CONSIDERATIONS FOR ESTABLISHING SINGLE EQUALITY BODIES AND INTEGRATED EQUALITY LEGISLATION

TOWARDS THE UNIFORM AND DYNAMIC IMPLEMENTATION OF EU ANTI-DISCRIMINATION LEGISLATION:
THE ROLE OF SPECIALISED BODIES
REPORT OF THE SEVENTH EXPERTS' MEETING, HOSTED BY THE EQUALITY COMMISSION FOR NORTHERN IRELAND, 17-18 JUNE 2004

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INTRODUCTION

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The Equality Commission for Northern Ireland (ECNI) was delighted to host the seventh and final experts' meeting in the framework of the project 'Towards the uniform and dynamic implementation of EU anti-discrimination legislation: the role of specialised bodies'. The meeting took place in Belfast on 17-18 June 2004.

The aim of the meeting was to look at integrated equality bodies and legislation and how an integrated approach may support moving beyond minimum standards in the implementation of the EU Directives to a coherent, consistent and progressive equality law regime in an enlarged EU. This issue is one that is currently of great interest to equality actors in many European countries as they reflect on the direction of equality law at the national and European levels. The question of integrated legislation for an integrated equality body is of particular importance to the Equality Commission for Northern Ireland, which, since its inception, has advocated the merging of anti-discrimination legislation in Northern Ireland. The meeting was exceptionally timely, as a discussion paper on options for a Single Equality Bill for Northern Ireland was published by the government the following week. It was also timely given deliberations in the UK on the establishment of a single body for equality and human rights. This reflects an overall trend across European states as specialised bodies and indeed governments deliberate the best structures and processes to ensure effective implementation of the EC Directives.

On the first day of the meeting three presentations set the scene for discussions around the topic. *Eithne McLaughlin, Professor of Social Policy at Queen's University Belfast*, gave a comprehensive and highly stimulating introduction to 'Equality Cultures and Practices in Northern Ireland', looking at the history of the Northern Ireland Act 1998 and how it shaped the equality environment and agenda. In particular, she examined the innovative statutory equality duty on public authorities in Northern Ireland to 'mainstream' equality in their policy-making. The 'Challenges and Choices of establishing a single Equality Commission in Northern Ireland' was recounted by *Evelyn Collins, Chief Executive of the Equality Commission for Northern Ireland* who shared issues of significant organisational and stakeholder benefits and outcomes from an integrated model, whilst identifying early challenges and strategies required to consolidate a dynamic, diverse equality body. 'Structures and Strategies in Europe – an overview of changes to European specialized bodies in light of new grounds introduced by Article 13 EC Treaty' was the theme of an expert paper delivered by *Jan Niessen, Director of Migration Policy Group*. The paper explored deliberations across member states on how best to effectively implement the EC requirement for equality bodies and Jan gave an extremely useful analysis of the various models and options available in member states.

The second and final day of the experts' meeting focussed on a cohesive equality legislative framework. *Tony Lockett, Deputy Head of the Unit for Anti-discrimination, Fundamental Social Rights and Civil Society of the European Commission's DG Employment and Social Affairs,* opened the morning's discussions with an overview of the European Commission's Green paper on Equality and non-discrimination in an enlarged European Union. This prompted much debate on coherence across Europe on equality legislation and on future collaboration among equality bodies from existing and new member states. *Ivan Millen, a senior officer with the Single Equality Act's project team in the Office of the First Minister and Deputy First Minister* provided a resume of the government's Green Paper on single equality legislation, outlining how "Achieving the Vision in Practice" was developed. This was followed by a response from *Professor Barry Fitzpatrick, Legal Adviser to the Equality Commission,* who provided the Commission's vision for an Act which encompasses international best practice, effective definitions of discrimination, freedom for employers and service providers to take a more proactive approach towards the promotion of equality, a less adversarial system of Commission investigation and a more effective system of judicial process, ensuring a clear *"equality for all"* agenda. Workshops on both days enabled participants to discuss and identify future priorities for the trans-national project and areas for further collaboration between project partners.

This meeting marked the end of the two-year specialised bodies project which sought to promote cooperation between national specialised equality bodies, facilitate the exchange of knowledge and best practice, and ultimately harmonized implementation of the EC anti-discrimination directives. The project partners would like to take this opportunity to thank the European Commission for its support through the European Community Action Programme to Combat Discrimination. The partners look forward to further cooperation in the future in an expanding network of equality bodies from across Europe. We hope this publication is of value to their ongoing work, to that of other bodies specialising in enforcing anti-discrimination legislation and promoting equality and to all organisations with a commitment to addressing inequalities and discrimination in all its forms.

CHALLENGES AND CHOICES – ESTABLISHING A SINGLE EQUALITY COMMISSION IN NORTHERN IRELAND

EVELYN COLLINS, CHIEF EXECUTIVE, EQUALITY COMMISSION FOR NORTHERN IRELAND

The statutory remit of the Equality Commission for Northern Ireland is to eliminate discrimination on the grounds of race, religious belief, political opinion, sex, marital status, disability and, since December 2003, sexual orientation; and to promote equality of opportunity on these grounds in the field of employment and – except for sexual orientation – in the provision of goods, facilities and services and housing or accommodation. We also have a duty to promote affirmative action under the fair employment legislation which deals with discrimination on the grounds of religious belief and political opinion; and we have explicit duties to keep the anti-discrimination legislation under review.

Our powers and duties are drawn from a considerable number of anti-discrimination statutes dating back to 1976. Two separate pieces of legislation that year addressed discrimination on the grounds of religion and politics, establishing the Fair Employment Agency (which later became the Fair Employment Commission) and, on the grounds of sex, setting up the Equal Opportunities Commission for Northern Ireland. Both these Commissions had powers similar to those of the Equality Commission today. The religion and political opinion legislation was considerably strengthened in 1989, with employers placed under an obligation to monitor the composition of the workforce by community background and to report to the Commission on this composition. Where there was evidence of under-representation of Catholics or Protestants, affirmative action measures were required to address such under-representations – through the use of measures such as special encouragement to people from one or the other community to apply for posts, for example.

New grounds were added to the anti-discrimination law framework with the 1995 Disability Discrimination Act and the 1997 Race Relations Order, the latter setting up a Commission for Racial Equality for Northern Ireland with responsibility for enforcement and promotion of equality of opportunity on grounds of race. Protection against discrimination on grounds of sexual orientation was introduced by way of Regulations in December 2003 and these Regulations gave the Equality Commission specific powers and duties in relation to this ground. This differs from the position in the rest of the United Kingdom where no equality body has been given such powers and duties in sexual orientation.

It is evident that through the 1990s, there was a growing interest internationally in mainstreaming equality, as a complementary approach to the more traditional methods of tackling discrimination such as anti-discrimination legislation.

In line with this, through the work of the various equality bodies in existence then, along with a number of NGOs, there was a general call for an equality duty on a statutory footing. This growing interest was reflected in a major review of fair employment legislation in the 1990s. One of its recommendations was to introduce a statutory requirement on mainstreaming in the public sector. The Government's Policy Appraisal and Fair Treatment Guidelines (PAFT) during the 1990s had introduced this on a voluntary basis but the response to this voluntary approach was patchy across the public sector and, indeed, PAFT tended to be ignored by some statutory bodies. The Government's response to the Standing Advisory Commission on Human Rights (SACHR) Review of Employment Equality, issued in March 1998, in the White Paper **Partnerships for Equality** was to accept SACHR's recommendation for a statutory equality duty. The White Paper also mooted merging the various equality Commissions into a single body, with a view to ensuring the effective implementation of the duty. The issue then got included in the political discussions leading to the Belfast Agreement of April 1998, a central theme of which is of course equality and human rights.

The proposal to merge the existing equality bodies was opposed by some of the former equality bodies although welcomed by the Fair Employment Commission. There was a range of differing views among the constituencies, with concerns expressed about the possible impact of a single equality body on the individual equality strands. Indeed, most single equality strand groups were opposed at the time but there was a clear enthusiasm for the introduction of a statutory equality duty.

The political decision to merge the former bodies was implemented in the Northern Ireland Act of July 1998 – S74 and Schedule 8 on the Equality Commission for Northern Ireland and S75 and Schedule 9 on the statutory equality duty. The start date for the new Commission was unclear for a period of time after the Act was introduced; this was also a time of uncertainties around the start of the devolved administration for Northern Ireland. In advance of setting up the Commission, a working group comprising the Chairs and Chief Executives of all the existing bodies, plus an official from the recognised public service trade union (NIPSA), was set up towards the end of 1998 at the request of Minister Paul Murphy. The working group had an independent Chair, Dr Joan Stringer, and its report focused on Commission appointments, start up structure, consultative councils and strategic priorities. The very short timescale within which the working group had to work meant that there was limited consultation but this was undertaken during the time and a report was published in March 1999.[1]

Commissioners were sought by way of public advertisement in February/March 1999 and the working group had recommended that these were general appointments as opposed to appointment of people who would champion single strand issues. The NIO appointed the Commissioners in August 1999. There can be up to 20 Commissioners and the legislation requires that they are representative of the community in Northern Ireland as a whole. The transfer Order took effect on 1 October 1999 with all staff transferring with employment terms and conditions of the pre-existing bodies.

EARLY CHALLENGES

We had to deal with a number of issues arising out of the merger of the former equality bodies, which differed in terms of size, strategy and resources as well as political attention, while we worked to build a single body with a new structure and its own distinctive organisational culture. Some of the pre-existing organisations had been opposed to the merger and this was a challenge in building a single body. Practical issues also, such as no new accommodation for almost two years so that we could all work together in the same building, proved unhelpful at the outset. We also had to ensure that we were equipped to fulfil fully our responsibilities for new areas of responsibilities such as the statutory equality duties. The timescale on this was running, as public authorities had from 1 January 2000 to 30 June 2000 to put together their Equality Schemes and forward them to us for approval. From 1 April 2000, the Commission had enforcement powers in respect of disability and considerable efforts were put into preparing for this, including undertaking a major recruitment exercise for staff to work on the disability ground. It also has to be said that devolution impacted greatly on our work with a great deal of interest from individual politicians and political parties.

CHOICES – STRATEGIC DIRECTION

Of course, the new Commission had choices in terms of its strategic direction based on our statutory remit. We are an independent public body, a body which has a role in the process of Government, progressing the achievement of public policy objectives in terms of equality, but we are not a government department. We operate at arms length from government but the general policy framework we work to is agreed by the relevant Government Minister of our sponsor department, the Office of the First Minister and Deputy First Minister (OFMDFM) through three-yearly corporate plans. The first corporate plan we published for consultation in March 2000 with four broad corporate priorities – mainstreaming equality of opportunity and promoting inclusion; combating discrimination and promoting equality of opportunity; developing partnerships for change; and building organisational effectiveness. There were many good aspects of this plan. It was clear, and the tasks we set out to achieve were spread over all the equality areas so that people interested in particular strands could see their issue being brought forward. There were less satisfactory elements as well; it was perhaps not focussed enough, for example.

[1] *Report of the Equality Commission working group, March 1999 (OFMDFM)*

In hindsight however, the first corporate plan was probably the most appropriate or workable start-up position on strategy, given timescales, the history of the pre-existing organisations, different legislation etc., and the job of work we had to bring these together.

