

Equality bodies – a European phenomenon

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“Equality is a fundamental value of the EU, and the European Network of Equality Bodies is a fundamental part of defending our values against attack and our citizens against discrimination²”

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The Treaty of Amsterdam and the subsequent adoption in 2000 of the so-called Race Directive was a genuine paradigm shift in European equal treatment legislation and practice. One of the major developments resulting from this Treaty change and new Directive was the introduction of a requirement for all EU Member States to set up bodies for the promotion of equal treatment, first on the ground of race and ethnic origin, later extended to the ground of gender. This article analyses the emergence of these bodies – equality bodies – in EU Member States and candidate countries and the role they play in promoting equality and the implementation and monitoring of EU equal treatment legislation. It argues that equality bodies have a significant potential to contribute to more equal societies and they have proven to be effective agents of change. They do so, among others, by contributing to relevant case law in front of the Court of Justice of the European Union leading to the further development and clarification of EU and national equal treatment legislation. The article also looks at the challenges experienced by equality bodies in different European countries as factors that influence and might limit their potential and contribution. To conclude, the article examines the necessary conditions for equality bodies to effectively contribute to the implementation of EU legislation and the achievement of substantive equality and it assesses whether current standards for equality bodies can guarantee these conditions.

Introduction

While equality bodies existed before 2000, their emergence on a large scale and in a whole geographical region is the result of EU legislation and in particular the so-called Race Directive³. A requirement for all EU Member States, and candidate countries, to establish or designate an equality body was introduced with the Race Directive in order to strengthen protection against discrimination. Equality bodies were tasked to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims⁴. This article discusses how far equality bodies have been able to fulfill this important role and looks at the potential equality bodies as specialized institutions dedicated to promoting equality and tackling discrimination hold. I argue that in a difficult social environment equality bodies have successfully established themselves as champions for equality and they have a major role to play in implementing and developing European and national protection against inequalities and discrimination. The second part of the article considers the challenges faced by equality bodies in terms of their independence and effectiveness and argues that European-level standards are necessary to tackle these challenges.

A short history of equality bodies

Equality bodies were first set up in a small number of, mainly common law, countries in the 1960s and '70s to ensure protection against discrimination. This period coincided with the American Civil Rights Movement and the adoption of various UN Human Rights Treaties, such as ICERD⁵ and CEDAW⁶ focusing on specific discriminated groups, but also the more general ICCPR⁷ and ICESCR⁸ with strong provisions against discrimination. In the United States the setting up of the Equal Employment Opportunity Commission (EEOC) was a result of the Civil Rights Act of 1964⁹. The United Kingdom set up an Equal Opportunities Commission in 1976¹⁰ (for gender equality) and a Commission for Racial Equality in 1977¹¹, neither of the two institutions covering Northern Ireland. Sweden set up the Jämställdhetsombudsmannen (Equality Ombudsman for gender equality) in 1980¹². In some other countries equality bodies were set up in the early 1990s, such as the Belgian Centre for Equal Opportunities and Opposition to Racism in 1993 and the Dutch Equal Treatment Commission in 1994.

However, until the third millennium countries with an equality body remained the exception in Europe and, as the above examples demonstrate, they could mostly be found in the Northwestern edge of the continent.

While equality and non-discrimination had already been recognized as fundamental values of the European Union¹³, in 1999 the Amsterdam Treaty introduced a new Article 19 to the Treaty on the Functioning of the European Union (ex Article 13 TEC), allowing the Council of the EU to adopt legislation to combat discrimination on six grounds¹⁴. The Council, stunned by the success of Jörg Haider's far right Austrian Freedom Party, quickly made use of this new power, adopting the Race Equality Directive in 2000¹⁵ (Givens TE, 2014). The Directive introduced an obligation for all EU Member States to designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin¹⁶. The competences of these bodies have to include providing independent assistance to victims of discrimination, conducting independent surveys concerning discrimination, publishing independent reports and making recommendations on any issue relating to such discrimination¹⁷. The provision is based on the notion that 'protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims¹⁸'. As opposed to carrying out their functions independently, the initial Commission proposal foresaw the setting up of 'independent bodies'¹⁹, coming closer to guaranteeing structural independence, something that, in light of later events, would have been both welcome and necessary. Yet, the adopted Directive constituted a giant leap forward in protecting equality and combating discrimination. A similar obligation to designate equality bodies (and already calling them as such) was introduced for the ground of sex with the EU Gender Equality Directives adopted in the 2000s, while on other discrimination grounds there is no such EU-level obligation²⁰. Outside of Europe no international or regional legislation has so far been introduced obliging Member States in a similar vein to set up equality bodies.

