



European network on free movement of workers

THEMATIC REPORT
Application of Regulation 1612/68

January 2011

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Introduction

Over three decades after the adoption of Regulation 1612/68, its provisions prohibiting discrimination against EU migrant workers still do not appear to enjoy uniform respect throughout the Member States.

Asking about respect for the anti-discrimination provisions of the Regulation is not a straightforward exercise. As a concept, the prohibition on nationality-based discrimination appears caught between two different areas of EU law: the prohibition of discrimination on other grounds on the one hand (that is, instruments based on what is now Article 19 of the Treaty on the Functioning of the European Union ('TFEU')) and EU law on the free movement of persons on the other (see Directive 2004/38/EC). Viewed from the perspective of anti-discrimination law, nationality-based discrimination appears, from the responses to the questionnaire, to be subordinated in many Member States to other prohibited grounds, such as race, ethnic origin or sex. Viewed from the perspective of EU law on the free movement of persons, the non-discrimination principle is a *lex generalis*, supplanted in many circumstances by more specialised rules permitting Member States to treat EU migrants generally (if not EU migrant workers) differently. As a result, the prohibition on discrimination based on nationality often does not enjoy an independent existence in the legal orders of the Member States. Where the prohibition is actively respected – in States like **Portugal** or **Ireland** – it is because of robust non-discrimination principles in national law that view nationality as a suspect ground similar to race. This does not appear related to a strong commitment to the equality of all EU citizens. Rather, it has to do with a commitment to equality generally; third-country nationals (at least those lawfully residing and working in those States) seem as likely to benefit from these provisions as EU migrants. In those States where the prohibition on nationality-based discrimination is weak, it is because of the way non-discrimination law and EU law of the free movement of persons are understood and implemented: the former, related to instruments stemming from Article 19 TFEU, concerns other categories apart from nationality, categories perhaps perceived as being more serious or urgent; the latter is understood as involving a series of complex rules closely related to immigration or aliens' law, not to laws prohibiting discrimination.

It is important to note that in many of the Member States nationality is not explicitly included as a prohibited ground of discrimination. This means that those alleging nationality-based discrimination must, to the extent that they rely on national legislation, either show that such legislation implicitly prohibits discrimination based on nationality, or show that the treatment they have suffered also fits into another category, such as racial discrimination or discrimination based on ethnic origin. Many of the answers to these questions in respect of Member States which do not explicitly include nationality in the list of prohibited grounds concern the arrangements in place for making discrimination claims generally, although care has been taken to highlight in specific cases the problems that failure to include nationality poses in relation to issues such as remedies and awareness-raising.

Question 1: Is discrimination on the grounds of nationality (direct and indirect) specifically addressed in national legislation?

The Member States can be divided roughly into three categories in relation to the question of whether discrimination on grounds of nationality is specifically addressed in their national legislation.

The first category of States includes those where it is specifically addressed. **Portugal** is a model in this respect. There, discrimination on grounds of nationality in respect of workers is a matter of constitutional principle. Article 15 of the Portuguese Constitution establishes the principle of equality between foreign nationals staying or residing in Portugal and Portuguese citizens; the main exceptions are for political rights and the exercise of public offices that are not predominantly technical in nature. Article 59 further sets out workers' rights, including the right to equal pay and decent working conditions, and makes explicit that all workers are entitled to those conditions "regardless of their... nationality". The Portuguese Labour Code also protects the general principle of equality between Portuguese and foreign workers. The Labour Code also explicitly prohibits direct and indirect discrimination based on nationality in relation to all of the areas Regulation 1612/68 covers. More typical of this category is **Ireland**, whose Employment Equality Acts include nationality as one of the nine grounds on which employment discrimination is prohibited, and whose Protection of Employees (Part-Time Work) Act 2001 extends employment protections to posted workers and to others, "irrespective of [their] nationality". Other Member States in this category include **Slovenia**, **Poland**, **the Netherlands**, **Lithuania**, **Finland** (which also prohibits employment discrimination on grounds of nationality in its Penal Code) **Bulgaria** and **Italy**. **Luxembourg's** law on equal treatment explicitly excludes nationality as one of the protected grounds, but nationality-based discrimination in employment is an offence under the penal code (unless nationality is a determining condition for employment). Although nationality is not included in the protected grounds in the anti-discrimination provisions of **Spain's** constitution, it is included explicitly in Spanish laws prohibiting discrimination in employment and other fields.

The second category includes Member States in which discrimination on the grounds of nationality is not specifically addressed in national legislation. **Germany** provides an example of this. The German Basic Law includes a general prohibition on discrimination on grounds of, inter alia, "national or social origin", but does not mention nationality. A recent law prohibiting discrimination likewise does not mention nationality. The closest term it includes is "ethnic origin"; however, the German courts have made it clear that these provisions do not prohibit discrimination based solely on grounds of nationality. Victims of such discrimination can nonetheless rely directly on Regulation 1612/68/EEC and other EU law provisions to seek redress. In some Member States, including **Latvia** and **Estonia**, nationality is not explicitly included as a ground on which discrimination is prohibited, but this list of prohibited grounds is not exhaustive, leaving open the possibility that nationality-based discrimination might be covered. This is also true in **Hungary**, where one unpublished judgment involving employment discrimination found that nationality discrimination might be prohibited under national legislation. Likewise, the Constitutional Court in **Belgium** has found that discrimination based on nationality can be unlawful if the action taken is not proportionate to a legitimate aim. In **Denmark** and **Greece**, it appears that individuals who have been discriminated against on grounds of nationality can only make claims if they can somehow show (directly or indirectly) that this constituted discrimination based on grounds of race or ethnicity. **Cyprus's** anti-discrimination legislation does not include nationality or national origin as grounds on which discrimination is prohibited. However, "national origin" is included in the mandate of **Cyprus's** equality body, creating a gap: the equality body can promote equality, including the prohibition on national-origin discrimination, but such discrimination is not actionable as a matter of Cypriot law. In **Malta**, nationality is not included as a protected ground, apparently so as to facilitate restrictions on the rights of third-country nationals.

