



**A training programme  
for young graduate and low qualified women  
both gathering a migratory background  
to enhance diversity and to struggle against discrimination  
on the labour market**

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## Module 0 - Overview on the main content of the Di&Di training

The training programme has been built keeping in mind the following issues:

- ❖ being focussed on two main target groups: young graduate and low qualified women both sharing a migratory background ;
- ❖ combining bottom-up approach & top-down approach: reminding of the legal basis (EU directive and national laws) together with concrete actions on the ground ;
- ❖ keeping in mind the “mutual recognition” approach : integrating both employees’ and employers’ sides and so remaining as neutral as possible ;
- ❖ enriching the knowledge on discrimination by the means of concrete problems faced on the ground by the two target groups ;
- ❖ avoiding the stigmatisation of the specific profiles of the Di&Di audience (sharing a migratory background) by identifying what is /what is not a discrimination linked to their migratory background
- ❖ insisting on the main specificities of diversity: changing the perspective and bringing something new on the labour market (new profiles, new skills & competences) ;
- ❖ offering some innovative support of training on the basis of existing tools and methods examples : Migrapass portfolio (expressing experience in terms of competences) or Allinhe strategy (enhancing access to VPL) ;
- ❖ taking into account the different domains (professional, social, personal) in which discrimination might occur ;
- ❖ avoiding the negative approach (justice, security, status...) of the presentation of the two publics by themselves towards potential employers
- ❖ Enhancing the European perspective: some European countries may be more in advance in this field and could share with other countries’ experience.

The methodology and pedagogical approach integrate both a theoretical approach (based on the literature gathered in the partners’ countries and on a EU level) and a practical approach (needs expressed by the two targets groups of the Di&Di).

**Modules 1 & 2** are focussed on the institutional context of the Di&Di project – the Lifelong Learning programme and the Leonardo da Vinci projects (**module 1**); secondly, it reminds of the main goals & objectives to be tackled insisting on the concept/definition of diversity on the labour market on the example of the Chart of Diversity offered in France (**module 2**) ; thirdly it précises the profiles of the two main target groups of the Di&Di focusing on their common points and differences (**module 3**). There are different reasons for leaving one’s country (work, family reunification, studies, political asylum...). European societies must cope with new waves of migrants (push/pull factors). Most of them come from North Africa and Sub-Saharan Africa, Turkey... They have different religions (most of them are Muslims), and different cultural backgrounds. It is raising the issue of multiculturalism, interculturalism and diversity and how to cope with them. A better knowledge of migration policies both on European and national levels is crucial to give the right references to migrants and sometimes to institutions themselves that might ignore the European perspective..

**Modules 3 & 4** are dedicated to the legal framework of Diversity & Struggle against discrimination both on European and national levels (**Modules 3**) together with examples of best practices on the ground in the 5 partners countries (**Module 4**).

**Modules 5 & 6** identify some obstacles and barriers to be overcome (**module 5**) together with some case studies insisting on what is/what is not a discrimination (**module 6**). It is necessary to provide the Di&Di target groups with some methodological developments, a typology of obstacles, the specificity of the discrimination linked to race or ethnic origin, the ways and means to solve them (**module 6**).

**Modules 7 & 8** focus on some tools and strategies already existing (Migrapass portfolio, Allinhe strategy) together with a critical approach (SWOT analysis) to decide how and how far it could be adapted to enhance diversity on the labour market

**Modules 9 & 10** are focussed on the added value of the Di&Di approach: in knowing and defending their rights, publics with a migratory background may develop a different behaviour, including the diversity approach (Module 9) but first and foremost enhancing the empowerment process (Module 10) combining rights & duties and skills and competences.

## Module 1 – The Di& Di project – Context, objectives, perspectives

### Content

1. A lifelong learning programme (knowledge society)
2. A Leonardo da Vinci project (labour market oriented)
3. Migrants, a public with special needs in the labour market

### Methodology proposed

- ◆ Explaining the institutional framework on LLP- a European programme focussed on skills and competences, to enhance European cooperation in Vocational Education and Training (VET)
- ◆ Explaining the general objective and specific objectives of the LLP programme (with a focus on the Call for proposal 2013)
- ◆ Explaining the main aim and goals of the Di&Di project, “Di&Di- enhancing diversity and struggling against discrimination in the labour market”

### Sources

- Enda Europe and iriv & alii, “*Di&Di- Struggling against discrimination and enhancing diversity on the labour market*”, LdV project selected in the Call for proposal LLP 2013, France.
- European Commission, Lifelong Learning Programme (LLP), Brussels, 2012.
- European Parliament and of the Council of 15 November 2006, OJ L327 of 24/11/2006 (and amended by the Decision 1357/2008 of the European Parliament and of the Council of 16 December 2008), Decision 1720/2006/EC

## 1. A lifelong learning programme (knowledge society)<sup>1</sup>

The Programme for EU Action in the Field of Lifelong Learning (the Lifelong Learning Programme – LLP)<sup>2</sup> aims to contribute through lifelong learning to the development of the EU as an advanced knowledge society, with sustainable economic development, more and better jobs and greater social cohesion. In particular, it aims to foster interchange, co-operation and mobility between education and training institutions and systems within the EU so that they may become a world quality reference. In this way, it addresses the modernisation and adaptation of education and training systems in the participating countries, particularly in the context of the goals set out in the EU 2020 Strategy<sup>3</sup>, and brings European added value directly to individual citizens participating in its mobility and other co-operation actions.

As indicated in Article 12 of the LLP decision, the programme should also contribute to furthering the horizontal policies of the EU, in particular by:

- (a) promoting an awareness of the importance of cultural and linguistic diversity within Europe, as well as of the need to combat racism, prejudice and xenophobia;
- (b) making provision for learners with special needs, and in particular by helping to promote their integration into mainstream education and training;
- (c) promoting equality between men and women and contributing to combating all forms of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The general objective of the LLP programme is to foster interchange, cooperation and mobility between education and training systems within the EU so that they become a world quality reference.

The programme's specific objectives ensure that the LLP supports and supplements action taken by the Member States and other participating countries, while fully respecting their responsibility for the content of education and training systems and their cultural and linguistic diversity. Its specific objectives are:

- to contribute to the development of quality Lifelong Learning, to promote high performance, innovation and a European dimension in systems and practices in the field ;
- to support the realisation of a European area for Lifelong Learning
- to help improve the quality, attractiveness and accessibility of the opportunities for Lifelong Learning available within Member States
- to reinforce the contribution of Lifelong Learning to social cohesion, active citizenship, intercultural dialogue, gender equality and personal fulfilment
- to promote creativity, competitiveness, employability and the growth of an entrepreneurial spirit

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<sup>1</sup> Lifelong Learning Programme (LLP), European Commission, Brussels, 2012.

<sup>2</sup> The programme was established by the Decision 1720/2006/EC of the European Parliament and of the Council of 15 November 2006, OJ L327 of 24/11/2006 (and amended by the Decision 1357/2008 of the European Parliament and of the Council of 16 December 2008).

<sup>3</sup> Communication from the Commission: Europe 2020 – A Strategy for Smart, Sustainable and Inclusive Growth. COM(2010) 2020.

- to promote language learning and linguistic diversity
- to contribute to increased participation in Lifelong Learning by people of all ages, including those with special needs and disadvantaged groups regardless of their socio-economic background
- to support the development of innovative ICT-based content, services, pedagogies and practices for Lifelong Learning
- to reinforce the role of Lifelong Learning in creating a sense of European citizenship based on understanding and respect for human rights and democracy, and encouraging tolerance and respect for peoples and cultures To promote cooperation in quality assurance in all sectors of VET in Europe
- to encourage the best use of results, innovative products and processes and to exchange good practice in the field covered by the Lifelong Learning Programme, in order to improve the quality of education and training

## 2. A Leonardo da Vinci project (labour market oriented) <sup>4</sup>

The Leonardo da Vinci programme links policy to practice in the field of vocational education and training (VET). Projects range from those giving individuals the chance to improve their competences, knowledge and skills through a period abroad, to Europe-wide co-operation between VET stakeholders in order to enhance the attractiveness, quality and performance of VET systems and practices.

As far as the Di&Di project is concerned, it aims at enhancing diversity and struggling against discrimination in the labour market. The main field of discrimination in the whole European Union is employment. Origin and gender are two of the 6 criteria defined by the EU legislation regarding discrimination (2000). In this context, the main innovations of the Di & Di project are:

- to bring together the methods of integration strategies for the target groups between the partners in five European countries ;
- to implement a training among youngsters and female migrants inspired by the results of previous projects<sup>5</sup>;
- to offer a coaching for the professionals will be inspired by a previous project.

The training for qualified young people and low qualified women with a migratory experience should identify and value their skills & competences, to open their perspectives for employment or new professional career, with a special view to enhance their creative and spirit of entrepreneurship competences, to enhance the exchange of participants' different experiences and competences. The Di&Di training aims at enhancing the access to employment of both target groups by (i) preventing against discrimination risks in the labor market through legal tools and concrete situations, and (ii) valuing special profiles and identifying competencies of trainees is a way to enhance.

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<sup>4</sup> Lifelong Learning Programme (LLP), European Commission, Brussels, 2012 & application form submitted by Enda Europe and iriv and alii, Di&Di, Call for proposal, LLP 2013.

<sup>5</sup> Migrapass <http://www.migrapass.eu> ; Médiateur interculturel, [www.mediateur-interculturel.net](http://www.mediateur-interculturel.net) ; Diversité + <http://diversiteplus.enda-europe.org>.

The mentoring for professionals who support or employ qualified young people or low qualified women with a migratory experience, in order to take into account the specific needs and potentials of their publics (qualified young people, low qualified women with a migratory experience) in their daily practices addresses professionals working with target groups, such as: managers of youth and women associations, social workers, recruiters and people in charge of diversity in businesses. Based on previous experiences of the partners, the mentor will allow trainees to take better into account the specific needs and expecting of qualified youngsters and low qualified women with a migratory in their daily practices

The Di & Di training and coaching will be adapted to each national context (France, Germany, Bulgaria, Italy, and Switzerland) together with a common EU framework.

### **3. Migrants faced to specific problems in the labour market requiring specific professional support <sup>6</sup>**

Two target groups are especially vulnerable in the labour market: youngsters and women. The difficulties to build a professional future for these two specific groups, qualified youngsters and low qualified women both sharing a migratory background, raise specific challenges which are insufficiently addressed. In a context of feminization of migration and growth of mobility of qualified youngsters, it is crucial to develop innovative tools and strategies taking into account the special needs of these groups.

The first reason and motivation for migrants to leave their country has long been the economic issue. Their country wouldn't offer them a situation for several reasons: less developed economy with poor natural resources; war or any natural disaster leading to starvation; political unsafety (corruption problems); religious or ethnic discrimination...The destination of their migration is directly linked to the country that would offer them the best economic possibilities. Till the seventies, European countries have been very interested in welcoming foreign workers as the labour force was not sufficient to build the economy with the economic growth of the years after the Second World War the so-called "Trente glorieuses" (Thirty glorious years)<sup>7</sup>.

Since the seventies, with the economic crisis, the oil crisis of 1973 and 1979, European countries have changed their perspective. They have closed their frontiers and so the first reason for migration has become family reunification and no more economic reason (workers). The principle of allowing the workers' family to join them in the host country has been quite commonly accepted. Faced to a "Fortress Europe" with strong regulation in matter of numbers of migrants to be accepted, illegal migration has developed since the past thirty years. It can be a way to enter the European country, find a job and then be able to ask for a naturalisation. In this case, the offer fits the demand on the market.

European countries have also tried in the past years to privilege a higher qualified migration. In this perspective, students' migration may have been somehow more developed. Traditional or historical links with foreign countries but mainly geographical position are the main source for this kind of migration : Algeria, Morocco or Tunisia or Senegal, Mali or Ivory Coast for

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<sup>6</sup> Halba (Bénédicte), *Médiation interculturelle : un métier, des compétences*, iriv, Paris, 2009.

<sup>7</sup> Fourrastie (Jean) , *Les Trente Glorieuses, ou la révolution invisible de 1946 à 1975*, Paris, Fayard, 1979, 300 p. (Rééd Hachette Pluriel n° 8363

France ; India for United Kingdom ; ex-Yugoslavia for Austria ; Albania for Greece ; Indonesia for the Netherlands ; Romania for Italy...

The main problems that are specific for workers with migratory background are the following:

- inappropriate skills and competences when a change occurs in the economic situation ; low qualified workers are usually the first fired in firms faced to economic crisis ;
- difficult working conditions and inability to express one's problem because of lack of information ;
- access to the information on the labour market when unemployed ;
- black market with no rights at all, including no access to any legal support ;
- illegal activities (human traffic such as prostitution especially with young women or men coming from Albania, other countries of Eastern Europe or from Africa).

The main specific problems migrant publics might be faced to in the labour market are :

- with the labour administration : in case of accident or any disease occurring to workers they must be declared otherwise they don't have any right but even with legal workers they are not aware or sufficiently informed on their rights and duties ;
- with employers and/or other employees : some "national workers" may see foreign workers as a threaten for their job as they have the reputation to accept more easily hard conditions; this is especially true for low qualified jobs but also for qualified jobs;
- with trade unions : workers with a migratory background were less likely to join a trade union for the reasons already mentioned but also because they are afraid to have a "rebel" image;
- with employment agency : proposals of training or jobs are not easy to understand by migrants ; sometimes the diploma they have had in their country are not recognised.

