



# **The State of Antidiscrimination Policies in Europe: Ten Years after the Passage of the Racial Equality Directive**

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## **I. Introduction**

Despite the groundbreaking antidiscrimination legislation recently transposed into law in the European Union, there remains a gap between the legal protections afforded to individuals on paper and their implementation on the ground. Most minority groups in the EU say they experience some form of discrimination, yet few report these incidents to authorities—either because they believe that nothing will change as a consequence, or because they simply are unaware of their legal options. Eighty percent of immigrants and minorities surveyed by the 2009 European Union Minorities and Discrimination Survey (EU-MIDIS) were unable to name a single organization capable of offering support to victims of discrimination in their country of residence, and few had heard of the European Union’s equality bodies—the flagship institutions tasked with promoting equal treatment in the EU.

While the mechanisms enabling individuals to protest incidents of discrimination have become more sophisticated in the past ten years, they have limited utility if vulnerable populations do not avail themselves of their legal options. Ten years after the passage of the European Union’s hallmark anti-discrimination legislation—the 2000 Racial Equality Directive (RED)—it is worthwhile to examine the extent to which this legislation has made a difference in the lives of those it was designed to protect, and what aspects of its implementation can be improved by Member States.

As governments and communities recover from the deepest economic crisis in decades, anecdotal evidence of racial violence and xenophobia in Europe abounds. The July 2010 expulsions of Roma from France; the January 2010 race riots between locals and African immigrants in Rosarno, Italy; the December 2009 “White Christmas” operation urging residents to denounce unauthorized immigrants in northern Italy; and the November 2009 referendum in Switzerland in which a majority voted to ban the construction of minarets all point to increasing anxiety vis a vis foreigners. These anecdotes suggest that some societies—for instance those feeling the most negative repercussions of the crisis—could reach a tipping point where immigrants and minorities are once again scapegoated. It is within this context that this paper seeks to closely examine the laws designed to mitigate these trends, through an examination of the statutory bodies put in place to combat discrimination in EU Member State: the EU equality bodies.

### **Box I: The EU Equality Bodies**

The 2000 Racial Equality Directive (RED) legally requires all EU Member States to designate independent bodies to combat discrimination on the grounds of racial or ethnic origin and promote equal treatment. These “equality bodies,” which Member States were expected to implement by July 2003 (or by the time of accession for states that joined in 2004 and 2007), have three principal goals:

1. To provide independent assistance to victims of discrimination, including helping them to pursue complaints;
2. To conduct independent surveys and to publish independent reports on discrimination; and
3. To make recommendations on issues relating to discrimination in their country.

While the RED establishes a minimum standard, the competencies offered by equality bodies, as well as the level of resources dedicated to addressing complaints, vary widely across Europe. Most of the equality bodies are in their infancy as institutions, and thus have been going through a growing period of structural changes, consolidation, and gradual increases of capacity.

## Box 2: Defining and Measuring Discrimination

For the purposes of this paper, we define discrimination as the unjust or prejudicial treatment of different categories of people—on the grounds of ethnic or racial background, nationality, gender, religion or belief, age, or sexual orientation—which has the effect of restricting people’s access to the economic, political, and social opportunities necessary to improve their livelihood and integration into society. EU legislation recognizes four manifestations of discrimination: **direct** or willful, **indirect** or unintentional, **harassment**, and **instruction to discriminate**. These can occur across a variety of public and private sectors, including employment, education, housing, social services, healthcare, and private services (such as in restaurants, shops, or banks).

Discrimination is not an easily measurable or quantifiable phenomenon. The barriers to obtaining empirical evidence on this trend include:

- **The lack of “hard” data.** The data collected by governments on the most conspicuous form of discrimination—crime and violent acts of discrimination—are scarce, unreliable, and not comparable across states. First, some states (such as France) are reluctant to consider racial or ethnic origin or religious affiliation in any public statistics. Second, the incidents that qualify as “hate crimes” are defined differently in each Member State, which affects how data are captured and analyzed.
- **Underreporting.** There is gross underreporting of acts of discrimination by potential victims (see Box 3 on the Roma). And groups facing historically high levels of discrimination often fear self-identifying to authorities.<sup>1</sup>
- **Burden of proof.** Finally — and perhaps most significantly — is the difficulty of proving discriminatory intent. Tools such as EU-wide surveys and resume tests can show that, on the whole, certain groups of people are discriminated against, but it is vastly harder to prove that any single individual or organization is guilty of a crime, and even more difficult to prosecute the offenders.

