

## The Transposition of the Race Directive (2000/43/EC) and the Framework Directive on Equal Treatment in Employment (2000/78/EC) into Dutch and Belgian Law

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*Susanne D. Burri and Filip Dorssemont*

At the Crossroads between an Open or Closed Avenue for Justifying Unequal Treatment

**Abstract:** This article provides a comparison of some aspects of the transposition of the Race and the Framework Directives in Belgium and the Netherlands. The context of the implementation processes differed substantially, in that the outlook of the existing Belgian and Dutch equal treatment legislation at the time of the adoption of the directives was profoundly different. The most striking differences related to the existence or the absence of comprehensive provisions relating to the grounds for the prohibition of discrimination, exemptions justifying unequal treatment and the competences of judicial or administrative supervisory bodies. The analysis of these divergences provides interesting insights into some of the problems relating to the transposition of EC equal treatment directives. The paper focuses on the extent to which these different contexts have resulted in the proper or improper implementation of the directives.

## New Grounds for Anti-discrimination: the Roles of Equality Commissions in Law Enforcement in the UK and Germany

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*Victoria Howe and Rolf Wank*

**Abstract:** This article argues that new legislation implementing the Framework Employment Directive prohibiting discrimination on grounds of religion, belief or sexual orientation will make no impact on employers' practices and behaviour, unless they are underpinned by enforcement mechanisms similar to those provided under the current anti-discrimination law. In this regard, the article explores the existing framework for enforcement of anti-discrimination law by existing equality bodies in the UK and in Germany and supports the proposals for the establishment of single Equality Commissions in both countries. The article states that the challenges of enforcing the new grounds of anti-discrimination should be addressed before the new Commissions come into existence.

## A Tale of Two Projects: Emerging Tension between Public and Private Aspects of Employment Discrimination Law

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*Aaron Baker*

**Abstract:** Zeal for curing the public ill of discrimination can lead to approaches that ignore the more private concerns of individual victims of discrimination. This article explains that the forward-looking project of changing society to eliminate inequality is quite a different project from that of providing accessible and effective individual remedies for discrimination victims. To that end, the nature and divergence of these two projects is described in abstract terms, and then

concretely illustrated by reference to US employment discrimination law, where a clear conflict has evolved between the two. The article then traces the development of anti-discrimination law in the United Kingdom, and the subtly emerging tension between the two projects here. Finally, the article assesses the contemporary discourse on reform of equality law in the UK, and suggests how a new single equality act might drive for social change without eroding the benefits of the existing system for individual dispute resolution.

## For Diversity, Against Discrimination: the Contradictory Approach to Age Discrimination in Employment

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*Malcolm Sargeant*

**Abstract:** This article argues that there is a contradiction contained within the Framework Directive on Equal Treatment in Employment and Occupation and the UK Government's proposals for implementing it. There is a distinction between the business justification for encouraging diversity in the workforce and the human rights justification for ending age discrimination. The first approach weakens the latter by legitimising continued discrimination on the basis of age. This is especially important because there is a close relationship between age discrimination and discrimination on the grounds of sex, race and disability.

## Employers' Liability for Bullying and Harassment

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*Eoin Quill*

**Abstract:** This article examines the application of tort principles to the question of an employer's liability for the psychological effects of bullying and harassment in the workplace in Ireland, comparing the position in the UK. It notes the difference in approach taken in these countries to the duty to avoid negligently inflicted psychiatric harm. It then goes on to examine the limited jurisprudence on intentionally inflicted emotional distress, looking briefly at US jurisprudence in respect of potential development of the law in Ireland and the UK. Finally it examines vicarious liability, including recent Canadian developments, that are proving to be instructive.

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