

TheMES

Themes on Migration and Ethnic Studies

occasional papers and reprints



31

(2009)

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- the Dutch and the UK Case

REMESO
Institute for Research on
Migration, Ethnicity and Society

TheMES

Themes on Migration and Ethnic Studies

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TheMES No. 31/09

ISSN 1651-8306

Cover: Martin Ålund

Series editors:

Peo Hansen

Tel. +46-11-36 34 23

E-mail: peoha@isv.liu.se

Erik Berggren

Tel. +46-11-36 32 66

E-mail: eribe@isv.liu.se

Editorial Committee:

Erik Berggren

Magnus Dahlstedt

Peo Hansen

Charles Woolfson

Orders:

Eva Renholm

Tel. +46-11-36 32 38

Fax. +46-11-36 30 04

E-mail: evare@isv.liu.se

Address:

Linköping University

ISV-REMESO

SE-601 74 Norrköping, Sweden

Webpage

www.isv.liu.se/remeso

Institutions Matter – Governance Makes Difference

Making of Diversity and Antidiscrimination Policy – the Dutch and the UK Case

Maritta Soinen

Abstract

It is often argued that new forms of governance, such as market and network, undermine the state. The state is handing over powers to supranational level, the EU, to the local level, in the name of decentralisation, and to the administration, to increase the overall effectiveness of provision of public goods. This paper argues that the state however plays a very crucial role, through representing different paths of institutional solutions in policy making. The main question is to what extent and how the institutional setting and the governance tradition of a state affects the process and policy contents in the field of antidiscrimination policies. Here, the Dutch and the UK cases represent two different traditions of policy governance. While the former follows the path of corporatist institutional solution the latter is known for its state-centred pluralistic model. The question is how this affects the formulation of antidiscrimination policy and implementation of the EU antidiscrimination policy. The paper draws on empirical materials such as documentation and interviews, but also research on policy making in the Netherlands and in the UK generally and in particular in the field of ethnic relations. After a short overview of EU legislative developments, the case of the Netherlands will be discussed, followed by an examination of the UK developments.

keywords: antidiscrimination, diversity, policy, governance, corporatism

A new policy for equal rights and diversity

The EU, as a Single Market project has sometimes been viewed as an elite project for European business interests, and EU integration has often been accused of suffering from a democratic deficit. In this perspective, the new EU antidiscrimination legislation which was put into place in 2000, contributes to broadening the value base through adding social values and civil rights to market values. Some have argued that the new anti-discrimination legislation simply incorporates existing international conventions for the protection of fundamental rights and equality which have already been ratified by many of the member states. The position of the Commission has been that the European market values can be readily combined with the international human rights discourse as the economic benefits of the anti-discrimination legislation seem obvious. The legislation does not only contribute to the protection of fundamental rights and freedoms but it reduces the human and financial costs of exclusion (COM 2004/379). In the EU context, the policy of equal rights and anti-discrimination can be understood as a response to the appearance of ethnically diverse labour forces and to the challenge posed by current demographic trends that are expected to lead to severe labour shortages. The EU has sought to tackle the problems of a diverse working life (ethnic and otherwise) through attention to both (business) economic factors and questions of justice and democracy. The legislative command-and-control instruments and prohibitions against discrimination that aim directly to eliminate discriminatory behaviour are combined with a variety of soft measures, including consensus and contract-based arrangements between social partners, guidelines, and regulation through codes of practice, to disseminate knowledge about discriminatory mechanisms and prejudicial attitudes.

How to influence member state policy-making?

The policy development since the late 1980s clearly indicates that legal and administrative institutions exist at the EU level for problem-solving concerning diversity and antidiscrimination in working life. Since year 2000 the comprehensive EU antidiscrimination legislation is in place. What kind of impact could we expect these Community regulations to have on member states? Hypothetically, the EU integration in this policy field - as in any other - can be expected to affect the member states in at least three distinctive ways (Radaelli 2002). First, the EU Community policy contributes to shaping and reshaping *public discourse* and the policy content in the member states. Secondly, it impinges on the national *legislation* which has to be adjusted to the EU standards. Thirdly, it will also have a visible impact on *public administration* where new organisational solutions might be needed in order to meet EU requirements. Finally, we could also argue that the new Community regulations have long-term effects on the political system itself through structuring and restructuring *power relations* in member states through influencing the legitimacy of actors and resource allocation between public bodies, social partners and NGOs, thereby contributing to reshape the workings of the policy-making system (Soininen 2003). 'Goodness of fit' (Cowles, Caporaso & Risse 2001) is the term that has been employed to describe the gap between the EU institutional arrangements in a policy field and those in member states. The larger the gap between the EU policy and the diversity and antidiscrimination policy in a member state, the stronger will be the adaptational pressure. But does the EU policy always oblige member states to adapt?

It has been argued that the domestic impact of an EU policy depends on the EU's choice of '*Europeanisation mechanism*' (Knill 2001). Many EU policies have aimed to influence the opportunity structures in the member states by abolishing domestic rules, regulations and administrative solutions, which have been regarded as barriers for common market activities. This form of regulation, *negative integration*, does not introduce an EU model that member states must adopt. The aim has been to deregulate in favour of the European market. It may not, therefore, be appropriate to talk about these policies as placing adaptational pressure on the member states.

The second main strategy, '*Europeanisation by framing domestic beliefs and expectations*', involves even less pressure. This strategy aims to influence the political climate, the public discourse, and to alter the expectations and perspectives of the domestic actors, and thereby 'softening up' and possibly preparing the member states for future binding regulations. The adaptational pressure is there, but it is not pronounced. Some EU policies, however, articulate clear institutional requirements with which the member states must comply. These policies create concrete adaptational pressures. The mechanism of '*Europeanisation by institutional compliance*' is characteristic of policies for *positive integration*. Consumer protection, environmental protection, and health and safety at work, are all policy areas where binding policy regulations aim to limit the negative effects of market functions. In practice, many EU policies use a combination of these three main mechanisms (Knill 2001).

What kind of policy mode does the EU diversity and antidiscrimination policy represent? Is it reasonable to describe it as putting adaptational pressure on member states, including the Netherlands and the UK?

Antidiscrimination policy consists of different strategies as national antidiscrimination legislation, the EU directives, consensus and contract based arrangements between social partners, and guidelines and initiatives, including regulation through codes of practice. While the legislation represents 'coercive' regulation by law, the soft law regulation consists of less binding voluntary arrangements, such as agreements between social partners on promoting equal opportunities, guidelines for best practices, declarations and other legally non-binding measures. While legislative rules have a direct impact on behaviour, the second mode of regulation, soft measures, primarily aim at influencing attitudes, perspectives and understandings. Equality is promoted by creating opinion in favour of fair treatment. These two modes are often seen as complementary.