## II. Developments in Antidiscrimination Legislation

In 1991, nearly every EU Member State<sup>2</sup> had some type of legal provision concerning racial discrimination, but in most jurisdictions these laws were rarely invoked before the courts. It was only in 1999, with Article 13 of the Treaty of Amsterdam, that the EU gained explicit authority to act in order to prevent discrimination on the grounds of sex, racial or ethnic origin, age, disability, religion, and sexual orientation. Although equality in these areas became an explicit and central aim of the European Union, the legislation did not provide Member States with specific tools to combat racism and xenophobia. In 2000, two additional directives were adopted—the Racial Equality

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<sup>1</sup> For example, only 8 percent of Romanians identify themselves as belonging to an ethnic minority when asked by Eurobarometer, or as reported by the census, whereas academics estimate a significantly higher percentage. See Special Eurobarometer 317, Question 17, and the Romanian Department of Interethnic Relations, [http://www.dri.gov.ro/index.html?page=date\\_statistic](http://www.dri.gov.ro/index.html?page=date_statistic)

<sup>2</sup> At the time, the EU had 12 Member States: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

Directive (RED), which established a common framework for national laws that protect against racial and ethnic discrimination, and the Employment Equality Directive (passed six months later), which prohibits discrimination in employment and occupation. Prior to the RED, most countries had a legal patchwork of antidiscrimination provisions but lacked a specific set of laws and a strong specialized body to enforce those laws.

However, despite these achievements on paper, some important gaps remained in the legal protections offered on the ground. Discrimination based on religion or belief, disability, age or sexual orientation was only protected in the labor market, but was not covered in areas such as education, healthcare, or housing (people were protected outside the workplace only on the grounds of gender or ethnic origin). The European Commission finally implemented a new Directive in July 2008 to extend the existing legal framework to bridge these gaps.

The Treaty of Lisbon, which came into force on December 1, 2009, gives prominent mention to equality and nondiscrimination, and makes the EU Charter of Fundamental Rights legally binding. Also notable is that the newly revised Treaty of the European Union unambiguously states that the EU is underpinned by respect for the rights of “persons belonging to minorities”—the first time this phrase is used in EU primary law.<sup>3</sup> The Lisbon Treaty also emphasizes the need to mainstream equality, meaning that the principle should permeate all aspects of EU policymaking instead of being sequestered in one issue area. The Treaty strengthens the existing legal basis for antidiscrimination measures in the European Union, and launches the fight against racism to the forefront of the EU’s policy priorities, something that had stalled in the previous decade. However, it does not introduce any new mechanisms for adopting policies and legal measures to combat discrimination, and according to analysts, lacks precision on the scope of the rights granted and how they would be implemented.<sup>4</sup>

The RED has been innovative in several ways, as it sets minimum antidiscrimination standards for EU Member States to follow, and has required the creation of equality bodies who must promote equal treatment. This has been noteworthy because it has eased the path for victims to pursue complaints, first by reversing the burden of proof (making it the defendant’s job to prove that discrimination has *not* occurred), and second by stipulating that intermediaries can engage the legal process on behalf of individuals. The 2008 Feryn decision—a case brought by the Belgian Centre for Equal Opportunities and Combating Racism against the Belgian company Firma Feryn NV—was an example of this process. NV Firma Feryn had publicly stated during a job recruitment process that it would not consider applications from persons of a certain ethnic origin. Though there was no individual who had been discriminated against at the heart of the story, the Court ruled that even in the absence of a complainant, direct discrimination could still occur. However, this has been the only major judgment by the European Court of Justice relating to the Racial Equality Directive (RED).<sup>5</sup>

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<sup>3</sup> European Agency for Fundamental Rights. Annual Report 2010.

