

Table of Contents

Acknowledgements	5
Foreword	7
Table of Contents	9
List of acronyms and abbreviations	17
Chapter 1	
Introduction	23
A. Research question	23
B. Practical implications and relevance for EU Equality Law	26
<i>I. Growth of grounds and multidimensionality</i>	26
<i>II. Multidimensionality and the principle of equality and non discrimination</i>	28
C. Research objective	31
D. Methodology and methods	32
<i>I. Methodology</i>	32
<i>II. Methods</i>	34
E. Structure	36
F. Shortcomings and limitations	37
G. Conceptual issues	39
<i>I. Ethnic minority women</i>	39
<i>II. Equality and equal treatment</i>	41
<i>III. Multidimensionality, intersectionality and additivity</i>	42
Chapter 2	
Conceptualising multidimensionality	43
A. The concept of multidimensionality	43
<i>I. Background</i>	43
<i>II. Conceptual structure: Additive and intersectional discrimination</i>	45
<i>III. Assessment of conceptual structure</i>	51
<i>IV. Intersectionality revisited</i>	53
1. A legal theoretical perspective	53
2. The challenge of intersectionality beyond legal theory – an interdisciplinary convergence?	55
3. Assessment and evaluation	61

B. The concept of multidimensionality – critique of equality legislation in selected jurisdictions	61
<i>I. USA</i>	61
1. Socio-economic status of women of colour	61
2. Legal framework	65
3. The approach of courts	66
4. Legal theory and critique of USA equality law	71
5. Interim results	75
<i>II. Canada</i>	76
1. Socio-economic status of ethnic minority women	76
2. Legal framework	78
3. The approach of Canadian courts and tribunals	79
4. Legal theory and critique of Canadian equality law	82
5. Interim results	84
C. Evaluation and conclusion	85
Chapter 3	
Ethnic minority women in Europe – social data	89
A. Preliminary remarks and description of methods	89
<i>I. Germany</i>	89
<i>II. The United Kingdom (UK)</i>	91
B. Analysis of social data	94
<i>I. General background</i>	94
<i>II. Germany</i>	96
1. Immigrant demographics	96
2. Education	97
3. Labour market	102
4. Summary of findings	111
5. Correlation with sociological studies	111
<i>III. The United Kingdom</i>	113
1. Immigrant demographics	113
2. Education	113
3. Labour market	114
4. Summary of findings	119
5. Correlation with sociological studies	120
C. Reasons for disadvantage faced by ethnic minority women	121
<i>I. Reasons associated with immigrants</i>	121
<i>II. External barriers</i>	124
1. Discrimination as a factor	125

2. Non discriminatory hindrances	127
D. Final assessment	129
I. <i>Preliminary remarks</i>	129
II. <i>Effects of gender and ethnicity</i>	130
III. <i>Intra-group differences</i>	130
IV. <i>Need for a religious dimension?</i>	130
V. <i>Beyond race and sex – to ethnicity/nationality and sex?</i>	131
VI. <i>Reasons for disadvantage: Beyond discrimination</i>	131
VII. <i>Position of ethnic minority women beyond education and the labour market</i>	133
Chapter 4	
The EU legal framework for addressing multidimensionality	135
A. Legislation: Growth of prohibited grounds and multidimensionality	135
I. <i>Nationality provisions</i>	135
II. <i>Sex</i>	136
1. Binding measures	136
2. Soft law measures	139
III. <i>Racial or ethnic origin</i>	142
1. Binding measures	142
2. Soft law measures	147
IV. <i>Religion or belief, disability, age, sexual orientation</i>	150
1. Binding measures	150
2. Soft law measures	150
V. <i>Interim assessment</i>	155
B. Expansion of grounds and new developments	156
I. <i>Concept of discrimination</i>	156
1. Direct discrimination	156
2. Indirect discrimination	159
3. Harassment	160
4. Sexual harassment	162
5. Instruction to discriminate	163
6. Reasonable accommodation	163
II. <i>Personal scope</i>	164
III. <i>Material scope</i>	164
IV. <i>Enforcement</i>	166
1. Burden of proof	166