Our second corporate plan is much more focussed. We used a particular methodology, the Balanced Scorecard, to help achieve this and it sets out clearly our mission – combating discrimination and promoting equality of opportunity through advice, promotion and enforcement. Our strategy aims to provide a balance between litigation/promotion/research and policy work. All these levers are important in our work to achieve change, with encouragement and advice on doing the right thing balanced with vigorous enforcement of the law. This sends a strong message of the need for compliance with often long fought for equality laws.

The corporate plan sets out our corporate objectives and is supplemented by annual business plans. Through a rigorous planning cycle involving public consultation, we seek to use our resources effectively to address both enduring inequalities such as job segregation, harassment, pregnancy discrimination and unequal pay; and emerging inequalities such as terms and conditions of migrant workers, racially motivated attacks, issues around access and reasonable accommodation for people with disabilities, and issues of discrimination on grounds of sexual orientation. Our specific objectives are as follows:

– To provide and promote a range of high quality, targeted and accessible services and to increase awareness of equality issues
– To mainstream equality effectively in public policy and service provision
– To influence change in equality legislation
– To make effective, efficient and strategic use of our resources
– To control costs
– To secure funding to maintain and develop our services
– To utilise effectively our powers to tackle discrimination and promote equality of opportunity through advice, research, promotion and enforcement
– To have the staff numbers and skill levels required to deliver our services
– To be recognised as an excellent service provider.

CHOICES – ORGANISATIONAL STRUCTURE

The Commission also had choices about its organisational structure. The start-up position was separate directorates based on the remit of the former Commissions, thus single strand except in respect of resources, and we set up a Statutory Duty Unit in April 2000. My appointment as Chief Executive took effect in March 2000 and I spent some time in my first few months on internal discussions on structure, following which we moved to functional divisions as being a more efficient and effective use of our resources. We had three Divisions – Policy and Public Affairs, Legal, and Operations and Corporate Services, and integration of service delivery ongoing with work to develop an integrated equality agenda. We recognised at that time the importance of focus on separate identity work also and we retained specialist development units on race and disability together with setting up reference groups on gender and fair employment. We have looked again recently at our structure, in light of the plans set out in the second corporate plan, and we will be making some changes to help us focus effectively on key strategic priorities.

ONGOING CHALLENGES

We face ongoing challenges like all other public bodies; for example, managing finite resources against the potentially unlimited demand for our services. We faced particular issues in providing support for legal cases and legal expenditure. There was some diversion of resources from other areas of work as there was an increase in assistance rates over the early period which needed to be addressed.

There is also a wide spectrum of external expectations, perhaps unsurprising in light of the political priority given to equality issues in Northern Ireland and the strength and vibrancy of the NGO sector. The range of political interest in the developing equality agenda can mean that the agenda is a much contested one. For us, political independence is vital and we work hard to ensure that we bring objective analysis to the arena, and work on priorities according to identified need.

We also need constantly to be vigilant against the creation of a hierarchy of discrimination, where there might be a drift into a greater allocation of resources and attention on some equality strands rather than others. There can also be potential conflict between the individual equality strands and we need to ensure that these are dealt with appropriately.

Particular challenges have arisen from the absence of single equality legislation; we still operate with the range of anti-discrimination statutory remits that have emerged over the last three decades.

We had called for a Single Equality Act (SEA) in the March 2000 draft Corporate Plan and the Northern Ireland Executive responded positively in its first Programme for Government in July 2000.

While we do not consider the single equality legislation is a fundamental requisite for a Single Equality Commission – we have demonstrated that we can work with a different legislative framework – it would clearly be helpful to have a Single Equality Act and we are looking for harmonised provisions in respect of monitoring/ affirmative action. We also want the new areas of age and sexual orientation to cover goods, facilities and services as well as employment, and we are looking for extension of our powers, for example on formal investigations.[2]

OFMDFM began consultation on a SEA in 2001. There have been delays in progressing with legislation, although a consultation paper is now available with a closing date for comment of 12 November 2004.[3]

Having cited a number of challenges, I believe we can also record some real achievements from our work over the last four years. But rather than focusing on these achievements, I want to talk about the learning points derived from a multi-strand approach to equality.

LEARNING POINTS

I believe there are considerable benefits in developing the multi-strand approach to equality. Looking at the whole picture of social inclusion and equality, at disadvantage across the equality categories, leads to the development, I believe, of a much stronger, holistic vision for change for the better in society. This approach allows us to mainstream equality and maximise opportunities, and allows us to learn lessons from one area to advantage other equality strands. We also have an easier engagement with multi-identity issues, in recognizing that all of us are defined in a multiplicity of ways, not just by our gender or race or other identity.

[2] Position papers on SEA are on our website (www.equalityni.org)
[3] Discussion paper: A Single Equality Bill for Northern Ireland, OFMDFM (www.OFMDFM.gov.uk)

In practical terms, as a much larger organization than any single strand body, we have much more influence and are much harder to ignore or sideline. It is also easier for our customers and stakeholder to come to a "one stop shop" on equality advice and good practice, rather than go to several different agencies.

From a resource point of view we can ensure effectiveness in our provision with allocation of resources across the dimensions as well as on administration. For staff, there have been some real growing and learning opportunities about new areas of work which have been helpful in creating and maintaining energy and enthusiasm for our work.

Finally, as a single equality body I believe that we provide a real focus for equality in Northern Ireland and that this itself helps us to contribute to a greater impact on society as a whole.

EUROPE

The Commission is committed to contributing at the European Union level as well as locally and nationally. We have considerable experience of working on a range of single strand equality issues and now of working on a multi-strand basis also and we are keen to share this experience and to learn from our counterparts across the EU. The importance of maintaining a focus and commitment at EU level on social progress as well as economic progress remains as vital as ever.

SINGLE EQUALITY ACT IN NORTHERN IRELAND – ACHIEVING THE VISION IN PRACTICE

BARRY FITZPATRICK, HEAD OF LEGAL POLICY & ADVICE, EQUALITY COMMISSION FOR NORTHERN IRELAND

1. INTRODUCTION

As set out in the paper of Evelyn Collins in this volume, 'Challenges and Choices – Establishing a Single Equality Commission in Northern Ireland', the need for single equality legislation in Northern Ireland, particularly after the inception of the Equality Commission, was well recognised. This was one of the first demands of the new Commission in 2000. The first Programme for Government 2001-05 of the Northern Ireland Executive included the commitment to, "during 2002, bring forward proposals to develop and harmonise anti-discrimination legislation as far as practicable". An extensive consultation process was undertaken by the Office of the First Minister and Deputy First Minister (OFMDFM) in 2001.[4] The Commission made its first detailed contribution to this debate, 'Single Equality Bill – Initial Position Paper' in September 2001 and has continued to make contributions to that debate since that time.[5] OFMDFM has now launched a Green Paper on a Single Equality Bill for Northern Ireland.[6] The ECNI intends to finalise its response in early September so that it can promote its recommendations up until the end of the consultation period in November 2004. Nonetheless, it is now anticipated that a Single Equality Act (SEA) will not come into effect in Northern Ireland until early 2007.

This significant gap between the anticipated production of a Single Equality Bill in 2002 and an eventual Act in 2007 is partly explained by periods of direct rule from Westminster while the Northern Ireland Assembly was suspended. A second significant factor was implementation of the two EU Directives, the Race and Ethnic Origin Directive 2000 (REOD) which required amendment to the Race Relations (Northern Ireland) Order 1997 (RRO) in relation to race and ethnic origin (but not nationality or national origins) by July 2003 and the Framework Employment Equality Directive 2000 (FEED). The latter, the scope of which only includes employment and training, required amendment to the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) in relation to religion or belief (but not political opinion) and the introduction of legal protection against sexual orientation discrimination in employment by December 2003. The Framework Directive also requires amendment to the Disability Discrimination Act 1995 (DDA) and the introduction of age discrimination in employment law by December 2006. We also need to be aware of implementation by 2005 of the Revised Equal Treatment Directive 2002 which updates and enhances gender equality law set out in the Sex Discrimination (Northern Ireland) Order 1976 (SDO)(as amended).

Therefore, while the Republic of Ireland put in place comprehensive equality legislation before implementation of the EU Directives,[7] Northern Ireland's efforts to produce the same were paradoxically delayed by implementation of the Directives, albeit that they have established an EU wide code of equality rights. By way of introduction, two further aspects of the Northern Irish context should be mentioned. The first is the statutory equality duty on public authorities to have due regard for the need to promote equality of opportunity on nine grounds, as set out in section 75 of the Northern Ireland Act 1998. A further paradox of the Northern Ireland situation is that the statutory equality duty is not playing a prominent role in the debate on the SEA. This is largely because section 75 is a reserved matter for the Westminster Parliament. Any revisions of it would require amendments to the Northern Ireland Act 1998, seen as a constitutional act which should only be amended with caution. It must also be remembered that the statutory equality duty is a process-driven duty. It does not create individual substantive rights. Nonetheless, the grounds in section 75 and experience of the processes underpinning that section have an important bearing on the SEA debate.

A further specific aspect of the Northern Irish context is the proposal to have a Bill of Rights for Northern Ireland.[8] Without dwelling on the intricacies of this process, any Bill of Rights for Northern Ireland will include an equality chapter. This will form a 'floor of rights' against which any equality legislation for Northern Ireland will be judged. As such, the eventual content of the Bill of Rights will have an important bearing on the drafting of the SEA.

[4] www.ofmdfmni.gov.uk/equality.
[5] http://www.equalityni.org/publications/recentpub.cfm.
[6] 'A Single Equality Bill for Northern Ireland A Discussion Paper on options for a Bill to harmonise, update and extend, where appropriate, anti-discrimination and equality legislation in Northern Ireland' (OFMDFM: June 2004)(henceforth described as 'the Green Paper').
[7] Employment Equality Act 1998 and the Equal Status Act 2000.
[8] Most recently, the Northern Ireland Human Rights Commission has produced an Update Report, Progressing a Bill of Rights for Northern Ireland (NIHRC: April 2004) (www.nihrc.org), to which the Commission has recently responded.

2. SOME GUIDING PRINCIPLES

Despite the fundamentally different approaches underlying the statutory equality duty and the development of substantive equality rights, the objective remains the same, namely the 'mainstreaming' of equality into the policies and practices of employers and service providers. The Commission is the first to recognise that each ground of inequality brings with it its own practical issues. In this sense, some degree of diversity must be accepted within a single statute. Nonetheless, the Commission is committed to a 'common template' across all the grounds in the SEA. In order to achieve this common template, it is necessary to have common principles but also effective principles. It is also necessary to have common, but also effective, enforcement mechanisms.

The objective is a statute which provides for the maximum facilitation for those organisations which wish to pursue equality but also the maximum impetus for those organisations which merely wish to satisfy (or even avoid) equality principles.