<sup>4</sup> European Network against Racism (ENAR). 2009. *The EU Lisbon Treaty: What implications for anti-racism?* Brussels: November 2009.

<sup>5</sup> Court of Justice of the European Communities. 2008. *Judgment of the Court of Justice in Case C-54/07. Press Release No. 50/08*, 10 July 2008. <http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-03/cp080050en.pdf>.

### III. Ten Years after the RED, Where Are We Today?

Whether or not they have been dealt a grave blow by the recession, one thing is clear: equality bodies are still nascent institutions that are experiencing growing pains. They have undergone major changes in the past five years, including consolidations spurred by recent tweaks in EU legislation, and they have been shaped by political trends in EU Member States.

The most recent annual report of the European Union’s Fundamental Rights Agency (FRA)—the independent body established to assist Member States as they implement EU law on rights matters—chastises a number of states who had yet to create a fully independent equality body by the end of 2009, or where the body was so new it had not had time to become operationally effective. Three states—Estonia, Poland and Malta—currently do not have dedicated institutions in place that fully comply with the Directive.<sup>6</sup> Others have only recently instituted bodies (Czech Republic, Luxembourg, and Spain), and therefore do not have a long track record of hearing cases. Others still do not have fully independent bodies; their rulings, as well as their budgets, are accountable to a public organization. In addition, recession-induced budget cuts—or feeble commitments by Member States—may have hampered their effectiveness. In Ireland, the equality body cut 43 percent of its budget in 2009, while Lithuania and Latvia made cuts of nearly the same magnitude.

The effectiveness of these bodies is contingent on several factors, including:

1. Their structure, mandate, and composition, including the breadth of their competencies and the tools at their disposal to enforce their rulings
2. Their independence from state influences and control (including financial independence)
3. The political climate in which each institution operates
4. The financial resources available to adequately staff their operations and provide assistance to victims.

We will examine each of these in depth below.

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<sup>6</sup> Estonia has a Gender Equality Commissioner, but no institution that deals with discrimination on the grounds of race or ethnicity; Poland has no independent equality body, though there is a Department of Women, Family and Counteracting Discrimination within the Ministry of Labour and Social Policy. Malta’s equality body does not have jurisdiction to act in relation to racial discrimination in employment.

### **Box 3: Discrimination against Roma**

The comprehensive European Union Minorities and Discrimination Survey (EU-MIDIS) published in April 2009 confirmed something long contended by activists and NGOs: Roma are discriminated against more than any other group in Europe—beating Sub-Saharan Africans and North Africans—in almost every aspect of everyday life, including employment, housing, healthcare, education, and social life. The numbers reveal that nearly half of all respondents (47 percent) reported being the victim of discrimination based on their ethnicity in the previous 12 months. At the top of the list were Roma in the Czech Republic, 64 percent of whom reported experiencing incidents of discrimination in the previous year, suggesting that Roma face worse treatment in places where they are more of a visible minority. Roma also reported high levels of discrimination in Hungary, Poland, Greece, and Slovakia (between 40-63 percent of Roma in each country reported they had been discriminated against).

Between 66 and 92 percent of Roma who reported discrimination to EU-MIDIS failed to report the incident to any authority. And of the 25 percent who reported they were victims of personal crime (mostly racially motivated), between 65 and 100 percent failed to report the incidents to the police.<sup>7</sup> When asked why, 78 percent said that “nothing would happen or change” by reporting their experiences, 52 percent said they did not know “how to go about reporting” or where to report, and 44 percent said it was not worth reporting something that “happens all the time.”<sup>8</sup>

Although the RED covers both national minorities as well as newly arrived immigrant groups, some evidence suggests that the legislation fails to address the specific situation of the Roma—a large, marginalized national minority population that has been unsuccessful using existing institutional frameworks to advocate on its own behalf.

