

Making equality legislation work for Trans people



Equinet member organisations

Country	Member
Austria	Ombud for Equal Treatment www.gleichbehandlungsanwaltschaft.at
Belgium	Centre for Equal Opportunities & Opposition to Racism www.diversite.be and www.diversiteit.be
Belgium	Institute for the Equality of Women and Men http://igvm-iefh.belgium.be/en
Bulgaria	Commission for Protection against Discrimination www.kzd-nondiscrimination.com
Croatia	Office of the Ombudsman www.ombudsman.hr
Cyprus	Office of the Commissioner for Administration (Ombudsman) www.ombudsman.gov.cy
Czech Republic	Office of the Public Defender of Rights www.ochrance.cz
Denmark	Board of Equal Treatment www.ast.dk
Denmark	Danish Institute for Human Rights www.humanrights.dk
Estonia	Gender Equality Commissioner www.svv.ee
Finland	Ombudsman for Equality www.tasa-arvo.fi
Finland	Ombudsman for Minorities www.ofm.fi
France	High Commission against Discrimination and for Equality www.halde.fr
Germany	Federal Anti-Discrimination Agency www.antidiskriminierungsstelle.de
Greece	Greek Ombudsman www.synigoros.gr
Hungary	Equal Treatment Authority www.egyenlobanasmod.hu
Hungary	Office of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities www.kisebbsegiombudsman.hu

Country	Member
Ireland	Equality Authority www.equality.ie
Italy	National Office against Racial Discrimination www.unar.it
Latvia	Office of the Ombudsman www.tiesibsargs.lv
Lithuania	Office of the Equal Opportunities Ombudsman www.lygybe.lt
Luxemburg	Centre for Equal Treatment www.cet.lu
Malta	National Commission for the Promotion of Equality www.equality.gov.mt
Netherlands	Dutch Equal Treatment Commission www.cgb.nl
Norway	Equality and Anti-Discrimination Ombud www.ldo.no
Portugal	Commission for Citizenship and Gender Equality www.cig.gov.pt
Romania	National Council for Combating Discrimination www.cncd.org.ro
Slovakia	National Centre for Human Rights www.snslp.sk
Spain	Spanish Race and Ethnic Equality Council www.migualdad.es
Spain – Basque country	Defentsoria – The Gender Equality Ombud www.euskadi.net/defentsoria
Sweden	Equality Ombudsman www.do.se
UK – Great Britain	Equality and Human Rights Commission www.equalityhumanrights.com
UK – Northern Ireland	Equality Commission for Northern Ireland www.equalityni.org

Making Equality Legislation work for Trans People

An Equinet Opinion
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Equinet members: Ombud for Equal Treatment, **Austria** | Centre for Equal Opportunities & Opposition to Racism, **Belgium** | Institute for the Equality of Women and Men, **Belgium** | Commission for Protection against Discrimination, **Bulgaria** | Office of the Ombudsman, **Croatia** | Office of the Commissioner for Administration (Ombudsman), **Cyprus** | Office of the Public Defender of Rights, **Czech Republic** | Board of Equal Treatment, **Denmark** | Danish Institute for Human Rights, **Denmark** | Gender Equality Commissioner, **Estonia** | Ombudsman for Equality, **Finland** | Ombudsman for Minorities, **Finland** | High Commission against Discrimination and for Equality, **France** | Federal Anti-Discrimination Agency, **Germany** | Greek Ombudsman, **Greece** | Equal Treatment Authority, **Hungary** | Office of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, **Hungary** | Equality Authority, **Ireland** | National Office Against Racial Discrimination, **Italy** | Office of the Ombudsman, **Latvia** | Office of the Equal Opportunities Ombudsman, **Lithuania** | Centre for Equal Treatment, **Luxembourg** | National Commission for the Promotion of Equality, **Malta** | Dutch Equal Treatment Commission, **Netherlands** | Equality and Anti-Discrimination Ombud, **Norway** | Commission for Citizenship and Gender Equality, **Portugal** | National Council for Combating Discrimination, **Romania** | National Centre for Human Rights, **Slovakia** | Spanish Race & Ethnic Equality Council, **Spain** | Defensoria – Gender Equality Ombud, **Spain** | Equality Ombudsman, **Sweden** | Equality and Human Rights Commission, **UK - Great Britain** | Equality Commission for Northern Ireland, **UK - Northern Ireland**

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Introduction

This opinion has a specific focus on the work of equality bodies in promoting equality for, and combating discrimination against trans people at Member State level. It seeks to identify policy and practice lessons from the work of equality bodies in this area and to communicate these lessons. The purpose of this opinion is to inform:

- Equality bodies about these lessons, so that they might better meet the challenges posed by the difficult experience and situation of trans people,
- Policy makers at European Union level about these lessons, so that they can contribute to improving the context within which equality bodies seek to make their contribution to equality for trans people.

