



# Exit from and non-take up of public services

A comparative analysis: France, Greece, Spain, Germany, Netherlands, Hungary

[GLOSSARY]

EXNOTA consortium

**French contribution to the glossary  
about non-take-up of social benefits in Europe**  
*Central terms in the official discourse about non-take-up or access  
to social rights in France.*

1. **Non recours** (aux droits sociaux)
2. **Pauvreté**
3. **Pauvreté héréditaire**
4. **Discrimination**

## 1. Non recours (aux droits sociaux)

English: Non-take-up (of social benefits)

**Definitions.** "Non-take-up" basic definition: *not receiving a social benefit that the person is entitled to.* "Not receiving" can be full or partial, permanent or temporary, frictional or cumulative:

- *Full non-take-up* occurs when a person does not apply for a benefit
- *Partial non-take-up* occurs when a person applies for a benefit but receives only part of it (little empirical information available)
- *Permanent non-take-up*, if a person makes no claim during the period of eligibility and at the time of losing this status.
- *Temporary or delayed non-take-up* occurs when a person puts in a claim some time after becoming eligible.
- *Frictional non-take-up* refers to the time it will take to move through the claiming process (claimant errors, time to get information, administrative time, etc.)
- *Cumulative non-take-up*, when a person is entitled to several benefits but more than one are not being received.

It refers to all types of public benefits or services. A basic distinction is made between *universal* services (meant for all citizens) and *specific* services for certain groups.

### Main Key Words used in France.

Key Words	Meaning
<i>The target population</i>	The groups targeted by political decision-makers.
<i>The eligible population</i>	The groups that correspond to the formal conditions of allocation of a benefit (an allowance or a service).
<i>The beneficiary population</i>	The groups that actually receive the benefit, whether they are eligible or not.
<i>Regular NTU</i>	Regular NTU corresponds to the standard definition of NTU of benefits, i.e. not receiving a social benefit even though you are entitled to it, whatever the reason may be.
<i>The NTU rate</i>	Ratio of the number of eligible persons who do not receive the benefit, over the total number of persons who do receive it.
<i>Primary NTU</i>	When an eligible individual does not apply for the benefit and therefore does not receive it.
<i>Secondary NTU</i>	When an eligible individual applies for a benefit but does not receive it, either because of something he/she did or did not do to be eligible or because the administration has taken a bad decision.
<i>Complete NTU</i>	When an eligible individual receives nothing and applies for nothing.
<i>Partial NTU</i>	When an eligible individual applies for a benefit but receives only a part of it.
<i>Permanent NTU</i>	When an individual does not apply for a benefit during the period in which he/she is eligible.
<i>Temporary NTU</i>	When an individual applies for a benefit a while after becoming eligible, so that there is a lapse of time between the decision and the actual application.

<i>Frictional NTU</i>	This form of NTU is due to the lapse of time necessary for the application for a benefit to be processed (due to the applicant, the administration or both).
<i>Cumulative NTU</i>	When an individual eligible for several benefits does not receive them all.
<i>Deliberate NTU (a form of exit)</i>	The phenomenon results from a cost/benefit calculation; since there are more disadvantages the person decides on NTU.
<i>Quasi-NTU</i>	The notion of quasi-NTU is proposed for benefits of which at least one of the conditions of eligibility can be decided by the potential beneficiary.
<i>Precariousness</i>	<i>"Precariousness is the absence of one or more form(s) of security that normally enable individuals and families to assume their basic responsibilities and to take advantage of their basic rights. The extent of the resulting insecurity and the seriousness and permanence of the consequences vary."</i> (J. Wresinski)
<i>Poverty</i>	<p>According to the European Council (1994 definition), people considered as poor are "people whose resources (material, cultural and social) are so weak that they are excluded from minimal acceptable lifestyles in the Member State in which they live". Poverty in Europe is therefore not measured on a harmonised scale. It can be addressed from different angles, depending on the country:</p> <ul style="list-style-type: none"> <li>- Monetary poverty (insufficient income). This consists in setting a threshold below which households are qualified as poor. This numeric criterion is based on indicators set conventionally by the different European countries. The approach used most commonly in Europe is relative monetary poverty ("poor" populations are those at the bottom of the income scale compared to the population as a whole).</li> <li>- "Living conditions" poverty, that is, an absence of ordinary consumer goods. The lack is calculated on the basis of what survey respondents own and/or think.</li> <li>- "Subjective" poverty, based on people's perception of their wealth or their unfulfilled needs.</li> <li>- "Administrative" poverty, concerning people who receive aid intended to alleviate poverty (e.g. guaranteed minimum income); this is a relevant criterion but difficult to use for comparisons.</li> </ul>
<i>Exclusion</i>	<p>The notion of social exclusion is also relative and can be defined in various ways.</p> <p>Social exclusion can be considered as a multidimensional concept of poverty that, in particular, introduces social participation and observance or rights within its conceptualisation. Material poverty is simply one form of social exclusion.</p> <p>Exclusion refers to a break in social links resulting from the process of <i>social disqualification</i> (Paugam) or <i>social disaffiliation</i> (Castel), related to the massive return of social and economic vulnerability in industrialised countries.</p> <p>The term social exclusion, as an analytical concept, was invented in France in 1974. Originally it referred to various categories of people described as "social cases"</p>

	<p>and who benefited from no social protection. Social exclusion in this context refers to a process of social disintegration, in the sense of a gradual breakdown of relations between the individual and society. Since the end of the eighties the term "social exclusion" has been used by the European Commission, increasingly concerned about the problem of long-term unemployment and that of unskilled workers and immigrants.</p> <p>Socially, psychologically and economically excluded people are most often without resources and means (no job, no housing, acculturation, de-socialisation, family dispersal). Exclusion is a dynamic reality characterised by the absence, for a lengthy period, of the possibility of benefiting from rights attached to the individual's social situation and personal history. The essential problem is that exclusion is closely bound to feelings of social uselessness and loss of self-esteem that induce intense psychological suffering and difficulty in fitting into a network of relationships. (URCAM)</p>
<i>Social cohesion</i>	A concept that encompasses a series of values and principles aimed at ensuring that all citizens, on an equal footing, without any selection, have access to basic economic and social rights (Council of Europe).
<i>Means-tested benefits</i>	The organisations responsible for paying benefits control or ask for proof of income (Math). Access to benefits depends on criteria; they may be distributed on the basis of an income scale.

**Emergence and diffusion in France.** Up to the 1990s, the NTU phenomenon had been neither studied nor even identified as an issue in France, whereas it was nearly systematically scrutinised in the United Kingdom and had been the object of several research studies in Germany and in the Netherlands (van Oorschot, 1991).

The change can be pinpointed to 1996 with a special issue of the research review of the CNAF (Caisse nationale des allocations familiales), *Recherches et Prévisions*, dedicated to the phenomenon. Given the absence of interest in the subject up to that issue, one of the problems of the authors was to find a French expression for *non take up*. The term was then explicitly imported from other countries and the growing interest for the phenomenon stems partly from comparative studies. Antoine Math (1996) has noted that *non-take-up* is a term linked to the British culture, rather than to the English language, since North-American analysts prefer to use the expression *the less than full rate of participation in welfare programs* (Moffit, 1992, Duclos, 1992).