## Module 2 – Di&Di audience - young graduate and low qualified migrants sharing a migratory background

### Content

1. international students/Graduate people - definition
2. Low qualified female migrants – definition
3. Differences and common points of the two target groups: sharing a migratory background

### Methodology proposed

- ◆ Explaining the main profiles of the two target groups addressed by the Di&Di project
- ◆ Explaining their common points / Underlining the reason for making them work together

### Sources

- European Commission, *Immigration of International Students to the EU*, European Migration Network Study 2012, Home Affairs, Brussels, 2013
- Kontos (Maria), *Between Integration and Exclusion: Migrant Women in European Labor Markets*, March 23, 2011  
Available on : <http://www.migrationpolicy.org/article/between-integration-and-exclusion-migrant-women-european-labor-markets>
- Online dictionary - <http://www.wordsense.eu/graduate/>

## 1. International Students/ Graduates - definitions

The following definitions are usually given to graduate

1. **graduate** (*pl. graduates*)<sup>8</sup> : (i) A person who is recognized by a [university](#) as having completed the requirements of a [degree](#) studied at the institution (ii) *US* - A person who is recognized by a [high school](#) as having completed the requirements of a course of study at the school
2. **graduate** (*comparative more graduate, superlative most graduate*)<sup>9</sup>: (i) graduated, arranged by [degrees](#) ; (ii) holding an academic degree ; (iii) relating to an academic degree

A main source of information concerning graduates or international students is the European Migration Network Study which regularly publishes a report on *Immigration of International Students to the EU*<sup>10</sup>. It

*“provides an overview of the immigration and mobility policies that are currently being implemented by the (Member) States to allow international students to enter into the EU for the purposes of study and where necessary, to move within the EU, also for the purpose of study. Such policies aim to both actively attract international students whilst at the same time preventing misuse of the international student route to migration. The study focuses on the migration of international students to the EU, including those who have progressed through several courses of study, for example, from a first to a second degree course. It does not include migrants who come to the EU for another purpose, even if they subsequently decide to undertake a course of study”.*

“Student” is principally understood as per Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service though broader categories of student have not been excluded from the Study, where identified by (Member) States as (proportionally) substantial in number and have migrated to the EU for the purpose of study (e.g. vocational training and further education).<sup>11</sup>

For the purpose of the study, “*International student*” refers to “a third-country national arriving in the EU from a third country for the purposes of study”. International students are a heterogeneous group which includes exchange students coming for a short period of time through mobility and exchange programmes, to students who follow their whole course of studies in a (Member) State. The concept of “International Student” varies therefore from one (Member) State to another, depending on the different programmes associated with them.<sup>9</sup> This raises also problems of comparability between the Member States.

The EMN Glossary defines, in the context of migration, a third-country national “student” as “a third-country national accepted by an establishment of higher education and admitted to the

<sup>8</sup> Source: <http://www.wordsense.eu/graduate/>

<sup>9</sup> Source: <http://www.wordsense.eu/graduate/>

<sup>10</sup> European Commission, *Immigration of International Students to the EU*, European Migration Network Study 2012, Home Affairs, Brussels, 2013

<sup>11</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:375:0012:0018:En:PDF>; It is important to note that **Ireland**, Denmark and the **United Kingdom** did not participate in the adoption of the Directive and thus are not bound by it, nor is Norway

territory of a Member State to pursue as his/her main activity a full-time course of study leading to a higher education qualification recognised by the Member State, including diplomas, certificates or doctoral degrees in an establishment of higher education, which may cover a preparatory course prior to such education according to its national legislation” based on the definition of “student” under Article 2 of Council Directive 2004/114/EC.

According to the last published report of the EMN (2013), the impact of international students or graduate migrants is quite positive :

*“A number of impacts have been recognised by some (Member) States resulting from the immigration of international students (Section 6). These vary considerably across the Member States and are shaped by the national strategies and policies in place. Overall, the impacts are considered to be positive, with international students making in some cases substantial contributions to national revenue streams, through the payment of educational fees and in local labour markets and economies through their employment contributions and community spending on living costs. There is little evidence to suggest that international students are in competition with national students for study places. With regard to brain drain, this has not been considered to be of major concern though (Member) States have measures in place to prevent such a phenomenon.”*

The report says (p 7):

*“Following completion of studies , graduates can apply for relevant work permits / authorisation to stay on other grounds, without leaving the Member State, in the majority of (Member) States, subject to the national conditions in place. In relation to employment opportunities, various practices are apparent reflecting their overall national strategies. Limitations may be placed on the type of employment which can be obtained by former international students, for example, it may need to be relevant to the academic programme completed, or in some cases minimum wage requirements may apply. The majority of Member States permit self-employment, though there may be a requirement for the graduate to demonstrate access to investment and capital or relevance to sector-based priorities. In recent years, some Member States have introduced new programmes to retain graduate entrepreneurs from third countries. In some cases, graduates from third countries may be offered a period of stay in order to find work in the Member State; such conditions vary in relation to available support duration of stay, which can be up to 18 months.”*

This first “target group” of the Di&Di project represents

*“a substantial proportion of the non-EU population in many (Member). In 2011, over 2 million first residence permits were issued to third-country nationals; although the highest number of new permits was granted for family reasons, some 21% of all new permits were issued for education reasons. Of all new residence permits issued for education reasons in 2011, almost 190 000 were issued for study purposes, as per the Student Directive 2004/114/EC”.*

## 2. Low qualified female migrants – definition<sup>12</sup>

The population of female migrants is as large as it is diverse. There were 14.9 million female immigrants in the 27 countries of the European Union (EU) in 2009, constituting 47.3 percent of the foreign-born population.

The main reason for migrating is to search an economic opportunity, to join family members, or for becoming asylum seekers and refugees. They mainly arrive through legal and migrate voluntarily. Nevertheless, some may be victims of human trafficking or other forms of exploitation.

The majority (63.2 percent; or 9.4 million) of female migrants in the European Union are not from Europe themselves, and a large part of these third-country nationals are from Africa, Latin America, and Asia.

Among immigrants in Europe, most of those who have arrived in the last 20 or so years are economic migrants, having come voluntarily (or in some cases, been trafficked) to enter the labor market. As many as 3.8 to 6 million are thought to be unauthorized immigrants, half of them female, and there are 700,000 female refugees making new livelihoods for themselves and their families throughout Europe.

In contrast to migrant women who entered European countries in previous immigration flows and were able to integrate into the regulated labor market with relative ease, new female migrants face significant challenges to economic and social integration. These women migrated after the collapse of the Soviet Union and with the expansion of the European Union, and many have encountered closed labor markets with job openings primarily in marginal, irregular sectors of the economy.

The diverse ways in which these women enter their destination countries affects the opportunities they have and, by extension, how they integrate into the labor markets where they live. Although many of the new female migrants are well educated, they find work for the most part in the gendered labor markets of domestic and care work, the services industry, and commercial sex work.

### Suggestions made by the German team

#### Migrants

In Germany, the official definition of migrants is given by the ministry of migrants and refugees (BAMF)

(<http://www.bamf.de/DE/Service/Left/Glossary/function/glossar.html?lv2=1364186&lv3=3198544>).

Every person is considered as a migrants who

- immigrated to Germany after 1949
- n in Germany without the German citizenship
- is born in Germany holding the German citizenship but at least one parent is born in Germany without the German citizenship or immigrated him/herself to Germany

<sup>12</sup> <http://www.migrationpolicy.org/article/between-integration-and-exclusion-migrant-women-european-labor-markets>

With regard to the aims of the Di&Di project and to the actual labour market situation in Germany we argue to focus on migrants who immigrated to Germany recently (so-called “1<sup>st</sup> generation migrants”): This group of migrants could benefit most from the training program to be aware of the risks of discrimination and get necessary tools at first hand for the prevention of discrimination – support they might not get from their peers in their respective communities which 2<sup>nd</sup> or 3<sup>rd</sup> generation migrants can lean on. In this manner, their integration into the labour market could be facilitated and accelerated.

### **Graduate people**

In terms of formal education, the term “graduation” refers to the achievement of a formal academic degree offered by universities and universities of applied sciences in Germany. However, with regard to the Di&Di project and its implementation in the German case, we strongly argue that also people who have obtained a non-academic diploma in VET are to be considered as “graduates” due to their formal standing and opportunities offered to them on the labour market. As VET is organised in a dual system in Germany, the achievement of a VET diploma sets high standards regarding concrete (technical, manual, etc.) and general abilities and skills. People who have successfully passed this educational cycle have also achieved a high standard of qualification.

### **Low-qualified people**

There does not exist a legal definition of “low-qualified” people in Germany. However, we would like to follow the definition used by the German Federal Labour Market Authority ([http://statistik.arbeitsagentur.de/nn\\_280770/Statistischer-Content/Grundlagen/Glossare/FST-Glossar/Geringqualifizierte.html](http://statistik.arbeitsagentur.de/nn_280770/Statistischer-Content/Grundlagen/Glossare/FST-Glossar/Geringqualifizierte.html)). Here, low-qualified people are defined as (potential) “employees who  
a) have a training qualification, but cannot exercise any longer this occupation they once have been trained in as they have had an employment as a semi-skilled or un-skilled worker for more than 4 years or  
b) do not have a training qualification that fulfils the regulations on the federal or the Länder level in terms of a training that lasts at least two years.”

The definition follows the perspective that people who do not have a (VET) qualification or an antiquated one face certain obstacles regarding their integration into the labour market. As the Di&Di project aims at supporting the integration into the labour market of groups who are in particular facing obstacles, we argue to adopt the definition cited above for the German case as it takes into view target groups that are in general and by the official institutions seen at risk in this respect.

### **Integration into the labour market**

In Germany, the term “integration into the labour market” implicitly means the integration into the so-called “first” labour market. This labour market covers all employment relations and conditions that exist without any supporting structures offered by active (activating) labour market policies (public subsidies, job-creating measures, financial subventions, etc.). Furthermore, the integration into the labour market inherently aims at employment conditions that are subject to social insurance (“sozialversicherungspflichtige Beschäftigungsverhältnisse”).

<http://www.bpb.de/nachschlagen/lexika/lexikon-der-wirtschaft/19238/erster-arbeitsmarkt>

<http://www.bpb.de/nachschlagen/lexika/lexikon-der-wirtschaft/21231/zweiter-arbeitsmarkt>

Some additional description about target groups will be made in the Mentoring. In particular a complement in the description of “young graduate”, who, as far as we understand, includes also young graduate coming in the frame of professional immigration (not as student) to work in France.

Regarding “low qualified women” we want to focus the important evolution in origin countries (in the sense of growing autonomy of women) as a key-factor of new women migration and domestic violence as an important factor of women migration.

### **Main collective decision**

During the experimentation and or at the national advisory groups, the target groups might be more detailed according to the national and/or local context

## **Module 3 – Legal framework – Struggling against discrimination - From the European level to the national levels**

### **Content**

1. A European framework- the Council of Europe and the European Commission
2. in Bulgaria ( 2004 )
3. in France a law and the Défenseur des Droits since 2008
4. in Germany : the legal background and the National Agency (2004)
5. Italy: legal background and national agency
6. Switzerland: the national background

### **Methodology proposed**

- ◆ Explaining the legal framework of the struggle against discrimination on a European level and on national levels
- ◆ Giving more information on the organisations responsible for the struggle in each country

### **Sources**

- European Union Agency for Fundamental rights & Council of Europe, “Handbook on European non-discrimination law”, Luxembourg, 2010
- Information gathered by CII for Bulgaria
- Information gathered by Irv for France
- Information gathered by Bildungsmarkt for Germany
- Information gathered by Iecob for Italy
- Information gathered by Ecap for Switzerland

## 1. A European context: key organisations and legal frameworks and spirit of the EU non-discrimination law

In 2010, the European Court of Human rights and the European Union Agency for Fundamental rights decided to collaborate on the preparation of a “Handbook on European case-law concerning non-discrimination”. In its foreword it reminds that “with the entry of the Lisbon Treaty, the Charter of Fundamental Rights of the European Union became legally binding. Furthermore, the Lisbon Treaty provides for EU accession the European Convention on Human Rights?”. The main aim was to set the standards on non-discrimination on a European level.

The year 2010 was not chosen by chance as it was the 60<sup>th</sup> anniversary of Human Rights. This Convention sets out, in its article a “general prohibition on discrimination”. It was also the 10<sup>th</sup> anniversary of the adoption of two fundamental test in the fight against discrimination at EU level: the Racial Equality and Employment Directives.

If the term “European non-discrimination law” suggests that it existed a single Europe-wide system of rules relating to non-discrimination, it in fact includes a variety of contexts. There are two reference organisations: on the one hand the Council of Europe (CoE), on the other hand the European Union (EU). at the same time, there are two key documents of reference: on the one hand the Eu Charter of Fundamental rights ; on the other hand the UN human rights treaties, all of which contain a prohibition on discrimination.

### 1.1 the key organisations in Europe

The **Council of Europe (CoE)** is an inter-governmental organisation (IGO) with the aim of promoting among other things “the rule of law, democracy, human rights and social development” (article 1 of the Statute of the CoE). The CoE Member States adopted the European Convention on Human Rights (ECHR) to help achieve these aims. It is considered as being the first of the modern human rights treaties drawing from the Universal Declaration of Human Rights.

In particular the ECHR sets out a “legally binding obligation on its members to guarantee a list of human rights to everyone (not just citizens) within their jurisdiction”. It has been enriched since its inception in 1950 through “Protocols”. The most significant one was **Protocol 11** (in 1994) which turned the ECHR into a permanent and full-time body. It was closely linked to the growth of cases that would

come from States in the east of Europe joining the Council of Europe after the fall of the Berlin Wall and the break-up of the former Soviet Union.

The prohibition on discrimination is guaranteed by Article 14 of the ECHR which “guarantees equal treatment in the enjoyment of the other right set down in the Convention. Protocol 12 (adopted in 2000) to the ECHR, not yet ratified by all EU member States, “expands the scope of the prohibition of discrimination by guaranteeing equal treatment in the enjoyment of any right (including rights under national law)”.

The principle of non-discrimination is a governing principle in many documents published by the CoE. The European Social Charter (1996) “includes both a right to equal opportunities and equal treatment in matters of employment and occupation, protecting against discrimination on the ground of sex.” Additional protection against discrimination is also included in the “Framework Convention for the protection of National Minorities” (articles 4,6 and 9). It is seen as a fundamental freedom.

The **European Union** (EU), currently made up of 27 Member States, has evolved from 3 separate Inter-governmental organisations (IGOs) in a now separate legal personality. The core purpose of the European Communities was “the stimulation of economic development through the free movement of goods, capital, people and services”. In order “to allow for a level of playing field between the Member States, the original Treaty establishing the European Economic Community” (Treaty of Rome, 1957), contained a provision, prohibiting discrimination on the basis of sex covered the ground of sex until 2000.

