



FAIRFORWARD:
SHAPING INCLUSIVE WORKPLACES ACROSS EUROPE
Legal Framework Comparative Analysis Report
MALTA
General Workers Union

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Abstract

This report, forming part of the ‘*Fairforward: Shaping Inclusive Workplaces across Europe*’ project presents a comparative analysis of the anti-discrimination employment legal frameworks found on an European Union level, specifically the EU Directives 2000/78/EC and 2000/43/EC and the main equality and legislative frameworks on the national level. The comparative analysis reveals strong national alignment with EU frameworks, with Malta having effectively transposed all EU minimum standards concerning discrimination based on age, disability, religion/belief, sexual orientation, and racial/ethnic origin. Notably, Malta's legislative and regulatory mechanisms surpass these minimum safeguards, by offering broader protections and more progressive legislative provisions. Despite Malta's robust legislative foundation, persistent disparities and challenges continue to afflict disadvantaged groups within the Maltese labour market, highlighting a significant gap between enshrined legal principles, and their actual implementation and lived experience of many workers. Recommendations for enhanced legal protection in employment for disadvantaged groups, include initiatives aimed at strengthening positive action, enhancing enforcement and access to justice, ensuring transparency in migrant worker procedures, and addressing intersectional forms of discrimination.



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Introduction

Effective legal frameworks are fundamental to combating discrimination and fostering inclusive workplaces. Legal frameworks are not merely sets of rules; they serve as the bedrock of employment relations, articulating societal values of fairness, dignity, and equality of opportunity. Comprehending these frameworks is therefore crucial, as they provide the essential legal foundation upon which fair employment practices are built, individual rights are protected, and avenues for redress are established. Without clear legislative guidance, discriminatory practices can persist unchecked, in violation of fundamental human rights and the exacerbation of social inequalities.

This report addresses this imperative by undertaking a comparative analysis between two pivotal European Union anti-discrimination directives—the Employment Equality Directive (2000/78/EC) and the Racial Equality Directive (2000/43/EC)—and Malta's corresponding national legal provisions governing equality and anti-discrimination in employment. The core objective of this exercise is to evaluate the extent of Malta's alignment and interplay with these established EU standards and identify commonalities and differences between the two frameworks. It also aims to pinpoint areas where legislative reform could lead to greater equality and inclusion within the field of employment.

This comparative analysis complements the objectives of the '*Fairforward*: Shaping Inclusive Workplaces Across Europe' project being led by the General Workers Union, Malta in collaboration with various other workers' unions across Europe. This initiative is directed at contributing to:

- raised awareness of workers organizations of the EU's anti-discrimination directives and the implementation status in participant countries;
- strengthened capabilities to use the collective bargaining by workers organizations to assist workers from vulnerable groups;
- enhanced cooperation of workers organizations for the development of measures to improve the status of the target group; and
- increased awareness of the problems relating to the target groups.

Following this brief explanation of the scope of the document in line with the aims and objectives of the '*Fairforward*: Shaping Inclusive Workplaces Across Europe' project, the report offers a contextual background to the study by examining the existing employment and anti-discrimination legal frameworks on the national and EU landscape. The report then compares the national anti-discrimination framework to the EU Employment Equality Directive (2000/78/EC) and the Racial Equality Directive (2000/43/EC) to highlight gaps and areas for improved alignment of national frameworks with EU standards. This analysis is structured in terms of the similarities and differences of national legislation as compared to EU Directives. In line with the findings arising from this comparative analysis, this report presents recommendations to enhance the effectiveness of legal frameworks for improving the inclusion of disadvantaged groups in the labour market.



Malta's Equality and Anti-Discrimination Legal Framework:

Malta's legal protection on equality and anti-discrimination in employment is robust, primarily rooted in its Constitution, transposed EU Directives, and specific national legislation. This framework aims to combat discrimination on various grounds with a view of promoting a fair and inclusive workplace.

The Constitution of Malta lays the foundational principles, specifically in Article 32, which prohibits discrimination on grounds such as race, place of origin, political opinions, colour, creed, or sex and provides the bedrock upon which more detailed legislation is built.