In a sense, the Commission envisages a 'rising floor' of principles below which the standards of the SEA cannot fall. The first is 'non-regression', a concept now familiar to European equality lawyers as articulated, for example, in Article 8.2 FEED which provides, "The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive." The Commission would obviously wish to see this principle apply across the scope of the SEA. Indeed, OFMDFM has set out a range of its own principles, one of which reads "To provide an effective, efficient and equitable framework of legislation and public policies to help eliminate unlawful discrimination and promote equality of opportunity and to demonstrate no regression from existing law".[9] So also the Commission would wish to see satisfaction of international standards[10] and harmonisation to the 'best standard' in the existing regimes. Implicitly, this is recognised in the Green Paper through the principle, "To minimise the tendency for hierarchies of inequalities to develop and to address the multiple identities held by all, which should ease the legal complexities of multiple discrimination cases before tribunals or courts".[11]

In many ways, 'equality of the inequalities' is a mantra in Northern Irish equality policy, not because there are no meaningful differences between the various grounds (and the scope of their coverage) within a SEA but because it is difficult to justify a hierarchy particularly to those who are members of 'protected groups' which do not gain the level of protection enjoyed by others. Hence, at least implicitly, the combination of 'non-regression' and 'equality of the inequalities' leads towards harmonisation to the best standards, although there must be room for what might be called 'variable geometry' within the SEA, namely carefully constructed situations in which the differences between grounds must be respected through modest variations of the common template. Finally, the Commission is committed to the establishment of 'best practice' on a comparative basis. This involves both examination of other equality law regimes but also analysis of the successes and failures of nearly 30 years of equality law in Northern Ireland. Hence, the development of a SEA presupposes some creative and inventive thinking on what common template is going carry equality law and policy through the next 30 years. It is in this sense that the Commission is calling for effective definitions and effective enforcement.

It is impossible in this short piece to do justice to the wide-ranging proposals which the Commission has already made as part of this debate. Our position papers are on our website and our response to the Green Paper will be posted there as soon as it is agreed in early September. The rest of this paper gives a brief outline of some of the controversies which have been addressed and how the Commission would wish to see them resolved.

[9] Green Paper, p 17.
[10] This is also reflected in the Green Paper, again at p 17 by the principle, "To ensure compliance with international human rights treaties, which promote equality and prohibit unfair discrimination, as well as compliance with European law".
[11] Ibid, p 20

3. GROUNDS

A fundamental issue at the heart of the SEA debate is the potential list of grounds to be included. It is tempting to adopt a 'long list' approach, embracing any ground which has the vaguest qualification for inclusion. The Commission would be unsatisfied with any list which did not include the nine grounds in section 75.[12] On the other hand, the latest version of the Equality Section of the Proposed Bill of Rights adopts a 'long list' approach.[13] As the Commission stated in its response to the Northern Ireland Human Rights Commission Update Paper, "[it] has called for a 'lively debate' on some of the potential grounds set out in section 4(3) but has reserved its position on their inclusion in a Single Equality Act. It may be that a 'long list' approach is appropriate for a constitutional document and a shorter list where the entire edifice of an equality law regime, including indirect discrimination and affirmative action, is applicable. In an equality statute, the Commission would wish to see a sense of focus on grounds which would benefit from an equality law approach and would not wish to see that regime diminished through more widespread litigation and increasing uncertainty over what is lawful and what is not. The Commission is also of the view that the significant rights and responsibilities associated with some of these grounds may be better articulated and protected through specific legislation directed at the particular issues which these grounds raise rather than through inclusion in an equality law statute."[14]

Nonetheless, the Commission is committed to the inclusion of an 'other status' ground in the SEA. This inclusion would permit the orderly extension of the SEA grounds, either through ministerial order or judicial interpretation, as has occurred in relation to sexual orientation through the 'other status' ground in Article 14 of the European Convention of Human Rights.

4. SCOPE

'Scope' envisages both the activities to be covered by the SEA and, by logical consequence, the capacities in which individuals are to be protected. Despite significant variations, pre-existing equality law in Northern Ireland and in Great Britain includes, within its scope, education and 'goods, facilities and services' ('GFS'). What is already a 'patchwork' of marginally different provisions across different regimes has become extraordinarily complicated though implementation of EU Directives, only within the scope of the Directives themselves and not within the wider scope of the pre-existing statutes. Paradoxically, the REOD provides the widest scope of all, with the EU race equality regime covering goods and services, education, social protection and social advantages.

There is of course an umbilical link between 'grounds' and 'scope'. Subject to particular aspects of 'variable geometry', the Commission is firmly of the view that, once a ground is to be included in the SEA, the full scope of the Act should apply to it. The 'infrastructure' of EU equality law has largely developed in the field of gender employment equality law but the significance of the 1968 Regulation on Free Movement of Workers, applying equality principles across a wide range of human activity,[15] should not be under-estimated. In some ways, the applicability of what is essentially employment equality law to other fields of activity should not be problematic. After all, the same organisation which is an employer is also a provider of goods, facilities and/or services etc. On the other hand, the applicability of equality law outside the labour market across a lengthening list of equality grounds raises potentially unpredictable results. The approach in the Green Paper is to pose questions as to whether existing regimes should be extended into new areas. The Commission's approach is to anticipate that the equivalent scope will apply to each ground unless there are pressing reasons, based on the diversity between grounds, for some degree of 'variable geometry', whether in relation to scope of protection or the timing of when that protection should be introduced.

[12] These are set out in section 75 in terms of "the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation, between men and women generally, between persons with disability and without and between persons with dependants and without."

[13] Section 4(3) provides:-"Everyone has the right to be protected against any direct or indirect discrimination whatsoever on any ground (or combination of grounds) such as sex, marital or family status, sexual orientation, genetic features, race or ethnic origin, nationality, colour, language, religion or belief, political or other opinion, disability, possession of a criminal conviction, national or social origin, association with a national minority, property, birth, parentage, age, residence, status as a victim or any other status."

[14] Response Paper to Update Paper (ECNI: July 2004), p 2.

[15] Regulation 1612/68 EEC covers discrimination on issues such as housing and social advantages as well as employment.

5. DEFINITIONS

5.1 Direct discrimination

The definitions to be employed in the SEA are the vital bedrock upon which the strategic enforcement of equality law can be built. The Commission has reservations about aspects of both the direct and indirect discrimination definitions set out in the Directives. They are 'minimum standards' below which implementation should not fall but there is a danger that a floor of European equality rights may become a 'ceiling' above which EU States do not wish to legislate. In relation to the definition of direct discrimination, Art 2.2(a) ROED/FEED states that "direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1". Although this is based on a British definition of direct discrimination, it grounds the notion of direct discrimination strictly on a 'comparative' basis.[16] The view of the Commission is that a comparator is *evidence* of discrimination but not the *essence* of discrimination. The real rationale for direct discrimination is to prohibit reliance on a discriminatory factor. Given reference to the notion of 'particular disadvantage' in relation to *indirect* discrimination, the Commission would wish to see a definition which provides that direct discrimination occurs when a 'disadvantage is based upon' a prohibited factor.[17]

5.2 Harassment

In relation to harassment, which is subsumed with the definition of 'discrimination' in both the REOD and the FEED but is considered a separate cause of action in the GB and NI legislation, the Commission has welcomed an explicit definition of harassment.[18] However, the provisions of Article 2.3 require both a violation of dignity *and* the creation of a hostile environment. In keeping with established UK case law, the Government accepted that the principle of 'non-regression'[19] required a conjunctive approach in both GB and NI implementation, so that either a violation of dignity *or* the creation of a hostile environment could be enough to satisfy the definition.

5.3 Indirect discrimination

The Commission also has its reservations with the definition of indirect discrimination provided in the REOD and the FEED. Art 2.2(b) ROED/FEED provides that "indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary". On the one hand, the Commission welcomes the non-statistical approach towards indirect discrimination encouraged by the use of the concept of 'particular disadvantage'. On the other hand, the Commission is uncomfortable with the 'legitimate aim' element in the definition. For specialised agencies combating unlawful discrimination, indirect discrimination is a vital component in their armoury against institutionalised or systemic discrimination. A weakened objective justification test compromises that objective.

The ECJ enunciated a "necessary aim" test in the seminal indirect discrimination case, Case 170/84 *Bilka-Kaufhaus*.[20] A "legitimate aim" test for objective justification in welfare equality cases has proved fatal to a wide range of indirect discrimination challenges.[21] So also, in relation to statutory employment schemes as in *ex parte Seymour-Smith*,[22] the invocation of a "legitimate aim" test by the ECJ has set a standard which the Member States have found little difficulty in satisfying. Hence, the Commission recommends that the definition of indirect discrimination include a 'necessary aim' standard in its test for objective justification.[23]

[16] Some vital ECJ judgments in gender equality law, Case C-177/88 Dekker ([1990] ECR I-3941) and Case C-32/93 Webb v EMO Air Cargo (UK) Ltd ([1994] ECR I-3537), both on pregnancy discrimination, and Case C-13/94 P v S ([1996] ECR I-2143), on gender assignment discrimination, cannot be easily reconciled with a comparative approach at all.

[17] See, for example, Equality Legislative Reform: Implementation of European Union Directives, (ECNI: July 2002), pp 5-6 (www.equalityni.org/uploads).

[18] ibid, p 7.

[19] Article 8.2 FEED.

[20] [1986] ECR 1607.

[21] See, for example, Case C-444/93 Megner [1995] ECR I-4741.

[22] Case C-167/97 R v Secretary of State ex parte Seymour-Smith [1999] ECR I-623.

[23] See, for example, Equality Legislative Reform: Implementation of European Union Directives, p 7.

5.4 Reasonable accommodation

In the FEED, the issue of 'reasonable accommodation' is treated purely as a matter of disability discrimination. Article 5 is both a free-standing provision but also the basis for objective justification for indirect discrimination in disability cases. As in UK law on disability discrimination in employment,[24] Article 5 provides for reasonable accommodation "in a particular case". However, the provisions of the DDA on discrimination in the provision of goods, facilities and services provide for 'reasonable adjustments' for "disabled persons", which is interpreted to involve an anticipatory duty on the part of service providers.[25] In these circumstances, it seems illogical not to apply an anticipatory duty to employment and training also. Perhaps more significantly, the Commission would also wish to see the reasonable accommodation duty apply to all the grounds in the SEA. A generalised reasonable accommodation duty is frequently invoked in the Canadian equality law system. It is a more direct and proactive duty than that which emerges from the technicalities of applying the indirect discrimination principle. Hence the Commission would wish to see it applied to all grounds.

6. GENUINE OCCUPATIONAL REQUIREMENTS

The Commission accepts that it may be necessary to provide that certain jobs should only be undertaken by women, blacks, gays and lesbians etc. Indeed, once a solid platform of equality law is established, there may be arguments that diversity must be respected particularly for previously disadvantaged groups.[26] One controversy in the UK has been whether to persevere with a 'specified list' approach towards GORs as was the case in the sex discrimination and race discrimination legislation or move to a general definition as in the REOD and the FEED. In essence, implementation of the REOD has involved retention of the list approach but supplemented by the general definition. Implementation of the FEED has involved a general definition approach, although in NI, it was determined that the 'essential nature of the job' test in the FETO,[27] being an even stronger test than that in Article 4.1, could not be diluted by enactment of either the general GOR or the more specific GOR in relation to 'religious ethos organisations' in Article 4.2. This has not prevented the UK Government from enacting more specific 'organised religion' exceptions in the GB and NI sexual orientation discrimination legislation.[28] The Commission wishes to see all exceptions proposed for the SEA to be rigorously examined. The SEA is an opportunity not only to create a 'common template' but also to question the continuing validity of many exceptions which may have appeared necessary in the past but no longer perform a useful function. Indeed, many exceptions in UK sex discrimination law and now other pre-existing regimes have been successfully challenged through exploitation of EU equality law.[29]

7. POSITIVE ACTION

Article 7.1 FEED provides that "[w]ith a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds referred to in Article 1".[30] This formulation, already well tested in the case law of the European Court of Justice (ECJ),[31] provides a significantly wider scope for positive action, albeit short of quotas, than is permitted at present in either GB or NI equality law. Essentially the UK approach is to allow for training programmes specific to a disadvantaged group, such as women-only or ethnic minority-only training. The Commission would wish to see a significantly expanded role of positive action in line with the permissive limits of the EU definition. Employers (and service providers) should be able to introduce positive measures to include previously disadvantaged groups in employment and the receipt of services without the danger of an indirect or a direct discrimination action being taken against them. There may well be a role for the Commission in approving such schemes. As mentioned above, a core objective of the Commission is "maximum

[24] Section 6 of the Disability Discrimination Act 1995 (DDA) is concerned with 'reasonable adjustments' for a particular disabled person.

