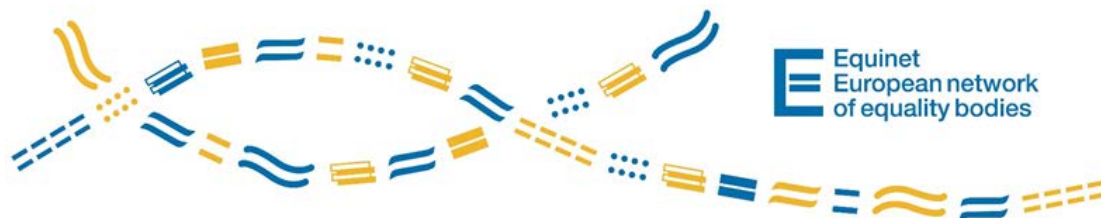


# Developing standards for equality bodies

An Equinet Working Paper

March 2016



## INTRODUCTION

EU Directives<sup>1</sup> require all EU Members States, accession countries and EEA countries to designate an equality body for the promotion of equal treatment. However, the Directives only provide minimum standards for the competences and limited functional independence of equality bodies and do not guarantee complete independence, effectiveness, sufficient powers and adequate resources for equality bodies.

This working paper seeks 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.

It combines a concern to include minimum basic standards alongside standards that would ensure the full potential of an equality body is achieved. It does so to ensure that standards recognise and:

- Enable the particular role, capabilities, and potential of equality bodies.
- Respond to the wider institutional architecture in which equality bodies are located.
- Address the changed context for equality bodies and new trends and evolution in their establishment, mandates, and operation.

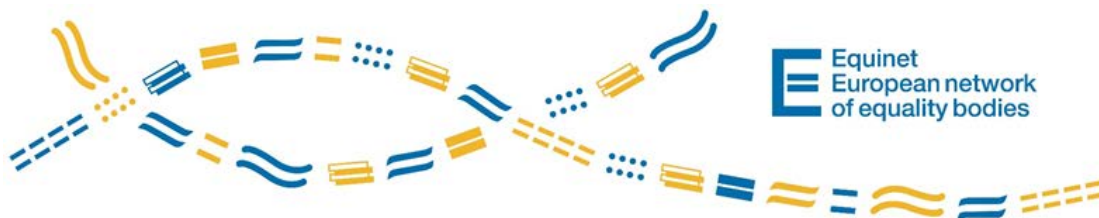
## EQUALITY BODIES

Equality bodies contribute to important and valuable change at the level of individuals, institutions, and society as a whole. Their potential includes to:

- Empower and assist individuals who experience discrimination to secure change in their situation.
- Contribute to authoritative clarification of the legal framework.
- Enhance organisational performance by supporting planned and systematic approaches to equality and non-discrimination in public, private, and civil society organisations and develop authoritative guidance on good practice in this regard.
- Enrich policy making with recommendations on public policy and provision, and inputs on equality, diversity and non-discrimination concerns into the public policy cycle.
- Give leadership to and enable a wide set of institutions that promote equality and provide pathways to justice in cases of discrimination.
- Inform societal attitudes to, debate on, and awareness of equality, diversity and non-discrimination.

---

<sup>1</sup> Directive 2000/43/EC, Directive 2004/113/EC, Directive 2006/54/EU, Directive 2010/41/EU



Equality bodies are unique when compared to other institutions with mandates in the field of rights. This difference is evident in the promotion of full equality in practice goes beyond rights, the focus on ground-based discrimination locates the individual rights holder as members of specific groups, the combination of enforcement and developmental approaches to their mandate, and the provision of assistance to individuals in cases of discrimination.

## STANDARDS

### STANDARDS are needed to:

- Assist the European Commission in monitoring the full and effective implementation of the EU equal treatment Directives.
- Assist Governments in establishing and creating suitable conditions for equality bodies.
- Enable equality bodies to realise their full potential in stimulating and supporting the achievement of full equality in practice and the elimination of discrimination.
- Empower equality bodies with an authority and a standing, and a shared platform from which to articulate their issues.
- Ensure that equality bodies can implement all of their functions and powers to a scale and a standard that can achieve an impact.
- Protect equality bodies from being undermined or diminished in the exercise of their functions or the realisation of their potential.