In the EU policy making soft law is a central policy instrument. It often relies on policy dissemination through 'best practices', systems of peer reviews, 'naming and shaming', guidelines, and voluntary agreements, to establish a common 'EU appropriate' way of dealing with the policy issue at hand. There exists today a rich body of scholarly work on soft EU governance. For example, in policy areas like social protection and employment, the use of voluntary soft law increased considerably during the 1990s (Landelius 2001, Jacobsson 2001). The Employment and Social Policy relies on Open Method of Co-ordination (OMC), aiming to establish a shared problem understanding, a 'hegemonic discourse' (Haahr 2004), related to language-use and knowledge making (Jacobsson 2004). Hartlapp identifies enforcement, management and persuasion as three distinct implementation policies in the EU Social policy (Hartlapp 2007). Common guidelines and systems of indicators are employed to create shared EU knowledge, to be used in debate, and in managing the diffusion of knowledge (Mosher & Trubek 2003). Here, voluntary governance places limits on the openly coercive

elements of the policy (Velluti 2007). Soft regulation has also played an important role in environmental policy (Brückner et al 2001). Moreover, the fields migration, asylum and in particular the field of integration are in the EU still largely regulated through voluntary policy cooperation.

These are all policy areas where it has been difficult to mobilize support for binding supranational regulations, not least because of considerable differences in national policy traditions. The use of soft governance has made it possible for the EU to take action when not in a position to introduce binding legislation due to lack of powers necessary for coercive measures (Radaelli 2002, Mörth 2004, Jacobsson 2001, Majone 1997, Landelius 2001). It has often appeared to be the only alternative, and consequently, no sharp distinction is made between coercive legislation and almost equally 'binding' soft regulation (Jacobsson 2001). Soft instruments have also been used in the anti-discrimination field, including peer review evaluations, introduction of codes of conduct and campaigns for awareness raising (Soininen 2006b).

The legislative framework

After having 'softened up' the policy field of equal rights and antidiscrimination during 1990s (Soininen 2006a) the EU introduced year 2000 a legislative framework. The legislation prohibits racial and ethnic discrimination in employment, education, social security and health care, access to goods and services, and housing (Council Directive 2000/43/EC), and discrimination in employment on grounds of religion and belief, disability, age and sexual orientation (Council Directive 2000/78/EC). The two directives stress the need to promote 'conditions for a socially inclusive labor market' for the EU in order to be able to achieve the objectives of the EC Treaty, 'in particular the attainment of high levels of employment and of social protection... economic and social cohesion and solidarity.' The member states must meet the minimum standards of the directives but are free to provide higher levels of protection than required by the Community law. Regarding grounds of age and disability, the member states were allowed to have three extra years to comply. For example, the UK Disability Regulations entered in force into October 2004. The optional three years were used for age by the Netherlands, Sweden, the UK, and Germany.

According to the Green Paper from 2004 the directives had required significant changes to national law in all member states, including those that already had comprehensive anti-discrimination legislation. Even greater demands have been put on those member states where the directives have required the introduction of an entirely new, rights-based approach to antidiscrimination, requiring the introduction of new legal concepts, including definitions of direct and indirect discrimination and harassment. Equal rights and antidiscrimination can in comparison with other policy fields be expected strongly to challenge cultural and national understandings as base for identity formations, which makes it a particularly complex issue, with strong normative and emotional connotations. The enforcement proceedings against member states for failing to meet the requirements of the directives include a formal letter from the Commission, thereafter a 'reasoned opinion', and finally the Commission can refer the member state to the European Court of Justice.

In entering different policy discourses, equality and antidiscrimination policy also changes its focus, from employment strategy and social exclusion to constitutional debates and foreign policy. For example, the question of Fundamental rights and antidiscrimination has been focused as central question when enlargement of the EU is

discussed. Although the legislation is informed by international human rights discourse, business values are not in conflict with the protection of fundamental rights, according to the Commission. While implementing the legislation, it is possible to frame the core message in different ways depending on the member state context, from enhancing economic efficiency to stress right to equal treatment.

Does it make a/any difference - institutions and policy content

Institutions matter. They constrain and enable policy actors, including the Commission, national governments, and employment agencies. Also empirical research convincingly shows that institutions and institutional legacies inform policy output, outcome, and performance.

They shape the policy making process, inform who is to participate, and thus ultimately decide/impact which societal values inform the policy. Welfare regimes to electoral systems and corporatist alternatively pluralist interest representation have a documented effect on policy process and content (Hall and Taylor 1996; Pierson 2004; Steinmo et al. 1992; Immergut 1998; Peters 1999). Bruno et al. (2006) have questioned the 'political neutrality' of governance forms. For example, the corporatist system, in which social partners are key policy actors, may not necessarily be advantageous for representation of minority interests (Odmalm 2004; Soininen 1999). Moreover, a large body of work shows how differences in national citizenship and integration regimes have an important impact on formulation of migration and integration measures (Janoski 1998; Soysal 1994; Schierup, Hansen & Castles 2006).

The question that this paper addresses is how different institutional settings, and more precisely different forms policy governance, inform policy contents in the field of antidiscrimination policies.

The Dutch case – from proactive equal rights legislation to integration policy

States tend to do things in their own way. For example, while some follow more strictly the path of legislative solutions to societal problems, others may view the regulation as a more appropriate response to social dilemmas. Here, we want especially to explore how institutional context, corporatist alternatively a pluralist one affects policy performance.

Important similarities characterise the overall diversity and anti-discrimination policy of the Netherlands and the UK, both of them have been well-known in the European context for their elaborate anti-discrimination strategies. When shaping the EU legislation, these two countries were important sources of inspiration. Differences are however also obvious when it comes to institutional arrangements to regulate socio-political interactions. The Netherlands, unlike the UK with its more traditional pluralist top-down system, has its policy-making legacy in a tradition of corporatist arrangements, offering a much closer relationship between the state and societal group interests. Even though somewhat weakened, it still informs the paths of formulation and implementation of public policies. The labour market partners' strong position in the policy-making process is based on the so called 'pillarisation-model' which historically provided religious minorities with a right to represent their interests in the political process.

Our main interest here is to shed light on the influence of policy making legacies on how diversity and antidiscrimination policies are shaped and reshaped. The question is

how the institutionalized understandings of the logical ways to proceed guide the choice of regulation mode and policy contents.

Soft governance in industrial relations and working life

An important development which is closely related to the growing preference for voluntary non-legislative policy regulation has been the growing tendency towards deregulation in European public policies since the 1980s. In order to limit the burdens of the welfare state through deregulation, the market solutions increased rapidly in popularity, inspired both by economic and ideological neo-liberal arguments. During the last decades the alternative offered has been a pure market or market-inspired regulation. In the labour market and working life some of the key concepts have been 'employability', 'flexibility', and 'human resources management' in business as well as the public sector.

In the EU context, soft regulation is often associated with techniques like benchmarking, applying the open method of co-ordination in the employment policy, and monitoring practice against statements of policy and targets within organizations (Sisson and Marginson 2002). Meanwhile, an important growth in soft regulation has simultaneously taken place in industrial relations at the European level where joint opinions, declarations, resolutions, recommendations, and agreements have become popular policy instruments (Sisson and Marginson, 2002). Some of these measures have addressed directly the issues of ethnic, racial and other forms of diversity in working life, with special concerns for the future developments of the European labour market. Paradoxically, as Sisson and Marginson (2002) describe it, the choice of non-coercive policy measures has often been associated with 'soft' issues like equal opportunities, training and employment policy, while hard regulation deals with 'hard' issues, i.e. those which can be easily evaluated and expressed in numbers, money and time.