In 2000, two directives were adopted: the Employment Equality Directive prohibited discrimination on the basis of sexual orientation, religious belief, age and disability in the area of employment; the Racial Equality Directive prohibited discrimination on the basis of race or ethnicity in the context of employment, but also in accessing the welfare system and social security, and goods and services.

The non-discrimination law under the EU recognised that “in order to allow individuals to reach their full potential in the employment market, it was also essential to guarantee them equal access to areas such as health, education and housing”.

## **1.2 the key documents of reference**

The European Union and its Member States recognised that their policies could have an impact on human rights and in an effort to make citizens feel “closer” to the EU, they

proclaimed the **EU Charter of Fundamental Rights (CFR) in 2000**. It contains “a list of human rights, inspired by the rights contained in the constitutions of the Member States, the ECHR and universal human rights treaties such as the UN Convention on the Rights of the Child. As a “Charter”, the CFR is merely a declaration which means that it is not legally binding, although the European Commission stated that its proposals would be in compliance.

When the Treaty of Lisbon entered into force in 2009, the Charter became a legally binding document. As a result both the institutions of the EU and the EU Member States are bound to comply with it but only when implementing EU law. Article 21 of the Charter contains a prohibition on discrimination on various grounds. Individuals can complain about EU legislation or national legislation that implements EU law if they feel the Charter has not been respected.

Human rights protection mechanisms are not limited to Europe. Through the United Nations (UN), all EU member States are party to the following UN human rights treaties, all of which contain a prohibition on discrimination: the International Covenant on Civil and Political Rights (ICESCR), the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention Against Torture , and the Convention on the Rights of the Child (CRC). The last created human rights treaty at UN levels is the 2006 Convention on the Rights of Persons with Disabilities (UNCRPD) which the EU ratified as an IGO in 2010.

### **1.3 the discrimination categories and defences**

The aim of the non-discrimination law is “to allow all individuals an equal and fair prospect to access opportunities available in society”. It stands that “while expressing our subjective preferences is commonplace and normal, at times we may exercise functions that place us in a position of authority or allow us to take decisions that may have a direct impact on others’ lives”, non-discrimination law intervenes in the choices we make, in these non-personal contexts, in two ways: direct” or “indirect” discrimination.

Firstly, it stipulates that “those individuals who are in similar situations should receive similar treatment and not be treated less favourably simply because of a particular “protected” characteristic they possess”. This is “direct discrimination” which is subject to a general objective justification defence.

Secondly, non-discrimination law stipulates that “those individuals who are in different situations should receive different treatment to the extent that this is needed to allow them to enjoy particular opportunities on the same basis as others”. Those same “protected grounds” should be taken into account when carrying out particular practices or creating particular rules. This is “indirect discrimination” which is subject to a defence based on objective justification irrespective of whether the claim is based on the ECHR or EU law.

In the article 2 of the Racial Equality Directive the direct discrimination occurs “where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin”. The heart of discrimination is the “difference of treatment that an individual is subject to”. Unfavourable treatment is relevant to making a determination of discrimination where it is unfavourable by comparison to someone in a similar situation. Therefore a “comparator” is needed.

In the article 2 of the Racial Equality Directive the indirect discrimination “shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons’.” A difference in treatment “may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group”. The first identifiable requirement is an apparently neutral rule, criterion or practice. The second identifiable requirement is that the rule, criterion or practice places a “protected group” at a particular disadvantage. The focus is made on “differential effects” as it was made on “differential treatment” in the direct discrimination.

A prohibition on harassment and on instruction to discriminate has been new developments introduced in the EU non-discrimination law for more comprehensive protection. According to it, harassment is deemed to be discrimination when “unwanted conduct related to a protected ground takes place, with the purpose or effect of violating the dignity of a person, and/or creating an intimidating, hostile, degrading, humiliating or offensive environment”.

Under EU law there are specific defences to direct discrimination, “which are tailored to the context of employment”. Indirect discrimination under the ECHR and EU laws is “subject to a general defence of objective justification”. Differential treatments may be justified “where it pursues a legitimate aim and where the means to pursue that aim are appropriate and necessary”. There are also more specific defences “namely (i) genuine

occupational requirements; (ii) exceptions in relation to religious institutions; and (iii) exceptions particular to age discrimination”. Age discrimination is the “only EU protected ground where direct discrimination can be objectively justified”.

## **2. in the Di&Di- countries partners**

### **2.1 in Bulgaria ( law of 2004 )**

The Law on the Protection from Discrimination entered into force on 1 January 2004. It established a specialized body for its application: the Commission for the Protection from Discrimination (CPD), whereby it also stipulates special protection from claims filed with civil courts.

The Commission for the Protection from Discrimination is an independent specialized quasi-judicial authority for the prevention and protection from discrimination and for conducting the governmental policy in the field of equal opportunities and equal treatment of all citizens on the territory of Bulgaria. It represents a “national equality body” which is envisaged to be present in all EU Member States. The CPD has the rights:

- To review and decide on cases of discrimination,
- To impose forced administrative measures and sanctions if violations are found,
- To issue recommendations to state and municipal authorities for halting discriminatory practices and for repealing their acts issued in violation of the legislation,
- To give opinions on regulatory drafts for their compliance with the non-discrimination legislation, as well as recommendations for adopting, cancelling, amending and supplementing regulations related to equal treatment.

The CPD is not part of the executive so it is unable to act independently from it, including when pronouncing against it and giving prescriptions and recommendations.

The main law in the Bulgarian legislation that forms the legal framework on discrimination and diversity is the Law for protection from discrimination (LPD). It arranges the protection from any form of discrimination and assists its prevention. The purpose of this law is to guarantee for every person the right of being equal before the

law, being equal in the treatment and opportunities for participation in public life and having effective protection from discrimination.

The law bans any direct or indirect discrimination based on gender, race, nationality, ethnic origin, human genome, citizenship, religion or faith, education, political affiliation or belief, personal or public situation, disability, age, sexual orientation, marital status or any other characteristics included in national or international treaties where Bulgaria is a party.

In the meaning of the law direct discrimination is any less favourable treatment of persons on the basis of the above criteria compared with the treatment of other people in comparable similar circumstances. Indirect discrimination is placing a person in less favourable position on the basis of the above criteria compared with other people through seemingly neutral regulation or practice, unless the latter are objectively justified in view of a legal objective and the means of pursuing this objective are appropriate and necessary.

One of the main areas of the protection from discrimination is the protection on the labour market. When announcing a vacancy, employers do not have the right to pose requirements related to the above criteria. The exceptions to this rule are regulated in a special paragraph of the law.

Before signing an employment contract with her/him, the employer does not have the right to demand from candidate information about the above criteria. Furthermore, employers are not allowed to reject or employ under less favourable conditions persons for the same reasons.

For equal labour employers are obliged to pay equal remuneration. They should provide their workers and officers with equal opportunities for professional training and professional qualification or requalification, for professional and career development by applying equal evaluation criteria to their activities. In cooperation with the syndicates employers are obliged to undertake effective measures for prevention of all forms of discrimination at the place of work.

When necessary for achieving the goals of this law, employers are obliged to encourage persons belonging to the underrepresented gender or to specific ethnic groups to apply for certain positions. The employers are further obliged to promote the professional development and involvement of employees that are underrepresented among the workers and officers performing specific activities or occupying specific positions.

The territorial offices of the Employment Agency are obliged to provide equal opportunities to unemployed persons for exercising the rights they are legally entitled to regardless of the above-described criteria.

## **2.2 A in France**

### **2.2.1 The legal framework applied in France is the Law n° 2008-496 of the 27th of May 2008 (modified in February 2014 with a consolidated version published the 7<sup>th</sup> of July 2014) implementing the Eu non-discrimination law in the French law.**

A definition of a direct discrimination is given in the article 1 reminding that it is the situation where a person is treated in a less favorable way compare to another due to his/her belonging or non-belonging, real or supposed to be, to a race or ethnic minority, to a religion, to believes, to convictions, to an age, to a disability, to a sexual orientation or identity, to a gender or to a location of residence.

It also defines an indirect discrimination: a disposal, criterion or apparently neutral practice linked to one of the situations described above that might have an effect on people or indirectly on other unless this disposal, criterion or practice might be objectively justified by a legitimate aim and that the means used are considered as necessary and appropriate.

Discrimination includes any harassment, with sexual connotation or not, undertaken by a person with the will to affect his/her dignity or to create any intimidating, hostile, degrading, humiliating or offending environment. The fact to ask anyone to have such a conduct is also prohibited.

Article 2 – of the law concerns the application of the rules in the respect of the equality of chances principle.

1° any direct or indirect discrimination due to the belonging or non-belonging, real or supposed, to a race or ethnic minority is forbidden in matters of social protection, health, social services, education, access or providing of goods and services ;

2° any direct or indirect discrimination founded on gender, belonging or non-belonging, real or supposed, to a race or ethnic minority, religion or convictions, disability, age, sexual orientation or identity or location of residence is forbidden in matters of affiliation or involvement in a trade union or professional organisation,

including any advantages linked to them, access to employment, employment, vocational training, including independent worker or non-paid-staff worker, including working conditions and professional promotion. This principle is not an obstacle to the differential treatments allowed previously when they obey a professional requirement essential and fundamental as far as they are legitimate and proportionate.

### **2.2.2 The National Agency the « Défenseur des droits » since 2008**

The National Agency was created in 2008 and is called the « Défenseur des droits ». its main mission s to struggle against any discrimination (direct or indirect) prohibited by the law or any international treaty agreed or ratified by France. It makes sure that anyone could know his/her rights, the legal conditions of discriminations (defined in any law, European directive, international convention...).

**It can be directly and freely addressed by any individual** (« personne physique ») or anyone acting on his/her behalf (an association regularly declared in the past years and clearly stating in its status its will to combat discriminations or to assist the victims of discriminations, together with the person being supposed to be victim of the discrimination and with his/her will.

**The discriminations prohibited by the law are explicitly and imitatively defined**, both for the criteria and the domains in which the discriminations occur.

**The French National Agency (« Défenseur des droits ») is in charge to struggle against discrimination in the following domains : employment, housing, education and access to goods an services.**

There are 20 criteria of discrimination under the French law : age ; physical appearance ; belonging or non-belonging to an ethnic minority ; belonging or non-belonging to a nation ; belonging or non-belonging to a race ; belonging or non-belonging to a religion ; health ; sexual identity ; sexual orientation ; pregnancy ; family situation ; handicap ; name ; sexe ; activities in a trade union; genetic characteristics ; ways of life ; political opinions ; origin ; location of residence. They concern inequalities of treatment in employment, housing, education & training, access to goods and services, public and private, access to health and social services. There are 450 delegates on all the territory (in France and overseas). There are permanent places to meet them. Source : <http://www.defenseurdesdroits.fr/> .

## 2.3 A law in Germany (2006) + National Agency against discrimination (2004)

### 2.3.1 The constitution (Grundgesetz)

The right to equality before the law and protection against discrimination for all persons constitutes a universal right. This principle is stated in article 3 of the constitution (Art. 3 Grundgesetz). The same article guarantees the equal treatment for woman and men.

Simultaneously, this article regularises the prohibition of any discrimination or unfavourable or preferential treatment because of sex, parentage, race, language, homeland and origin, faith, religious or political opinions or disability. In general, article 3 formulates the principle of the prohibition of arbitrary action. The state has the duty to promote the equal treatment for men and woman and to avoid their discrimination. The law of equal treatment directly effects the relations between the government and persons – the government has to respect equality. According to general jurisdiction, the right to equality indirectly also effects the relations between private persons and companies as everybody has to respect this principle of human rights/ prohibition of arbitrary actions.

GG: <http://www.bundestag.de/bundestag/aufgaben/rechtsgrundlagen/grundgesetz/gg/245216>

### 2.3.2 Das Allgemeine Gleichbehandlungsgesetz (AGG): The General Equal Treatment Act

Discrimination- The legal definition of discrimination is based on the General Equal Treatment Act (Das Allgemeine Gleichbehandlungsgesetz (AGG)) :

Following this definition, discrimination consists of three steps

The (1) disadvantage of persons who (2) embody specified characteristics protected by the general equal treatment act (sex, parentage, race, language, homeland and origin, faith, religious or political opinions or disability) (3) without justifiable reason.

The non-exhaustive list of specified protected characteristics has been criticised as being politically difficult. The German definition is stricter as the definition given by the European Convention on Human Rights.

This federal law protects against discrimination on the grounds of race or ethnic origin, sex, religion, disability, age, political or religious opinions or sexual identity. These principles have full legal effects between employee and employer. In order to achieve the objective of this law, the concerned persons have the right for legal claims against the employer and

private persons (the right to complain/ right to withhold performance/ claim for damages). This law includes also the prohibition of discrimination under civil law (private insurance/ rental law / contracts under civil law for the mass market). The AGG satisfies the EU's Racial Equality Directive and Employment Framework: Directives 2000/43/EG, 2000/78/EG, 2002/73/EG and 2004/113/EG.

Source: AGG: <http://www.gesetze-im-internet.de/agg/BJNR189710006.html>

## 2.4 Italy: national actions by the Ministry for International Cooperation and NGOs

### 2.4.1 legal framework in Italy

Specific and detailed legislation against discrimination in respect of race, ethnic origin and religion was introduced into the Italian legal system only in 1998. Before that, the only specific legal tool was criminal legislation on 'hate speech' which included references to discriminatory acts of a different nature.

As in many other legal systems, the absence of specific legislation did not mean, however, that the overall system did not include rules that could be used as a basis for anti-discrimination litigation. The 1948 Constitution includes a general principle of equality requiring equal treatment irrespective of – among other things – race and religion, and in general irrespective of 'personal and social conditions'; moreover Act 300/1970, the Workers' Act, has a provision banning discriminatory acts against workers.

While clearly forbidding any discriminatory legislation, it is a matter of legal debate whether the constitutional principle has direct effect, i.e. if it is sufficient ground for an action by an individual who has faced discrimination. This has never been clearly tested in court. The first enactment of advanced anti-discrimination rules took place with the 1998 Immigration Decree. This law provides a good set of remedies against racial, ethnic and religious discrimination and in many respects anticipated the requirements of Directives 2000/43/EC and 2000/78/EC. The Immigration Decree prohibits direct and indirect discrimination by individuals and public authorities, with definitions roughly corresponding to those of the Directives but with an open-ended list of fields of application. Protection extends to discrimination on the ground of national origin.

