Ethnic discrimination and anti-discrimination in employment: a comparative European perspective

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Principles of Equality and Challenges of Discrimination: Problems and Effective Remedies
Global Governance Programme, EUI Florence, April 2014
Topics

Part I
1 Definition of the problem; states of awareness; EU Agencies and law
2 Sources of evidence for discrimination
3 Comparative EU research: majority attitudes, minority experiences, social partners

Part II
4 Organisational anti-discrimination measures
5 Diversity management in Europe
6 A typology of discrimination?
Part I

Ethnic discrimination in employment: research, the law and raising awareness
Preventing Racism at the Workplace
Eurofound, Dublin 1996
Recommendations: Eurofound 1996

• EU directive prohibiting racial discrimination in employment
• Anti-discrimination legislation in all EU member states
• More awareness raising, information provision and research
Racial Equality Directive
(2000/43 /EC)

prohibits:

• direct discrimination
• indirect discrimination
• harassment
• instruction to discriminate

on grounds of racial or ethnic origin,

in employment and training, (as well as education, social security, healthcare, housing, access to goods and services)
EU Agencies

Specialised bodies set up to assist member states to cope with new tasks of a legal, technical or scientific nature

• European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)
• EU Agency for Fundamental Rights (FRA)
Founded in Vienna in 1998 as the European Monitoring Centre on Racism and Xenophobia (EUMC).

On 1st March 2007 the EUMC’s mandate was extended, and it became the European Union Agency for Fundamental Rights (FRA)
One of its prime objectives has been to provide the Community and its Member States with objective, reliable and comparable data at European level on the phenomena of racism and xenophobia in order to help them take measures or formulate courses of action within their respective spheres of competence.
International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD)

• The term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.
Racial discrimination in employment occurs when immigrants and ethnic minorities are accorded inferior treatment in the labour market or in the workplace relative to the white majority, even when comparably qualified in terms of education, experience or other relevant criteria. Its effect is to deprive people of the opportunities they deserve through the application of criteria which are irrelevant and morally indefensible.
National Focal Points
FRANET (before 2011 – RAXEN)

28 National Focal Points, one in each Member State:

Consortia of human rights organisations, NGOs, research organisations, contracted by the FRA;
Collecting data and information according to common guidelines developed by the FRA.
Data collection & analysis

• Data and information collected by the National Focal Points of the FRA’s RAXEN network in the following areas:
  
  Legislation and case law
  Racist violence and crimes
  Employment
  Housing
  Education
  Healthcare

(http://fra.europa.eu)
Sources of RAXEN data

• Statistical data from official, semi-official and NGO sources

• Information on relevant legal provisions

• Information on racist incidents and discrimination court cases

• Information from research activities, opinion polls, etc.

• Case studies on positive initiatives against racism and discrimination
FRA’s *Annual Reports*, Vienna

*Fundamental rights: challenges and achievements in 2010*
Migrants, Minorities and Employment: Exclusion and Discrimination in 27 Member States of the European Union
FRA, Vienna, 2010
Sources of evidence for racial discrimination in employment

1. Statistics and official surveys
2. Evidence from complaints, court cases
3. Evidence from research
Statistics and statistical surveys

• Statistical analyses show that even when taking into account other variables relevant to accessing jobs in the labour market such as age, sex, educational attainments, skills, and so on, migrants and their descendants – the second generation – still perform less well in the labour market than their majority peers.

• The conclusion is that the explanation for this residue of inequality is discrimination.

• The inequalities demonstrated in such statistical patterns constitute *indirect* evidence of discrimination.
Complaints and legal cases

• direct discrimination
• indirect discrimination
• harassment
• instruction to discriminate

on grounds of racial or ethnic origin
(as in Racial Equality Directive)
Racial Equality Directive

Direct discrimination shall be taken to occur ‘when 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’

‘Indirect discrimination shall be taken to occur when an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons’
1997: Cases of racial/ethnic discrimination in employment put forward for legal consideration

Sweden

France

UK
1997: Cases of racial/ethnic discrimination in employment put forward for legal consideration

