector and Company Level

Some firms had already begun implementing the measures provided for in the new inter-sectoral agreement, and even before the agreement was reached, equality was an issue on the bargaining agenda of sectors and companies. But to the best of our knowledge, no reliable statistical data on the implementation of the obligations of the Génisson Act are available to date. Research by the French Ministry of Social Affairs, Labour and Solidarity into the last decade of the 20th century reveals that since 1990, 155 agreements in 125 sectors at all levels (national, regional and *départemental*), of which 118 were at the national level, have been signed on the issue of gender equality, out of a total of more than 12,000 agreements.[66]

4.5 Reactions following Implementation

Employers' Organisations

Employers' organisations recognise the problem of women's positions in the labour market as a problem for these organisations. The Movement of French Enterprises (*Mouvement des Entreprise de France,* MEDEF) states that companies need female employees to develop and to remain competitive. The organisation considers women's labour as a factor in social dynamism and economic growth. It points at expected demographic developments that will put pressure on the labour market and will make it necessary to develop women's labour at all levels of the organisation.

MEDEF is happy with the national inter-sector agreements because it is aiming for a mentality change that is necessary if women are to be fully integrated at all levels of the organisation. The employers consider such a step necessary on the basis of their experiences with the Roudy Act, which has not brought occupational equality.

[66] Ministry of Social Affairs, Labour and Solidarity, Une décienne de negotiation collective sur l'égalité professionnelle dans les branches', *La négociation collective en 2002* ('A Decade of Collective bargaining on Gender Equality and Sector Level', Collective Bargaining in 2002), 2003, cited by Meilland, *Gender equality in the workplace – the case of France*, 2004, www.eiro.eurofound.eu.

The employers also approve of the framework character of the agreement for it will not put needless constraints or burdens on the companies but makes it possible to take into account the specific characteristics of professions and situations. The measures proposed will be more effective than the law, according to the employers, because they are realistic.

Unions

The unions have reacted positively to the introduction of the Génisson Act, characterising it as a chance to be leapt at. To avoid the Act becoming a dead letter like the former Act of 1983, the unions have been active in promoting the implementation of the Act by disseminating information and developing strategies and instruments and by campaigning, for example on the occasion of International Women's Day on 8 March. The French Democratic Confederation of Labour (CFDT), for example, developed a plan of action and an equality bargaining guide for negotiators and occupational equality instructions for activists at company level. Another example is a model agreement, developed by the General Confederation of Labour (CGT).

The unions, especially CFDT and CGT, were less content with the character of the national inter-sector agreement. They point to the absence of any statistical targets as a missed chance to ameliorate women's positions in the labour market and at the same time to comply with agreements made in Europe to reduce pay inequalities between men and women by 50% by 2010. Moreover, CGT has asked for further talks on women's retirement. On the other hand, the unions consider the agreement to be a step forward, for it does fill in the so-called empty obligation of the Génisson Act by pointing out specific issues to bargain on and specific methods to be used.

Government

In the process of the negotiations by both sides of industry on occupational equality at national level that have recently resulted in the national, inter-sector agreement, government has played a supporting role, notably by organising a round table discussion on the subject in December 2002. After the signing of the agreement, the Minister of Occupational Equality introduced the so-called Equality Label, meant to be a measure complementary to the demands of the law and the collective agreement. The label was developed in cooperation with both sides of industry. Companies – public and private, small and medium-sized as well as large companies – can enter the procedure to obtain an equality label on a voluntary basis. The label is awarded by an independent organisation on the basis of 18 criteria. A tripartite commission advises on the award. The criteria relate to different aspects of occupational equality:

- Information and communication
- The signing of an agreement on occupational equality
- Measures to promote equal access by women and men to continuous vocational training
- Policies aimed at equal representation of women and men in decision making
- Taking parenthood into account.

4.6 Effectiveness

An evaluation of the effectiveness of the Génisson Act is currently being undertaken by the French government.[67]

The reactions of the parties involved and the agreement being reached at national level point in the direction of at least formal effectiveness of the measure. Methods for implementation are being developed by the union confederations, an intentional agreement between both sides of industry has been concluded at national level, and support is being given by government.

Behavioural effectiveness is to be expected as the national agreement has set standards for sector and company level by mentioning issues that have to be negotiated on and methods to be implemented.

4.7 Keys to Success

Because the instrument is rather recent and evaluative research has not yet been completed, formulating keys to success is only possible on a hypothetical basis. First of all, we have to recall the fact that making bargaining on certain issues obligatory is a common measure within the French collective bargaining system. Equality bargaining is just one of the many issues that both sides of industry are obliged to bargain on regularly. This characteristic of the French industrial relations system might well be a necessary condition for the success of the obligation to bargain on equality issues. If it is true that in the French system the duty to bargain on equality is in this sense nothing more than additional "business as usual", this might be an important condition. It underlines the point that if we consider the conditions for implementing the measure in other EU countries, we have to take careful account of the characteristics of national systems of industrial relations. It is important to raise the question of whether or not the measure fits in with that national system or whether it needs to be adapted.

Further preconditions for the success of equality bargaining (be it on a voluntary basis or on the basis of a legal obligation) and, more specifically, the integration of equality issues into all bargaining (gender mainstreaming) have been formulated on the basis of a five-year research project on collective bargaining and equal opportunities in the EU by the European Foundation for the Improvement in Living and Working Conditions. Factors which may encourage the use of collective bargaining as an instrument for strengthening and mainstreaming equal opportunities and recommendations for action are listed in an analysis of this research project issued by the European Industrial Relations Observatory (EIRO)[68]:

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[67] Laret-Bedel, *forthcoming*

[68] Mark Carley, *Equal opportunities, collective bargaining and the European employment strategy*, www.eiro.eurofound.eu.int/2000/05/study/tn0005402s.html. See for a more recent study on gender mainstreaming in industrial relations: M. Grünell & M.H.Schaapman, *Gender mainstreaming in industrial relations*, www.eiro.eurofound.eu.int, forthcoming, 2005.

Both sides of industry (at the appropriate levels) should:

- Improve their expertise on equality issues by establishing equality officers or expertise centres within their organisations at national, sector and/or company level.
- Take positive action to ensure women's proper representation within their organisations and to improve women's participation in the bargaining process both in terms of quantity (increasing the number) and quality (increasing women's influence).
- Develop equality guidelines or manuals for their negotiators, to promote equality on the bargaining agenda and to help mainstream equality in all agenda items.
- Provide training to develop negotiators' awareness of equality .
- Develop an equal opportunities scan as an instrument for gender-proofing collective agreements.
- Ensure that agreements include provisions for implementing and monitoring equality measures.
- Set up joint equality bodies on national, sector or company level with responsibility for overseeing the implementation and elaboration of equality provisions
- Conclude general framework agreements on equality issues at European, sector and national level, as appropriate, to tackle such matters as the gender pay gap or sexual harassment.
- In order to integrate an equality perspective into all collective bargaining, focus, for example, on the creation of good quality new jobs and on the inclusion of flexible and part-time workers in all collective arrangements.

Action by others:

- National governments should seek to utilise (or establish) mechanisms to disseminate good practice in equality bargaining, for example by stimulating national expertise centres and expert groups and by ensuring that attention is paid to equality in the administrative collection and review of agreements.
- National Action Plans should report at least on quantitative developments on the reduction of the pay gap between the sexes, changes in horizontal and vertical sex segregation and the increase of female negotiators in collective bargaining.
- National governments should develop equality legislation and review how new and existing equality legislation requires action by both sides of industry, and facilitate and monitor such action.
- National governments should ensure that action by both sides of industry to promote collective bargaining includes an equality dimension.
- The European Union, national Member States and local authorities should reserve funds for equality areas, for example, childcare facilities and care leave facilities, to guarantee equal opportunities for employees and self-employed persons with care responsibilities while they are undergoing training.
- The European Commission's technical and financial support to both sides of industry could involve funds for the appointment and/or training of equality officers or the creation of joint equality bodies on national, company or sector level.
- The European Commission should ensure that equality is mainstreamed into legislative measures promoting social dialogue and collective bargaining, such as provisions relating to European Works Councils and the proposed national level consultation and information bodies.
- The European Commission should maintain a database on the results of equality bargaining throughout the EU.

5 Equal Pay Reviews in the United Kingdom

5.1 Introduction

In 1999 The Equal Opportunities Commission (EOC) launched its three-year *Valuing Women* campaign in order to put the issue of equal pay for men and women back on the political agenda[69]. Research showed that despite the fact that it was nearly thirty years since the Equal Pay Act 1970 came into force, women working full-time still only earned 82 per cent of the income of men doing the same job. This means a gender pay gap of nearly 20 per cent. For women and men working part-time the pay gap was even wider; women earned, on average, only 60 per cent of the income of men; a gender pay gap of 40 per cent[70]. This was unacceptable to the EOC and it published findings from three specifically commissioned studies on attitudes towards pay, which showed there was already a broad consensus on taking action to close the gender pay gap[71].

That same year the EOC set up the employer-led Equal Pay Task Force. Its task was to define and measure the extent of the gender pay gap, find causes and consequences of the pay gap and identify ways to close this gap. One of its findings was that 25 to 50 per cent of the pay gap is due to pay discrimination. The Task Force came up with several recommendations to combat pay discrimination in its final report *Just Pay*[72]. The main recommendation was that the Equal Pay Act be amended and that all employers be required to conduct annual equal pay reviews (EPR). The report strongly recommended a partnership approach. Since publication of the report the EOC has therefore been encouraging employers to regularly conduct a pay review. It has been working together with and alongside Government, employers and trade unions to implement the recommendations of the Equal Pay Task Force and to try to combat pay discrimination. Reviewing pay systems would reveal any unexplained pay inequalities, raise awareness amongst employers about the gender pay gap and encourage them to deal with it. This would be an essential step towards eliminating pay discrimination. Unions should put equal pay on the bargaining agenda and train union representatives to assist employers in carrying out equal pay reviews; employers' organisations should take action to equip their members to audit their pay systems[73].

This view was welcomed by the EOC, Trade Union Congress (TUC) and unions, but according to the Confederation of British Industry (CBI) the introduction of mandatory pay reviews would impose excessive costs on businesses, especially the small and medium-sized firms[74]. The Government then decided against mandatory pay reviews and adopted the voluntary approach. Their objective was to encourage employers to conduct an equal pay review through intensive campaigning. The Department of Trade and Industry (DTI) subsequently provided the EOC with funding to prepare the model for voluntary pay reviews.

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[69] www.eoc.org.uk
[70] *The Gender Pay Gap*, a Research Review, Research Findings, School of Management, UMIST, EOC 2001
[71] *Attitudes to Equal Pay*, EOC 2000 www.eoc.org.uk
[72] The Equal Pay Task Force, *Just Pay*, EOC 2001
[73] The Equal Pay Task Force, *Just Pay*, EOC 2001, p. 21
[74] Jane Parker, National report by on the United Kingdom for the EIRO comparative study *Gender equality plans in the workplace*, March 2004, www.eiro.eurofound.eu.int

There is a different approach for organisations in the public sector. In response to the publication of The Equal Pay Task Force's final report *Just Pay*[75] the Government committed its own departments and agencies to reviewing their reward systems and preparing equal pay action plans[76]. The report put pressure upon public sector organisations by stating that they should act as good practice employers and tackle equal pay problems[77]. This obligation on public bodies has not been laid down in legislation but is part of Government policy.

5.2 Description of the Instrument

The *Valuing Women* campaign, which was launched by the EOC in 1999 to raise attention for the 20 per cent gender pay gap, aimed at stopping pay discrimination, encouraging awareness, openness and transparency of pay by both employers and employees. As part of its *Valuing Women* campaign, the EOC set up the Equal Pay Task Force. The twelve-member Task Force included employer and trade union representatives from the public and private sectors and independent experts in pay equality en gender issues. Its assignment was to identify concrete, workable solutions to close the gender pay gap while concentrating on that part of the gap that was due to pay discrimination. After close consultation with all relevant stakeholders, individuals and organisations, the Task Force published its final report *Just Pay* in 2001[78]. It came up with a five-pronged approach on how to eliminate the enduring gender pay gap. Part of this approach is to reform and modernise the equal pay legislation. The Task Force recommended that the Equal Pay Act be amended and that all employers be required to conduct annual equal pay reviews (EPR). Public consultation revealed that many employers in Britain were confident that there was no gender pay gap in their organisation. Remarkably they had no information whatsoever on which they could base this confidence; they had not carried out an equal pay review. Their confidence seemed therefore complacent. This lack of awareness was one of the barriers to equal pay. An obligation to carry out an EPR would raise awareness among employers and help close the gender pay gap.

Since conducting an EPR is not mandatory, Government and the EOC are putting their efforts together to encourage employers to voluntarily conduct an EPR. The Government has provided both the EOC and the Trades Union Congress (TUC) with funding to develop materials that can assist employers to conduct an EPR. The EOC has developed the Equal Pay Review Kit, which includes the EPR model. The TUC partially used the money to develop training materials for union representatives, which is in line with the Equal Pay Review Kit.

The EOC finalised its Equal Pay Review Kit in 2002. The Kit is aimed at employers and gives them advice on good equal pay practice. It also includes a detailed Step–by-Step Guide to Equal Pay and the EOC equal pay review model. According to the Equal Pay Review Kit any EPR should involve comparing the pay of men and women, explaining any gaps and closing any gaps that cannot be explained by grounds other than sex. It stresses the employers' responsibility for providing equal pay and states that conducting an EPR is the most appropriate method of ensuring a pay system that is free from sex bias. In developing the EPR

[75] The Equal Pay Task Force, *Just Pay*, EOC 2001
[76] Women and Equality Unit, *Towards a Closing of the UK Gender Pay Gap*, 2003. www.womenandequalityunit.gov.uk
[77] W*e expect the Government and public service employers to take a lead on this issue. As a major employer, the Government should act as a role model and develop good practice, disseminating lessons learnt throughout the public sector*, Just Pay, p. xiv
[78] The Equal Pay Task Force, *Just Pay*, EOC 2001

model the EOC has tried to take away any barriers for employers to conduct an EPR. A simple tool with clear instructions should activate employers and convince them of the business sense carrying out an EPR makes. To raise awareness among employers of the need and advantages of reviewing their pay systems and including the female workforce fully, continuous campaigning and involvement of the key players in the labour market, employers, unions and government, is necessary.

The actual form of and the process in which an EPR has to be carried out is not prescribed. There are consequently many ways of conducting an EPR. Many employers seem to have designed their own pay review, some with the aid of external consultants or by making use of other models or forms of guidance. Some of the alternative pay reviews are either based on or are very similar to the EOC EPR model, but have been tailored to the specific needs of the sector or employer[79].

The EOC Equal Pay Review Model

The EOC EPR model is a good example of how a pay system can be reviewed. Many employers' and employees' organisations have adopted its five-step EPR model in equal pay guides for their members. The EOC recommends a five-step EPR model:

Step 1: Decide the scope of the review and identify the data required.
The Kit gives advice on which employees to include, who to involve in conducting the review (employees, trade union or employee representatives, experts from outside the organisation) and what information is needed to conduct a full EPR.

Step 2: Determine where men and women are doing like work/work rated as equivalent/equal value.
The Kit explains what is meant by 'like work', 'work rated as equivalent' and 'equal value' and which organisations should choose which check.

Step 3: Collect pay data to identify equal pay gaps.
The Kit explains how to calculate pay and how to compare pay data. It recommends investigating any differences in pay between men and women performing equal work of 5 per cent or more, or patterns of differences of 3 per cent or more.

Step 4: Establish the causes of any significant pay gaps and assess the reasons for these.
The Kit includes recommendations on what aspects of pay should be checked and assessment of the reasons for a significant gender pay gap.

Step 5: Develop an equal pay action plan and/or reviewing and monitoring.
The Kit explains when and how to make an equal pay action plan and review and monitor the pay system.

In conjunction with the EPR Kit the EOC's *Guidance Notes for the Equal Pay Review Kit* should be used[80]. It gives more detailed information on reviewing pay systems and assessing pay data. It also includes useful checklists that can be used by the employer while conducting an EPR.

[79] Incomes Data Services, *Monitoring progress on equal pay reviews*, EOC 2004, p. 30-31
[80] EOC, 2003: www.eoc.org.uk

Conducting a pay review is voluntary for companies. There are no legal requirements for employers to carry out an equal pay review. Consequently there are no legal sanctions on employers not conducting an equal pay review. However, employees who think they are receiving less pay than their colleagues of the opposite sex can always file an equal pay claim in accordance with the Equal Pay Act 1970 with the Employment Tribunal. The Government has recently improved tribunal procedures following recommendations by the Equal Pay Task Force[81]. The Government amended several pieces of legislation after great pressure by the EOC. It amended time limits in the Equal Pay Act[82] on bringing an equal pay case before the Employment Tribunal and replaced the previous 2 year limit on back pay with a 6 year limit, for example where the employer has concealed the existence of unequal pay. It further enabled individual employees to request specific information from their employers to establish any pay inequalities[83]. The EOC gives detailed information on how to file such a claim on their website. This should encourage employers to act proactively and conduct EPR to protect themselves from these possible claims.

Although there is no statutory obligation for government departments and agencies to conduct a pay review, obviously more pressure is being put on public bodies to comply with the government's commitment to assess and deal with the gender pay gap in any sector of the labour market. Ministers' have a responsibility for the progress their departments are making in conducting pay reviews. They are subject to close monitoring by Members of Parliament and Ministers are regularly confronted with questions in the House of Commons[84]. Apart from this there is also the pressure on public organisations from the public, media and non-governmental organisations.

Apart from setting up their own campaigns and measures[85] the Government provided the TUC with funding to support the TUC Equal Pay Pilot Project[86]. This project was designed to assist unions in updating the skills of their representatives in order to contribute to the Government's objective of closing the gender pay gap. The money was used to revise and update training materials in line with the EOC Equal Pay Review Kit, to brief tutors and train representatives on the new materials, provide a training programme online, produce newsletters and a final report and many more activities to help close the gender pay gap, raise awareness and assist employers in conducting an EPR.