Moreover, soft, non-coercive regulation has increased successively in many member states where more issues are today decided by collective bargaining, relying on flexible frameworks instead of compulsory systems of rules and regulations. The content of legislation is in itself often a result of collective bargaining, and also when legislation is used to deal with an issue this is done by establishing a general principle, thus leaving the social partners responsibility for details (Sisson and Marginson 2002). The social partner agreements and joint opinions tend to be 'softly' implemented as they are basically only recommendations to negotiators at sector and company levels. In short, corporative policy-making has become increasingly popular at all levels, thereby strengthening the role of employer and employee organizations in formulating and implementing policies.

The Dutch tradition of corporatism

Even though somewhat weakened, the Dutch corporatist tradition still informs the paths and processes of formulation and implementation of public policies. The title of a book chapter discussing industrial relations in the Netherlands, 'The Return of Responsive Corporatism', illustrates well the key position of new corporatism in Dutch industrial relations (Visser 1998). Agreements and regulations by the social partner play a central role in Dutch policies. These policy agreements are moreover characterised by not being binding instructions which must be applied but guidance with considerable "moral" weight' (Visser 1998).

Confronted with institutional veto points in the corporatist policy-making model the government eventually has more limited powers to push through its proposals than it has in a pluralist system. On the other hand, the corporatist model has potential to pave the way for comprehensive policy innovations, actively involving social partners in designing government policies. It may also strengthen the governing capacity of the state as it limits the number of societal interests that can be involved in policy-making and – perhaps also by ‘co-opting’ them in a shared decision-making system (Pierre & Peters 2000).

In short, we could expect that a strong position of social partners in a member state’s policy process, as in the Netherlands, will result in an anti-discrimination and equal rights policy with a strong preference for voluntary soft law measures instead of coercive legislation. Secondly, the corporatist solution may weaken the position of minority interest in governmental policymaking by creating a clear hierarchy between interests of the social partners and other societal interests.

Extensive antidiscrimination regulation by law

Since the 1980s, the Netherlands has established a number of relatively elaborate anti-discrimination strategies with a focus on equal rights. Legislation prohibiting discrimination has comprised an important part in the overall diversity strategy.

The extensive anti-discrimination regulation by law includes a range of regulations, in order to prevent discrimination in the labour market. The Criminal law penalises racial discrimination in various aspects of the workplace. There is also a stipulation in labour law prohibiting discrimination in the context of collective agreements. The 1995 Act on Equal Treatment, is a comprehensive law prohibiting direct and in direct discrimination on wide ranging grounds. Sex discrimination as well as the discrimination due to marital status have been equally included as possible grounds for discrimination in line with a number of other grounds. Positive action for women, migrants and ethnic minorities has been explicitly allowed (Wrench 1996, Abel 1977). The Equal Treatment Commission (Commissie Gelijke Behandeling) which is part of the Act on Equal Treatment, deals with all kind of complaints regarding discrimination.

Soft neo-corporate governance – introducing proactive legislative measures

Besides the legislation directly forbidding discrimination on a number of grounds a second part of the legislation has been designed to guarantee equal rights in the labour market in a more proactive way. This legislation, which informed the diversity policies on company and workplace level during the 1990s, included monitoring of public and private sector employers. The two central pieces of legislation, WBEAA (Wer Bevorderende Evenredige Arbeidsdeelname Allochtonen) from 1994 and its successor Wet SAMEN, from 1998, have provided guidelines for public and private sector employers to design company policies to promote diversity.

The legislation obliged companies with more than 35 employees to have a plan for and to aim for proportional representation of non-natives in their work force. Sanctions were limited to the obligation to publish a yearly report. In 1998, the government introduced the Employment of Minorities Promotion Act (Wet SAMEN) as a successor of the 1994 years Act (Shadow Report LBR 2000).

The introduction of the proactive legislation, which had the goal of mobilising private and public sector employers to scrutinize the effects of their recruitment, promotion and organisational policies for employees with minority background, also

created a new market for experts in diversity management. During 1990s there was a fast-growing interest for diversity consultancy and training in awareness-raising both in business and public sector, helping the employers to monitor and 'diversity tune' their organizational routines and practices. Diversity management was there to learn to respect and celebrate cultural differences and differences in employees' experiences and backgrounds, at least to the point where they served the efficiency of the overall economic performance. In that way, anti-discrimination measures benefited the existing workforce or encouraged a broader recruitment policy. But diversity management and training were also viewed as a necessary complement to anti-discrimination legislation, making it possible for employers to implement smoothly the demands made by the legislation that outlawed discrimination.

Guidelines for Code of Practice

Anti-discrimination codes of practice are a special category of non-legislative regulation which have been widely accepted by both the government and the social partners. They provide voluntary guidelines for a company or organisation for what is or is not appropriate action with regard to ethnic diversity. In the late 1980s, the Dutch code of practice for employment agencies has been established as a result of complaints and research findings on racial discrimination by employment agencies. The issues taken up included how to meet employers with discriminatory requirements, to recruit more persons from ethnic minority groups, and handle other situations with potential discriminatory elements (Wrench 1996). Both public and private, but especially the public organisations, have experiences of positive action policies (Shadow report LBR 2000).

LBR

The National Bureau for Combating Discrimination, LBR (Landelijk Bureau Racismebestrijding) was established in Utrecht as early as in 1985. As a centre for national expertise on racial discrimination, giving support to individuals and organisations in legal and other matters, it has played an important role in Dutch anti-discrimination policy. Activities like training legal aid workers, and supporting anti-discrimination agencies and the victims of discrimination are a central part of bureau work as well as the formulation of codes of good practice and research on labour market issues, housing and education. Formally independent from the government but funded by it, the NGO LBR lacks legal powers and is mainly focused on information, support and service functions. The local anti-discrimination offices which are supported by the municipalities, provide help in individual cases of discrimination, by mediation or taking the case to a lawyer or to the Equal Treatment Commission.

Policy for integration of 'minorities'

The background to the introduction of the proactive legislation WBEAA and Wet SAMEN, described above, can be traced back to earlier policy developments. Examples of the Dutch policy initiatives include the 'ethnic minorities' policy which was officially established in the early 1980's to create equal access and equal opportunities for native Dutch and targeted immigrant categories (Abel 1997; Muus 2000). The mainstream labour market services were available to immigrants but there was also public employment services specifically intended for them (Abel 1997). The public

employment service aimed at proportional placement of ethnic minorities in labour market measures and job placement.

In 1986, a report from the Dutch Minorities Research and Advisory Commission argued for further positive action measures. It proposed measures such as preferential treatment of minority persons in case of equal qualification or in the case of sufficient qualification, and reserving a certain amount of vacancies for ethnic minorities.