<table>
<thead>
<tr>
<th>Country</th>
<th>Cases</th>
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<tbody>
<tr>
<td>Sweden</td>
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<td>France</td>
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<td>UK</td>
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Evidence from research

- Surveys of the majority population and ‘gatekeepers’
- Surveys of the minority population (‘victim surveys’)
- Discrimination testing
National surveys - employers

- 2000 Denmark: of 1200 private sector employers, 25% would not hire an immigrant or refugee under any circumstances.
- 2007 Belgium: 80% of employers (small/self-employed) would never hire an immigrant.
- 2007 Slovenia: of 112 major employers, 32% prioritised recruitment of ‘ethnic Slovenians’; 74% rejected positive action for ethnic minorities.
- 2009 Lithuania: of 404 companies, 60% prioritised ‘local citizens’; resistant to recruiting refugees.
Surveys of migrants & minorities

In 2006 report:

• Russian speakers in Estonia, Turks in Germany, Russians, Estonians & Vietnamese in Finland, immigrants in Denmark, immigrants and their descendants in France, all reported subjective experiences of discrimination

• Of 1000 Turks in Germany, 56% experienced discriminatory treatment at the workplace
• Net discrimination rates of around 35% (i.e. in one in three attempts migrants/minorities faced ethnic discrimination)
• Minority candidates need to make 3-5 times more attempts to achieve a positive response
• In one local situation they needed to make 17 times more attempts
EUMC, *Majorities’ Attitudes Towards Minorities*, Vienna 2005
Eurobarometer Results for the EU15 and 13 Candidate Countries 2003 (sorted by % agreement, by country)

“All immigrants, legal or illegal, born here or abroad, should be sent back to the country of origin”
Personal characteristics

Education: People who have prolonged their education tend to dissociate themselves from most exclusionist stances more than those at lower educational levels.

Occupation: People with higher professional careers show weak support for most exclusionist stances. People performing manual labour or the self-employed, and also those depending on social security show more support.

Income: People in the lowest income quartile tend to more strongly adhere to exclusionist stances than those on higher incomes.
Personal characteristics (continued)

Age: In general, younger people exhibit less support for ethnic exclusionism than older people.

Geography: People living in urban areas tend to show less support for exclusionism than people living in rural areas.

Politics: People on the right-wing of the political spectrum show more support for all aspects of exclusionism.
EU-MIDIS: Largest EU-wide survey on minorities

- 23,500 migrant/ethnic minority respondents
- Different groups surveyed across Member States:
  - Roma
  - Sub-Saharan/Caribbeans
  - Central and Eastern Europeans
  - Turkish
  - Former Yugoslavians
  - North Africans
  - Russian
- 5,000 majority population respondents
EU – MIDIS: Background Info

- Selected minority groups, generally largest
- Self-identified minority/migrant background
- Respondents age 16+, in country at least 1 year
- Random sample of 500 – 1,500 respondents per country (min 500 per group)
- Standardised questionnaire
- Face-to-face interviews in people’s homes lasting between 20 to 60 minutes
Discrimination Experiences

EU-MIDIS asked respondents about discrimination they had experienced, in the past 12 months or in the past 5 years, in nine areas:

1. when looking for work
2. at work
3. when looking for a house or an apartment to rent or buy
4. by healthcare personnel
5. by social service personnel
6. by school personnel
7. at a café, restaurant or bar
8. when entering or in a shop
9. when trying to open a bank account or get a loan
Percentage discriminated at work or looking for work: last 12 months (%)

- Roma: 22%
- Sub-Saharan...: 22%
- North African: 18%
- CEE: 15%
- Turkish: 10%
- Russian: 5%
- Ex-YU: 5%
Percentage of respondents who did not report work-related discrimination

Most recent incident in the past 12 months, out of all those who experienced work-related discrimination

<table>
<thead>
<tr>
<th>Region</th>
<th>Not reported</th>
<th>Reported</th>
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</thead>
<tbody>
<tr>
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<td>9</td>
</tr>
<tr>
<td>CEE</td>
<td>89</td>
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<tr>
<td>Roma</td>
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<tr>
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<tr>
<td>Sub-Saharan...</td>
<td>82</td>
<td>18</td>
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</table>