[25] DDA, section 21.

[26] One difficulty which the Commission has with the REOD is that it does not explicitly provide for what might be called a 'general service requirement' (GSR), i.e. an equivalent provision to the GOR for the purposes of the provision of goods, facilities and services, e.g. a support service for black and minority ethnic recipients. The Commission would wish to see a GSR in the SEA subject to the same stringent requirements as GORs.

[27] Article 70(3) of the Order provides:- "(3) So far as they relate to discrimination on the ground of religious belief, Parts III [employment] and V do not apply to or in relation to any employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief."

[28] See the Employment Protection (Sexual Orientation) Regulations, Article 7(3) (GB) and the Employment Protection (Sexual Orientation) Regulations (Northern Ireland), Article 8(3), held, on a narrow interpretation, not to be outside the scope of Article 4.1, FEED (R (on the application of Amicus-MSF and others) v Secretary of State for Trade and Industry [2004] IRLR 430 (High Ct)).

[29] Many examples from EU gender equality law include Case 222/84, Johnston v Chief Constable of the Royal Ulster Constabulary [1986] ECR 1651.

[30] Article 5 REOD is couched in similar terms.

[31] See, for example, Case C-450/93 Kalanke v Bremen [1995] ECR I-3051 and Case C-409/95 Marschall v Land Nordrhein-Westfalen [1997] ECR I-6363.

facilitation for those organisations which wish to pursue equality as well as maximum impetus for those organisations which merely wish to satisfy (or even avoid) equality principles". It is not enough to pursue equality by merely avoiding direct and indirect discrimination cases. Organisations should be free to introduce 'positive inclusionary measures' short of quotas in order to redress inequality in employment and provision of services.

8. ENFORCEMENT

It is tempting to relegate issues of enforcement to some secondary role in implementation, as if each State had a high degree of 'procedural autonomy'. The Commission is not of this view. A vital component of the ECJ's jurisprudence on gender equality law was the enunciation of the fundamental principle of 'effective judicial protection'.[32] It is indeed appropriate that a predecessor of the Commission, the Equal Opportunities Commission for Northern Ireland, assisted Mrs Johnston in her case both in the NI courts and the ECJ. Rights which cannot be enforced actually create an impression that inequality is being redressed when, in reality, very little is being achieved. It is for this reason that the Commission is committed to a range of reforms in the system of enforcement of equality law to bring it into the 21st century.

8.1 Standing for organisations

A crucial element in the debate upon effective enforcement, particularly for specialised agencies, concerns the extent to which the system of judicial process should move beyond one predicated upon an individual bringing his or her own case. The Commission is convinced that, although it and its predecessors, have assisted many highly significant cases, with ramifications well beyond the facts of the particular case, there are still many examples of discrimination and inequality which are never addressed because individuals, frequently in highly vulnerable positions, do not wish to litigate. The Commission has two stances upon this issue of standing for itself and other organisations, such as trade unions and interest groups, to bring cases to the courts and tribunals.

First, Article 7.2 REOD/ Art 9.2 FEED provides that "Member States shall ensure that associations, organisations or other legal entities which have … a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either *on behalf* or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive" (emphasis added). The Commission is of the view that it supports individuals who bring cases in their own name but it would act 'on behalf of' a complainant if it brought the case in its own name but with the consent of the named complainant.[33] Although such a formulation would still require the naming of complainants, the Commission takes the view that some of the pressures of bringing a case in the complainant's own name would be removed. Standing to bring a case would also give the Commission control over the proceedings. Given the terminology used in Articles 7 REOD and Article 9 FEED, such standing should also be open to trade unions and suitably qualified interest groups.

The Commission would wish the SEA to go further. In highly strategic cases for specialised agencies and other bodies, the 'victim' almost becomes a bystander. The issue at stake is whether the policies and practices of an employer or service provider exhibit evidence of institutionalised or systemic discrimination. In such cases, the Commission is of the view that standing should be available even in the absence of a named 'victim'. The European Parliament, during the passage of the Revised Equal Treatment Directive, proposed an amendment, paradoxically rejected by the European Commission, to allow for genuinely autonomous standing for organisations, as follows, "[associations, organisations and other legal entities] may, where national law permits, bring a collective action, in any judicial and/or administrative procedure, on their own initiative and aside from the particular circumstances of an individual case, in order to determine whether or not the principle of equal treatment …

[32] *See Case 222/84* Johnston.
[33] *Arguably, the application of the principle of effective judicial protection to the interpretation of Articles 7.2 and 9.2 reinforces this approach.*

is applied" (emphasis added). The Commission is convinced that it is only with such a formulation that some of the most entrenched aspects of discrimination and inequality can be tackled. It is therefore disappointed that neither GB nor NI implementation of the Directives involves any measures to provide any degree of standing for the Commission or other organisations before the courts and tribunals.

8.2 Remedies

At the other end of the judicial process, it is equally important to have effective remedies both for individuals but also where organisations are given standing either to act either on behalf of named complainants or in their own name. It is therefore disappointing that there has been a similar lack of GB or NI implementation of Article 15 REOD/ Article17 FEED, which provides that "Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive". The Commission is unconvinced that remedies in GB and NI courts and tribunals are "effective, proportionate and dissuasive". It would wish to see creative and imaginative thinking on issues such as exemplary compensation in some individual cases and proactive remedies to require changes to policies and practices, to require equality audits and to require liaison with the Commission. It should also be possible for courts and tribunals, in some exceptional circumstances, to issue injunctive relief in order to prevent an act of discrimination occurring or being repeated.

8.3 Single Equality Tribunal

A significant aspect of the Commission's proposals on enforcement is the merging of the jurisdiction of the tribunal system and the ordinary courts into a Single Equality Tribunal. There is a natural progression from a Single Equality Commission to a Single Equality Act including a Single Equality Tribunal. On the one hand, traditional 'simple justice' models of judicial process, frequently set up to provide dispute resolution in employment and welfare cases, are not suited to cope with the complexities of equality law, even before they are underpinned by the distinctive legal system of the EU. Hence, it is necessary to develop a system of judicial process which can manage the complexities of equality law. It is only in a tribunal where the ECNI has standing, where applicants are entitled to legal aid and where effective remedies are available that equality law can effectively be enforced.

On the other hand, diverting certain types of equality cases into different judicial processes is counter-productive. In GB, employment and training equality cases are taken to employment tribunals. In NI, they go to the Fair Employment Tribunal (FET) and industrial tribunals. Hence, NI already has a specialist equality tribunal. But GFS cases go to the ordinary courts. In fact, very few cases are taken into relation to GFS, perhaps due to the perceived inaccessibility of the County Court system. The Commission would wish to see the expertise already existing in the tribunal system to be channelled into a Single Equality Tribunal, in which all equality cases will be heard.

8.4 Alternative Dispute Resolution

Very many equality law disputes are capable of 'alternative dispute resolution' through conciliation, mediation and arbitration. What any specialised agency requires is a durable solution to the discrimination and inequality. The pursuit of a strategically important case does not reach a satisfactory conclusion by a payment of compensation without any resultant change in policies and practices. So long as conciliation and mediation produce durable outcomes, the Commission would welcome greater use of these alternatives. Indeed, the Commission is able to insist upon terms in negotiated settlements such as undertakings to change practices, to carry out equality audits and to liaise with the Commission. The Commission wishes to see these outcomes amongst the remedial options open to the Single Equality Tribunal. However, the Commission also wants to see these outcomes through alternative dispute resolution. The Commission is not opposed to the possibility of arbitration in equality

cases, so long as it is not an attempt to develop another 'simple justice' model for what are often complicated cases. Indeed, there may be sensitive cases, for example harassment cases, in which a more informal system of dispute resolution may be more attractive than any traditional form of judicial process. So also, it may be easier to extract a proactive remedy out of arbitration proceedings, conducted in close proximity to the alleged act of discrimination.

8.5 Monitoring and Review

What is specific to the Northern Irish 'fair employment' (FETO) model is an elaborate process of monitoring on grounds of 'community background', of reporting annually to the Commission, of the setting of 'fair participation' targets and of three year reviews of progress towards fair participation. There is much evidence to indicate that the FETO model has been successful in relation to the core objective of redressing labour market participation between Catholics and Protestants.[34] The Commission would wish to build on this success by extending this model to cover all the grounds in the SEA. It is certainly true that a model which relies heavily on a constructive relationship between the Commission and a wide range of employers (and service providers) may work more effectively in a jurisdiction of 1.6 million people than in a significantly larger economy. Nonetheless, the FETO model focuses attention on attainable equality goals.

A potential limitation of the FETO model is that it is heavily dependant on quantitative monitoring. Such monitoring is more productive in a 'bi-focal' situation in which respondents are either Catholic or Protestant (or male or female). In relation to grounds such as race, disability or sexual orientation, the value of reliance purely on quantitative monitoring is more debatable. Of course, any form of monitoring is merely the first step towards a diagnosis of inequality and measures to redress it. Performance of the statutory equality duty in the public sector has brought about a strongly consultative model. In this regard, the Commission would wish to see a consultative model in the labour market, based on the EU system of information and consultation, with consideration of a consultative model in relation to provision of services built on experience of the statutory equality duty. Hence, the augmenting of quantitative monitoring with qualitative monitoring will add a new vitality to the FETO model, encouraging more detailed diagnosis of inequality and more effective measures to redress it.

8.6 Powers of Investigation

Closely linked to monitoring and review in the 'FETO model' are the powers of investigation on the part of the Commission. The Commission has the power under FETO to undertake investigations, in relation to employment-related matters, in any case in which it is seeking to 'promote equality of opportunity'.[35] This is a less confrontational, more 'cooperative' model than is found in the other equality law regimes, in which the Commission can conduct general investigations across sectors or the entire economy but can only conduct a formal 'named person' investigation if it has formed a belief that an act of unlawful discrimination has been committed. This latter approach has proved to be a more adversarial process, frequently open to judicial review of the Commission in the administrative law courts. The more recently introduced formal investigation system under the DDA has advantages over the more long-standing approach in the sex and race discrimination legislation. The Commission would certainly wish to see formal investigations across the SEA at least to be based on the DDA model. However, it is of the view that the FETO model offers the best possibilities for Commission investigations which will produce genuinely constructive outcomes in relation to the promotion of equality of opportunity.