Three years later, in 1989, an investigation, which mainly dealt with the Dutch ethnic 'minorities' poor labour market position, recommended active measures, such as improving education, training, and work experience but also included a proposal for an Act to Promote Labour Market Opportunities. According to the proposal companies should commit themselves to employing members of minority groups to achieve proportional representation in the work organisations. No sanctions were suggested but employers would instead be obliged to release annual reports showing the results of the diversity activities. The publicity would hopefully make them take action for more inclusive recruitment policies. The Act would contribute to changing attitudes and make it possible for the government to use 'contract compliance' to put pressure on companies that did not make efforts to achieve proportional representation.

The reaction from the social partners was one of reluctance to the proposal of new legislation and it had nevertheless to wait until the Act for the Promotion of Proportional Labour Participation of Non-Natives (*Wer Bevordering Evenredige Arbeidsdeelname Allochtonen, WBEAA*) was passed in 1994. As a response to the 1989s proposal, the social partners had introduced a labour market agreement that aimed to create a considerable number of jobs for ethnic minority persons. Unfortunately, the results were not very impressive according to the evaluations carried out and the 1994 Act was passed (Wrench 1996).

The critics of the proactive legislation win - the introduction of the Dutch way

In 2004, after six years of the *Wet SAMEN*, the legislation was eventually abolished. Influenced by the critics of the employer organisations the government concluded after several investigations that the administrative burdens for the employers were too heavy compared to the positive effects of the legislation (LBR/int/04; The Ministry of Social Affairs and Employment/AK/04; *Glastra/int/04*). In its evaluation of the *Wet SAMEN*, the government stressed the employer opinion about how inefficient the actual legislation had been in creating more diversity in the working life. The opinion of the employers was not in favour of the law – it was said to interfere with the company HRM policies (*Glastra/int/04*). The ten year experiment with proactive legislation was over. Instead, a new Expertise centre has operated since 2005, funded by the government. It is designed to serve private and public employers with expertise in diversity issues, providing voluntary consultation – when these requested that (*Glastra/int/2004*).

As the proactive legislation was 'lightened up' by the introduction of the *Wet SAMEN*, 1998, it also became 'softer' and less coercive. Employers had considerable freedom to comply the demands put on them by the *Wet SAMEN*: the sanctions for not fulfilling the requirement of yearly reports were not heavy and many employers preferred to pay the symbolic penalty fee. The non-coercive form of regulation finally took over totally when even the 'lighter' version of the legislation was abolished and replaced with an Expertise centre.

Meanwhile, other developments had taken place that support the less coercive policy line. The policy developments during 1990s were largely influenced by the parliamentary commission that launched the idea of diversity management in dealing with inter-ethnic relations in 1992 after looking for tangible solutions in Canadian minority policy. The argument was put forward that there was a need to move in 'a more Dutch direction'. This was now understood as a way more oriented towards the voluntary diversity management as a 'business idea', and consequently away from the legislative focus on equal rights and anti-discrimination. The Dutch way – soft policy measures emphasising diversity management became thus a concept frequently employed through 1990s.

The changing political climate – 'lightening up' the antidiscrimination regulation – from equal rights to integration

The abolishment of the 'light' version' of the WBEAA, the Wet SAMEN, in 1998, can finally be seen as one of the expressions of the new political climate in the Netherlands since late 1990s (Glastra/int/04). Although the legislation outlawing discrimination in individual cases is comprehensive, the proactive piece of legislation which had put demands on employers to work in a systematic way to eliminate structural barriers for an inclusive working life was now eliminated.

The political climate had changed radically in the Netherlands since the late 1990s. From having been a model and a source of inspiration for the EU anti-discrimination legislation the situation has during the last decade been characterised by increasing xenophobia in the Dutch public discourse (LBR/int/04). In the 1990s, the interest mobilisation for equal rights and anti-discrimination was well organised and powerful enough to put considerable pressure on policy formulation at the EU level. Key politicians, like the Mayor of Amsterdam and the Dutch ministry of justice Ed Fountain, played an active role getting the EU anti-discrimination legislation in place (LBR/int/04).

The new policy orientation also affects the funding of public activities for anti-discrimination work, from assistance in the individual cases of discrimination to information and research. This fact in combination with the poorer economic situation in the country will most likely result in cut backs in funding to non-governmental expert institutes like the LBR (LBR/int/04).

Instead the integration policy became the new key concept shaping the public understanding around issues regarding diversity, equal rights and multicultural society. As a representative for the LBR puts it: 'But the fact is that the whole perspective has changed and there is not so much attention anymore to anti-discrimination issues, but more on integration part.' (LBR/int/04).

Strong opinions have argued that the main problem with the Dutch multicultural society is that the so called minorities are not well enough integrated in the Dutch society, and in particular in the labour market. One of the factors which have according to the LBR contributed to the shift from anti-discrimination discourse to the one on integration is the position of the Muslims in Dutch society – the debate became increasingly intense after September 11, 2001.

The introduction of 'integration' as a key concept has implied that the remedy is to be found in upgrading the vocational and language skills of these minority members, thus defining the problem in terms of individual characteristics of those to be integrated.

Thus the focus is on ‘minorities’, rather than on the private and public employment practices. Part of debate has taken peculiar forms.

An example of this is how media debate made use of the fact that the homosexuals as group have a relatively strong position in the Dutch society. News such as that ‘...an imam said that homosexuals were worse than pigs’, became then an integral part of the debate on unsuccessful integration of the Muslim population (LBR/int/04). The murder of the filmmaker Theo van Gogh in November 2004 by a second-generation Dutch-Moroccan Bouyeri contributed to speed up the integration debate. Religion was reintroduced to the public sphere further polarising the public opinion. When Ian Burama asks what had happened to the Netherlands as ‘the most progressive little enclave in the Europe’, he looks for the answers in the Dutch history and finds that the myth of Dutch tolerance was perhaps just a myth – in the light of how Dutch Jews were treated during the wartime and postwar period (Garton Ash, NRB 2006, cites Burama).

Although closely linked to the question of polarised opinions our question here is more limited. How can we explain the Dutch development from relatively radical public policy promoting equal treatment, antidiscrimination measures and diversity? First, the liberalisation of the coercive anti-discrimination policy as well as the radical change in the public discourse have been explained as being a part of a bigger pattern of political change in the Netherlands. Changes in the political power balance, as a result of succeeding weak governments, opened the way for the stronger influence of economic powers. Simultaneously the now dominating neo-liberal policy line contributed to strengthen the control of the employer organisations over the discourse and policy contents. The Dutch subsidiarity system harmonised well with this development. The principle of ‘if the private sector can do it – then the state should not intervene’, goes hand in hand with the later general deregulations in the Dutch labour market policies and the strong emphasises put on the ‘active society’ (Glastra/int/04). To conclude, the institutional legacy of corporatist policy process has guaranteed the privileged power position of social partners and in particular the employer representatives with their preference for ‘soft’ measures. What is important to notice here is that – in opposite to coercive legislative measures – the ‘soft’ measures can be easily abolished depending on the shift in power positions and fluctuations in public opinion.