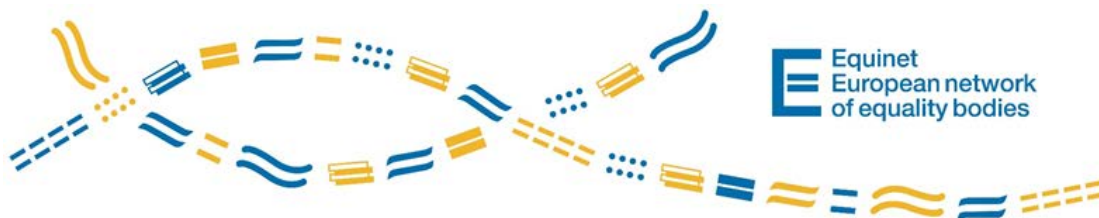
### STANDARDS should:

- Ensure the broadest mandate for equality bodies in relation to equality and non-discrimination.
- Set out and underpin the conditions required for equality bodies to be independent and effective.
- Locate equality bodies appropriately within a wider institutional infrastructure to promote equality and combat discrimination.
- Enable equality bodies to realise their potential.
- Ensure there is no regression in the situation of any equality body.

## A FRAMEWORK FOR STANDARDS

### STANDARDS need to specifically address:

1. **MANDATE:** Equality bodies are independent statutory bodies established to implement equal treatment legislation and must have a broad mandate to promote and support the achievement of full equality in practice and to combat and eliminate all forms of discrimination in all areas of society.



2. **COMPLETE INDEPENDENCE:** Equality bodies must have complete independence so that, without interference from any quarter, they can, in accordance with their legal mandate: Implement their powers as they deem most appropriate; Identify their own priorities and take positions on and respond to these issues as they see fit; Communicate an understanding of equality, diversity and non-discrimination that accords with their own analysis; and Choose how they manage and deploy their human and financial resources, within the requirements of relevant labour legislation and good financial management.
3. **EFFECTIVENESS:** Equality bodies must have the powers and the human and financial resources necessary to deploy all their functions and powers, within their legal mandate, to a scale and in a manner that can achieve an impact and realise their full potential.
4. **INSTITUTIONAL ARCHITECTURE:** Equality bodies work within a wider institutional infrastructure to combat discrimination and promote equality at national level, and must be appropriately located within pathways for individuals to access justice in cases of discrimination and the infrastructure to achieve full equality in practice.

## CONTENT

### MANDATE:

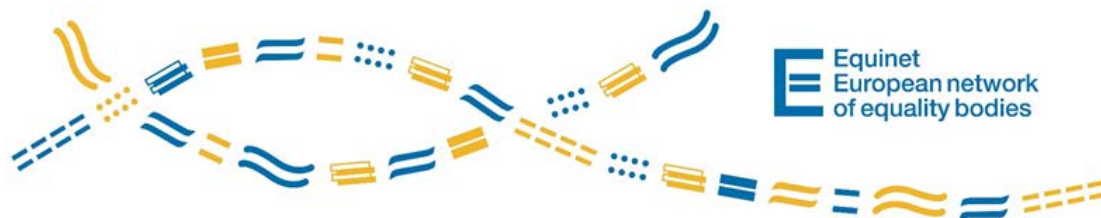
#### STANDARDS need to address and secure:

- a. A mandate that encompasses equality, diversity and non-discrimination both in the public and private sector and covering, at a minimum, the fields of employment, vocational training, goods and services, education, housing, social protection, and social advantages.
- b. A mandate that, at a minimum, ensures all Treaty grounds (Article 19) are covered by the equality body or bodies within the jurisdiction, covers issues of multiple discrimination, and gives due consideration to the range of grounds covered the Charter of Fundamental Rights (Article 21).

### COMPLETE INDEPENDENCE:

#### STANDARDS need to address and secure:

- a. Equality bodies are established with their own legal personality, a legal structure that is stand-alone, separate, and independent from Government, and a mandate defined in law.
- b. A governance structure that is reflective of the diversity of people and social forces in society; and with all leadership positions appointed through a transparent, competency based, and independent procedure.



- c. Systems of accountability that reflect and ensure the independence and effectiveness of equality bodies.
- d. Absence of, or ability to reject, any direct or indirect external pressure and undue interference, in particular from Government and the state, in making strategic choices, decision making, selecting legal interventions, taking positions on issues, and giving meaning to equality, diversity and non-discrimination.
- e. Management and deployment of staff and financial resources solely on the basis of decisions made by those in leadership positions, respecting the requirements of relevant labour legislation and sound financial management.
- f. Capacity of equality bodies to:
  - i. Act at an international level in legal proceedings and networking.
  - ii. Secure and deploy funding from sources other than the state.
  - iii. Enter into agreements with other organisations to progress work on shared objectives.
  - iv. Secure the conditions necessary to build trust and confidence from groups experiencing discrimination and inequality.