Given the small number of European countries with already established dedicated equality bodies, in practice the obligation meant that many Member States and candidate countries had to set up new structures, while some others decided to designate already existing structures, by granting them an additional mandate and powers. This different regulatory approach, coupled with the diverse legal and administrative traditions of Member States and candidate countries, led to a large variety of equality bodies in Europe. Some of them are, as we have shown, institutions with a long history, others were set

up to fulfil the Member State's EU obligations. Some of them are stand-alone equality institutions, others are situated in larger bodies holding other mandates as well. Some of them focus on promotional work, others on strategic litigation and yet others on deciding on the merits of discrimination cases in their own administrative procedure.

Recognising the importance of harmonised interpretation and implementation of the EU Equality Directives, European equality bodies decided to set up a European Network of Equality Bodies, Equinet, in 2007. Its membership currently includes 46 equality bodies from 34 European countries, in line with the fact that EEA countries, EU candidate countries and certain Eastern Membership countries²¹ are also under a legal obligation to set up equality bodies.

The potential of equality bodies

The EU Equality Directives introduced the obligation of setting up equality bodies²² expecting them to strengthen protection against discrimination. Equality bodies have proven their value in promoting equality and tackling discrimination in years since the adoption of the Directives. As the Commission noted in 2014, 'strengthening the role of the national equality bodies as watchdogs for equality can make a crucial contribution to more effective implementation and application of the Directives'²³. Thus, at the most basic, though crucial, level, equality bodies can contribute to the effective monitoring and enforcement of legal obligations provided that they are given the necessary powers and resources. Depending on their powers they can hold governments to account with regard to their equality obligations, report to international bodies, provide independent assistance to victims, give legal advice, represent complainants in legal procedures, intervene in such procedures, and make decisions on the merits of discrimination claims. There are vast differences between the powers of equality bodies throughout Europe and the constraints of this article do not allow us to describe them all. However, it is useful to keep in mind that at the most basic level we can differentiate between equality bodies that focus mainly on promotional work and providing advice, those that focus on investigating and deciding cases on the merits and those that have a mix of these powers²⁴.

As Equinet (2012) notes, equality bodies have a wide ranging potential for achieving change at different levels and change for individuals is only part of this. Their potential includes *social change* with an impact on the culture of a society and stimulating a prizing of equality, diversity and non-discrimination as values in society. *Organisational change* is secured through an impact on policy making and on the internal policies, procedures and practices within organisations such that equality is promoted, diversity is accommodated and discrimination is eliminated for employees and service users. *Individual change* means that equality bodies can impact on the situation and experience of individual members of groups subject to discrimination and inequality at work or in accessing goods and services (Equinet 2012: 11).

While EU equality legislation requires Member States to set up equality bodies only for the grounds of race and ethnic origin and gender²⁵, in practice the overwhelming majority of Member States, EEA countries, candidate countries and Eastern Partnership countries went beyond this minimum and their equality bodies cover all or many grounds of discrimination, often even surpassing the 6 grounds listed in the EU Treaties (Equinet 2017a). While in some countries more than one equality body exists²⁶, there is a clear pattern in that most individual equality bodies cover all or a number of discrimination grounds

(Equinet 2017a). Therefore, in most countries, equality bodies are well placed to tackle all forms and grounds of discrimination and inequalities, including multiple and intersectional ones. This stands in marked contrast with civil society, where working with a grounds-based focus can be an issue hindering the effective handling of multiple and intersectional discrimination cases or possibly causing diverging interests and thus actions²⁷.

As low-threshold and expert complaint bodies (with their procedure free from legal fees), they also make an important contribution to fighting under-reporting. This is especially important when recent data from the EU's Agency for Fundamental Rights (FRA) show that only one out of eight respondents (12%) reported or made a complaint about the most recent incident of discrimination based on ethnic or immigrant background (European Union Agency for Fundamental Rights 2017: 42). While the same data shows that equality bodies have a long way to go in overcoming under-reporting (European Union Agency for Fundamental Rights 2017: 50-54), they are well placed to do so if they are given the necessary independence, powers and resources. Owing to their role, they can provide a link between individuals at risk of discrimination, civil society and the government, and they can strategically position themselves as safe places and expert institutions, different to other public bodies, yet with the weight and tools of such bodies.

The legal case work of equality bodies provides another key contribution to the development of equality law. This includes work at the national level, where equality bodies, depending on their powers, may take cases to courts in their own name, provide legal support to complainants, make interventions, *amicus curiae* submissions or expert statements, or formally decide discrimination cases using their adjudicatory powers and, where they are mandated to do so, ordering effective and dissuasive sanctions²⁸. Given their specialization and expertise in discrimination issues, equality bodies are ideally placed to ensure that national legislation and case law develops in a direction that takes into account and responds to the main discrimination issues and challenges. In particular, a number of equality bodies engage in strategic litigation (Equinet 2017b), with the intention that the legal proceedings they participate in will have a positive broader impact on law and policy development as well as setting a precedent for the outcome in similar discrimination cases.

