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Policy Brief - UK

The project aims	EMILIE PROJECT OVERVIEW <p>EMILIE examines the migration and integration experiences of nine EU Member States and attempts to respond to the new challenges that multiculturalism is facing in Europe in the early 21st century. EMILIE studies three important areas: Education; Discrimination in the workplace; Voting rights and civic participation, in Belgium, Denmark, France, Germany, Greece, Latvia, Poland, Spain and the UK. EMILIE aims to:</p> <ul style="list-style-type: none">• track the relationship between migration-related diversity and citizenship, i.e. multicultural citizenship, across these EU countries; and• identify whether multicultural citizenship is emerging in Europe, and if so what distinctive patterns and types can distinguished.
Case studies	EMILIE conducted three policy-related case studies in each country. The first set of case studies focused on education policy and the measures and practices adopted in dealing with cultural diversity in secondary education. The second set of case studies assessed the implementation of the EU 2000 Anti-Discrimination Directives in the different national contexts. And the third set of case studies investigated voting rights and overall issues of political participation and representation of migrant communities and ethnic minorities in the countries studied.
Definitions	(Multicultural) Citizenship: The notion of citizenship requires a self-governing political community in which individuals have rights and correlative duties enforced by law but are likely to also have a sense of shaping and being shaped by a public space that goes beyond law and politics. Multicultural citizenship debates ask how citizenship can be fully enacted for and by individuals that are culturally diverse.
Methods, data and period of reference	Each case study focuses in the last twenty year period (from 1989 till today). Data collected include policy documents, media coverage, scholarly studies, statistical data, qualitative interviews with key informants, and where it has been possible discussion groups with civil society actors and policy makers.
Focus	The project is concerned with migration-related cultural diversity and not with historical, native ethnic minorities. Special attention is paid to religious diversity and issues concerning Muslim migrants as their integration in European societies has been approached as increasingly challenging in these EU Member States.

Main findings

- Public policy analysts concerned with the welfare of Britain's migration related minorities have argued that the broad development of Britain's anti-discrimination legislation has sometimes been piecemeal and is often inconsistent.
- That this is acutely and disproportionately felt by some minorities more than others is a complaint frequently made by a number of Muslim organisations.
- The original legal approach to anti-discrimination in Britain was the statutory tort of unlawful discrimination (created by the Sex Discrimination Act 1975 and Race Relations Act 1976).
- This legislative step grafted an important collective value (non-discrimination on the grounds of sex and race) on to the existing private law structure.
- Subsequent developments, especially at the EU level, have made this 'public function' of discrimination law more explicit.
- Most importantly, UK discrimination law has had to accommodate the provisions of the European Convention on Human Rights such as the equality provision in Article 14 or the right to privacy in Article 8.
- These developments have led to what is sometimes described as the 'constitutionalising' of discrimination law that proved to be catalyst in shaping recent changes to anti-discrimination measures.
- The RED directives [i.e. the Racial Equality directive (2000/43/EC of 29/06/2000) and the Employment Equality directive (2000/78/EC of 27/11/2000)] have prompted a harmonisation of different equality strands. Now the policy aim is addressing 'intersectional' discrimination – this development has not led, however, to an abandonment of non-discrimination traditions that are sensitive to ethnic and racial particularity.

Anti-discrimination policy

British citizenship has never conferred a formal or constitutional right to non-discrimination:

- Since the introduction of Human Rights Act (1998) created provisions compatible with the European Convention on Human Rights (ECHR), non-citizens too have been afforded a basic level of protection from discrimination.
- It nevertheless remains the case that it is specific anti-discrimination measures that have traditionally offered the most robust protections.
- Measures were developed in response to migration related diversity, in a way that gave specific emphasis upon how society can achieve fair treatment for different groups. This means that British anti-discrimination frameworks have tried to address the rights of distinct groups as well as their modes of interaction, and so are not merely concerned with the rights of individuals.
- Key examples of these anti-discrimination frameworks include the Sex Discrimination Act 1975 and Race Relations Act 1976 as amended in 2000.
- In the case of the latter, all public authorities have a general duty to promote race equality. This requires them, in particular, to eliminate racial discrimination, ensure equality of opportunity, and promote good 'race relations' through such things as outreach work and diversity awareness training.
- There are also specific duties such as the implementation of a written policy on race equality; an assessment of the impact of new and current policies on ethnic minority staff, students and other service users; the monitoring of recruitment and progression of ethnic minority staff and students; and monitoring grievance, disciplinary, appraisal, staff development and termination procedures by ethnicity.
- The Secretary of State is also empowered to impose specific duties on key, listed public authorities. Broadly, these selected authorities must publish a Race Equalities Scheme and meet specific employment duties (the scheme is effectively a strategy and action plan).

A forthcoming Single Equality Act (SEA) is expected to combine all UK equality enactments and so to provide comparable protections across all equality strands.