5.3 Goals of the Instrument

Basically the EPR was introduced to reduce the gender pay gap. Since the introduction of the Equal Pay Act in 1970 the pay gap between the sexes had decreased from 31 per cent to 18 per cent by April 2001, but was still there. This was enough reason for the EOC to take up the matter seriously involving employers, unions and Government to combat pay discrimination.

[81] The Equal Pay Task Force, *Just Pay*, EOC 2001, p. 16
[82] The Equal Pay Act 1970 (Amendment) Regulations (2003).
[83] The Employment Act 2002, section 42 Equal Pay: questionnaires and the subsequent Equal Pay (Questions and Replies) Order 2003. See also: www.hmso.gov.uk
[84] www.parliament.uk/hansard
[85] Appointment of "fair pay champions" from employer and union backgrounds who are to promote good practice and raise awareness amongst their peers; the introduction of annual awards (Castle Awards) to promote good practice by employers
[86] For more information and results: TUC, *Equal Pay Pilot Project*, Final Report – Phase 2, 2003

The EOC launched the *Valuing Women* campaign, assigned research into pay practices, set up the Equal Pay Task Force and consequently set targets for closing the pay gap.

In December 2001, the EOC set targets for employers to carry out pay reviews[87]: 50 per cent of large firms (with over 500 employees) should have completed an equal pay review by the end of 2003 and 25 per cent of the rest of the firms should have reviewed their pay systems by the end of 2005[88]. The Government recently set the target at 35 per cent of large companies to have carried out pay reviews by 2006[89]. This is now the official target.

In October 2003, the EOC commissioned Incomes Data Services to examine the extent of equal pay review activity across the British economy. The result *Monitoring Progress on Equal Pay Reviews* was published in Spring 2004[90].

5.4 Policy Theory

The recommendation to implement a statutory obligation for employers to carry out an equal pay review is part of the multi-levered approach the Equal Pay Task Force proposes in its final report *Just Pay* in 2001[91]. The Task Force believes that pay discrimination can be dealt with through:

- Raising levels of awareness and developing a common understanding of what the pay gap means
- Reforming and modernising the equal pay legislation
- Capacity building to ensure employers and trade unions know how to implement equal pay
- Enhancing transparency and developing accountability for delivering pay equality
- Amending social, economic and labour market policies to complement equal pay measures

Research reveals that most employers are not aware of a gender pay gap in their pay systems and are therefore not planning on conducting an EPR[92]. Conducting further research, publishing statistics on the gender pay gap, actively campaigning for equal pay and forcing employers to carry out an EPR by introducing an obligation for every employer to check their pay system will eventually lead to greater awareness of the gender pay gap problem and understanding of the necessity of dealing with this problem. The only way an employer can know whether women receive equal pay is to carry out an EPR.

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[87] The Task Force stated in its 2001 report *Just Pay* that they believe it is perfectly feasible, with concerted action by all the key players, that the gender gap due to discrimination in the workplace should be reduced by 50% within the next 5 years and eliminated entirely within 8 years.

[88] Targets were arrived at by reference to the following sources: The EOC programme for capacity building, including the development of a model equal pay review that will be ready by summer 2002; *Gender Equality in Pay Practices*, NOP Business for EOC, 2000; Government's targets of April 2003 for departments and agencies to review pay systems and prepare action plans; The 1998 Workplace Employment Relations Survey Management Questionnaire (WERS 1998); The Small Business Service statistics on the number and size of enterprises in the UK.

[89] Women and Equality Unit, *Delivering on Gender Equality*, DTI June 2003; the report does not mention a target for small and medium-sized companies.

[90] Incomes Data Services, *Monitoring Progress on Equal Pay Reviews*, EOC Spring 2004. www.eoc.org.uk

[91] The Equal Pay Task Force, *Just Pay*, EOC 2001, p. 14

[92] The Equal Pay Task Force, *Just Pay*, EOC 2001

Equal pay reviews should become an integral part of human resource and reward strategies. The government has to amend legislation and oblige employers to conduct an EPR.

For employers who are already planning an EPR the main barrier to actually carry one out seems to be the lack of knowledge and capacity to implement equal pay. In order to break this barrier the Task Force advised on capacity building to ensure that employers and trade unions know how to review pay systems. The EOC was advised to provide explanatory material and to work with pay experts, software companies to find ways to effectively help employers carry out an EPR. With Government funding the EOC developed the Equal Pay Review Kit including the EPR model. A clear and easy to use tool to check pay systems should encourage employers to conduct equal pay reviews.

The Confederation of British Industry (CBI), one of the largest employer organisations suggested the following approach: an appealing argument for employers to conduct an EPR is that it makes business sense. The CBI suggested that this argument would be likely to find favour with employers. This approach should be taken when asking employers to check their pay systems. The Government must act as an example to employers and take the lead on best practice.

5.5 Implementation of the Instrument

Since the *Valuing Women* campaign started in 1999 the EOC has taken various supportive measures to promote equal pay and raise awareness amongst employers. The EOC is the organisation mainly responsible for promoting the use of the equal pay review with employers. With DTI funding it developed the Equal Pay Review Kit, which is the key instrument for a number of measures taken by the Equal Opportunities Commission to tackle the gender pay gap in the British labour market. The Equal Pay Review Kit can be ordered from the EOC or downloaded from their website and the EOC has written guides and brochures to enable employers to carry out equal pay reviews[93]. Apart from this the EOC has taken other active measures to support and tackle the gender pay gap, for example setting up an Equal Pay Forum for employers to promote and share good equal pay practice in cooperation with Opportunity Now[94], organising an annual conference (2002 & 2003) to assess progress and make plans to reduce the pay gap further and recently a poster campaign *It's time to get even*.

There is close cooperation with the Government and the unions. The Trades Union Congress (TUC) and other unions have launched their own campaigns for equal pay. They provide training for union representatives to help employers conduct pay reviews.

[93] *Code of practice on Equal* Pay (EOC), An *Introduction to the Equal Pay Review Kit* (EOC), *Guidance Notes for the Equal Pay Review Kit* (EOC), *Are you providing equal pay?* (EOC). More on: www.eoc.org.uk/equalpay

[94] Opportunity Now is a business-led campaign launched in 1999 that works with employers to realise the economic potential and business benefits that women at all levels contribute to the workforce. More on: www.bitc.org.uk

5.6 Reactions of parties involved

Unions

> *The GMB union has urged the government to force employers to undertake equal pay audits following a new report which revealed that the average pay gap between male and female workers has grown to £129 a week*[95].

The unions' reaction to the introduction of pay reviews is positive, but they are disappointed that carrying out an EPR remains voluntary. The Trade Union Congress (TUC) itself received funding from the Department of Trade and Industry to develop supporting materials for the EOC Equal Pay Review Kit[96]. It organises activities to support employers in conducting an EPR such as training union equal pay representatives to help tackle the gender pay gap. The TUC regularly briefs union officers to look at new training materials and the EOC Equal Pay Kit and TUC changed rules so that all unions are under a positive duty to promote equality[97]. The TUC and other unions have launched their own campaigns for equal pay. They continue to call for mandatory pay reviews.

Employers

> *The CBI believes pay inequality results from the different choices women make, the careers they choose and the time they spend out of the labour market because of childcare responsibilities*[98].

The Confederation of British Industry (CBI) reacts strongly to the Task Force's recommendation for statutory pay reviews and argues that pay reviews will have little impact, but are an excessive administrative burden, particularly for small companies[99]. After conducting their own research the CBI found that pay discrimination is not the main factor responsible for the gender pay gap. Other factors play more important roles and therefore the responsibility for closing the gender pay gap should not lie solely with the employer. The key causes for pay inequalities are gender stereotyping throughout society, structural barriers in the labour market and individual choices and attitudes. The priority should be to address the structural barriers and promote good practice in pay. Statutory pay auditing would be disproportionate and impracticable for employers. In the eyes of the CBI the best way to deal with these problems is to improve childcare facilities, promote flexible working and provide better careers advice.

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[95] The GMB is a general union of 700,000 people of whom nearly 40% are women. The three capital letters GMB is the registered name of the union. The union today is the sum of a number of mergers of longstanding trades unions covering several production and service sectors and trades. That is why the Union's name is now just the letters "GMB" and is referred to as "Britain's General Union". Press release 14/01/2004, GMB website: www.gmb.ork.uk

[96] *Equal Pay Pilot Project. Final report-Phase 2*, TUC London September 2003

[97] EOR June 2003a:12

[98] CBI, press-release, 27 March 2001 www.cbi.org.uk

[99] See: Jane Parker, National report by on the United Kingdom for the EIRO comparative study *Gender equality plans in the workplace*, March 2004, www.eiro.eurofound.eu.int and press-releases on www.cbi.org.uk

The CBI is committed to working together with the EOC and others to promote the necessary changes, but finds that the principal responsibility to change the system lies with the Government[100].

Government

The Government's reaction to the Equal Pay Task Force's recommendation to encourage employers to conduct a yearly pay review was that it welcomes pay reviews, but that they should not be mandatory. This decision was mainly influenced by a strong rejection by the employers' organisations of what they consider as imposing costly measures on employers. Nevertheless the Department of Trade and Industry decided to encourage employers to carry out an EPR and they provided the EOC with extra funding to develop a model for voluntary pay reviews. Alongside the EOC work on the pay reviews, the Government took steps of its own such as the organisation of annual good practice awards, "fair pay champions" to raise awareness and build support amongst employers for pay reviews. In reaction to the Equal Pay Task Force's call for the government to set an example to employers, it has committed government departments and agencies to conducting pay reviews.

The main contribution by the Government in encouraging employers to conduct an EPR was to amend several pieces of legislation[101]. It introduced the statutory equal pay questionnaire in 2003. Employers are now obliged to respond to employees asking questions about their pay. The aim was to make pay systems more transparent and it enables employees to assess their pay and to take successive action if needed. The government held a public consultation *Towards equal pay for Women* on streamlining equal pay tribunal procedures which started in 2001 and was concluded in December 2003[102]. Amongst other stakeholders the EOC and both sides of industry were consulted. The amended Employment Tribunal Regulations and Rules of Procedure should come into effect on 1 October 2004. This means an additional pressure upon employers to conduct EPRs: if they do not check their pay system themselves, employees will now be able to file a pay claim more easily.

The Government's Women and Equality Unit has published various pieces of research on the gender pay gap[103]. Another supportive measure to combat pay discrimination and encourage employers to carry out an EPR was funding the TUC to develop a pilot programme to train full-time union officers and workplace representatives in carrying out pay reviews[104].

Public Discussion

> *A voluntary approach has its limits: employers do not believe they have a pay gap and therefore do not believe an equal pay review is necessary*[105].

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[100] CBI, *Tackling the Pay Gap between Men and Women*, CBI Evidence to the Equal Pay Task Force, CBI London, August 2000
[101] See Note 14 and 15
[102] More information on this consultation on www.dti.gov.uk/consultations
[103] www.womenandequality.gov.uk
[104] *Equal Pay Pilot Project. Final report-Phase 2*, TUC London September 2003
[105] Jane Parker, *EOC urges new action on equal pay*, April 2001, European Industrial Relations Observatory On-line (EIRO), www.eiro.eurofound.eu.int

The public debate that followed the recommendation by the Equal Pay Task Force to require all employers to conduct an equal pay review was mainly about the fact of whether or not EPRs should become mandatory. All parties concerned were positive about the introduction of voluntary EPRs. The EOC and trade unions felt that with the *Just* Pay report in their hands they had enough arguments to convince the Government to make an EPR a statutory obligation. The main cause for the gender pay gap is pay discrimination. Research for the Task Force showed that employers do not feel the need to check their pay systems because they believe they already provide equal pay. The only way to combat this misplaced confidence is to force employers to conduct an EPR.

5.7 Effectiveness of Equal Pay Reviews

Formal Effectiveness

EPR activity
In October the EOC commissioned Incomes Data Services to examine the extent of equal pay review (EPR) activity across the British economy[106]. The results were published in the Spring of 2004 in a report called *Monitoring Progress on Equal Pay Reviews*. The report shows that the EOC target with respect to large organisations, 50 per cent by the end of 2003, had not been met. In November 2003, nearly half (45 per cent) of large organisations (those with 500 or more employees) had either completed an EPR, were in the process of carrying one out, or planned to start one before the end of 2004[107]. Their target for small or medium-sized organisations is well on its way to being achieved; just under a third (31 per cent) of small or medium-sized (25-499 employees). More recently, in June 2003, the Government set its own target that 35 per cent of large organisations should have conducted an EPR by 2006[108]. The report states that this should be achieved.

An important finding was that public sector organisations were almost twice as likely as firms in the private sector to have conducted an EPR, or to be planning one. Here the percentage of organisations planning an EPR had fallen significantly from 54 per cent in 2002 to 32 per cent in 2003. More important is the finding that the majority (57 per cent) of the respondents had no plans to carry out an EPR. This is not a big reduction compared with 2002 when 54 per cent had no plans to do an EPR.

Conducting an EPR
The main reasons for private sector firms to conduct an EPR was (1) the employer's wish to be considered a good practice employer (64 per cent) and (2) that an EPR was seen as good business sense (51 per cent). When asked what factors had influenced employers in 2003 to conduct an EPR, 41 per cent mentioned Government policy and publicity, compared with 40 per cent in 2002, while 29 per cent stated that EOC policy and publicity had influenced them, compared with only 9 per cent in 2002. The latter seems to have gained significance since 2002 and appears to have become a growing stimulus for employers and is the main factor responsible for the increase in the number of employers conducting an EPR in 2003.

[106] Sally Brett and Sue Milsome (Incomes Data Services), *Monitoring progress on equal pay reviews*, EOC Discussion Series, EOC Spring 2004
[107] 16 per cent of employers had completed an EPR, 6 per cent were in the process of conducting one, and 21 per cent had plans to do one (mostly within the next year), *Monitoring progress on equal pay reviews*, Incomes Data Services, EOC Research Discussion Series, EOC March 2003
[108] WEU, 2003

A quarter of organisations that had conducted an EPR or were planning one had seen the EOC Equal Pay Review Kit. Not all had used it to conduct their EPR, but the majority had used elements of the toolkit to design their own review. According to the report this shows that among those organisations that have decided to do an EPR there is a greater awareness of changes in policy and an increased commitment to equal pay. The firms that had no plans for an EPR stated that the main reason for not doing so was that they believed they already provided equal pay[109].

EPR process and results
Most organisations that had completed an EPR, or were conducting one had begun in 2002 or 2003. This indicates how awareness has been raised in the last two years. Three-quarters said they had designed their own pay review. A number of these had either used external consultants or used guides. More than 25 per cent had been motivated by EOC policy and publicity to carry out an EPR. Many public sector organisations had used the EOC Equal Pay Review Kit or similar guidance when conducting an EPR, while the majority of private sector organisations had not sought any external advice[110].

Behavioural Effectiveness

A fifth of the organisations that had completed an EPR in 2003 found a significant pay gap that could not be explained on grounds other than sex. These gaps varied from between 1 and 20 per cent. Almost all of those organisations had taken, or planned, action to either reduce or eliminate those gaps[111]. Most organisations that had carried out an EPR, or were in the process of doing one, planned to repeat the exercise on a regular basis. Only 10 per cent said they would not do one again. Of those employers planning to repeat an EPR, 56 per cent said they plan to conduct the EPR annually, 8 per cent planned to conduct one every two years and a further 9 per cent stated it was an ongoing process.

Material Effectiveness

All the efforts by the EOC, trade unions and Government have contributed to raising awareness amongst employers and employees of the existence of a gender pay gap. However, the size of the gender pay gap does not seem to have changed dramatically since the EOC put the issue back on the agenda in 1999 with its *Valuing Women* campaign. Research shows that the average pay of a woman working full-time was 81.6 per cent of that of a man doing the same job in April 2001. The gender pay gap then widened by 0.4 percentage points between April 2001 and April 2002 and narrowed down again by 1.0 percentage point between April 2002 and April 2003 to women earning on average 82.0 per cent of the equivalent average of men. This still means a difference in pay between men and women of 18 per cent in 2003. Although this is the narrowest pay gap since the New Earnings Survey began in April 1970[112], it is not major reduction.

[109] Similar findings in: *Gender equality in pay practices*, EOC 2001
[110] Incomes Data Services, *Monitoring Progress on Equal Pay Reviews*, EOC Spring 2004
[111] 11 out of 14: Incomes Data Services, *Monitoring Progress on Equal Pay Reviews*, EOC Spring 2004, p. 36
[112] Jamie Jenkins, Patterns of pay: results of the 2001 New Earnings Survey in: *Labour Market Trends*, vol 110, no 3, 2001. Joanna Bulman, Patterns of pay: result of the 2002 New Earnings Survey in: *Labour Market Trends*, vol 110, no 12, 2002 and Patterns of pay: result of the 2003 New Earnings Survey in: *Labour Market Trends*, vol 11X No. X, pp 14, 2003. www.statistics.gov.uk

Conclusions on Effectiveness

The main conclusion on the effectiveness of conducting pay reviews as a means of reducing the gender pay gap is that the targets the EOC had set in 2001 for organisations to have conducted an EPR by the end of 2003 have not been met. Although nearly half of large organisations had conducted or was planning to conduct an EPR by the end of 2003, 49 per cent still had no plans to conduct one. This proportion had improved little since 2002. In spite of these figures the gender pay gap is still 18 per cent. The fact that half of these are not planning an EPR because they believe they have no gender pay gap, implies that there is still a lot of work to be done by the EOC together with Government and unions to raise awareness amongst these employers of the need for and benefits of conducting an EPR.

Positive findings are that more organisations are conducting an EPR every year. The responses from these organisations are encouraging. They show that the majority conduct an EPR in line with EOC guidance and recommendations. Another encouraging finding is that most employers who detect a significant pay gap after carrying out an EPR take action to close it. Finally, a majority of those who have already conducted an EPR plan to repeat the exercise. This development stimulates the EOC to continue to launch advertising campaigns, seek media attention for the equal pay issue, commission research on the matter and continuously stress the importance of employers checking their pay systems. The Government provided the EOC with funding to develop an EPR model and supporting guides and the TUC to develop training materials for tutors and representatives and it monitors its own departments and agencies conducting an EPR[113]. Besides this, serious efforts are being made by the government to amend relevant legislation and simplify tribunal procedures.