Importantly, equality bodies are also using their specialist expertise to engage in litigation at the European level, encouraging national courts to refer preliminary questions to the Court of Justice of the EU (CJEU)²⁹ and participating in cases in front of the European Court of Human Rights (ECtHR)³⁰. Such landmark cases helped to shed light for instance on the limits of legality of internal rules of a private undertaking prohibiting the visible wearing of any political, philosophical or religious sign in the workplace³¹; clarify that public discriminatory statements can be challenged in court even in the absence of an individual victim and the sanctions in such cases must also be effective, proportionate and dissuasive³²; that public statements may be sufficient to shift the burden of proof to the defendant³³; or that the concept of discrimination by association also applies to the ground of race and ethnic origin³⁴. Following an initial attempt, it remains to be seen whether equality bodies with adjudicatory powers can themselves refer preliminary questions to the CJEU³⁵. Legal action at the European level is a key, albeit thus far relatively underused tool for equality bodies, holding a potential to influence and develop equality laws not only in one Member State, but ensuring consistent and progressive interpretation at the European level. While third party interventions are possible and relatively widely used for instance by civil society actors before the ECtHR³⁶, such interventions are not possible in the procedure of the CJEU, where only organisations

that had been part of the proceedings at national level can take part. This is an important limitation, making it crucial that equality bodies become involved in cases well before they are referred to the CJEU. In the long run it might be argued that the CJEU could usefully contemplate adopting a similar approach to the ECtHR, allowing expert institutions to submit third party interventions.

Moving beyond legal and enforcement powers, the use of other, ‘soft’ powers of equality bodies also holds great potential. Such ‘soft’ powers are related to the promotion of equality and can include for instance making recommendations, promoting good equality practices by duty bearers, research and survey work. However, in certain cases a lack of adequate resources might lead to an inability of using these powers to their full extent, having to prioritise the fulfillment of duties with regard to enforcement, assistance to victims and other legal powers. On the other hand, the use of some of these soft powers might also constitute a challenge for or require more careful considerations from equality bodies with a quasi-judicial (adjudicatory) focus, as their use could be perceived as taking the side of victims of discrimination and disregarding the concerns and viewpoints of duty bearers, thereby undermining the perception of impartiality of the equality body, something that is essential for the effectiveness of their work on deciding cases.

Equality bodies have also established themselves as key players for the development of European and national equality legislation. Their independence and expertise on issues relating to discrimination gives them a legitimacy to make recommendations and puts them in a strong position to comment on all policies and existing or proposed legislation affecting groups at risk of discrimination. In a survey conducted by Equinet in 2014, an overwhelming 22 equality bodies out of 23 declared having issued recommendations to their respective national/federal Governments and Ministries, and 17 to their national/federal Parliaments. These are followed by recommendations to Regional/Local Governments and, to a lesser extent, Regional/Local Parliaments and public institutions and authorities such as, for instance, schools (Equinet 2014: 7). While ensuring the engagement, interest and political will and being heard might prove to be a formidable challenge, making recommendations is a useful and effective way in which equality bodies can contribute to the development of equality legislation as well as policies.

As foreseen in the provisions on equality bodies in the EU Directives³⁷, equality bodies operate as knowledge hubs and centers of excellence on equality and non-discrimination issues. They conduct research and surveys and provide an increasing knowledge base on the theory and realities of discrimination³⁸. This might be based on a review and analysis of the complaints they receive, research conducted in-house or commissioned to external experts³⁹.

Equality bodies also work closely with employers and service providers in order to prevent discrimination incidents and to encourage and facilitate the adoption of good equality and non-discrimination practices. This preventive and proactive work is crucially important in light of high levels of under-reporting, rendering it impossible for equality bodies to tackle all discrimination incidents. Work with duty bearers can take many forms (Equinet 2013). It covers the provision of information, awareness raising, and training activities to ensure that all employers and service providers are aware of equality legislation and their obligations in general or with respect to particular forms, grounds or fields of discrimination. More concrete and tailor-made advice and guidance or even specialised practical support can also be provided by equality bodies to ensure that a particular company or sector fulfills their equality obligations in the best possible way⁴⁰.

Statutory duties on employers, service providers and policy makers can also be seen as a crucial tool for overcoming discrimination and achieving more equal societies (Equinet 2016a: 3). Such duties are set out, albeit with relatively few details, in the EU Equality Directives⁴¹ as well as in documents by the Council of Europe's European Commission against Racism and Intolerance (ECRI)⁴² and the Commissioner for Human Rights⁴³. Statutory duties go beyond the traditional reactive model of tackling discrimination cases as well as the notion of formal equality, and they may seek to achieve substantive equality (Equinet 2016a: 13). Different forms of statutory duties encompass preventive duties, institutional duties and mainstreaming duties. Preventive duties are statutory duties on organisations to take measures to prevent discrimination, harassment or sexual harassment in employment or in the provision of goods and services. Among the statutory duties these are comparatively less aspirational, following a formal equality model and focusing on preventing discrimination. Nonetheless, and much to the advantage of duty bearers themselves, even these duties already go well beyond the traditional reactive model, requiring planning and forward thinking. Institutional duties are statutory duties on organisations to promote equality for employees or for people accessing their services, for example by introducing equality and diversity plans. Institutional duties evidence a higher level of ambition, one that aims at substantive equality. Mainstreaming duties are statutory duties on public authorities to have due regard to the need to promote equality in carrying out their functions. Similarly to institutional duties, these follow a substantive equality model, but have a possibly greater potential owing to their reach beyond individual organisations, laying down rules and expectations for the whole society. Equality bodies often play an important role in the conceptualization, introduction, monitoring and enforcement of all three types of duties at the national level, thereby contributing to change at both the societal and the organisational level (see for example Equality Commission for Northern Ireland 2008). While the current coverage of statutory duties at European as well as national level remains patchy, their potential in achieving real change is increasingly recognised (Fredman 2009), not the least owing to the work of equality bodies.