EU-MIDIS 2008, questions CA4 & CB4
Reasons for not reporting the most recent incident of discrimination
In the past 12 months, all respondents (%)

- Nothing would happen/change by reporting: 63%
- It's normal, happens all the time - not worth reporting it/too trivial: 40%
- Didn't know how to go about reporting/where to report: 36%
- Concerned about negative consequences/contrary to my interest: 26%
- Inconvenience/too much bureaucracy or trouble/no time: 21%
Percentage of respondents in the EU27 who have heard of at least one of up to three equality bodies in their country

- Yes: 37%
- No: 60%
- Don't know/Refused: 3%
The impact of the Racial Equality Directive

Views of trade unions and employers in the European Union

Strengthening the fundamental rights architecture in the EU IV
Research on Social Partners’ views on the Racial Equality Directive

• Focus of the study:
  – Awareness of the Directive and relevant national legislation among the social partners
  – Opinions of the social partners on the value of the Directive and on the role of equality bodies
  – Opinions on the impact of the Directive
Study methodology

• Qualitative study: 344 interviews in EU-27
  – trade unions, employers organisations
    (+ some NGOs and Equality Bodies)
  – 2 questionnaires; interview time 30 min – 2 hours
  – fieldwork: March – June 2009
Levels of awareness and response

• Are they (employers or unions) aware of the Racial Equality Directive?
• Are they aware of national anti-discrimination legislation?
• Are they aware of their national Equality Body (if one exists)?
• Have they adapted their policies to include combating racial/ethnic discrimination?
• Have they adapted their practices to include anti-discrimination measures?
• Are they strongly committed to combating racial/ethnic discrimination?
### Awareness and response score

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<th>Score</th>
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<tr>
<td>Ireland</td>
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<tr>
<td>Finland</td>
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<tr>
<td>UK</td>
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<td>Germany</td>
<td>5.1</td>
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<tr>
<td>Denmark</td>
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<td>Belgium</td>
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<td>Netherlands</td>
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<td>Austria</td>
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<td>Portugal</td>
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<tr>
<td>Spain</td>
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<tr>
<td>France</td>
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<tr>
<td>Italy</td>
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<td>Greece</td>
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<td>Luxembourg</td>
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## Awareness and response score (cont.)

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<tr>
<td>Romania</td>
<td>3.3</td>
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<tr>
<td>Poland</td>
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<td>Lithuania</td>
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<tr>
<td>Hungary</td>
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<tr>
<td>Czech Republic</td>
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<tr>
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<td>3.2</td>
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<tr>
<td>Latvia</td>
<td>3.0</td>
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<td>Estonia</td>
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</table>
‘No problem here’ - employers

• **Romanian employers’ organisation:**
  “All in all, I do not consider that there are racial problems in Romania.”

• **Bulgarian employers' organisation:**
  “Working people from the minorities... do not feel oppressed or discriminated against.”

• **Latvian employers organisation:**
  “Maybe there have been problems in Germany historically - we know that with the Jews. But in Latvia we have never had anything like that. Ethnic discrimination is not a problem, it has never been here. Never!”
'No problem here’ – trade unions

• **Trade union, Czech Republic:**
  • “The racial discrimination issue is marginal.”

• **Trade Union Confederation, Estonia:**
  • “I think that racial discrimination in the workplace is missing in Estonia.”

• **Trade union, Latvia:**
  • 'The EU non-discrimination law is seen as something forced on the country from the outside, and non-essential”.'
Roma

• **Employer, Lithuania**
  
  ”The problem in Lithuania is about the Roma species, as we call them here. They simply don’t want to work, they don’t want to learn, .....”

• **Employer, Bulgaria**
  
  ”There are some practices in Bulgaria that are not discrimination, but as a result there are Roma people in an unfavourable position”.

• **Trade Union Confederation, Lithuania:**
  
  “We don't see a lot of discrimination here in Lithuania at all’ .......”As regards Gypsies, our employers do not like to have workers who are Gypsies.”