There is a third category of Member States whose laws in this area are somewhat ambiguous, or simply do not fit neatly into the two categories set out above. In the **Czech Republic** and **Slovakia**, experts remarked that while national legislation prohibits discrimination based on nationality, the term “nationality” does not mean the same thing as citizenship but instead refers to ethnic origin. **Sweden**'s legislation does not explicitly prohibit discrimination based on nationality, but the *travaux préparatoires* to that legislation indicate that the term “ethnic origin”, which does constitute a prohibited ground of discrimination, also encompasses nationality. Likewise, the **United Kingdom** prohibits discrimination based on race, defining “race” as including “nationality”. **Romania**'s legislation bans discrimination based on “national affiliation”. In **France**, discrimination based on ‘belonging or non-belonging, true or supposed, to... a nation’ is prohibited in the Labour Code. This is considered to cover the concept of national origin. In these six Member States, nationality appears to mean more than simply holding the citizenship of another Member State; as a result, individuals claiming discrimination on this basis may have to show more than in the States listed in the first category, or may simply be discouraged from making their claims if they do not feel that the discrimination they have experienced is prohibited by national law. In **Austria**, the legislation dealing with discrimination in employment and other areas, the Equal Treatment Act, does not specifically cover nationality or any related concept, although nationality-based discrimination (putting someone at an “unjustified disadvantage” or preventing her/him from entering a location or using services which are for public use) is an administrative offence.

This diversity indicates more than simply uneven application of the non-discrimination principle contained in Regulation 1612/68. In some Member States (i.e. the first group), discrimination based on nationality is taken as seriously as discrimination taken on other grounds such as race or sex. In others, it is either neglected altogether or, as in Germany, it is assumed that EU law will provide a backstop. The expert from **Belgium** noted, for example, a decree the French Community adopted prohibiting discrimination; it did not include nationality as a prohibited ground but noted, in the legislative instrument, that EU law prohibits discrimination on grounds of nationality. In the third group of States, the notion of “nationality” is explicitly or implicitly bound up with ideas about race or ethnicity. This might impede the effective operation of the non-discrimination principle as embodied in Regulation 1612/68 if victims of nationality-based discrimination cannot show or do not feel that the treatment they suffered is somehow connected with their race or ethnicity.

Question 2: What are the means of redress available at national level for victims of discrimination on grounds of nationality, as regards in particular access to employment and working conditions?

This section details means of redress for victims of discrimination generally in the Member States under national law. Of course these remedies will only work for individuals discriminated against on grounds of nationality if the law in the relevant Member State prohibits nationality discrimination, if they can claim that the discrimination they suffered falls into another category covered by law (e.g. race or ethnic origin) and/or if these remedies also apply in cases where individuals are invoking EU law (specifically Regulation 1612/68) directly. In **Malta** for example, because nationality is explicitly not covered in non-discrimination legislation, it is entirely unclear what recourse a victim of discrimination based on nationality would have.

It is almost always possible for victims of discrimination to go before a court or tribunal in order to obtain redress in the Member States (e.g. putting an end to the discrimination and/or awarding compensation). Indeed, only the expert from **Lithuania** failed to mention the possibility of individuals being able to go to Court for cases of employment discrimination in the private sector (it is clearly possible in the public sector). In **Germany** victims of

discrimination can take claims in the civil courts, or in the administrative courts if they are making claims against an administrative authority. In **Slovenia** victims can likewise take cases before the civil or the administrative courts. Some Member States ease restrictions on access to justice for individuals alleging discrimination. In **Italy**, for instance, the judicial procedure for bringing a discrimination claim is faster and simpler than an ordinary claim before the courts (and not complying with a judicial order to cease discriminating is a criminal offence). In **Romania**, those who bring judicial proceedings claiming discrimination are exempt from judicial taxes. In the **United Kingdom** specialist employment tribunals (or in Northern Ireland 'industrial tribunals') have been set up to hear employment discrimination claims, after an individual has gone through internal grievance procedures; the equality body can also bring proceedings. Employment tribunals in **Austria** also have exclusive jurisdiction on discrimination matters in relation to labour affairs. In the **Czech Republic** an individual can take legal proceedings to bring an end to the discriminatory conduct and receive compensation. **Portugal's** anti-discrimination law provides for pecuniary and non-pecuniary damage for victims of nationality discrimination. **Sweden's** anti-discrimination law provides for similar compensation from courts. In **Greece** only the courts have the power to examine and provide remedies for discrimination claims, although individuals can get guidance from other bodies.

In **Spain**, individuals can go to an administrative, labour or civil court to protect their right to be free from discrimination in employment. In **Luxembourg** an individual can lodge a criminal complaint, can have recourse to alternative dispute resolution mechanisms, or (s)he can take legal proceedings for damages and interest; if the case is against a public-sector employer, the individual must go to the administrative court. In **Latvia**, it is possible to pursue either administrative or civil proceedings; individuals are likely to pursue administrative remedies, however, even though these cannot result in compensation for non-pecuniary damage, because they are faster and the civil courts have very little expertise in dealing with discrimination cases.

Most Member States also offer some alternative to bringing legal proceedings before a court or tribunal. **Romania**, mentioned above, is one example: in addition of going to court, it is possible to bring a case before the National Council for Combating Discrimination. That body can order remedies to restore the person to the situation (s)he would have been in without the discrimination. However, that non-judicial body's apparent ability to overturn laws, rules and regulations has raised constitutional problems that are still being resolved. In **Slovakia**, it is possible to bring a complaint to the office of Labour, Social Affairs and Family in relation to employment discrimination. In **Denmark**, it is possible to go first to the Board of Equal Treatment with a complaint; if the individual is dissatisfied with the outcome (s)he can go to court, or (s)he can go straight to court from the start, bypassing the Board. In the **Netherlands** it is possible to bring a claim to the Equal Treatment Committee or to go directly to court. In **Finland**, the Occupational Health and Safety body is competent to carry out investigations of acts of discrimination and can refer cases to the police, but is not competent to award compensation. **Estonia** has an equality commissioner who can make decisions, but which are not binding. Furthermore, in addition to individuals being able to institute proceedings in courts there, the Law Chancellor can also litigate discrimination claims there. In **Bulgaria**, individuals have a choice between going to an equality commission, whose decisions can be appealed to the Supreme Administrative Court, or making a claim in the civil courts. In **Belgium** an individual can have recourse to an equality body, a mediator, or can take civil or criminal proceedings. In **Hungary** individuals have the choice between taking a case to an administrative equality body or bring a court case. In **France** labour inspectors have the power to sanction discriminatory measures under the Labour Code and the Penal Code and the equality body can investigate discrimination and issue recommendations. In **Cyprus** victims of discrimination can bring claims before labour tribunals, the Supreme Court (in its jurisdiction to hear claims involving fundamental rights)

and the equality body; the latter receives a significant number of complaints from EU migrants.