In an article discussing the difficulty and traps in translating social protection vocabulary, Antoine Math (1996) pointed out *non-take-up* as an example of a word with no real equivalent in the French language. He showed that literal translations of *non-take-up* or of its Dutch counterpart *niet-gebruik* would be unsatisfactory neologisms (*non-ramassage, non-prise, non utilisation, non usage, non emploi*) because they would be unable to reflect clearly and accurately the meaning of non-take-up. In certain translations by non-specialists of social issues, especially in reports of international organisations, one could find translations of *take-up* such as *taux de souscription, taux de distribution, taux d'utilisation* (Room, 1991 et 1992)

or *taux de consommation des prestations* (Brown, 1995). French analysts had also tried to translate *take up* by *taux de participation*, *taux de pénétration* (CREDOC, 1995), the very ambiguous expression *proportion d'exclus* (Vanlerenberghe, 1992), and the more explicit *non-effectivité* (CEBS, 1995, p26). *Non-demande* had also been used (Barthe et alii, 1992) with the strong disadvantage of assuming that the cause of NTU is due only to the person's behaviour. The more neutral *non-utilisation* seemed to be better from this point of view (Pitrou, 1978, p.182).

*Non recours* was eventually chosen by the authors of the special issue of *Recherches et Prévisions* as the best solution to provide an accurate idea of the phenomenon. This French term had already been used, in particular in an article in English by Wim van Oorschot (1991) following the suggestion of French social policy academic Jean-Claude Ray.

Following the pioneering work undertaken in *Recherches et Prévisions*, the expression *non recours* was subsequently widely used in administrative reports and in academic work. Two PhD theses were presented on this issue (Reinstadler, 1999; Terracol, 2002).

*Non recours* is now better known, even if the expression often needs to be accompanied, as it was in the title of the 1996 special issue of *Recherches et Prévisions*, by the expression *accès aux droits* (access to rights). *Accès aux droits* is less precise for the NTU phenomenon, but has a more direct and explicit French meaning. That is why *accès aux droits* is much used more in the policy-making field, for instance in French texts on the fight against poverty and social exclusion.

Reference is often made to "access to social rights", of which NTU is considered to be a sub-set. According to Mary Daly, author of a report submitted to the Council of Europe on access to social rights, these rights can be defined as follows: "Social rights, then, are those provisions, expressed in legal and other forms, which are necessary for the fulfilment of people's social needs and for the promotion of social cohesion and solidarity. In terms of specifying the content of social rights ... it interprets social rights as covering housing, social protection, employment and education".<sup>1</sup>

NTU does not concern those rights in the broad sense of the term; it applies to potential beneficiaries' non-access to social benefits or to the public services that are, in a sense, the materialisation of those rights in public policy terms.

The issue of "access to rights" is older and use of the term itself is widespread. It appeared in the late 1970s in relation to the family allowance funds, the *Caisses d'allocations familiales*, well before NTU had become an issue. Its origin is twofold: the upsurge of precariousness among the groups that received family allowances, related to the deterioration of the labour market; and the institutional response to that phenomenon, consisting in a diversification of allowances to respond more effectively to certain situations (young children) or to the emergence of new types of families (single parents), and the introduction of means-tested benefits (apart from housing allowances that have existed since 1948, the first means-tested family allowances were created in the first half of the seventies). When it became clear that the multiplication of benefits generated complexity and significant difficulties, the CNAF commissioned a study by Jean-Luc Outin on families' access to social benefits (Outin, 1979). A series of initiatives from both within and outside the family branch of the social security system were instrumental in adding the

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<sup>1</sup> European Committee for Social Cohesion, Mary Daly, *Access to social rights in Europe* (Germany: Council of Europe, 2002), 15.

issue of access to rights and, secondarily, of NTU, to the institution's list of concerns (EXNOTA, 2003: 29-35).

Today, NTU appears to be considered by the man in the street as a technical or technocratic expression. It still seems to be confined to scientific or to administrative analytical reports (especially those of the *Observatoire de la pauvreté et de l'exclusion sociale*).

Yet the concept is increasingly recognised and used by the social security funds (CNAF, CNAMTS, etc.), the administration and the government, through various instruments (management contract between the government and the social security funds, ministerial working groups, social cohesion plans, laws).

\* In the contract that it signed with the government for the 2001-2004 period (*Convention d'Objectifs et de Gestion – COG*), the CNAF clearly listed among its objectives the need to identify and experiment with areas of potential rights. One of the sections of the contract (Project 7) explicitly defines NTU as "a concept for evaluating public policies and their implementation". Internal CNAF studies detail possible forms of NTU, list known explanations (drawing on the results of earlier research), and launch debate on usual modes of dealing with beneficiaries as regards possible measures to fight against NTU (CNAF, 2004). This engagement seems flimsy, however, since the new COG does not appear to have retained the issue of seeking potential benefits as a priority. The new watchword is productivity. It is only in relation to the recurrent topic of receiving the public that overall treatment of potential rights reappears as one of the institution's preoccupations.

\* In a comparable way, the *Caisse Nationale d'Assurance Maladie des Travailleurs Salariés* (CNAMTS), the institution that manages the national health insurance system, has embarked on the systematic identification of situations of NTU. In its "Draft plan for a policy to fight exclusion", the CNAMTS urges the *Caisses* in its network to "study situations of non-take-up" and suggests testing possible ways of measuring the phenomenon on two types of offer per year. For 2004, the subjects relate to: non-response to the offer of a social service following a description in case of exit from *Couverture Maladie Universelle Complémentaire* (CMUC – free complementary health insurance for low-income groups); and failure to apply for CMUC. This new objective is carried by the *Direction de l'Animation du Réseau des Caisses primaires d'assurance maladie* and, within it, by the heads of the "Précarité" project. Apart from this new orientation, note the existence of the *Centre technique d'appui et de formation des centres d'examens de santé* (CETAF) of the CPAM, created in 1994, whose mission includes the creation of a health operating report based on data received annually from the 90 health examination centres (CES – *centres d'examen de santé*)<sup>2</sup>. The CETAF compiles information relative to the health and health benefits of wage-earners examined at the CES. A total of over 250 variables are informed for over 650,000 people received annually. With a permanent team that includes statisticians, the CETAF has the capacity to measure and regularly characterise "NTU of health", especially on the basis of entitled benefits to basic and complementary health insurance of the groups received by the CES, as well as rates of delay or non-take-up of healthcare per population group, geographic area and type of pathology.

\* The theme and the term NTU are now starting to be recognized at governmental level, particularly with the new Working Group on the "Fight against exclusions, quality of reception and participation of persons in difficulty". This group was created in December 2003 by the *Direction générale de l'action sociale* (DGAS),

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<sup>2</sup> See the site : <http://www.cetaf.asso.fr>

at the request of the Minister responsible for the struggle against exclusion, as part of the National Plan to fight against precariousness and exclusion (PNLE – *Plan national de lutte contre la précarité et l'exclusion*). The Group is moderated by the DGAS sub-division for policies on social insertion and the fight against exclusion, also responsible for preparing the next PNAI for France. It consists of representatives of the CNAF, the CNAMTS, the UNCCAS (*Union nationale des centres communaux d'action sociale*) and the DGS (*Direction générale de la santé*), and works in close partnership with ODENORE, the institute for research on NTU<sup>3</sup>.

In response to the request for priority actions in the new Social Cohesion Plan (*Plan de cohésion sociale*) drawn up on 6 July 2004 by the Inter-ministerial Committee for the fight against exclusion (CILE – *Comité Interministériel de Lutte contre l'Exclusion*), the Working Group has just proposed "the promotion of ODENORE" (Action 5) and, more broadly, "the development of indicators on NTU of benefits" (Action 8). The latter proposal corresponds to that of another Working Group, "Basic rights. Access, exercise, take-up" set up by the CNLE (*Conseil National des politiques de Lutte contre la pauvreté et l'exclusion sociale*) in preparation for the first national conference on the fight against exclusion<sup>4</sup>.

These proposals are likely to be applied since the framework law relative to finance laws (LOLF) of 1 August 2001, considered as "a new financial constitution" of the State<sup>5</sup>, provides for Objective 1 "Reinforcing access by underprivileged persons to social benefits" of the budgetary programme "Politics in favour of inclusion", to be measured in terms of a results indicator known as "rate of non-take-up of social benefits".