Bans:
- direct discrimination
- indirect discrimination
- harassment
- instruction to discriminate

on grounds of racial or ethnic origin
1997: Cases of racial/ethnic discrimination in employment put forward for legal consideration

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2009: Complaints of racial/ethnic discrimination made to equality bodies

- Sweden  2 409
- France  3 009
- UK  4 983
Complaints in one year
(Annual Report 2009)

• Less than 10: Estonia, Malta, Slovenia

• More than 1,000: Belgium, France, UK

Recommendation to verify “whether the small number of complaints is not the result of victims’ lack of awareness of their rights, fear of reprisals, limited access to available mechanisms, lack of confidence in the police and judicial authorities, or the authorities’ lack of attention or sensitivity to cases of racial discrimination”.
Part II

The law and anti-discrimination policies: positive developments and challenges
Six types of organisational policy

1. Training the immigrants/minorities
2. Making cultural allowances
3. Challenging negative attitudes
4. Combating discrimination
5. Equal opportunities policies with positive action
6. Diversity management
1. Training the immigrants/minorities

To assist in their integration into society and work.

- to improve their work-related education and skills
- the language, culture and customs of the new society
- how to operate in the labour market
2. Making cultural allowances

Allowances are made for specific religious or cultural needs

- the recognition of religious restrictions on diet in company canteens,
- allowing workers to celebrate religious holidays other than Christian ones
- allowing the wearing of certain items of clothing, such as the headscarf or trousers for women, or the turban for Sikh men.
- the use of literature in minority languages
3. Challenging negative attitudes

The assumption is that the main barriers to change are the attitudes and prejudices of people

- publicity and information campaigns or training to change peoples' attitudes
- courses, training packages and media materials addressing prejudices and hostile attitudes
- opportunities to discuss xenophobia and racism.
4. Combating discrimination

To produce changes in people's behaviour rather than trying to change people’s attitudes

• the introduction of fair recruitment and selection procedures, and training on how to operate these
• training for managers on how to comply with anti-discrimination legislation
• anti-harassment policies and training
• disciplinary measures against racism and discrimination
5. Equal opportunities policies with positive action

A combination of the other approaches in a general equal opportunities package

- an equal opportunities statement for the organisation,
- a handbook for employees setting out the policy’s intentions and procedures
- a target, such as the long-term aim of reflecting the ethnic mix of the local population in the workforce
- monitoring of the ethnic background of the workforce.
Positive action

Initiatives over and above the simple provision of equal treatment, and the production of a 'level playing field' through removing discriminatory barriers

- Whereas equal treatment would mean treating people who apply for jobs without discrimination
- positive action means doing something extra for previously excluded minorities, something you are not doing for the majority
6. Diversity management

• “The basic concept of managing diversity accepts that the workforce consists of a diverse population of people. The diversity consists of visible and non-visible differences which will include factors such as sex, age, background, race, disability, personality and workstyle.

• It is founded on the premise that harnessing these differences will create a productive environment in which everybody feels valued, where their talents are being fully utilised and in which organisational goals are met”

Dimensions of a diversity management policy

- ‘Race’ / ethnicity
- Gender
- Age
- Sexual orientation
- Physical ability
The end of the ‘melting pot’ metaphor & assimilation

• "At the workplace (…) the melting pot has been more than a metaphor. Corporate success has demanded a good deal of conformity, and employees have voluntarily abandoned most of their ethnic distinctions at the company door."

Now organisations are changing their cultures and beginning to apply more emphasis to valuing and managing diversity mainly because they have a greater understanding of the significant role that diversity will play in their future competitive and organisational success.

Benefits of diversity management

● Access to talent
  ● Easier to recruit labour
  ● Reduces excessive labour turnover and absenteeism

● Sales
  ● Sales to cultural minority groups
  ● Access to international markets

● Work groups
  ● Promotes team creativity and innovation
  ● Improves problem solving, decision making

● Improves the public image

● Reduces risk of unlawful practices
Fire service 'sexist, racist and homophobic'

Quality of service's life-saving work not reflected in internal culture

The Fire Service has been branded institutionally sexist, racist and homophobic in a scathing report revealing prejudice throughout the service in England and Wales.