Ireland provides an interesting example that seems to combine the best elements of a court or tribunal and an alternative body. The Equality Tribunal, made up of a Director and Equality Officers, hears and mediates complaints of alleged discrimination under the Employment Equality Acts and the Equal Status Acts. Its decisions are legally binding and are set out in writing, with reasons, after a full investigation. Parties can appoint legal representatives, but do not have to be represented. If the Tribunal believes that the case can be resolved through mediation, and neither of the parties object, the Director can refer the case to a Mediation Officer. A legal agreement reached with the help of a mediation officer is legally binding as well. Decisions from the Equality Tribunal under the Employment Equality Acts can be appealed to the Labour Court, whereas decisions of the Equality Tribunal under the Equal Status Acts can be appealed to the Circuit Court. The system could potentially provide a model for other Member States: although it gives individuals direct access (without needing a lawyer) to a tribunal, the tribunal itself is staffed by individuals with expertise in equality laws and who will attempt to find a non-adversarial solution (i.e. mediation) if possible. As nationality discrimination is explicitly included in Ireland's anti-discrimination laws, it is a particularly good model for other Member States.

Poland's law also offers a unique form of redress. In December 2009 an act on collective redress was introduced: a group of at least ten people can now institute collective proceedings in civil cases, including labour cases for employment discrimination. There is not yet much practice under this provision, but it may also provide a useful example for other Member States.

Question 3: May associations/organisations or other legal entities having a legitimate interest in ensuring respect of equal treatment on grounds of nationality engage in judicial and/or administrative procedures either on behalf of or in support of complaints?

In a few cases, experts noted that there was in fact a form of double discrimination in relation to individuals' ability to get this kind of assistance or representation. In the **Czech Republic**, for instance, those claiming discrimination based on nationality can get advice from associations, who can also write or supplement legal submissions on their behalf before the administrative authorities. However, unlike those who face discrimination on other grounds, such as race or sex, those who claim discrimination based on nationality cannot be represented by an NGO in civil proceedings. A similar situation exists in **Germany**: victims of nationality-based discrimination cannot avail themselves of this kind of assistance and representation, whereas victims of other forms of discrimination can. In **Latvia**, the provisions on associations providing this kind of representation were intended for race and gender cases only, but the expert was of the view that if a court was considering a case of discrimination based on nationality, it would allow representation by an association in that context as well. In **Greece**, however, only those claiming discrimination based on race or ethnic origin can be represented by associations.

In most Member States, it appears possible to be represented in discrimination proceedings by a not-for-profit association; it is simply a matter of being able to make a discrimination claim based on nationality, which, as explained in response to Question 1, may have to be done indirectly. Some Member States impose restrictions on who can provide this kind of representation. **Italy** only permits organisations that are on the appropriate register at the Ministry of Labour to do so. In **Belgium**, only associations that have existed for at least three years can undertake this kind of activity, and only then if they demonstrate that they were set

up to defend human rights or combat discrimination. In **France**, trade unions can initiate proceedings under the Labour Code, while organisations that have been constituted for at least five years and which have been set up to combat discrimination can lodge complaints with the equality body. In **Lithuania** non-government organisations that have a mandate, under the relevant legislation, to provide representation to victims of discrimination can do so in judicial and administrative proceedings.

Many Member States have governmental or quasi-governmental bodies that can assist and represent individuals. In **Denmark**, in addition to trade unions, the Danish Institute for Human Rights can intervene in cases. **Slovenia** has an "advocate of the principle of equal opportunities", whose mandate encompasses discovery and warning; the advocate can investigate allegations and make recommendations for how to rectify acts of discrimination, and the advocate can help those claiming discrimination to undertake other procedures. **Austria** has a comparable system at federal level: there is an "advocate for non-discrimination" who can investigate discrimination and refer cases to another body which opens a procedure and must publish its final opinion on the matter; similar systems exist at provincial level as well. In **Italy** organisations that are registered with the Ministry of Labour can bring cases on behalf of individuals or in the general interest. In **the Netherlands** associations with the relevant legal powers can also bring complaints, as can trade unions. In **Sweden** it is a similar situation; interestingly, a victim goes to a labour court if (s)he is a member of a trade union and a district court otherwise, giving trade unions a very important role in those disputes involving their members. In **Ireland**, victims of discrimination must make claims in their own right (unless the equality body brings a claim on someone's behalf) or nominate any one to represent them.

Some Member States allow for the additional possibility of NGOs to intervene in proceedings, that is, to present information to courts and tribunals independent of the individual making the claim. So in the **United Kingdom**, in addition to acting for individuals, NGOs can also make third-party interventions, although usually this will only be allowed before higher courts, for example, before the Court of Appeal, which is usually the third judicial instance in employment proceedings. In **Bulgaria**, NGOs or trade unions can enter the judicial process as the "holder of a legitimate interest". In **Slovakia**, where NGOs can act for individuals, bring claims on behalf of a large number of individuals, or intervene in proceedings. Likewise, in **Poland**, NGOs can act on behalf of victims or simply present an opinion to the court hearing the case. In **Hungary** NGOs have played an important role in acting for victims of discrimination before the courts and the equality body. In **Portugal** and **Romania** there also appears to be a general possibility of joining the legal procedure. This may provide a useful model for all Member States, as individual discrimination cases may raise broader questions, and, as many experts indicated, judges may lack familiarity with these issues and benefit from NGO interventions.

In **Cyprus**, no one has challenged the standing of associations to represent individuals in proceedings before the equality body, and can represent individuals in cases before the courts.

In **Spain**, trade unions can bring a collective complaint or act in individual cases where the action affects a collective interest.

Because of a lack of clarity about legal procedures in **Malta**, the possibility of assistance or representation by associations does not appear to exist. In **Estonia**, likewise, victims of nationality-based discrimination cannot call on the support of organisations or associations. In **Luxembourg** the only context where this kind of intervention can take place is in criminal proceedings, where an association recognised by the Ministry of Justice can support a complainant or act on her/his behalf.

In **Finland**, trade unions are the only non-government organisations that can engage in judicial or administrative proceedings on behalf of victims of discrimination.

Question 4: Is there a possibility – and if so which one – for fixing penalties for those who discriminate on grounds of nationality?