It has also been decided that the Working Group on the "Fight against exclusions, quality of reception and participation of persons in difficulty" of the DSGAS will participate in steering the actions of the CILE. It is already considering the possibilities of constructing NTU as an indicator for actions in the fight against exclusion, based on the first methodological results of ODENORE. The reflection under way also involves the services of the DGAS responsible for preparing the next PNAI project (for early 2005), and the representatives of the DREES (*Direction de la recherche, des études, de l'évaluation et des statistiques*) responsible for research, evaluation and statistics, and common to the Ministry of Social Affairs, Labour and Solidarity and the Ministry of Health, Family affairs and Disabled persons. In particular, the possibility of *jointly constructing criteria to measure NTU* for specific fields of data is under investigation. It would be necessary to have regular and coherent sets of estimations or statistical measurements and analyses. This project takes into account the wide diversity and fragmentation of existing administrative data and data provided by associations (NGOs), and the lack of ad hoc data on NTU. Irrespective of their size, these sets will be composed of various measurement tools; NTU will therefore appear as a *compound indicator*. The selected criteria will be *characterised criteria*, in the sense that, for the identified groups in situations of NTU, we have several characteristic types of information (in

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<sup>3</sup> ODENORE (*Observatoire du non recours*), an Unit for research on NTU, was created in March 2003 by the coordinator of the EXNOTA programme. It is currently funded by the *Fonds à la Réforme de l'Etat*, the CNAF, the Isère General Council, and the City of Grenoble, and works in partnership with other organizations, including the DGAS, the CNAMTS and *Médecins du Monde*. ODENORE is the author of several works on NTU, including presentations of data, specific studies and general articles. See: <http://ODENORE.msh-alpes.prd.fr>.

See also the presentation of ODENORE for EXNOTA, Final report, December 2004.

<sup>4</sup> See this Group's report on p. 36. The report was presented at the national conference on the fight against exclusion and for insertion, held on 6 July 2004 under the presidency of the Prime Minister.

<sup>5</sup> The implementation of the LOLF of 1 August 2001 profoundly reformed the State budget. Apart from the new budgetary structure, public management is set to change from a culture of means to one of results. This new performance-based management is expected to be a powerful lever of State reform and to enhance Parliament's powers.

other words, these criteria will make it possible to say *how much* and *who* is concerned).

It seems that the NTU concept has now been soundly established owing to the different administrative actors' and leaders' appropriation of the term, the theme, and related measures.

**Initial text.** Math A. (1996), « *Non-take-up, niet-gebruik* ou non recours ? Le problème de la traduction des termes de protection sociale », *Recherches et Prévisions*, n°43, CNAF, Paris.

Les recherches comparatives sur la protection sociale doivent fréquemment faire face au problème de la traduction de certains termes. Ainsi, il est difficile de trouver un équivalent au concept appelé non-take-up par les britanniques ou niet-gebruik par les néerlandais. Cet article vise à donner quelques explications suite à la proposition de traduire non-take-up par "non recours" (aux prestations sociales).

Une traduction, lorsqu'elle se limite à un mot ou une expression isolée, ne va pas toujours de soi et il est illusoire de croire qu'il suffit de remplacer les mots d'une langue par ceux d'une autre. Une traduction va bien au-delà d'un simple remplacement des mots à l'aide du dictionnaire, elle requiert une fidélité au sens, et cette exigence trouve ses limites lorsque l'on se trouve face à un vocabulaire profondément lié à la langue et/ou la culture d'origine. En langue eskimo, par exemple, il existerait plus de vingt couleurs blanches différentes, utilisées notamment pour qualifier la neige et la glace. Cette richesse relative de la langue eskimo proviendrait de l'environnement dans lequel les locuteurs vivent et reflèterait l'importance de ces éléments naturels dans les modes de vie de cette population.

### ***Traduire des termes de protection sociale***

Avec le développement des études comparatives dans le domaine de la recherche sur la protection sociale, plusieurs auteurs ont déjà souligné les difficultés de traduction auxquelles ils ont été confrontés lors de leurs travaux comparatifs et les erreurs sémantiques que génèrent des traductions directes de termes désignant des mécanismes, des concepts parce que ceux-ci sont profondément ancrés dans l'histoire, dans la culture et, par conséquent, dans la langue du pays auxquels ils se réfèrent.

Signalons deux grands types de difficulté : quand la traduction conduit à une altération sensible ou à un appauvrissement du sens et quand il ne semble exister aucune traduction simple. Le premier cas est fréquemment souligné par les chercheurs, le second beaucoup moins.

### ***Des traductions qui altèrent le sens initial***

Pour de nombreux mots ou expressions, les traductions modifient le sens original voire lui font perdre la quasi-totalité de ce sens. Dans tous les cas, se produit un fort décalage sémantique entre l'original et la traduction. Pour des raisons similaires au fait que *Christmas pudding* ne peut être traduit en français par dessert de Noël ou, inversement foie gras par *fat liver paste*, politique familiale et *family policy* ne recouvrent pas les mêmes notions en dépit des apparences, tout comme les termes allocation familiale, *kindergeld*, *kinderbijslag*, *family allowance*, ou encore *child benefit*, tant chacun est profondément enraciné dans une histoire, une pratique, un pays ou une langue (Barbier, 1990).

«Il en va de même pour l'allocation parentale d'éducation et l'Erziehungsgeld que les allemands ont coutume de traduire en français par "allocation parentale d'éducation", ce qui est une erreur [...] parce que cela masque leur nature profondément différente... ; ... il convient par avance de renoncer à trouver partout dans nos pays des équivalents lexicaux parmi les catégories (soit juridiques, soit sociologiques) qui servent à décrire la protection sociale. La "sécurité sociale" par exemple n'est pas "social security" ni exactement "soziale Sicherung" ou "soziale Sicherheit"» (Barbier, 1991, p79, p75). Le fait familial lui-même ne fait pas l'objet d'un consensus en Europe en raison des divergences inter-culturelles qui existent dans la représentation sociale de la famille (Schultheis, 1991, Hantrais et Letablier, 1994). Ces différences se répercutent jusque dans les définitions statistiques officielles et dans les indicateurs socio-démographiques. Ainsi, la notion de ménage et ses "équivalents" étrangers, *household*, *huishouden* et *Haushalt*, utilisés dans les recensements ne (se) sont pas construits de la même façon selon les pays. D'autres concepts tels que la famille, le couple cohabitant et la monoparentalité renvoient aussi à des représentations et des définitions divergentes, ce qui est une source supplémentaire de difficulté pour toute recherche comparative sur les politiques familiales (Hantrais et Letablier, 1994).

Récemment, des recherches sur les politiques de lutte contre la pauvreté et l'exclusion mettaient en évidence combien «le terme 'exclusion sociale', traduite en anglais par 'social exclusion' est quasiment incompréhensible dans certains pays», comme le Royaume-Uni ou le Portugal par exemple, où «l'expression ne renvoie à aucun sens clairement identifié» (CEBS, 1995, p9). «Inversement, le terme anglais 'deprivation', concept très utilisé par les anglo-saxons n'a pas été importé en France», ou alors sous la forme de l'expression francisée "déprivation", car il ne correspond pas à la représentation dominante de la pauvreté ou de l'exclusion en France (p.9).

Cette difficulté voire impossibilité de traduire des termes a le mérite de souligner combien il est dangereux de donner l'illusion d'une définition "scientifique" là où ne peuvent sans doute (co)exister que des regards multiples, ou encore des phénomènes "a-comparables", en raison de leur forte spécificité propre à un pays ou une culture (Barbier, 1991, CEBS, 1995).