The overwhelmingly white, male staff believed women were not up to doing "a man’s job", black firefighters faced "routine name-calling" and homosexuality was a taboo subject, according to the Fire Service Inspectorate.
Factors stimulating diversity management

- Demographic shifts
- Migration/Markets
- Growth of service sector
- Organisational changes
- Globalisation
- Equality measures/Identity politics
Equality measures

US
• Civil Rights Act
• Equal Employment Opportunity
• Affirmative Action

EU
• Racial Equality Directive
Identity politics
US – European differences

- Historical context
- Size of minority ethnic populations
- Size of companies
- Strength of legislation
$176 million racial discrimination lawsuit - 1996
Texaco settlement: the results

1. Senior managers must promote diversity
2. Diversity training for all employees
3. Recruitment pool expanded (40 universities)
4. Criteria for hiring and promotion publicised
5. Management bonuses tied to diversity targets
6. Promotions panels include 1 minority and 1 woman
7. Independent outsider for dispute mediation
European Commission: *The Business Case for Diversity: Good Practices in the Workplace, 2005*

- European Business Test Panel (EBTP)
- Around 3000 businesses from 25 EU Member States, plus Norway
- 798 responses, a 26.6% return
- Almost ½ of these ‘engaged in promoting diversity or integration’
- Highest scoring benefit “resolving labour shortages and recruiting and retaining high quality staff”
European Commission: *The Business Case for Diversity: Good Practices in the Workplace, 2005*

- Within the main survey, a ‘Good practice’ survey
- 121 responses from around 3000 questionnaires
- 19 case studies of good practice selected for Annex
- Largest number from UK, followed by (in order) Spain, Germany, Belgium, and then France, the Netherlands & Sweden
Conclusions

• “Companies are making steady progress in the implementation of diversity and equality policies in Europe.”

• “It is reasonable to infer that recent EU antidiscrimination legislation has had a considerable impact in promoting action in this field.”
European Commission: *The Business Case for Diversity: Good Practices in the Workplace, 2005*

Reservations:

- Main survey: Over ½ of the ¼ that responded had no diversity initiatives.
- Good practice survey: only 9 of the 19 cases included ethnicity as one of the criteria of the policy (4 of the 5 UK cases included ethnicity; none of the 3 German cases did).
- In general, from the survey, “most corporate diverse city initiatives were still mainly focused on gender equality issues.”
- The level of responses and good practice submissions received from companies based in the new EU member states and from southern Europe was relatively low. (Main survey: only 7% were from countries of southern Europe.)
Factors stimulating diversity management

• Demographic shifts
• Migration/Markets
• Growth of service sector
• Organisational changes
• Globalisation

• Equality measures/Identity politics
«Those who stress universal trends often underplay cultural differences in their search for similar patterns across societies, whilst those who stress divergence ... give a greater emphasis to the impact of culture.»
Cultural/identity elements of diversity management policies

Allowances are made for specific religious or cultural needs, or recognising ethnic/minority identity

- the recognition of religious restrictions on diet in company canteens,
- allowing workers to celebrate religious holidays other than Christian ones
- The provision of prayer rooms
- allowing the wearing of certain items of clothing, such as the headscarf or trousers for women, or the turban for Sikh men.
- the use of literature in minority languages
- advocacy, network or support groups – (US: African American, Asian Americans, Hispanics, etc.)
Responses to immigration and ethnic diversity

• Differential exclusion (Gastarbeiters)

• Assimilation

• Pluralism (multiculturalism)

  • Castles, Stephen  ’How nation states respond to immigration and ethnic diversity’ New Community vol. 21 no. 3, 1995, p 293-308
Definitions

• **Multiculturality**: The existence of several cultural or ethnic groups with distinct identity and traditions within a society

• **Multiculturalism**: A broad set of mutually reinforcing approaches or methodologies concerning the incorporation and participation of immigrants and ethnic minorities and their modes of cultural/religious difference

  *(Vertovec & Wessendorf 2010)*
Multiculturalism

implies mutual tolerance and rights to preserve aspects of cultural heritage and language, to maintain religious and cultural institutions, and to engage in religious and cultural practices, in the context of equal treatment and equality before the law.
Multicultural policies