5.9 Keys to Success

Although targets were not achieved, the joint efforts of both sides of industry, the Government and the Equal Opportunities Commission encouraged around 45 per cent of large organisations to either conduct or plan to conduct an EPR by the end of 2003. The efforts made to raise awareness of the existence of a gender pay gap and its negative consequences, to detect the pay gap in each individual organisation and to assist employers to close this gap have seemingly not led to a significant reduction of the pay gap, but have raised awareness among many employers of the need to conduct such a pay review. Stakeholders mention various key factors, which have contributed or will contribute to future use of the pay reviews:

- Leadership from the government; employers mention government as one of the main influences upon them in deciding to conduct an EPR. By trying to set an example to other employers and by putting money and effort into policy and campaigning government contributes to the performance of EPR.
- Pressure and cooperation from the trade unions, especially by training union and workplace representatives in assisting employers to conduct an EPR.
- Close partnership of employers, unions, government, and a specialised equality body helps to convince society and the economy of the importance of providing equal pay.

[113] *Equal Pay Pilot Project. Final report-Phase 2*, TUC London September 2003

- Transparency; pay systems often seem complex and obscure. Creating transparency enables employers to provide equal pay and employees to detect pay inequalities.
- The development and introduction of a workable Pay Review Model (EOC EPR model) and additional accessible information has been shown to be essential. By providing employers with clear and easy to use tools and guidance on EPRs, they are able either to conduct an EPR directly or use the tool as a model for designing their own EPR.
- Convincing employers of the potential positive results and benefits of paying more attention to a possible pay gap and to equal participation. If there is a significant business benefit in prospect, employers are stimulated to carry out a review.
- The use and development of additional material and measures to support the introduction of the EPR model is essential. Campaigning, training and written guidance on the need and use of an EPR contributes to raising awareness amongst employers of the existence of a gender pay gap and the need to combat pay discrimination.
- Convincing employers that conducting an EPR is good employment practice and that it makes good business sense. The CBI suggested in its evidence to the Equal Pay Task Force that such an approach would be likely to find favour with employers and would build upon activities already undertaken in various sectors[114].
- Government's support in encouraging employees to come forward and file pay claims before the Employment Tribunal. Amendments to existing legislation to enable them do this more easily. This puts pressure on employers to carry out an EPR.

Points for Consideration:

Employers lack of a proper understanding of, and/or commitment to, key principles which support the development of pay practices free of gender bias (Monitoring progress towards pay equality, 2003)

- There is no statutory obligation to carry out an equal pay review and hence no judicial enforcement. Unions and the EOC identify this as the main barrier for employers to conduct a pay review.
- Not one EPR model is prescribed by law; although the EOC has developed the EPR model, firms can design their own pay reviews. This entails the risk that the outcomes of EPRs can substantively differ. There is no objective measure and control mechanism that can detect incomplete and therefore useless EPRs.
- Not all parties seem convinced of the fact that pay discrimination is the main reason for the gender pay gap. The employer organisations seem especially reluctant to actively campaign for equal pay.
- Reasons for the pay gap are complex and interconnected. Key factors include differences in educational levels and work experience, for example due to time taken out of the labour market for childcare; part-time working; occupational segregation; and discrimination; and other factors including length and time of commute to work[115].

[114] Equal Pay Task Force, *Just Pay*, EOC 2001, p. 24
[115] Women and Equality Unit, *Delivering on the equality agenda*, London DTI, 2003

6 Codes of Conduct (The Netherlands)

6.1 Introduction

The use of codes of conduct as a means of controlling, changing and influencing both desirable and undesirable behaviour by employees gained popularity in The Netherlands during the 1980s. It started out as an instrument to reduce corporate criminality. When it proved to be an effective tool for this, it became a rather popular instrument and in 1987 the first code of conduct to prevent and combat race discrimination was formulated[116]. In the early nineties the Minister of the Interior and Kingdom Relations commissioned research on the use of codes of conduct to prevent and combat race discrimination. The final report was published in 1992[117]. Its main conclusion was that in Dutch organisations codes of conduct were rare and limited in scope. In response to this the Minister called for government departments, political parties and non-governmental organisations (NGOs) to take joint responsibility and create a society free from discrimination. The parties involved signed the *Algemene Verklaring tegen Rassendiscriminatie*[118] and agreed to use codes of conduct as an instrument to combat race discrimination. The rationale behind this agreement was that all organisations are actively part of a common social environment. The values and standards in that social environment should become integrated into each individual organisation[119]. Many model codes of conduct have since been developed in public and private sector organisations to prevent and reduce discrimination and promote equal treatment and diversity. Some codes are general in nature and include some provisions on discrimination. Other codes are specifically aimed at the prevention and elimination of discrimination. The increasing use of codes of conduct by Dutch organisations over the last few years is partially due to the efforts and influence of non-governmental organisations that have encouraged organisations to take their social and ethical responsibility and make it an integral part of company policy and proceedings[120].

Although Dutch legislation does not provide a statutory obligation for organisations to draw up a code of conduct to eliminate discrimination in the workplace, the Dutch Working Conditions Act and the General Equality Act do include the obligation for any employer to protect its employees from sexual harassment, aggression and violence within and by the organisation[121]. Discrimination is seen as either aggression or violence. The Acts do not prescribe a specific instrument the employer should employ to meet this obligation. The existence of the Act, however, should encourage employers to actively adapt company policy to meet this obligation. A code of conduct could be part of that company policy.

[116] ABU Code of Conduct covering agency work, 1987
[117] Landelijk Bureau ter bestrijding van Rassendiscriminatie (LBR), *Gedragscodes Ter Voorkoming en Bestrijding van Rassendiscriminatie*, 1992
[118] Translates as: General Declaration against Race discrimination, 1992
[119] *Model Gedragscode Rijksoverheid tegen Rassendiscriminatie*, Den Haag: Ministerie van Binnenlandse Zaken, 2001
[120] L. Paape and H. Hummels, *Sociaal en ethische verantwoording: keurslijf of lijfbehoud?*, PriceWaterhouseCoopers & Universiteit Nyenrode, 2000
[121] Arbeidsomstandigheden Wet 1998, section 1, subsection f and Algemene Wet Gelijke Behandeling, section 5

In 2000, the Companies Care[122] project was launched. This Dutch project focuses on the effectiveness of codes of conduct as an instrument for eliminating discrimination and promoting diversity and was funded by EQUAL, which is part of the European Social Fund (ESF) and promotes equal opportunities on the labour market. In the last few years Companies CARE has commissioned various studies on the existence of, experiences with and effectiveness of codes of conduct in Dutch organisations[123].

6.2 Description of Instrument

> *A code of conduct is an official description of often moral rules or values which an organisation wishes to aspire to, and according to which all people subject to the code should conduct themselves [124].*

There are many different definitions of a code of conduct[125]. A distinction can be made between three main categories. A code of conduct can be either:

- a set of rules or
- a description of values and principles or
- a combination of values, principles and rules[126].

Various categories of codes of conduct can be identified depending on the organisational level at which they are established:

- the company code, the code is established at company level
- the professional code, the code is established within professional associations
- the sector or industry code, established by a coordinated industrial organisation and/or trade unions
- the governmental code, established at either central or local level[127].

Regardless of the exact composition of a code of conduct and the category it belongs to its main objective, in general, should be to prevent and eliminate discriminatory behaviour from the organisation and to promote equality and diversity. Usually a code of conduct consists of a combination of provisions on desirable behaviour, equality and diversity, and undesirable behaviour and discrimination.

There are various stages of development before a code of conduct can be introduced into an organisation. First of all the code of conduct has to be developed; an organisation needs to consider its objective, its scope, and it needs to define the core concepts and further content of the code. Then the most crucial part: the implementation of the code.

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[122] CARE stands for Companies Apply Rules for Equality**.** More information about this Dutch project on: www.e-quality.nl

[123] Companies CARE has kindly let us use these reports before they were published.

[124] TNO-arbeid, *Succesfactoren bij de ontwikkeling, implementatie en handhaving van gedragscodes rond non-discriminatie en diversiteit*, Report to Companies CARE, TNO Hoofddorp, 2004

[125] See for a summary of definitions: Ing. D.J. de Koning, *Vooronderzoek Gedragscodes*, report to Companies Care, E-quality, experts in gender en ethnicity, Spring 2003, p. 6

[126] Ing. D.J. de Koning, *Vooronderzoek Gedragscodes*, report to Companies Care, E-quality, experts in gender en ethnicity, Spring 2003, p. 6

[127] The first three are mentioned in: Ing. D.J. de Koning, *Vooronderzoek Gedragscodes*, report to Companies Care, E-quality, experts in gender en ethnicity, Spring 2003

A code is only proven to be effective if the organisation has taken the right time and effort to implement it successfully. The third stage concerns the enforcement and monitoring of the implementation of the code. Finally there is the issue of external responsibility: how and to whom does the organisation account for the code's functioning[128]?

Development of a Code of Conduct

> *Organisations should be dissuaded from copying a code of conduct. A good code of conduct should be tailored to the specific organisation. It should fit the goals, tasks and functions of each individual company*[129].

Responsibility
The responsibility for developing a code of conduct depends on the organisational level at which the code is established. The responsibility for a company code should lie with the board of an organisation; responsibility for a professional code with the relevant association and for an industrial code the responsibility should lie with the relevant industrial organisation. This responsibility entails initiating the development of the code, monitoring the progress of its development and implementing the code properly and successfully within the organisation.

Project Group
Some organisations appoint a project group to be in charge of the whole process of planning, formulating and implementing the code of conduct. This group can bring together representatives from every layer of the organisation. At company level the works council or staff representatives may be involved in composing the project group, above company level it is useful to ask trade unions to cooperate. Sometimes external experts are recruited to participate in the project group.

Before a project group can start functioning properly the exact tasks of the group should be made clear. Agreements have to be made on such matters as the timescale in which the code has to be completed and implemented, competencies of the group (or its members) and informing and involving employees in the process. Some group members might need additional training before they can actively take part in the development of the code.

Objective and Definitions
Recent reports on the use and effectiveness of codes of conduct conclude that setting up a special project group to manage the development and introduction of a code of conduct will contribute to its successful implementation within the organisation[130]. The project group should start the development of a code of conduct by specifying the code's objective. A code of conduct is a useful and effective instrument for organisations to combat discrimination and promote diversity in their own specific field and in their own specific way.

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[128] Ing. D.J. de Koning, *Vooronderzoek Gedragscodes*, report to Companies Care, E-quality, experts in gender en ethnicity, Spring 2003, p. 9
[129] Ing. D.J. de Koning, *Vooronderzoek Gedragscodes*, report to Companies Care, E-quality, experts in gender en ethnicity, Spring 2003, p. 9
[130] TNO-arbeid, *Succesfactoren bij de ontwikkeling, implementatie en handhaving van gedragscodes rond non-discriminatie en diversiteit*, Report to Companies CARE, TNO Hoofddorp, 2004; Ing. D.J. de Koning, *Vooronderzoek Gedragscodes*, report to Companies Care, E-quality, experts in gender en ethnicity, Spring 2003

All members of the organisation should be invited to take part in an open discussion within the organisation: what conduct exactly is desired? What behaviour is acceptable and tolerable within this specific organisation and what is not? An open consultation including every member of staff should be encouraged. It is very important to draw close attention to this matter. This company standard will be developed into rules of conduct and guidelines. The code should match and represent the organisational culture as well as internal and external policy. This is essential for the proper functioning of the code at a later stage. Consultation can be performed for instance by conducting a survey. This of course depends on the size of the organisation.

The core message of a code of conduct as an instrument to encourage compliance with equality legislation should be that discrimination on any ground is not tolerated. Not on the work floor, not in contacts with and/or between other people in and/or outside the company.
Nowadays discrimination is a broader concept than twenty years ago. In 2004, European legislation prohibited discrimination in the workplace on a number of grounds: employers should treat all employees alike regardless of gender, race, ethnic background, religion or belief, sexual orientation, disability or age. This means that an organisation that wishes to develop a code of conduct that aims to combat discrimination should consider all these grounds when defining core concepts e.g. desired conduct and discrimination. Codes of conduct often include a reference to national and international non-discrimination legislation. The full text of relevant provisions can be enclosed in a special annex to this report.

Scope
The scope of the code depends on the type of organisation. Who should be subject to the code? Some codes of conduct are internally orientated; they focus on company policy and are aimed at regulating behaviour between colleagues. Other codes of conduct are externally orientated; they focus mainly on behaviour between employees and clients, guests, students, visitors, patients, suppliers or customers. This means that some codes should include rules on contact with external/ third parties. Codes of conduct in the public sector tend to have a predominantly external focus while private sector codes have a more internal focus. Another point for consideration is the level of ambition. Does the code wish to set a minimum standard of desired conduct or is the code a declaration of conduct to be aspired to? Either way, people subject to the code should be able to identify with the ambition of the code.

Content of the Code of Conduct
A code of conduct can either be a general code that includes some specific provisions on non-discrimination and diversity, or a code specifically aimed at non-discrimination and diversity in the workplace. A code of conduct is usually put down in writing and varies in size from a one-page set of rules to a voluminous professional code. Some organisations combine a complete and extensive code of conduct with summaries of the same code in clear and short brochures. These summaries are frequently illustrated with cartoons to make the code more comprehensive and appealing to those subject to the code.

The code of conduct should start by specifying its objective. Introducing the code with a comprehensible statement of its objective is part of the implementation process. Core concepts such as desirable or undesirable conduct, and direct and indirect discrimination should be clear and comprehensible to all those subject to the code[131].

[131] To come into line with current EU Directives *harassment* and *the instruction to discriminate/ victimisation* is also regarded as discrimination. See: Race discrimination Directive 200/48, General Framework Directive 2000/78 and Equal Treatment Directive 2002/73.

Some codes of conduct start with a general clause on the objective of the code followed by the definitions of these core concepts. The code's objective is formulated in a formal or less formal tone depending on the specific organisation. Codes sometimes start with a more general declaration about the organisation's ambitions with regard to desired behaviour. Every organisation should fit the contents to their own culture and needs, while bearing in mind that it is essential that the code is clear and comprehensive. The code should preferably bear the message that all conduct is debateable. If a code of conduct consists of a set of rigid rules it will inevitably lead to adverse comments within the organisation, which will not contribute to its successful implementation.

> *This organisation considers the prevention and suppression of aggression, sexual harassment and discrimination to be of great importance. Discrimination on the grounds of race, age, religion or belief, political orientation, gender, nationality, sexual orientation, civil status and disability will not be tolerated by this organisation. The organisation wishes to demonstrate this through this code of conduct. The objective, besides the prevention and suppression of aggression, sexual harassment and discrimination, is also to encourage a discussion on these matters*[132].

There are several criteria for the content of a good code, which any organisation should bear in mind when developing one. First of all a code of conduct should be *comprehensive*, the code should contain clear definitions which are the result of extensive internal discussion. The code can also include visual aids to illustrate the meaning of certain definitions. Secondly the code should be *authentic*, each company should tailor its own code to fit its specific business policy and needs. Thirdly, the code has to *be able to survive developments*, not only current but also future company circumstances should be taken into consideration when deciding on the content of the code. Another important criterion is the *level of ambition.* What is the code's intention? Does it provide minimum standards of desired behaviour or does it set a maximum goal? The code should be *measurable*, it has to be monitored and the company should account for the code. Besides this the code should be *flexible*, avoid rigid and detailed provisions on undesirable behaviour (prohibitions), but a good code should also contain positive instructions, ambitions and aspirations. Finally there should be a *relational coherence* between the code of conduct and company policy: the code should become an integrated part of company proceedings[133].

Sanctions and Rewards
Another essential condition for the successful implementation of the code of conduct is that it must have a clear section on sanctions for infringements of the code. Again sanctions should fit general company policy. The code should be of a binding nature.

In the Netherlands several models of a code of conduct have been developed. The following table of contents of the LBR model code[134] might serve as an example:

Section 1: Definitions
Section 2: Objective
Section 3: Status of code

[132] Modelgedragscode Welzijnswerk
[133] http://www.minjust.nl/b_organ/npc/beroepsm/art_kk_effectiviteit_van_een_code.htm
[134] Najat Bochhah, *Van must tot lust*, LBR Rotterdam 2002

Section 4: Scope of code
Section 5: Publication of the code
Section 6: Compliance
Section 7: Monitoring compliance
Section 8: Guidelines on conduct:

- Situations to which the code applies e.g. recruitment and selection, contract of employment and working conditions, promotion and transfers, training, policy on sickness absenteeism, dismissal
- Right of complaint
- The appointment of an intermediary, tasks, responsibilities and competencies
- The appointment of a complaints committee
- Complaints procedure
- Sanctions

6.3 Implementation of the Code of Conduct

Implementation Plan

There is no one successful or correct method for implementing a code in an organisation. As well as the contents, the implementation of the code should fit the specific organisation. It is crucial to take the time and effort to draw up a plan and to monitor the implementation process carefully. The code is a means of creating a culture, in which conduct can be discussed, and is not an end in itself. A code can only be effective if it raises awareness of the problem discrimination can imply for a person and subsequently for the organisation. It is meant to influence the mentality in the workplace and preferably change discriminatory behaviour within or by the organisation. This can only be achieved if the code appeals to its users and if its contents are comprehensive. The project group, possibly together with the works council, must decide on the best way to implement the code.
Management plays a vital role in this process. They have to see to the practical implementation of the code in the various departments of the organisation. The success of a code starts with management being involved and determined to implement the code. This can be achieved by adjusting the implementation method to organisational procedures. Another way to encourage management commitment is to stress the fact that a code of conduct can contribute to the organisation's primary processes.

Implementation

The introduction of the code should be done in such a manner that the code gets full attention from all those subject to the code. According to a report on the development, implementation and enforcement of codes of conduct it is essential to employ a creative and light-hearted manner of implementing the code for the code to become embedded within the organisation. Some organisations arrange discussions hosted by stand-up comedians; others start poster campaigns on the issues covered by the code. Some codes have an eye-catching layout or include cartoons and thought-provoking statements. It is useful to provide training for management on discrimination and undesirable conduct[135]. This will increase their commitment to the objective of the code and enable them to actively assist in the implementation of the code of conduct within their specific departments.