Last, but not least, equality bodies contribute to social change via their communication work. With their awareness-raising activities they are crucial actors in ensuring that both groups at risk of discrimination and duty bearers such as employers, service providers and the public sector know their rights and obligations under equality law. However, the role and potential of awareness-raising goes well beyond promoting the law. It also means changing the discourse about equality and rights and promoting a valuing of diversity. While it is sometimes easy to be pessimistic observing today's political and societal tendencies, it has been proven by equality bodies and others that when people value community, social justice and freedom, they tend to be less discriminatory. Across Europe we see a positive picture: people view these values as most important (Equinet and Public Interest Research Centre 2013: 4). This is a good basis for equality bodies and others to work on engaging and strengthening these values by focusing on values-based communication in order to bring to the fore the sense of respect and care for others that every person already holds within them.

Challenges for equality bodies

Equality bodies face a number of challenges limiting their ability to fulfil their full potential set out above and much of this can be traced back to external factors.

In the majority of European countries equality bodies were set up in or around the early 2000s⁴⁴, only a few years before the worst global economic and financial crisis in decades hit, leading to significant reductions in public expenditure across the Member States. Recent years have also seen a diminishing political and public attention to issues of equality and non-discrimination, and the emergence of conditions of hardship and disadvantage in the wider society that can be fertile breeding grounds for discrimination and division (Equinet 2012: 8). Such a hostility to, and diminishing interest in, equality could lead to an undermining of the independence of equality bodies, a disproportionate reduction in resources available to them (Equinet 2012: 17) or even political attacks on the equality body for taking up certain issues. Currently EU Directives do not provide sufficient protection to the independence and resources of equality bodies.

EU Directives also provide little guidance on the powers to be allocated to equality bodies. Consequently, some states have set up equality bodies with a mandate that appears to lack some important tools in order to be effective. This is the case where equality bodies have no power to provide legal assistance other than basic advice on the applicable legislation and avenues of remedy available, or where the decisions of adjudicatory bodies are not legally binding or they are not mandated to apply sanctions in discrimination cases. While EU Directives, by their nature, give a leeway to Member States in the exact model they are choosing for transposing these provisions, some of these models raise questions about the ability of the equality body to effectively fulfil its mandate.

Equality bodies are expected to have a well-defined and specialised mandate supporting fundamental rights as a public sector statutory body. They have important and helpful links with other public bodies working on rights in certain sectors, such as the police, employment agencies, education agencies or healthcare agencies. They can also cooperate with organisations holding a general mandate, such as Ombud institutions or National Human Rights Institutions (NHRIs). These links, ranging from ad hoc cooperation through joint actions to joint planning are both important and useful in advancing equality and human rights and challenging maladministration by public bodies (Equinet 2011). Some European countries have decided to go further and merge equality bodies with Ombud institutions or NHRIs⁴⁵. Such mergers undoubtedly hold an important potential to enhance the standing of both equality and human rights mandates, broaden the scope of intervention on issues of equality and human rights, deal with cases that involve both equality and human rights complaints, and provide greater accessibility and clarity to those alleging discrimination or human rights violations. However, as Equinet's report showcases, it is crucial that these mergers are not put in place solely in search of financial savings without a well thought-through and planned process, taking into account all concerns (Equinet 2011: 12). Some of these concerns and challenges relate to defining the role, purpose and priorities of the merged body; deciding on the powers, functions and modes of operation; aligning the historically different legal frameworks and *modus operandi* applicable to equality and to human rights organisations; working with the different 'communities of expertise' on the different topics (Crowther and O'Conneide 2013: 38-57).

Mergers as a result of flawed processes are more prone to increase the risk of the merged body not being able to dedicate the same attention to both types of mandates, even though NHRI and equality body mandates have been shown to be different in many ways. Crowley argues that besides the different legal basis and mandate, the objective of equality bodies to promote full or substantive equality in practice goes beyond combating discrimination as a violation of human rights standards (Crowley 2016: 34-45). In his view equality bodies focus on 'social change', going beyond 'corrective change' sought by NHRIs.