### ***Des traductions impossibles ?***

La difficulté d'une traduction peut également provenir de la totale inexistence d'une notion ou d'un concept dans une langue. Ce peut être un terme exprimant une idée exclusivement limitée à la culture du pays, intraduisible correctement dans une autre langue sans une longue explication, à l'instar de l'anglais *cosiness* ou du néerlandais *verzuiling*, qui ne peuvent être saisis par les traductions données par un dictionnaire (respectivement, confort ou chaleur agréable, et, compartimentage ou "piliarisation" de la société).

Ce peut être également un terme correspondant à un concept seulement étudié et développé dans quelques pays et quelques langues. Dans le domaine de la protection sociale, le terme anglais "*decommodification*" en est une illustration. Il est construit à partir du mot *commodity*, mais à la différence d'autres mots au sens voisin tels *goods* ou *product*, le caractère marchand, faisant l'objet d'une négociation sur un marché est mis en avant avec le mot *commodity*, ce que les traductions marchandises, biens de consommation, articles, ne reflètent que de façon secondaire en français. *Decommodification*, proposé par Esping-Andersen (1990) permet de caractériser un Etat-providence en observant dans quelle mesure cet Etat-providence, en renforçant la socialisation et "en sapant le capitalisme" par des revenus de transferts, libère les travailleurs de leur dépendance vis-à-vis du

marché (Bradshaw et alii, 1994). Les termes "démarchandisation", "démarchéisation" ne sont que des pis-aller qui reflètent très incomplètement le sens original.

Il semble bien qu'il faille choisir entre deux solutions : garder l'original et utiliser un anglicisme, ou bien choisir une traduction en français, pouvant constituer un néologisme comme dans notre exemple, et dont la consonance peut, de surcroît, apparaître fort inesthétique. Dans une volonté de promouvoir l'usage exclusif de la langue française, la traduction peut l'emporter, mais si le but est plutôt de se faire comprendre, de ne pas créer de confusion (polysémie ou autres), de pouvoir communiquer avec ceux qui s'intéressent au domaine, la première solution semble souvent inévitable, quitte à conserver des guillemets.

### **Traduire "non-take-up"**

Le *non-take-up* correspond bien à ce dernier cas de figure : ce phénomène est étudié depuis longtemps et de manière systématique au Royaume-Uni, et dans une moindre mesure aux Pays-Bas et en Allemagne. Le *non-take-up* désigne le phénomène qui advient lorsque des personnes ou des ménages ne perçoivent pas tout ou partie d'une prestation à laquelle ils ont droit, qu'elles qu'en puissent être les raisons. Se pose la question d'une éventuelle traduction française capable d'exprimer de façon courte, par un groupe nominal, ce que recouvre le terme.

Le terme anglais *non-take-up* ou son équivalent néerlandais *niet-gebruik* désigne le phénomène (par opposition à leurs antonymes *take-up* et *gebruik*). Il s'agirait donc de tenter de trouver une définition sachant qu'en français, en raison de l'absence d'intérêt pour le sujet, le concept n'a pu se construire. Au moyen de traductions littérales, on obtient de l'anglais des expressions peu satisfaisantes pour rendre compte du phénomène (et des personnes), tels que "non-ramassage", "non-prise" ("non-preneurs") etc., qui constituent des néologismes qui, quelle que soit l'appréciation esthétique subjective que l'on pourrait en avoir, ne parviennent pas à restituer exactement et clairement le sens initial. Le résultat n'est guère meilleur, doux euphémisme, avec le néerlandais (*niet gebruik* et *niet-gebruiker*), puisqu'on peut obtenir alors "non-utilisation" ("non-utilisateurs"), "non-emploi", "non-usage" ("non-usagers"), etc.

Dans certaines traductions, par des non-spécialistes, de rapports d'organisations internationales rédigés en anglais, on peut également trouver pour *take-up* les très maladroits "taux de souscription", "taux de distribution" ou "taux d'utilisation" (Room, 1991 et 1992) ou "taux de consommation des prestations" (Brown, 1995). Ont aussi été utilisés les incertains "taux de participation" ou "taux de pénétration" (CREDOC, 1995), l'ambigu "proportion d'exclus" (Vanlerenberghe, 1992), voire le plus explicite "non-effectivité" (CEBS, 1995, p26).

Si l'expression "non-demande" (Barthe et alii, 1992) a un certain attrait, elle tend néanmoins à réduire fortement et arbitrairement le *non-take-up* en présumant une cause unique au phénomène : le fait qu'une personne éligible ne perçoit pas une prestation serait le résultat de la décision active et consciente de cette personne de ne pas la "demander". Pour la même raison, "non-utilisation" a pu être préféré au terme "refus" (Pitrou, 1978, p.182). Notons au passage, ce qui pourrait surprendre un lecteur français, que le *non-take-up* est un terme réellement lié à une culture, britannique en l'occurrence, davantage qu'à la langue puisque la terminologie américaine l'ignore et que les travaux américains utilisent l'expression *the less than full rate of participation in welfare programs* - taux non complet de participation aux programmes d'assistance (Moffit, 1992, Duclos, 1992).

En conclusion, le terme "non recours" nous a paru être la moins mauvaise solution pour rendre compte du sens du phénomène, même si subsiste encore quelque peu

l'idée selon laquelle la cause du phénomène est à trouver avant tout du côté de la personne. Ce terme a déjà été utilisé, en particulier dans un article spécialisé sur le sujet à la suite d'une suggestion de Jean-Claude Ray (van Oorschot, 1991). Bien évidemment, cette proposition de traduction ne peut refléter totalement le sens initial, et surtout, ne peut espérer acquérir d'emblée le sens commun que possède *non-take-up* au Royaume-Uni, où l'homme de la rue connaît parfaitement bien la signification du concept, très fréquemment utilisé par les médias et les décideurs politiques.

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## 2. Pauvreté

English: poverty

**Non-take up in debates on the measurement of poverty.** The aim here is to explain how debates on poverty and particularly on its measurement introduce the question of NTU in more or less explicit terms. This report is therefore not intended to recall the history of the concept of poverty which has been amply documented elsewhere. Excellent syntheses exist on the subject, including the recent book by historian André Gueslin (Chair of contemporary social history at the University of Paris VII Jussieu), *Les gens de rien. Une histoire de la grande pauvreté dans la France du XXème siècle* (Paris, Fayard, 2004), the introduction of which is cited below. The idea here is to identify how debates on ways of identifying and evaluating poverty today reveal and possibly retain problems of access to social rights as possible and desirable indicators of poverty or exclusion. That is a way of showing the connection between emergence of NTU and the sudden appearance of the "new poverty" theme.

Gueslin's book, like others, refers to the work of INSEE (*Institut national de la statistique et des études économiques*), and especially to an issue of the journal *Economie et Statistique* devoted to the measurement of poverty (*Economie et Statistique*, "Mesurer la pauvreté aujourd'hui", n° 308-309-310, 1997). This set of articles written by sociologists, economists and statisticians has become a standard reference in France.