The same decree contained a special procedural rules for anti-discrimination cases in order to make them especially swift and effective, now revoked and replaced with the ordinary fast-track procedure (see section 5 below, 'Enforcing the law'). Several judicial decisions based on

the Immigration Decree, often applied together with Decree 215/2003 implementing Directive 2000/43, have been reported during the last year. They are mainly decisions against public bodies, in particular municipalities and Regions, convicted of discrimination on the ground of nationality.

In order to transpose Directives 2000/43/EC and 2000/78/EC into Italian law, the Government approved two decrees in July 2003, Decree 215/2003 (transposing Directive 2000/43) and Decree 216/2003 (transposing Directive 2000/78). The Decrees reproduce the text of each Directive. Decree 215/2003 is thus applicable within all fields mentioned in Directive 2000/43 to discrimination on the ground of race and ethnic origin, while Decree 216/2003 applies within the field of employment to discrimination based on religion and belief, sexual orientation, disability and age. Both Decrees basically aim to transplant the Directives into the legal system as they are, without attempting to coordinate between them or with other existing Italian legal rules. Some drafting mistakes were corrected by a later decree, and legislation passed in early 2008 amended some of the major discrepancies with the Directives.

A further act was passed in 2006 which extends the prohibition of direct and indirect discrimination on the ground of disability beyond the field of employment, with remedies similar to those foreseen by the Decrees transposing the Directives. One criticism addressed at this sort of law making concerns the fact that, since it does not abolish pre-existing anti-discrimination rules nor attempt consolidation, it adds further legal regimes, creating a complex legal framework. A step towards coordination was taken in 2011, with the general fast-track procedure applying expressly to all the grounds covered by the Directives, plus national origin, language and colour. It must be recalled that Italy is party to the major international treaties and conventions against discrimination, for example the Convention on the Elimination of All Forms of Racial Discrimination, ILO Convention No. 111 on Discrimination and the Convention on the Rights of Persons with Disabilities, which have all been transposed into domestic law. It has, however, not yet ratified Protocol 12 to the European Convention on Human Rights, thus limiting the potential of the Convention as a tool for anti-discrimination litigation.

Source : (taken from the website: [www.non-discrimination.net](http://www.non-discrimination.net))

Link to **Decree 215/2003** (transposing Directive 2000/43):

<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003;215>

Link to **Decree 216/2003** (transposing Directive 2000/78):

<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2003;216>

#### 2.4.1.1 Italian Agency- National Office against Racial Discrimination (UNAR)

The National Office Against Racial Discrimination, also known by the acronym UNAR, is an office for the promotion of equal treatment and the removal of discrimination based on racial or ethnic origin. Active in Italy since 2003, is established at the Presidency of the Council of Ministers, Department for Equal Opportunities. UNAR works independently and impartially carrying out activities to promote equality and to eliminate all forms of discrimination based on race or ethnic origin. Furthermore, UNAR fights against cultural and religious racism. UNAR was established by the decree of 9 July 2003 n. 215, transposing the EU Directive n. 2000/43 CE.

The tasks assigned by law to UNAR are defined as follows:

1. To provide assistance, in administrative or judicial proceedings, to people who consider themselves wronged by discriminatory behavior
2. To carry out investigation in order to verify the existence of discriminatory phenomena
3. To promote the adoption (by public and private entities, in particular by associations and bodies carrying out activities to fight against discrimination) of specific measures aiming to prevent or compensate situations of disadvantage related to racial or ethnic origin;
4. To disseminate the highest possible knowledge of instruments of protection, including public awareness actions on the principle of equal treatment and the development of information and communication campaigns;
5. To provide recommendations and opinions on issues related to discrimination based on race and ethnic origin, as well as proposals to amend the current legislation;
6. To provide to the Parliament an annual report on the effective application of the principle of equal treatment and the effectiveness of protection mechanisms, and to provide to the Prime Minister an annual report on the work performed;
7. Promote studies, researches, trainings and exchange of experiences, also in collaboration with the associations and organizations carrying out activities to fight against discrimination , with other non-governmental organizations working in the same field and with the specialized statistic agencies , in order to develop guidelines on the fight against discrimination.

*Contacts:*

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| <p>Anti-discrimination point in Rome</p> <p><b>UNAR</b><br/> General Director: Marco De Giorgi<br/> Address: Largo Chigi, 19 – 00187 Roma<br/> Tel. +39 06 6779 2267<br/> Fax +39 06 6779 2272<br/> E-mail: <a href="mailto:unar@unar.it">unar@unar.it</a></p> | <p>Anti-discrimination point in Forlì</p> <p><b>DIALOGOS SOCIETA' COOP. SOC.</b><br/> Reference name: Claudia Torelli<br/> Address: Piazzetta San Crispino, 1 - 47100 Forlì<br/> Tel. +390543712818<br/> Fax +390543712817<br/> E-mail: <a href="mailto:centrostranieri.fo@comune.forli.fc.it">centrostranieri.fo@comune.forli.fc.it</a></p> |
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## 2.5 Switzerland (Federal Commission against racism )

The Swiss legal system includes some specific provisions against discrimination in its various forms:

- **the criminal law provisions against racial discrimination** (Article 261 bis of the Penal Code, <http://www.admin.ch/opc/fr/classified-compilation/19370083/index.html>);
- **the Federal Law on Gender Equality (GEA)** 151.1 on March 24, 1995 (Status as of 1 January 2011, <http://www.admin.ch/opc/en/classified-compilation/19950082/index.html>)
- **Federal Law on the Elimination of Discrimination against people with disabilities** 151.3 LDIS of 13 December 2002 (Updated 1 July 2013), <http://www.admin.ch/opc/fr/classified-compilation/20002658/index.html>

As regards in particular the **protection of victims of racial discrimination** there isn't a single law, but various constitutional and penal provisions, administrative law and private law.

- In terms **of the Constitution and international law**, the prohibition of discrimination is enshrined in the following legal rules:
  - Equality before the law, Art. 8 Federal Constitution, <http://www.admin.ch/ch/e/rs/101/a8.html>
  - International Convention on the Elimination of All Forms of Racial Discrimination
  - Art. 14 European Convention on Human Rights (CEDU)
  - Article 2, paragraph 2, of the International Covenant on Economic, Social and Cultural Rights (UN Covenant I)
  - Article 2 paragraph 1 of the International Covenant on Civil and Political Rights (UN Covenant II)

- Convention for the Protection of National Minorities
- ILO Convention no. 111 of 1958 concerning discrimination in employment and occupation (in force in Switzerland on July 13, 1962)
- **The criminal law against racial discrimination** (Article 261 bis of the Penal Code and Article 171c of the Swiss Code of Military Justice, [http://www.vtg.admin.ch/internet/vtg/fr/home/militaerdienst/allgemeines/fachstelle\\_extremismus/extremismus\\_in\\_der.html](http://www.vtg.admin.ch/internet/vtg/fr/home/militaerdienst/allgemeines/fachstelle_extremismus/extremismus_in_der.html)) punishes any act racist who publicly denies a person, either implicitly or explicitly, the right to an existence in conditions equality because of race or ethnic-cultural identity different or even denying her the right to exist.
- **The protection of privacy under the Civil Code art. 28B** (<http://www.admin.ch/opc/en/classified-compilation/19070042/index.html>) gives each person wrongfully injured in his personality from acts of racial discrimination the right to seek legal action against the author and ask for repair.
- **The Labour Law** (Articles 19, 20, 328, 328b, 336 of the Code of Obligations and Article 2 paragraph 1 of the Civil Code) give protection against acts of racial discrimination in the relationship between employer and employee, between colleagues and with clients. Some rules are also in the collective labor agreements and in the Law on staff
- **Tenancy law** (Criminal Law: Articles 259b, 269, 270 and 271a of the Swiss Code of Obligations) protection against acts of racial discrimination by the landlord, neighbors and their relatives and acquaintances.

## Module 4 – Struggling against discrimination - examples of best practices in the 5 countries

### Content

1. Definition of a best practice
2. In the 5 countries: selection of best practices
  - 2.1 in Bulgaria
  - 2.2 in France
  - 2.3 in Germany
  - 2.4 in Italy
  - 2.5 in Switzerland

### Sources

The grid and elements developed in this part are inspired by the theoretical approach offered by the Involve project (2005-2006), a European project implemented under the INTI programme ([www.involve-europe.eunow](http://www.involve-europe.eunow) only available on: <http://www.iriv-migrations.net/index.php?id=9> ) in 7 countries: Netherlands, Germany, Austria, Hungary, UK, France and Spain

- ❖ CEV & alii, Involve- Involvement of third country nationals in volunteering as a means of better integration
- ❖ Best practice for France : Enda Europe & iriv
- ❖ Best practice for Bulgaria : CII
- ❖ Best practice for Italy : IECOB
- ❖ Best practice for Germany : Bildungsmark
- ❖ Best practice for Switzerland : ECAP

## 1. Definition of a good/best practice

The aims of this module are

- ❖ to explore examples of good practice in struggling against discrimination on the labour market among our two target groups (**graduate youngsters and low qualified women, both sharing a migratory background**)
- ❖ to identify barriers faced and/or overcome thanks to the good practice
- ❖ to enable partners of the Di&Di to exchange ideas and experience focusing on the diversity of the situations in the different countries and organisations.

The main questions to have in mind in selecting examples of good practice and barriers at practical level are :

- How do we define good practice?
- What examples are there of good practice?
- Among our two main target groups ?
- Among organisations working with our target groups ?
- What worked?
- What problems did the target groups encounter and how did they overcome them?
- Did the organisations/project change in the process?
- In what way?
- Are there examples of innovative partnerships that have helped increase struggling against discrimination?

As far as good practice and barriers at policy level are concerned :

- What policy initiatives have helped?(at EU / national / regional / local level) ?
- What have been the problems and barriers?
- How have these been solved?
- Has anyone evaluated the policy?
- What has been the outcome?

Taking into account these different questions, and the national or local contexts, the best way to define a best/good practice, as far as the Di&Di project is concerned, is to select any practical project or initiative which allowed enhance diversity by struggling against discrimination

### Examples of best practices in the 5 countries of the DI&Di

Each partner of the Di&Di project is selecting an example of best practice in its country and fills the following grid

1.1 in Bulgaria

1.2 in France

1.3 in Germany

1.4 in Italy

1.5 in Switzerland

**Name of the project/initiative:** .....

Objectives of the project/initiative

|  |
|--|
|  |
|--|

Participants of the project/initiatives (project partners and target groups)

project partners :

Number of people and profiles (M/F, age, ...)

|  |
|--|
|  |
|--|

Reasons for setting up this project (100 to 300 words)

....

|  |
|--|
|  |
|--|

Funding of the project (100 to 300 words)

...

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|--|
|  |
|--|

Description of activities within the project (100 to 300 words)

....

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|--|
|  |
|--|

Geographical Scope of Action (100 to 300 words)

....

|  |
|--|
|  |
|--|

Main results of the project (100 to 300 words)

.....

Attitudes of target groups towards non-discrimination process (before / afterward the project / in general)

...

Problems encountered that hamper the process?

.....

Elements practice that made this project a success? (criteria of good practice taking into account the national context)

.....

Innovation about this project (added value for struggling against discrimination on the labour market)?

.....

Transferability of this project (main criteria to be transferred on a EU level)

.....

**Contact / reference of the project/initiative**

### **Suggestions made by Enda Europe**

In the description of the Best Practice the following category: “added value of the project regarding the local context on discrimination issues.”

## Contribution by the German team- Diversity-oriented staff development in public administration

### Objectives of the project/initiative

Realise diversity-concepts in daily work within a public authority; improvement of the internal communication structures; strengthen customer-friendly services

### Participants of the project/initiatives (project partners and target groups)

Project promotor: Landesamt für Gesundheit und Soziales (LAGeSO) Berlin (State Office of Health and Social Affairs in Berlin)

Partners in the implementation: board of department chiefs, personnel board, staff representation, women's representative, liaison officer for persons with disabilities; an external Training Provider

Number of people and profiles (M/F, age, ...): senior managers, human resources managers, employees, *number and profiles to be verified*

### Reasons for setting up this project (100 to 300 words)

The LAGeSO is an authority subordinated to the Berlin Senate for Health and Social Affairs. Its task is to assure health and social support services for the citizens of Berlin. Important customer groups are persons seeking for asylum, persons with the need for special care, persons without a house and repatriates. With the AGG (The General Equal Treatment Act) coming into force, seminars on the AGG became obligatory (§12 AGG). The authority used this as a chance not only to inform about the AGG and its implications in practice, but to introduce a comprehensive diversity concept to put the potentials of diversity into the focus.

### Funding of the project (100 to 300 words)

The project was implemented within the regular budget of the authority. Tasks were assigned as parts of the regular job descriptions. Only trainings, carried out by an external training provider, were funded additionally through different EU project funds (ESF).

### Description of activities within the project (100 to 300 words)

- Designation of a diversity commissioner

- Compulsory training for senior managers on awareness for diversity issues, on the AGG and on options to act in practice
- Installation of an information site on the AGG and on diversity issues in the intranet
- Training for employees at all levels of the organisation: Awareness for diversity issues, AGG, deepening modules on different dimensions of diversity
- Training for human resource managers on recruitment strategies
- Installation of an AGG-related complaint and counselling point
- Installation of an AGG-Diversity-Board

#### Geographical Scope of Action (100 to 300 words)

The project was set up inside a public authority

#### Main results of the project (100 to 300 words)

Important results are

- sustainable structures to face discrimination in a public authority through the institutions of a diversity commissioner, an AGG-related complaint and counselling point and an AGG-diversity board
- a high level of awareness at different levels of the organisation

#### Attitudes of target groups towards non-discrimination process (before / afterward the project / in general)

The participants, employees in a public authority, had the opportunity to analyse and understand in deep the background and practical implications of an AGG related to their daily practice. Trainings and discussions allowed them to exchange and reflect their daily work experience in the view of discrimination and diversity concepts. They could experience that speaking about discrimination and diversity is rather speaking about themselves than learning something about “the others”, which may have lead to an important shift in perception and self-understanding.