Not all Member States have systems of fixed penalties. For those that do, the systems themselves and the penalties that can be fixed vary. In **Slovakia**, the labour inspectorate can impose penalties of up to €100,000; it is thought that this also applies to acts of nationality-based discrimination. Under **Ireland's** Employment Equality acts, a worker can be awarded up to 104 times her/his weekly pay, and under the Equal Status Acts, compensation can be awarded up to €6,349. **Slovenia** treats discrimination as a misdemeanour, punishable by a fine between €250 and €1,200 for an individual and between €2,500 and €40,000 for a business. In **Romania**, fines against a natural person range from between €94 and €938 for individual acts of discrimination and between €140 and €1,880 for discrimination against a group. **Latvia** also has a system of penalties under administrative law, of between €35 and €355 for natural persons and between €70 and €1070 for legal persons. **Lithuania's** Code of Administrative offences allows fines against employers and public officials for acts of discrimination of between €30 and €580, with fines up to €1,160 for repeat violations. There are also fines in that State for failing to co-operate with the Equal Opportunities Ombudsman, ranging from €145 to €290. **Hungary's** Equal Treatment Authority can issue fines of between €175 and €21,000. In **Finland** and **Belgium**, discrimination can be treated as a criminal matter; in the former, it can lead to a fine and a prison sentence of up to six months, along with compensation for the victim up to €16,430; in the latter, it can result in a prison term of between one month and two years and a fine between €50 and €1,000. The **Czech Republic** allows for penalties of up to €16,125 for offences in the area of equal treatment. In **Cyprus**, the equality body and courts can impose fines in cases of discrimination, including court-imposed fines of up to €6,835 for natural persons and €11,962 for legal persons.

In other States, or in other procedures in States listed above, penalties are not fixed or are sometimes unavailable. In **Denmark**, for instance, the Board of Equal Treatment cannot mete out any penalty (but the police, the Labour Court and ordinary courts can issue fines). **Estonia, Italy, the Netherlands, and Poland** set no maximum or minimum for penalties for discrimination against workers. In **Portugal**, the fine against an employer for discrimination depends on the company's annual turnover; individuals who are found to have committed a misdemeanour by discriminating based on nationality or other grounds may also be given a fine and the decision may be made public. In the **United Kingdom**, employment tribunals can impose the same fines that ordinary courts would be able to impose for nationality (i.e. "race") discrimination; this means that there is no set minimum or maximum.

Because **Malta** does not protect against discrimination on grounds of nationality, there is no indication for what the penalties may be. The expert from **Spain** noted fixed penal and administrative penalties not in terms of damages awarded, but rather in prison terms of terms of disqualification: under the Penal Code, national-origin discrimination in employment can carry a prison term from 12 to 24 months, or six to 24 months in the public service; in the private sector, those who discriminate may face disqualification from their profession for one to four years, and those in the public sector may face disqualification from public employment for two to four years.

While there is no possibility for fixing civil penalties in **Luxembourg**, criminal penalties include imprisonment from six months to three years and a fine ranging from €251 to €37,500. In **France**, the Penal Code provides for a prison term of up to three years and a fine of up to €45,000 for employment discrimination, while the Labour Code simply provides for

compensation; the equality body can assign fines of up to €3,000 for individuals and €15,000 for companies.

For **Sweden**, no mention was made of fixed penalties, but the ombudsman can order those who discriminate to pay damages. Likewise, the expert for **Bulgaria** did not mention fixed penalties but did indicate that the equality body or the courts can impose financial penalties. The expert for **Greece** likewise indicated the possibility of imposing penalties, but did not indicate amounts; however, this is only for race or ethnicity discrimination. In **Austria**, there is no fixed-penalty system but victims can apply for compensation, and the administrative offence of nationality discrimination can be punished through a fine of up to €1,090. The expert for **Germany** noted that the authorities cannot impose penalties for nationality discrimination.

Question 5: Are there any measures – and if so, which ones – aimed at protecting workers against adverse treatment by the employer as a reaction to a complaint for discrimination on grounds of nationality?

There appear to be twenty Member States which potentially provide workers with protection against adverse treatment when they have made a claim of discrimination. These mechanisms are general in nature and apply to all discrimination claims, so those benefiting from them would have to articulate their claim in terms of the relevant domestic law on discrimination. For example, there is protection in **Denmark**, where the law prohibiting discrimination provides for damages for those who are victims of reprisals, but as Danish law (see Question 1) does not specifically address nationality discrimination, the individual concerned will have to articulate her/his discrimination claim indirectly (e.g. on the basis of ethnic origin). The same is true of **Greece**, where adverse treatment as a result of making a discrimination claim is treated the same as any act of discrimination, but the law only applies to claims of discrimination based on race or ethnic origin. The **United Kingdom** (where nationality is included in the concept of “race”) treats what it calls “victimisation” (i.e. retaliation for having made a discrimination complaint) as a separate act of discrimination, giving rise to a separate complaint. **Ireland** likewise prohibits victimisation and covers not only those who have made complaints but also those who have threatened to make complaints about discrimination or those who support complaints by other workers. **Bulgarian** law defines and punishes such retaliation as a form of “persecution”. **Finland** also provides for penalties for such treatment, as does the **Netherlands**, although a recent study was done in the latter State to determine the effectiveness of such provisions; the study revealed that those who make accusations of discrimination do not receive sufficient protection. **Poland** has provisions in this area and **Portugal** qualifies an act of retaliation by an employer as null and void and treats it as a serious misdemeanour. Labour law in **France** similarly prohibits adverse action taken following a complaint, providing for such action to be nullified. In **Slovenia**, the “advocate” investigating the case is required to apply protective measures for an individual who has made a complaint based on discrimination and who faces retaliation. In **Sweden**, those who complain about discrimination are also protected, and employers who retaliate will be required to pay damages. **Latvia** also provides this kind of protection. In **Germany** individuals can seek the protection of the labour courts or of trade unions in cases of retaliation. Legislation in **Spain** regards retaliation of this kind as a serious offence. In **Austria**, an employer is not allowed to take adverse action on the basis that an individual has claimed discrimination; the same applies to employees who appear as witnesses in discrimination cases.

Although employment discrimination based on nationality is not prohibited per se in **Cyprus**, it does fall within the remit of that State’s equality body; it is an offence employers to retaliate against a worker for making a complaint to the equality body or in any way cooperating with it.

Belgium has an interesting system that might provide a useful model for other Member States. During the twelve-month period following a discrimination complaint, the person accused of discrimination must justify any detrimental employment action taken against the worker, regardless of whether it is related to the complaint. The period concerned extends for another three months after a decision on the discrimination complaint has been reached.

In **Hungary**, no distinct means of redress is available for retaliation, although it is possible to bring a new complaint before the Equal Treatment Authority following retaliation. Likewise, retaliation can form the basis of a complaint to a court in **Lithuania** and in **Italy**.

Slovakia, the **Czech Republic**, **Romania**, **Luxembourg** and **Estonia** do not appear to provide protection against retaliation. The expert from **Malta** did not address the issue as nationality-based discrimination is not prohibited there.