As opposed to any linear or clear-cut causal interpretation of poverty, this issue of *Economie et Statistique* shows that there is no single decisive factor explaining poverty today. The phenomenon is complex and relative. It is therefore in the debate on the choice of descriptors that we see the appearance of the impossibility or refusal of benefiting from social transfers, and thus reference to NTU. The complexity of this debate stems both from a set of theoretical and methodological problems, and from the permanent relativism to which the refusal leads, from all ethnocentric points of view. Above all, it is necessary to avoid "classifying as poor, individuals or groups whose behaviours and preferences are in reality simply different"<sup>6</sup>. That type of mistake would, for instance, consist in "treating equally a social group that is relatively well integrated but used to a lifestyle with few goods and little money, and a social group in a state of helplessness, in the process of marginalisation, when the references and needs of these two groups are clearly not the same"<sup>7</sup>. In these conditions, the relationship with both public assistance and private support (the family, the group, etc.) appears to be a descriptor of sharply contrasting situations. Under no circumstances can they be qualified *a priori* as deficient or be seen as indicating marginalisation in relation to a single benchmark, especially when it has not yet incorporated the characteristics of a post-industrial and post-welfare society. The scope of this refusal of ethnocentrism is broad since it compels us to re-evaluate the epistemological positions within the social sciences. For instance, it is noteworthy that recent studies on the sociology of youth systematically contradict the definitions of youth established in relation to such norms as social, occupational and family integration (cf. the recent volume edited by C. Pugeault-Cicchelli, V. Cicchelli, T. Ragi, 2004). Youth is now taken into account as a distinction in the ways of experiencing rights, obligations and responsibilities, through a multiplicity of worlds, affiliations or timeframes, where certain authors sometimes explicitly highlight the existence of chosen or imposed NTU (e.g. regarding health: Peneff, 2000; Pommereau, 2002; or occupational

<sup>6</sup> M. Fleurbaey, N. Herpin, M. Martinez, D. Verger, "Mesurer la pauvreté", *Economie et Statistiques*, n° 308-309-310, 1997, p. 24.

<sup>7</sup> *Ib.* p. 24.

insertion in Quebec: Simard *et al.*, 2001; in Belgium: Bajoit and Franssen, 1995; in Germany: Zoll, 1993; and in France: Cingolani, 1994; Roulleau-Berger, 1991; Schehr, 1999).

The relativism of the very definition of poverty leads to the introduction of reflection on preferences and, in particular, on "accommodating preferences" where being accustomed to poverty causes individuals to adapt and to adjust their aspirations by a process similar to the reduction of cognitive dissonances. The question of the institutional answers to poverty then arises. If individual preferences can cause people to adapt and to be satisfied with their situation, how can they be prompted to willingly take the required steps? The question appears all the more relevant in light of the development of welfare policies in which potential beneficiaries are encouraged to take a particular step. It has generated a theoretical debate on the type of action to implement, in which the possibility of NTU of proposed procedures and devices has appeared. Some have analysed this possibility as an assumed preference of certain individuals, for which they should be considered responsible (Dworkin, 1981; Rawls, 1982; Van Parijs, 1995), while others see it as the effect of inequality in individuals' capacities to choose and decide, that has to be resolved or at least reduced (Arneson, 1989; Cohen, 1989; Sen, 1985). This debate on accommodating preferences and their consequences in terms of the failure to use certain proposed resources is essential in research on NTU. It is at the heart of the distinction between imposed NTU and voluntary NTU, and therefore of the explanation given. The very concept of "non-take up" relates to people's preference or free choice, allowed by the fact that for that particular benefit or service at least one of the conditions of eligibility can be decided by the potential beneficiary. But how can this type of NTU be interpreted? As a real preference or as the effect of inequality in understanding the rules of access to the benefit? And, depending on the answer, is it better to leave things as they are or to react? This situation is found in France, for example, with the non-continuity of rights between the RMI (*revenu minimum garanti* – minimum income support) and the CMUC (*couverture d'assurance maladie complémentaire gratuite* – free complementary health insurance for low-income households). Even though, in terms of the law, access to the latter is automatic for beneficiaries of the former, and information is automatically transmitted from the institution managing the RMI to the one managing the CMUC, the CMUC still has to be requested. ODENORE is currently evaluating this absence of continuity.

Among the debates on poverty, the one on its absolute or relative character also introduces the idea of NTU. Institutional approaches to absolute poverty consider that "the poor are those that society denotes as such by selecting them in the field of assistance measures, e.g. households that request additional resources"<sup>8</sup>. This approach has highlighted the difficulty of targeting all good addressees, in other words, of allocating this assistance to those who really do need it (Ray and Jankéliowitch, 1992). The possibility of dysfunctioning in terms of NTU and abusive take up is then shown: "excluded individuals do not all have the same ability to be informed and to take the necessary steps. Some can obtain additional resources from the administration simply because its agents are unable to check whether the information provided on the individual's own resources is true"<sup>9</sup>. The taking into account of the possibility of overuse has introduced the opposite issue to that of NTU. This is the case, in particular, in Germany, as shown by the German First Periodic Report (December 2003) for EXNOTA, that can be summed up by the following extract from *Economie et Statistiques*:

"One way of getting round this second difficulty consists in setting up an administrative device that encourages part of its potential beneficiaries to

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<sup>8</sup> Ib. p. 27.

<sup>9</sup> Ib. p. 28.

withdraw". Schultheis (1996) analyses *Bundssozialhilfegesetz* in these terms. Social welfare in Germany combines several characteristics. Poverty is defined in relation to an absolute threshold: the vital minimum is estimated nationwide, on the basis of the cost of a basket of goods. The allocation of aid is then decentralized at municipal level with the aim of improving information on potential beneficiaries and limiting abuse that beneficiaries are often suspected of. It is distributed in the form of "purchase vouchers" that specify the nature and quantity of goods, and corresponds to an ethic of health and sobriety. The most original device, inspired by a spirit of subsidiarity, is that of payment of living expenditures ("recouvrement des dépenses alimentaires"). In these conditions, the only people that request public aid are those who have no family support. Public welfare allocated in this way is reserved for the excluded, by identifying them as such. On the other hand, this device helps to make a part of poverty invisible, especially that of poor households where the traditional family structure has been maintained, with its norms of honour and mutual help<sup>10</sup>.

In France the social welfare institutions also refer to the principle of the obligation to provide a living allowance, inscribed in the civil code, to avoid a substitution of public transfers for private transfers (Laferrère, 1997). This is the case, for instance, with medical aid and social housing of the aged. The obligation to recover the amounts advanced sometimes leads to a preference for NTU, e.g. in the case of aid for care for the dependent aged, recovery from the children's inheritance dissuades potential candidates who do not want their children to have to contribute (Frinault, 2003). The same applies to the minimum income support for the aged, that can be recovered from the heirs' inheritance on the person's death (for an inheritance above a certain amount). This has regularly been signalled as a cause for NTU, especially among old people with very low incomes (only their pension) who are eligible for income support but own property or a business that they want to leave to their heirs. This is the case mainly of farmers or retired self-employed people.

At the same time research studies on experiences of take up of welfare have indicated tendencies to move away from public aid. People who find themselves unemployed sometimes decline social aid to avoid the weight of moving down the social scale (Paugam, 1991). Take up of family grants is thus analysed as an alternative that, when evaluated, produces statistics (especially in relation to socio-professional background and time spent unemployed) giving an *inferred* estimation of NTU. This is evident mainly for people unemployed for less than a year, since family solidarity regresses as the period of unemployment drags on<sup>11</sup>. Note that this inferential approach to social welfare for the jobless can make use of European data from the *European panel*, that contains questions on family support. But, at best, tendencies between the volume of social transfers and the presence of private solidarity can be observed. Specific research has to be undertaken to understand the disincentive effects of less developed welfare systems (e.g. Loison, 2002). Basically, when family support is taken into account, the perspective on questions relating to poverty is broadened to include inequalities regarding social or relational capital. NTU of the social welfare system is thus introduced as an index of relative poverty, where living conditions partially compensate for low incomes<sup>12</sup>.

The statistical approach to poverty is also challenged outside specialized institutes and academic circles interested in the subject, by groups of associations strongly

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<sup>10</sup> *Ib.* p. 28.

<sup>11</sup> S. Paugam and J.P. Zoyem, "Le soutien financier de la famille: une forme essentielle de solidarité", *Economie et Statistiques*, n° 308-309-310, 1997, p. 187-210.