The most significant piece of national legislation in this domain is the Equality Act (Cap. 577 of the Laws of Malta), which fully transposed key EU anti-discrimination directives into Maltese law. This Act extends protection beyond the traditional constitutional grounds, explicitly prohibiting discrimination in employment (and other areas) based on:

- Sex/Gender: Including pregnancy, maternity, and gender reassignment.
- Sexual Orientation: Protecting against discrimination based on a person's sexual orientation.
- Gender Identity: Safeguarding individuals based on their gender identity.
- Age: Protecting both younger and older workers from age-based discrimination.
- Religion or Belief: Ensuring individuals are not discriminated against based on their faith or lack thereof.
- Race or Ethnic Origin: Covering racial and ethnic discrimination.
- Disability: Requiring reasonable accommodation for persons with disabilities and prohibiting discrimination based on their condition.

The Equality Act makes direct and indirect discrimination, harassment, and victimization unlawful in relation to employment conditions, access to employment, promotion, training, and dismissal. It also establishes the Human Rights and Equality Commission as the national equality body, replacing the National Commission for the Promotion of Equality and expanding its mandate to cover all grounds of discrimination. The Human Rights and Equality Commission is empowered to investigate complaints, conduct inquiries, and issue opinions on matters of equality and non-discrimination.

Complementing the Equality Act, the Employment and Industrial Relations Act (Cap. 452 of the Laws of Malta) provides the general legal framework for employment relationships and incorporates specific anti-discrimination provisions. While the Equality Act offers a broader scope, the Employment and Industrial Relations Act reinforces the principles of equal treatment in areas like recruitment, working conditions, pay, and termination. It ensures that collective agreements and employment contracts do not contain discriminatory clauses and outlines redress mechanisms for employees who experience discrimination.

Additional specific legislation further strengthens protection for distinct groups of people. The Equal Opportunities (Persons with Disability) Act (Cap. 413 of the Laws of Malta) specifically addresses discrimination against persons with disabilities. It mandates reasonable

accommodation in the workplace and establishes a quota system (2%) for businesses with 20 or more employees to engage persons with disabilities, aiming to increase their participation in the labour market. While this act is subsumed to some extent by the broader Equality Act, it provides specific mechanisms and a dedicated commission (Commission for the Rights of Persons with Disability) for monitoring and enforcement concerning disability.

The Promotion of Equality (Gender Identity, Gender Expression and Sex Characteristics) Act (Cap. 555 of the Laws of Malta) specifically addresses discrimination on the grounds of gender identity, gender expression, and sex characteristics. This progressive law further strengthens protections for transgender, intersex, and gender non-conforming individuals in all spheres, including employment.

Malta's accession in the European Union means its legal framework is significantly shaped by EU law. Directives such as the Equal Treatment Directive (2006/54/EC), the Race Equality Directive (2000/43/EC), and the Employment Equality Directive (2000/78/EC) have been fully transposed into national law, primarily through the Equality Act. Malta is in the process of transposing the 'EU Pay Transparency Directive' (EU 2023/970), through the 'Transparent and Predictable Working Conditions Regulations' (Legal Notice 112 of 2025) which should lead to more robust monitoring of pay equity by mandating salary range and pay gap disclosures consistent with the principle of equal pay for work of equal value. This ensures a well-founded framework of protection in line with broader European principles.

Thus, Malta has established a comprehensive and evolving legal framework to combat discrimination and promote equality in employment. While legislation is robust, continuous efforts are needed to ensure effective implementation, address emerging forms of discrimination, and bridge the gap between legal provisions and the lived experience, particularly of disadvantaged groups in the workplace.

EU's Equality and Anti-Discrimination Legal Framework:

The European Union has established a robust framework to combat discrimination, with two cornerstone directives specifically targeting equality in employment and protection against racial discrimination: the Employment Equality Directive (2000/78/EC) and the Racial Equality Directive (2000/43/EC). These directives set common minimum standards across all Member States, which must be transposed into national law.