One factor is that the legislation was not drafted with the Roma in mind as a target group: When the RED was passed in 2000, the EU-15 had an estimated population of 1.5-1.8 million Roma, compared to 11 million in today’s expanded EU-27.<sup>9</sup> And while the European Commission initiated infringement procedures against France (which were later suspended) because of the July 2010 expulsions, which appeared to illegally single out the Roma as an ethnic group, the French equality body has not yet taken up the case.

## **A. Structure of the Equality Bodies**

As EU law allows Member States to implement directives as they see fit, equality bodies vary tremendously in their structure, mandate, and competencies. Some equality commissions have singular competencies whereas others provide a complete spectrum of assistance and information to citizens. Most critically, the majority of Member States offer a well-defined path to for victims to resolve their complaints, although the exact mechanism is not specified by the RED and thus this can take the form of a trial, mediation, or hearing. In general, three distinct paths to deliberation exist:

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<sup>7</sup> European Agency for Fundamental Rights. 2009. *EU-MIDIS: European Union Minorities and Discrimination Survey*. Data in Focus Report 1: The Roma.

<sup>8</sup> European Union Agency for Fundamental Rights. 2009. *EU-MIDIS: European Union Minorities and Discrimination Survey*. Main Results Report.

<sup>9</sup> Jean-Pierre Liégeois. 1994. *Roma, Gypsies, Travellers*. Strasbourg: Council of Europe Publications.

- *Providing financial assistance.* One set of states, including the United Kingdom, offers financial support for victims to have their complaints heard in court, covering legal fees in some situations when citizens have financial limitations.
- *Conducting independent hearings and issuing opinions.* Some states, like France and the Netherlands, have deliberative committees within their equality bodies that conduct hearings and offer non-binding opinions separate from the national court system. Others, like the Bulgarian Commission for Protection against Discrimination, actually function as a quasi-court and can impose sanctions pursuant to their rulings.<sup>10</sup>
- *Representing victims in court.* Some institutions, such as the Swedish Ombudsman, do not have their own arbitration mechanism, but they represent victims of discrimination free of charge in national courts. (Bodies that function as quasi-courts themselves, meanwhile, do not represent complainants in national courts.)

The different structure of each body grants specific advantages and disadvantages. For example, bodies that act as quasi-judicial authorities (such as in Bulgaria and the Netherlands), must refrain from offering services to victims or representing them in national courts in order to be seen as impartial. Therefore, although they may technically lack one of the key competencies—providing support to a victim while he or she seeks a resolution—this should not automatically be seen as a deficit. The Dutch equality body, for example, is considered to be among the most effective because it delivers respected (though nonbinding) opinions that are considered highly authoritative. However, it does not assist victims because this is seen to conflict with its primary aim of hearing and investigating cases.<sup>11</sup>

Not only do the services of the equality commissions differ greatly, their mandates do as well. Some equality bodies do not address cases introduced by private institutions, employers, or individuals. In several countries (such as Greece), the office of the ombudsman—typically a government-appointed official charged with investigating and addressing complaints—acts as the equality body, meaning that they mainly focus on instances of discrimination committed by public officials and offices. Furthermore, some equality bodies only cover cases of discrimination in certain sectors. For example, Malta’s institution only provides assistance for those racially and ethnically discriminated against in regard to the provision of goods and services. This is a particular problem because the bulk of discriminatory incidents do not occur in the public sector (which is increasingly well monitored). According to the EU-MIDIS survey, discrimination in “private services” dominates individuals’ experiences of discrimination in the EU-27, followed by work-related discrimination.<sup>12</sup>

Finally, the wide range in the number of complaints received by each body (see Table 1) provides another method of comparison, although these data can be misleading. Fewer registered complaints should not be taken as evidence of less discrimination in those countries; it is likely an indication of the underutilizations of these bodies (as evidenced by the EU-MIDIS survey), primarily because victims are either unaware that they exist or otherwise reluctant to seek their services.

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<sup>10</sup> Bulgarian Questionnaire.

<sup>11</sup> See European Union Agency for Fundamental Rights (FRA), 2009, *Annual Report*.