[34] *See Osborne B and Shuttleworth I,* Fair Employment in Northern Ireland A Generation On *(2004: Belfast, Blackstaff Press).*
[35] *Article 11, FETO.*

9. CONCLUSION

The proposals for a SEA provide an opportunity to create a coherent, consistent and effective equality law system in Northern Ireland. The Commission is of the view that this process is not just an exercise in producing a 'common template' across whatever grounds are to be included in the SEA. It is also an opportunity to review over a quarter of a century of the enforcement of equality law in order to bring about a genuinely effective system. Of course, this process of producing a SEA cannot be seen in isolation. It must be appreciated that there will be choreography between implementation of the EU Directives, the anticipated enactment of a Bill of Rights for Northern Ireland, the enactment of the SEA for Northern Ireland and a possible agenda in Great Britain towards a SEA there also. The coming into force of a SEA in Northern Ireland has lain at the heart of the Commission's objectives since its inception. It looks forward with confidence towards the day when this ambition is achieved.

NATIONAL SPECIALISED EQUALITY BODIES IN THE WAKE OF THE EC ANTI-DISCRIMINATION DIRECTIVES

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1. INTRODUCTION[36]

Four years on from the adoption of the Racial Equality Directive (2000/43/EC), a wide spectrum of models of equality bodies can be found across the European Union and neighbouring States. Article 13 of the Racial Equality Directive requires EU Member States to *'designate an independent body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin'*. The body need not be an institution with the exclusive mandate to promote equality but *'may form part of agencies charged at national level with the defence of human rights or the safeguarding of individual rights'*. This provision complements General Policy Recommendation No. 2 of the Council of Europe's European Commission against Racism and Intolerance (ECRI), which already in 1997 called for the establishment of a specialised body to combat racism, xenophobia, anti-Semitism and intolerance at national level and set out a comprehensive list of basic principles concerning such bodies. This provision is also in line with resolutions and recommendations from the United Nations and the Council of Europe according to which all States should establish an independent human rights commission[37] and an ombudsman.[38]

Regrettably, no requirement to establish an equality body was included in the Framework Directive (2000/78/EC) vis-à-vis discrimination on the grounds of religion or belief, age, disability or sexual orientation. A gender equality body or bodies *'for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex'* must however be in place by 5 October 2005, the deadline for transposition of Directive 2002/73, which amends the second Equal Treatment Directive (Article 8a 76/207/EEC as amended).

Notwithstanding the lack of EU rules for the establishment of equality bodies for all grounds of discrimination protected by Article 13 of the EC Treaty (sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation), an increasing number of countries are providing for institutional support for all grounds of discrimination that are legally prohibited in that country. Providing such support for all grounds is logical and to be welcomed. Equality bodies are extremely important for the implementation of anti-discrimination legislation on all grounds, given the role they can play in supporting victims of discrimination, giving guidance to government and other public and private bodies on how to work towards equality, providing other stakeholders and the public with information on anti-discrimination rights, and conducting specialised surveys and research into discrimination and ways of eradicating it.

This paper seeks to give an overview of emerging trends in relation to the institutional set-up of national bodies for the promotion of equal treatment in the EU Member States as well as Bulgaria and Romania as accession States, and Norway as an EEA member state, emphasising changes that have occurred to those structures in the time since the adoption of the EC anti-discrimination directives. Some key observations will be listed to this end. Thereafter, some of the arguments for and against the chosen structures will be set out.[39]

2. OBSERVATIONS ON THE STRUCTURES OF EQUALITY BODIES IN THE EU

A first observation that can be made is that since 2000 change has occurred in the majority of European States with regard to the set-up of bodies for the promotion of equal treatment. The second observation that will be made is that it is more common to find bodies or ombudsmen specifically mandated to promote equality than to find this task placed within an agency or ombudsman institution with a wider brief. A third observation is that there are more instances of specialised bodies covering several grounds of discrimination than bodies which deal with only race and ethnicity or gender (i.e. going beyond what EC law requires). Finally, a fourth observation is that many multiple-ground bodies are faced with the challenge of enforcing a series of laws and different standards of protection for the different grounds of discrimination. The following provides details of these observations.

[36] *This paper, completed in July 2004, is based on information gathered within the framework of the specialised bodies project and country reports written by experts for the European Commission. Further information can be found in: the 2003 European Commission commissioned study Equality, Diversity and Enlargement based on country reports produced by experts from the new Member States and coordinated by MEDE European Consultancy and Migration Policy Group; summaries of the transposition of the Racial Equality Directive in the EU-15 produced by the Group of Independent experts on discrimination on the grounds of Racial and Ethnic Origin and equivalent reports by the Group of Independent experts on discrimination on the grounds of religion and belief, both coordinated by Migration Policy Group; and the European Commission commissioned Study on Anti-discrimination Bodies, completed by PLS Ramboll Management in May 2002. All of the above are available on the European Commission DG Employment & Social Affairs site http://www.europa.eu.int/comm/employment_social/fundamental_rights/index_en.htm.*

[37] *Principles relating to the Status of National Institutions, General Assembly Resolution 48/134 of 20 December 1993.*

[38] *Recommendation No. R. 85 (13) on the institution of the ombudsman.*

[39] *It should be noted that this paper does not seek to give an evaluative opinion on whether Member States comply with the EC directives in respect of their equality legislation or bodies for the promotion of equal treatment.*

Observation 1: Countries that have changed their institutional set-up of bodies for the promotion of equal treatment since the EC anti-discrimination directives were adopted outnumber those which have seen no change.
There are four countries which have *not* changed their institutional set-up for bodies for the promotion of equal treatment since the adoption of the EC directives in 2000:

Ireland: the Equality Authority,[40] established in 1999 on the basis of the Employment Equality Act 1998, deals with 9 grounds of discrimination: gender, marital status, family status, age, disability, race, sexual orientation, religious belief and membership of the Traveller Community. Recent amendments to the Employment Equality Act and the Equal Status Act in the Equality Act 2004 did not include amendments to the regulation of the Equality Authority (except in relation to the hiring of staff).
Norway: the Centre for Combating Ethnic Discrimination was established by Royal Decree in 1998. The Gender Equality Ombud was set up in 1979, and the Gender Equality Centre, which raises public awareness and lobbies for more active gender equality measures and policies, was established in 1997 as a result of the reorganisation of the Equal Status Council of 1972.[41] Institutional changes towards a single equality body are however expected in the coming years.
Romania: the National Council for Combating Discrimination was established by Ordinance 137/2000 as a specialised body of central public administration subordinated to the government. According to the ordinance, discrimination encompasses difference, exclusion, restriction or preference based on race, nationality, ethnic belonging, language, religion, social status, beliefs, sex or sexual orientation, belonging to a disfavoured category or any other criterion, aiming at or resulting in the restriction or prevention of equal recognition, use or exercise of human rights and fundamental freedoms in the political, economic, social and cultural fields or in any other fields of public life.
Sweden: there are four single ground Ombudsmen: the Ombudsman against Ethnic Discrimination (DO established in 1986, competent for the grounds ethnicity and religion or other belief), the Equal Opportunities Ombudsman (gender body, JämO established in 1991), the Disability Ombudsman (HO established in 1994) and the Ombudsman against Discrimination on grounds of Sexual Orientation (HomO established 1999).[42] A parliamentary enquiry is currently looking into the benefits of integrated legislation, which if adopted would also lead to an integrated equality body combining the existing Ombudsmen and adding age discrimination. The powers of DO, HO and HomO were expanded in 2003 to cover in addition to working life also complaints outside working life.

In contrast there are 18 countries which have seen recent change to their institutional set-up for promoting equal treatment:
Austria: the 2004 Equal Treatment Act (ETA) has three parts: one on Equal Treatment of Women and Men in Employment; one on Equal Treatment without discrimination on the grounds of ethnic belonging, religion or belief, age or sexual orientation; and one on Equal Treatment without discrimination on the grounds of ethnic belonging in other fields (i.e. beyond employment). A second new Act contains provisions on institutions and procedures. New institutional arrangements introduced by this Act correspond to the three parts of the ETA, building upon the existing Equal Treatment Commission and Ombud for Equal Employment Opportunities.[43] There will be three ombuds: the Ombud for equal employment opportunities for women and men; the Ombud for equal employment opportunities with regard to ethnic belonging, religion or belief, age and sexual orientation; and the Ombud for equal opportunities with regard to ethnic belonging in other areas. These three Ombuds will be collectively the Equal Treatment Legal Representation ('Gleichbehandlungsanwaltschaft'), with the Ombud for equal employment opportunities for women and men coordinating the three institutions. Correspondingly, the Equal Treatment Commission, which hears complaints of discrimination, will consist of three senates. Disability as a discrimination ground will be regulated in a new separate law.
Belgium: the Act of 25 February 2003 pertaining to the combat of discrimination and to the Act of 15 February 1993 pertaining to the foundation of a Centre for Equal Opportunities and Opposition to Racism[44] extended the mandate of the Belgian Centre to cover, in addition to so-called race, skin colour, heritage, background or

[40] *www.equality.ie*
[41] *Senter mot etnisk diskriminering www.smed.no, Likestillingsombudet http://www.likestillingsombudet.no/, Likestillingssenteret http://www.likestilling.no/*
[42] *Ombudsmannen mot etnisk diskriminering www.do.se; Jämställdhetsombudsmannen www.jamombud.se; Handikappombudsmannen www.handikappombudsmannen.se, Ombudsmannen mot diskriminering på grund av sexuell läggning www.homo.se.*
[43] *Gleichbehandlungskommission, Anwältin für die Gleichbehandlung von Frauen und Männern in der Arbeitswelt http://www.bmgf.gv.at/cms/site/themen.htm?channel=CH0210*
[44] *Centre pour l'égalité des chances et la lutte contre le racisme/Centrum voor gelijkheid van kansen en voor racismebestrijding www.antiracisme.be*

nationality, also sexual orientation, marital status, birth, fortune, age, religious or philosophical conviction, current and future state of health, disability or physical trait. Belgium has established a new body for dealing with sex discrimination, the Institute for Equality between women and men.[45]

Bulgaria: the Protection against Discrimination Commission is established under the Protection against Discrimination Act 2003 to deal with the grounds sex, race, extraction, ethnicity, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status, or any other ground. The Commission is not yet operational.

Cyprus: the Commissioner for Administration of the Republic of Cyprus (Ombudsman) has been given the mandate to deal with all grounds of discrimination, as the Ombudsman has the responsibility for enforcing Protocol 12 to the European Convention on Human Rights (which Cyprus is one of the eight Council of Europe member states to have ratified), which prohibits discrimination on an inexhaustive list of grounds.

Denmark: the Danish Institute for Human Rights, established by Act No. 411 of 6 June 2002, is the designated body required by Article 13 of the Racial Equality Directive. The Complaints Committee for Ethnic Equal Treatment was established within the Institute for Human Rights[46] on the basis of Act no. 374 of 28 May 2003 on Ethnic Equal Treatment. The Committee's mandate was extended to employment cases by Act No 253 of 7 April 2004. The Equal Status Board[47] considers complaints of sex discrimination in society, and guides and advises citizens, organisations, firms and authorities about bringing complaints concerning gender discrimination before the board or other bodies.

Estonia: from 1 January 2004, the powers of the Chancellor of Justice[48] were extended by the 2003 Legal Chancellor Act Amendment Act which makes the Chancellor of Justice the central authority for handling and resolving discrimination complaints. The Chancellor supervises relevant activities of central and local government institutions and organs, public legal entities or private entities performing a public function or duty. In relation to discrimination disputes between persons governed by private law, the Chancellor can carry out voluntary conciliation proceedings as a mediator (discrimination based on gender, race, colour, nationality (ethnic origin), language, origin, religion or religious beliefs, political or other opinion, property or social status, age, disability, sexual orientation or other attributes specified by the law).