[135] Stichting FNV Pers, *Op weg naar een werkvloer zonder racisme*, Amsterdam, Oktober 2003, p. 32-33

Involving people actively in the implementation of the code is the only way to create commitment within the organisation to the values subscribed by the code[136].

In large organisations it is useful to adapt the initial company code to the functions and tasks of individual departments within the organisation. This increases the chances of a successful implementation. The same can be done with professional and industrial codes. For example, a model code to prevent race discrimination was developed for the Dutch public sector in 2001[137]. This code was drawn up at central governmental level but is formulated in such a way that it can be adapted to the specific tasks and organisational structure of each individual government department and agency. The same is done at local government level in, for example, the municipalities of Amsterdam[138] and Rotterdam[139]. The model codes include step-by-step explanatory comments to enable organisations to develop their own organisational code. An example of a model trade code is the *Model Gedragscode Welzijnswerk*[140]. This model code was established through close cooperation between employer and employee organisations. The obligation for individual employers to develop a code of conduct was included in the collective agreement. Subsequently a model code was designed to enable individual organisations to meet this obligation. An example of a model industrial code of conduct is the NVP-*sollicitatiecode*[141]. This code, designed by the NVP (Dutch Association for Personnel Management), is specifically aimed at preventing discrimination during application and selection procedures. It includes rules on equal opportunities and non-discrimination. Individual companies can adjust and personalise this industrial code in order to fit their individual business structure and needs.

Monitoring Implementation of the Code of Conduct

Right of complaint

Finally, the code should include a proper right of complaint and clear procedures on the monitoring of the code[142]. A right of complaint is the entirety of formally determined provisions on the grounds of which complaints about discriminatory behaviour can be handled. Most companies set up a special complaint committee to handle the complaints. Employees or others subject to the code who feel they have been discriminated against can file a complaint with this body in a prescribed way.

The contents of a right of complaint depend on organisational policy. A good right of complaint should include the admissibility of a complaint: who can file a complaint where and within what time limit; provisions on the competencies and compilation of a, possibly internal, complaints committee and on the complaints procedure. Many organisations have an intermediary, who can be appointed to support complainants and assist them during the complaints procedure. Research shows that employees find it easier to file a complaint with an intermediary than with a complaints committee.

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[136] TNO, *Succesfactoren bij de ontwikkeling, implementatie en handhaving van gedragscodes rond non-discriminatie en diversiteit*, TNO Hoofddorp, 2004

[137] *Model Gedragscode Rijksoverheid tegen Rassendiscriminatie*, Den Haag: Ministerie van Binnenlandse Zaken, 2001

[138] *Amsterdamse gedragscode ter voorkoming en bestrijding van rassendiscriminatie*, 10 januari 1996

[139] *Rotterdamse gedragscode ongewenst gedrag Circulaire 94 / 7; P &O 94 / 185* (Rotterdam 4 februari 1994)

[140] Model Gedragscode Welzijnswerk

[141] The NVP-Sollicitatiecode, 2003 http://www.stvda.nl/_uploads/2003_nvp_sollicitatiecode.pdf

[142] Stichting FNV Pers, *Op weg naar een werkvloer zonder racisme*, Amsterdam, October 2003, p. 27

They fear negative reactions from colleagues and management and find an independent intermediary more approachable[143]. Organisations should think carefully before appointing a complaints committee. They can overcome this initial fear among future complainants by adjusting the complaints procedure. It might be decided that either management or the intermediary is the initial person to address depending on whom the complaint is about.

After implementation of the code, management has to supervise the integration of the code into daily company proceedings. Close monitoring is essential to the successful functioning of the code. Management plays a vital role here. It has to set an example and act as a stimulator and corrector. Management together with the works council or staff representatives can decide when and how to evaluate the code and see whether it needs adjusting.

External responsibility
An organisation can decide to publish information on the use and functioning of the code of conduct in its annual (and/or social) report.

Remedies

Whether a code of conduct has a legal status depends on the level at which and sector in which the code of conduct is established. The decision to develop and introduce a code of conduct at company level is a merely voluntary one, there is no national statutory obligation to develop a code of conduct to prevent and combat discrimination. There are, however, sanctions for individual employers who fail to comply with the obligation in the Working Conditions Act. Non-compliance with this act is considered a criminal offence and employers can be fined and, in the event of persistent infringements, the employer may end up in court. In the case of a code established by professional associations there will obviously be more pressure on the professionals /organisations/ companies within that same profession to adapt and introduce the code within their organisations. It might even be a condition for membership. Once the code is established at industrial level, trade unions and employers' organisations will or might bargain for the development of a code of conduct within each individual member organisation in a collective agreement. In the case of non-compliance with that stipulation by an individual employer, employees can turn to the union. Public sector codes of conduct however are seen as administrative rules. Enforcement of these codes at central or local governmental level is done within each individual governmental department or agency. Complaints of discriminatory behaviour should be filed with the complaints committee according to the procedures prescribed in the code. Often they do not contain any sanctions for non-compliance. Disciplinary measures can be taken in the event of infringements of the code's rules. External enforcement by the competent administrative Court is also a possibility. Administrative procedures will have to be followed.

[143] Boonstra, Knegt, Tros (Hugo Sinzheimer Instituut), *Regelingen inzake een individueel klachtrecht van werknemers in bedrijven*, Minsterie van Sociale Zaken en Werkgelegenheid Den Haag, September 2000

6.4 Goals of the Instrument

The main goal of a code of conduct should be to start a serious internal discussion on desirable and undesirable behaviour within and/or by the organisation[144]. Recent research within Dutch organisations on the development and implementation of codes of conduct shows that a code is more effective when it aims at encouraging a discussion on discriminatory behaviour covering: What does discrimination entail? What forms of discrimination can be identified in which parts and proceedings of this specific organisation? How does it manifest itself? How can it be avoided? An open discussion between employer and employees will raise awareness of the necessity and advantages of equal treatment. If compliance with national and international equality legislation is the only motive for the development and introduction of the code, a code will have no bearing on those subject to the code and proper implementation within the organisation will not succeed. This is the reason why organisations need to invest sufficient time and serious efforts in the development and implementation of a code of conduct. Simply copying a model code and distributing it among employees is not sufficient and will only be a waste of time and money. A code of conduct is a means not an end in itself!

6.5 Policy Theory

Developing a code of conduct is a useful means for organisations to meet national and international obligations to actively combat undesirable behaviour and discrimination within and by their organisations. These national and international obligations are often formulated in general terms. A code of conduct can transfer those general prohibitions into practical rules tailored to the specific needs, culture and policy of an organisation, profession or industry[145]. Domestic rules are more accessible and this will encourage compliance.

A code of conduct is a self-regulatory instrument. Organisations can set their own rules and standards and deal with conflicts internally without the interference of external bodies or government. Internal rules prove to be more effectively complied with than regulations imposed from above. The code of conduct provides the organisation with continuity: no more *ad hoc* problem solving.

Having a code of conduct can work preventively. The existence of a clear and accessible code of conduct benefits all those subject to the code. Employees know what conduct is tolerated and what is not in contacts with other colleagues, clients and consumers. This will create a pleasant and safe working environment. This will influence individual performance and absenteeism through illness will decline. In such an environment potential conflicts can be dealt with at an early stage internally and complex time-consuming and costly legal procedures can be avoided.

If any conflicts do arise, the existence of a properly published code of conduct is admissible in evidence and may be taken into account in proceedings on dismissal and suspension. The existence of a code of conduct can serve as an indication that the employer has done enough to inform employees on company rules and procedures.

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[144] TNO-arbeid, *Gewenst beleid tegen ongewenst gedrag: Voorbeelden van goed beleid tegen ongewenste omgangsvormen op het werk*, TNO Hoofddorp, 2002

[145] Najat Bochhah, *Van must tot lust*, LBR Rotterdam 2002

Having a code of conduct might serve as a good PR instrument. It can improve the social image and reputation of an organisation and this might attract potential employees and clients. It is a necessary tool for organisations that preach diversity management, and it will increase external and internal credibility.

Through the process of developing a code of conduct the organisation will acquire knowledge about its own organisation and working environment. Involving staff in discussions about the objective of the code and defining desirable behaviour will create a positive environment, which will help to implement the code of conduct at a later stage.

6.5 Reaction of Parties involved

Government

Since the Minister of the Interior and Kingdom Relations called for the use of codes of conduct in the fight against discrimination in the workplace, model codes of conduct have been drawn up at national and local governmental level: *Model Gedragscode Rijksoverheid* and the *Model Gedragscode voor ambtenaren bij gemeenten*[146]. The first model is specifically about discrimination while the latter refers only marginally to discrimination.

After the 2001 Convention on Race Discrimination and Intolerance, the Netherlands drew up a National Action Plan which was published in 2003. One of the themes it focuses on is equality in the labour market. It specifically mentions that the use of codes of conduct can prevent and eliminate discrimination in an organisation. It further states that the Ministry of Foreign Affairs will draw up a model code on integrity, which will have at its heart the Government code against race discrimination. The government intends involving expert centres on discrimination in the discussion to jointly work together to eliminate discrimination. The Ministry of Social Affairs and Employment organised an expert meeting in 2003 to explore the possibilities of reducing unwanted behaviour in the workplace. The outcomes of this meeting will be used in the development of working condition policy[147].

In 2000, the Companies CARE Project in the Netherlands was started. It was funded with EQUAL money, which is part of the European Social Fund (ESF)[148]. Companies CARE is a product of close cooperation between E-Quality (expert centre on gender and ethnicity), LBL (experts on age and society), COC (the national organisation for lesbian and gay interests) and LBR (National Bureau against Race Discrimination). The project is managed and supported by the *Agentschap SZW* [149]. Its main focus is on the effectiveness of codes of conduct as a tool to combat discrimination and promote diversity. The objective is to improve the quality and effectiveness of codes of conduct and rights to complaint.

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[146] At central level the *Model Gedragscode Rijksoverheid tegen Rassendiscriminatie*, Den Haag: Ministerie van Binnenlandse Zaken, 2001 and more recently at local level: *Modelgedragscode voor gemeenteambtenaren*, VNG, 2004

[147] National Action Plan The Netherlands , 2003

[148] For more information on EQUAL projects in the Netherlands: http://agentschap.szw.nl/index.cfm?fuseaction=dsp_document&link_id=27808&menu_item=4766 or in general: http://europa.eu.int/comm/employment_social/equal/index_en.html

[149] The Agentschap SZW is in charge of subsidies in the field of social economical policy, especially on work and income. It is also responsible for carrying out subsidy measures by the European Social Fund (ESF).

In this context it commissioned various research projects to look into the use and effectiveness of codes of conduct on discrimination and diversity[150]. It will use the results to develop training material for organisations that want to start using codes of conduct. In October Companies CARE presented a special website: www.diversiteitscode.nl. It offers practical tools to help organisations promote diversity and combat discrimination in the workplace. The site consists of a database with instruments and publications to enable employers to adapt diversity policy and draw up codes of conducts on the matter.

Employers and Employees Organisations

In 2003, the *Stichting* NCW, a centre related to the employer organisation VNO-NCW, published a brochure on company codes in which it does not specifically address discrimination. It speaks of core values and rules for employees.

In 2001, the agriculture employers' organisation LTO drew up a code of conduct for the horticulture industry together with FNV. It states that since the introduction of the code in 2001 examination of individual annual reports shows that hardly any complaints have been registered with the specially installed complaints committee. Only three formal complaints were registered, but they were not on discriminatory behaviour. The trade union ascribes this to the fact that employees have difficulty in approaching the committee. LTO draws a different conclusion: it concludes that apparently there are no problems with discrimination in the workplace in this specific industry.

Unfortunately, no further information was available on the involvement and experiences of the trade unions in the development of anti-discrimination codes of conduct or experiences with the FNV code.

6.6 Effectiveness of Codes of Conduct

Formal Effectiveness

Since the Minister of the Interior and Kingdom Relations called on all public and private sector organisations to develop codes of conduct to prevent race discrimination many codes have been developed. In 2000, research was done into the social and ethical responsibility of 2,500 Dutch large organisations. It showed that 34 per cent of those large private sector organisations had introduced a code of conduct, 50 per cent was either in the process of developing one or planning to do so in the near future. Only 17 per cent stated it did not need a code of conduct. Where nearly half of large organisations (more than 1000 employees) have a code of conduct, only a third of medium-sized (between 300 and 1000 employees) and just over 25 per cent of small (300 employees or fewer) organisations have a code. Since this study focused on codes of conduct in general it did not specifically refer to codes on discrimination[151]. At the moment the Dutch Working Conditions Act is being evaluated with a special focus on knowledge of the concept of undesirable behaviour among individual employers and the existence of a code of conduct to regulate this behaviour.

[150] See e.g.: Ing. D.J. de Koning, *Vooronderzoek Gedragscodes*, report to Companies Care, E-quality, experts in gender and ethnicity, Spring 2003 and TNO arbeid, *Succesfactoren bij de ontwikkeling, implementatie en handhaving van gedragscodes rond non-discriminatie en diversiteit*, TNO 2004.
[151] L. Paape and H. Hummels, *Sociaal en ethische verantwoording: keurslijf of lijfbehoud?*, PriceWaterhouseCoopers & Universiteit Nyenrode, 2000

The results of the evaluation will be presented to the Minister of Social Affairs and Employment at the end of October. Unfortunately no results were available in the public domain at the time this publication was printed.

A handful of codes of conduct specifically aimed at the elimination of race and other discrimination has been developed at various levels. At trade and industry level there are codes for insurance (1992), the sports industry (1994) small firms, FNV trade union (1993), health sector (1995), care (2000) and horticulture industry (2001)[152]. There is little information available on the implementation of these codes.

In 2001, the Dutch government published the *Model Gedragscode Rijksoverheid*[153]. All central governmental departments and agencies are subject to the code. It is specifically aimed at preventing and combating race discrimination.

Behavioural Effectiveness

In 2000, an evaluation was carried out into the legal obligation for employers to have an active policy against aggression and violence, sexual harassment and mobbing. This obligation was included in the Working Conditions Act. 40 per cent of employees said they had been confronted with aggression and violence, 10 per cent with sexual harassment and 16 per cent with mobbing at their workplace. A significant proportion of the employees confronted with aggression and violence (75 per cent), sexual harassment (42 per cent) and mobbing (56 per cent) filed a complaint with the appointed complaints person or committee. Complaining does not often lead to changes in the workplace or in the personal situation of the complainant. An important finding is that most incidents regarding sexual harassment do not turn into a formal complaint. Conflicts are either solved at an early stage or complainants prefer to change jobs rather than file an official complaint[154]. Another report on company policy on undesirable behaviour shows that in practice employers do not tend to evaluate their policy. Information on the effectiveness of such policy is therefore scarce[155].

Material Effectiveness

The main conclusion of the evaluation of the 1994 Rotterdam and 1996 Amsterdam anti-discrimination code of conduct for local civil servants is that codes of conduct do not work. Most local authorities are familiar with the code but they have not yet introduced it or implemented it. This is mainly due to the fact that the codes have not been properly published and presented. There is hardly any referral to the code, employees do not complain, and there is no support for the code from management. As a reason for the lack of support, management cites time pressure and the fact that they think the discrimination issue is old fashioned. They are thus not actively contributing to the implementation of the code. Furthermore, most departments do not have a clear procedure to be followed if an employee complains of discriminatory behaviour[156].

[152] http://www.lbr.nl
[153] *Model Gedragscode Rijksoverheid tegen Rassendiscriminatie,* Den Haag: Ministerie van Binnenlandse Zaken, 2001
[154] Regioplan Onderzoek Advies en Informatie, *Evaluatie Arbo-Wet inzake seksuele intimidatie, agressie en geweld en pesten op het werk,* Amsterdam, maart 2000
[155] TNO-arbeid, *Gewenst beleid tegen ongewenst gedrag: Voorbeelden van goed beleid tegen ongewenste omgangsvormen op het werk,* TNO Hoofddorp, 2002
[156] P. Stevens, *Anti-discriminatiecodes,* Universiteit Utrecht, 2003

Conclusions on Effectiveness

It is not possible to draw a conclusion on the effectiveness from the little information we have on experiences with codes of conduct in relation to the elimination of discrimination. Although quite a few codes of conduct have been developed since 1992, little or no information on their effectiveness is available. The scarce information that is available is not very encouraging. In most organisations the code of conduct seems to remain a useless piece of paper. Poor or no active implementation guarantees the failure of a code. Employers are not actively performing their duty to eliminate discrimination from the workplace. A project such as Companies CARE might help to change this situation by providing concrete information on the development and implementation and assist organisations in complying with equality legislation.

6.7 Keys to Success

The introduction of a code of conduct can be to the benefit of the employer, employee and the organisation as a whole. A code of conduct may protect employers and employees from undesirable behaviour and it helps them to avoid lengthy and complex legal procedures. A successful code of conduct is tailored to the goals, tasks and policy of the specific organisation. The right of complaint inextricably forms part of a good code of conduct.

A summary of the main keys to the development and implementation of a successful code of conduct:

- Each organisation should design its own code of conduct, tailored to individual business needs. Points for consideration are: the size of the organisation, its organisational culture and policy, its main goals, tasks and strategies, matching existing quality and other protocols, the use of language, form and lay-out of code of conduct, presentation and implementation of the code
- Pay special attention to the content of the code and the procedural factors when developing and implementing the code
- Publicity around the introduction of a code of conduct is essential; there are many creative ways of drawing attention to the objective and contents of the code such as seminars, leaflets and the layout of the code
- Partnership between both sides of industry and the government might help raise awareness of the need for codes of conduct in the workplace
- Management plays an important role in implementing the code of conduct and preventing undesirable behaviour i.e. discrimination. Regularly drawing attention to the matter, i.e. during staff meetings, will continue to keep the objective of the code an issue[157]. Management should take complaints about discrimination seriously and point out the existence of a right of complaint and related procedures
- Set up a committee of complaints and design clear complaint procedures

[157] TNO-arbeid, *Gewenst beleid tegen ongewenst gedrag: Voorbeelden van goed beleid tegen ongewenste omgangsvormen op het werk*, TNO Hoofddorp, 2002

7 Covenants (the Netherlands)

7.1 Introduction

In the last decade the Netherlands has become a diverse society, in demographic, social and cultural terms. The change in composition of the Dutch population has significant consequences for Dutch labour market policy. Despite the diverse composition of the Dutch labour force, many ethnic minority groups experience difficulties in entering the labour market. Society as a whole needs to become aware of this diversity and its implications, but employers especially must recognise that a multicultural company policy is needed. In the early nineties the first initiatives to encourage ethnic minority groups to participate in the labour market came from both sides of Dutch industry. In 1991 employers' and employees' organisations in the *Stichting van de Arbeid* (STAR)[158] agreed on a framework for an ethnic minority policy for both sides of industry. This framework was documented in *Meer Werk voor Minderheden*[159]. As the results of this policy were disappointing, the government decided to enact legislation on the matter. A start was made with the Law on the Promotion of Proportional Labour Participation of Ethnic Minorities, which came into force in 1994 but was replaced by the SAMEN Act of 1998[160]. The latter was a result of the evaluation of the second STAR Framework agreement[161]. The SAMEN Act is meant to support the recommendations of that agreement between employers' and employees' organisations and to increase labour market participation by ethnic minorities.