#### Problems encountered that hamper the process?

People individually tended to be reluctant to the technical terms of “discrimination” or “diversity management”. These seemed to imply “bad practice”, that would be criticised with

the project, or to impose theoretical concepts as innovative approach while neglecting the expertise and good practice that people had developed in their daily work.

Elements practice that made this project a success? (criteria of good practice taking into account the national context)

In the context of what we call in Germany the “intercultural opening of public administration” as a process of organisational development, two important success factors can be drawn from this project:

- the top-down approach: Trainings were compulsory for every employee. Discussions and training, however, started from the existing boards of representatives and from senior management. They were tested, refined and approved before being transmitted to other employees. This way, superiors engaged themselves first and acted as good examples instead of just imposing an obligation to their subordinates.

- sustainability: Long term structures within the organisation (diversity commissioner, AGG-complaint and counselling point, AGG-board) were set up which allow for an ongoing discussion and development process towards non-discrimination practices

(see: “Towards equality of chances in education and work: Examples of best practice”, published by the German national anti-discrimination agency in 2013)

Innovation about this project (added value for struggling against discrimination on the labour market)?

The example is probably no innovative by itself, but it represents very well a series of interventions in public administration to implement the AGG, prevent discrimination and promote diversity management in public services. It combines those aspects that have proven necessary to provoke sustainable change: Change does not depend on individuals, their attitudes and behaviours only, but on supportive structures in their working environment.

Transferability of this project (main criteria to be transferred on a EU level)

In order to transfer the approach to public administration and public services in other EU-countries, or to other types of bodies such as companies, or to discuss it at EU-level, it is necessary to compare the main pillars of organisational change in the different contexts.

Criteria to check could be:

- How is the organisation structured, what kind of boards and panels exists?

- At which parts of the organisation do discrimination and diversity play an obvious role (customer services, team cooperation, recruitment ...)?
- Are their existing activities or policies related to diversity and discrimination already in force (charte of diversity, trainings etc.)?
- Which are the usual ways to support change within the organisation: voluntary/compulsory training, special departments/commissioners/panels, ...?
- Who has the power to decide on structural change and individual development insider the organisation?

### Contribution by the Bulgarian team

Having a framework for describing the good practices is very useful although we should keep in mind different contexts. Regarding the Bulgarian one, the situation could be summarized in the following remark – the country is still working on its anti-discrimination empowerment. That is why concrete good practices like the one concerning the labor market, unfortunately, are still missing (except of the two given below examples). That is why projects like Di&Di, which not only help the work in such a direction but also give an open space of sharing practices, experience and thoughts with more experienced partners in this area are so important.

As a brief overview of the situation in the country one should mention that the lack of enough 'good' practices could be explained in a lot of ways – the civil society, which is still in a process of creating and formulating itself; the communist historical reality, which excluded the possibility of the otherness to be and to exist; the media, which are still struggling for the right balance between civic position, market demands and freedom of speech; the sensitivity of the majority of the people and so on. But, as always, maybe the explanation is somewhere in between and represents a complex amalgam of all these reasons, and even more. Some examples

One of the first steps, even if their productivity can be contested, are on **State level**. **The Integration center of the State Agency for Refugees in Bulgaria** has a program for empowering the access of refugees to the labour market and their professional realisation. Even though it is not primarily focused on the needs of women and youngsters, they too can benefice from it.

In 2012 (that is the last official information, even though the program is still active, but the report for 2013 is not yet published) 75 people were trained in the 3 possible modules for obtaining qualification for: hairdresser, tailor and beautician. At the end of the courses 9 of them passed the final exams. However, information about the number of people who managed to find a work is missing.

**The Integration center of the State Agency for Refugees in Bulgaria in cooperation with Caritas and CVS-Bulgaria** is also working since 2010 on a project which aims to improve the linguistic integration of children and youngsters. The work is on volunteer means. Here again the focus group is larger, but the volunteers are emphasizing on their work with

youngsters. Their adaptation and integration at the last grades of school are very sensitive. Based on volunteer workers statements, the very contact and work with them is one of the major positive effects of the project. Here again a concrete information about the direct results – people who found work with the help of this project – is missing.

For the moment, on **civic level, Migrapass project is the only project** focused especially on the integration of people with migrant background on the labor market. The experience was very important for the Bulgarian context. The project has developed an innovative tool and method which contributes to meet the following objectives: allowing migrants to identify their experiences and to express them in competences; enhancing diversity on the national labor markets; struggling against discriminations migrants.

By being proposed to different categories of migrants it fights against discriminations and allows people undervalued on the labor market to make their skills recognized. The Migrapass process targets low qualified workers; women and youngsters without any relevant professional experience ; migrants with diploma/qualifications from their native countries unrecognized on the European labor markets. Up till now it stays the only one and – from testimonies of people involved – a very useful tool in the process of integration on the labor market.

## **Contribution by the Italian team- Examples of Best Practices against discrimination:**

### **1) “Foreigners’ Council”**

It has the aim to encourage foreigners’ participation to the city public life and to facilitate a dialogue within people with different religions.

The Council has the following tasks:

- ✓ To promote awareness about foreigners’ rights and duties through courses of civil education.
- ✓ To organize activities aiming to promote foreigners’ integration.
- ✓ To gather information and conduct researches in collaboration with the Municipality.
- ✓ To organize debates and public events aiming to promote anti xenophobia and anti racism awareness.
- ✓ Provide foreigners with information on documents and certification useful to participate in political and public life
- ✓ To support foreigners’ associations in writing and presenting projects to the Municipality.

**The President and Vice President are permanent members of the Municipality Council and they have right to speak.**

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## 2) Project “MUNDIALITO”

|  |  |
|--|--|
| Objectives of the project/initiative   | Organise a football tournament where each team represents a different nationality of the city  |
| Project partners                       | Foreigns’ Council (Municipality of Forlì)<br>Center for Peace “Annalena Tonelli”<br>DIALOGOS   |
| Number of people (final beneficiaries) | 100 players  |
| People involved                        | All citizens of Forlì  |
| Project description                    | This project was promoted by the “Center for Peace” of Forlì with the aim to create a social event for all the immigrants resident in the city. The football tournament is not the only activity but it is just the spin up event representing the occasion for debates about discrimination and integration issues. The soccer tournament is organised every year and in 2014 there will be the 10 <sup>th</sup> anniversary of this event. |

## 3) Citizenship ceremony

During Second World War the liberation of Forlì took place on November 9, 1944. In this date and each year Municipality of Forlì organizes a public event to meet all foreign citizens who took Italian citizenship during the same year.

### As far as France is concerned

For France, two examples of best practices have been selected :

1) Association Epée and their platform of Success stories of migrants who created their own business : <http://www.histoiresdentrepreneurs.org/> ; The association made a presentation of its activity at the national advisory group of September 2014. This example of best practice will be more detailed after a face to face meeting together with its managing director

2) association APSV- Association de Prévention du site de la Villette and their referential to struggle against discriminations : <http://www.paris19contrelesdiscriminations.fr/plan-lcde/>. This referential will be more detailed after meeting the representaives of the APSV

**Main collective decision**

The examples of best practices will be enriched or selected during the experimentation among the participants of the training and/or participants at the national advisory groups

## **Module 5 – Identification of the main obstacles and the way to overcome them on the labour market by the Di&Di publics (theoretical approach)**

### **Content**

1. Problem 1: language
2. Problem 2: qualification (inadequate or lack of)
3. Problem 3: creation of activities
4. Problem 4: situation of "justified differential treatment" or "legitimate" discrimination

### **Sources**

- ◆ Council of Europe, Education and Languages, Language Policy, July 2014, [http://www.coe.int/t/dg4/linguistic/cadre1\\_EN.asp?](http://www.coe.int/t/dg4/linguistic/cadre1_EN.asp?)
- ◆ Europass : linguistic levels
- ◆ Eurostat & Cedefop
- ◆ National institutes of statistics

### **1. Problem 1: language**

The first main obstacle to be overcome by the Di&Di target groups might be the linguistic problem as a basic level is required on the labour market is B1 sometimes B2 for employment requiring a higher level of responsibility. As far as the Di&Di strategy is concerned, the first support to be provided to overcome the linguistic barrier which might be opposed to migrants on the labour market is on the one hand to give them some tool to identify their linguistic level (CEFR) and on the other hand to give them the information to improve their linguistic skills.

The Common European Framework of Reference for Languages: Learning, teaching, assessment (CEFR) is a framework of reference on a European level. It was designed “to provide a transparent, coherent and comprehensive basis for the elaboration of language syllabuses and curriculum guidelines, the design of teaching and learning materials, and the assessment of foreign language proficiency”. It is used in Europe and is now available in 39 languages.

The CEFR describes foreign language proficiency at six levels: A1 and A2, B1 and B2, C1 and C2. It also defines three ‘plus’ levels (A2+, B1+, B2+). “Based on empirical research and widespread consultation, this scheme makes it possible to compare tests and examinations across languages and national boundaries. It also provides a basis for recognising language qualifications and thus facilitating educational and occupational mobility”.

The CEFR’s illustrative scales of “can do” descriptors are available in a bank of descriptors together with many other related descriptors. The CEFR’s scales of foreign language proficiency are accompanied by a detailed analysis of communicative contexts, themes, tasks and purposes as well as scaled descriptions of the competences on which we draw when we communicate. This helps to explain why the CEFR is increasingly used in teacher education, the reform of foreign language curricula and the development of teaching materials.

The CEFR does not offer ready-made solutions but is to be adapted to the requirements of particular contexts. The need for careful interpretation and adaptation is especially acute when the CEFR’s descriptive apparatus and proficiency levels are used to explore the communicative needs of adult migrants and to guide the assessment of their proficiency in the language of their host community.

In 2007 the Council of Europe organised an intergovernmental forum on “*The Common European Framework of Reference for Languages (CEFR) and the development of language policies: challenges and responsibilities*”. Recalling that in educational matters responsibility lies with the member states, the forum concluded that “*rather than vis--vis the Council of Europe, it is towards one's own learners and one's European partners that one has a responsibility for making coherent, realistic use of the CEFR.*” Accordingly a “Recommendation on the use of the CEFR” has been addressed to the governments of member states (see text box).

Following the call of the Barcelona European Council (March 2002), the European Commission has developed a survey based on the CEFR to measure the foreign / second language proficiency of pupils at the end of compulsory education. The purpose of the survey is to establish a European Indicator of Language Competence, providing member states with internationally comparable data on the results of foreign language teaching and learning in the European Union.

Source : Council of Europe, Education and Languages, Language Policy,  
[http://www.coe.int/t/dg4/linguistic/cadre1\\_EN.asp?](http://www.coe.int/t/dg4/linguistic/cadre1_EN.asp?)

## **2. Problem 2: qualification (inadequation or lack of)**

Most of the employment offers refer to a level of qualification required to postulate, whatever the level of qualification. The main “discriminating” barrier for migrant publics is the fact that their diploma or qualifications might not be recognized in the host countries. Graduate migrants living in EU member states (coming from third country nations) face a form of a downgrading: neither their professional experience nor the diplomas obtained in their countries of origin are recognized in the academic and labour market in the EU countries and they must contact a national public body in each of the EU countries (ENIC, NARIC) to certify that their diplomas are genuine. In turn, the national body must verify with the Universities or other Higher Education institutions in the country of origin of the graduate migrants, the authenticity of the diploma. This process is meant just for certifying the validity of the diploma, and it does not entail neither the recognition or assessment of the diploma (equivalence of a national diploma) nor an understanding of its content (expression in terms of competences as for the EU diplomas). As far as low qualified women are concerned, they

are not either familiar with the levels of qualification and might have even a low level of qualification they don't know.

According to the principles of recognition for further studies (academic recognition) stipulated in the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (Lisbon Convention, 1997), one country recognizes qualifications - whether for access to higher education, for periods of study or for higher education degrees - given by an institution/programme that is recognized as belonging to a system of higher education (unless it can show that there are substantial differences between its own qualifications and the qualifications for which recognition is sought).

To implement the Lisbon Recognition Convention and to develop policy and practice for the recognition of qualifications, different tools and frameworks have been implemented at the European level : the Council of Europe and UNESCO have established the ENIC Network (European Network of National Information Centres on academic recognition and mobility) which cooperates closely with the NARIC Network of the European Union.

The NARIC network is an initiative of the European Commission and was created in 1984 and aims at improving academic recognition of diplomas and periods of study in the Member States of the European Union (EU) countries, the European Economic Area (EEA) countries and Turkey; in addition, the network is part of the Community's Lifelong Learning Programme (LLP), which stimulates the mobility of students and staff between higher education institutions in these countries.

Moreover, the Bologna process implemented in the European Union since 2000 has allowed the EU countries to express their diplomas in terms of competences; since 2002 the Copenhagen process has further allowed to take into account non formal and informal learning and in this way it has enhanced the implementation of the Validation of Prior Learning in EU countries.

One way to overcome this main barrier is to better inform migrant publics on the Valuing Prior Learning (VPL) process. It allows an access to Higher Education or to any other qualification or diploma (even secondary level). This was the main aim of the Allinhe project (led by the Inholland University, 2011-2014, [www.allinhe.eu](http://www.allinhe.eu)) ; one of the key target groups was migrants and ethnic minorities.

### 3. Problem 3: creation of activities

The inadequation between the offer (expressed by the job seekers) and the demand (expressed by the employers) is very linked to the lack of knowledge of the labour market (codes to be known). The access to the national labour markets might be very difficult to understand, even for nationals. For graduate migrants, the diploma might not fit with the needs of the labour market (too general, not relevant in the national context of the host countries) ; for low qualified women, they might have not the basic required qualification for the labour market.

Faced to these “inappropriate” profiles on the labour markets, they might be interested or “forced to” create their own business. This is specially the case with low qualified women coming from Africa where they could have experienced some business activities, for instance on local markets. They could repeat the same activity in local markets in EU national countries. Another very common example is the creation of a restaurants or any activity linked to food (fast food...). As far as graduate youngsters are concerned, the time to find an unemployment according to their diploma might be a main reason for creating their own business especially if they belong to network (family, social or professional).

The main barriers they could encounter might be to create their own activity because the information is not so clear or because the administration might be very demanding (also with nationals). The process to create a business activity has been simplified in many EU countries nevertheless the administrative process is always stressing.