Equality bodies use both enforcement and promotional and developmental approaches vis-à-vis duty-bearers. Their focus is on assistance to individual victims of discrimination, while this is not necessarily a core mandate for NHRIs according to the Paris Principles. Equality bodies focus on groups of persons experiencing inequality due to a common characteristic, while NHRIs tend to have a more individual approach. Last but not least, equality bodies focus on working in and with both the private and the public sectors, while NHRIs' actions often focus on the state as the ultimate duty bearer.

Against the backdrop of the challenges listed above, it seems necessary and useful to develop European-level standards for the independence and effectiveness of equality bodies. This would help to ensure that equality bodies can reach their potential and that victims of discrimination in all European countries can count on the assistance of an effective equality body.

Standards for equality bodies

In the face of an apparent push against the rule of law and fundamental values of the EU in a number of countries, the operation of strong and effective equality bodies is even more important and attacks on their work, independence, resources or sheer existence⁴⁶ is a good indicator of such populist tendencies. Equality bodies have a major role to play in defending the rule of law by implementing and developing European and national protection against inequalities and discrimination. Therefore, these attacks are all the more unacceptable and the vulnerability of equality bodies to such attacks all the more untenable.

Equinet has long been calling for the introduction of standards at EU level for the setting up and operation of equality bodies that go beyond the current brief provisions in the EU Equality Directives⁴⁷. Standards for similar bodies working on fundamental rights and standards for equality bodies by other organisations provide powerful precedents and examples. For NHRIs, the United Nations General Assembly adopted the Principles relating to the status of national institutions (so-called 'Paris Principles') in 1993, while the European Union has introduced strong standards for data protection authorities in the Treaties⁴⁸, greatly detailed in the General Data Protection Regulation applicable from May 2018⁴⁹. ECRI adopted already in 1997, thus preceding EU Equality legislation requiring the setting up of equality bodies, its General Policy Recommendation N°2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. This ECRI Recommendation has been revised in 2017 and adopted as General Policy Recommendation on Equality bodies to combat racism and intolerance at national level (European Commission against Racism and Intolerance 2017). Equinet itself published a working paper in 2016 on Developing Standards for Equality Bodies (Equinet 2016b) 'to establish positions that equality bodies could promote, negotiate and advance vis-à-vis European and national administrations in the establishment of standards for equality bodies at European level and their implementation at national level' (Equinet 2016b: 2).

The standards mentioned above show significant similarities in addressing issues of independence, resources, powers, accountability and appointments of heads and staff. They suggest a way forward for EU action to ensure that equality bodies are able to fulfil their entire potential. Such EU action might be forthcoming as on 23 March 2018 the European Commission has published a roadmap (European Commission 2018a) and launched a targeted public consultation (European Commission 2018b) on equality bodies in the EU in order to prepare a Commission Recommendation on the subject. The

Roadmap explains that '(t)he text of the Directives leaves discretion to Member States as to the structure and functioning of equality bodies. This has resulted in significant differences between the bodies established in the Member States, in terms of mandate, competences, structures and resources. In recent years, a number of equality bodies have faced significant reductions in their budgets, and several cases of external pressure and undue interference have been reported. The functioning of a number of equality bodies has been severely hampered, as is evidenced by the increase in complaints about their independence and effectiveness. (...) The present initiative aims at tackling these issues and helping equality bodies reach their full potential, by setting up recommendations in relation to their mandate, independence, effectiveness and institutional architecture'. The objective of the public consultation is to obtain up-to-date evidence from key stakeholders, concerning (i) the challenges faced by equality bodies at national level and (ii) the issues which should be prioritised at EU level in order to best help the bodies reach their full potential (European Commission 2018b).

Equality bodies need to be mandated to deal with all forms, grounds and fields of discrimination and inequalities. This is important to prevent a situation where certain grounds, fields or forms of discrimination are not covered by an equality body (effectively creating a hierarchy of protection) or a fragmented solution where some areas are covered by non-specialist institutions such as Labour Inspectorates that might be expected to operate less independently from government and to focus more on their 'traditional' mandate at the expense of equality and non-discrimination issues⁵⁰.

Independence is a key issue that standards need to regulate and guarantee. It is necessary in order to enable the equality body to tackle all inequalities and discrimination, no matter how inconvenient or sensitive they might be for the government. It also contributes to the struggle against under-reporting, by enabling the equality body to function and be perceived to function as an expert institution, free from influence by other state actors, thereby creating a safe environment for its clients who are quite often members of groups that are traditionally (and justifiably) wary of state institutions, owing to previous experiences of discrimination and humiliation. Taking inspiration from another type of statutory bodies set up to safeguard fundamental rights, data protection authorities, the complete independence of equality bodies should be guaranteed⁵¹. This would mean among others that equality bodies are established by the Constitution or primary legislation with their own legal personality; that they are free from or can reject any direct or indirect external pressure and undue interference; that the leadership can freely manage staff and financial resources within the limits of applicable labour and financial legislation; that the leadership of the body is appointed through a transparent, competency based, and independent procedure; and that the systems of accountability guarantee independence.