<sup>12</sup> EU-MIDIS defines “private services” as those an individual might encounter in the following situations: trying to open a bank account or obtain a loan, or entering or patronizing a shop, restaurant, bar, or café. See: European Union Agency for Fundamental Rights, 2009, *EU-MIDIS: European Union Minorities and Discrimination Survey*. Data in Focus Report 1: The Roma, 5.

**Table 1: Discrimination complaints registered in EU Member States, compared to total and minority population.**

Number of Complaints <sup>13</sup>	Country <sup>14</sup>	Total Population (2010) in millions	Minority Population*
<b>Fewer than 20</b>	Romania	21.47	10.5%
	Portugal	10.64	4%
	Slovakia	5.43	14.2%
	Slovenia	2.05	17%
	Estonia	1.34	12%
	Luxembourg	.50	37%
	Malta	.42	>4%
<b>Fewer than 100</b>	Italy	60.44	7.1%
	Greece	11.31	≈10%
	Denmark	5.54	9.5%
<b>Fewer than 1000</b>	Latvia	2.23)	41%
	Netherlands	16.62	19.1%
	Belgium	10.83	4%
	Sweden	9.39	7.7%
	Finland	5.37	≈7%
	Cyprus	.80 <sup>+</sup>	>14%
	<b>More than 1000</b>	Germany	81.80
France		65.45	≈40%
United Kingdom		62.01	8%
Hungary		10.01	5.6%
Austria		8.37	9%
Bulgaria		7.58	16%
Ireland		4.47	4%
Lithuania		3.26	16%

<sup>+</sup>~1m with Northern Cyprus

\*Minority population is defined as those residents with visible, ethnic or linguistic minority status.

## **B. Independence**

Though almost all equality bodies claim that they act independently and impartially when dealing with discrimination issues, the links between some of the bodies and federal institutions is cited as a factor that could potentially undermine their impartiality. For example, Austria's Ombudsman for Equal Treatment is attached to the Federal Chancellery, and Belgium's equality body has a board run by entirely government officials. Furthermore, the Spanish body that conducts reports and recommendations is actually a subsection of the Ministry of Immigration and Employment. While these organizational structures do not by themselves compromise the work of the equality bodies, the bodies' close affiliation with government ministries presents a potential conflict of interest. And

<sup>13</sup> Most complaint numbers are from 2009, the rest no earlier than 2006. See FRA Annual Report 2009 and national equity bodies.

<sup>14</sup> All numbers are estimates calculated from national statistical organizations or the CIA World Factbook and are accurate within 10 years.



even the perception of impartiality may diminish the effectiveness of these bodies, as victims may feel less comfortable seeking their help.

As equality bodies have become established, their role has shifted from advocacy to regulator. Many business interests have become concerned over the regulatory role of equality bodies, even trying to influence politicians to decrease their influence. Although these efforts have been unsuccessful thus far, it will be important for equality bodies to maintain their independence.

Consolidation and reorganization have been significant factors for many countries. Of the countries under review, Belgium, the Netherlands, and the United Kingdom had existing entities that required minimal changes to meet the requirements of the RED. In the United Kingdom, it could be argued that the RED had little impact, except to spur a reorganization of existing equality institutions. The Commission on Racial Equality (CRE) was merged into the Equality and Human Rights Commission (EHRC) in 2008, which critics at the time considered to be a watering down of the mission of the CRE.

As equality bodies have made decisions that are unpopular with government officials, there have been threats to dilute their influence by moving them into larger entities within the government bureaucracy.<sup>15</sup> This could affect both the impact and independence of an equality body. In some countries, the groups tasked with equality are housed within institutions with larger mandates, such as the Ombudsman's office. This means that the specialized expertise needed to adjudicate discrimination complaints could potentially be lost, or simply not prioritized, within the larger institution—especially during times of budget cuts. Similarly, in countries such as Lithuania, multiple bodies, each with a specialized mandate (for instance, gender equality, children's rights, and racial discrimination), are being consolidated into one. Again, the fear is that the emphasis on discrimination would be lost.