Finland: the Occupational Health and Safety Authority is charged with supervising the 2003 Equality Act as regards employment relationships in private and public sectors as regards discrimination on all grounds (age, ethnic or national origin, nationality, language, religion, belief, opinion, health, disability, sexual orientation or other status relating to a person). The newly established Board against Discrimination and the existing Ombudsman for Minorities[49] both have the mandate to supervise the enforcement of the 2003 Equality Act in relation to ethnic discrimination in spheres other than working life. The Ombudsman for Equality monitors compliance with the Act on Equality Between Women and Men.[50]

France: a bill for the establishment of a High Authority for Combating Discrimination and for Equality[51] was transmitted to parliament on 15 July 2004 and should be adopted in Autumn 2004. It is envisaged that the body, competent to deal with all forms of discrimination prohibited by law or an international agreement to which France is party, should start work on 1 January 2005.

Hungary: the Authority established by Act No. 125 of 2003 on equal treament and the fostering of equal opportunity should start work in 2005. It will deal with discrimination on the grounds of sex, racial origin, skin colour, nationality, national or ethnic origin, mother tongue, state of disability, health condition, religious or ideological conviction, political or other opinion, family status, maternity (pregnancy) or paternity, sexual orientation, sexual identity, age, social origin, financial status, part-time nature of employment legal relation or other legal relation aimed at labour or determined period thereof, belonging to an interest representation, and other situation, attribution or condition of a person or group. The Ombudsman and the Deputy Ombudsman for Civil Rights and the Ombudsman for the Rights of National and Ethnic Minorities also have relevant powers.[52]

Italy: the Office for the fight against Racial and Ethnic discrimination and the Commission for Equal Opportunities between Men and Women were set up in 2004. These offices are physically located within the Ministry for Equal Opportunities and under the political responsibility of the Minister for Equal Opportunities.[53] The former is charged with assisting victims of discrimination and also receiving complaints through a contact centre; the latter is an advisory body for the Minister about issues relating to gender equality.

[45] Institut pour l'égalité des femmes et des hommes/Instituut voor de gelijkheid van vrouwen en mannen www.meta.fgov.be
[46] Klagekomitéen for Etnisk Ligebehandling, Institut for Menneskerettigheder http://www.humanrights.dk/afdelinger/klagekomite/
[47] Klagekomitéen for Etnisk Ligebehandling, Institut for Menneskerettigheder http://www.humanrights.dk/afdelinger/klagekomitel/; Ligestillingsnaevnet http://www.ligenaevn.dk/
[48] Õiguskantsler http://www.oiguskantsler.ee
[49] Vähemmistövaltuutettu http://www.mol.fi/vahemmistovaltuutettu/index.html
[50] Tasa-arvovaltuutettu http://www.stm.fi/Resource.phx/eng/subjt/gendr/index.htx
[51] Haute autorité de lutte contre les discriminations et pour l'égalité http://www.assemblee-nat.fr/12/dossiers/haute_autorite_discriminations.asp
[52] Állampolgári Jogok Biztosa és Általános Helyettese, Nemzeti és Etnika Kisebbségi Jogok Biztosa www.obh.hu
[53] Ministero per le pari opportunità www.pariopportunita.gov.it

Also in relation to sex discrimination, the National Committee for the implementation of the principles of equal treatment and equal opportunities between men and women at the workplace and the Equality Councillors appointed at national, regional and provincial level by the Minister of Labour have advisory and monitoring roles.
Lithuania: the Equal Opportunities Ombudsman,[54] formerly responsible for gender equality only, now deals with all Article 13 ECT grounds (sex, sexual orientation, age, disability, race, ethnicity, religion or other convictions).
Netherlands: disability, chronic illness and age have recently been added as protected grounds to the mandate of the Equal Treatment Commission,[55] which already had the legal mandate to deal with unequal treatment on grounds of religion, belief, political opinion, nationality, race, sex, heterosexual or homosexual orientation, civil status, full and part-time work and the nature of a labour relationship (i.e. temporary or permanent employee). In addition, there is a network of anti-discrimination offices providing assistance to victims of discrimination.[56]
Poland: the Secretariat of the Government Plenipotentiary for Equal Status for Woman[57] was established by ordinance of the Council of Ministers in November 2001; under the provisions of the ordinance of the Council of Ministers of 25 June 2002 its competences were extended to carrying out the governmental policy in the field of counteracting and combating discrimination on grounds of race, ethnic origin, religion, belief, age and sexual orientation until a specialised body for counteracting and combating discrimination is established. The Commissioner for Civil Rights Protection (national Ombudsman) and the Government Plenipotentiary for Disabled Persons' Affairs also have relevant competences.
Portugal: the Commission for Equality and Against Racial Discrimination (covering race, nationality and ethnic origin) is presided by the High Commissioner for Immigration and Ethnic Minorities.[58] The Commission for Equality in Employment and at the Workplace deals with sex discrimination.[59] The Commission for Religious Freedom was established by the Law on Religious Freedom of 2001 and regulated by Decree law 308/2003 and is an independent organ of a primarily consultative nature.[60]
Slovakia: the National Centre for Human Rights[61] has the role of overseeing adherence to the new anti-discrimination law which guarantees fair treatment for everyone regardless of race, colour, sex, religion, age, national or ethnic origin, health condition, or sexual orientation.
Slovenia: the Fulfilment of the Principle of Equal Treatment Act 2004 envisages the establishment of a government council for fulfilling the principle of equal treatment, and an Advocate for the Principle of Equality to offer non-binding opinions on the existence of discrimination in individual cases to operate within the Equal Opportunities Office,[62] which currently deals with sex equality only.
Spain: the law which transposed the EC anti-discrimination directives in December 2003 established the Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, attached to the Ministry of Labour and Social Affairs. Its make-up and functions should soon be regulated by a Royal decree. By law, the Public Defender (Ombudsman),[63] who also deals with discrimination cases, may establish cooperation and collaboration with the Council. In addition, a Monitoring Centre for Racism and Xenophobia was also recently established within the immigration department of the Ministry of Labour and Social Affairs. The Institute for Women[64] provides information and advice on sex discrimination.
United Kingdom of Great Britain (GB) and Northern Ireland (NI): the institutional set-up of equality bodies in the UK is made up of three commissions with a mandate for Great Britain – the Commission for Racial Equality (CRE, established in 1976), the Equal Opportunities Commission (for gender, EOC, established in 1975), and the Disability Rights Commission (DRC, established in 1999)[65] - and the Equality Commission for Northern Ireland (ECNI).[66] The latter is the result of a process of integration in 1999 of the single bodies that existed in NI at that time: the Commission for Racial Equality for Northern Ireland, the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission and the Northern Ireland Disability Council. The only change introduced in the UK since 2000 has been to ECNI: sexual orientation was added to the grounds race, religious belief or political opinion, sex, marital status and disability when the 2003 Employment Equality (Sexual Orientation) Regulations (Northern Ireland) entered into force. The British government intends, however, to replace the three existing GB Commissions with a single Commission for Equality and Human Rights in 2006 and give it also the mandate to deal with the new grounds religion and belief, sexual orientation and age.[67]

Six countries have not yet transposed the EC anti-discrimination directives but are expected to either introduce new bodies for the promotion of equal treatment or allocate that mandate to an existing institution: in the

[54] *Lygių galimybių kontrolieriaus tarnyba www.lygybe.lrs.lt*
[55] *Commissie Gelijke Behandeling www.cgb.nl*
[56] *Landelijke Vereniging van Anti-Discriminatie Bureaau, www.lvadb.nl*
[57] *Sekretariat Pelnomocnika Rzadu do Spraw Rownego Statusu Kobiet i Mezczyzn*
[58] *Comissão para a Igualdade e Contra a Discriminação Racial; Alto-Comissário para a Imigração e Minorias Étnicas www.acime.gov.pt,*
[59] *Comissão para a Igualdade no Trabalho e no Emprego www.cite.gov.pt*
[60] *Comissão da Liberdade Religiosa*
[61] *Slovenské národného strediska pre l'udské práva www.snslp.sk*
[62] *Urad za enake možnosti www.uem-rs.si*
[63] *Defensor del Pueblo www.defensordelpueblo.es/index.asp*
[64] *Instituto de la Mujer www.mtas.es/mujer/principal.htm*
[65] *www.cre.gov.uk, www.eoc.org.uk, www.drc.gov.uk*
[66] *www.equalityni.org*
[67] *A White Paper 'Fairness for all: a new Commission for Equality and Human Rights' setting out the government's plans was published in May 2004. http://www.womenandequalityunit.gov.uk/equality/project/cehr_white_paper.pdf last accessed 20 July 2004.*

Czech Republic a new anti-discrimination law will either establish a new single equality body with the mandate for discrimination on the grounds of racial or ethnic origin, sex, sexual orientation, age, disability, belief and religion, or extend the mandate of the Public Defender of Rights (Czech ombudsman) to discrimination issues. It is not yet clear how **Germany** will transpose the requirement for a specialised body. In **Greece** it has been proposed that the Ombudsman be given the mandate to fulfil Article 13 of the Racial Equality Directive and also grounds in the Framework Directive as well as gender complaints, and that a Labour Supervision Body (within the Labour Ministry) be responsible for ethnic discrimination in the labour market and a Committee of Equal Treatment (within the Justice Ministry) be responsible for ethnic discrimination cases occurring in the private field (outside labour market). In **Latvia** it is expected that the National Human Rights Office will be the designated specialised body under the pending Non-discrimination law, which will transpose the Article 13 directives. In **Luxembourg** (while there is already a Special Permanent Commission against Racial Discrimination competent to hear petitions from victims once all other local remedies are exhausted) a proposal for a law on the specialised body is expected. In **Malta** the mandate of the National Commission for the Promotion of Equality for Men and Women may be extended to cover race and ethnicity. The mandate of the Maltese National Commission for Persons with Disability includes disability discrimination cases.

The developments in respect of national equality bodies are to be welcomed. It must be acknowledged that not all countries have seen change exclusively as a result of the EC anti-discrimination directives; some may have introduced changes anyway. Certainly the work of ECRI in issuing soft law recommendations and monitoring the situation in Council of Europe member states through their country reports has played a major part in persuading States to change tack for several years now. There are however States in which it is clear that change to the law and institutional protection was driven by the obligation to comply with the EC directives. Those countries which have introduced equality bodies for race and ethnicity, but not the grounds protected by the Framework Directive, give rise to such conclusions. Reflecting in national law the two-tier approach in the EC directives by denying victims of religious/belief, age, disability or sexual orientation discrimination independent assistance is a disappointing perpetuation of hierarchy among discrimination grounds. Such distinctions send the wrong message to discriminated persons and society as a whole.

Observation 2: Countries with bodies/ombudsmen with a specific equality brief outnumber countries that have placed the task of promoting equal treatment within an agency with a wider brief.
As noted in the introduction, under the directives the promotion of equal treatment may be trusted to agencies charged at national level with the defence of human rights or the safeguarding of individual rights. This option has not however been taken up by the majority of European countries. Austria, Belgium, Bulgaria, France, Hungary, Ireland, Italy, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the UK all currently have or will soon have specialised equality and/or discrimination bodies, ombudsmen or offices. A separate matter is the link these equality bodies or offices have with ministries, which varies from country to country; this issue will not be considered here.