Question 6: Are there any organisations at national level – and if so which ones – that promote equal treatment on grounds of nationality and provide independent assistance to victims of such discrimination (“Equality Bodies”)? Does the action of these organisations cover all items related to discrimination on grounds of nationality specifically mentioned in Regulation 1612/68 (access to employment / working conditions / social and tax advantages / membership of trade unions / housing...)?

It does not appear that Equality Bodies were set up in most of the Member States with the requirements of Regulation 1612/68 specifically in mind. As a result, there is wide variation in the way that Equality Bodies deal with nationality discrimination in general, and the extent to which they cover all of the matters Regulation 1612/68 covers.

There are several bodies which, even though nationality is not explicitly within their remit, deal with nationality-based discrimination in relation to the matters the Regulation covers. **Denmark**'s Institute for Human Rights promotes equal treatment on grounds of race or ethnic origin; it covers all of the matters dealt with in the Regulation, but will not necessarily be able to deal with nationality discrimination if that discrimination cannot be described as concerning race or ethnic origin. Likewise, **Greece**'s equality bodies only deal with discrimination based on race and ethnic origin, and competence is split: the Ombudsman deals with infringement by a public service, the Labour Inspectorate with cases of employment and the Commission of Equal Treatment with other matters. **Italy**'s equality body, the UNAR, is not set up specifically to deal with nationality discrimination but often deals with cases of nationality discrimination as it sees them as a form of race discrimination. Likewise, in **Spain** the Council for the Promotion of Equal Treatment and Non Discrimination of People deals with discrimination based on race or ethnic origin. **Luxembourg**'s Centre for Equal Treatment, its equality body, does not deal with complaints about discrimination based on nationality, even though such discrimination is a criminal offence. In **Austria**, the bodies responsible are the equal treatment commission and the equal treatment attorney, who are responsible for promoting equality, as well as taking forward cases; their mandates cover all the matters in the Regulation.

Hungary's equality body covers all of the issues in the Regulation. Although nationality is not a specific ground of prohibited discrimination there, the equal body can consider discrimination on any basis. **Latvia**'s Ombudsman Office, which serves as the State's equality body, will consider discrimination based not only on the prohibited grounds set out in domestic legislation, but also discrimination based on nationality and, it appears, on all issues the Regulation covers, although its remit is not specific.

There are several Member States whose equality bodies expressly deal with nationality discrimination. **Belgium's** Centre for Equal Opportunities and Opposition to Racism has a broad scope for intervention, covering nationality and the full subject matter of the Regulation; in 2008, for example, the Centre carried out a report on discrimination based on nationality in the housing sector, particularly in relation to renting accommodation. **Sweden's** equality bodies cover all aspects of the Regulation, as does **Romania's** equality body. The **United Kingdom's** Equality and Human Rights Commission, although it will soon be facing considerable restructuring due to budget cuts, covers nationality as an aspect of race and is competent to deal with complaints falling within all matters under the Regulation. **Ireland's** Equality Authority is equally comprehensive, working towards the elimination of discrimination based, inter alia, on nationality and looking at all of the matters that the Regulation covers. **Portugal's** equality body explicitly deals with nationality discrimination, with a particular focus on employment and housing. In **Slovenia**, the equality body's remit also covers nationality, as is the case in **Lithuania**.

In **Finland**, while the Ombudsman for Minorities is responsible for tackling ethnic discrimination (often understood to cover nationality discrimination), it does not have competence to deal with discrimination in the labour market, although it does deal with other matters that fall within the remit of Regulation 1612/68, including social and tax advantages; the occupational health and safety authority is the body responsible for discrimination in the labour market.

France provides a particularly interesting example of a dense institutional network combating discrimination against migrants: in each geographic *département*, there is a Commission on Access to Citizenship that promotes the rights of young migrants of all backgrounds and helps them combat discrimination.

Bulgaria's Commission for Protection Against Discrimination provides advice to individuals who are claiming to be victims of discrimination, but only in the field of employment.

In the **Czech Republic**, the Czech Ombudsman has the functions of an equality body, although it is limited, when dealing with individual complaints, to providing assistance to those claiming to have been victims of discrimination.

Cyprus, as mentioned earlier, is in the strange situation of having an equality body with a specific mandate to look into national-origin discrimination, even though such discrimination is not prohibited by its anti-discrimination law. (Nationality-based discrimination is prohibited though in the legislative instrument transposing Directive 2004/38.) That body has made a number of decisions following complaints dealing with nationality discrimination in various areas the Regulation covers. However, the body does not provide legal assistance to individuals who claim to be victims of discrimination.

The **Netherlands** has various bodies that exist to promote equality and combat discrimination, but in a general way and without a focus on nationality discrimination. There is, however, an NGO that provides assistance specifically to cross-border workers and another that works with migrants from Southern Europe.

Slovakia does not appear to have an equality body. The expert for **Poland** only cited NGOs carrying out this kind of work and the National Labour Inspectorate.

The expert from **Malta** noted that there is no organisation set up to promote equal treatment on the ground of nationality or to assist victims. Likewise, the expert from **Estonia** noted the absence of any institution active in this field and noted that the social partners do not promote awareness of the prohibition on nationality-based discrimination. While the same

also appears to be true in **Germany**, the trade unions play a role in protecting EU migrant workers against nationality-based discrimination.

Question 7: What rules apply to the burden of proof in cases of nationality discrimination?

In some Member States, the burden of proof is placed on the individual alleged to have committed the act of discrimination. This is the case in **Belgium** in civil cases (although in criminal cases the burden is obviously not on the defendant). The same is true in **Finland**: the burden is on the accused in civil cases, but on the complaining party in criminal cases. In **Estonia** there is a reverse burden of proof in discrimination cases as well. In **Latvia** the burden of proof is also reversed in discrimination cases arising under the Labour Law; although this provision was introduced in order to bring Latvia in line with EU directives on race and gender discrimination, it can be used for all grounds, including nationality. Other States in this category include **Poland, Portugal** and **Sweden**. Following a request from the European Commission, legislation in **Cyprus** was changed so that the burden of proof lies essentially on the person accused of discrimination, with the victim merely having to introduce facts indicating that discrimination has taken place. However, this does not apply to nationality discrimination, which Cypriot legislation does not cover.

In **Hungary**, where the burden of proof falls depends on where the case is being brought: ordinary rules about the burden of proof – placing it on the party making an allegation – apply in labour or private law cases, but before the Equal Treatment Authority the burden is on the party who allegedly committed the discriminatory act.

In **Italy** the burden of proof is still on the person alleging discrimination, but it is relaxed when the case has to do with access to work or working conditions: proof of indirect discrimination will suffice to create a rebuttable presumption in such cases.

