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Sexual Orientation Discrimination in the European Union: Nationality Laws and the Employment Directive. By C WAALDIJK and M BONINI-BARALDI. The Hague: TMC Asser Press, 2006. 256 pp. £48.

Waaldijk and Bonini-Baraldi have written an analytic account of how the Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (in force 2 December 2003) has been transposed into the laws of the current 27 Member States of the European Union, insofar as the Directive covers lesbians, gays and bisexuals ('LGB people'). It was not until 1999 that the institutions of the European Community gained the competence to issue directives on matters such as discrimination against homosexuals in employment and the Council acted promptly in respect of religion or belief, disability, age and sexual orientation. It should be noted that this Directive goes under several names e.g. the 'Framework Directive'; this book calls it the 'Employment Equality Directive' which has the merit of demonstrating that the Directive applies to employment, read broadly, and not, for example, to schools and goods and services (cf. the Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origins, the 'Race' Directive).

Chapters are written by the individual author and a good deal of the book is based on the work of the European Group of Experts on Combating Sexual Orientation Discrimination, established by the Commission in 2002 to report on the implementation of the Directive in respect of LGB people in the then 15 Member States. The Report, published in 2003 and updated in 2004, was edited by this book's authors and was entitled *Combating Sexual Orientation Discrimination in Employment: Legislation in Fifteen EU Member States—Report of the European Group of Experts on Combating Sexual Orientation Discrimination, About the Implementation up to April 2004 of Directive 2000/78/EC establishing a General Framework for Equal Treatment in Employment and Occupation,* 2004, Universiteit Leiden, Leiden. The Report, which is available at www.emmeiiers.nl/experts as well as on the European Commission's website (in English and French), is divided into chapters dealing with each of the then Member States and is well worth reading in its own right. For example, the chapters on Ireland and the United Kingdom by Mark Bell and Robert Wintemute respectively may be singled out as of interest to readers who wish for a very good introduction to present law on sexual orientation discrimination in the British Isles.

The book under review is a synoptic overview of the Report together with material provided by lawyers on the ten Member States which have recently acceded and the two states, Bulgaria and Romania, which were about to become members at the time of the writing of the text, together with the work of the European Network of Legal Experts in the Non-Discrimination Field, particularly the country reports in *Report on Measures to Combat Discrimination* (Utrecht/Brussels, Human Consultancy & Migration Policy Group, 2004 and 2005). The chapter division reflects this distinction and the core of the

book is chapters 4 and 5 entitled 'Comparative analysis of legislation implementing the Directive in the fifteen old member states' and 'Implementation of the Directive in the ten new Member States and in the two acceding states'. It should be noted that of the 'old' 15 Member States Germany, Greece and Luxembourg had not enacted legislation to transpose the directive into national law and that accordingly they are omitted from the analysis. Other chapters focus on how the Directive came about (including a study of the European Convention on Human Rights' application to LGB people and the European Court of Justice's refusal to apply Article 141, previously 119, on equal pay between men and women to LGB people while extending its protection to transgendered people), on pre-existing national protection for LGB people (Table 5 on pp. 73–5 is particularly helpful in this regard), on the interpretation of the Directive (e.g. the Directive applies to sexual orientation but does it apply to sexual behaviour?) and on comparing Member States' implementation of the Directive. The Directive itself appears in an Annex. There is a bibliography, tables of cases and legislation and an index.

The book suffers from the defects of highly analytical accounts in that other material is simply not there. There are surveys found in tables on pp. 62–3 on whether 'straight' people would not like homosexuals to live next to them and whether homosexuality is ever justified: the figures are to say the least varied across the EU. There is also the table on p. 83 detailing the decriminalisation of sexual acts between adult males and the recognition of same-sex partnerships. However, these examples going beyond the implementation of the Directive are rare in the book and there is for instance, no discussion on whether the Directive has increased the acceptance of homosexuality (e.g. has homosexual harassment declined in the workplace?). There are some cryptic remarks such as (p. 48) whether negative statements about homosexuality may constitute harassment (an issue 'requiring a sensitive balancing act on the part of those responsible for enforcing the rules of the Directive') but discussing the width of the Directive's concepts is not the primary focus of the book, though there are some pointed comments in the final chapter about the vague wording of the Directive. The discussion of the interaction between homosexuality and religions (pp. 50–1 and 126–8) is particularly compressed and unhelpful to those engaged in determining the boundaries between religion or belief legislation and the sexual orientation legislation under review: the reviewer looked for Catholicism and Islam in the index but the relevant passages in the book are found in the index under 'Churches', 'Religion or belief' and 'Religious employment'. It is accepted that this book is not about empirical matters and that it may still be too early to grapple with such issues, but the book has to be read with other material to understand not just the state of the law but the efficacy of that law. The book came out before there were any decisions of the ECJ interpreting the Directive. As may be expected in an analytical approach there is a degree of repetition e.g. the restriction of French law to protection of LGB people themselves with the result that it does not apply to *perceived* sexual orientation is mentioned at several different points.

The reviewer was impressed by the tables, particularly Table 8 on p. 148, 'Major shortcomings in the implementation of the Directive' but the print is very small and colour would have been helpful. It is also not immediately evident how the legislation in each individual Member State falls short of all of the Directive's provisions. For example, a reader from one of the Member States may wish for a subchapter dealing with all the deficiencies in that State's provisions but one has to go through the authors' relevant chapter to understand that State's partial (or total) non-implementation of the Directive, though the diagram on p. 148, mentioned above, is helpful in this respect. On the basis of that table of the then 15 Member States (but excluding Greece, Germany and Luxembourg for the reason stated above) France, Italy, Portugal and the UK appear to be the worst offenders. The reviewer would especially point to the discussion of indirect discrimination (pp. 100–2) as demonstrating the principal areas in which current UK law

falls short of the Directive's requirements, but the whole of the Chapter repays careful study.

The book is extremely well-produced and is well-written (though the sub-heading 'A certain implementation of the Directive' on p. 209 is strange to Anglo-Saxon ears); orthographical errors are vanishingly small. The phrase 'chaotic and fragmented' is used on p. 217 to describe the multi-level character of discrimination law across geographic Europe, but could also be used of the failures to transpose the directive across the now 27 Member States of the European Union. In sum, the book is a splendid addition to the bookshelves of any discrimination lawyer, whether in the EU or beyond.

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