The Employment Equality Directive (2000/78/EC) aims to establish a general framework for equal treatment in employment and occupation. Its primary objective is to combat discrimination on four specific grounds: religion or belief, disability, age, and sexual orientation. The scope of this directive covers all aspects of employment and occupation, including conditions for access to employment, self-employment, and occupation (including selection criteria and recruitment conditions); access to vocational guidance, training, and retraining; employment and working conditions, including dismissals and pay; and membership of, and involvement in, workers' and employers' organizations.

Key concepts defined within this directive include direct discrimination (treating one person less favourably than another in a comparable situation on a prohibited ground) and indirect discrimination (an apparently neutral provision, criterion, or practice that would put persons on a prohibited ground at a particular disadvantage, unless objectively justified by a legitimate aim). It also prohibits harassment, defined as unwanted conduct creating an intimidating or hostile environment, and victimisation resulting from less favourable treatment of a person because they have asserted their rights such as raising a discrimination under the Directive. A crucial provision for disability is the obligation for employers to provide reasonable accommodation to enable persons with disabilities to access or advance in employment, unless it imposes a disproportionate burden. Limited exceptions exist for genuine occupational requirements or legitimate aims, such as specific age requirements for certain roles.

The Racial Equality Directive (2000/43/EC) focuses specifically on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. While it also covers employment and occupation, its scope is broader than the Employment Equality Directive, extending to areas such as social protection, education, and access to goods and services. Similar to the Employment Equality Directive, it prohibits direct and indirect discrimination, harassment, and victimisation based on racial or ethnic origin. This directive also explicitly permits positive action measures designed to prevent or compensate for disadvantages linked to racial or ethnic origin, provided they are necessary and proportionate.

Both directives share several common provisions that are vital for their effective implementation. They establish minimum standards, enabling Member States to adopt more favourable national provisions. The directives introduce a shift in the burden of proof, meaning that once a person establishes facts from which discrimination may be presumed, it is for the respondent to prove that there has been no breach of the principle of equal treatment. Furthermore, Member States are required to designate independent bodies for the promotion of equal treatment and to ensure that victims of discrimination have access to effective, proportionate, and dissuasive remedies. They also encourage dialogue with social partners to foster non-discriminatory practices.

These two directives form the bedrock of the EU's anti-discrimination policy, providing a harmonized and comprehensive legal framework to ensure equal opportunities and treatment for all individuals in employment and beyond, based on fundamental human rights principles. Their weight however primarily resides in their effective transposition and alignment into national legislation.

Comparative Analysis: Malta and EU Equality and Anti-Discrimination Legal Frameworks

Malta, as an EU Member State, has transposed the core principles of the EU's equality and anti-discrimination directives into its national legal framework. This comparative analysis will highlight the alignment and specific nuances between the EU's Employment Equality Directive (2000/78/EC) and Racial Equality Directive (2000/43/EC) and Malta's domestic legislation,



primarily the Equality Act (Cap. 577), the Employment and Industrial Relations Act (Cap. 452), the Equal Opportunities (Persons with Disability) Act (Cap. 413), and the Promotion of Equality (Gender Identity, Gender Expression and Sex Characteristics) Act (Cap. 555).

The comparative analysis was systematically carried out by examining key thematic areas, including the specific grounds of discrimination covered, the scope of application, key concepts and provisions, and the enforcement and redress mechanisms across both EU and Maltese legal frameworks.

Grounds of Discrimination Covered

The Employment Equality Directive (2000/78/EC) and the Racial Equality Directive (2000/43/EC) mandate Member States to prohibit discrimination in employment based on religion or belief, disability, age, sexual orientation, and racial or ethnic origin. Malta's anti-discrimination framework directly transposes the EU's mandated grounds, whilst explicitly broadening protection on other grounds of discrimination. The Equality Act extends protection to sex, encompassing pregnancy, maternity, and gender reassignment. Malta has taken a pioneering role in explicitly legislating on gender identity, a ground not specifically listed in the 2000 EU Directives, further solidified by the Promotion of Equality (Gender Identity, Gender Expression and Sex Characteristics) Act (Cap. 555).