The **United Kingdom, Ireland, Slovenia, Slovakia, Romania, the Netherlands, Latvia, Greece, Denmark, Spain, France, Lithuania, Austria** and **Bulgaria** have systems of a shared burden of proof. For example, in **Bulgaria**, “after the party that alleges to be a victim of discrimination proves the facts from which it follows that there is discrimination, the other party has to prove that the right to equal treatment has not been infringed”. In a **United Kingdom** employment tribunal, the complainant must prove “facts from which the tribunal could... conclude in the absence of an adequate explanation that the respondent” committed an act of discrimination; at that point, the burden falls on the accused party to demonstrate that there was no discrimination.

In the **Czech Republic**, those claiming nationality discrimination in civil courts must apply the ordinary rules on burden of proof, which are not advantageous to the claimant. This is different from cases where discrimination is alleged on other grounds (e.g. race, age, sexual orientation); in such cases, the burden of proof is on the accused.

The expert for **Malta** did not provide information on this matter because of the absence of any legal provisions in that Member State for penalising nationality-based discrimination. Similarly, the expert from **Germany** noted that there are no particular rules in relation to the burden of proof in nationality cases, although there are specific rules for other forms of discrimination.

The expert from **Luxembourg** noted that because the only cases of nationality discrimination that go to court are criminal cases, if the victim initiates the action (s)he will have to prove all of the facts as well as the intention to discriminate.

Question 8: Are there specific provisions/measures adopted at national level aimed at raising awareness of the rights of workers not to be discrimination against on grounds of nationality?

There was a high level of consistency across the Member State in response to this question: usually, there are no specific awareness-raising measures concerning migrant workers' right to equal treatment regardless of their nationality; however, most Member States have agencies active in the field of raising awareness about anti-discrimination provisions generally, and nationality occasionally features in their work. Where nationality-based discrimination is explicitly prohibited in national law, more awareness-raising work is done in this area. For example, in the **United Kingdom** the Equality and Human Rights Commission is obligated to promote awareness of equality laws. In **Ireland**, the Equality Authority is required to provide information to the public about equality laws and does so through its website. In other States, though, even where there are awareness campaigns about discrimination generally, there are no specific measures taken to promote awareness of nationality discrimination. This is the situation in **Denmark, Romania, Latvia, Greece, Italy, Finland, Bulgaria, Spain** and the **Czech Republic**.

There are some States where discrimination against EU migrant workers is the subject of greater public awareness. In **Hungary**, discrimination on the basis of nationality is a frequently-discussed topic and there is a great deal of information available about it; that awareness-raising work generally concerns migrants from neighbouring States. **Portugal** provides a model in this area: the authorities launched a National Plan for the Integration of Immigrants, focusing on integration of migrant workers into the social security scheme and tax administration, vocational training, participation in trade unions and access to housing and the banking system. Employers are also required to post information about non-discrimination laws in an appropriate place. In **Lithuania**, where nationality is specifically covered as a prohibited ground of discrimination, the expert cited a government anti-discrimination programme for 2009-2011 and the availability of funds from the European Social Fund for other initiatives.

In **Slovenia** there is a statutory obligation on all State bodies and local authorities to establish conditions for the equal treatment of persons (including on grounds of nationality). In **Sweden** there is a similar statutory obligation but it is placed on employers, who must take "active" measures to promote equality based on ethnicity (which is viewed as covering nationality).

In **Poland** and the **Netherlands**, there appears to be little awareness-raising activity; in those States, the authorities limit themselves to issuing policy statements on these matters.

The expert from **France** noted in response to this question that collective conventions on workers' rights must contain provisions on equality of treatment and prevention of discrimination.

The experts from **Estonia, Austria, Luxembourg** and **Slovakia** indicated that there were no measures in place or initiatives to promote the right not to be discriminated against based on nationality. The same was true for **Cyprus**, where the expert noted only a seminar on the free movement of workers in October 2009. The expert from **Belgium** could only point to the efforts of trade unions to promote the rights of workers in general, but there was nothing specific on nationality discrimination. The same appears to be true for **Germany**. The expert from **Malta** did not indicate any awareness-raising activities.

Question 9: Are there juridical assistance services devoted to issues of free movement of workers, such as local Bar Associations or Government websites (if so, please provide their names)? Do they provide full and accurate information?

Many experts cited pages on the website of the Ministry of the Interior or similar bodies. It appears, however, that this information is presented as information about immigration or access to the labour market; information about nationality-based discrimination is not usually included. Such information is unlikely to make migrants aware that they are entitled to non-discriminatory treatment; particularly as many States put this information on websites intended for aliens, it might rather give the impression that EU migrants have different rights from nationals.

The **United Kingdom** Government for example has a page on its immigration website about the rights of "European citizens" with limited information not focused on citizens' right to be free from discrimination. The UK Government also has a page dealing specifically with free movement of workers on a website for the general public about a wide variety of matters; the page does not include information on protection from discrimination. Similarly, **Ireland's** Citizens Information Board has information that has been described as accurate but not detailed. While the Irish Naturalisation and Immigration Service provides information on the rights of third-country national family members of EU migrants, it does not deal with non-discrimination. The **Czech Republic** has a similar page, only in Czech and with limited information. **Denmark** has a similar website as well, and its Ministry of Education has set up a hotline for migrants refused access to education. The Immigration Service, the Ministry of Employment and the Economic and the Occupational Health and Safety administration have put up websites in **Finland** that are relevant. Trade unions also play a crucial role there in disseminating information. In **Romania** the Office for Immigration and the National Council for Combating Discrimination have useful information on their websites, and in **Sweden** the Migration Board provides information on the free movement of workers. In **Slovenia** individuals can turn to the Employment Service, but nowhere else, it appears. The relevant webpage in **Italy** containing information about free movement of workers has been described as unsatisfactory.

The Institute for Employment and Vocational Training in **Portugal** has a comprehensive website with information on free movement which may provide a model for other Member States.

Experts mentioned the existence of legal aid for EU migrants being available on a non-discriminatory basis in the **United Kingdom, Austria, Belgium, Hungary, Poland, France** and the **Netherlands**. In **Cyprus** it appears that legal aid is available in theory but in practice it does not appear that there have been cases where people have received it. In **France** there are also various NGOs providing assistance, but none, it appears, on a national basis. In **Austria**, in addition to being able to access legal aid, EU migrants facing discrimination could count on the Chamber of Employees to support them.

In **Spain** there are specialist legal firms dealing with free movement of EU citizens, but, apparently, nothing else.

In **Lithuania** EURES advisers are available to assist migrant workers but as that Member State does not appear to be a popular destination for EU migrants at present most of the advisers are engaged in assisting Lithuanian citizens who wish to move elsewhere in the EU. The same appears to be true in **Bulgaria**, where EURES advisers are the only source of information cited.