Cyprus, Denmark, Estonia, Finland, and Slovakia have placed the task of promoting equal treatment within an agency with a wider brief. Finland has both a specialised anti-discrimination body, the Board against Discrimination, and institutions with a wider brief charged with supervising the Equal Treatment Act (the Minorities Ombudsman and the Health and Safety Authority).

Observation 3: There are more instances of specialised bodies covering a series of discrimination grounds than bodies which deal only with race/ethnicity and/or gender (i.e. going beyond what EC law requires).
The tendency in European States seems to be to provide for bodies or institutes that can assist victims of discrimination, regardless of the grounds of the discrimination. Such States are clearly going beyond European law, recognising the need for institutional support for all victims of discrimination and the urgency of promoting equality for all as an overarching goal.

Multiple-ground bodies
Several countries have extended the mandates of existing specialised bodies or other institutions – covering

grounds beyond race, ethnicity and sex - to coincide with the transposition of the EC anti-discrimination directives. This usually indicates that they perceive it as necessary for there to be an enforcement body for the all new grounds of discrimination introduced into domestic law as a result of the EC directives. The Cyprus Ombudsman, the Finnish Occupational Health and Safety Authority, the Lithuanian Equal Opportunities Ombudsman, the Polish Secretariat of the Government Plenipotentiary for Equal Status for Women and Men and the Slovakian National Centre for Human Rights all have enhanced roles in combating discrimination and promoting equality. The Estonian Chancellor of Justice has also been given an extended mandate relating to discrimination, but this despite the absence of new anti-discrimination laws transposing the directives. The Dutch Equal Treatment Commission, whilst already in charge of multiple grounds, now also has the mandate to deal with age and disability discrimination, as these are the subject of new anti-discrimination laws. Similarly, the Equality Commission for Northern Ireland, already charged with multiple discrimination grounds, now also deals with sexual orientation discrimination as new laws were introduced for this ground. The Belgian Centre for Equal Opportunities and Opposition to Racism has a host of new grounds in accordance with the 2003 legislation which expressly covers 17 grounds.

The Irish Equality Authority and the Romanian National Council for Combating Discrimination have been multiple-ground bodies since their inception. New bodies covering all legally prohibited discrimination grounds that have been established by law (though not yet operational) since the adoption of the EC directives are the Bulgarian Protection against Discrimination Commission, the Hungarian Authority, and the Slovenian government council for fulfilling the principle of equal treatment and Advocate for the Principle of Equality which will operate within the existing Equal Opportunities Office. The French High Authority for Combating Discrimination, likely to be established by law in the coming months, will also fall into this category.

The situation in Austria is unique, in that the existing Ombud for equal employment opportunities (for women and men) has been given the coordinating role of two further new Ombuds: the Ombud for equal employment opportunities with regard to ethnic belonging, religion or belief, age and sexual orientation and the Ombud for equal opportunities with regard to ethnic belonging in other areas.

Bodies restricted to race/ethnic origin
It follows that bodies with a mandate for only race/ethnic origin discrimination are in a minority. These are: the British Commission for Racial Equality, the Danish Complaints Committee for Ethnic Equal Treatment within the Danish Institute for Human Rights, the Italian National Office against racial discriminations, the Finnish Board against Discrimination and Minorities Ombudsman, the Norwegian Centre against Ethnic Discrimination, the Portuguese Commission for Equality and Against Racial Discrimination, the Spanish Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, and the Swedish Ombudsman against Ethnic Discrimination.

Bodies/institutes restricted to gender
Bodies with a mandate for gender only are the Belgian Institute for Equality of Men and Women, the British Equal Opportunities Commission, the Danish Equal Status Board, the Finnish Ombudsman for Equality, the German Ombudspersons for Women, the Greek Secretariat of Equality of the Sexes, the Italian Commission for Equal Opportunities between men and women, the Maltese National Commission for the Promotion of Equality for Men and Women, the Norwegian Gender Equality Ombud and Gender Equality Centre, the Portuguese Commission for Equality in Employment and at the Workplace, the Spanish Institute for Women and the Swedish Equal Opportunities Ombudsman.

Finally, there are four instances of bodies with a mandate for *disability only*: the Swedish Disability Ombudsman, the British Disability Rights Commission, the German Commissioner for Persons with Disabilities and the Maltese National Commission for Persons with Disability. And there is only one body with the mandate for sexual orientation only: the Swedish Ombudsman against Discrimination on grounds of Sexual Orientation.

At this point it is important to note an identified trend among countries with longer standing single ground specialised bodies towards establishing a new integrated single equality body. Northern Ireland did this in 1999 (as detailed in the paper by Evelyn Collins in this publication); Great Britain and Norway[68] are committed to this, and Sweden is considering it.

Observation 4: Many multiple-ground bodies are faced with the challenge of implementing different standards of protection according to the different grounds of discrimination.
Many countries have several pieces of legislation instead of one single equality law, which should all be enforced by the equality body. Often this fact is accompanied by distinctions in the scope and level of protection for each ground. This is the case for example for the Equality Commission for Northern Ireland and the Dutch Equal Treatment Commission. It may also be the case where the EC anti-discrimination and gender equality directives have been reproduced or reflected in corresponding national laws, e.g. in Cyprus, as the equality body will deal with cases of discrimination based on religion/belief, age, disability, sexual orientation discrimination or sex only in relation to employment and occupation, whereas in relation to race and ethnic origin discrimination the law and thus their powers will go further. This leads to a particular enforcement scenario and a high chance of confusion and dissatisfaction among victims. Equally peculiar is the situation whereby a single ground body for race and ethnicity (or gender or other ground) has to enforce only those parts of multiple-ground equal treatment legislation (i.e. a general equal treatment act) that apply to their ground. This is the case for the Finnish Board against Discrimination and Minorities Ombudsman, and the Austrian Ombuds which are each responsible for part of the legislation. The new Finnish and Austrian laws reflect the scope of the EC directives.

Specialised bodies in Belgium, Ireland, and Romania, and soon also Bulgaria and Hungary, find themselves in the less complex situation of dealing with a series of discrimination grounds that are all similarly or equally provided for in the core multiple-ground equality legislation (though they usually must also enforce additional relevant legislation). The legislation in these countries tends not to distinguish between the grounds in terms of level of protection and competencies of the body per discrimination ground, making it easier for the equality body to do its job. Having legislation which covers all grounds equally is also fairer and more transparent for victims. The Dutch Equal Treatment Commission similarly implements an integrated Equal Treatment Act, although discrimination on the grounds of age, disability, chronic illness, working hours and the nature of a labour relationship are legislated separately. The Dutch government is currently considering the drafting of a comprehensive 'Integrating Act', which would replace all existing non-discrimination acts.

In Sweden, where a government enquiry is considering the question of merging equality legislation, if integrated legislation is introduced, an integrated equality body will be established at the same time. There is already a 2003 Act banning discrimination on the grounds of ethnic belonging, age, disability, religion or belief and sexual orientation. This is clearly a logical way of dealing with the situation. The same approach will be taken in Norway, which is in the process of creating new legislation and harmonising existing legislation. In Great Britain on the other hand, there is no indication that there will be any integration of equality legislation to coincide with the merging of the three equality commissions into a Commission for Equality and Human Rights, which in that case would face the considerable challenge of implementing several pieces of legislation and extensive differences in the protection of the various grounds and perhaps even in the Commission's competences in relation to those grounds.

3. RATIONALE BEHIND THE CHOSEN EQUALITY STRUCTURES

As has been remarked above, there is a tendency for European States to choose the model of one comprehensive equality body over a group of single ground bodies. This choice is made for various reasons. The following sets out advantages and challenges of multiple ground specialised bodies.

Strategic advantages:

– Support to victims of discrimination is more coherent regardless of the ground of discrimination.
– The work of practitioners is more coherent and integrated. It is easier to cross-fertilise/transfer knowledge and

[68] *It is envisaged that a new Ombud for equality and against discrimination will be established in 2006 for the protection of the rights or ethnic and religious minorities and gender equality, replacing the existing bodies.*

experience among grounds. Compare the perhaps more difficult task for several single ground bodies in a given country to ensure they are working in a complementary way to achieve consistency in policies, legal interpretation, and avoid conflicts among bodies that are all acting in defence of their own ground.
– Recognises multiple identity of victims; cases of multiple discrimination easier to handle.
– More straight forward for victims to approach one equality body: cases in which the individual is aware s/he has been discriminated against but is unable to identify the source of the discrimination can be more efficiently addressed.
– More effective partner for business / employers / public authorities by acting as a single, consistent source of information and advice.
– Stronger impact on decision makers as the body is a larger organisation representing the interests of more people.
– Stronger message to the public against all forms of discrimination and for equality.
– Public support likely to be greater, as everyone can identify with at least one of the discrimination grounds. Compare to situation of single bodies which may find it difficult to ensure their voice is heard, particularly when public opinion is not very favourable to the cause, and in the context of increasing competition for public attention with the addition of new legally prohibited grounds of discrimination.
– Cost-effective use of resources, e.g. support staff, office costs.

It is useful to refer to the recently published British White Paper 'Fairness for all: a new Commission for Equality and Human Rights' (CEHR) which outlines the perceived benefits of having one body in Great Britain covering all grounds against having several single ground bodies. Three options are described:[69] to retain the status quo; to establish new Commissions for each new equality strand and human rights; or to establish a single equality and human rights Commission. Option 1, it is concluded, would leave the new grounds of sexual orientation, religion and belief and age without any institutional support, and without a body to promote awareness and provide alternative resolutions there would be no perceivable reduction in the number of cases arising from breaches of legislation. Option 2 would fail to reap the benefit of the 'economies of scale and synergies arising from a single organisation, including the promotion of good practice on equality and diversity to employers and service providers'. A single body is estimated to cost 15-25% less than six separate commissions.[70] Option 3 on the other hand would facilitate the integrated promotion of equality and human rights and tackling of discrimination. The benefits of the single equality and human rights Commission identified by the White Paper include an estimated increased income and employment levels of the grounds concerned of £51-91 million as a result of more information and guidance on discrimination rights and people being better equipped to secure these rights. It would also be expected to contribute to the social cohesion of all groups within society by tackling discrimination and inequality in a more strategic way and promoting the vision of a society based on equality of opportunity and respect for the dignity of each person. Whilst particular to the experience and environment of Great Britain, this is of course relevant to many other countries too.