- Those explicitly mentioned in a previous Equality Act (2006) included age; disability; gender; proposed, commenced or completed gender reassignment; race; religion or belief and sexual orientation.
- This act is also particularly noteworthy because it is probably the first occasion on which equality and diversity have been expressly linked in an anti-discrimination act, and are presented as a blend of traditional non-discrimination obligations, substantive equality goals around equal participation, and statutory duties to promote respect for diversity, human dignity and human rights.
- It remains the case, however, that as yet there is no proposed statutory duty on religion. Given that Muslims are omitted from the statutory duty required by Race Relations legislation, there is a concern that public authorities in which Muslims reside will not be required to proactively take the needs of Muslim communities into account.

Bodies responsible for implementing anti-discrimination policy

A new statutory equality body, the Equality and Human Rights Commission (EHRC) has been created to integrate guidance and support to individuals and businesses and help ensure a coherent approach to equality issues affecting the seven grounds of age, race, gender, disability, sexuality, religion, and human rights. This amalgamates the work of previous organizations and seeks to address matters of 'intersectionality' through the following objectives:

- Promote equality on an integrated basis, taking account of the full range of barriers to equality and the needs of all groups covered by equality legislation; engage with government, public service providers and business and be heard by the public; understand the commonalities of discrimination and develop and promote strategies for addressing them across the board.
- Promote good practice to business, service providers and others in mainstreaming equality across the breadth of their operations. Businesses are increasingly addressing all facets of diversity in their human resources management and broader business strategies. Support from the new statutory equality body needs to match upcoming challenges and play a strong role in driving cultural change.
- Serve clients through providing:
 - A single point of contact for individuals, providing information, advice and guidance on their equality rights that reflects their real life experience.
 - A single point of advice to employers and service providers covering all discrimination grounds; as well as support and partnership to other organisations providing advice in the field of equality and discrimination.
 - More effective support for individuals facing discrimination, especially discrimination on multiple grounds
 - A better basis for fostering local networks focused on the issues on the ground.
- Become a centre of comprehensive knowledge and expertise, making best use of specialist research and legal capabilities; be a learning organisation, able to innovate, pilot, transfer success and be flexible in responding to new challenges.
- Have the ability to engage with all stakeholders and NGOs, dealing with the full range of issues of concern; and make partnership working a key tool.

Main problems in anti-discrimination policy implementation

There has been a tension between the EHRC and Muslim communities on a number of key issues concerning the public recognition of Muslim identities, not least over the lack in desire for this new body to address issues of anti-Muslim discrimination.

- Some Muslim organisations such as the Islamic Human Rights Commission (IHRC) point to a loss of confidence in the new body.
- The EHRC is criticized for an economy of scales approach that often culminates in operational withdrawal from specific to precedent cases.
- There is evidence that some Muslim bodies are increasingly supporting cases where the claimant is not otherwise assisted because the complaint concerns anti-Muslim discrimination outside the sphere of employment.
- To the above criticisms advocates of the new commission maintain that in redressing the issue of multiple discrimination, only a single equalities commission is able to arbitrate with even-handedness, while pursuing several issues of discrimination simultaneously.
- Fitting the enforcement of the different strands of discrimination together could deepen the public policy understanding of equality and non-discrimination, so that by drawing upon examples of 'best practice' from each commission, an amalgamated body might craft a better method of implementing and monitoring both the old and newly formulated anti-discrimination protections that have emerged from Article 13.

Recommendations for Reforming the Legal Framework

- There is a complementary relationship between non-discrimination and equality of opportunity, and there are potentially enough grounds in the Equality Act (2006) to allow the EHRC to conceive non-discrimination in a substantive sense.
- There is a need, however, to create a single more serviceable instrument out of the several texts of the existing legislation and other provisions.
- This is characterised as a “patchwork” approach which consists of three elements: (i) the choice of material, (ii) the care in construction, and (iii) the harmony achieved by the overall design.
Taking each in turn: (i) materially this instrument should include legislation from the Equal Pay Act (1970), the Sex Discrimination Act (1975), and the Race Relations Act (1976); (ii) in construction there should be a basic unity across definitions of discrimination including indirect discrimination and burdens of proof, (iii) its design should be more comprehensible but not simply a compilation of a large number of discrimination rights without any added overall purpose.
- In sum, this single instrument should seek to achieve a simple and accessible code which will promote real equality and be flexible allowing for change as it happens.
- Genuine harmonisation, however, should entail extending protection from discrimination in goods, facilities and services on the grounds of age, sexual orientation and, of course, religion and belief.
- Indeed, full parity would require mapping the race equality duty discussed earlier onto each of the other grounds.

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For more information on the Social Sciences and Humanities Research Programme of the European Commission please see:

http://ec.europa.eu/research/social-sciences/index_en.html