The opinion draws from a survey of the work of equality bodies on these issues. It has also involved discussion and written contributions from the equality bodies participating in the Equinet Policy Formation working group.

This opinion has been prepared in a context of growing institutional concern at European level about the experience and situation of trans people. This is evident in:

- The recent issues paper on human rights and gender identity prepared by the Commissioner for Human Rights of the Council of Europe,
- The recommendations of the Council of Europe Parliamentary Assembly (PACE) and the Committee of Ministers
- The focus on trans people developed by the European Commission on the back of the 2007 European Year of Equal Opportunities for All,
- The research report of the Fundamental Rights Agency on homophobia and discrimination on the grounds of sexual orientation and gender identity,
- The policy work of ILGA-Europe and TransGender Europe.

Equinet, the European network of equality bodies, brings together 33 equality bodies from 28 European countries. The equality bodies are statutory organisations established under equality legislation to combat discrimination and promote equality across a range of grounds including the ground of gender. Equinet seeks to:

- Enhance the capacity of equality bodies through a variety of peer support initiatives,
- Contribute to policy formation by identifying and communicating the learning from the work of equality bodies.

Context

Trans people are a diverse group that encompasses people of different gender identities, gender expressions and sex embodiments. They include intersex people, cross-dressers and people who cross dress without any permanent desire for change, transvestites, transsexuals, transgender and other gender variant people. It is also important to note that trans people can experience multiple discrimination where, for example, they are members of minority ethnic groups or where they are older people.

The European Union equal treatment directives provide valuable individual enforcement rights for some trans people on the ground of gender. The EU Directive 2004/113/EC implements the principle of equal treatment between men and women in the access to and supply of goods and services. Similarly, the EU recast Directive 2006/54/EC implements the principle of equal treatment between men and women in matters of employment and occupation. The European Court of Justice has ruled that discrimination arising from the gender reassignment of a person is considered as discrimination on the ground of gender (*P.v S. and Cornwall County Council*).

The Commissioner for Human Rights of the Council of Europe published an issues paper on 'Human Rights and Gender Identity' in 2009. This stated that '(t)he human rights situation of transgender persons has long been ignored and neglected, although the problems they face are serious and often specific to this group alone. Transgender people experience a high degree of discrimination, intolerance and outright violence.' The paper identifies six specific human rights issues for trans people. These are:

- Discrimination based on gender identity is not explicitly covered in legal frameworks in a large majority of Council of Europe Member States.
- The denial of legal recognition, for transgender persons, of their preferred gender and name.
- Access to healthcare (including access to gender reassignment treatment).
- Access to the labour market.
- Transphobia and violence against transgender persons.
- Transgender refugees and migrants.

The paper makes a number of specific recommendations to the Member States of the Council of Europe such as 'includ(ing) the human rights concerns of transgender persons in the scope of activities of equality bodies and national human rights structures'.

The Fundamental Rights Agency of the European Union published a report on 'Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II – The Social Situation' in 2009. The report was researched by the Danish Institute for Human Rights and COWI - the Consultancy within Engineering, Environmental Science and Economics.

This report clarified that '(t)ransgender persons face transphobia and discrimination on the grounds of their gender identity and expression and not necessarily because of their sexual orientation. Transgender persons can be heterosexual, homosexual or bisexual' and stated that '(d)iscrimination against transgender persons occurs in all areas investigated for this report and (they are) especially affected by hate crime and hate speech. Discrimination in health and employment is more pronounced. Surveys show that transgender people face more negative attitudes than LGB people'.

This report makes reference to the low number of discrimination complaints on the grounds of sexual orientation, gender identity and gender expression across the European Union. It suggests that the fear of discrimination, homophobia and transphobia contribute to this under-reporting alongside a lack of awareness of rights among lesbian, gay, bisexual and trans people. These factors are also identified as contributing to the invisibility of LGBT persons in many parts of Europe and in many social settings.

The report notes that 'although people who experience discrimination arising from gender reassignment should be protected by anti-discrimination law, often Member States do not apply this legislation to transgender people'. It highlights that 'equality authorities and other specialised bodies in many Member States still need to develop data collection mechanisms, promote scientific research and actively encourage LGBT people to come forward and lodge complaints on incidents of discrimination'. It goes on to recommend that '(t)he European Commission should consider intensifying its efforts to share effectively with Member States models of good practice in the application of the EU's anti-discrimination legislation, particularly through Equinet'.