Another main barrier is the access to financing, especially with banks. The files to be filled and the requirement to obtain a credit are more and more demanding (also for nationals).

The only way to overcome this main barrier is to be supported in the process by professionals in the field of creation of activity such as organisations depending on Chamber of commerce and trade (main contact in the for profit sector), or associations dedicated to micro-credit (such as the ADIE in France, <http://www.adie.org/>) in the not-for-profit sector or local authorities (economic services of cities or towns) in the public sector. They can support the candidates, be a “caution” for them and also identify if the treatment of the demand some situations of discriminations might occur (too many information to be provided, no answer to demand, unnecessary documents...).

#### **4. Problem 5: permanent barriers (situation of protectionism and/or "legitimate" discrimination)**

Some differential treatment might be justified according to the European non-discrimination law, if it is shown that:

- ❖ The rule or practice in question pursues a legitimate aim ;
- ❖ The means chosen to achieve that aim (that is the measure which has led to the differential treatment) is proportionate to and necessary to achieve that aim.

In the context of employment the European Court of Justice "has been reluctant to accept differential treatment based on reasons of management that are related to the economic concerns of employers, while it is more willing to accept differential treatment based on broader social and employment policy goals with fiscal implications". In this field the Member States are given a broad "margin of discretion". In the context of the European Convention on Human Rights, differential treatment is less likely to be accepted where "it relates to matters considered to be at the core of personal dignity-such as discrimination based on race or ethnic origin, home, or private and family life". On the contrary, it is more likely to accept differential treatment where "this relates to broader social policy considerations, particularly where these have fiscal considerations. The 'margin of appreciation' is also left to the Member States ; where this margin is deemed "narrow", the ECtHR adopts a higher degree of scrutiny.

Differential treatment is justified in a limited set of circumstances.

The "genuine occupational requirement defence" is present in each of the directives. It allows employers to differentiate against individuals on the basis of a protected ground "where this ground has an inherent link with the capacity to perform or the qualifications required of a particular job" : article 14 of the Gender equality Directive & article 4 of the Racial Equality directive & article 4 of the Employment Equality Directive.

In the Employment Equality Directive, we can find two other defences: firstly the permissibility of discrimination on the basis of religion or belief by employers who are faith-based organisations (article 4) ; secondly the permissibility of age discrimination in certain circumstances (article 6).

This is most important in the Di&D strategy to inform our two target groups about these exceptions to the rules and to check whether a situation of apparent discrimination might be justified (legally "legitimate") or not.

**Suggestion made by Enda Europoe**

Focusing the problem of qualification on the lack of diplomas' recognition seems a bit restrictive, although it is a major problem, especially for women migrant who are for instance, because of their low qualification concentrated to "ethnic" jobs, mostly unsure/ For international students, even qualified, their qualification are not necessarily adapted to the country prior needs, especially true for literary studies. It would be good to add one or two sentences on these issues.

**Main collective decision**

The main obstacles faced by the Di&Di publics will be enriched during the experimentation among the participants of the training and/or participants at the national advisory groups

## **Module 6 – Case studies - what is a discrimination / what is not a discrimination (practical cases)**

### **Content**

1. Definition of a case study
2. Example of case studies in each of the countries
  - 2.1 Bulgaria
  - 2.2 France
  - 2.3 Germany
  - 2.4 Italy
  - 2.5 Switzerland

### **Methodology**

- ◆ Template identifying the situation and the barrier
- ◆ Analysis of the situation (discrimination or not)
- ◆ Solution to be found or the way to find an alternative solution

### **Sources**

- ❖ Inholland & alii, Allinhe project, an Erasmus project (2011-2014) in 8 countries (Netherlands, Denmark, Finland, France, Romania, Slovenia, UK and South Korea) available on [www.allinhe.eu](http://www.allinhe.eu).
- ❖ Case studies for France : Enda Europe & iriv
- ❖ Case studies for Bulgaria : CII
- ❖ Case studies for Italy : IECOB
- ❖ Case studies for Germany : Bildungsmark
- ❖ Case studies for Switzerland : ECAP

## 1. Definition of a case study

A case study provides a short illustration of a project/programme focussing on the impacts/results achieved in the area of external cooperation & development by using **concrete examples & testimonies of people** benefiting from this assistance. (source : [http://ec.europa.eu/europeaid/multimedia/case-studies/index\\_en.htm](http://ec.europa.eu/europeaid/multimedia/case-studies/index_en.htm))

The idea is to provide thanks to the Di&Di project a a broad reservoir of ‘best-practices’ (module 4) and case studies (module 6). In this reservoir the case studies for Di&Di will be situated.

Main questions concerning the case studies are:

- a. how to develop a strategy and a model for struggling against discrimination and enhancing diversity as an effective instrument for facilitating and including graduate youngsters and low qualified women, both sharing a migratory background, in the labour market ?
- b. how to create a stimulus for strengthening innovative lifelong learning strategies enhancing diversity in the labour market ?
- c. does this mean an innovative programme for professionalising staff in Human resources services (in firms) and in associations working with migrant publics in order for them to be better informed on the situations of discrimination some publics may be faced to ?

All partners work out on 1 or 2 national case studies in which the contextualised Di&Di strategy can be researched and analysed on its value for:

1. opening up opportunities to the potential of an individual for personal development by using competences of selected HE-learning domains.
2. opening up formative and summative HE-learning opportunities to the potential of an individual within a learning domain or sector.

The national case studies will ...

- ... provide process descriptions of a discrimination process in the case(s).
- ... for each country focus on one or two of the identified target groups. In total a number of 30 candidates per country will be analysed within the case(s). Every partner decides to collect the data for this number of candidates in one or two cases.
- ... collect both quantitative as well as qualitative data concerning the Di&Di-methodology and the impact of the Di&Di on the candidates.
- ... be a description of critical success factors for implementing the Di&Di strategy in informing target groups on what can and/or what cannot be considered as a discrimination.

... in the analysis come up with recommendations to follow with a primary focus on quantitative (how many users ‘reached’; how many gained access) and qualitative aspects (effectiveness of the Di&Di strategy and its reach).

... result also in a general model for collecting data for nationally contextualized practices-descriptions on the non-discrimination strategy for target groups and professionals working with migrant publics

## 2. Case studies in the 5 countries

The main aim of the case studies is to be able, after reading it, to be able to have a clearer idea on :

- ❖ what is a discrimination / what is not a discrimination (practical cases)
- ❖ Main criteria for discrimination (Eu/national levels)
- ❖ Questions to be asked /Answers to be provided (steps to be taken)
- ❖ Eventual process to be followed in the case of permanent obstacle (legal process)

Each organisation partners choses to select the kind of case study that might be the most relevant:

- ❖ Case study with a discrimination /case study with a barrier/obstacle but not a situation of discrimination
- ❖ Case studies with positive solutions ? Case studies with a combination of positive and negative solution

The idea: on the basis of difficulties faced by the Di&Di target groups, identification or not of a discrimination, solution found to overcome the difficulty

The following grid should be filled by each of the partners of the Di&Di project on the basis of the experimentation they will conduct.

Case study- name (person or organisation)

Context (national , regional or local)- 100 words

|  |
|--|
|  |
|--|

Profile of the people concerned (target groups of the Di&Di)- 100 words

|       |
|-------|
| ..... |
|-------|

Profile of the organisations responsible for the situation of discrimination (or considered as though )- 100 words

|     |
|-----|
| ... |
|-----|

Reasons for selecting this case (up to 300 words)

....

Is there a direct discrimination ? if yes, please describe it (up to 300 words)

.....

Is there an indirect discrimination ? if yes, please describe it (up to 300 words)

...

Is there a situation of harassment ? if yes, please describe it (up to 300 words)

.....

Is there any instruction to discriminate ? if yes, please describe it (up to 300 words)

.....

Analysis of the potential solutions to be offered- (up to 300 words)

....

Steps to be followed in case of an action towards the National Agency or any legal process  
(up to 300 words)

....

General conclusion on the case study- what is/what is not a situation of discrimination

....

Transferability of the case study in other EU countries

....

## Contribution by the German team

### Examples for what is (not) discrimination: case studies

In general, the decision whether discrimination is occurring or not has to be determined by the national Labour Court.

Not all types of discrimination violate federal and/or state laws that prohibit discrimination. Some types of unequal treatment are perfectly legal, and cannot form the basis for a civil rights case alleging discrimination. Nevertheless, a person can feel discriminated even if the anti-discrimination-law is not violated. In this case, we cannot decide for this person if he/she is discriminated or not solely because a legal claim would be declined.

We call this kind of discrimination “subjective discrimination”. The individual involved needs to be supported by specialists like consultants of the anti-discrimination agencies. The consulting activities should pursue different aims:

- coaching interview with preventive and enlightening effects
- empowerment of the involved individual
- showing alternative possibilities and options for behaviour in certain discriminating situations,

The workplace or labour market is still the main source of discrimination complaints and the potential for a complaint exists at most stages of the employment relationship. Therefore we two judgements of different Labour Courts to enlighten the distinction between discrimination and non discrimination:

#### Case of non-discrimination

A German Labour Court had to decide: is it discrimination or not if the employer requires very good German language skills in his job advertising?

The facts: The applicant was a woman born in Russia who lived in Germany since many years. She applied for a job as a software engineer in a very famous company. Apart from the classical programming activities, the job description contained tasks as documentation and client communication activities on a national level.

The Russian lady did not get the job and took legal actions through two German labour tribunals. Her argument was that the job advertisement discriminated her on the basis of her origin because good German skills were required. In her opinion, the job advertisement disadvantaged applicants of different origins or nations in comparison with native speakers.

Both instances denied the claim. Objective reasons justified the requirement of good German language skills:

The job profile included amongst other tasks, direct communication with clients and writing documentation in German, and not only the classical soft engineer back-office work. Therefore the German language skills are indispensable to perform the job.

*CONCLUSION: It is admissible that an employer requires good German language skills in the vacancy notice. The condition: the language skills are necessary to perform the particular job.*

(Landesarbeitsgericht Nürnberg, Urteil vom 05.10.2011, 2 Sa 171/11)

### Case of discrimination

A German Labour Court had to decide: Is it discrimination or not if a recruiter of a postal industry company refuses an applicant because he considered during the first job interview by phone that his German was not sufficient?

The facts: A company of the postal sector offered a job as a postman. A candidate origin from the Ivory Coast applied for the job. In the job advertisement a sufficient spoken and written level of German was required.

The recruiter of the company had a first job interview by phone. After this telephone interview he decided that the German level was not sufficient and the candidate was declined.

The Labour Court confirmed the violation of the anti-discrimination-law:

The procedure of the company to select the right applicant was not appropriate to find out the necessary competencies of a postman.

For non native speakers it is obviously more difficult to introduce themselves during a telephone interview. Therefore they are disadvantaged compared to native speakers. A postman does not need excellent language skills to perform his job. He has to communicate with colleagues, clients and the employer. A short telephone interview was not appropriate to assess their German level. Consequently, the selection procedure was inadequate and excessive to define the competencies of the postman.

*CONCLUSION: The Labour Court decided that an indirect discrimination exists if an apparently neutral procedure disadvantages applicants of different origin.*

(ArbG Hamburg, Urteil vom 26.01.2010)

## **Suggestions made by the Bulgarian team**

For this exact moment, view to the relatively newness of the problem, there is no concrete information.

But, regarding our experience on the field, we can make the assumption that 2 major organizations will be involved in the protection of youngsters and women with migration history in case of discrimination. One is the State, but independently working, **Commission for the Protection from Discrimination**. It is an independent specialized quasi-judicial authority for the prevention and protection from discrimination and for conducting the governmental policy in the field of equal opportunities and equal treatment of all citizens on the territory of Bulgaria (for more information see above – module 3).

The other one is the Bulgarian Helsinki committee. BHC was established on 14 July 1992 as an independent non-governmental organisation for the protection of human rights. The objectives of the committee are to promote respect for the human rights of every individual, to stimulate legislative reform to bring Bulgarian legislation in line with international human rights standards, to trigger public debate on human rights issues, to carry out advocacy for the protection of human rights, and to popularize and make widely available human rights instruments.

Due to the fact that it is the main anti-body protecting different minority groups from discrimination and providing legal help; and also – that it was one of the main critics of the State measures towards the refugees last year, we can assume that BHC will turn up into one of the major providers of legal help for women and youngsters in case of discrimination. For the moment there is no public information if such cases – and respectively measures – already exist because of the policies of protecting the confidentiality of BHC's clients.

### As far as France is concerned

Several case studies are provided on the website of the Défenseur des droits. We have decided to select case studies on the basis of the experiences of the participants at our sessions of experimentation

### Main collective conclusion :

The case studies will be selected during the experimentation among the participants of the training and/or among the participants of the national advisory groups.

## Module 7 – Some tools and methods offered to enhance access to the labour market among migrants (Migrapass portfolio, Training for cultural mediators, Allinhe strategy..)

### Content

1. Portfolio Migrapass (since 2012)
2. Training "Médiateur interculturel" (since 2009)
3. Allinhe for migrants - an access to VPL for migrants (2011-2014)
4. Any other initiatives used/implemented in EU and in each country

### Sources

- ❖ Autremonde & iriv et alii, (2010-2012), *Migrapass, a portfolio and a companion for migrants* a Leonardo da Vinci project in 5 countries (France, Austria, Bulgaria, Spain, UK) [www.migrapass.eu](http://www.migrapass.eu)
- ❖ Iriv, *Médiateur interculturel: un métier, des compétences*, iriv, Paris, 2009
- ❖ USGM et alii, TIPS (2007-2009), *T.I.P.S. - T-learning to Improve Professional Skills for Intercultural dialogue*, a Leonardo da Vinci project in 5 countries (Italy, Austria, France, Greece & Poland)
- ❖ Inholland University et alii, (2011-2014), *Allinhe- Access to Lifelong Learning in Higher Education for All*, an Erasmus project in 8 countries (Netherlands, Denmark, Finland, France, Romania, Slovenia and UK + South Korea)
- ❖ Other sources:

## 1. Portfolio Migrapass (since 2012)

A vivid approach is to enhance access to the labour market is to design appropriate tools & methods to migrants to favour their integration considering that they are the main actors of the integration process. A European team has been working on improving the recognition of migrant workers' skills and competences, the Migrapass project (2010-2012).