A second important factor that contributes to the increased stress on integration can be found in the Dutch policy legacy. Traditionally ‘the ethnic minorities’ concept is used in the public discourse to label specific ‘target groups’ for policy measures (Abel 1997, Muus 2000). The policy measures designed during the 1980s, either by the government or by the social partners, were specially aimed at integrating these ‘target groups’. As such they were the subject both for policy measures and tolerance for their minority cultures, rather than being attributed the role of an active counterpart. Also, in practice the minority organisations were too fragmented for that (Glastra/int/04; Abell/int/04). In the same manner as the ‘soft’ measures, also ‘tolerance’ – as opposite to equal rights - is very sensitive to alterations in national (majority) mood and changes in public opinion.

The impact of the EU directives?

Given the fact that the Dutch anti-discrimination legislation is still relatively comprehensive and that it has partly been in place since beginning of 1970s, do the EU anti-discrimination directives have any implications for the existing Dutch legislation? The answer is yes, to some extent. Some of the changes are, for example, the issue of

age discrimination, which was not covered in the existing legislation. Another issue is the definition of harassment on national grounds which has been addressed as a question for case law in the Netherlands, but is now included in the new legislation. The protection of victimisation is furthermore now extended. Changes in the legislation due to the new EU legislation include the General Equal Treatment Act of 1994, that was amended by EC Implementation Act 2004. A new Age Discrimination Act was introduced in 2003 as well as an Act of Equal Treatment on the grounds of disability or chronic disease. These changes cover all grounds in two directives and additional grounds including sex.

As the Dutch government representative for the Ministry of Social Affairs and Employment explained, his view on the development of the Dutch anti-discrimination policy in 2003 (Equal treatment in the Netherlands, Ministry of Social Affairs and Employment, March 2003) the Dutch policy in the area of equal treatment is highly influenced by the EU legislation:

'In short, a lot has been regulated and, in all honesty, that is mainly due to European legislation and regulations. If those were not in place, things would have progressed much more slowly in the Netherlands.' (Theo Langejan, Director-General for International and Labour Relations, Ministry of Social Affairs and Employment, 2003).

Such a statement about the impact of the Community legislation on the Dutch policy made by a government representative in a public statement is particularly interesting against the background of the shift in the public discourse from anti-discrimination to integration. We may conclude that although the introduction of the EU anti-discrimination legislation *did not have any radical impact* on the Dutch legislation, which was already comprehensive, *it did have an impact on the public policy discourse, through counterbalancing some of the most xenophobic elements in it*, by supporting the domestic anti-discrimination opinion.

The UK – legislation and race relations

Unlike the Netherlands, with its corporatist policy-making structure, the pluralist British political system can be described as facilitating strong executive leadership with a high concentration and centralisation of political power, without the institutional veto points which are characteristic of the corporatist system. There is the potential for 'more radical and comprehensive policy innovations', according to the Knill (Knill 2001:100). An important part of the picture is a long standing legislative tradition in the UK, which also has informed the responses to the challenge of equal rights and anti-discrimination. High priority is given to legislation with relatively strong law enforcement.

A highly influential factor in British politics during the last decades has been the strong preference for market governance and the wish to limit the state intervention and the scope of the public sector in favour of the private sector solutions. Labour governments since the late 1990s have not substantially changed this basic policy orientation. In industrial relations, the history of regulating, the role of the social partners has been one of voluntarism, which extends to seeing collective agreements as bound by honour. Collective bargaining has not addressed substantive issues in detail, emphasising instead the establishment of procedural rules. Generally, collective

bargaining has been given a greater responsibility for implementing legal provisions (Sisson and Marginson 2001).

There is a strong tradition in the British policy making system of involving societal associations in the formulation and implementation of policy programmes, but as Knill puts it, this does not significantly reduce the scope of executive leadership, as in corporatist arrangements (Knill 2001). The structure of British interest groups is essentially pluralist and fairly fragmented. Immigrant and minority communities have their own interest representation through a number of relatively strong organisations.

Another institutional factor which has a bearing on equal rights and anti-discrimination policies in the UK is the concept '*race relations*', which has been employed to describe the position of immigrant and minority groups in the society (Favell 1998). According to the idea of '*race relations*' the challenge for the government is to regulate relations between the majority and minorities in a way that maintains a harmonious social development.

Here, the '*race relations*' have therefore been the main target for government policies and not the '*minorities*' which would be attributed a role as '*target groups*', as in Dutch public discourse. Instead, the racial minorities are conceptualised in the UK public discourse and in legislation as subjects with equal right to legal protection, including protection from prejudicial treatment.

A tradition of strong anti-discrimination legislation

The legislation plays a significant role in the UK equal rights and anti-discrimination policy. It has an elaborated anti-discrimination legislation which is strongly based on the notion of equal rights and stretches back almost four decades. Therefore, the successive work to further develop the legislation has been mainly concentrated on how best to increase the efficiency in law enforcement and simultaneously act as a platform to promote a large number of elaborated non-coercive policy measures.

Building on the main concern for the legislators, i. e. to insure harmonious race relations in British society, the 1976 Race Relations Act, which came into force in 1977, replaced two previous Race Relations Acts. The first was passed in 1965, the second in 1968. The second Act extended the scope of the 1965 Act and made racial discrimination unlawful in employment, housing and the provision of goods, facilities and services, including education. However, research reports and other investigations carried out in the beginning of 1970s demonstrated that there was a widespread discrimination and inequality in the British society. One important explanation for this was believed to be the major structural weaknesses in the Race Relations Act. The problem was not in the first place the scope of the Act but its enforcement (Anwar, Roach & Sondhi 2000). From the government point of view, a preferable solution was to harmonise the legislation on sex and race discrimination. As a result the Sex Discrimination Act was passed in 1975 and the new Race Discrimination Act in 1976 (Anwar, Roach & Sondhi 2000). In addition to direct discrimination indirect discrimination was now covered by the law.

In order to strengthen the enforcement powers, the 1976 Act gave the new Race Relations Commission a mandate for law enforcement and provided it with considerable powers to prevent discriminatory practices. In comparison with the LBR in the Netherlands, which was established a decade later and without any mandate for law enforcement, the position of the Commission for Racial Equality (CRE) was very different in many important ways. The major law enforcement function gave it a strong

position both in the policy-making process, through making it an important actor for the government, and when implementing concrete anti-discrimination activities. The work of the Commission was directed towards the elimination of racial discrimination and the promotion of equal opportunity as well as good relations between persons with backgrounds in different racial groups. The Commission conducted formal investigations in the case of suspected discrimination and instituted legal proceedings in cases of persistent discrimination.

Soft regulation for anti-discrimination

Complementary to legislation, a comprehensive arsenal of non-coercive policy instruments are used in order to promote equal rights. One form of action taken by the Commission for Racial Equality was to initiate codes of practice in the working life. The 'Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equal Opportunity in Employment' was drawn up as early as the mid-1980s. It included recommendations, policy measures and strategies for employers, trade unions and employment agencies on how to eliminate discrimination and promote equality of opportunity. It also addressed issues like anti-discrimination training, ethnic record keeping and monitoring, and the use of positive action measures (Wrench 1996). Public sector employers, larger companies and employers with a substantial ethnic minority workforce were among the targeted employers.