<sup>12</sup> This is the idea of poverty scales based on subjective and monetary aspects and on living conditions: S. Lollivier, D. Verger, "Pauvreté d'existence, monétaire ou subjective sont distinctes", *Economie et Statistiques*, n° 308-309-310, 1997, p. 113-142.

mobilised in the struggle against discrimination and exclusion. At this level the most active player is the *Réseau d'alerte sur les inégalités* (RAI) which ensures that social debate is kept alive on inequalities and poverty, and their possible solutions<sup>13</sup>.

In 1994 the association *Droit au logement* (Dal) occupied a large building, rue du Dragon, in Paris. This was an opportunity for extensive contact between activists, trade unionists and researchers from various institutions, especially from the former Cerc (research centre on income and costs), dissolved by the government of Edouard Balladur. This was how the RAI was born. This network analyses public policies to identify everything that can worsen different forms of exclusion, thus providing arguments for those working in the field to reduce them. It has drafted counter-proposals for the law against exclusions, excessive debt, employee savings, universal health insurance, the tax system and employment incentives.<sup>14</sup>

Today members of the RAI include activists from associations (e.g. *Droit au logement* (DAL), *Agir ensemble contre le chômage* (AC !), *Points Cardinaux*, *Raison d'Agir*, and the *Groupe d'information et de soutien des immigrés* (Gisti)), trade unions (e.g. *Syndicat unifié des impôts* (Snui – *Groupe des 10*), *Fédération des Finances CGT*, *CGT* at INSEE) and researchers (sociologists, economists, jurists, etc.).

The lack of statistics prompted the RAI to launch the BIP40 site. This Barometer of Inequalities and Poverty is a synthetic indicator that incorporates existing statistical series. It applies a method inspired by those used to produce the HDI (Human Development Index of the UNDP) or related indicators. The BIP40 aggregates indexes obtained through statistical series, once normalised, by giving each of them a certain weight. This step necessarily involves a degree of subjectivity. This applies to the BIP40 and to the calculation of any index of inequality, including the most frequently used synthetic indexes.

By calculating the weighted sum of these normalised indexes, the RAI obtains an aggregated index that translates the tendency observed year after year in the evolution of inequalities and poverty.

### **Le Bip 40, un baromètre pour faire pression**

*Rassembler tous les ingrédients qui concourent au développement des inégalités et de la pauvreté en un seul indice. L'entreprise est certes complexe, mais salubre.*

Ceux qui écoutent la chronique économique de Jean-Marc Sylvestre tous les matins sur France Inter savent combien les indicateurs économiques classiques, comme l'inévitable Cac 40 (pour la Bourse de Paris) ou le taux de croissance du PIB, dominent le débat public. Comment attirer davantage l'attention sur les inégalités et la pauvreté, y compris dans leur dimension non monétaire ? Cette constante préoccupation d'Alternatives Economiques [1] rejoignait celles du Réseau d'alerte sur les inégalités (RAI). Ce réseau regroupe depuis 1995 des associations militantes comme Droit au logement ou Agir ensemble contre le chômage (AC !), des organisations syndicales et des chercheurs. Pour faire pièce au Cac 40, le RAI s'est lancé dans la confection d'un baromètre des inégalités et de la pauvreté, le Bip 40 (clin d'oeil malicieux au PIB). Voici, en exclusivité dans Alternatives Economiques, les premiers résultats de ce travail de bénédictin.

#### **Additionner des expulsions, des taux de chômage...**

Il s'agit d'additionner des choux et des carottes, des taux de chômage et des inégalités de revenus, des expulsions et des nombres de Français soumis à l'impôt de solidarité sur la

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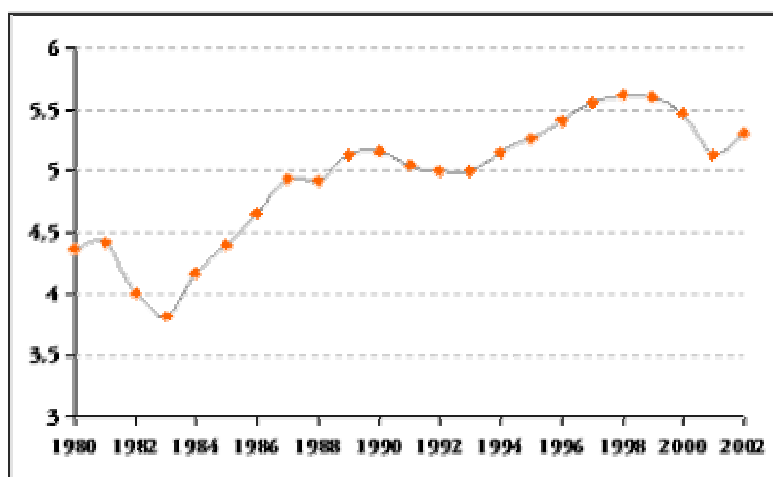
<sup>13</sup> <http://www.bip40.org>

<sup>14</sup> Ib.

fortune... Une telle démarche comporte nécessairement une part importante d'appréciation subjective dans le poids qu'on accorde aux différents ingrédients incorporés à la sauce. D'autant plus que nombre de statistiques ont une signification ambiguë. Exemple : la hausse du nombre d'allocataires de minima sociaux peut traduire une aggravation de la pauvreté et/ou une meilleure prise en charge collective de celle-ci. Serait-il alors impossible de fabriquer un indicateur sans tromper le public ? Ni plus ni moins qu'avec les indicateurs classiques, eux aussi fondés sur de nombreuses conventions sociales qui n'ont rien de naturel ou d'incontestable. Les Nations unies ont montré l'exemple en créant, en 1990, l'indice de développement humain (IDH), sous l'impulsion notamment du futur prix Nobel d'économie Amartya Sen. Cet indice mêle allègrement espérance de vie, taux d'alphabétisation et PIB par habitant. L'Onu a récidivé ensuite avec l'indicateur de pauvreté humaine (IPH). Depuis, chaque année, le rapport du Programme des Nations unies pour le développement (Pnud) et ses indices jouent un rôle significatif - et positif - dans le débat public, en relativisant les indicateurs monétaires diffusés par les autres institutions internationales : ainsi, en 2001, selon l'IPH, les Etats-Unis étaient 17e sur... 17 pays de l'OCDE (la Suède est 1re et la France, 8e). Actuellement, en France comme dans la plupart des pays développés, le débat est intense autour de moyens alternatifs pour appréhender la richesse et le bien-être. L'économiste Jean Gadrey avait organisé un colloque sur ce thème à Lille fin 2001, tandis que Patrick Viveret a remis un rapport début 2002 à Guy Hascoët, le secrétaire d'Etat à l'Economie solidaire, sur les moyens de " reconsidérer la richesse ", un sujet sur lequel travaille également de façon approfondie l'économiste Bernard Perret.

### Des carences statistiques

Dans ce contexte, le Bip 40, mis au point par le RAI avec des moyens très modestes, ne prétend évidemment pas épuiser le sujet. Et tant mieux si, un jour, un organisme officiel met à son tour au point un indicateur de ce type. Cela signifierait au moins que l'Etat aurait enfin fait le nécessaire pour collecter et mettre à disposition les informations de base indispensables dans ces domaines. La mauvaise qualité du système statistique français pour tout ce qui touche à la pauvreté et aux inégalités est bien le premier enseignement du travail réalisé par le RAI. Les derniers chiffres disponibles sur les niveaux d'inégalités de revenus en France remontent à... 1997 ! C'est tout simplement un scandale. Force est de constater que, de ce point de vue, les cinq années de gouvernement de la gauche plurielle n'ont pas amélioré les choses. Malgré ces difficultés, il a été cependant possible de rassembler suffisamment de séries statistiques significatives pour constituer le Bip 40.