### **C. Political Trends and Reorganization**

All equality bodies have gone through or are facing reorganizations that may diminish their ability to address discrimination, particularly in regard to enforcement related to employers.<sup>16</sup> Reorganization is often approached as an efficient way to share resources across entities that are doing similar work, but it can be problematic because resources are spread more thinly across staff. Work on different grounds of discrimination may have to compete for attention and resources (for example, gender discrimination, which has a much larger constituency, could take resources away from racial discrimination). Also, it takes time for bureaucratic reorganizations to become efficient, and services can suffer during the transition period.

When the RED was passed by the European Council in 2000, most governments were dominated by left or socialist parties. In the next few years, conservative parties took over many of those governments (particularly in France and Germany) impacting the nature of the laws designed to implement the RED. Equality body staff has expressed concerns that less sympathetic governments

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<sup>15</sup> Add citation

<sup>16</sup> A field study was conducted during the spring and summer of 2010 of the equality bodies in France, Germany, Belgium, the Netherlands, and the United Kingdom. Interviews were conducted with staff members to determine the extent of the measures taken by each country to implement the RED and the political pressures that these bodies have faced since their creation.

may try to limit the scope of their organizations, particularly concerning any opinions that may impact business. Conservative governments have been more likely to pass laws that only met the minimum requirements of the directive, because of their concerns about how it would affect the private sector. Germany provides a prime example of this approach, as the law which implemented the RED only met the bare minimum required by the directive. Despite the country's size and the number of complaints it receives annually, the Germany equality body—the *Antidiskriminierungsstelle des Bundes* (Federal Antidiscrimination Bureau [ADS])—has a relatively small staff of twenty, seven of which are lawyers.<sup>17</sup>

One of the first bodies affected by reorganization was the Commission for Racial Equality (CRE) in the United Kingdom, which was subsumed into the Equality and Human Rights Commission in 2007. At the time, the move was criticized as potentially diluting the focus on race. The move combined the CRE, the Equal Opportunities Commission (focused on gender), and the Disability Rights Commission. Issues related to the promotion and protection of human rights also came under the EHRC mandate. Current staff has noted that the combination of the different entities and competencies is still impacting the efficiency of the office, and that a full bureaucratic integration will take another two years.

The French Equality Body—*La haute autorité de lutte contre les discriminations et pour l'égalité* (High Commission against Discrimination and for Equality [HALDE])—is likely to be phased out and folded into the office of the “*Defenseur des Droits*” (defender of rights) by the end of the year, which may reduce its influence and diminish the emphasis on discrimination. One of the factors that has played into the potential changes at the HALDE has been its successful enforcement of antidiscrimination policy for large employers.

In the Netherlands, the quality and funding of antidiscrimination services has been a problem. The reorganization of the equality body has been on hold while the new coalition government was being formed, but it was clear that the organization *Art. 1*—the main organizer of municipal-level equality bodies—was likely to lose their funding. *Art. 1* has been unable to pull together the different local level antidiscrimination bodies, particularly those from the larger cities, such as Amsterdam, Rotterdam, and the Hague, who have wanted to work directly with the government rather than use *Art.1* as an intermediary.

#### **D. Budget Cuts**

While some equality bodies have continued to expand, per their original strategic missions, budget and staff cuts have affected several others. This information must be presented with the caveat that the budget figures alone do not necessarily allow us to compare actual antidiscrimination expenditures across Member States. Some bodies with larger budgets may cover multiple grounds,

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<sup>17</sup> In addition to the ADS, Germany has a network of commissioners within the government who have responsibility over antidiscrimination policy, including the Federal Commissioner for National Minorities and Aussiedler (people from the East with German ancestry); the Commissioner for Disabled; and the Commissioner for Migration, Refugees and Integration, who focuses on antidiscrimination policy for migrants. However, this is a new network, and prior to this, only the Commission for Migration focused on antidiscrimination. Although the ADS opened in 2006, in many ways, Germany is just getting started. Interviews with staff reveal that the first three years were focused on developing the structure of the organization, and the previous director also focused much of the office's effort on making connections with the business community. They have a new director in the past year that has focused more directly on antidiscrimination policy.

or be housed within institutions with different mandates, and thus actually spend less on discrimination than smaller institutions who devote a larger proportion of their resources to covering ethnic and racial discrimination. We face the same problem of measurement when we look at staff numbers. For example, the Greek Ombudsman has an impressive 142 staff members, but only 15 deal with discrimination, putting it on par with Denmark's 8-person staff — one of the smallest.