2. Equal treatment bodies	167
3. Remedies and sanctions	168
4. Victimisation	169
5. Defence of rights	169
<i>V. Exceptions</i>	170
1. Extension or consolidation of the sex approach to the new grounds	170
2. Genuine service requirements – A reflection of the extended material scope	174
3. Departure from the practice under sex equality	174
<i>VI. Interim findings</i>	176
C. Assessment and challenges	177
 Chapter 5	
Addressing the intersections of sex and racial discrimination in EU equality law	179
A. The legislative framework	179
<i>I. Provisions on multidimensionality</i>	179
<i>II. Conceptual structure</i>	182
1. Conceptions of equality in EU anti-discrimination law	182
a. Formal equality and substantive equality	182
b. Conceptions of equality and multidimensionality	183
2. Concepts of direct and indirect discrimination	186
a. Direct discrimination and comparators	186
b. Indirect discrimination	187
<i>III. The inconsistent levels of protection</i>	189
1. Inconsistencies in concepts	190
a. Harassment	190
b. Concept of goods and services	192
2. Material scope	194
3. Inconsistent exceptions	196
a. The personal scope	196
b. Exceptions common to both grounds	200
c. Ground specific exceptions - genuine service requirement	204
<i>IV. Enforcement</i>	205
1. Equal treatment bodies	205
2. Remedies and sanctions	208
<i>V. Peculiarities of EU equality law</i>	217
B. Approach of the European Court of Justice	220
<i>I. Pre 2000</i>	220
1. Nationality	220
2. Sex	221

3. Religion	222
<i>II. Post 2000</i>	222
1. Age	222
2. Disability	225
3. Sexual orientation	226
4. Race and ethnicity	226
<i>III. Possible reasons for the lack of attention</i>	226
<i>IV. Issues not addressed</i>	228
1. Segregation	228
2. Structural intersectional	229
C. Final remarks	229
 Chapter 6	
Addressing the intersections of race, ethnicity and sex in the UK and Germany	231
A. United Kingdom	231
<i>I. Legislative framework</i>	231
1. Introduction	231
2. Addressing multidimensionality	235
3. Ability of legislative framework to address multidimensionality	238
a. Transparency and coherency	238
b. Inconsistencies and hierarchies	239
c. Equality Act 2006 and positive duty	244
d. Equality Act 2006 and single equality body	245
4. Assessment	246
<i>II. Approach of UK Courts</i>	250
B. Germany	256
<i>I. Legislative framework</i>	256
1. Introduction	256
2. Addressing multidimensionality	259
3. Equal treatment body	262
4. Remedies and sanctions	262
5. Ability of legislative framework to address multidimensionality	263
a. Transparency	263
b. Inconsistencies and hierarchies	264
6. Interim assessment	268
<i>II. German courts</i>	270
C. Evaluation	276
<i>I. Legislative framework</i>	276
<i>II. Approach of courts</i>	279
<i>III. Reasons for restricted approach</i>	279

Chapter 7	
Construing EU law to address the specific position of minority women	293
A. Legislative framework	293
I. <i>Introducing a provision on multidimensionality</i>	293
1. Enumerated and open-ended list	293
a. Non-exhaustive list with no prohibition on multidimensionality	294
b. Non-exhaustive list with an explicit provision on multidimensionality – A South African perspective	298
c. Implications to the EU equality law	303
d. Feasibility	310
e. Concluding remarks	314
2. Explicit provision and enumerated closed list of grounds	314
a. Feasibility	314
b. Restricting intersections?	316
II. <i>Addressing inconsistencies</i>	317
1. Conceptual inconsistencies	318
a. Harassment	318
b. Concept of goods and services	319
2. Material scope	319
3. Exceptions	320
a. Genuine occupational requirement	320
b. Genuine service requirement	321
c. The personal scope	321
d. Positive action	324
4. Enforcement	325
a. The equal treatment bodies	325
b. Sanctions	326
III. <i>The concepts and conceptions in equality law</i>	326
1. Conceptions of equality	327
2. The concept of direct discrimination	327
a. The single comparator test	327
b. Multiple comparators	328
c. Comparator free approach	329
d. Hypothetical comparators	330
e. Indirect discrimination	331
B. Addressing structural intersectional discrimination in EU equality law	333
I. <i>Identifying the socio-context</i>	334
II. <i>Redressing the social context through anti-discrimination law</i>	335
1. Indirect discrimination	335
2. Positive action	336

3. Reasonable accommodation	336
4. Borrowing from other equality approaches	337
5. Conclusion	337
<i>III. Beyond equality law – structural intersectionality at the interface of anti-discrimination law and other policies – The European Employment Strategy (EES)</i>	338
1. Any impact?	340
2. Evidence of an integrated approach	343
3. Construing the EES to address intersectionality	346
4. Limitations?	346
<i>IV. Concluding remarks</i>	347
Chapter 8	
Conclusion and final theses	349
Table of cases	377
Literature	377
Annex	413