The Trans Rights Conference organized by ILGA-Europe and TransGender Europe and held in Malta in October 2009 adopted a declaration that included specific mention of equality bodies. This stated that:

'We note the importance of national equality bodies in tackling discrimination against trans people through enforcement of gender equality and anti-discrimination legislation at national level. The Fundamental Rights Agency's social situation report

shows that national equality bodies are currently not sufficiently including trans issues in their work. We therefore call upon national equality bodies to:

1. Be proactive in enforcing anti-discrimination legislation to improve trans equality and human rights.
2. Monitor the implementation of case law and gender equality legislation *vis-à-vis* trans people.
3. Include trans people in gender mainstreaming measures.
4. Produce guidance on trans rights and equality.
5. Support trans people in taking forward cases of discrimination to courts and/or respective entities.
6. Make sure that future gender equality legislation expressly includes gender identity and gender expression.
7. Research, collect and publish data on trans equality and human rights issues.
8. Consult and involve trans equality and rights organisations in national gender equality and human rights policy development.'

The work of equality bodies

Over the summer months of 2009, Equinet surveyed 20 equality bodies from 16 different Member States. Part of the survey included questions on their work with trans people. The survey was further supplemented by written contributions from 10 of the equality bodies participating in the Equinet Policy Formation working group of 2010. The survey and the written contributions provide some useful insights into the work of equality bodies on the issues of trans people. They offer guidance on how equality bodies might best develop their work in this area. The survey and written contributions also offer a timely challenge to the equality bodies to further develop their work in this area.

While not all equality bodies have a mandate in relation to trans people, some 25% of the equality bodies surveyed reported that they were involved in casework brought forward by trans people. Where equality bodies were working on such cases the numbers reported were low, with the norm being between one and three cases per annum. This is an indicator of limited engagement between equality bodies and trans people.

A range of issues were raised in the cases being brought forward by trans people. These cover employment issues, issues in the provision of goods and services and issues in relation to the functions of the state. In employment, allegations of discrimination were brought forward in relation to recruitment and dismissal. In the provision of goods and services allegations of discrimination were brought forward in relation to insurance, access to leisure activities and access to health and medical services. The issues brought forward in relation to the functions of the state related to registration in the name and gender of preference.

It is clear that a number of equality bodies are developing good practice in seeking to make visible, and respond effectively to, issues of inequality and discrimination experienced by trans people. Four different approaches are evident, alongside casework, where equality bodies have:

- Conducted research or surveys on the experience and situation of trans people. This work provides a foundation for further work on the issues of trans people in making these issues visible and building knowledge and understanding of these issues. In some instances this work had a further benefit in involving the active participation of trans people and their organisations and thus building an ongoing engagement between them and the equality body.
- Created networks to engage in dialogue and cooperation with trans people and their organisations. This work provides a foundation for mutual education where equality

bodies develop a knowledge and understanding of trans people and their issues and where trans people gain a knowledge and understanding of the equal treatment legislation and the work of the equality bodies.

- Included a focus on trans people in their work with other stakeholders – in the provision of training for example. This work provides a valuable visibility to trans people and their issues within other sectors beyond the equality body.
- Participated in and supported initiatives that focus on the situation and experience of trans people. These initiatives can challenge the stigma experienced by trans people and afford a useful visibility to their experience and situation. The participation of the equality body can offer a valuable standing and status to these initiatives and can have the added benefit of building trust between trans people and the equality body.

Equality bodies have reported a number of difficulties and barriers to their engagement with trans people and their issues. These include:

- Budgetary restrictions. Some equality bodies find it difficult to be proactive in taking on issues due to lack of human and financial resources. In a context where their work is reduced to being reactive, trans people all too often do not feature in this work.
- Communication difficulties. Trans people are often rendered invisible. They rarely have the resources to organise. They are small in number and scattered. These factors can make it difficult for equality bodies to reach out to and engage effectively with trans people.
- Lack of knowledge. Equality bodies can be hindered by a lack of capacity in addressing trans issues. This lack of capacity can often be based on a lack of knowledge and understanding of trans people and their issues.
- Lack of awareness. Trans people can lack awareness of their rights under equality legislation and of how to exercise such rights. Trans people can also be fearful of being identified and further victimised on the basis of approaching an equality body and seeking to exercise their rights.