Another form of policy measure has been Contract Compliance. Authorities can encourage companies to which they give contracts to comply with the minimum requirements of equal opportunities practices. After decades of experience using 'contract compliance' among local authorities, the evaluations were positive. They documented that equal opportunities policies had been improved in the companies delivering services or goods to these authorities (Wrench 1996). In the mid-1990s, some of the private sector employers showed interest in equal opportunity measures recommended by the government (Department of Employment's Race Relations Employment Advisory Service). The recommended equal opportunities policy covered central areas in employment, from recruitment and promotion to reviewing regularly the routines in the organisation.

The changes in legislation and administration due to the EU legislation

The anti-discrimination legislation has been in place since the late 1960 and there exist moreover a number of well developed soft policies. Could this possibly mean that there is no need to make changes in the legislation to meet the demands put by the new EU law? The answer is no. Even in the Great Britain transposing of directives has resulted in some changes in the existing anti-discrimination legislation.

Thus, the Race Relations Act of 1976 has been amended by the Race Relations Regulations in 2003. Also the Disability Discrimination Act from 1995 has been amended by Disability Discrimination Regulations 2003, in order to bring the legislation in line with the new EU directives. New regulations introduced 2003 are also the Employment Equality (Religion or Belief) Regulations and Employment Equality (sexual orientation) Regulations 2003 (amendment). The UK used the possibility of the optional three years for age and in respect for vocational training the disability (Equality and non-discrimination, Annual Report by the Commission, 2005). The Disability Discrimination Bill was progressed through Parliament during the spring of 2005.

In addition, in March 2005, the government published a new Equality Bill which extends the protection against discrimination on grounds of religion and belief to the provision of goods, facilities and services to the public, the provision and management of premises and the carrying out of public functions. These changes make the UK legislation more comprehensive than what is actually required by the EU directives where the discrimination grounds religion and belief are only covered by the Employment directive.

The issue of race discrimination contra discrimination on the grounds of religion and belief has been one of the hot issues in the UK debate when transposing the directives (O’Cinneide/int/2004). The root of the problem is in the different scope of the two EU directives and the practical implications of that. While the Racial Equality Directive, which prohibits discrimination on the grounds race and ethnicity, covers a number of policy areas, the scope of the Employment Directive which regulates, among other grounds, religion and belief, is limited to employment. In practice, this means that a minority group which is not only a religious group but also a racial group is given far better protection in the legislation than a group which is ‘only’ a religious group, for example the large Muslim community. The new Equality law solves this problem by giving both categories a more equal legal protection. Clearly, then, the transposition of EU directives not only resulted in complying with the directives but the practical difficulties implementing in them have moreover inspired the UK government to launch an even more inclusive anti-discrimination legislation than that demanded by the EU legislation.

Another important, and also to some extent controversial issue, was the establishment of a new Commission for Equality and Human Rights included in the Equality Bill. The Commission that has been in place since 2007 is designed to have law enforcement powers for all the discrimination grounds that are listed in the EU directives, the Racial Equality directive and the Employment directive (2000/43/EC, 2000/78/EC) and also for sex discrimination (goods and services) covered by directive 2004/113/EC. It has taken over the responsibilities of the Commission for Racial Equality.

The discussion about such an integrated approach was heated. Not surprisingly perhaps, the main opposition came from the organisations representing ‘race’ interests, as well as from the Commission for Racial Equality. These instances accepted only half-heartedly the idea of a single equality body. The main argument was that working equally with all the discrimination grounds would risk slowing down the anti-discrimination work on race/ethnicity, a discrimination ground where most progress has been made up till now (O’Cinneide/int/2004)

The government decision to establish the Commission for Equality and Human Rights nevertheless closely followed the recommendations from the EU. It had strongly argued for an integrated approach and for a single equality body as an administrative solution, in order to make it possible to implement the integrated approach in practice, i.e. to work simultaneously with all the discrimination grounds covered by the legislation.

The policy of positive duty

One of the most important later changes in the UK policies is the introduction of a policy of positive duty, which is closely related to the ongoing discussion on mainstreaming and taking a full step towards an integrated approach. While the

discussion about the single equality body has been somewhat intense with diverging opinions, there is considerable consensus regarding the introduction of the positive duty law, which sets out a basic framework for positive duties imposed upon public authorities to pursue equality goals.

A general positive duty is that enacted under the Race Relations Act 2000 (Amendment), requiring a specified list of public authorities to 'pay due regard' to the need to eliminate racial discrimination and the complementary positive obligations, to promote equality of opportunity, and good relations between people of different ethnic origin. The Commission for Racial Equality and after 2007 the new Equality and Human Rights Commission, has been responsible for implementation and monitoring of the positive duty on public authorities. It uses a proportionality test when interpreting the meaning of 'due regard'. This means that 'the weight given to race equality should be proportionate to its relevance to a particular function (Statutory Code of Practice on the Duty to Promote Race Equality, CRE, 2002). A similar provision was introduced in relation to disability discrimination by virtue of the Disability Discrimination Act 2005 (O'Conneide 2005:213-31).

The background to the introduction of positive duty on public authorities can be traced back to recommendations made by the so called Macpherson Report. The report concluded, after an investigation, that the Metropolitan Police in London had been institutionally racist when carrying out an inquiry into a racist killing. In other words, the investigators concluded that structural factors had mitigated against an effective investigation into the murder of the victim, because he was black (Shaw 2005). Another important source of inspiration is to be found in the Northern Ireland approach to anti-discrimination, which has had an important influence on the development of the positive policy legislation in the UK. In the specific Northern Ireland context, with the conflict between two religious-political communities, the policy of positive duties on public authorities was initiated in legislation in late 1980s to address structural inequalities in the labour market and to deal with deeply rooted prejudice. The positive duty is included in the constitution of Northern Ireland, in Northern Ireland Act (Shaw 2005).

A new generation of anti-discrimination legislation?

In sharp contrast to the policy developments in the Netherlands, where the efforts during the 1990s to introduce a proactive anti-discrimination legislation eventually failed under the pressure from employer organisations, the UK government has implemented an elaborate positive duty legislation which can even be said to represent a new generation of anti-discrimination legislation.

What then makes the positive duty legislation so different from those existing ones? The short answer is that it is proactive. What is new with the positive duty legislation is that it avoids some of the weaknesses which are a priori associated with traditional 'individually oriented' anti-discrimination laws. Due to the fact that the traditional anti-discrimination legislation only focuses on those individuals who can be shown to have been actively discriminated (directly or indirectly), and who are compensated for that, it is basically very reactive and only responds to events after the fact and once a complaint has been made and taken to court (Shaw 2005). Instead, the positive duty legislation is based on a recognition that societal discrimination extends well beyond individual acts of prejudice. Given this starting point, equality can only be meaningfully advanced if practices and structures are altered proactively (Sandra Fredman 2001, in Shaw 2005) Rather than responding to individual complaints, the law of positive duties on public

authorities establish equality measures which can be expected to be proactive and have an impact on the structural factors that produce and reproduce discriminatory treatment.

Mainstreaming equal rights

The EU stresses the need to mainstream anti-discrimination measures to all policy making. According to the Commission, mainstreaming is a central policy which makes it possible to make concrete progress in enforcing equal rights. The UK legislation, especially when it includes positive measures, meets these demands.