In 1999, the Taskforce *Minderheden en Arbeidsmarkt*[162] was set up by the Minister of Social Affairs and the Minister of the Interior to stimulate participation in the labour market by ethnic minorities and to abolish possible obstacles. It came up with three recommendations to adopt a policy to match job seekers from ethnic minority groups and potential employers:

- Match supply and demand in the most direct and fast manner possible
- Involve top management of large companies
- Aim at trade level

These recommendations led to several projects. Two of these, the small and medium-sized company covenant (MKB Covenant) and the *Raamconvenant Grote Ondernemingen* (RGO), will be analysed in this chapter. Both projects aim at greater inclusion of ethnic minorities in the labour market. As these initiatives involved multiple parties, covenants were used to lay down agreements on objectives and procedures. The projects have all been evaluated and similar policy projects have been adopted for other unemployed groups such as the covenant to stimulate labour market participation of women who return to work after a career break[163]. The following analysis is on the use and effectiveness of covenants as an instrument to create equal opportunities for ethnic minority groups.

[158] The Stichting van de Arbeid is a consultation body comprising central employer and employee organisations which occasionally advises government on social and economical policy. More information on: www.stvda.nl
[159] Stichting van de Arbeid, *Méér werk voor minderheden*, November 1990: (1991-1996)
[160] Wet SAMEN (Stimulering Evenredige Arbeidsdeelname Minderheden), 1998
[161] Stichting van de Arbeid, *Met Minderheden meer Mogelijkheden*, November 1996: (1997-2001)
[162] Translates as: "Task Force Minorities and Labour market". In this Taskforce representatives of minorities, employer and employee organisations, trade and industry, and employment agencies were united
[163] Ruim baan voor vrouwen project: www.ruimbaanvoorvrouwen.nl

7.2 Description of the Instrument

A covenant can be defined as a formal agreement between a central public body and one or more parties that aims at implementing government policy. The agreement is legally binding, unless parties decide otherwise. The goals, rights and obligations of parties involved are formulated clearly. The covenants further consist of agreements to carry out that objective, monitoring, dispute procedures, specific measures concerning compliance with the covenant, evaluation, regulations on modification of the contents of the covenant and regulations on cancellation by a party and its consequences.

Since 1999 the Dutch government has implemented several projects to increase labour market participation by ethnic minorities. The following is a description of two such projects in which agreements and proceedings were put down in covenants. Both projects resulted from the recommendations made by the Task Force *Minderheden en Arbeidsmarkt*. The first recommendation –match offer and demand- led to the *Convenant inzake de instroom van etnische minderheden in het midden- en kleinbedrijf* (MKB covenant). The second recommendation –involve management of large companies- led to the *Raamconvenant Grote Ondernemingen* (RGO).

MKB covenant

In April 2000 the Chair of the small and medium-sized employer organisation (MKB Nederland) took the initiative to draw up a covenant involving the Ministry of Social Affairs and Employment, the Ministry of the Interior and Kingdom Relations, MKB Nederland and the Centre for Work and Income (CWI[164]): the MKB covenant. The objective of the covenant was to mediate between job-seeking minorities and vacancies in small and medium-sized companies. Ethnic minorities should thus be enabled to enter the labour market and employers of small and medium-sized companies should be able to fill their so-called difficult vacancies. The project was finalised in December 2002.

CWI set up a national and regional project infrastructure to achieve the objective of the covenant. At regional level project teams were created with a total of 250 MKB Consultants who exclusively worked on the MKB covenant. These project teams were made up of ethnic minorities mediation experts who assist employers with recruitment and selection. Some of these MKB Consultants had an ethnic minority background. The project teams were supervised by regional project managers who were subsequently supervised by a national project manager. The project teams had clear targets: each region had the obligation to fulfil a set number of small and medium-sized company vacancies in a set period of time.

A one-on-one approach was taken when mediating for ethnic minority job seekers. Every ethnic minority client who registered with the CWI[165] was invited to a preliminary consultation. People who receive unemployment benefits are formally obliged to visit the CWI for consultation every other week. During these consultations, the job seeker's competencies and possibilities were explored. Through this approach ethnic minority job seekers were closely monitored into finding a job.

[164] The Centre for Work and Income (CWI) is the first stop for job seekers and employers in the Netherlands. Employers can contact CWI for placement services and information on the labour market. CWI can help job seekers find work or to apply for unemployment or supplementary benefits. The centre also issues dismissal and employment permits and provides information relating to labour law.
[165] See note 7.

Additional training was provided if needed. Each MKB Consultant was responsible for its own caseload; this one-on-one approach was supposed to enable the consultants to work more effectively.

The MKB covenant accommodated several specific measures for employers. A national telephone number was put into operation through which employers could communicate their vacancies. Those vacancies were immediately redirected to the relevant region and an MKB Consultant would contact the employer. The MKB Consultant was supposed to nominate at least one job candidate within three days and within a week there should be clarity on the fulfilment of the vacancy. The CWI was also allowed to refer a case to a commercial intermediary if it was unable to comply with this obligation internally. The MKB Consultant must monitor its client up to two months after placement. Close monitoring of clients should help them to stay in the job.

***Raamconvenant Grote Ondernemingen* (RGO)**

A second project resulting from the recommendations of the Taskforce *Minderheden en Arbeidsmarkt*[166] is the RGO. This covenant, signed in June 2000, covered multicultural staff policy. The covenant was finalised in June 2004. The objective of this covenant was to involve senior management of large companies in increasing labour market participation of ethnic minorities. The RGO project consisted of one framework covenant between the Minister of Social Affairs and Employment, the Minister of Large City and Integration Policy and the boards of fourteen large Dutch companies, such as KLM, ABN AMRO and Randstad Groep Nederland BV. This framework covenant laid down the parties' intention to make a serious effort to implement a multicultural staff policy. A project organisation was set up, *Ruim Baan voor Minderheden (RBvM)*, to support individual organisations in implementing the covenant. Parties agreed on the use of implementation covenants between the above-mentioned Ministers and individual organisations containing detailed agreements and subsequent measures. A total of 110 large companies from various industries signed this covenant. An average of one in ten large Dutch non-profit organisations and one in seven large organisations in the profit sector are party to an implementation covenant. The implementation covenants contained agreements on the following themes:

- Multicultural staff policy and intercultural management: raising commitment and a support base in the workplace, training staff on the issue and other diverse concrete measures
- Recruitment and selection: create vacancies for the target group and raise awareness of culture and background during job application procedures
- Influx of ethnic minorities: create and offer work experience positions and trainee-ships
- Preservation and flow: professional and language training, monitoring and coaching
- Other measures and activities to support the objective of the covenant

Each implementation covenant was tailored to fit the policy and structure of the specific organisation that is party to the covenant. Neither the framework covenant nor the individual implementation covenants are legally binding.

[166] See Introduction and note 5.

7.3 Goals of the Instrument

As mentioned in the Introduction the two projects described in this chapter were the results of the recommendations made by the Taskforce *Minderheden en Arbeidsmarkt*. This task force, set up by the Minister of Social Affairs and Employment and the Minister of the Interior and Kingdom Relations, was set up to stimulate labour market participation of ethnic minorities and to abolish possible obstacles.

MKB Covenant

The main target was to mediate for 20,000 people from the ethnic minorities to find them jobs within small and medium-sized companies before the end of May 2001. Small and medium-sized company employers were supposed to provide the CWI with 30,000 vacancies. The covenant was prolonged twice and was finalised in January 2003. With the first prolongation, which ran from April 2001 to December 2001, parties to the covenant agreed to mediate for a further 13,000 people from the ethnic minorities and provide the CWI with the equivalent in vacancies. The second prolongation entailed mediation for another 23,000 people from the ethnic minorities between December 2001 and December 2002, and 20,000 vacancies were to be provided by employers.

***Raamconvenant Grote Ondernemingen* (RGO)**

With the signing of the framework covenant by the Minister of Social Affairs and Employment, the Minister of Large City and Integration Policy and the boards of fourteen large Dutch companies, a first step was taken by the Dutch government to involve senior management in government policy to improve the social and economical position of ethnic minority groups in the Dutch labour market and to reduce unemployment figures for these groups by 50 per cent. Both Ministers' target was to involve at least one hundred large Dutch companies in the RGO project and to reach an agreement on specific measures for each company to adopt a multicultural staff policy. These measures were to be laid down in implementation covenants with each individual company.

7.4 Policy theory

Government policy regarding the labour market position of ethnic minorities can be described as part of a broader integration policy. Its primary objective is to create active citizenship for members of ethnic groups. Public authorities, non-governmental organisations, the commercial industry and minority organisations carry joint responsibility to create equal opportunities as well as obligations for newcomers. Procedures in economic, labour and social policy need to be amended to enable ethnic minorities to participate equally in Dutch society[167].

[167] KPMG, *"De partners aan het woord" Evaluatie Wet SAMEN – feiten, ervaringen en visie*, TK 2002-2003, 27 223 nr. 44, 26-09-2003, p. 24.

MKB covenant

The MKB covenant specifically aimed at reaching ethnic minority job seekers and at assisting them, by way of one-on-one consultation and close monitoring, in finding and keeping a job. Past experiences with this specific group had shown they were hard to reach and mediate for. Under the MKB covenant ethnic minorities were actively encouraged to look for jobs by means of publicity, such as advertising campaigns and brochures on the matter and a one-on-one approach by the CWI. Personal and regular contact with one case consultant would enable consultant, client and employer to find a perfect match.

***Raamconvenant Grote Ondernemingen* (RGO)**

The RGO project was initiated to involve senior management of large companies in the implementation of government policy related to the economic and social position of ethnic minorities. This policy was based on the fact that existing labour market instruments did not have the desired effects. Nationwide measures had proved to be too general: the problems of specific ethnic minority groups could not be dealt with effectively. These general policy agreements needed to be translated into specific measures. The use of implementation covenants, which are the practical implementation of the framework covenant, would enable an individual organisation to set specific targets related to multicultural staff policy. The decision to involve senior management was made to create commitment. Through signing the framework covenant the boards of large companies would commit themselves to deal with the underdeveloped economic position of ethnic minorities and to increase labour market participation by this specific group. The involvement of important Dutch companies would serve as a good practice example and should have a significant influence on individual employers to adopt a similar approach.

7.5 Implementation of the Instrument

MKB covenant

The implementation of the MKB covenant was supported by various additional measures to inform employers about the project, such as:

- An intensive communication campaign: the campaign is aimed at encouraging communication of vacancies and increasing participation by ethnic minority job seekers
- The MKB vacancy line: vacancies are immediately redirected to MKB Consultants
- The MKB vacancy bus: an active approach to inform employers across the country about possible candidates
- A regional vacancy newspaper (*de AanBodkrant*): this newspaper is distributed regularly and offers an insight into the pool of candidates and is meant to match supply and demand in each region
- Brochures: information brochures for employers and job-seekers
- An MKB Newsletter: informs employers on recent developments concerning the covenant
- Seminars and information stands at conferences: during the covenant period a total of 300 seminars were organised to inform employers about the project

- Information campaign (*Entree in mkb*): in 2002, parties to the covenant together with national and local ethnic minority organisations launched this campaign to reach ethnic minority groups through advertising on satellite and regional television channels
- Other activities: mainly regional activities aimed at employers

***Raamconvenant Grote Ondernemingen* (RGO)**

With the signing of the RGO framework covenant, parties set up a special project organisation whose task was to support individual organisations in implementing and monitoring progress of the agreements in the covenant, *Ruim Baan voor Minderheden (RbVM*). Furthermore a special website was designed which registered participants in the project, the content of and parties to each covenant[168]. It gave detailed information on the progress and results of the individual covenants.

7.6 Reactions to the Implementation

Government

The Ministry of Social Affairs and Employment and the Ministry of Large Cities and Integration, the Ministry of Justice and the CWI are positive about the results of the MKB covenant. They feel that the use of covenants has contributed significantly to an increase in labour participation by the target group. In the future, however, covenants should focus more on the recruitment and transfer of target groups into higher positions within the same company. Other points for consideration are the enforcement of agreements in the implementation and other covenants and the inclusion of positive financial and other incentives. It might encourage compliance with covenants if employers can be held responsible for the progress of the covenant and the results achieved, and if they can receive compensation for the expenses incurred in achieving their individual targets. According to the government the use of covenants is a temporary measure until companies have commenced self-regulation and taken responsibility to solve diversity issues[169].

Subsequent to the ethnic minority covenants, more covenants have been concluded relating to the increasing labour market participation of other minority groups such as women who return to the labour market after a career break, women with an ethnic minority background and older workers.

Employers

The majority of the 110 companies who were party to an RGO covenant or implementation covenant, 60 per cent, are positive about this instrument. Around 40 per cent claim to have experienced a definite improvement in the position of ethnic minority workers within the organisation and 60 per cent state that awareness of this issue has increased. 15 per cent of participating companies feel that the RGO covenant has created a broader understanding and insight into the position of ethnic minority groups within their organisation, which has led to a

[168] www.rbvm.nl
[169] KPMG, *"De partners aan het woord" Evaluatie Wet SAMEN – feiten, ervaringen en visie*, TK 2002-2003, 27 223 nr. 44, 26-09-2003

reduction in prejudice about these groups. Only a few organisations, 5 per cent, feel that a covenant is a good incentive for companies to start taking action to increase the participation of ethnic minorities in the labour market[170].

Unions

No employee organisations were party to either of the abovementioned covenant projects. One of the main central employee organisations, the *Federatie Nederlandse Vakbeweging* (FNV), was invited by the Ministry of Social Affairs and Employment in 2002 to join the evaluation committee of the RGO project, but refused since they had not been involved in the set up of the covenants. In relation to the MKB project, the FNV points out that the CWI found that most participants from ethnic minority groups who were matched to a job in a small and medium-sized company received a temporary contract. Dutch labour law allows temporary contracts to be extended by another temporary contract only twice, which makes placement into a permanent job through the MKB project quite difficult. According to the FNV, the CWI counted each extension as a new match or placement. Thus the genuine total of filled vacancies appears to have been at least tripled[171].

7.6 Effectiveness

Formal Effectiveness

MKB covenant
Between 2000 and 2003 a total of 78,000 vacancies were communicated to the CWI by employers (target was 63,000), a total of 44,000 vacancies were filled (target was 53,000) and a total of 70,000 job seekers were placed, of which 62,000 were from the ethnic minorities following mediation by the CWI (target was 56,000). One of the reasons that the target of 53,000 filled vacancies was not reached is the fact that a discrepancy remained between supply and demand. For example, 23 per cent of the communicated vacancies were in the technical industry while only 15 per cent of ethnic minority job seekers were qualified to work in that specific area. On the other hand, 25 per cent of job seekers were registered as production employees compared with only 6 per cent of vacancies available. In spite of this discrepancy, results were positive, mainly due to the efforts of the MKB Consultants who actively searched for matching vacancies and supported employers in formulating practical job profiles.

Research further shows that organisations that have a relatively high influx of ethnic minorities are faced at the same time with relatively high departures of this target group[172]. An independent report on the endurance of the placement of ethnic minority workers through the CWI shows that six months after placement around 64 per cent has a job of which 33 per cent with the same employer. This is roughly the same after twelve months. Departure among ethnic workers is the greatest in the first six months after placement. Once a worker has passed these six months he or she is more likely to stay in that job[173].

[170] SEOR B.V., *Monitoring en evaluatie Convenant Grote Ondernemingen –tussenrapportage (eindversie),* Rotterdam, June 2002
[171] Information obtained through interview by mail with Leontien Bijleveld from the FNV vrouwensecretariaat.
[172] KPMG, *"De partners aan het woord" Evaluatie Wet SAMEN – feiten, ervaringen en visie,* TK 2002-2003, 27 223 nr. 44, 26-09-2003
[173] Regioplan, *Minderheden aan het werk?,* Amsterdam, June 2002

Raamconvenant Grote Ondernemingen (RGO)
In March 2002, one hundred and ten companies were party to a covenant with the government[174]. There had been contacts with a total of 155 companies and finally 70 per cent agreed on signing a covenant. The fact that the target of one hundred companies involved in the RGO project was reached is mainly due to the efforts of the project organisation *RvBM*. In most cases the *RvBM* took the initiative and approached each company individually. Initially most companies were not eager to cooperate, but eventually they were convinced of the need for an active approach to the target group. Reasons for cooperation were diverse. Examples given were: social responsibility, combating labour shortages, competition motives and the social image of the organisation. The main reason, however, was that organisations were concerned about the continuity of recruitment of workers and thus the continuity of the organisation itself. Developing a multicultural staff policy enabled them to access an extra pool of potential staff.

During the RGO project many measures were taken by individual employers to develop a multicultural approach but they cannot all be attributed to the working of the covenant. Other factors such as the positive economical climate, the fact that many participating organisation had already started to implement a diversity policy before the actual start of the RGO covenant and other autonomous developments have contributed significantly to the success of the covenant. Nevertheless, by the end of 2003, the majority of the 110 organisations planned to renew the covenant, of which 95 eventually did.