In **Estonia** there is a possibility to apply for state-guaranteed legal aid for those people who do not have enough resources to pay for legal services. This is foreseen for all persons, including in cases involving discrimination.

Those States with the fewest services and sources of information include: **Latvia** (no judicial assistance service except for SOLVIT and the Ombudsman); **Slovakia** (the only source of information is a web page on the site of the Ministry of Labour, Social Affairs and Family in English about access to the labour market); **Luxembourg** (no services of which the expert was aware); **Germany** (no efforts to provide legal assistance of which the expert was aware); **Malta** (no assistance services noted); and **Greece** (no assistance services noted).

Question 10: Are there other practical weaknesses or obstacles that you can identify in the national context?

Experts identified four main problems.

The first is that nationality per se is not covered in the national anti-discrimination laws of some States. This is the case in **Denmark, Austria, Latvia, the Netherlands, Hungary** and **Estonia**.

The second problem is lack of awareness about anti-discrimination law. This is the case in the **Czech Republic**. There is low awareness in **Latvia** as well, where, for example, requirements such as a high level of Latvian language mastery is required for many jobs, potentially resulting in nationality-based discrimination. In **Finland** there is also an awareness problem, linked to the fact that anti-discrimination law is fragmented and not easily accessible to the non-Finnish population. The same is true in **Slovakia**, where the expert also cited the inadequacy of the judiciary to deal with these issues. The expert from **Lithuania** gave a concrete example of a lack of awareness: many educational establishments require previous experience in that institution before they will hire someone, indirectly discriminating against EU migrants. The expert from **Cyprus** noted both a lack of awareness and lawyers' unwillingness to undergo training on anti-discrimination law.

The third problem is the lack of concrete cases brought before the courts. This is the case in the **Czech Republic**. Similarly, legislation in **Romania** has not been adequately tested. The expert from **Italy** noted the same problem, citing lack of knowledge of the law, fear of reprisals, and high legal costs which must be paid in advance. The expert from **Bulgaria** noted that this area of law was new in that Member State and there is a lack of practice.

Finally, in **Portugal** and **Ireland** there are worries that exceptions contained in anti-discrimination laws may be too wide to ensure adequate protection for migrant workers.

Some other points were raised. In the **United Kingdom**, discriminatory provisions on access to social assistance or social security benefits or social housing pose a problem for EU migrants in general, but particularly some workers, especially in the light of the transition arrangements in place for citizens whose States joined the EU in 2004 or 2007. The expert from **Belgium** noted the problem of reverse discrimination: Belgian workers face discrimination when they move within Belgium from one region to another, and frontier workers face problems. The expert from **Spain** noted problems with the transposition of Directive 2004/38, particularly in relation to the right of family members of EU migrants to work. The expert from **Luxembourg** noted myriad problems: only recently was a law passed opening up the civil service to EU migrants in line with EU law; there are problems with mutual recognition of qualifications, particularly for Bulgarians and Romanians; there are long delays for EU migrants receiving residence documentation and family allowances; frontier workers routinely experience difficulties; and the courts (particularly administrative courts) do not understand European law well.

The experts from **Slovenia** (where the labour market appears very open to EU migrants), **Sweden** (where the authorities are very familiar with EU law) and **Poland** (where discrimination is prohibited in multiple legal provisions) did not identify any other weaknesses. Likewise, the expert from **Germany** says that nationality discrimination does not appear to have raised particular problems there. The experts from **France** and **Greece** did not mention any other obstacles. The expert from **Malta** focused on the complete lack of any recognition of nationality discrimination in that Member State.

Question 11: What role do the social partners in your own Member State play in advising-informing workers about their rights not to be discriminated against on the grounds of nationality?

In those States where social partners are active, trade unions tend to play the biggest role. To the extent that they provide information and advice to workers about their rights not to be discriminated against on the grounds of nationality, it tends to be in the context of other anti-discrimination work.

In the **Czech Republic**, trade unions provide information to all workers about their rights and provide free legal aid in labour-related cases and support in civil and administrative cases. Trade unions provide similar information and support in **Finland**. In **Germany** trade unions provide advice for workers on their right not to be discriminated against on grounds of nationality. In **Hungary**, social partners (particularly trade unions) run workshops and conferences on anti-discrimination issues. Trade-union experts in that State have published papers on free movement of workers and been active in the field. In **Ireland** the Congress of Trade Unions plays a role in disseminating information on protection against discrimination generally. In **Italy**, trade unions are active in taking discrimination cases to courts. In **Sweden** trade unions have been particularly engaged in the issue of posted workers, as the *Laval* case before the ECJ shows, and otherwise have been engaged in fighting discrimination based on sex and/or ethnic origin. In **Slovenia** trade unions have been active in working on issues related to nationality-based discrimination, but mostly in relation to third-country nationals, who make up a large part of the workforce. In the **United Kingdom**, trade unions have played a strong role in informing migrant workers from elsewhere in the EU of their rights, including the prohibition on nationality-based discrimination, and have provided information in a number of European languages. In **Belgium**, the social partners do not have a legally prescribed role; they often engage in anti-discrimination awareness campaigns but do not cover the prohibition on nationality discrimination. In **Cyprus** the trade unions have organised seminars and even published booklets in various European languages about discrimination, but focusing on other discrimination grounds, not nationality; the trade unions do not generally provide advice to individuals. In **Austria**, the Chamber of Employees is responsible for protecting workers' interests, giving legal advice and other information, although the expert noted that the Chamber of Employees was instrumental in maintaining restrictions against EU8 nationals' access to the labour market.

The Netherlands provides a rare example of engagement from employers' organisations, who are in favour of free movement of workers and actively promote it. Trade unions have defended the rights of migrant workers facing discrimination based on nationality there as well. They were particularly active, for example, in defending the rights of Romanian agricultural workers in 2009 when those workers were facing unjust working conditions. Similar efforts exist in **Portugal**, where employers' and employees' organisations have cooperated to fight discrimination against migrant workers in the workplace, particularly in the health service, where there are large numbers of EU migrants working. Employers' and employees' organisations are also actively involved in combating discrimination generally in **Poland**. The expert from **Spain**, who noted the contribution of trade unions, also emphasised the increasing role of Spanish companies and business associations in managing diversity.