Effectiveness of the equality body needs to be guaranteed by way of allocating adequate financial and staff resources and premises, enabling it to implement all its functions and powers in a way that achieves outcomes and makes an impact. In addition, any expansion of the mandate and functions of the equality body needs to be associated with an adequate increase in its resources to ensure effective fulfilment of both the old and the new functions. This is particularly important in a context where equality bodies regularly see their mandate expanded without the necessary increase in resources⁵². In order to effectively fulfil their potential, equality bodies also need to be given sufficient powers covering all aspects of their mandate. This includes, for instance, powers to advise, engage and work with duty bearers; conducting or commissioning research; making recommendations to legislators and policy-makers; communicating with the public and raise awareness; conducting general inquiries; and investigating

individual cases of discrimination. Depending on the specificities of the equality body in question, they might also be empowered to provide legal advice and support; take cases to court; make findings or legally binding decisions and employ sanctions in cases of discrimination.

Standards should also require effective cooperation among equality bodies (in states where more than one equality body is set up) and between equality bodies and other similar structures.

Despite the well-established needs and models, it is clear that political support to the issue of fundamental values and in particular equality will be necessary in order for these, or even more limited, standards for equality bodies to be adopted and implemented.

Equality bodies – a European best practice

EU equality legislation has undoubtedly come a long way since its introduction. However, there remain some considerable challenges and a generally speaking slow progress in many areas (see for instance: European Institute for Gender Equality 2017). There are also important gaps in the protection against discrimination, arguably leading to a hierarchy of grounds (Bell 2008, Howard 2007, Lahuerta 2016)⁵³, where equal treatment on the ground of race and ethnic origin, at least at EU level, is more protected than other grounds⁵⁴.

Challenges also remain in effectively implementing legislation that has already been adopted, including correct transposition of the EU Directives, the application in practice of specific provisions such as the shared burden of proof, and the application of effective, dissuasive and proportionate sanctions to name but a few. It is in this field of effective implementation that equality bodies can make a key contribution, as noted by the European Commission: 'To combat discrimination and ensure equal treatment, Member States and stakeholders have recognised that equality bodies are essential to move from "the law on paper to the law in practice" and to ensure that the legal rights are actually applied on the ground' (European Commission 2015).

Acknowledging the potential of equality bodies, the Commission also noted that 'enhancing the effectiveness of equality bodies and allowing them to reach their full potential could go a long way towards promoting equal treatment in a way that is easily accessible to everyone in the EU and faster as well as less costly than enforcement through courts for all the parties concerned (including Member States)' (European Commission 2015).

In a context where certain politicians and citizens question the usefulness and necessity of EU legislation, equality bodies could serve as a powerful evidence of European added value in the service of the whole population, guaranteeing the fundamental value of equality and non-discrimination. The EU, as globally the only supranational organisation with an obligation for its Member States to set up equality bodies, can justifiably be proud of this achievement. It is usefully seeking to further strengthen equality bodies by introducing more detailed standards for their setup and operations and by supporting the exchanges and peer learning at the European level between equality bodies. Finally, in its external relations the EU could also promote the setting up of equality bodies as best practice institutions in other jurisdictions.

Conclusion

This article set out to showcase the important role equality bodies are playing and can play by ensuring the proper implementation of the current equality law framework and by working towards further development of this framework. I have shown the beginnings of equality bodies worldwide and in Europe and established that they can be seen to a significant extent as a European phenomenon, introduced pursuant to the EU equal treatment directives. We discussed the demonstrated potential of equality bodies to contribute to better enforcement of equality legislation as well as their ‘soft powers’ to help building more equal societies.

In the current socio-political climate equality bodies provide an interesting and important opportunity to defend both equality legislation and the fundamental value of equality. However, we argued that the same challenging socio-political climate and environment makes it increasingly difficult for equality bodies to fulfill their potential and mandate in the face of attempts seeking to undermine their independence, effectiveness, and even their very existence. The effects of some of these challenges could be successfully tackled by the adoption of strong standards and guarantees for the setting up and operations of equality bodies. Recent standards adopted by the Council of Europe’s ECRI and the ongoing work towards a Recommendation by the European Commission represent important milestones in that direction. Further work and reflections will be needed in the coming years to monitor whether these newly adopted standards are effective and sufficient in creating the conditions where equality bodies can achieve their full potential in working towards full equality in practice.