Further diversification of protected grounds is seen in other national laws. The Employment and Industrial Relations Act (Cap. 452) includes prohibitions based on marital status, pregnancy/potential pregnancy, sex, colour, religious conviction, political opinion, and trade union membership. The Equal Opportunities (Persons with Disability) Act (Cap. 413) provides disability protections and introduces a 2% employment quota for larger employers, actively promoting inclusion.

Thus, Malta's national legal framework for anti-discrimination not only faithfully implements the mandatory grounds stipulated by key EU directives but provides added thrust by extending protections to a significantly broader array of characteristics. This is particularly evident in its pioneering legislation on gender identity, gender expression, and sex characteristics, as well as the more expansive coverage found in other complementary national laws and proactive measures like disability quotas.

Scope of Application

The scope of anti-discrimination provisions varies between EU directives and Maltese national law, with Malta often adopting a broader and more integrated approach. The EU Employment Equality Directive (2000/78/EC) specifically targets discrimination solely within the realm of employment and occupation. In contrast, the EU Racial Equality Directive (2000/43/EC) has a more expansive reach, extending its prohibitions to employment, social protection, social advantages, education, and access to goods and services.

Malta's legal framework generally aligns with this broader scope, and in many instances, extends it comprehensively across all protected grounds. The Equality Act (Cap. 577) reflects the wide application of the Racial Equality Directive, prohibiting discrimination not only in employment but

also in crucial areas such as education, access to goods and services, and social protection for all grounds covered. This signifies Malta's deliberate choice to apply a comprehensive anti-discrimination framework consistently across various facets of life, rather than limiting broader protection solely to racial or ethnic origin. While the Employment and Industrial Relations Act (Cap. 452) naturally concentrates on the employment context, it complements the wider remit of the Equality Act. Furthermore, the Equal Opportunities (Persons with Disability) Act (Cap. 413) specifically expands protections for persons with disabilities beyond employment, ensuring equal access to public facilities, goods, and services, demonstrating a holistic commitment to inclusivity.

Key Concepts and Provisions

Both EU directives and Malta's national legislation share fundamental key concepts and provisions in their approach to combating discrimination. A core similarity lies in the definitions of prohibited conduct: both the Employment Equality Directive (2000/78/EC) and the Racial Equality Directive (2000/43/EC) explicitly define and prohibit direct discrimination, indirect discrimination, harassment, and victimisation. Maltese law, notably through the Equality Act (Cap. 577) and the Employment and Industrial Relations Act (Cap. 452), faithfully incorporates these same definitions, guaranteeing a consistent understanding of discriminatory acts. This ensures that a person treated less favourably due to a protected characteristic (direct discrimination) or affected by a seemingly neutral provision that disproportionately disadvantages them (indirect discrimination), or subjected to unwanted conduct creating a hostile environment (harassment), or retaliated against for asserting their rights (victimisation), can seek recourse under both legal systems.

Furthermore, a crucial common principle is the requirement for reasonable accommodation for disability. The EU directives mandate that appropriate measures be taken to enable persons with disabilities to access and participate in employment and training, unless such measures impose a disproportionate burden. Malta fully mirrors this obligation, embedding the duty to provide reasonable accommodation within both the Equality Act and, more specifically, the Equal Opportunities (Persons with Disability) Act (Cap. 413), offering dual legislative backing.

Another shared concept is the allowance for genuine occupational requirements. Both EU and Maltese law recognize that in very limited circumstances, an attribute typically protected against discrimination may be a legitimate and determining requirement for a specific job, provided the objective is legitimate and the requirement proportionate. This ensures a pragmatic balance between non-discrimination principles and the inherent demands of certain occupational roles.

A critical procedural safeguard fully adopted by Malta is the shift in the burden of proof in discrimination cases. Originating from EU directives, this mechanism recognizes the inherent difficulty victims face in proving discrimination. Once a complainant establishes facts from which discrimination may be presumed, the burden shifts to the respondent to prove that no discrimination occurred, thereby significantly enhancing the effectiveness of legal remedies and access to justice for victims.

