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## Equality Data

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## Equality Data

*any piece of information that is useful for the purposes of describing and analysing the state of equality*

quantitative or qualitative

*Equality statistics* – data that reflect inequalities or their causes . . . in society

(Source: European Handbook on Equality Data 2016)

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## Legal Framework

- Evidence for discrimination may be established by any means including on the basis of statistical evidence. (rec 15, RED, EED)
  - duties of equality bodies to conduct independent surveys concerning discrimination -> monitor (in)equality
  - obligation on states to take positive steps to give effect to the right not to be discriminated against
  - duties of employers to collect data on the number of employees with disabilities, for the purpose of demonstrating compliance with legally imposed quotas
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## Legal Framework - UNRPD

### Article 31 – Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention.
  2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.
  3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.
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## Legal Practise

- Most countries are hesitant in collecting equality data – need to rely on proxies
- Exceptions UK and Ireland
  - all public bodies have to promote equal opportunities on all protected discrimination grounds
  - interpreted to require data collection on all discrimination grounds to demonstrate compliance.

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## What can it be used for?

### **In court**

Statistical data as a stimulus for the presumption of discrimination -> shift of the burden of proof

Statistical data as a tool for evidence in cases of indirect discrimination and structural discrimination

Data collected can also serve as a proof that no discrimination has taken place

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## Presumption of discrimination

*official statistics that provide for a prima facie indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men*

*Shift to the respondent to show that this is the result of objective factors not related to sex*

*(ECtHR, Hoogendijk v. the Netherlands, No 58641/100, 6 January 2005)*

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## Evidence for indirect discrimination

*In order to be presumed discriminatory, a measure must affect*

- *‘a fair greater number of women than men’ or*

*(CJEU, C-171/88, Ingrid Rinner-Kühn v. FWW, 13 July 1989)*

- *‘a considerably lower percentage of men than women’ or*

*(CJEU, C184/89, Helga Nimz v. Freie und Hansestadt Hamburg, 7 February 1991)*

*(CJEU, C-33/89, Maria Kowalska v. Freie und Hansestadt Hamburg, 27 June 1990)*

- *‘far more women than men’*

*(CJEU, C-343/92, M.A. De Weerd, and Others v. Bestuur van de Bedrijfsvereniging voor de Gezondheid, and Others, 24 February 1994)*

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## Evidence for indirect discrimination

Differences have to be significant

- 89 Percent of one group affected (*Rinner-Kühn*)
- 60 percent would not be sufficient

(AG Leger in CJEU, C-317/93, Inge Nolte v. LVA Hannover, 14 December 1995)

BUT: can still prove indirect discrimination *if it revealed a persistent and relatively constant disparity over a long period*

(Seymour-Smith, CJEU, C-167/97)

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## Evidence for indirect discrimination

Admission for competition for entry into police school –  
minimum height requirement (170 cm)

Affected far more men than women – indirect  
discrimination

(CJEU Kalliri C-409/16)

1.70m is

a) 7-8cm lower than the average height of men

6-7 cm higher than the average height of women

b) 80 % of the male population are of this height compared to only 19 %  
of the female population.

percentage of female potential candidates who are excluded is  
disproportionately larger than that of male potential candidates

(Council of State (Supreme Administrative Court) Judgment No 2055/2019)

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## Evidence for indirect discrimination

### D.H. and others vs. Czech Republic

Statistics revealed that in 1999 in Ostrava:

- Over half of the students in "special schools" were Roma (whilst representing only 2% of school children)
- Any randomly chosen Roma child was more than 27 times more likely to be placed in a "special school" than a non-Roma child.

Allocation was based on a test of intellectual capacity – neutral?

Assessment of the impact of a measure or practice on an individual or group

*-> reliable and significant statistics sufficient to constitute prima facie evidence of indirect discrimination*

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## Evidence for indirect discrimination

BUT – as in any case of indirect discrimination!!

If the defendant can show that the means chosen

- meet a necessary aim (e.g. of MSs social policy) and
- that they are suitable and necessary for attaining that aim,

-> mere fact that the provision affects a much greater number of female workers than male workers -> not discriminatory

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## Proof for non-discriminatory policies

Danish Government Agency had to reduce workforce

- All employees dismissed > 50 years
- Discrimination on grounds of age?
- Statistical information: presumption 'Yes'
- BUT: employees, who were older than claimants were not dismissed and statistical data age composition in government agency
- no discrimination

(Danish Supreme Court, Case 28/2015)

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## What can Equality Data be used for?

### As a policy tool

- Identification of structural discrimination and barriers
- Starting Base for positive action measures
- Monitoring tool

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## What can it be used for?

### As a management tool

#### Diversity monitoring

- Source of information for the design and implementation of measurements of managing diversity
- Monitoring of success

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## Practise of Data Collection

### Statistical Data

National Statistical Offices, Labour Market  
Statistics, EU SILC  
Data on Gender, Age, Disability

Medical v. Social Model

### Case Law Data Base

Courts, Equality Bodies

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## Practise of Data Collection

### Discrimination Testing

#### Research and Studies

- Eurobarometer
- FRA Studies
- National Surveys

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## Caveats

### Data Protection

### Group based approach

Stigmatisation

Affects for those, who do not fit into the picture

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## Data Protection Rules

### Article 9 of the General Data Protection Regulation (EU) 2016/679 (GDPR)

- prohibits the processing of personal data revealing characteristics such as racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, as well as the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, or data concerning a natural person's sex life or sexual orientation.
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## Data Protection Rules

### Exceptions

- the data subject has given explicit consent
  - processing is necessary for reasons of substantial public interest, statistical purposes, scientific or historical research purposes, or for achieving purposes in the public interest, (check of proportionality)
  - anonymous information, for statistical or research purposes.
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## Data Protection Rules

### General principles of data protection

Article 5 GDPR:

lawfulness, fairness, transparency,  
purpose limitation, data minimisation, accuracy,  
storage limitation, integrity, confidentiality and  
accountability.

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## Stigmatisation

Selection of groups/characteristica sensitive  
topic

Which criteria are chosen?

Who declares, who belongs to which group?

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## Strategies Against Biases

Be aware of intersectional discrimination

Double-check the effects

Make sure it's not about categorisation but  
about identification of discriminatory  
structures

Mixture of self-identification and attributes  
that lead to discrimination

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## Final Remarks

Data reflects a situation at a specific time –  
data will and should change – and might  
then not serve for the same purpose  
anymore

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