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² Frans Timmermans, First Vice-President of the European Commission on 10 October 2017 - <http://www.equineteurope.org/Press-Release-Equinet-10-years-promoting-equality-in-Europe> (accessed on 22 January 2018)

³ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Race Directive), Official Journal L 180, 19/07/2000, P. 0022 – 0026

⁴ Race Directive, Recital 24

⁵ UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> (accessed on 23 April 2018)

⁶ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. Available at: <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf> (accessed on 23 April 2018)

⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171. Available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (accessed on 23 April 2018)

⁸ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (accessed on 23 April 2018)

⁹ U.S. Equal Employment Opportunity Commission (2015) EEOC at 50. Available at: <https://www.eeoc.gov/eeoc/history/50th/index.cfm> (accessed on 23 April 2018)

¹⁰ UK Web Archive (2006) Equal Opportunities Commission. Our 30th anniversary. Available at: <https://www.webarchive.org.uk/wayback/archive/20061116120000/http://www.eoc.org.uk/Default2678.html> (accessed on 23 April 2018)

¹¹ The National Archives. Records of the Commission for Racial Equality and predecessors. Available at: <http://discovery.nationalarchives.gov.uk/details/r/C53> (accessed on 23 April 2018)

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¹³ See for instance Article 2 and 3 of the Treaty on European Union (TEU) or Article 8 and 10 of the Treaty on the Functioning of the European Union (TFEU). European Union, Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Official Journal C 326 , 26/10/2012 P. 0001 – 0390.

¹⁴ Article 19(1) TFEU: ‘Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.’

¹⁵ Race Directive

¹⁶ Article 13(1) Race Directive

¹⁷ Article 13(2) Race Directive

¹⁸ Recital 24 Race Directive

¹⁹ EUR-Lex (2000) Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:1999:0566:FIN> (accessed on 23 April 2018)

²⁰ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Gender Goods and Services Directive: OJ L 373, 21.12.2004, p. 37–43) and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (Gender Recast Directive: OJ L 204, 26.7.2006, p. 23–36) and Directive 2010/41/EU of the European Parliament and of the Council 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (Self-Employed Directive: OJ L 180, 15.7.2010, p. 1–6)

²¹ By virtue of the Association Agreements between the EU and Georgia, Moldova and Ukraine

²² Race Directive, Article 13; Gender Goods and Services Directive, Article 12; Gender Recast Directive, Article 20; Self-Employed Directive, Article 11

²³ European Commission (2014), Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive') Available at: http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf (accessed on 23 April 2018)

²⁴ For further information and an overview of the powers of equality bodies in Europe, see: Equinet. European Directory of Equality Bodies. Available at: <http://www.equineteurope.org/-Members-Directory-> (accessed on 23 April 2018)

²⁵ See footnote 22 above

²⁶ For instance in Belgium there are two equality bodies and in Croatia there are three equality bodies (separate equality bodies on the ground of gender and on disability)

²⁷ Consider the NGO scene at European level, with different networks of NGOs existing for each ground of discrimination.

²⁸ For an overview of the legal powers of equality bodies refer to the European Directory of Equality Bodies on Equinet's website (<http://www.equineteurope.org/-Members-Directory->)

²⁹ See for instance the Swedish equality body's role in *Jämställdhetsombudsmannen v. Örebro läns Landsting* (C-236/98, EU:C:2000:173); the Belgian equality body's role in *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*. (C-54/07, EU:C:2008:397) and in *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* (C-157/15, EU:C:2017:203); the Bulgarian equality body's role in *"CHEZ Razpredelenie Bulgaria" AD v Komisia za zashtita ot diskriminatsia* (C-83/14, EU:C:2015:480); and the Romanian equality body's role in *Relu Adrian Coman, Robert Clabourn Hamilton, Asociația Accept v Inspectoratul General pentru Imigrări, Ministerul Afacerilor Interne, Consiliul Național pentru Combaterea Discriminării* (C-673/16, AG Opinion EU:C:2018:2)

³⁰ See for instance the British Equality and Human Rights Commission intervening in *Eweida and Others v. the United Kingdom* (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10)

³¹ *Eweida and Others v the United Kingdom* (Applications nos. 48420/10, 59842/10, 51671/10 and 36516/10)

³² *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*. (C-54/07, EU:C:2008:397)

³³ *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*. (C-54/07, EU:C:2008:397)

³⁴ *"CHEZ Razpredelenie Bulgaria" AD v Komisia za zashtita ot diskriminatsia* (C-83/14, EU:C:2015:480)

³⁵ *Valeri Hariev Belov v CHEZ Elektro Bulgaria AD and Others* (C-394/11, EU:C:2013:48)

³⁶ European Convention on Human Rights Article 36(2): "The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings."

³⁷ For instance Recital 24 of the Race Directive provides: 'Protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims.'; while Article 13 requires equality bodies' competences to include: 'conducting independent surveys concerning discrimination' and 'publishing independent reports'. The other EU Directives contain similar provisions on the *raison d'être* and competences of equality bodies.

³⁸ For examples see the regular Equinet Newsletters, available at: <http://www.equineteurope.org/-Equinet-Newsletters->. For instance the March 2018 issue contains information about research conducted among others by the Hungarian Equal Treatment Authority on workplace harassment, on harassment and discrimination in education, and a survey on legal awareness; by the Irish Human Rights and Equality Commission (together with the Economic and Social Research Institute (ESRI)) on "Attitudes to Diversity in Ireland"; and by the British Equality and Human Rights Commission on the effect of tax, welfare, social security and public spending on equality.