Because the *RvBM* spent most of its time informing and convincing companies to cooperate, there was little time left for the organisation to fulfil its remaining tasks. In 2002, the *RvBM* had not yet been able to monitor, encourage and /or support companies in the implementation of agreements arising from the covenants. The *RvBM* stated in the RGO evaluation report of 2002 that it was confident that there would be sufficient time remaining to deal with this backlog.

Behavioural Effectiveness

MKB covenant
The MKB covenant has had a positive effect on CWI procedures. The one-on-one approach in relation to ethnic minority job seekers as well as employers has turned out to be quite effective. Although the MKB covenant was terminated at the end of 2002, the CWI has adopted this approach in mediating for ethnic minority job seekers into its regular mediating function. The experiences with the MKB covenant seem to have contributed to this development. Although most employers were reluctant to cooperate with the CWI at first, the personal approach of MKB consultants and regular personal contact with those employers have changed this attitude.

Raamconvenant Grote Ondernemingen (RGO)
External research shows that the number of employees from ethnic minority backgrounds in companies that participate in the RGO project is above the national average[175]. The target group was reached more than proportionally.

[174] SEOR B.V., *Monitoring en evaluatie Convenant Grote Ondernemingen –tussenrapportage (eindversie)*, Rotterdam, June 2002
[175] SEOR B.V., *Monitoring en evaluatie Convenant Grote Ondernemingen –tussenrapportage (eindversie)*, Rotterdam, June 2002

Awareness of the need for a multicultural policy rose among senior management of large companies. Commitment to the goals of the RGO project increased and parties contributed to the regular monitoring and evaluation of the covenants. An independent evaluation of the RGO project concludes that the project has accelerated multicultural staff policy mainly in those companies who were already taking an active approach towards attracting and involving ethnic minorities. For other companies it created conditions that will aid such acceleration in the near future. The covenant seems to have functioned as an incentive for companies to work actively towards multicultural policy and management within the organisation[176].

Material Effectiveness

During 2002, the proportion of ethnic minorities on the Dutch labour market rose from 8.5 to 9.1 per cent. This percentage reflects the proportion of ethnic minorities in the total of the Dutch labour force, which is 10 per cent. The number of individual organisations who actually reached this 10 per cent standard decreased from 25 per cent in 2000 to 19 per cent in 2002. The services industry has the largest share of ethnic minorities: 13.1 per cent, whereas the construction industry has the smallest share with less than 6 per cent of the total of workers. The number of ethnic minorities in full-time jobs rose from 8.7 per cent in 2001 to 9.5 per cent in 2002. These figures indicate an improvement in the position of ethnic minorities in the Dutch labour market[177].

In 1998, 16 per cent of ethnic minorities were unemployed while unemployment among Dutch natives was only 4 per cent. In 2003, unemployment figures for ethnic minorities were still around three times higher than figures for Dutch natives: around 4 per cent of Dutch natives were unemployed at the end of 2003 compared with 14 per cent of ethnic minorities[178].

Conclusions on Effectiveness

The use of covenants in the projects mentioned above seem to have had a stimulating effect on organisations to actively cooperate with the government to encourage participation by ethnic minorities in the labour market. Although targets in both projects have been met, the difficulty remains of keeping the target group in the jobs. Since departure has been shown to be high and the economic situation has changed during the past few years, the government's attention will need to focus on offering ethnic minorities the prospect of a more permanent job. Most organisations feel that the covenant is mainly an instrument that raises awareness of the backward position of ethnic minorities in the labour market and relatively few feel that it actually works as an incentive for employers to commence an active multicultural policy within their organisation. Future use of this instrument will focus on a more integral approach to increasing labour participation by minorities. Diversity will become the starting point. The use of covenants appears to be a successful formula for involving various parties to achieve a mutual goal: equal opportunities for all and continuity in the labour market

[176] SEOR B.V., *Monitoring en evaluatie Convenant Grote Ondernemingen –tussenrapportage (eindversie)*, Rotterdam, June 2002

[177] Letter from the State Secretary of Social Affairs M. Rutte to the Parliament dated 28 April 2004: www.minszw.nl

[178] Sabine Lucassen, *Groei werkloosheid bij allochtonen iets sterker*, in: *Sociaal economische trends*, eerste kwartaal 2004, CBS 2004: www.cbs.nl

7.7 Keys to Success

MKB covenant

- Formulate concrete and ambitious goals: a result-oriented approach stimulates and involves parties to the covenant.
- Public monitoring of results: from day one vacancies and placements were made public on a specially designed website, www.werkzaken.nl Publicity appears to be a successful incentive for parties to cooperate actively.
- Joint cooperation: during the preparation and implementation of the covenant parties met regularly to discuss and monitor the approach adopted and the results achieved. Swift action could thus be taken to adjust the implementation of the covenant.
- Take sufficient time to build a proper project infrastructure: members of the target groups –employers and ethnic minority job seekers- need time to prepare for the actual implementation of the project.
- Registration process for job seekers (at the CWI) should connect with the project infrastructure.
- One-on-one approach to ethnic minority job-seekers: the obligation for people from the ethnic minorities to attend regular consultations at the CWI as well as the personal contact with their MKB Consultant seem to have positive results.
- Publicity: clear publicity on Dutch job seeking procedures and employment possibilities aimed at immigrant workers in brochures and through advertising is necessary to reach and involve the target group.

Raamconvenant Grote Ondernemingen (RGO)

- Commitment and a support base within the organisation are essential, especially from senior and other management: individual companies should invest in informing staff about the content of the covenants and their objectives and create a support base within the organisation.
- There should be a continuous process of implementing agreements from the covenants: assigning a special project manager or group contributes to this continuity
- Government should create a continuous supply of ethnic minority workers to aid employers to meet their targets.
- The ethnic minority workers should receive proper language training: poor language skills appear to be a major obstacle for employers and employees to implement the covenants successfully.
- External experts should be made available to employers for a small fee to help implement the covenants.

8 Contract Compliance (the Netherlands)

8.1 Introduction

Since the use of orthodox legal methods (legislation and other measures) proved to be fairly ineffective in preventing the social exclusion of certain groups and stimulating equality of opportunities in the Netherlands and elsewhere, the Dutch government went in search of other more practical and effective instruments[179]. One of those instruments is the use of contract compliance by national, regional or local governments to promote equality in the workplace and stimulate labour market participation. Contract compliance can be described as the stipulation of additional social conditions in public contracts with private sector organisations. These social conditions often aim at promoting labour market participation by specific target groups or improving working conditions. The legality of the use of contract compliance has often been questioned. Dutch and international research claim to have found a legal basis for the use of contract compliance in national and international legislation[180]. At national level the Dutch Constitution, Penal Code and Equal Treatment Act allow the use of contract compliance[181]. At European level Article 5 of the Race Directive (2000/43), Article 7 of the Framework Directive (2000/78) and Article 2 (7 and 8) of the amended Equal Treatment Directive (2002/73) state that the anti-discrimination requirements of the Directive "shall be without prejudice to measures to promote equal opportunities" for the target groups in the areas covered by the directives i.e. employment, promotion, vocational training and working conditions. These measures are also regularly defined as positive action measures. The Treaty of Amsterdam added a subsection to Article 141 EC, which explicitly allows for positive action policy to promote equality between men and women in employment. At international level the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Elimination of all Forms of Racial Discrimination provide a legal base for positive action[182]. Article 1 of ILO Labour Clauses (Public Contracts) Convention number 94 specifically addresses governments to eliminate discrimination in relation to employment in such matters as working conditions[183]. Contract compliance appears to draw its legal status from positive action policy, which is part of national and international equality legislation.

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[179] Wilthagen et al, *Onder sociale voorwaarden*, Minsterie van Sociale Zaken en Werkgelegenheid, Den Haag, oktober 2000; Christopher McCrudden, *Public Procurement and Equal Opportunities in the European Community: A study of "contract compliance" in the member states of the European Community and under European Community Law*, Oxford University, December 1994

[180] Wilthagen et al, *Onder sociale voorwaarden*, Minsterie van Sociale Zaken en Werkgelegenheid, Den Haag, oktober 2000; Christopher McCrudden, *Public Procurement and Equal Opportunities in the European Community: A study of "contract compliance" in the member states of the European Community and under European Community Law*, Oxford University, December 1994

[181] A general prohibition of discrimination in Article 1 of the Dutch Constitution; a prohibition of race discrimination in Article 429 sub 4 of the Penal Code and a provision on positive action for women in Article 5 of the General Equal Treatment Act

[182] UN Convention on the Elimination of All Forms of Discrimination against Women, General Assembly resolution 34/180 of 18 December 1979 (entry into force 3 Sept 198) ; UN Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969)

[183] Article 3 of ILO Labour Clauses (public contracts) Convention, 1949 (No. 94) states: *Where appropriate provisions relating to the health, safety and welfare of workers engaged in the execution of contracts are not already applicable by virtue of national laws or regulations, collective agreement or arbitration award, the competent authority shall take adequate measures to ensure fair and reasonable conditions of health, safety and welfare for the workers concerned.*

While equality legislation often focuses on only one or a limited number of grounds of discrimination, a parallel to the legitimate application of contract compliance can be drawn from positive action policy in matters of gender equality as assumed by Wilthagen et al[184].

Political interest in the Netherlands in the use of contract compliance for securing equality first arose in the 1970s when women, inspired by developments in the United States, called for the use of positive action. In the eighties positive action found a legal basis in the Dutch Equal Opportunities Act. The debate on contract compliance became a political issue in the early nineties in relation to the discrimination of women and ethnic minorities. Serious attempts by the Government to explore the possible use of contract compliance have failed. In 1989, the Ministry of Social Affairs presented the document *Meer kansen afdwingen*, which investigates legal possibilities for the use of contract compliance. Many NGOs reacted positively, but employer organisations and trade unions rejected this document[185]. In 1995, however, the first Dutch independent empirical study was performed on the use of contract compliance by Dutch Government in relation to building contracts. In 1999, renewed interest emerged and the Dutch Government started a pilot project *Sociaal Bestek* on the use of contract compliance by the national Government in the context of activating labour market policy[186]. That same year, the Ministry of Social Affairs and Employment commissioned new research on contract compliance. This resulted in the publication *Onder sociale voorwaarden* which reports on the use of contract compliance by regional and local governments, the marginal conditions and results. This report was published October 2000. The 1999 pilot was evaluated and a final report on the project was published in July 2003.

8.2 Description of the Instrument

The term contract compliance originated in the United States (US) and due to experience with the instrument in the US and Canada it has become associated with the use of government contracts to achieve racial and gender equality. McCrudden adopts a broad approach and defines contract compliance as the "use of public procurement as an instrument of social policy, particularly for the purpose of achieving equality of opportunity between different groups"[187]. In his view the term contract compliance may include:

- Situations in which the opportunity to bid for government contracts is used as an incentive to achieve a particular social aim which goes beyond that for which the contract is primarily being awarded, setting the achievement of a social aim as a *pre-award requirement*
- The imposition of obligations on the contractor which must be complied with *during* the carrying out of the contract, with some sanction being available for non-compliance with those obligations
- Situations in which the order of preference for tenderers is, at the *award* stage, determined on the basis of social rather than purely economic considerations;

[184] Wilthagen et al, p. 16.
[185] Wilthagen et al
[186] *Pilot Sociaal Bestek Rijksoverheid* 1999 which aims at stimulating labour market participation, in the construction sector, of the unemployed including minorities.
[187] Christopher McCrudden, *Public Procurement and Equal Opportunities in the European Community: A study of "contract compliance" in the member states of the European Community and under European Community Law*, Oxford University, December 1994, p. 7

- The withdrawal of the opportunity to bid for a contract as a *sanction* against a contractor who has breached social obligations in the past[188].

In the Netherlands research into contract compliance and the political debate on the issue has mainly focused on the use of contract compliance as an incentive to employers to adopt positive action policies. This use of contract compliance corresponds with McCrudden's second situation: contractors under public contracts have to comply with certain social obligations during the execution of the contract. The Dutch researchers, Wilthagen et al, therefore define contract compliance as the inclusion of additional social clauses that go beyond the main objective of the contract in the context of regular or occasional governmental activities[189]. They make a further distinction. Contract compliance in the Netherlands can entail:

1. Additional social clauses introduced, encouraged or demanded (stipulated) by government in its public identity (extension of collective bargaining agreements, certification, residential policy, subsidies schemes and other administrational tasks)
2. Additional social clauses applied by national, regional or local government in its private or mainly private identity (tenders, investments, supplies, purchase of services and goods)
3. Additional social clauses applied by private organisations in contracts with other private organisations e.g. contractor – subcontractor relation.

In the following analysis we focus on the second point, the private identity of the governments, since it concentrates on the contractual relationship between public bodies and private contractors. In doing so we have borne in mind McCrudden's broader view on contract compliance. The following analysis will start with a description of regional and local governments' general experience with contract compliance taken from the Dutch report *Onder sociale voorwaarden*[190]. Secondly, there will be a description of the central government pilot we mentioned in the introduction[191].

Legal Limitations

The Dutch researchers focused on the use of contract compliance by regional and local governments across the economy. They see opportunities for governments to use contract compliance in putting up tenders for public works. At the same time they detect a number of legal limitations that have to be taken into account when governments apply such an instrument in their contractual relationship with private contractors. In that context governments act as a private corporation and such contractual relationships are subject to legal limitations deriving from domestic private and public law and European legislation.

National Legal Limitations
Governments acting as a private corporation are subject to limitations under both private and public law. The freedom of contract is one of the basic principles of Dutch contract law. This likewise applies to a government acting as a private entity.

[188] McCrudden p. 8
[189] Wilthagen et al, *Onder sociale voorwaarden*, 2000, p. 11
[190] Wilthagen et al, *Onder sociale voorwaarden*, Minsterie van Sociale Zaken en Werkgelegenheid, Den Haag, oktober 2000
[191] *Pilot Sociaal Bestek Rijksoverheid* 1999 which aims at stimulating labour market participation, in the construction sector, of the unemployed including minorities

There are, however, limitations to this freedom: the Dutch Civil Code states that a party to a contract may not include a stipulation which is unreasonably onerous to the other party[192] and it may not abuse circumstances when concluding the contract[193]. This significantly limits the possibilities for a government to include social stipulations. A public body should weigh the interests of all the relevant parties before it includes any clause, social or otherwise, in the contract to practice positive action. The public interest might not always prevail.

Dutch public law may limit the use of contract compliance by prescribing that governments are only allowed to conclude contracts in areas in which they have so-called administrative freedom. Besides, they are not entitled to use private contracts when they can achieve the same objective by using one of its public law competencies. Explaining this any further would lead us too far into the specifics of Dutch administrative law. It is only relevant to the extent that the concurrence of private and public law might imply a rather complex obstacle for the use of contract compliance by governments. Other administrative obstacles are the principles of good administration, which any public body has to obey in its proceedings. Principles of relevance to the use of contract compliance are the principle of legal certainty, the prohibition of arbitrariness and the equality principle.

European Legal Limitations

Contracting out by governments is further governed by European legislation. When stipulating social clauses a public body must first comply with the principle of non-discrimination on the grounds of nationality, the principle of freedom of residence and the principle of freedom of services. Besides that, contracting out by governments is subject to various European Directives, namely the Public Service Contracts Directive[194], the Public Supply Contracts Directive[195], the Public Works Contracts Directive[196] and the Procurement Procedures Directive[197]. There is no general European prohibition of the use of contract compliance by public bodies: the inclusion of additional social clauses in public contracts is possible provided that public bodies comply with provisions from the above-mentioned European legislation[198]. There are a few conditions. First of all, in the Beentjes case the ECJ states that social clauses should be formulated as conditions for the execution of the contract. Although this case was specifically on positive action on behalf of the long-term unemployed, the Commission has drawn a parallel with social clauses that aim at elimination of discrimination[199]. Another condition is that contract compliance policy should be transparent: conditions for execution must be published when public contracts are put out to tender. A third limitation is the fact that those conditions may never be directly or indirectly discriminating. The public body involved must provide a guaranteed supply of the target groups. Furthermore, foreign contractors must be able to bring in their own workers and those contractors cannot be obliged to hire workers from the domestic target group.

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[192] Civil Code section 6:233 jo. 6:236 & 6:237

[193] Civil Code section 3:44 sub 1 and 4

[194] Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, OJ 1992, L 209/1

[195] Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, OJ 1993, L 199/1

[196] Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, OJ 1993, L 199/54

[197] Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, OJ 1993, L 199/84

[198] Case 31/87, Beentjes, European Court reports 1988, p. 4635

[199] Communication of the European Commission of 22 September 1989, OJ 1989, C 311/46, § 46

Wilthagen et al conclude that contract compliance is allowed, but no concrete rules on the practice of contract compliance have been formulated yet. In the present situation the risk of breaking rules and competencies remains[200].

Contract Compliance by Dutch Local Governments (Wilthagen et al)

In 1998, Wilthagen et al conducted a survey among all (569) regional and local governments on their experiences with the use of contract compliance to achieve increasing labour market participation. They focused on the period from 1994 to 1998. A total of 152 mostly local governments responded. Of the 9 governments who had actually put contract compliance into effect the following pattern could be recognised:

- Target groups are: the long term unemployed (unemployed for longer than 6 months), people registered at the social security offices, job seekers and school leavers
- The majority uses contract compliance in public works contracts, and some in the contracting out of services or goods
- Social clauses consisted of the obligation for contractors to spend a certain percentage (2 or 3 per cent) of the total labour costs on the training or hiring of people from the target groups
- In most cases social clauses were included in covenants: agreements between several parties
- Parties involved are employer organisations, trade unions, training institutions, local governmental agencies, temporary employment agencies and social services
- The agreement includes a sanction on non-compliance with the social clauses. The sanction consisted of a cut in the sum contracted for, equivalent to the sum which was, contrary to the social clause, not spent on the target group(s)

Pilot Project *Sociaal Bestek*

In 1999, the Pilot project *Sociaal Bestek Rijksoverheid* was launched. The pilot was a joint venture involving several government departments and agencies, trade unions and the employer organisation for local governments. It aims at stimulating labour market participation, in the construction sector, of long standing unemployed workers including those from the ethnic minorities. The government decided in 1997 that by way of experiment, public construction tenders from different governmental departments (with private contractors) would have to include a social clause. This clause urges competing contractors to spend two to five per cent of the contracted sum on hiring long-term unemployed to work on the project. Contractors may only employ unemployed people who are publicly registered under the *Wet inschakeling werkzoekenden*[201]. The long-term unemployed receive training, preferably through existing training facilities in the construction sector, and will thus be offered better job perspectives. With this experiment the government aimed at increasing participation of the unemployed in public works. Participating government departments are the Ministry of Housing, Spatial Planning and the Environment, the Ministry of Transport, and the Ministry of Defence. The Ministry of Social Affairs and Employment coordinates the projects and is responsible for the evaluation. This evaluation took place in 2003. The results will serve as a starting point for discussion on the possible permanent wider use of social clauses in other public tenders.