The Migrapass project proposes both a unique tool and support for migrants and professionals working in the migration field in order to help them when considering their professional career or in a possible professional redeployment with new perspectives. It should enhance their professional support in many ways:

1. by its innovative approach: an original portfolio designed for the needs of migrants by taking into account different profiles (low qualified people, youngsters and women without any professional experience; qualified people whose diploma or qualifications are not recognized in the national labour markets); it should be most useful for the Di&Di strategy
2. by its pedagogy: proposing a holistic approach combining formal, non-formal and informal learning with a focus on social experiences (formal or informal volunteering) and personal experience (family background); it is most useful to explain this Copenhagen approach among the two target groups of the Di&Di;

Thanks to the experimentation implemented by the Migrapass in 5 EU countries, we are aware of the main feedbacks:

- the Migrapass portfolio as ‘a self-awareness and self-empowering tool’;
- an ‘immediate practical application of the portfolio process’ in improving ones’ CV, providing strong help in preparing for an interview or a way to extend their job search into new types of employment.

Migrants liked the idea of using a tool to value their experience and competences. They also saw the use they could make of such a tool in their research for a job. The process of the portfolio has been really appreciated by both the migrants as it is a ‘learning by doing’ process. The main advantages they could see were:

- the autobiographical approach: experience has to be described in providing concrete elements to appreciate its relevance,
- the analytical approach: competences have to be identified on the basis of the described experience; the pragmatic approach: the last part of the portfolio is meant to propose an action plan with a precise schedule.

- the holistic approach proposed: professional experience is the basis and complements the migratory experience, the social experience (volunteering and other) ;
- the competence approach: the notion is not so easy to understand even for the participants who had written a résumé with their counsellor for employment (all the résumés looked the same with the same words and no personal value); in explaining the competence on the basis of their personal experience they could understand the meaning of the competence and even the level of competence they had achieved ;
- the labour market approach: the Migrapass portfolio has been used as a pedagogical tool to be familiar with the words/notions used in the labour market; filling it was considered by some of the mentors as a ‘linguistic’ exercise.

This tool might be of great use in the D&D strategy as it enhances both the knowledge of the national labour market and the empowerment process (self-assessment).

## **2. TIPS approach- training for intercultural mediators (since 2009)**

This second European project didn’t address directly migrants but more professionals working with them. Nevertheless it might be most useful in the Di&Di strategy to be aware of the problems to be faced by migrants in many ways (social, economic fields) as the access to the labour market deserves a holistic approach. Taking into account the barriers faced for the sustainability of the TIPS project during the experimentation conducted in the 5 EU countries, some partners decided to adapt the training course to develop a national perspective (for instance *iriv* for France<sup>13</sup>). The French training course proposes 16 modules.

The first module presents the European Year for the Intercultural Dialogue. Module 2 is proposing a list of definitions required to better notions such as: migration, emigration and immigration; stranger, foreigner and refugee; integration /assimilation and integration. Module 3 explains the issues of multiculturalism, interculturalism and diversity. This institutional background might be interesting for the two target groups of the Di&Di.

Modules 4 and 5 define the actors of the cultural mediation: migrants and stakeholders responsible for the migration policy. Module 4 gives an average profile explaining the reason for migrating with a comparison in other European countries. Module 5 explains the policy of migration and integration in both the national and European contexts. It is useful or the

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<sup>13</sup> Iriv, *Médiateur- un métier des compétences* -iriv, Paris, 2009 - [www.mediateur-interculturel.net](http://www.mediateur-interculturel.net) supported by l’ACSE and Unifformation

Di&Di target groups to know the main actors working in the field of migration and their responsibilities.

Modules 6 to 8 present the profession of cultural mediator. Module 6 reminds of the professional framework together with the main principles set and where a status exists. Module 7 gives an “average” profile of a cultural mediator, defining their profile, their missions and tasks, the skills and competences required to be a professional. Module 8 explains the core of the profession: solving conflicts together with the main obstacles and barriers faced by migrants. These 3 modules might be of direct use for the Di&Di target groups in case they would be faced to potential situations of discrimination.

Modules 9 to 13 focusses on cultural mediation in different situations. Module 9 is dedicated to the migrants’ rights and the idea of citizenship. Module 10 is dedicated to Social Housing policy as migrants are one of the first public concerned by the access to social housing. Module 11 is focused on Education as a key issue for migrants as this is for both adults and youngsters the only way to be fully integrated in the host societies. Module 12 is dedicated to Employment as the other way to be truly integrated in society even though the access to the “normal” labour market with fair conditions may be a challenge for many migrants. Module 13 concerns Health which is a sensitive domain to be taken into account as it deals with very intimate problems and may be the place for many taboos and cultural habits which could be seen as obstacles to a good integration. Modules 9 to 13 might also most useful for the Di&Di target groups as they could identify cases of discriminations in various situations as the access the labour market deserves a holistic approach.

Modules 14 to 16 are focussed on “publics with special needs”. Module 14 is dedicated to youngsters and the different types of conflicts cultural mediators may be faced to such as the generation gap, the problem of acculturation and the main issue of volunteering as an empowerment process. Module 15 is dealing with intercultural mediation among women with a focus on the specific education, alphabetisation, social and professional integration and the issue of equality of chance (equal access to professional opportunities). Module 16 is developing intercultural mediation among seniors with the discrimination faced by migrants’ seniors in retirement issue, the generation gap with the younger migrants and a new social identity through volunteering. Modules 14 and 15 address directly the two target groups of the Di&Di: youngsters and low qualified women.

### 3. Allinhe for migrants (since 2013)

The Migrapass and the ALLinHE share the same spirit:

- opening doors and changing perspectives especially among underrepresented target groups in the lifelong learning perspective (the example of migrants);
- integrating different tools & approaches to manage diversity (on a European and non-European levels);
- implementing a holistic approach combining personal, social and professional experiences;
- facilitating the access to VPL in enhancing a mentoring approach: trainers/mentors are offered a special strategy (assessor training manual for the ALLinHE);
- combining the top-down and the bottom-up approaches : both are important to better understand the opportunities offered by VPL (micro-level, meso-level and macro-level);
- considering the validation of competences as a two way process.

The competence approach is a key issue in a successful professional integration in the long term. Because of the lack of national experience or because of the linguistic issue, migrants could be, in the short term, oriented on very basic tasks and low qualified employments even graduate migrants because of the lack of recognition of their diploma. In the mid-term or long-term, the Migrapass approach allows them to improve their professional career and to make a positive choice: either to stay in their present position or to change it in valuing other competences. The most important risks underlined by the Cedefop experts, in the process of validating non formal and informal learning, are when applicants prepare the portfolio alone or with little mediation from one tutor. Learning by doing and by transmitting one's own experience to other migrants is the basic philosophy of the Migrapass. This is part of the empowerment spirit: making migrants be the main agents of their own integration. Some of the "trainees" are selected to become tutors in the future with other migrants.

Raising awareness of councillors in charge of VPL on the special profile and expectations of migrant publics was a main concern of the ALLinHE project. The first step was to dispatch among them the tool, the Migrapass portfolio as the first tool designed in France to take into account experiences and competences acquired thanks to migratory background. The approach is holistic: the Migrapass portfolio combines professional, social and migratory experiences in order to express them in terms of competences. This was the important to point

to underline: a migratory experience is not central but valued in complement to other experiences (professional, social, personal...). For migrants who have no professional experience (in the sense of paid activity) in France, it was important to show that voluntary experience could be considered as a “professional experience” on condition that they could provide all the relevant elements to prove the reality and relevance of the volunteering (in terms of activities fulfilled and competences acquired).

The second main point was to underline the requirements for being an efficient VPL assessor. A guide was dispatched, based on the councils provided by the Assessor Training Manual published by VPL experts in Netherlands (Duvekot, 2012 and Kappe, Smits & Bekker, 2011). The method insisted on the 9 main competences any train assessor should possess: Managing, Presenting, Learning, Guiding, Commitment and conviction, Applying professionalism, Attention and understanding, Ethics and integrity, Management of the needs and Expectations of the “customer”. If the 8 first points could be easily understood, the last point could raise some problem among VPL councillors who are not familiar to work with migrant audiences. The guide also emphasized the different roles to be played by VPL councillors: speaker, leader, coach, organizer, advisor, developer.

At last, it was crucial to underline that lifelong learning, as integration, is a two way process. Bridging the gap between University and the Community is a challenging issue. Even though University remains the place to deliver diplomas and to propose a reference framework of qualifications, the door is open to any kind of learning to be assessed thanks to the recognition of VPL in many European countries. People from civil society, both professionals and/or volunteers, have already been associated with the assessment of learning outcomes as far as their activity may be concerned by the VPL. A “new deal” of the validation of competences would consist in enhancing a circular approach of lifelong learning which is closely linked to its genuine spirit (Halba, 2012). Present learners may become future assessors and vice versa. This is also part of the empowerment process: changing our perspectives and being able to play a different role. It is not enough to open a door: opening spirits may be the alternative term for enhancing a meaningful and sustainable validation of the competences.

Combined with the Migrapass project, the Allinhe approach might be a crucial strategy for the two target groups of the Di&Di project :

- by favoring an access to “national” diploma to graduate youngsters thanks to the VPL approach ;
- by enhancing to a qualification or even diploma to low qualified women.

**Main collective conclusion :**

**Any other initiative used/implemented in EU and in each country** will be selected during the experimentation among the participants of the training and/or among the participants of the national advisory groups and will enrich this part of the training

## Module 8 – SWOT analysis (critical approach)

### Content

1. the SWOT approach (Strength/Weakness/Opportunity/Threat)
2. a proposal of grid adapted to the Di&Di strategy
  - a grid in order to "test" if the tool and/or strategy might be relevant for graduate/ low qualified women
  - if not, what would be the kind of threat or weakness : national specificities and/or specific profiles of target groups ?

### Methodology

- ◆ underlining the critical approach in order to enhance the bottom up approach
- ◆ avoiding a descriptive approach
- ◆ updating the tool or strategy to make it be useful and relevant

### Sources

- ❖ Europaid -  
[http://ec.europa.eu/europeaid/evaluation/methodology/tools/too\\_swo\\_def\\_en.htm](http://ec.europa.eu/europeaid/evaluation/methodology/tools/too_swo_def_en.htm)

### ❖ 1. the SWOT approach ( Strength/Weakness/Opportunity/Threat)

The SWOT analysis (Strengths - Weaknesses - Opportunities - Threats) is a strategy analysis tool. For example, it combines the [study](#) of the strengths and weaknesses of an organisation, a geographical area, or a sector, with the study of the opportunities and threats to their environment. As such, it is instrumental in development strategy formulation. For strategy, this approach takes into account internal and external factors, with a view to maximising the potential of strengths and opportunities, while minimising the impact of weaknesses and threats.

#### *Rationale of SWOT analysis*

|                         | <i>Positive aspect</i> | <i>Negative aspect</i> |
|-------------------------|------------------------|------------------------|
| <b>Internal factors</b> | Strengths              | Weaknesses             |
| <b>External factors</b> | Opportunities          | Threats                |

This tool is mainly [used](#) during the ex ante evaluation of programmes. SWOT analysis describes positive and negative aspects and identifies the factors in the environment which may positively or negatively influence projects. By so doing, this analysis reduces uncertainties and supports the strategy's improvement or its assessment. SWOT analysis belongs to the group of tools studying the relevance and possible coherence of specific programmes or entire strategies.

Many adaptations and interpretations have emerged from the implementation of SWOT analysis. Some of its four components may vary with the needs of the analysis, such as supporting the planning of development schemes or analysis of the geographical areas, determining and validating strategies or ex ante evaluations. Thus, in addition to SWOT, other acronyms include:

- SWOL: Strengths, Weaknesses, Opportunities, Limitations
- SWPO: Success, Weaknesses, Potentials, Obstacles
- SWAP: Successes, Weaknesses, Aims, Problems
- SOFT: Successes, Opportunities, Failures, Threats

Apart from the refinements induced by these acronyms, these analyses share the same objective and will not be distinguished in this methodology.

Source : [http://ec.europa.eu/europeaid/evaluation/methodology/tools/too\\_swo\\_def\\_en.htm](http://ec.europa.eu/europeaid/evaluation/methodology/tools/too_swo_def_en.htm)

## 2. applying the SWOT analysis to each case faced by the

In order to enhance the critical approach, a SWOT (Strength, Weaknesses, Opportunities and Threats) analysis will be enhanced of:

- (i) of the results to be achieved- enhancing diversity and struggling against discrimination ;
- (ii) its impact on the target groups in being aware of these issues and being able to take any relevant measure to enhance their access to the labour market

a grid in order to "test" if the tool and/or strategy might be relevant for graduate/ low qualified women ?

if not, what would be the kind of threat or weakness : national specificities and/or specific profiles of target groups ?

| <b>SWOT analysis</b>   |  |
|--|--|
| <u>Strengths of non-discrimination &amp; diversity process</u>       | <u>Opportunities of non-discrimination &amp; diversity process</u> |
| <u>Weaknesses of non-discrimination &amp; diversity process</u><br>: | <u>Threats of non-discrimination &amp; diversity process</u><br>:  |

## Feedback

Some partners who were familiar with the approach found it too much detailed, other needed more information as this was a new approach for them

The idea is to develop a critical approach among the participants in presenting them, both the examples of best practices and the case studies. The SWOT analysis appears to be a good basis but other pedagogic approach may be offered during the sessions. Consequently this part might be enriched during the experimentation

## Module 9 – From discrimination to diversity - the positive side of the social & professional inclusion (what is at stake)

This module and the following may be considered as transversal modules. According to the trainer they may be presented either in the before, during or after the other modules

### Content

1. the concept of diversity illustrated by the French example of the French Diversity Charter
2. diversity on a European level: key notions and countries having published a Charter of Diversity so far

### Methodology

- ◆ on the basis of the former modules, a synthesis of the different criteria to be taken into account
- ◆ a grid to identify and use the tools and strategies
- ◆ an action plan

### Sources

- ❖ French Charter of Diversity available on : <http://www.diversity-charter.com/>
- ❖ European Commission, Direction for Justice, [http://ec.europa.eu/justice/discrimination/diversity/charters/index\\_en.htm](http://ec.europa.eu/justice/discrimination/diversity/charters/index_en.htm)

## 1. the concept of diversity

The concept of diversity has been an issue discussed by responsible of human resources in firm in the past 10 ears. In order to better explain what is at stake I a diversity strategy, we would like to set forward the spirit of a Chart of Diversity on the bass of the French example (source : <http://www.diversity-charter.com/>).