³⁹ See for instance: German Federal Anti-Discrimination Agency (2016): Research on risks of discrimination against refugees and asylum-seekers. Available at:

http://www.antidiskriminierungsstelle.de/DE/Beratung/Gefluechtete_und_Neuzugewanderte/Diskriminierungsrisiken/gefluechtete_node.html (accessed on 23 April 2018)

⁴⁰ For instance as research has shown in Germany that suitably qualified candidates are often not called for employment interviews because information on their application form or curriculum vitae shows their age, gender, or ethnicity, the Federal Anti-Discrimination Agency (FADA) worked with a number of employers to develop a mechanism where applicants for posts were selected for interviews on the basis of ‘depersonalised applications’. Equinet 2013: 43.

⁴¹ See Article 26 of the Gender Recast Directive: ‘Statutory duties include preventive duties requiring organisations to establish systems and processes to prevent discrimination, institutional duties requiring organisations to establish systems and processes to promote equality for employees and service users, and mainstreaming duties requiring public authorities to have due regard to the need to promote equality in legislating, budgeting, regulating, and policy making.’ Article 29 provides that ‘provides that, Member States shall actively take into account the objective of equality between men and women when formulating and implementing laws, regulations, administrative provisions, policies and activities in the areas referred to in this Directive’. See Equinet 2016a: 6.

⁴² ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, adopted on 13 December 2002, paragraph 8; ECRI General Policy Recommendation No. 14 on Combating Racism and Racial Discrimination in Employment, adopted on 22 June 2012, paragraph 1) g. on Legal duties on public authorities.

⁴³ Opinion of the Commissioner for Human Rights on national structures for promoting equality, CommDH(2011)2, Council of Europe, Strasbourg, 21 March 2011, paragraph 6.1.2.

⁴⁴ See Equinet’s European Directory of Equality Bodies at: <http://www.equineteurope.org/-Members-Directory-> (accessed on 23 April 2018)

⁴⁵ Examples include the Equality and Human Rights Commission in Great Britain, the Irish Human Rights and Equality Commission. For an ongoing process in Malta see for instance: Malta Today (2017)

⁴⁶ European network of legal experts in gender equality and non-discrimination (2017) News report on Romania Available at: <http://www.equalitylaw.eu/downloads/4050-romania-the-senate-rejects-draft-bill-aiming-to-abrogate-anti-discrimination-law-pdf-276-kb> (accessed on 23 April 2018). Other examples can include disproportionate budget cuts, or a premature termination of mandate of the head of the equality body.

⁴⁷ For an early example see for instance: Equinet (2012)

⁴⁸ Article 39 TEU; Article 16 TFEU and Article 8 Charter of Fundamental Rights of the European Union

⁴⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

⁵⁰ Consider for example the recent positive developments in Greece, where the most recent amendment of the national legal framework for equal treatment, with Law 4443/2016, assigned to the Greek Ombudsman the overall competence against discrimination, extending its competencies to both the public and the private sector in the field of employment for all grounds of discrimination. Before this amendment the private sector was covered by the Labour Inspectorate, a government service. See for instance: <http://www.equalitylaw.eu/downloads/4076-greece-re-transposition-of-directives-2000-43-ec-2000-78-ec-and-transposition-of-directive-2014-54-eu-pdf-190-kb> (accessed on 23 April 2018)

⁵¹ On complete independence of data protection authorities see for instance the following cases from the CJEU: C-288/12, EU:C:2014:237 *Commission v Hungary*; C-518/07, EU:C:2010:125 *Commission v Germany*; and C-614/10, EU:C:2012:631 *Commission v Austria*; as well as the relevant sections in the General Data Protection Regulation (Article 51-54)

⁵² Consider for instance the Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (Directive 2014/54/EU, OJ L 128, 30.4.2014, p. 8–14), which led to the appointment of equality bodies in 16 EU Member States as bodies promoting equal treatment and supporting workers in the European Union and their family members (<http://ec.europa.eu/social/main.jsp?catId=1277&langId=en>) (accessed on 23 April 2018)

⁵³ See for instance: Bell M (2008) *Extending EU Anti-Discrimination Law: Report of an ENAR Ad Hoc Expert Group on Anti-Discrimination Law*, Brussels, European Network against Racism. Available at:

<http://cms.horus.be/files/99935/MediaArchive/pdf/Extending%20EU%20Anti-Discrimination%20Law%20final.pdf> (accessed on 23 April 2018); Howard E (2007) The case for a considered hierarchy of discrimination grounds in EU law. *Maastricht Journal of European and Comparative Law*, 13 (4). pp. 445-470.; Lahuerta SB (2016) Taking EU Equality Law to the Next Level: In Search of Coherence. *European Labour Law Journal* Vol 7, Issue 3.

⁵⁴ In order to remedy this, legislative action is necessary, notably by adopting the so-called Horizontal Directive, in front of the Council since 2008 (Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM/2008/0426 final))