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New book on laws against
sexual orientation discrimination in employment

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SEXUAL ORIENTATION DISCRIMINATION
IN THE EUROPEAN UNION :
NATIONAL LAWS AND THE EMPLOYMENT EQUALITY DIRECTIVE

by Kees Waaldijk and Matteo Bonini-Baraldi

The [Employment Equality Directive](#) requires each Member State of the European Union to prohibit sexual orientation discrimination in the field of employment. This book is the first to assess to what degree the Directive's requirements have been met by the twenty-five Member States and by Bulgaria and Romania.

The authors discuss the relevant aspects of European law and provide a detailed analysis of the quality and conformity of national anti-discrimination legislation aimed at implementing the Employment Equality Directive. In this analysis special attention is paid to the implications of what distinguishes sexual orientation from other forbidden grounds of discrimination. Therefore the book focuses on the various private and public aspects of sexual orientation, such as preference, behaviour, partnership and 'coming out'. It discusses direct and indirect discrimination, harassment, permissible and impermissible exceptions, sanctions, and the role of interest groups and specialised enforcement bodies. This is done against the background of international human rights law and in relation to the general legal situation with respect to lesbian and gay rights in the twenty-seven countries.

The book is aimed at a wide readership of judges, legal practitioners, non-governmental organisations, policy makers, academics and students interested in anti-discrimination law, European law, sexual orientation law, employment law and/or human rights

KEES WAALDIJK is a senior lecturer at the E.M. Meijers Institute of Legal Studies of the University of Leiden, specialising in law & homosexuality issues. MATTEO BONINI-BARALDI is a researcher, working at the Faculty of Law of the University of Bologna. Together they headed the EUROPEAN GROUP OF EXPERTS ON COMBATING SEXUAL ORIENTATION DISCRIMINATION set up by the European Commission.

The book is based on the final report of that Group of Experts (see www.emmeijers.nl/experts), but has been updated, and has been expanded with a study of the ten Member States that joined the EU in 2004 and the two countries that will soon join the EU (Bulgaria and Romania).

The 270 page hardbound book is published by the [T.M.C. ASSER PRESS](http://www.asserpress.nl/cata/waaldijk/fra.htm) in The Hague (see www.asserpress.nl/cata/waaldijk/fra.htm), for which it is being distributed by [CAMBRIDGE UNIVERSITY PRESS](http://www.cambridge.org).

For **ordering details** see: www.cambridge.org/catalogue/catalogue.asp?isbn=9067042137.

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The book has nine general **conclusions**:

- Sexual orientation discrimination is now forbidden at many levels: at the level of international human rights law, at the level of European Union law, in some countries at constitutional level (explicitly so far only in Portugal), in almost every country at the level of national legislation, and often also at regional level.
- The Employment Equality Directive and its implementation can be useful additions to the existing international and constitutional prohibitions of discrimination, which usually tend to be vertical (that is: not binding for private employers and other private entities) and vague (leaving scope for various forms of justification).
- Hardly any Member State has fully complied with all the requirements of the Directive. Two Member States have been very late with implementing the Directive (in Germany the implementing legislation was only enacted in August 2006; in Luxembourg the bill is still being debated), and in one Member State sexual orientation discrimination is only implicitly forbidden (Latvia).
- On some points the Directive itself is rather vague, and many Member States, by deviating from the Directive on numerous points have still further jeopardised the legal certainty that the Directive and its implementation should have brought. In more than a third of the Member States the implementing legislation is problematic with respect to the following topics:
 - indirect discrimination (such as, in countries where same-sex partners cannot marry, the exclusion of unmarried partners from certain spousal benefits);
 - material scope of the prohibition of discrimination (self-employed people are not always covered);
 - exceptions for occupational requirements and for religion based employers;
 - role of interest groups in enforcement procedures;
 - division of burden of proof;
 - effectiveness and proportionality of sanctions.
- The concept of sexual orientation as used in the Directive (and by the European Court of Human Rights) refers to something that is so private that no one can be required to reveal it, and simultaneously so vital that everyone has the right to live openly according to it. Most, though not all, countries seem to recognise the legal implications of this dual character of sexual orientation, a right to privacy and a right to come out.

- It is encouraging that several Member States have already gone further than the Directive requires (for example by extending the prohibition of sexual orientation discrimination to other fields than employment, or by setting up specialised bodies to help combat sexual orientation discrimination).
- The specific case law of the European Court of Human Rights with respect to sexual orientation and its three key aspects (preference, behaviour, relationships) should inspire the Court of Justice of the EU when judging on issues that were left vague in the Directive itself.

The book provides a thorough and critical comparative analysis, while referring back to a great number of **country reports** (by leading experts in the field) that have been made public online (see www.emmeijers.nl/experts).

Please feel free to forward this message (for example to your library). Thanks!

Best,

also on behalf of Matteo Bonini-Baraldi,

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