As Table 2 shows, budgets decreased substantially for at least three equality bodies between 2008 and 2009: Both Ireland and Lithuania saw dramatic decreases of over 40 percent, while Latvia and Romania followed with 30 and 25 percent cuts, respectively. Niall Crowley, then chief of Ireland's Equality Authority, resigned in protest over these cuts in October 2008.

**Table 2: Budgets of Equality Bodies in EU Member States (in EUROS)**

	<b>Budget 2008</b>	<b>Budget 2009</b>	<b>Percent Change</b>
<b>Ireland</b>	5,897,000	3,333,000	-43.48
<b>Lithuania</b>	538,114	316,555	-41.17
<b>Latvia</b>	1,855,068	1,287,016	-30.62
<b>Romania<sup>1</sup></b>	*	*	-25 <sup>2</sup>
<b>United Kingdom</b>	88,287,759	78,305,119	-11.31
<b>Belgium</b>	7,500,000	7,500,000	0
<b>Denmark</b>	806,024	806,024	0
<b>Greece<sup>2</sup></b>	*	10,269,000	*
<b>Malta</b>	256,000	256,000	0
<b>Italy</b>	2,035,000	2,035,000	0
<b>Sweden</b>	9,360	9,360	0
<b>Hungary</b>	972,895	980,294	0.76
<b>France</b>	11,600,000	11,837,000	2.04
<b>Czech Republic</b>	3,712,630	3,797,449	2.28
<b>Finland</b>	685,082	704,000	2.76
<b>Netherlands</b>	*	*	4.30
<b>Germany</b>	2,814,000	2,990,000	6.25
<b>Luxembourg</b>	200,000	220,000	10.00
<b>Bulgaria</b>	1,338,211	1,650,000	23.30

\* Exact figures unavailable; equality bodies only reported the percent change from 2008-2009.

Note: National currencies have been converted to EUROS using the exchange rates from July 1, 2009.

<sup>1</sup> This figure comes from news reports, as Romania has not yet responded to the questionnaire.

<sup>2</sup> Although data do not exist for Greece prior to 2009, they have announced a budget decrease for 2010.

Source: MPI Questionnaires to EU Equality Bodies.

As nations weather the brunt of the recession, there are some indications that equality bodies are looking for ways to make further cuts. Five equality bodies have asked for waivers of the fee they pay to be part of the European Network of Equality Bodies (Equinet); alarmed by these cutbacks, the Network has launched campaigns reminding governments that they are legally required to maintain their equality bodies.

In some countries, budget cuts have put a strain on staff members who are already stretched thin in the face of growing caseloads. The EHRC reports a 10 percent increase in its caseload in the field of human rights (a new area of responsibility for the organization), leading the European Commission against Racism and Intolerance (ECRI) to raise concerns that the EHRC's current budget "may not suffice to maintain previous levels of protection against racism."<sup>18</sup> Other bodies have also reported burgeoning caseloads without any significant increases in capacity. French anti-discrimination and equality body HALDE received 10,546 complaints in 2009—a drastic jump from just 1,500 complaints in 2005—yet they planned to add only two staff members in 2010.<sup>19</sup> The Hungarian Equal Treatment Authority's budget increased slightly from 2008 to 2009, but it also accompanied an increased caseload. While four lawyers were added to the staff in 2008 "due to added burdens," the body reports that its current staff size is not sufficient to handle the number of complaints in a timely fashion.<sup>20</sup>