In **Lithuania**, although the trade unions are generally active they do not appear interested in defending the rights of foreign nationals in the labour market. In **Romania**, social partners do not appear to be active, mainly because of the very low number of EU migrant workers there. Social partners apparently are not active in this field in **Slovakia** either. The social partners in **Denmark** have done some work in this area, but not very much. In **Estonia**, the trade unions are familiar with the prohibition on nationality-based discrimination, but their major field of activity in this area is advising Estonian workers who are going abroad. **Bulgaria**, **Greece** and **Latvia** have also not seem much activity, in the latter State probably because of the low number of EU migrant workers. In **Luxembourg** there has been little engagement on the part of the social partners; however, when a new law was introduced discriminating against the family members of non-resident workers in relation to accessing financial aid for studies, the three major union groupings were involve in protests, invoking EU law to challenge the legislation. The expert from **France** pointed only to the possibility that trade unions have under the Labour Code to alert employers to discrimination.

The expert from **Malta** did not address this, as the issue of discrimination on grounds of nationality there has not been addressed, it appears, by anyone.

Question 12: Mention 2 or 3 aspects that in your view would justify a further legal action at EU level to improve enforcing the rights granted by Regulation 1612/68.

Many experts mentioned the need to challenge laws and practices that resulted in discrimination in the field of social advantages: social assistance benefits in the **United Kingdom**, study grants for workers in the **Netherlands**, social assistance and pensions in **Poland** and family allowances in **Luxembourg** posed particular problems.

The experts from **Slovakia** and **Bulgaria** noted the need to raise awareness, not only of this aspect of EU law but of the EU legal system in general. The expert from **Ireland** put it particularly well: because people refer to the equality legislation and not EU law, there is a general “equality dynamic” but no “free movement of workers dynamic” and people are simply unfamiliar with the Regulation. The expert from **Lithuania** also focused on awareness raising and the need to monitor the liberalisation of national labour markets, particularly in times of economic difficulty. The expert from **Austria** noted how gaps in Austrian legislation on discrimination were likely to result in confusion about the situation of EU migrant workers; that expert also focused on abuse resulting from the transition arrangements for accession nationals.

The expert from **Cyprus** noted the need for more cases and the need to extend legal aid to these kinds of cases.

Experts from those States where nationality is not explicitly included as a prohibited ground of discrimination in national law (e.g. **Denmark**, **Greece**, **Estonia**, **Latvia**) recommended changing EU law to require States to included nationality as such a ground. Many experts also noted the need to raise awareness about the prohibition of discrimination on grounds of nationality. Other suggestions were to have EU rules on the burden of proof in discrimination cases, and the expert from **Belgium** explicitly suggested that EU law should provide for a reversed burden of proof (that is, putting the burden of proof on the person accused of discrimination). The expert from **Latvia** in particular suggested considering whether different grounds of discrimination in EU law (nationality, race, sex) should still be governed by different rules; perhaps a unified approach would be more appropriate. The experts from **Italy** thought it would be helpful to have an EU-law remedy for nationality discrimination; they also noted that it would be helpful to clarify the relationship between Article 7(2) of Regulation

1612/68 and Article 24 of Directive 2004/38. The expert from **Malta** seemed to suggest that some kind of change was needed to ensure clear and unequivocal provisions about nationality-based discrimination were included in domestic law.

The expert from **Romania** suggested a unified system of offences and sanctions and increasing the effectiveness of the European Coordination Office.

The expert from **Portugal** looked at Regulation 1612/68 and suggested amending it to reflect developments in the case law (e.g. the *Ibrahim* and *Teixeira* cases) and re-introducing Articles 10 and 11, which Directive 2004/38 repealed.

The experts from **Slovenia, Sweden, Germany, Finland, Spain** and **France** did not think any further legal action should be taken. In particular, the expert from **Hungary** thought that too-frequent changes in EU law might cause rule-of-law problems; what was needed was time for individual claims to come forward. The expert from the **Czech Republic** had similar remarks: that Member State only recently amended its laws to comply with EU law in this area, and thought more sharing of best practice would be better than legal action at Union level.

Question 13: On the basis of the situation encountered in your own Member State, would you recommend a reform of the current EU legal framework?

There was almost an even split between the experts on this point. Experts from fifteen Member States (**Cyprus, Czech Republic, Hungary, Germany, Finland, France, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Slovenia and Sweden**) indicated that legal reform was not necessary.

The experts from the other Member States were divided as to what reforms were needed. Some suggested legal reform in general ways: the expert from **Belgium** suggested more movement towards disconnecting the prohibition on nationality discrimination from the law on free movement of workers, while the expert from **Bulgaria** suggested greater rights to access information about legal norms in this area. Some experts, including those from **Denmark, Greece** and the **United Kingdom**, focused on simplifying the instruments. The expert from **Romania** simply mentioned the need to modernise the legal regime concerning the prohibition of nationality-based discrimination. The expert from the **Netherlands** recommended several changes: harmonise the burden of proof for nationality discrimination with Directive 2000/43; let trade unions take class actions; raise awareness on the position of EU migrants; and improve the knowledge of judges. The expert from **Austria** similarly recommended importing the burden-of-proof rule from Directive 2000/43 and giving trade unions or other social partners greater powers to combat discrimination. Several experts (**Estonia, Spain, Latvia, Slovakia**) cited the need to provide for incorporation of the prohibition on nationality-based discrimination into domestic law, perhaps by incorporating it into a Directive.

Conclusion

If the prohibition on nationality-based discrimination is going to enjoy uniform respect across the EU, it may require a change to its status within the EU legal order, to something closer to the status that the prohibitions on race and gender discrimination enjoy. In those States where the principle is respected, this is not a result of obedience to EU law, but because of an advanced understanding of what the principle of non-discrimination means. If there is one point of commonality across the Member States that results from this survey, it is that ultimately EU migrant workers are still perceived in most of the EU as holding a status closer to

that of third-country nationals than to that of national workers. Where EU migrants enjoy protection from discrimination, it is thanks to generous national laws that are perceived as going beyond the requirements of EU law. Many EU migrant workers opposing discrimination based on their nationality will have to rely on generous interpretations of national law (e.g. interpretations that assimilate it to race discrimination or discrimination based on ethnic origin). Where they face discrimination in access to social advantages, such as welfare benefits, the question from a national-law perspective is not so much whether they are being treated on a non-discriminatory basis as whether they meet the legal requirements EU law on the free movement of persons (namely Directive 2004/38) allows the State to impose on them. Many of the experts agree that stronger protection for EU citizens against discrimination based on nationality requires reform both to EU anti-discrimination law (i.e. measures currently based on Article 19 TFEU) and to EU law on the free movement of persons; the former must take nationality as seriously as other prohibited grounds, while the latter must admit of fewer differences between EU migrants on the one hand and host State nationals on the other.