Enforcement and Remedies

Both EU directives and Maltese law prioritize robust enforcement mechanisms and effective remedies against discrimination. EU directives mandate Member States to establish independent bodies dedicated to promoting equal treatment and ensuring that available remedies are effective, proportionate, and dissuasive. In alignment with these requirements, Malta has established the Human Rights and Equality Commission under the Equality Act, which functions as the national equality body with powers to investigate complaints and issue opinions. Furthermore, the Industrial Tribunal plays a crucial role in adjudicating employment discrimination cases, drawing upon the Employment and Industrial Relations Act and other pertinent subsidiary legislation. The remedies available under Maltese law, including financial compensation for damages, are designed to be both effective and dissuasive, thereby directly reflecting the core principles set out in the EU directives.

In summary, Malta's anti-discrimination legal framework in employment largely aligns with the EU's Employment Equality and Racial Equality Directives. In terms of similarities, both frameworks cover common grounds of discrimination in employment, including age, disability, religion or belief, sexual orientation, and racial or ethnic origin. They define and prohibit direct and indirect discrimination, harassment, and victimisation. Both also include the requirement for reasonable accommodation for persons with disabilities and implement the shift in the burden of proof in discrimination cases. Enforcement bodies and provisions for effective remedies are also mandated by both legislative frameworks. However, Malta's framework is notably more expansive in certain areas. Its Equality Act covers sex/gender (including gender reassignment), which is covered by other EU directives, but also explicitly includes gender identity and gender expression, a more progressive stance than that provided by the EU directives. Furthermore, Malta's Equality Act applies the broad scope of the Racial Equality Directive (covering goods, services, education, etc.) to all protected characteristics, rather than just race/ethnic origin, signifying a more comprehensive approach. Specific national laws like the Equal Opportunities (Persons with Disability) Act also introduce additional provisions like a 2% employment quota, going beyond the EU benchmark.

Thus, Malta's legal framework for equality and anti-discrimination in employment is highly congruent with the EU's Employment Equality and Racial Equality Directives. Malta has not only fully transposed the directives' minimum standards but has, in several instances (e.g., specific protection for gender identity, broader scope of the Equality Act for all grounds), adopted more progressive and comprehensive measures.

Legal Reform: Recommendations

Malta's legal framework for equality and anti-discrimination in employment largely aligns and even surpasses the protection found under EU directives. Despite the strong legislative foundation, persistent disparities and emerging challenges continue to affect vulnerable and marginalized groups within the Maltese labour market, highlighting a gap between these enshrined legal principles and their actual implementation and lived reality for many workers,



particularly disadvantaged groups. It is therefore crucial to enhance the effectiveness of these provisions to ensure the full realization of progressive legal rights for those most susceptible to discrimination in the labour market.

The following legal reform recommendations are aimed at strengthening proactive measures (through positive action for various groups), enhancing enforcement mechanisms and access to justice (including increased penalties and legal aid), ensuring transparency and efficiency in migrant worker procedures, and explicitly addressing intersectional and ‘hidden’ forms of discrimination.

Strengthening Proactive Measures and Positive Action Beyond Disability: While Malta has a commendable 2% quota for persons with disabilities, the legal framework could be enhanced by introducing and actively promoting positive action measures for other underrepresented groups. The EU's Racial Equality Directive specifically permits such measures, and this principle could be expanded.

- **Proposal:** Amend the ‘Equality Act’ to include provisions that legally enable or encourage employers to adopt proportionate positive action measures for specific protected characteristics (e.g., older workers, women in male-dominated sectors, certain migrant groups) where demonstrable historical disadvantage or underrepresentation exists, aiming to actively foster their inclusion rather than merely prohibiting discrimination.

Enhancing Enforcement Mechanisms and Access to Justice for All Vulnerable Groups: Despite existing enforcement bodies like Human Rights and Equality Commission and the Industrial Tribunal, the ‘lived experience’ often falls short of policy intent, particularly for disadvantaged workers and those at risk of discrimination. Legal reforms can aim to make the enforcement process more effective and accessible.