1. Parliamentary affirmation of multiculturalism
2. Multiculturalism in school curriculum
3. Ethnic representation/sensitivity in the mandate of public media
4. Exemptions from dress codes etc.
5. Allowing dual citizenship
6. Funding ethnic group organisations’ cultural activities
7. Bilingual education or mother tongue instruction
8. Affirmative action

Banting, K. and Kymlicka, W. ‘Do Multiculturalism Policies erode the Welfare State?’ Queens University, Canada, 2004
Strength of multicultural policies

- **Strong:** Australia, Canada
- **Modest:** Belgium, Netherlands, Portugal, Sweden, UK, US
- **Weak:** Austria, Denmark, Finland, France, Italy, Germany, Greece, Norway, Spain, Switzerland

Banting, K. and Kymlicka, W. ‘Do Multiculturalism Policies erode the Welfare State?’ Queens University, Canada, 2004
Pillarisation in the Netherlands

- Catholic
- Protestant
- General - Socialist & Liberal

Schools: Catholic
        Protestant
        Jewish
        Muslim
        Hindu
Swedish constitution 1974

«Various groups defined through language, ethnicity and religion should be supported in order to maintain their cultural heritage and identities.»
«not as a flattening process of assimilation but as equal opportunity, accompanied by cultural diversity, in an atmosphere of mutual tolerance.»

UK Home Secretary, 1968
“The principle of French policy is to be ‘colour blind’. No ‘minority’ policies exist, nor the very idea of minorities. According to this approach, multiculturalism or ethnic cultures should remain in the private sphere, and should not be recognised in the public domain.”

France: ‘Cultural imperialism’:

the American imposition of the word ‘minority’ with all its unstated assumptions and pre-suppositions that ‘categories cut out from within a given nation-state on the basis of “cultural” or “ethnic” traits have the desire or the right to demand civic and political recognition as such’.

Germany

The idea of cultural diversity – describing an immigration society that is made up of citizens with different cultural heritages and religions – is hardly used at all in the political sphere.

Because of its link to the idea of multiculturalism, diversity has likewise been rejected by politicians throughout the last decade.

_Tolerance Discourses and Cultural Diversity Challenges in Germany_  
Nina Mühe, ACCEPT PLURALISM project: www.accept-pluralism.eu
"Should there be a ban on wearing headscarves in public places?": agree

- France 78 %
- Germany 54 %
- UK 29 %

Pew Global Attitudes survey, 2005
Conclusion 1

Whilst there are pressures for convergence in diversity management practices in the long term, it seems that national differences are useful for understanding the divergencies in the short term.
Political criticisms

'Sharia law will undermine British society,' warns Cameron in attack on multiculturalism
Daily Mail, 26 February 2008

Multiculturalism in Germany has 'utterly failed', claims Chancellor Angela Merkel
Daily Mail, 18 October 2010

Nicolas Sarkozy joins David Cameron and Angela Merkel view that multiculturalism has failed
Daily Mail, 15 October 2011
In health our overall drive to provide greater patient choice will include more tailored services to meet the needs of different cultural and political groups.

As youth services and school partnerships are developed, we will improve opportunities for young people of all backgrounds (…) to develop an inclusive sense of British identity alongside their other cultural identities.

We also expect museums, galleries and community cultural programmes to play an increased role in promoting an understanding of, and celebrating, the diverse elements of our local and national society.

More broadly, health services need to be sensitive to the cultural backgrounds of all patients.

Today, Britishness encompasses the collective contribution diverse communities make to the country. People should not have to choose between their British identity and other cultural identities. They can be proud of both.
December 2012
«In many ways this retreat from and open hostility to multiculturalism is, on examination, an exercise in avoiding using the term ‘multiculturalism’ rather than moving away from the principles of multiculturalism altogether.»

McGhee 2008: 85, cited in Vertovec and Wessendorf 2010
• «... it can be observed that certain countries claim to have universalistic principles but are, as a result of the actual process of the management of diversity, inevitably obliged to take into account the specificities of various populations.»

Schnapper et al. 2003, p.17
A typology of discrimination?

1. Racist discrimination
2. Statistical discrimination
3. Societal discrimination
4. Indirect discrimination
5. Past-in-present discrimination
6. Side-effect discrimination
7. Opportunist discrimination
8. Legal discrimination
9. Institutional discrimination