[200] Wilthagen et al, p. 92
[201] Job seekers employment Act.

8.3 Goals of the Instrument

Governments' objectives in implementing contract compliance vary. It is mainly used as an instrument of social policy to increase labour market participation by specific groups of unemployed people and subsequently decrease unemployment figures. Other reasons for the use of contract compliance are for example to improve city economy and life, enlarge the social responsibility of organisations and financial advantage for the local governments.

8.4 Policy Theory

In the early 1980s there was very little labour participation by specific groups such as women, ethnic minorities, disabled people and the long-term unemployed in general in the Netherlands. Compared internationally, the Netherlands experienced labour market inactivity of large parts of the labour force. The Dutch government subsequently adopted an activating labour market policy. High unemployment figures among ethnic minorities are due on the one hand to a lack of education and, on the other, to discrimination by employers . Since neither legislation nor other initiatives seemed to have any effects on this reality the Dutch government went in search of new instruments to deal with discrimination in the workplace and to increase labour market participation. One of these instruments is the use of contract compliance in public contracts. Experiences with this instrument in the United States and Canada have been quite promising so the Dutch government decided to explore its possibilities for Dutch social policy[202]. During the nineties Dutch - national and local - governments started implementing contract compliance as part of their labour market policy. The inclusion of additional social clauses in public contracts was mainly used to increase labour market participation by members of certain target groups who would otherwise experience major obstacles in finding a job. Contract compliance is used as a form of positive action for those target groups: by forcing private contractors to hire workers from the target group pool, the government helps those people to enter the labour market. By training and hiring them, parties to the public contracts try to create equal starting positions for people and enable them to participate actively in the labour market. Contract compliance is used as an instrument to achieve and implement social and labour market policy. Motives for implementing contract compliance are social as well as an economic.

8.5 Implementation of Instrument

Wilthagen et al

The survey conducted by Wilthagen et al showed that between 1994 and 1998 contract compliance was implemented in the Netherlands in various manners. Additional social clauses on training and hiring workers from target groups were included in either individual contracts between local governments and private contractors and/or incorporated in covenants between local governments and other organisations, for example, industrial organisations.

[202] Wilthagen et al, p. 5

Some public bodies had set a percentage of labour or other costs of a project that needed to be spent on labour market participation for a specific target group or groups. Others had set a quota on participants from a specific target group or groups which should be hired during the project[203].

Pilot *Sociaal Bestek Rijksoverheid*

After the formal decision had been made to start the pilot a Technical Commission was appointed to formulate a plan of action. Many organisations were involved into the pilot. The Ministry of Social Affairs and Employment was the initiator and held final responsibility. Another three Ministries would provide the public contracts. Other organisations involved were public service agencies, local governments, trade unions and employer organisations. From these parties a monitoring commission was formed. Arrangements were made about the projects, recruitment and training of members of the target group (the long term unemployed) and in 1999 the pilot was launched.

8.6 Reaction to the Implementation

Wilthagen et al

Most of the local governments who had actually implemented contract compliance, were in the progress of doing so or were planning to use the instrument were positive about it. They expected that the use of contract compliance would contribute significantly to the reduction of long-term unemployment, the creation of employment and the increase of labour market participation. Since the survey was among local governments, we do not know how the other parties involved experienced the use of contract compliance.

Sociaal Bestek

The Ministry of Social Affairs and Employment found it difficult to involve employer organisations actively in the project. These organisations were reluctant at first, as they could not envisage the target group and were not convinced of the advantages. This was mainly due to the fact that contract compliance in this specific pilot project meant obligations for the individual contractors without any direct benefits such as subsidies. The individual contractors, however, adopted a positive attitude towards the experiment and this is the main reason why the employer organisations finally decided to cooperate.

In response to the evaluation report of the Pilot Project *Sociaal Bestek*, the State Secretary of Social Affairs and Employment concluded that although the evaluation has resulted in some insight into the conditions for the successful application of contract compliance, the use of covenants is to be preferred. This is remarkable since most governments use covenants as a form of contract compliance.[204].

[203] Wilthagen et al, p. 94
[204] Letter of the State Secretary of Social Affairs at the presentation of the evaluation report *Evaluatie Pilot Sociaal Bestek Rijksoverheid*, Den Haag, 11 juli 2003

8.7 Effectiveness

Formal Effectiveness

Wilthagen et al
Contract compliance as an instrument in social policy is mainly used by larger municipalities and mostly in the construction industry. In most cases local government involves many organisations such as employers' organisations, trade unions, training institutions, local governmental agencies and temporary employment agencies. Contract compliance policy and responsibilities are in most cases laid down in covenants between the parties involved. Often, an additional training policy is initiated to train potential participants from the target group and the possibility is created to apply for grants to be able to comply with the social clauses. Between 1994 and 1998, 17 per cent of all (569) Dutch local governments had considered the use of contract compliance but only nine, mainly large, municipalities had actually put contract compliance into practice. Those nine municipalities together applied contract compliance to a total of 13 projects. The number of participants from the target groups went from 0 to around 80 per project. Most of those projects have not yet been finalised.

Sociaal bestek
After the launch in 1999 the pilot did not get off the ground: the actual construction projects started later than expected and alternative projects were scarce. Hardly any job seekers could be found to participate. The pilot was formally ended in 2002 without any significant results. Evaluation of the project by an independent research agency showed that only three construction projects actually worked under a public contract that included a social clause[205]. They only attracted five candidates from the unemployed pool who had not received training prior to the project due to lack of time. A few of them withdrew from the project at a premature stage. Both participants in the project and the national coordinator stated two key factors that they held responsible for the failure of the pilot. First, they blame labour market developments; in 1997, when the government decided on the pilot, there was a large pool of unemployed, but this changed during the pilot and finally the pilot was operating in a tight labour market and the pool had narrowed down significantly. As a second external factor the slow pace of implementation of the projects was mentioned. The two key factors led to the same conclusion: there was too much time between the drawing up of the project and its implementation. Many factors can change in the meantime, especially when working on large and long construction projects. The report states however that many lessons have been drawn from the experiences with this pilot. Those lessons focus on the methods of contract compliance, the approach, recruitment and selection of potential candidates, and management and coordination.

Behavioural Effectiveness

Although most local government projects have not yet ended, the majority of participants to the projects who made use of contract compliance are positive about the functioning of contract compliance (seven out of nine). Those same governments are planning future use of this instrument. The remaining local governments stated that they had either never thought of the possibility of contract compliance and or claim that labour market participation (or the lack of it) is not a problem in their municipality. These are the two main reasons for not using contract compliance.

[205] Regioplan, *Evaluatie Sociaal Bestek – eindrapport-*, Amsterdam, March 2003.

Material Effectiveness

Between 1994 and 2002 labour market participation of ethnic minorities in the Netherlands increased significantly. In 2003 around 50 per cent of ethnic minorities had a job compared to just over 35 per cent in 1994. The participation of Moroccan women in the Dutch labour market has risen from 20 to 30 per cent and that of Moroccan men from 36 to 59 per cent. The participation of Turkish women doubled from 16 to 36 per cent while in 2002 around 59 per cent of Turkish men was working compared to 41 per cent in 1994. The unemployment figure for ethnic minorities fell from 20 to 30 per cent in 1994 to less than 10 per cent in 2002. During 2003 this figure went up again[206].
During the 1990s labour market participation by Dutch women rose from 39 to 52 per cent in 2001 compared with around 70 per cent of Dutch men.

Conclusions on Effectiveness

Both the evaluation of the use of contract compliance by local governments and the report on the experiences of national government conclude that contract compliance is effectively applied by just a few public bodies in a small number of cases and only if certain conditions are being fulfilled. This use of contract compliance cannot be held responsible for the increasing labour market participation of women from the ethnic minorities in the Netherlands. Subsequently little can be said about the effectiveness of the use of contract compliance by governments to stimulate labour market participation by certain target groups. Participants in individual projects with contracts including social clauses were nevertheless positive about their experiences with the instrument, especially when agreements were documented in covenants. Most governments have not yet been able to evaluate their contract compliance policy. According to Wilthagen et al, it has substantial potential provided that several legal and other conditions are taken into account. Both the Dutch report and the pilot resulted in a list of recommendations for the future use of contract compliance.

8.9 Keys to Success

- Inclusion of social clauses in public contracts is more suitable for local, small-scale and short-term projects
- It is essential to include executable and effective sanctions in the contract for non-compliance with the social clause.
- Attract field experts and experts on relevant initiatives to advise on contract compliance policy and legal limitations
- Commitment and serious involvement of the parties involved is essential
- Connect contract compliance policy with structural regional/local labour market policy
- Sufficient preparation and planning time is essential to the successful implementation of the instrument
- The public body involved must provide for a large pool of potential participants from target groups
- Potential participants need to be properly trained and schooled before or during the project

[206] J. Dagevos, M. Gijsberts, C van Praag (eds.), *Rapportage minderheden 2003: onderwijs, arbeid en sociaal-culturele integratie*, Sociaal en Cultureel Planbureau, Den Haag, oktober 2003

- Enough proper technical and social guidance for the participants before and during the project
- Assign a project manager and make one department responsible for contract compliance policy
- Contract compliance policy should be formally documented internally and monitored by the accounts department of a public body. Proper internal and external publicity of this policy is essential
- The economics departments should preferably initiate contract compliance, rather than social departments. This will increase support from trade and industry
- Actively involve employer organisations, trade unions, field experts and organisations, employment agencies and relevant social services
- Involve all relevant parties from the start and convince them of the benefits of contract compliance
- Draw up covenants between relevant parties and include a general declaration as well as detailed agreements on the specifics of contract compliance

9 Mainstreaming Equal Treatment into Companies' General Policies (the Netherlands)

9.1 Introduction

'Mainstreaming equal treatment' is not so much a policy instrument, but rather a strategy in which different kinds of instruments can – and should - be applied. Moreover, it is a strategy that stems from government policy making rather than a strategy designed to be applied in other arenas in society[207], notably within the context of compliance with equal treatment regulation at company level. Finally, the strategy was originally designed to achieve equality between men and women (gender mainstreaming), not taking into account the other grounds of today's equal treatment legislation.

This does not imply that it would not be appropriate to apply the strategy at company level, and that mainstreaming could not take into account all legal anti-discrimination grounds instead of just gender. It does mean however, that the development of an equality mainstreaming strategy at company level is still in its infancy. This, in turn, has consequences for the way in which we deal with the question of how the mainstreaming strategy can be effectively applied at company level. We cannot draw on a whole range of experiences with equality mainstreaming at company level and therefore we will base our review of this instrument on the development of the concept of gender mainstreaming in government policy making, broaden it with the other anti-discrimination grounds by making use of insights gained from diversity policies, and explore the possibilities of applying it at company level by examining a few examples of mainstreaming practices at company level.

Historical Background

The concept of gender mainstreaming was first used in discussions on the role of women in development in the context of the United Nations third World Conference on Women in Nairobi in 1985 and acquired a broader basis during the nineties, particularly by way of the *Platform for Action*, the final document of the United Nations fourth World Conference on Women in Beijing (1995).[208] The concept has been inscribed in the missions of the European Union since the ratification of the Treaty of Amsterdam in 1997, making it a priority in all its member states.

In the Netherlands, as well as in other member states, the World Conference on Women in Beijing and the EU mission statement have provided an impulse to the mainstreaming strategy. Since the turn of the century, a whole range of policy documents has been published, aimed at developing the mainstreaming of gender within departments and the interdepartmental organisation and policy, as a second track alongside specific emancipation policies.[209]

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[207] This does not imply that the concept could not be taken up in other arenas. An example is the arena of collective bargaining, of which this book provides an example in chapter 3, the case of France.

[208] Paragraphs 79, 105, 123, 141, 164, 189, 202, 229, 238, 252,273, *Platform for Action*, Beijing, 1995, cited in: Council of Europe, *Gender mainstreaming: Conceptual framework, methodology and presentation of good practices*, Strasbourg, 1998, p.13.

[209] *Interdepartmental Plan of Action on Gender Mainstreaming 1998 – 2002*, Lower House, 1998-1999, 26 206, no. 11; *Cabinet's Position on Gender Mainstreaming*, Lower House, 2000-2001, 27 061, no. 15. *Medium Term Emancipation Policy Plan 2001-2010*, The Hague, 2000. *Multi-Year Plan on Emancipation Policy*, The Hague,

Equality between men and women is the objective of the mainstreaming policy, although other discrimination grounds are taken into account as well. The *Multi-Year Policy Plan* (2000) states that its main objective is:

"The creation of conditions for a pluralistic society in which everyone regardless of sex, and in interaction with other social organising principles such as ethnical identity, age, marital status, handicap and sexual orientation, has the opportunity to create an independent existence for themselves and in which both women and men can enjoy equal rights, opportunities, freedoms and (social) responsibilities."[210]

This objective of gender mainstreaming within a multicultural society is also supported by E-Quality, the main government-funded expertise centre for policy makers (at various levels) on emancipation issues. In an explanation of its gender mainstreaming strategy on its website, it states that mainstreaming refers not only to sex but also to all non-discrimination grounds, in other words, to diversity.[211]

Most government initiatives are aimed at mainstreaming gender in government organisation and policies, whether centrally or in the provinces or municipalities, but the principle of collective responsibility is explicitly recognised in the *Multi-Year Policy Plan* (2000)[212] and cooperation with private parties is mentioned as a priority for the first decade of the 21st century. Though still in its infancy, as explained above, the issue of measures aimed at equality mainstreaming at company level can be seen in the context of this cooperation.

9.2 Definition of Strategy

Gender mainstreaming has turned out to be an easily misunderstood concept and the discussions on what it entails and what it does not are numerous, often resulting in the conclusion that the concept is not useful at all and would lead to gender issues disappearing from the policy agenda altogether. To avoid the misunderstandings that have surrounded the concept ever since it first came up, it is important to pay attention both to its definition as well as to the complementary character of gender mainstreaming as related to specific emancipation policies.

The Council of Europe set up a group of specialists in 1995 to look at mainstreaming. It highlighted these issues in its Final Report[213] agreeing on the following definition that is still broadly accepted:

2000. *Gender Mainstreaming. A Strategy for Quality Improvement. Advisory Report by the Interdepartmental Working Group on Mainstreaming to the State Secretary for Social Affairs and Employment, A.E. Verstand-Bogaert*, The Hague, 2001.

[210] *Multi-Year Plan on Emancipation Policy*, The Hague, 2001.

[211] http://www.e-quality.nl/e-quality/pagina.asp?pagkey=21302.

[212] *Multi-Year Plan on Emancipation Policy*, The Hague, 2001.

[213] Council of Europe, *Gender mainstreaming, conceptual framework, methodology and presentation of good practices*, Strasbourg, 1998.

> *"Gender mainstreaming is the organisation (or reorganisation), improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated into all policies at all levels and at all stages, by the players normally involved in policy making.*

This definition of gender mainstreaming highlights:

- The goal of mainstreaming: to integrate a gender equality perspective in all policies (with the ultimate aim of achieving gender equality).
- The process of mainstreaming: organisation (or reorganisation), improvement, development and evaluation of policy processes.
- The objects of mainstreaming: all policies at all levels and all stages.
- The subjects of mainstreaming: the players normally involved in policy making.

The gender mainstreaming approach ties in with the fact that a policy – even if it is apparently neutral from the point of view of gender – always has different effects on men and women respectively. The main aim is to evaluate and correct the different impacts that legislative measures, policies and programmes of action can have on men and women, taking into account their different positions in life, and their different socio-economic situations. The mainstreaming strategy is not aimed at changing women and helping them to fit in with existing, male-oriented organisations and institutions, but accepts their situations, priorities and needs as *normal*; that is, takes them at the same level as men, as a starting point for designing or redesigning organisations and institutions in all areas and at all levels of society.

It is very important to recognise the fact that gender mainstreaming is complementary to specific gender equality policies, it builds on the knowledge and lessons learnt from these policies and can by no means replace them. According to the group of specialists on mainstreaming from the Council of Europe, these are two different strategies to reach the same goal, i.e. gender equality, and these must go hand in hand, at least until there is a real culture and consensus on gender equality throughout society. The main difference between mainstreaming and specific gender equality policies is the players involved and the policies that are chosen to be addressed. The starting point for "traditional" forms of equality policies is a specific problem resulting from a gender inequality. A specific policy for that problem is then developed by equality machinery. The starting point for mainstreaming is a policy that already exists. The policy process is then reorganised so that the players usually involved take a gender perspective into account and gender equality as a goal is reached. Mainstreaming is a fundamental strategy – it may take some time before it is implemented, but it has a potential for a sustainable change. Traditional forms of equality policy may act much faster, but they are usually limited to specific policy areas.[214]

9.3 Description of Instruments

The instruments to be applied in a mainstreaming strategy are not new or specially conceived for that aim. Gender mainstreaming strategies can start from the techniques and tools generally used in the policy process, provided that they are redesigned and adapted to the needs of mainstreaming.

[214] Ibidem.

They are basically aimed at the creation and dissemination of knowledge and at raising awareness, for the problem with equality issues is that in most cases the problem itself is not recognised as such and the mainstream policy players lack expertise on equality issues. Creating knowledge and raising awareness includes not only the problem of inequality and the way to handle it, but should always be complemented by monitoring and assessing the organisation's own policies from an equality perspective.
Both the final report[215] by the group of experts from the Council of Europe as well as the Dutch government's policy document *Gender Mainstreaming: A Strategy for Quality Improvement*[217] list a whole range of instruments categorised along three lines:

- Analytical instruments, such as statistics, surveys and forecasts, cost-benefit analyses, research, checklists, guidelines and terms of reference, gender impact assessment methods, monitoring.
- Educational instruments, such as awareness-raising and training courses including follow-up action; mobile expertise providing education at the level of a unit or department, manuals and handbooks, booklets and leaflets.
- Consultative and communicative instruments, such as working groups and think tanks, directories, databases and organisational charts, participation of both sexes in decision-making, conferences and seminars, hearings.