The overall package of mainstreaming practices means that the anti-discrimination and equal rights guarantees are in place in primary law. Second, positive action measures are used to address disadvantages, due to historical rooted injustices or when dealing with newcomers in need of immediate measures for housing, language and employment (integration policy measures). Finally, in addition there is a need to guarantee an efficient implementation and enforcement of equal rights in practice. Positive duties on public authorities are to be applied at all levels as effective means of delivering mainstreaming, enforcing the public authorities to pay due concern to equal rights in all their activities (Shaw 2005). This description of mainstreaming equal rights applies to a large extent to the current legislative situation in the UK.

An important aspect of the positive duties is that they can also be seen as representing good governance and a participatory-democratic approach in action. In the UK the mainstreaming of equal rights also means that positive duty should inform public policy making. In practice, this principle means that efforts are made to guarantee a high degree of participation of affected groups in formulating and implementing equal rights policies, and in the determining the assessment on impact of existing and future government policies on affected groups (Shaw 2005).

In this respect, the UK policy follows closely the EU recommendations. It is most plausible that the historically institutionalised care for harmonious race relations in the UK, implying rather a 'subject' than a 'target' position for minorities, is an important factor which not only informs the policy making in general, but also paves a way for the participatory-democratic model in equal rights policies. Although the UK has had its share of the radical political developments, like the London bombings in July 2005 that resulted in a heated debate on integration, the focus on integration has however not replaced the approach of equal rights as the guiding policy principle.

Conclusions

I have argued that differences in institutional solution in terms of governance tradition offer central answers to divergent policy developments in the antidiscrimination policy. Then, how has the institutional solutions guided the choice of regulation mode and policy contents in antidiscrimination policies in the UK and in the Dutch case? In the Netherlands the institutional veto points in the corporatist policymaking model have made it harder for the government to push through coercive legislative measures, while giving increasing powers to Dutch social partners, employer and employee organisations. From having originally been a source of inspiration for the EU anti-discrimination legislation the Dutch antidiscrimination policy has undergone some profound changes during the past three decades. In the name of moving in 'a more Dutch direction' the government successively oriented towards voluntary diversity management as a 'business idea'. It has consequently put less emphasis on the

legislative focus of equal rights and antidiscrimination. 'The Dutch way' – soft policy measures emphasising diversity management has thus become a central concept since 1990s. The explanations to these developments include changes in the political power balance, as a result of weak governments, strong influence of economic powers and in particular of employer organisations – supported by the neo-liberal public discourse, deregulations in the Dutch labour market policies and emphasis on the 'active society'.

While the institutional legacy of corporatist policy process guaranteed the privileged power position of the employer interests - the equal rights approach was successively replaced in the policy discourse by increased focus on the integration problem. In the Dutch policy discourse the ethnic minorities are perceived in the first place as 'target groups', and as such subject both to (integration) policy measures and tolerance of their minority cultures. However, in a similar manner as 'soft' voluntary measures for equal rights, also the principle of tolerance turned out to be sensitive to changing public opinion. Was there an impact of the EU antidiscrimination legislation? The answer is positive. Although it did not have any radical impact on the Dutch law, which was already comprehensive, the introduction of the legislation counterbalanced some of the most xenophobic elements in the policy discourse. In that way the EU directives contributed to shaping public discourse by framing domestic beliefs.

We have seen a very different development in the UK case that represents a state-centred pluralistic model giving potential for 'more radical and comprehensive policy innovations' due to wider government powers. A long standing tradition of coercive legislation as a central policy instrument in the UK and it has also informed the responses to the challenge of equal rights and anti-discrimination. High priority is given to legislation with relatively strong law enforcement. Could this possibly mean that there was no need to make changes in the legislation to meet the demands put by the new EU law? The answer is no. Even in the UK, like in most of the EU member states, the transposing of directives resulted in at least some changes in the existing legislation. However, the UK legislation is today more comprehensive than what is actually required by the EU. It also covers discrimination grounds religion and belief that are only covered in the employment by the EU Employment directive. There has been considerable consensus regarding the introduction of the positive duty law, forcing public authorities to pursue equality goals. Thus, in sharp contrast to the Dutch policy developments, where the proactive antidiscrimination legislation eventually failed under the pressure from employer organisations, the UK government has implemented an elaborate positive duty legislation. Beside the powers of the government, a second contributing factor behind the stress put on equal rights can be found in the historically institutionalised care for harmonious race relations in the UK, implying rather a 'subject' than a 'target' position for minorities.

References

- Abel Paul (1997) Netherlands. Dublin: European Case Studies of Good Practice for the Prevention of Racial Discrimination and Xenophobia and the Promotion of Equal Treatment in the Workplace. Foundation for the Improvement of Living and Working Conditions. Working paper No.: WP/97/44/EN
- Anwar, Muhammed, Roach, Patrick and Ranjit Sondhi (eds) (2000) From Legislation to Integration. Race Relations in Britain. London: MACMILLAN PRESS LTD.
- Bauböck, Rainer (ed) (1994) From Aliens to Citizens. Redefining the Status of Immigrants in Europe. Aldershot: Ashgate Publishing Limited.
- Bruno, I., Jacquot, S., and Mandin, L. (2006) Europeanization through its instrumentation: benchmarking, mainstreaming and the open method of co-ordination... toolbox or Pandora's box? *Journal of European Public Policy* 13(4): 519-536
- Brückner, Lars, Jordan, Andrew, Wurzel, Rüdiger and Anthony Zito (2001) Policy Learning and the Transfer of New Environmental Policy Instruments in the European Union. Paper presented at the Annual Meeting of the American Political Science Association, San Francisco, August 31- September 3.
- Cowles, Maria Green, Caparaso, James A, and Risse, Thomas (2001) Transforming Europe: Europeanization and domestic change, Cornell: Cornell University Press.
- Favell, Adrian (1998) Philosophies of Integration. Immigration and the Idea of Citizenship in France and Britain. London: MACMILLAN PRESS LTD.
- Fredman, S (2001) Equality: A New Generation?, in *Industrial Law Journal*, 2001:30, 145-68, 163-164
- Garton Ash, Timothy (2006) Islam in Europe, *NRB*, 2006, Vol 53, number 15, October
- Gras, Mitzi and Bovenkerk, Frank (1995) Preventing racism at the workplace. The Netherlands. Dublin: European Foundation for the Improvement of Living and Working Conditions. Working paper No.: WP/95/49/EN.
- Haahr, J H (2004) Open co-ordination as advanced liberal government, *Journal of European Public Policy* 11(2): 209-230
- Hall, Peter A and Taylor, Rosemary C.R. (1996). Political Science and the Three New Institutionalisms, in *Political Studies*, XLIV, p 936-957.
- Hartlapp, M (2007) On Enforcement, Management and Persuasion: Different Logics of Implementation Policy in the EU and the ILO, *JCMS*, 2007, 45(3), 653-674
- Immergut, Ellen M (1998). The Theoretical Core if the New Institutionalism, in *Politics and Society*, vol 26 No.1, p 5-34.
- Jacobsson, Kerstin (2001) Employment Policy Coordination. A new System of EU Governance. Paper Presented at the Scancor workshop on 'Transnational regulation and the transformation of states', Stanford 22-23 June 2001.
- Jacobsson, Kerstin (2004) Soft regulation and the subtle transformations of states: the case of EU employment policy, *Journal of European Social Policy* 14(4): 355-370
- Janoski, Thomas (1998). Citizenship and Civil Society. A Framework Rights & Obligations in Liberal, Traditional, and Social democratic Regimes. Cambridge: Cambridge University Press.
- Knill, Christopher (2001) The Europeanisation of National Administrations. Patterns of Institutional Change and Persistence. Cambridge: Cambridge University Press.
- Landelius, Ann-Charlotte (2001). Om soft law på det sociala skyddsområdet – en EG-rättslig studie. Stockholm: Norstedts Juridik.
- Majone, Giandomenico (1997) The new European agencies: regulation by information, in *Journal of European Public Policy*, 4:2 June, p 262-275.