## EFFECTIVENESS

### STANDARDS need to address and secure:

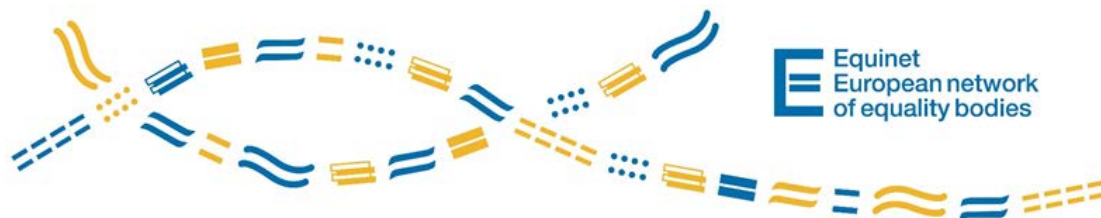
- a. Financial resources that are adequate to enable the equality body to implement all its functions and powers to a scale and standard to achieve outcomes and make an impact. The equality body should be enabled to make a proposal for the resources required to the relevant entity.
- b. Staff resources that are adequate to fully implement the mandate of the equality body, within the financial resources agreed. Equality bodies should be able to identify and recruit a staff complement with the requisite numbers, competences and skill levels, and that is reflective of the diversity of society.
- c. Physical resources, in particular a premises, that are suitable to implement its mandate and adequate for its staff and operational needs.
- d. General powers of equality bodies that include to:
  - i. Promote and support good equality and diversity practice by employers, service providers, and policy makers.
  - ii. Commission and conduct research on any issue relevant to their mandate.
  - iii. Make recommendations to legislators and policy makers in relation to issues of equality and non-discrimination.
  - iv. Communicate with stakeholders and engage in public debate on issues relating to equality, diversity and non-discrimination.
  - v. Conduct general investigations and inquiries and make recommendations on issues of inequality and discrimination, including, in particular, structural discrimination.

- vi. Challenge domestic legislation and administrative regulations incompatible with non-discrimination provisions in the EU equal treatment Directives, national equal treatment legislation or national Constitutions.
- vii. Mediate between the parties in cases of discrimination, as appropriate and agreed.
- viii. Examine or investigate cases of discrimination and secure information from alleged perpetrators of discrimination.
- e. Specific powers to underpin promotional-type functions that include to:
  - i. Provide legal advice and support to people who experience discrimination and offer personal and moral support, as necessary.
  - ii. Take cases in their own name; appear in cases before the Courts; and act as *amicus curiae*.
  - iii. Support and monitor the implementation of positive duties on public bodies to have regard to equality in carrying out their functions, and on private companies and civil society organisations to be planned and systematic in their approach to equality and non-discrimination.
- f. Specific powers to underpin tribunal-type functions that include to:
  - i. Make findings in cases of discrimination.
  - ii. Employ sanctions and award compensation that are proportionate, effective and dissuasive.
  - iii. Make legally binding decisions in cases of discrimination.
  - iv. Instruct perpetrators found to have discriminated to take a course of action to address the discrimination that occurred and to prevent any future recurrence.
  - v. Follow-up findings made to ensure implementation of decisions.
- g. Any expansion in the mandate of equality bodies on foot of new national legislation, European Directives, or international instruments should be coherent with the original mandate of the equality body, and should involve the allocation of sufficient additional resources for adequate and effective implementation of any additional mandate.

## INSTITUTIONAL ARCHITECTURE

### STANDARDS need to address and secure:

- a. Where separate equality bodies are established for particular grounds, linkages should be created to ensure a coherent application of the principles of non-discrimination and equality and that the needs of people at intersections between the grounds are addressed.
- b. The overall national institutional architecture should include both tribunal type and promotional type functions.
- c. Where equality bodies have their mandates combined with bodies such as national human rights institutions or ombudsman offices, they must have:
  - i. A coherent legal basis and powers for all parts of the mandate.



- ii. An adequacy of resources to implement all parts of the mandate and to secure an appropriate balancing of resources to ensure parity of focus across all parts of the mandate.
  - iii. An internal structure capable of ensuring a parity of focus across all parts of the mandate.
  - iv. A capacity to develop an integrated approach to all parts of the mandate, to the extent that this is possible and appropriate.
  - v. A multi-disciplinary competence across its staff.
- d. Equality bodies should be the first step for those seeking to make a claim of discrimination within pathways for access to justice that are accessible and coherent. They should have the powers and resources to enable claimants to navigate and be supported along the full pathway for access to justice and to keep these pathways under review and make recommendations to ensure accessibility.
- e. Equality bodies should be enabled to give leadership in and support the wider infrastructure to promote equality. They should have the powers and resources to participate in fora, committees and social partner arrangements established by Governments to deliberate on and contribute to developing public plans, policy, and programmes.