- **Proposal:** Review and potentially increase the dissuasive nature of penalties for discrimination under the Equality Act and Employment and Industrial Relations Act. Legally mandate and promote free legal aid provisions and simplified complaint procedures, ensuring that lack of resources or legal knowledge does not impede certain groups from access to redress.

Grant the Human Rights and Equality Commission stronger proactive powers through legal amendment, such as the ability to conduct own-initiative investigations into systemic discrimination in specific sectors without waiting for individual complaints, and to issue binding corrective orders.

Legal Mandates for Transparency and Efficiency in Migrant Worker Procedures: Procedural barriers in work permits and qualification recognition lead to underemployment and precarity for foreign workers, particularly for third country nationals and asylum seekers.

- **Proposal:** Introduce specific legal provisions, possibly within subsidiary legislation under the Employment and Industrial Relations Act and/or relevant immigration acts, that mandate strict timeframes, clear criteria, and transparent appeal mechanisms for

work permit applications and qualification recognition processes. This would reduce discretion, mitigate exploitation risks, and prevent underemployment, aligning with the principles of fair treatment.

Addressing Intersectional and ‘Hidden’ Discrimination: Discrimination often occurs on multiple grounds simultaneously adding to the complexity and intersectoral disadvantage faced by individuals. While the Equality Act covers multiple grounds, explicitly addressing intersectionality in law can strengthen protection. Similarly, ‘hidden’ groups need clearer avenues for redress.

- **Proposal:** Introduce explicit clauses or authoritative legal guidance within the Equality Act that define and prohibit intersectional discrimination, providing a legal basis for individuals to claim discrimination based on the combination of multiple protected characteristics. Additionally, explore specific legal clarifications or outreach mechanisms to ensure that the protections of the Equality Act fully extend to and are accessible by all ‘hidden’ vulnerable populations, such as individuals with mental health difficulties or those in highly precarious or informal employment.

These recommendations aim to move beyond mere prohibition of discrimination towards a more proactive, accessible, and comprehensive legal framework that genuinely fosters the inclusion of all disadvantaged groups in the Maltese labour market.

Conclusions:

The analysis confirms Malta's strong alignment with the EU's foundational Employment Equality and Racial Equality Directives. Malta has effectively transposed all minimum standards, ensuring comprehensive protection against discrimination based on age, disability, religion/belief, sexual orientation, and racial/ethnic origin. Notably, Malta's framework, particularly the Equality Act, surpasses EU minimums, extending broad protections across various life areas for all characteristics and featuring progressive legislation for gender identity and expression.

However, the mere existence of strong legal frameworks is insufficient if such regulatory provisions are not effectively monitored and rigorously enforced. Robust monitoring mechanisms are vital to identify persistent discrimination and assess the real-world impact of legal provisions. Without diligent enforcement, even the most progressive laws risk remaining aspirational, failing to translate into tangible inclusion and equality in the workplace.

Looking forward, while the national legal framework is robust, continuous efforts are needed. Recommendations aim to translate strong legal provisions into tangible improvements for disadvantaged groups by strengthening positive action measures, enhancing enforcement mechanisms and access to justice for all, ensuring transparency in migrant worker procedures, and explicitly addressing intersectional discrimination to foster a more inclusive labour market.

List of Legal Frameworks:

European Union Legal Frameworks:

- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).
- Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

Maltese National Legal Frameworks:

- Constitution of Malta (Cap. 1 of the Laws of Malta of 1964).
- Employment and Industrial Relations Act (Cap. 452 of the Laws of Malta of 2002).
- Equal Opportunities (Persons with Disability) Act (Cap. 413 of the Laws of Malta of 2000).
- Equality Act (Cap. 577 of the Laws of Malta of 2003).
- Promotion of Equality (Gender Identity, Gender Expression and Sex Characteristics) Act (Cap. 555 of the Laws of Malta of 2015).
- Temporary Agency Workers Regulations (Subsidiary Legislation 452.133 of 2025).
- Transparent and Predictable Working Conditions Regulations' (Legal Notice 112 of 2025)