While the recession may have contributed to halting the expansion of some bodies—especially in those countries most affected by the downturn as observed in Table 2—other nations' budgets have stayed the same or increased. We can also observe positive trends in terms of oversight. In the Czech Republic, increased public scrutiny of how the government has dealt with foreign workers during the crisis—including the voluntary return program—may have led to pressure for increased oversight of anti-discrimination measures. In its 2009 report to the European Migration Network, the Czech National Contact Point reported that regional problems arising from the dismissal of foreign workers during the economic crisis led the Ministry of the Interior to create "emergent integration projects" in selected municipalities to "improve the quality of coexistence of immigrants and the majority society, and prevent xenophobia."<sup>21</sup> Another positive development occurred in June 2009, when the Czech Parliament became the last EU Member State to pass anti-discrimination legislation, which had been vetoed just one year prior—thus coming into compliance with the RED and avoiding EU sanctions.<sup>22</sup>

## IV. Conclusions

The principal problem in Europe today is no longer the lack of legislation, but rather its uneven implementation on the ground. While satisfactory — and increasingly comprehensive — legislation to combat discrimination is in place in almost all EU Member States, it has not been implemented to full advantage. In some cases, legislative measures have been undermined by a lack of political will and public support, factors exacerbated by recent changes in political leadership.

Because vulnerable populations frequently lack knowledge about their rights, do not trust authorities, and are often resigned to the systemic and widespread discrimination they face, the existence of legislation on its own is not enough to break ingrained cycles of discrimination. The current legislative framework, however, is an important foundation, and can be fine-tuned to better

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<sup>18</sup> European Commission against Racism and Intolerance. 2010. *ECRI Report on the United Kingdom: Fourth Monitoring Cycle*. Strasbourg: Council of Europe, 2 March 2010.

<sup>19</sup> MPI Questionnaire from the French High Commission against Discrimination and for Equality (HALDE).

<sup>20</sup> MPI Questionnaire from the Hungarian Equal Treatment Authority.

<sup>21</sup> European Migration Network. 2010. *EMN Annual Policy Report 2009: National Contact Point of the Czech Republic to the European Migration Network*. March 2010, p 30.

<sup>22</sup> European Network of Equality Bodies (Equinet). 2009. "Czech Republic pass anti-discrimination legislation," 07 July 2009. [http://www.equineteurope.org/405\\_3.html](http://www.equineteurope.org/405_3.html).

serve the needs of populations who are treated unequally. However, it will be important for NGOs and other actors to support the work of these bodies as budgets tighten and pressures increase to reduce resources or reorganize.

Several trends are likely to affect the ability of equality bodies to effectively address discrimination, chief among which are:

- *Structural changes.* The trend that many bodies are experiencing—that of multiple specialized bodies being consolidated into one larger institution—may dilute the focus on antidiscrimination while also spurring inefficiencies that come with more bureaucracy. Already limited resources, including small numbers of staff (and even smaller numbers of lawyers) will be spread across more issue areas, and staff specialists will acquire larger portfolios and arguably less time to devote to race-related discrimination.
- *Political pressures.* Changes in political leadership, especially the shift toward conservative governments in a number of countries, may undercut the political will necessary to ensure the effectiveness and independence of equality bodies (particularly in regard to enforcement related to employers, which has been politically unpopular).
- *Threats to independence.* As equality bodies grow and undergo reorganizations, it is critical that they maintain their independence from both government and business influences, in order to assist individuals in an impartial manner. Because the RED only mandates a minimum level of compliance, the services provided by equality bodies run the risk of sinking to the “lowest common denominator.” A body with a strong independent voice will be better able to resist this trend.
- *Budget cuts.* While some countries have fewer absolute resources at their disposal in the wake of the global recession and internal structural changes, all countries must strive to make smarter and more effective investments in order to counter these trends.

In light of these challenges, the European Union’s antidiscrimination priority for the next decade should not be to create *more* legislation or more institutions; instead, the EU needs to strengthen the ones it already has, and make vulnerable populations aware of the assistance available to them.

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