Ten steps for equality bodies to engage with trans people

1. Make trans people an issue.

Equality bodies need to identify trans people's rights and the inequality and discrimination experienced by trans people as a priority issue. Trans people's rights need to be named in the strategic plan of equality bodies and in the annual work plan. Human and financial resources need to be committed to developing this focus in the work of equality bodies.

The strategic plan of the British Equality and Human Rights Commission for 2009-2012 explicitly acknowledges discrimination faced by transgender people as a pressing issue. It identifies tackling hatred and violence directed at transgender people as a root cause of discrimination and as a challenge to be addressed in order to build a society without prejudice, to promote good relations and to foster a vibrant equality and human rights culture.

2. Take a broad perspective on trans people.

Equality bodies need to take an inclusive perspective on trans people that encompasses gender identity, gender expression and sex embodiment. It is also

important to take account of the potential for multiple discrimination faced by trans people.

Equality bodies need to identify the extent to which trans people are covered by the equality legislation in their jurisdiction. All bans on sex discrimination include transsexuals but not necessarily gender identity or gender expression in a broader sense. Equality bodies need to promote an inclusive coverage of trans people in equality legislation.

The Austrian Ombud for Equal Treatment has had a small number of cases of discrimination in employment taken by trans people in connection with their gender reassignment. Since 2009 they decided to specifically address other trans people who do not intend to change their sex and/or who reject the traditional binary gender order - such as cross dressers, transvestites and intersex people.

3. Talk to trans people.

Equality bodies need to engage with trans people. This should start by meeting with and talking to organisations of trans people to discuss the situation and experience of trans people and to explore how to make the equality legislation work for trans people. Where there is no such organisation this could start simply by meeting and talking to individual trans people. This would form the basis of the crucial mutual education that ensures equality legislation can contribute to addressing the issues of trans people.

The Belgian Institute for the Equality of Women and Men has set up an ongoing collaboration with two transgender organisations. This partnership involves meetings to discuss the demands and actions of the transgender organisations, as well as financing events and publishing information on the Belgian Institute's website.

4. Learn about trans people.

Equality bodies need to develop their capacity to address trans issues. Staff training is crucial in this regard. Training can develop staff awareness, knowledge and understanding of trans people and their issues. It would be useful for equality bodies to develop and provide this training in partnership with trans people and their organisations.

The office of the Swedish Equality Ombudsman has worked to enhance its understanding of trans people and their issues by creating networks with, and engaging in dialogue with, transgender organisations and transgender people. The focus for this dialogue and networking is to collect experiences of transgender people, survey what violations of transgender people's human rights occur and what discriminatory structures exist in Swedish society. This approach involves mutual knowledge development and is expected to result in an increased number of complaints from transgender people.

5. Support trans people.

Equality bodies need to support, and encourage support for, organisations of trans people. This support is important in empowering the voice of trans people in society and in ensuring a point of contact and support for trans people whose experience can be one of isolation.

The Danish Institute for Human Rights was co-organizer of the Human Rights conference in connection with the World OutGames – LGBT Olympics in Copenhagen July 2009. This included the preparation of a catalogue of good practices to promote the rights of LGBT people with a strong focus on usable examples of good practice for trans persons. The Danish Institute for Human Rights forms partnerships with civil society where they are frequently the lead as NGOs often lack the necessary resources. The Danish Institute for Human Rights also offers quality assurance of the projects and initiatives – especially on the substance. The Danish Institute for Human Rights has also initiated cooperation with individual transgender persons, with the aim of empowering them and maintaining a high level of knowledge of their situation.

6. Make trans people visible.

Equality bodies need to conduct or commission research on the experience and situation of trans people. This work develops a visibility for trans people, builds a knowledge and understanding of their experience and situation, and stimulates a broader commitment to responding to trans people and their issues.

The Institute for the Equality of Women and Men in Belgium published research on the social and legal situation of trans people in Belgium in 2009. 'Being Transgender in Belgium: mapping the social and legal situation of transgender people' sought to map the discrimination and inequalities in practice, policy and legislation faced by trans people.

7. Communicate with trans people.

Equality bodies need to specifically target trans people in their work of raising awareness of rights under equality legislation and on how best to exercise such rights. Communication strategies and materials need to be developed that are specific to the particular situation and needs of trans people.

The Austrian Ombud for Equal Treatment is planning to publish an information leaflet ('Discrimination of Transgender Persons is Discrimination on the Ground of Gender') which is designed to reach trans people and to show them to what extent they are protected under the Austrian equality legislation.