Même s'il reflète évidemment les choix subjectifs de ceux qui l'ont conçu, son profil depuis 1980 semble assez conforme à ce qu'on peut percevoir intuitivement de l'évolution de la pauvreté et des inégalités : le Bip grimpe rapidement à partir de 1983, puis il marque une pause entre la fin des années 80 et 1992, pour repartir franchement à la hausse jusqu'en 1998, avant de s'infléchir légèrement en fin de période. Il reste donc encore une bonne marge au nouveau président de la République et à la future majorité parlementaire avant de ramener les inégalités à leur niveau du début des années 80. On disposera en tout cas

d'un outil, même s'il reste limité et perfectible, pour mesurer les progrès accomplis (ou non) dans cette direction.

[1] voir en particulier le hors-série annuel *Les chiffres de l'économie*  
Article paru dans *Alternatives économiques*, n° 202 (04/2002), Page 46. Auteurs :  
Guillaume DUVAL, Vincent MARCUS.  
Le graphique présentant l'évolution de l'indice BIP 40 depuis 1980 a été mis à jour.

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### 3. Pauvreté héréditaire

*English: hereditary poverty*

*Index: "hereditary underclass" (Harrington); "l'inséré permanent" (Castel), "l'hérédité sociale de la pauvreté" (Avenel)*

*Hereditary poverty*, that is, poverty that persists from generation to generation within the same family, is sometimes observed. In France, ODENORE (the NTU research unit) has noted the existence of this phenomenon in the health field, for instance. The "non-observance of prescriptions" in certain families may correspond to chronic non-take-up of healthcare from generation to generation. The reasons for this are a complex combination of economic explanations with factors concerning lifestyle and healthcare-related behaviours. The possibility of hereditary poverty reinforces the idea of total and definitive disaffiliation of people or families. This hypothesis is currently being verified in the framework of research involving ODENORE and other teams in the analysis of the database "life histories and building identities" ("*histoires de vie et construction d'identités*") of INSEE, the French national institute of statistics and economic surveys. The possibility of hereditary poverty is also found elsewhere. For instance, as regards the RMI (minimum income allowance), the term "*social heredity of poverty*" is used to refer to beneficiaries who are relatively old or close to retirement age, with health problems, often with families to care for, often far from employment and without any motivation to find a job (Avenel, 2005). Robert Castel (1995) spoke of "*insérés permanents*" to describe the least qualified individuals and families who are lastingly established in a position between employment and joblessness, the market economy and traditional assistance, which is not a situation of integration. This situation has been criticized in terms of "poverty traps" or "unemployment traps" into which the beneficiaries of welfare fall (Belorgey, 2000). The 2004 annual report of the NGO *Secours Catholique* used the image of a "social iceberg" to point out the fact that groups in precarious situations (especially "poor workers") sink lastingly into a situation of poverty.

Apart from reasons peculiar to the dead-ends of institutional solutions, another issue appears: non-take-up when conditions of life are characterized by total uncertainty as regards the future. Pierre Bourdieu, among others, highlighted this problem when he spoke of the "*the effect of fate*" of repeated failures that cause people to give up, for ever (Bourdieu, 1993: 223-226).

In a famous report many years ago in the US, Michael Harrington spoke of the "hereditary underclass" after numerous observations of poverty in which he observed extensive non-take-up of welfare aid programmes. The possibility of a hereditary underclass or significant hereditary poverty is reappearing today (or at least is again becoming visible since it never ceased to exist). Harrington described the phenomenon as follows:

*"In 1968 the National Commission on Civil Disorders – the 'Riot' Commission – reported that in Detroit, New Haven and Newark, the cities where the violence was the most destructive in 1967, the median percentage of those eligible who were actually covered by any one of the major social programs was 33 percent. In other words, in the United States a majority of the poor are not on welfare at all. And, the commission showed, the national average for welfare payments is 'a little more than one half of need' – and in some cases one fourth of need" (Harrington, 1962: xxi).*

*"One the most disturbing facts about the poor is that roughly half of them are young. They will be flooding into the labor market so fast in 1975 that the*

*Department of Labor expects that there will be 25 percent more 16-19-year-olds looking for a job in 1965 – and 50 percent more black youths. This will happen at a time when the blue-collar positions for which they will be competing will be opening up at a rate of about 15 percent a year. In other words, there is a very real possibility that many, even most, of children of the poor will become the fathers and mothers of the poor. If that were to take place, then America would, for the first time in its history, have a hereditary underclass” (Harrington, 1962, xxiii).*

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## 4. Discrimination

*English: Discrimination*

*Index: "sexist discrimination", "racial or ethnic discrimination", "positive discrimination"*

**Definitions.** The English word to discriminate is derived from the latin *discrimino* meaning to divide and *discerno* meaning to distinguish or separate. The term is still used in many sciences: mathematics, physics and the social sciences with definitions related to distinction or determination of different sub-sets. In everyday language the word relates to the idea of distinguishing an individual or social group from others through different, generally disadvantageous treatment.

- *Sexist discrimination*: unfavourable treatment decided on arbitrarily on the grounds of gender, a criterion considered to be illegal.

- *Racial or ethnic discrimination*: unfavourable treatment decided on arbitrarily on the grounds of the illegal criterion of a real or supposed difference in race or origins.

- *Positive discrimination or affirmative action*: favourable treatment decided on in a concerted manner in light of observed situations of inequality that cannot be redressed without such exceptional corrective measures.

**Emergence and diffusion in France.** It was only in the late 1990s that debate around different forms of discrimination suddenly emerged and that the public authorities recognised the problem in France. The short upturn in the labour market between 1997 and 2001 highlighted the fact that certain population groups remained more affected by long-term unemployment than others. It became clear that the reasons related not to a shortage of job offers in those individuals' residential environments nor to their lack of qualifications, but to such criteria as sex, age, nationality or origins – criteria that could not be considered acceptable in a republican state which proclaimed its attachment to the values of equality between all citizens. The issue of discrimination subsequently spread to other criteria such as disabilities, sexual orientation and religion, and was observed in areas other than the workplace, including housing, education, the civil service, recreational activities, etc.

But from a judicial point of view and especially as far as the legal means for combating discrimination were concerned, it was the evolution of European community law that put the issue firmly onto the agenda in France.

In itself the European project systematically excluded the practice of certain forms of discrimination by its member states. National legislation that was more restrictive regarding companies and workers from states other than the state in question ran counter to the principles of free circulation of products, capital and manpower characterising the "common market".

It was these principles of equality between member states from the point of view of economic competition – in which the Treaty of Rome that founded the European Community in 1957 was grounded – that allowed the battle against sexist discrimination to be launched some twenty years later. Article 119 of the Treaty stipulates that each member state guarantees the application of the principle of equal pay for equal work to male and female workers. Originally this article was simply intended to protect the member states from competition based on cheaper female labour. For a long time the states in the European community disregarded it

and applied their own legislation. Things changed, however, after a Belgian lawyer used the article to defend one of her clients, an airhostess at SABENA who was forced by the airline to retire at the age of 40 whereas her male colleagues could retire at 55. In 1970, 1975 and 1977 the European Court of Justice, to which the case was referred, ruled that the plaintiff had been a victim of sexist discrimination and promulgated a series of decrees known as the Defrenne decrees (after the plaintiff). In terms of these decrees, any individual who considers her- or himself to be a victim of discrimination has the right of redress, in terms of Article 119 of the 1957 Treaty, independently of the state of the issue in the national legislation concerned.

Subsequently a series of European directives compelled the member states to apply principles of equality between the sexes to remuneration, employment, training and promotion, as well as to unemployment, invalidity and pension schemes, including for criteria related indirectly but de facto to gender such as marriage status and children's education. Hence, the notion of indirect or covert discrimination appeared, defined by the European Court of Justice as the situation that exists when an apparently neutral measure, criterion or practice affects a clearly greater proportion of people of one sex than of the other. This definition makes reference to a case judged by the ECJ in 1986 in which part-time workers of a firm were refused access to an advantage reserved for full-time workers. Since the vast majority of part-time workers in the firm were women, they were considered to be victims of indirect discrimination.