The instruments can also be categorised along the phases of the policy process:

- Detecting, for example:
    - A strategic information system aiming to list relevant information from a variety of sources and make it accessible for use (analytical)
    - A gender and/or diversity checklist or quick scan to check whether gender/diversity is relevant to the policy matter at hand (analytical)
    - Meetings to promote alertness and gender/diversity sensitivity and shed light on the gender/diversity aspects of certain policy matters (consultative/communicative)
- Agenda setting, for example:
    - Investigation and analysis of the existing situation in a particular policy area (analytical)
    - Policy calendar with all important dates including those on which action on gender / diversity should be taken ((consultative/communicative)
- Implementing, for example:
    - Ex ante test, such as the Gender Impact Assessment to check whether a policy intention will have unacceptable effects (analytical)
    - Gender sensitive budgeting which assesses gender effects and analyses distribution effects (analytical)
    - Needs assessment of the policy's target group (analytical)
    - Information provision (consultative/communicative)
    - Reports (consultative/communicative)

[215] Council of Europe, *Gender mainstreaming, conceptual framework, methodology and presentation of good practices*, Strasbourg, 1998.
[217] *Gender Mainstreaming. A Strategy for Quality Improvement. Advisory Report by the Interdepartmental Working Group on Mainstreaming to the State Secretary for Social Affairs and Employment, A.E. Verstand-Bogaert*, The Hague, 2001.

- Monitoring and assessing, for example:
  - Monitoring: target figures, ratios and indicators (analytical)
  - Ex post assessment (analytical)
  - Benchmarking, seals of approval, supervision and audit (consultative/communicative)
  - Peer reviews, exchange of best practices (consultative/communicative)
  - Discussion rounds (consultative/communicative)
- All phases:
  - Promotion of expertise by way of training, courses, workshops (educational)
  - Promotion of expertise by way of handbooks, manuals, guidelines, and the dissemination of good practices (educational).

Development of Instruments for Company Level

Gender and other mainstreaming is a complex concept not least because it applies to all areas and all levels of society, and therefore analyses of the mainstreaming strategy often remain at a theoretical, general level. It is necessary to make the concept specific for the context in which it is implemented. In the context of compliance with equal treatment legislation by companies, mainstreaming comes down to the anchoring of an equality perspective in their human resources policies. This means that in their human resources management, companies must pay attention to relevant differences between people and between categories of people. There are already some examples of good practice in this respect (Shell, Delta Lloyd, IBM, ING), often detected by what are known as diversity awards, introduced in the Netherlands by the employers' organisation VNO-NCW. Other examples usually concern the application of one single instrument, for example an audit or a checklist.

We have been looking however for government initiatives to promote mainstreaming at company level, which are rare. One good example however is "Mixed", a cooperative project by the Directorate of Coordination Emancipation Policy (DCE) of the Ministry of Social Affairs and Employment and seven expert organisations, funded by the European Social Fund's Equal programme.[218] Although aimed specifically at breaking the glass ceiling and bringing women into the higher segments of the labour force in companies and organisations (a specific problem resulting from gender inequality), and though hardly explicitly named as such, it includes, besides the development of specific measures to deal with this, clear mainstreaming elements in its strategy. The project demonstrates the importance of tailored solutions and the development of instruments for the specific contexts they are intended for, i.e. human resources management in companies.

Within the context of the project, nine instruments have been developed, spread over three tracks:

- Culture and organisation: the creation of preconditions for the better use of female talent in companies and organisations (measures aimed at recruitment, the assessment and change of organisational culture, part-time work assessment, work/life balance)
- Talent: creating more female talent in companies and organisations and making it visible
- Anchoring: the anchoring of measures that stimulate the promotion of women by way of the international Investors in People (IiP) method.

[218] *Mixed Management - Handboek diversiteit m/v*, Den Haag: Ministerie van Sociale Zaken en Werkgelegenheid, 2004.

Elements of mainstreaming are to be found in all three tracks, but whereas in the first two tracks specific instruments are developed while some attention is paid to their implementation (mainstreaming), in the third track mainstreaming itself is the subject. We will therefore limit ourselves to a description of this third track.

Building on the Investors in People method, which aims at a process of improving organisations based on the development of its employees, a specific module has been developed in the context of the Mixed project to assess the way in which a company has integrated a policy of equal treatment in its human resources management policies. The characteristics of this module are the same as all modules of the Investors in People method for assessing a company's HRM policies. Different from other assessment methods, the IiP assessment of a company's policy as regards the development of its human resources is based first and foremost on experiences and results rather than on paper tigers such as policy plans, plans of actions, annual reports, etc.

The specific equal treatment module contains criteria to be met in all phases of the policy cycle (commitment – planning – action – evaluation) to check whether or not equal treatment has been implemented. The module has the following characteristics:

- Evidence is based primarily on the experiences of the people concerned (and only partly on plans and reports).
- Attention is paid to awareness of the notion of diversity in every phase of the policy process.
- Attention is paid to knowledge of the measures taken in every phase of the policy process.
- Attention is paid to the results of the measures taken.

9.5 Implementation and Effectiveness

Mainstreaming equal treatment at company level has not become widespread practice yet and only a few examples exist. These are usually not even a comprehensive mainstreaming strategy but rather the implementation of one or two mainstreaming instruments. Consequently, it is too early to draw any conclusions on effectiveness. An advantage of the equal treatment module developed in the context of the Mixed project in cooperation with Investors in People, is that it assesses effectiveness at different levels. Not only is a check being made on whether or not equal treatment is being implemented in organisational plans (formal effectiveness), but the experiences with the implementation of these plans, and what its behavioural effects have been are also assessed.

9.6 Keys to Success

Sophisticated instruments can be developed, but they will not work unless some important preconditions are met. In the context of equality mainstreaming at company level, the following are important:

- Commitment:
  The *management* of a company should recognise the problem of equality as a company problem and should have the will to do something about it. It must make this absolutely clear to the rest of the company, not only by formulating a *clear* policy plan, but also by underlining its urgency by giving it explicit priority. Senior management in the company can make this clear by setting a good example. It can also stimulate mainstreaming by explicitly showing its appreciation of mainstreaming activities at all levels of the organisation.
  Middle management is generally recognised as an important segment in processes of organisational change. This is equally applicable with respect to equality mainstreaming. Although they do not determine the goals and content of a strategy, managers at the middle level are very important when it comes to implementing it. It is important that company management backs them up, and not only by way of a clear description (detailed policy plan). They also have to be consulted about the way in which equality policies are to be implemented, and they have to be given the necessary powers and means.
  Finally, the commitment of *employees* should not be neglected. It is important to inform them about the strategy and explain its backgrounds and means.
- Expertise:
  Expertise can be organised within the company both by installing equality machinery and by means of training. Expertise can also be hired from expert centres.
- Participation by women and people from minority groups in decision making:
  The various values, interests and life experiences of women and people from the ethnic minorities are much more easily integrated into the company’s policies if people who represent those values, interests and experiences participate in decision making. None of them is necessarily an advocate of their groups' interests, but, as a matter of fact, most advocates for equality are usually women and/or members of an ethnic minority group. This principle applies to all levels of management and also to representative bodies of employees.

10 Conclusions

In this report we have examined eight 'instruments' of equal treatment policy:

(1) The 'Gender Equality Plan' (Sweden)
(2) The Equality Authority (Ireland)
(3) The obligation on both sides of industry to negotiate on equal treatment (France)
(4) 'Equal pay audits' (United Kingdom)
(5) Codes of conduct and rights of complaint (as far as they are used in The Netherlands: NL)
(6) Covenants (NL)
(7) Contract compliance (NL)
(8) Mainstreaming (NL)

The questions guiding us in the project, were:

(a) What are the characteristics of the instrument?
(b) In what way, and to what extent is the instrument being implemented and what experiences have been gained in this process?
(c) What have been the effects of implementing the instrument for equal treatment 'in the workplace'? What conclusions can be drawn about its effectiveness (distinguishing between formal, behavioural and substantial effectiveness)?
(d) To the extent that the instrument has been successful, what conditions may be said to have particularly contributed to its success?

As we already noted in the introduction to this report, the eight 'instruments' of equal treatment policy that we have been analysing, are of a rather diverse character. Some of them impose legal duties on employers, others try to further negotiations and agreements on equal treatment between both sides of industry, still others focus more on inspection and the enforcement of equal treatment rules. There are differences as to the extent of the 'reactive' or 'proactive' character of the instruments. These differences might be relevant in the light of a gradual development of the elements of 'combating discrimination' and 'furthering equal opportunities' into a European policy of 'promoting diversity'.
The analysis of the eight instruments is to be found in chapters 2 to 9. In this final chapter we make a comparison between the eight instruments and highlight some of their common, or diverging elements. We end by raising some questions that are still open to debate and might be the subject of further studies in the future.

10.1 Different Ways of Exerting Influence

In all cases governments are using instruments to bring about changes in the conditions under which decisions in labour organisations are being made. These instruments, therefore, always target employers, whether directly or indirectly, but other parties are called to account as well: unions, works councils, individual employees. The influence exerted which should bring about these changes, can principally take three different forms.

A Information and Employee Empowerment

The concept implied in some of the instruments is that legal rules are the ultimate normative framework for 'equality relevant' behaviour within labour organisations.
Their point is mainly (1) to inform employers and employees on their current position relative to their legal duties and rights and (2) to further compliance with these rules. This applies to the Equal Pay Audits (UK) and the activities of the Equality Authority (Ireland).

Apart from the usual dissemination of information on duties and rights, *reviews* are also being deployed. In a review, organisational practice is gauged by the standards of equality rules. Employers are not obliged, but invited, encouraged, and supplied with technical means to do the review by themselves. In fact, reviews are somewhere in between information and enforcement: the idea is that an employer who has been urged to do a review will become aware of equality deficiencies in his organisation and thus take systematic measures that bring behaviour at least closer to compliance with the rules.

In Ireland, the Equality Authority has an additional power: it can invite employers to conduct a review and, if they fail to do so, the Equality Authority will conduct the review and make the action plan on its own initiative. Generally, however, employers are expected to be convinced of the advantages of doing reviews and making action plans for reasons of economic rationality (e.g. personnel recruitment), of company image ('best practice' as an employer), of corporate social responsibility, of preventing legal actions against them, or of combinations of them, without additional pressure being put upon them.

Typically, the introduction of these instruments is accompanied by a strengthening of the powers of individual employees to bring actions if equality rules are infringed. In this sense, these instruments may be said to respect the external position of the state vis-à-vis the market. In comparison to other instruments they may also be said to take account of the limited possibilities available for mobilising an intermediate field of institutionalised industrial relations. Unions and employers' organisations are, however, involved in the 'Equal Pay Task Force' (UK) and in the board of the Equality Authority (Ireland).

B Negotiating and Contracting with Organisations

A second category consists of instruments applied by governments that have decided not to go down the line of imposing legal duties, but of using contractual means to reach the goals of their equal treatment policy. Governments may be in a position to negotiate on these matters due to their status of commissioner of civil works ('contract compliance'), but also due to their control over sources of state authority (covenants), for instance their power to withhold 'sticks' (to refrain as yet from imposing or enforcing legal duties) or to distribute 'carrots' (to subsidise compliant behaviour).

Contract compliance, where the state in fact acts as an authority disguised in contractual clothing, seems to be less effective, partly because it fails to generate a shared consciousness of the urgency of the measures that the other party should take. Covenants, on the other hand, seem to be more successful, provided that they serve mutual interests. They tend to be agreements between government and employers, however, in which participation by employees' representatives is not always guaranteed.

C Generating Cooperation and Learning within Organisations

In the third and final category, instruments aim at generating a spontaneous process in the social aspect of labour organisations, presupposing that they ought to become *learning* organisations, to become aware of the points in which they are lagging behind in achieving equal and fair internal relations, and conscious of their own interest in doing something about it.

Some of these instruments also make use of reviews and plans, but they tend to stress the importance of close cooperation between both sides of industry. They are based on the dual expectation that the more the content of the rules or policy is determined in close cooperation with the target groups, (1) the more it will be attuned to specific, sectoral or local features and the better applicable it thus will be; and (2) the more it will have the support of these groups and will thus be effective. This category includes the 'gender equality plans' (Sweden), the legal obligation on both sides of industry to negotiate on equal treatment (France), the codes of conduct and 'mainstreaming' (both, in this report, the Netherlands).

The 'gender equality plans' in Sweden are also based on the idea that a review at enterprise level, followed by a systematic action plan to remedy deficiencies is a good way to further compliance with equality rules. In Sweden, employers (with 10 or more employees) are legally obliged to make an equality plan, and to do that in cooperation with employees' representatives. The unions as well as the independent Ombudsman have been assigned the task of monitoring the action plans and enforcing the duty should an employer fail to comply. Although the set-up is clearly that of a duty on an employer, and of enforcement of this duty, the Ombudsman stresses the vital importance of cooperation between employer and employees' representatives in making the equality plan.

In both other cases too, an employers' obligation is involved[219] to a certain extent, but it has been more clearly subordinated to what the instrument really aims at: to get a process going, in the course of which those involved cooperatively take stock of and evaluate the state of affairs regarding equality and make plans to remedy deficiencies.

A multi-levered structure for a framework agreement that, in a next step, is translated into more detailed agreements and codes at local level seems to be appreciated by all parties involved, and in particular by employers who tend to prefer 'tailored' measures.

The instrument of 'mainstreaming' (in this report: The Netherlands), represents a further development in the direction of organisational learning, in which equality or diversity policies should be integrated into normal company decision-making procedures. Although this topic, understandably, is currently attracting a lot of attention, the sources on actual implementation and effectiveness are still scarce.

[219] An employer's neglect of the duty to negotiate specifically on equality issues is punishable in France; duties in The Netherlands may flow from employers' duties resulting from health & safety legislation.

10.2 Infrastructure

A survey of the instruments shows that the 'intermediate field' between government policies on the one hand, and changing workplace practices on the other hand, is structured either by making use of existing organisational infrastructure or by introducing new types of organisation. For the implementation of the Swedish equality plans and of the French duty to negotiate on equality matters, for instance, trust has been put in the existing organisational infrastructure. In some of them, however, special 'task forces' or 'project groups' are created to take care of the development, the introduction, and/or the organisation of the implementation of the measures. In the UK, for instance, a special employer-led Equal Pay Task Force sets up the equal pay reviews, while in the Netherlands special project groups formulate and implement the codes of conduct.

In the light of EU Directives[220] and policies (Green Paper 2004) calling, for example, for a more integrated approach to combat discrimination on all grounds, the Irish Equality Authority represents an interesting infrastructural development. As a single body it aims to combat a broad spectrum of types of discrimination and for that purpose has at its disposal a broad range of powers. It has, among others, the task of providing information in all its forms about equality rules, of monitoring equal treatment legislation and of preparing draft codes of conduct. Participation by different stakeholders on the board of the EA guarantees their involvement in the Authority's policies. As noted before, its mode of operation may, however, be said largely to be external to business: it does not interfere with internal company cooperation but leaves that to the process of local industrial relations, and puts its trust mainly in the mechanism of individual legal actions. The only exception to be noted is that the EA takes care of training unions on equality matters.

10.3 Encouraging Cooperation

Other instruments aim explicitly at furthering the social dialogue, partly at national and sector level, but particularly locally, at company level. The advantages of this approach are that both sides of industry are involved in reviewing and making plans to change existing inequalities, these plans consequently contain 'tailor-made' qualities, both sides of industry are involved in the implementation of these plans and in the level of compliance with equality rules.

A multi-levered structure, in which general rules or agreements can be 'translated' into, and 'attuned' to local, concrete rules and plans, can reckon on support, at least from employers. The existence of some kind of 'model', though preferably still of a rather general nature, seems to help to persuade stakeholders at local level to make a plan for their own organisation, or to come to some kind of agreement in their own organisation. The effectiveness of Swedish 'gender equality plans' seem in this respect to be affected by the lack of such a model. It might be that the existence of a model generates fewer rather than more complaints about the inadequacies of the plans that employers are required to draw up.

[220] E.g. the duty to set up specialised bodies or extend the mandate of existing equality bodies, laid down in Art. 13 of the Race Directive 2000/43, or the duty to promote social dialogue with a view to fostering equal treatment, including the monitoring of workplace practices, codes of conduct and good practices on equality in employment.

Other forms of cooperation are at stake in covenants. Government and, usually, employers jointly take measures to combat discrimination or to further the employment opportunities of target groups. To achieve this cooperation, one or two conditions need to be fulfilled: employers must have an economic interest in the result that the covenant is expected to generate, or employers should have a reason to fear more directive government measures if they fail to reach an agreement. The latter condition is also relevant to codes of conduct, where the threat ('stick') of legislative measures - which may be more rigid and less adapted to the needs of industry - may act as an inducement to reach an agreement at industry level.

10.4 Subjects for Discussion

The concluding points, noted above, lead to some propositions that could be subjects for further discussion or research:

- Instruments differ in the extent to which they dare to interfere, and are in fact interfering with the way in which stakeholders at company level come to agreements on matters relevant to equality rules. Measures that aim to influence the nature of the decision-making process itself are more effective than measures that only add external constraints to this process.

- Cooperation between stakeholders is an important key to success, because it enhances the level of involvement, the quality of the content of agreements and the chances of successful implementation.

- Multi-levered structures, in which there is room to attune general plans at national or sector level to specific features of individual companies, may further the implementation and enhance the effectiveness of agreements, codes or plans on matters of equality.

- Providing models and tool-kits may significantly contribute to lowering thresholds that employers perceive when they are confronted with some of the duties that flow from equality rules and policy.

- One single body, like the Irish Equality Authority, may, by uniting expertise on different grounds of discrimination and by combining diverse powers, significantly strengthen the effectiveness of equality legislation.

- Pay reviews, or equality reviews in general, should be integrated into companies normal annual reporting.