8. Develop strategic casework.

Equality bodies need to be strategic in developing casework on trans issues. There is a limited body of such casework developed by equality bodies. Successful casework will stimulate trans people to be more confident in asserting their rights and will encourage employers and service providers to address the rights of trans people in their practices and procedures. More broadly casework could be pursued that tests and clarifies the extent to which equality legislation covers all trans people.

The Belgian Institute for the Equality of Women and Men addresses between seven and ten cases each year from trans people, where proceedings are initiated. They respond to a further three to six requests for information from trans people. The casework of the Institute for the Equality of Women and Men confirms that trans people experience discrimination in the workplace (for example, harassment and discrimination when applying for jobs) and in the provision of goods and services (for example, in healthcare, housing and insurance services).

9. Engage other stakeholders.

Equality bodies alone cannot address the complex and varied issues facing trans people. They need to engage other stakeholders in championing equality for trans people and in supporting good practice in promoting equality for and preventing discrimination against trans people.

The British Equality and Human Rights Commission has issued guidance for public authorities on 'Provision of Goods, Facilities and Services to Trans People' to assist them in meeting public sector equality duties and human rights obligations. The guidance provides information on legal background, specific issues in different fields of social life and a number of good practice examples.

10. Communicate about trans people.

Equality bodies can play a valuable role in building public awareness of and commitment to addressing equality issues. Equality bodies need to include a particular focus on trans people in this awareness work.

The Danish Institute for Human Rights held, in cooperation with Copenhagen City and Copenhagen Police, a campaign against hate crimes in 2009 and 2010 where they also focused on the hate crime experienced by trans people. The Institute is currently publishing an analysis on hate crime in Denmark which makes the point that transgender people have to be mentioned specifically in legislation pertaining to hate crime and hate speech.

Three steps to better enable equality bodies to respond effectively to trans people

The European Commission has played a valuable role in developing a focus on the experience and situation of trans people. The EU equal treatment Directives provide a valuable basis on which some trans people can advance their rights. The PROGRESS initiative has provided the resources for initiatives to make trans people more visible; to empower them and to engage a range of stakeholders in addressing trans issues.

There are three further steps that could usefully be taken at EU level that would assist a more effective response from equality bodies to trans people at Member State level. These are:

1. Name trans people in the equal treatment Directives.

The European Commission could usefully propose an explicit naming of trans people within the provisions of both gender equal treatment Directives. This naming of trans people could take an inclusive approach encompassing gender identity, gender expression and sex embodiment. This naming of trans people could be achieved as part of the review of the gender equality legislation proposed in the current Roadmap for Equality between Women and Men. A number of Member States have already included an express reference to trans people in their equality legislation and this provides a valuable starting point for further developing this approach at EU level.

The European Commission could usefully ensure that issues faced by trans people are addressed through provisions to:

- Ensure there is no discrimination in the legal system against trans people through the absence of legal recognition for trans people in the gender with which they identify.
- Require employers and service providers to make adjustments to enable participation by trans people unless such adjustment would result in a disproportionate burden.

2. Proactively advance the situation of trans people through implementation of the new strategy for equality between women and men.

Earlier this year Equinet offered an opinion entitled 'New Directions for Equality between Women and Men'. One of the suggestions made in the opinion was that the new roadmap proposed at the time would include specific commitments in relation to identifying, analysing and responding to the diverse experiences, situations and identities of trans people. The European Commission has now published this new roadmap for equality between women and men and valuably included a specific reference to issues of sex discrimination in relation to gender identity.

The European Commission's work of studying the specific issues pertaining to sex discrimination in relation to gender identity that are referenced in the new strategy could usefully provide the foundations for European level initiatives on the issues facing trans people. More specifically the European Commission could usefully make public the results of this work and develop a strategy to use these results and address the needs identified by including a focus on trans people in all strands of implementation of the new roadmap.

3. Support advocacy initiatives by trans people at Member State level.

The European Commission could usefully apply a number of the funding mechanisms developed under the PROGRESS programme to support the emergence of organisations of trans people at Member State level and to enable their work to build awareness of the rights among trans people and to provide the supports necessary for trans people to exercise those rights. The restricted call for proposals to Member States would be particularly useful in this regard.

Conclusion

Equinet looks forward to a positive response to this opinion from equality bodies and from policy makers. Equinet is committed to supporting a practical implementation of the ideas and proposals in this opinion. To this end, Equinet will:

- Convene a round-table of policy makers and relevant institutions at European Union level to stimulate a discussion, based on this opinion, on how best to make equality legislation work for trans people.
- Support a networking of equality bodies interested in developing good practice, based on this opinion, in promoting equality for and combating discrimination against trans people.

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