Discrimination related to racial or ethnic origins was taken into account later in European law. In 1995 the Commission adopted a common declaration on the prevention of racial discrimination and xenophobia and the promotion of equal treatment in the workplace.

The year 1997 was decreed European year against racism. In the same year the European Monitoring Centre on Racism and Xenophobia was set up in Vienna to collect data on these facts, carry out scientific surveys and draw up proposals for the member states.

In the same year the Amsterdam Treaty amended Article 13 of the Rome Treaty as follows: without undermining the other measures of the present treaty and within the limits of the competences granted by this treaty to the Community, the Council, unanimously ruling on the Commission's proposal and after consulting the European Parliament, can take the required measures to combat discrimination based on gender, race or ethnic origin, religion or convictions, age or sexual orientation.

In 2000 the European Council adopted two directives and a Community action programme to combat discrimination.

The first, known as the RACE directive of 29 June 2000, notes that the principle of equal treatment means the absence of any form of direct or indirect discrimination.

Treatment is directly discriminatory when it clearly uses an illegal criterion – here, race or ethnic origin – to justify the difference shown by comparison with the way in which another person has been treated.

When a rule or practice seems to be neutral but becomes discriminatory through its effects, the discrimination is indirect.

To this definition of discrimination, the RACE directive adds harassment that occurs when an undesirable behaviour related to race or ethnic origin occurs, with the aim

or effect of harming a person's dignity or creating an intimidating, hostile, degrading and offensive environment.

It also adds the incentive to discriminate that may stem from orders transmitted by seniors to their subordinates or from requirements by principals to their sub-contractors. Any behaviour consisting of enjoining a person to practise discrimination against individuals for reasons of race or ethnic origin is considered discriminatory.

The scope of application of the RACE directive is very broad and concerns both public authorities and the private sector, in all dimensions of employment: recruitment, remuneration, promotion, training, union membership, etc. It likewise applies to the fields of social welfare, education and access to goods and services, and authorises affirmative action:

To ensure full equality in practice, the principle of equal treatment does not prevent a member state from maintaining or adopting specific measures intended to prevent or to compensate for disadvantages related to race or ethnic origin.

The directive furthermore stipulates that the onus of proof has to be shared by both parties in discrimination lawsuits. This implies that if the plaintiff has evidence that he or she has been a victim of discrimination, the accused has to supply evidence that that treatment was in no way based on racial or ethnic grounds.

Finally, the directive recommends the creation of an independent body to combat discrimination on the grounds of race and ethnic origin, in each state of the European Union.

A second directive, known as "EMPLOI", was adopted on 27 November 2000 to combat all forms of discrimination in the workplace related to religion, personal convictions, disabilities, age or sexual orientation.

In parallel with these legal measures adopted by the European Council, the European Commission set up "EQUAL" in the same year to promote new means of combating discrimination and inequalities in the labour market, in a context of "transnational" cooperation.

To benefit from EQUAL funds, a project has to be broken down into thematic areas and implemented in geographical or sectoral development partnerships. The partners may be trade unions, local associations, firms or government authorities. They define the actions that they wish to carry out, which have to correspond to the European strategy for employment and essentially benefit people who are victims of the main forms of discrimination.

**Transposition in France.** The number of cases of discrimination taken to court in France since the RACE directive was adopted is very low. Only about ten people were sentenced during the 1990s, whereas in the UK an average of 2,000 convictions were recorded annually during the same period. The reason seems to relate to the fact that European law is seldom put into application in this respect, especially as regards the shared onus of proof. Other reasons concern the functioning of the French legal system. Cases of discrimination are brought before penal courts, not civil courts. The former treat them as intentional tort, which means that the plaintiff has to prove that he or she has been a victim of intentional discrimination by the accused. This automatically excludes many cases. Moreover, the French penal code defines a number of precise situations in which the offence of discrimination can be recognised (Article 225-2). Accordingly, discrimination related

to working relations and remuneration, and to relations with government administrations and public authorities, remains excluded.

The 16 November 2001 law completed the French labour code by reinforcing anti-discrimination measures. It also extended the fight against direct and indirect discrimination to housing. However, the exact terms of these measures have yet to be defined.

Outside the legal field a number of initiatives have been taken in France, especially to promote studies to further knowledge of racial discrimination and to produce tools to combat it more effectively.

For instance, in February 1999 a framework agreement was signed between the State, the ANPE (national employment agency) and the FASILD (social action fund to promote integration and combat discrimination). The aim was to organise training designed to raise consciousness in the workplace of the struggle against discrimination.

In April of the same year the labour ministry created the GED which later became the GELD, a public interest group to study and combat discrimination, consisting of several ministries, social partners (administrations, unions etc.), and associations (NGOs). A toll-free number (114) was set up for people who considered themselves to be victims of discrimination. The calls were transferred to the CODAC (departmental commissions for access to citizenship). Following a highly critical report on this device, the number was cancelled. In 2002 a project was drawn up to transform the GELD into an independent authority to combat discrimination, as defined in the RACE directive. This independent authority is to be set up in early 2005.

In recent years a great deal of reluctance has emerged in France among researchers, decision-makers, NGOs and trade unions, as regards this type of policy. Very little is known today about discrimination and the concepts used in legal texts remain vague. Much reservation still exists, especially on the issue of affirmative action. The concept is connected with the still dominant idea that particular treatment of certain categories of citizens, even when it is positive, is contrary to the republican principles of equal treatment of all citizens.

**Positive discrimination and NTU.** Some connections can be identified between discrimination and non-take-up. Indirect or systemic discrimination, which occurs when certain individuals are excluded from a certain benefit or service due to their race or their real or assumed origins, maintains certain attitudes of non-take-up. For instance, in the occupational training system certain individuals of immigrant families fail to take advantage of available training because they believe that the jobs they would thus be trained for would not be accessible to them due to their origins (Barou, Desroches, Maguer, Viprey, 2002).

The connection between positive discrimination and NTU can be seen through the various debates that emerged in France around a desirable reform of the welfare state. In this framework positive discrimination was expected to result in "an equitable form of equality" that was contrasted with the principle of strict equality of treatment between all citizens. Noting that it was the middle-classes that benefited disproportionately from the principle of universality of benefits or from the fact that certain public services were free, certain reformers called for a re-centring of public expenditures and a redistribution of services among the most underprivileged (Minc, 1994). Since 1995 it has been in policies aimed at the regional or local levels that positive discrimination likely to have some connection

with NTU has been found. Examples include "public-service platforms" or "*maisons de quartiers*" ("neighbourhood centres") (Maguer, 2001) and, more recently, "*maisons du droit*" or "*maisons de la justice*" set up in underprivileged neighbourhoods to provide the inhabitants with access to services to which they are entitled but which are normally accessible only in the head offices of the main administrations. The idea is thus to reduce not only geographic distance but also a form of social and cultural distance. The "*maisons de quartier*" or "*maisons de services publics*" set up in underprivileged areas are manned by trained staff who are familiar with the "underprivileged users" in these areas and often have the assistance of interpreters.

In these territorialized measures the beneficiaries are not chosen on the basis of their specific individual characteristics but for supposed characteristics that are inferred from the fact that they live in an area recurrently marked by the presence of people in difficult social situations.

The somewhat anecdotal initiative of the Institut d'Etudes Politiques in Paris to open its doors to some students from secondary schools classified as "priority education areas" (ZEP) was inspired by the territorial dimension. Anti-discriminatory policies have difficulty taking into account the concrete situation of individuals, which explains why their impact on NTU has until now been limited.

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