The French Chart first explains the definition and aim of such a Charter. It is a “written commitment that can be signed by any company, regardless of its size, that wishes to ban discrimination in the workplace and makes a decision to work towards creating diversity. It expresses a company’s willingness to improve the degree to which their workforce reflects the diversity of French society.” It is made of six articles which should guide companies through the process of instituting new practices by involving all of their employees and partners in these actions.

The aim is to “prompt them to implement a human resources policy focused on the recognition and validation of the personal skills of individuals”.

It insists on a main issue : to “favour cohesion and social equality while improving how it is executed”. Regardless of the size is another main issue as 70% of employment in France depend on SPEs and micro-entreprises. The level of commitment is a third main issue : the diversity policy into the company’s general strategy should “be made at the highest level, by the company’s chief officer”.

The reason for implementing such a strategy is part of “a win-win approach for businesses and society”. It should contribute to “social cohesiveness” as companies are faced to the following issues :

- 1. Complying to the law and so protecting from damage to the reputation of the firm :** by committing to improving diversity, companies ensure their hiring practices comply with the law, thereby pre-empting the risk of discrimination complaints or losing their reputation to legal proceedings.
- 2. Showing their commitment as a socially responsible company -** striving for diversity means building a positive corporate image for their clients, suppliers, employees and local authorities (public contract awards, ethical expectations of consumers and employees, etc.).
- 3. Optimisation of the human resources management -** Managing diversity contributes to optimising skills and encourages employees to get involved. Diversifying their hiring pools and integrating new employee profiles also aids in periods of labour shortages.
- 4. improving their financial performance -** Over the long term, a diverse team provides a

better understanding of the needs of different customer bases, helps penetrate new markets, develop the company's capacity for innovation and gives greater flexibility during times of change.

The French Charter gives some examples of actions that might be taken:

1. Raise awareness of non-discrimination and diversity issues among top management and staff involved in recruitment, training and career development and to educate them in these matters.
2. Respect and promote the application of all aspects of the principle of non-discrimination at every stage of the human resources management, in particular in the recruitment, training, promotion and career development of employees.
3. Endeavour to reflect, the diversity of the French society particularly in its cultural and ethnic dimension at every level of our workforce.
4. Make all our employees aware of our commitment to non-discrimination and diversity, and keep them informed of the practical results of this commitment.
5. Make the development and implementation of the diversity policy a subject of a dialogue with the employees' representatives.
6. Insert a chapter in the annual report describing the commitment to non-discrimination and diversity (measures implemented, internal procedures and results achieved).

## **2. On a European perspective**

A diversity charter consists of a **short document voluntarily signed by a company or a public institution**. It outlines the measures it will undertake to promote diversity and equal opportunities in the workplace, regardless of race or ethnic origin, sexual orientation, gender, age, disability and religion.

The diversity policies developed within companies adhering to a diversity charter recognise, understand and value people's similarities and differences as representing huge potential sources of innovation, problem-solving, customer focus, etc.

Diversity charters are among the latest in a series of voluntary diversity initiatives aimed at **encouraging companies to implement and develop diversity policies**.

The European Commission recognises that **diversity charters can contribute to fighting discrimination in the workplace and to promoting equality**.

Therefore it is funding a platform for EU-level exchange between organisations promoting and implementing national diversity charters. The platform is part of a larger project which aims at supporting voluntary initiatives promoting diversity management in the workplace.

The EU-level exchange platform allows the promoters of the existing diversity charters to meet on a regular basis, to share their experiences and develop common tools.

It is available on : [http://ec.europa.eu/justice/discrimination/diversity/charters/index\\_en.htm](http://ec.europa.eu/justice/discrimination/diversity/charters/index_en.htm)

In a glossary, some key issues are reminded such as:

- **Discrimination-** Non-discrimination is one of the values on which the EU is founded. The Treaty protects against discrimination on the basis of EU nationality. The Charter of Fundamental Rights prohibits discrimination on any ground, such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation as well as on the grounds of nationality in the area of EU law.
- **Equality-** EU citizenship confers the right to protection from discrimination on the grounds of, among other things, sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. This is enshrined in the [Charter of Fundamental Rights](#)
- **Harassment-** any unwanted physical or verbal conduct that offends or humiliates others. It can take many forms: threats, intimidation, or verbal abuse; unwelcome remarks or jokes about subjects like ethnicity, religion, disability or age; displaying racist or other offensive pictures or posters
- **Positive action-** Specific measures to compensate for disadvantages experienced by people suffering discrimination due to ethnic origin, age or other characteristics which might lead to them being treated unfairly. Making different arrangements (special training etc.) are ways of improving chances.
- **Segregation-** separating people of different races or classes, and usually refers to this practice in schools and other public service; this is a form of discrimination.
- **statistical discrimination-** it describes an economic theory of inequality based on stereotypes against persons or a group of people to whom they are not culturally attuned. Often statistical discrimination is used in the employer/ employee context.

The theory states that job seekers who do not share the same values as their potential employer, may either not be hired in the first place or will earn less.

- **Victimisation-** means someone is treated badly or differently for having made a complaint about discrimination or supporting a colleague who has made a complaint.

Diversity charters are among the latest in a series of voluntary diversity initiatives aimed at **encouraging companies to implement and develop diversity policies.**

A diversity charter consists of a **short document voluntarily signed by a company or a public institution.** It outlines the measures it will undertake to promote diversity and equal opportunities in the workplace, regardless of race or ethnic origin, sexual orientation, gender, age, disability and religion.

The diversity policies developed within companies adhering to a diversity charter recognise, understand and value people's similarities and differences as representing huge potential sources of innovation, problem-solving, customer focus, etc.

So far the following countries have published a Charter of Diversity :

1. Austria
2. Belgium
3. Estonia
4. Finland
5. France
6. Germany
7. Ireland
8. Italy
9. Luxembourg
10. Poland
11. Spain
12. Sweden

Source : [http://ec.europa.eu/justice/discrimination/diversity/index\\_en.htm](http://ec.europa.eu/justice/discrimination/diversity/index_en.htm)

## Module 10 – The empowerment process - being actors and not publics - the Di&Di attitude in practice

This module and the previous one may be considered as transversal modules. According to the trainer they may be presented either in the before, during or after the other modules

### Content

1. the empowerment process
2. from equal opportunities to LLP approach
3. the Di&Di attitude to enhance the empowerment process by promoting diversity and equality of chances

### Sources

- ❖ John Lord (John) and Hutchison (Peggy) *The Process of Empowerment: Implications for Theory and Practice*, Canadian Journal of Community Mental Health, 12:1, Spring 1993, Pages 5-22.  
Available at:  
[http://www.johnlord.net/web\\_documents/process\\_of\\_empowerment.pdf](http://www.johnlord.net/web_documents/process_of_empowerment.pdf)
- ❖ Bénédicte Halba & alii, *Migrapass- a portfolio and a companion for migrants*, Final publication, Paris, October 2012  
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<http://www.iriv-migrations.net/fichiers/Migrapass/Final%20publication%20-%20Migrapass%20-%20October%202012.pdf>
- ❖ Bénédicte Halba (2008), ‘*Lifelong learning: a key issue for migrants and professionals working with them in “Immigration and integration: European experiences”*’, edited by Anna Krasteva, Manfred Wörner Foundation, Sofia.

## 1. The process of empowerment

According to John Lord and Peggy Hutchison (1993), : “The concept of empowerment is of increasing interest to researchers, practitioners and citizens concerned about mental health issues’. It has become a “new buzzword”.

It should be understood by examining the “concepts of power and powerlessness” (Moscovitch and Drover, 1981, quoted by John Lord and Peggy Huchinson).

At the individual level, powerlessness can be seen as the expectation of the person that his/her own actions will be ineffective in influencing the outcome of life events (Keiffer, 1984). It has “ come to be viewed as an objective phenomenon, where people with little or no political and economic power lack the means to gain greater control and resources in their lives” (Albee, 1981 quoted by John Lord and Peggy Huchinson).

Most of the literature also associates empowerment with personal control. It would be an aim “to enhance the possibilities for people to control their own lives” (Rappaport, 1987 quoted by John Lord and Peggy Huchinson)

Empowerment should also “enhance the possibilities for people to control their own lives “ Rappaport (1987). The concept has also been understood as “a process of change” (Cornell Empowerment Group, 1989, quoted by John Lord and Peggy Huchinson ). According to McClelland (1975 quoted by John Lord and Peggy Huchinson) “ in order for people to take power, they need to gain information about themselves and their environment and be willing to identify and work with others for change.

Similarly, Whitmore (1988 quoted by John Lord and Peggy Huchinson) defines empowerment as: “ an interactive process through which people experience personal and social change, enabling them to take action to achieve influence over the organizations and institutions which affect their lives and the communities in which they live”.

## 2. from equal opportunities for all & diversity to skills & competence- the lifelong learning perspective<sup>14</sup>

Closely linked to immigration and integration policies, the European policy is meant to enhance diversity and promote equal opportunities for all. They have been key issues in the past five years on the occasion of European Years, meant to highlight major issues.

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<sup>14</sup> Halba B. (2008), ‘Lifelong learning: a key issue for migrants and professionals working with them in “Immigration and integration: European experiences’, edited by Anna Krasteva, Manfred Wörner Foundation, Sofia, 2008.

The 2007 European Year of Equal Opportunities for All<sup>15</sup> opened the way to a bolder strategy to fight against discrimination in the European Union. It aimed to: make people more aware of their rights to enjoy equal treatment and a life free of discrimination – irrespective of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation; promote equal opportunities for all and launch a major debate on the benefits of diversity both for European societies and individuals. Migrants are key targets in this context.

The European Year of Intercultural Dialogue (EYID) 2008<sup>16</sup> recognised that Europe's great cultural diversity represents a unique advantage. It is encouraging all those living in Europe to explore the benefits of Europe's cultural heritage and opportunities to learn from different cultural traditions. The enlargement of the European Union, deregulation of employment laws and globalisation have increased the multicultural character of many countries, adding to the number of languages, religions, ethnic and cultural backgrounds found on the continent. Intercultural dialogue has an increasingly important role to play in fostering European identity and citizenship.

As migration is one of the main issues' policies Member States have to face, a common approach to questions that migration flows arise is necessary in order to assure cohesion, economic and social development. Each member state and the European Union as a whole has to develop skills and professional competences related to migrants' needs focusing on issues as acceptance, both behavioural, historical and cultural, social integration, diversity management. The Copenhagen process, in the lifelong learning perspective, is meant to value informal and non-formal learning. The acquisition of competences is a key point of the Lifelong Learning process enhanced by the European Parliament and of the Council, stating in a common recommendation that

*{...} key competences in the shape of knowledge, skills and attitudes appropriate to each context are fundamental for each individual in a knowledge-based society. They provide added value for the labour market, social cohesion and active citizenship by offering flexibility and adaptability, satisfaction and motivation {...}*.<sup>17</sup>

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<sup>15</sup> [http://ec.europa.eu/employment\\_social/eyeq/index.cfm](http://ec.europa.eu/employment_social/eyeq/index.cfm)

<sup>16</sup> The European Year of Intercultural Dialogue (2008) was established by [Decision N° 1983/2006/EC](#) of the European Parliament and of the Council. (18 December 2006) on the statement that Europe is becoming more culturally diverse. ; [http://www.interculturaldialogue2008.eu/406.0.html?&redirect\\_url=my-startpage-eyid.html](http://www.interculturaldialogue2008.eu/406.0.html?&redirect_url=my-startpage-eyid.html)

<sup>17</sup> European Parliament and European Council - *Recommendation published in the Official Journal L 394 of 30.12.2006*

Because they should be acquired by everyone, the recommendation proposes a reference tool for the Member States to ensure that these key competences are fully integrated into their strategies and infrastructures, as the acquisition of key competences

*{...} fits in with the principles of equality and access for all. This reference framework also applies in particular to disadvantaged groups whose educational potential requires support. Examples of such groups include people with low basic skills, early school leavers, the long-term unemployed, people with disabilities or migrants, etc. {...}.*

The LLP programme addresses both professionals working with migrants and their public (migrants). One of the main conditions for projects to be successful is to prove its impact on the target groups but also their ability to involve the stakeholders (on all levels). A fair and efficient governance of migration and integration policy implies a multilevel approach: if the general framework is given both on European and national scales, local stakeholders have to implement it. This is why intercultural mediation approach is so challenging as far as it brings with it the notion of negotiation and equal treatment of concerned parties.

### **3. the Di&Di attitude to enhance the empowerment process by promoting diversity and equality of chances**

The Di &Di project offers a three step process:

- A first step necessary in the integration process: being aware of the legal and institutional framework to identify and so struggle against discriminations with a view to avoid any stigmatisation
- A second step is to empower migrants in making them be self-confident in their potential and possibilities by explaining them different tools and strategies designed to value the very unique skills & competences they may have developed thanks to their migratory background
- A third step is to enhance the diversity approach: informing on the tools and strategies implemented both on a European and national levels through the Charter for Diversity for instance

The best way to enhance diversity on the labour market is :

- to offer migrants tools and methods designed to value their experience and the competences linked to it allowing them (Migrapass portfolio, Allinhe strategy)
- to enhance a better knowledge of what is required on the EU labour markets – codes to be known (institutions, process to apply, relevant tools...) ; in this perspective the Charter of Diversity already published in 12 EU countries might be one relevant reference
- to combine both the non-discrimination approach (more preventive) and the diversity approach (more positive) with a clear view of what is/is not a discrimination and the ways to enhance a diversity approach (Charters)

## Sources – Literature and useful websites

Please indicate all the references you might find useful as far as your country is concerned and/or a European level

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### **Collective decision**

This offered bibliography and selection of websites will be enriched during the experimentation