- Mosher, J S and D M Trubek (2003), in *JCMS* 2003 Volume 41. Number 1. pp. 63-88
- Muus, Philip (2000) Migration, immigrants and labour markets in EU countries. Paper presented at National Institute for Working Life. Laxholmen, Sweden.
- Mörth, Ulrika (2001) Europeanization as interpretation, translation and editing of public policies. Paper presented at the Conference 'Europeanization of Security and Defence Policy', Swedish National Defence College, December 5-6 2001.
- (2004) The EU as a normative power, *SCORE Working paper*, 2004:10, University of Stockholm
- O' Cinneide, Colm (2005) A New Generation of Equality Legislation? Positive Duties and Disability Rights, in A. Lawson and C. Gooding (eds.) *Disability Rights in Europe* (Oxford: Hart Publishing, 2005, 213-31
- Odmalm, P (2004) Invandrarföreningar som intressekanaler – möjligheter och hinder på lokal nivå, i Bengtsson Bo *Föreningsliv, makt och integration*, Ds 2004:49
- Pierre, J and G, Peters (2000) *Governance, Politics and the State*. London: Macmillan.
- Pierson, P (2004) *Politics in Time: History, institutions, and social analysis*. Princeton, NJ: Princeton University Press.
- Peters, Guy (1999) *Institutional Theory in Political Science. The 'New Institutionalism'*. London: PINTER, A Cassell imprint.
- Radaelli, Claudio (2002). *The Europeanization of Public Policy: Notes on Theory, Methods, and the Challenge of Empirical Research in The Politics of Europeanisation*, K.Featherstone & C Radaelli, Oxford: Oxford University Press
- Schierup C-U, Hansen, P and S Castles (2006) *Migration, Citizenship and the European Welfare State*. Oxford University Press
- Marginson, Paul and Keith Sisson (2002) *European Integration and Industrial Relations: a Case of Convergence and Divergence*, *JCMS*, vol 40, 671-92. .
- Shaw,Jo (2005) *Mainstreaming Equality and Diversity in European Union Law and Policy*, a paper presented at the conference 'Mainstreaming diversity: opening the debate with the whole society', by DG Employment, Social Affairs and Equal Opportunities, 27-28 June 2005, Mondorf-les-Bains , Luxemburg 26-28 June , 2005.
- Soininen, M (1999) 'The Swedish Model as an Institutional Framework for Immigrant Membership Rights' in *Journal of Ethnic and Migration Studies*, Vol. 25 No. 4, 685-702.
- (2006a) *Deliberative collaboration with obstacles. Policymaking and anti-discrimination legislation in the EU*. A refereed conference paper presented at the Centre for Public Policy, University of Melbourne, Governments and Communities in Partnership conference, September 2006.
- (2006b) *Public policy-making with Civil Society Organisations: Partner Collaboration in Implementing the EU Anti-discrimination Legislation*, in *A New State of Welfare. Politics, Policies and Parties in Post-National Welfare State*, (eds, Linde, Eduards & Segerberg), US-AB Stockholm, 91-7155-333-5
- Soysal, Yasemin (1994) *Limits of Citizenship. Migrants and Postnational Membership in Europe*. London: The University of Chicago Press, Ltd.
- Steinmo, Sven, Thelen, Kathleen and Longstreth, Frank (1992) *Structuring Politics. Historical Institutionalism in Comparative Analysis*. Cambridge: Cambridge University Press.
- Tilton, Tim (1990) *The Political Theory of Swedish Social Democracy*. Oxford. Oxford University Press.

- Velluti, S (2007) What European Union Strategy for Integrating Migrants? The Role of OMC Soft Mechanisms in the Development of an EU Immigration Policy, *European Journal of Migration and Law* 9: 53–82
- Visser, J (1998) 'The Return of Responsive Corporatism', in Ferner, A and Hyman, R. (eds) *Changing Industrial Relations in Europe*, Blackwell: Oxford, 1998.
- Wrench, John (1996) *Preventing Racism at the Workplace: A Report on 16 European Countries*. Dublin: European Foundation for the Improvement of Living and Working Conditions.
- (2000) *From Anti-Discrimination to Diversity Management*. Paper presented at *Diversity Practice: Diversity Management and Integration*. National Institute for Working Life. Laxholmen, Sweden.
- Statutory Code of Practice on the Duty to Promote Race Equality, Commission for Racial Equality, London, 2002
- Communication on non-discrimination and equal opportunities for all. Decision on the European Year of Equal Opportunities for All (2007), European Commission
- Council Directive 2000/43/EC. Implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. *Official Journal of the European Communities*.
- 2000/78/EC. Prohibiting employment discrimination on the grounds of religion or belief, disability, age or sexual orientation. *Official Journal of European Communities*.
- Equality and non-discrimination in an enlarged European Union, Green Paper, May 2004, European Commission, DG Employment und Social Affairs (COM(2004)379)
- Equality and non-discrimination, Annual Report 2005, European Commission, DG Employment und Social Affairs
- The Social Agenda 2005-2010, A social Europe in the Global Economy. Jobs and Opportunities for all, March 2005, European Commission, DG Employment und Social Affairs
- Communication from the Commission on the Social Agenda, (COM(2005) 33)
- LBR Shadow Report 2000 National Bureau against racial Discrimination. Rotterdam.
- Theo Langejan, Director-General for International and Labour Relations, Ministry of Social Affairs and Employment, the Netherlands, 2003

Interviews:

LBR, May 2003

Ministry of Social Affairs and Employment, Netherlands, Astrid K, September 2004

Glastra, Folke, Associate professor, University of Leiden, the Netherlands, May 2004

O'Conneide, Colm, Senior Lecture in Laws, UCL, the UK, May 2004

TheMES on Migration and Ethnic Studies are published by REMESO, Institute for Research on Migration, Ethnicity and Society. REMESO is an Institute for research, post graduate and general education at the Department for Social and Welfare Studies, Campus Norrköping, Linköping University.

TheMES No. 31/09

ISSN 1101-7570

Series editors:

Erik Berggren

Tel. +46-11-36 32 66

E-mail: eribe@isv.liu.se

Peo Hansen

Tel. +46-11-36 34 23

E-mail: peoha@isv.liu.se