Challenges:

– Juggling the monitoring of the implementation of legislation on many grounds of discrimination and assisting victims of all these forms of discrimination as well as multiple discrimination.
– In the case of a merger of existing bodies, there may not be a corresponding raise in budget and staff to enable the same level of attention to each ground; there may be widespread dissatisfaction at the decrease in resources exclusively allocated to the grounds previously dealt with among discriminated communities and among staff, and there may be a fall in staff morale as a result of increased workload or feeling of inability to have an impact on problems.
– There are a greater number of communities / discriminated groups to work with.
– A balance must be struck between the horizontal implementation of the principle of equality and adequately addressing the particularities of the different grounds
– Need to counter instances of grounds of discrimination working against each other, e.g. age v. gender (e.g. older men protected in their jobs to the expense of women coming through), sexual orientation v. religion (e.g. right of religious entity to curtail employment opportunities of homosexuals within religious institutions

[69] *Appendix B Partial regulatory impact assessment of CEHR, p. 106-116*
[70] *Appendix B, paragraph 19*

because of perceived clash with religious ethos), ethnicity v. gender (e.g. traditional subordination of women in some ethnic groups), religion v. gender (e.g. traditional subordination of women in some religions).
– Danger of one or two grounds receiving more focus and/or budget, in other words a hierarchy of interests. How successfully this can be avoided will depend on the strength of constituencies of those with an interest in a particular ground, both the specialised bodies staff and the communities themselves. In a country like the UK, strong constituencies have been built up over a number of years, so groups/communities supporting action against a particular ground should have no difficulty in continuing to make their voice heard in a single equality commission. However, in other countries where there are less strong constituencies for certain grounds, there may be a de facto concentration on combating discrimination on the grounds that have traditionally been worked with.
– The structure of the legislation may perpetuate a hierarchy of interests, whereas comprehensive unified single legislation that affords the same level of protection to all grounds and using the same wording would increase the effectiveness of the equality body.[71]
– In terms of internal structures, balancing both functional, cross-ground expertise (i.e. departments and staff organised according to tasks) with a degree of ground-specific focus, with 'good leadership, a clear chain of command and effective cooperation'.[72]

4. CONCLUSION

The recent European Commission Green Paper 'Equality and non-discrimination in an enlarged European Union' welcomes the trend among some Member States 'to establish equality bodies, whether combined or separate, covering all grounds of discrimination set out in Article 13 of the Treaty', as 'it demonstrates that some Member States are willing to go beyond the minimum standards set out in Community law', adding that 'the Equality Bodies will certainly be key partners in the future development of anti-discrimination policy in the EU.'[73]

Yet despite the progress outlined in this paper, not all countries go beyond Community law, and a move towards specialised bodies for all grounds of discrimination, whether through multiple ground or single ground bodies, is advocated here. Further, more still needs to be done in terms of mandate and powers to better enable specialised bodies to effectively promote equal treatment. Many States have limited the mandate of their specialised body(ies) to that required under the Racial Equality Directive and the second equal treatment (gender) directive, with some still even falling short of these requirements. In their search for effective functions national bodies must look to the principles set out in ECRI's General Policy Recommendation No. 2, which provide invaluable suggestions for the mandate of the specialised body that go far beyond those called for by the European Union. It is absolutely vital that an ambitious mandate is matched with the resources in terms of budget and staff to carry out this remit properly. Both multiple ground equality bodies and single ground bodies are finding themselves with a rapidly increasing workload and volume of discrimination complaints, which must be met with adequate resources combined with well thought-out enforcement strategies.[74]

The differences in the legal protection of the respective discrimination grounds should be removed at national and European levels. A core objective of the cooperation between the specialised equality bodies is to ensure the uniform application of EC anti-discrimination norms and the levelling up of protection across all grounds at national level. At European level, a significant step may be taken through the European Commission's consultation launched by the Green Paper, which seeks views on the possibilities for 'strengthening the integrated approach to anti-discrimination covering all of the grounds mentioned in Article 13 of the EC Treaty, including sex'.[75] If there is wide support for an integrated approach, we may also see a shift in this direction within the European Union institutions, which currently deal with the issues quite separately.

[71] *Cf. Colm O'Cinneide, A Single Equality Body: Lessons from Abroad, 2002, p.10 (Report commissioned by the CRE, DRC and EOC as an independent report in the context of Great Britain's move to single body).*
[72] *Ibid. p.30-37*
[73] *28.05.2004, COM (2004) 379 final, paragraph 3.5. The purpose of the Green Paper is to raise a wide number of issues linked to the future of equality and non-discrimination policy in an enlarged European Union. It launches a consultation exercise aimed at all of the relevant stakeholders and the public, who should fill out an annexed questionnaire by 31 August 2004.*
[74] *See report of the Sixth Experts' meeting in this series, Dublin, 3-4 March 2004.*
[75] *Green Paper, paragraph 3.6.*

COMMENTS AND DISCUSSION

POINTS RAISED BY PARTICIPANTS IN THE PLENARY SESSIONS

There is a fear among some people that a specialised body that works on all grounds of discrimination cannot focus sufficiently on any ground and that a hierarchy of grounds may emerge, especially when existing single ground bodies merge. There must be adequate focus on single grounds of discrimination to ensure that the issues particular to each ground are properly dealt with, but there must also be cross-fertilisation of best practice across the grounds.

If equality officers are used to working with a high level of legislative protection in relation to one ground, this may filter through to other grounds. It can and should be written into a specialised body's corporate plan that all grounds will be treated equally.

An advantage of single integrated legislation is that certain concepts can be adapted to different grounds. Thus in Ireland, for example, the Equality Tribunal has applied the interpretation of reasonable accommodation normally used in relation to disability discrimination to migrant workers.

In every case a specialised body supports, effort can be made to make the case as relevant as possible for all grounds. The reality of cases – and people, who all have multiple identities - is such that a single body dealing with multiple grounds can be advantageous.

Where specialised bodies have competences in relation to some grounds that are wider than for other grounds, there is a danger that limited resources will be channelled into the execution of those further-reaching competences, which in turn helps to perpetuate the hierarchy of grounds.

It is important for specialised bodies to build up good relationships with the discriminated communities and equality stakeholders. However, a body whose core competence is to issue decisions on cases may find this more difficult than a body whose core activity is supporting victims and/or promoting equality.

Specialised courts, tribunals or other bodies that can hear cases more rapidly than the normal courts are a very valuable part of enforcement of equality laws.

The non-regression clause in the EC directives (Article 6(2) Racial Equality Directive and Article 8(2) Framework Directive) prevents Member States from lowering the level of protection that existed in national law before the directives, even in transposing the exceptions provided for by the directives.

Specialised bodies should have the power to review legislation and legislative proposals, which would include the competence to assess laws transposing EC directives. Annual reports to parliament can be used to draw attention to issues of concern to specialised bodies.

Single integrated legislation lends itself better to dealing with multiple discrimination.

In the Netherlands there is specific legislation prohibiting discrimination of part-time workers and as a result women who work part-time no longer have to rely on proving indirect sex discrimination when discriminated for being a part-time worker. This circumvents the difficulties that can be associated with proving indirect discrimination. It was suggested that sometimes it is more appropriate to create specific laws to address specific societal circumstances rather than rely on fitting equality laws around that situation. Another such example is dealing with the treatment of 'victims' of the Troubles in Northern Ireland, which some feel should be covered by equality law, whereas others see this as an issue that should be addressed by specific legislation.

There are considerable differences in the national, legal and institutional contexts in which the specialised bodies work, and these are inevitably definitive for their work. It is vital for specialised bodies to understand the respective contexts in order to understand better how specialised bodies work in their national context and to be able to effectively draw upon the experience of other bodies. It is unlikely to be possible to lift a model of a specialised bodies or powers out of one country and place it in another country without carefully adapting it to fit the national context.

A significant difficulty specialised bodies may have is that because the competences they have are wide and varied, they cannot have staff that are specialised to undertake all of these, e.g. lawyers are unlikely to be competent to undertake surveys. Therefore, it may be appropriate sometimes to contract out some work to external experts or scientists.

It was noted that there is a danger of giving more powers to specialised bodies without evaluating the impact of existing powers. The work of specialised bodies should be monitored with a view to ascertaining what works and what does not work, and, if necessary, powers should be revised accordingly.

There are sometimes conflicts between the powers of a specialised body such as the roles of adjudicator, promoter of equal treatment and investigator and exercising those powers simultaneously. The competences should be clearly categorised and where necessary on the basis of the separation of powers, some competences should be undertaken externally.

PROGRAMME

THURSDAY, 17 JUNE 2004

11.00 Welcome: Evelyn Collins, Chief Executive, Equality Commission for Northern Ireland

11.15 Northern Ireland Act 1998: shaping the equality environment– Professor Eithne McLaughlin, Queens University Belfast

11.45 Challenges and Choices – Establishing a single equality commission in Northern Ireland: Evelyn Collins, Chief Executive, Equality Commission for Northern Ireland

12.15 Structures and Strategies in Europe – an overview of changes to European specialized bodies in light of new grounds introduced by Article 13 EC Treaty – Jan Niessen, Director Migration Policy Group

14.00 Plenary discussion from morning's presentations

14.45 Workshops:
– Redefining positive action in light of Directives (Beverley Jones, solicitor, NI, and Ingrid Nikolay-Leitner, Ombud, Austria)
– New anti-discriminatory grounds; implementation approaches (Professor Barry Fitzpatrick, ECNI)
– Engaging with civil society: stakeholder processes and consultative councils (Irene Kingston, ECNI; Maggie Beirne, Committee on the Administration of Justice)

16.15-17.00 Plenary Session

FRIDAY, 18 JUNE 2004

9.15 Equality and non-discrimination in EU Enlargement – an outline of the Green Paper,Tony Lockett, European Commission DG Employment and Social Affairs

09.45 Single Equality Act in NI – Achieving the vision in practice (Representative of the Office of the First Minister and Deputy First Minister and Professor Barry Fitzpatrick, Legal Advisor to ECNI)

10.45 Plenary discussion on the morning's presentations

11.45 Workshops:
(Key theme of all workshops will be strengthening further co-operation between European specialised bodies, taking views from workshop participants how can this be done in the subject area of each workshop – to feed into the future phase of the project)

– Common concepts and definitions (Anna Theodóra Gunnarsdóttir, Swedish Ombudsman against Ethnic Discrimination)
– Employer and service provider duties (ECNI facilitators in respect of experience on FETO and S75)
– Review of powers of the specialised equality bodies; strengthening the legislation (Janet Cormack, MPG)

12.45 Plenary discussion on the morning workshops and on areas/themes for strengthening future collaboration between European specialized bodies – phase two of the transnational project.

14.15 Close of the Belfast Experts' Meeting

PARTICIPANTS

Austria:
Christine Baur, Ombud for Equal Employment Opportunities
Sandra Konstatzky, Ombud for Equal Employment Opportunities
Ingrid Nikolay-Leitner, Ombud for Equal Employment Opportunities

Belgium:
Dirk De Meirleir, Centre for Equal Opportunities and Opposition to Racism

Denmark:
Christoffer Ulrik Badse, Danish Institute for Human Rights

France:
Sophie Latraverse, Groupe d'Etude et de Lutte contre les Discriminations (GELD)

Ireland:
Eilis Barry, Equality Authority
Anna Visser, National Consultative Committee on Racism and Interculturalism

Netherlands:
Edith Brons, Equal Treatment Commission
Marcel Zwamborn, Equal Treatment Commission

Romania:
Adrian Vasile Camarasan, National Council for Combating Discrimination

Sweden:
Ulrika Dietersson, Ombudsman against Ethnic Discrimination
Anna Theodora Gunnarsdottir, Ombudsman against Ethnic Discrimination

United Kingdom:

Maggie Beirne, Committee on the Administration of Justice
Catherine Casserley, Disability Rights Commission
Evelyn Collins, Equality Commission for Northern Ireland
Tim Cunningham, Committee on the Administration of Justice
Neil Feris, Cleaver, Fulton and Rankin
Barry Fitzpatrick, Equality Commission for Northern Ireland
Jim Glackin, Equality Commission for Northern Ireland
Tansy Hutchinson, Northern Ireland Council for Ethnic Minorities
Beverley Jones, Jones & Cassidy Solicitors
Irene Kingston, Equality Commission for Northern Ireland
James Knox, Coalition on Sexual Orientation
Danny Lambe, Equality Commission for Northern Ireland
Liz Law, Equality Commission for Northern Ireland
Pauline Leeson, Children in Northern Ireland
Patricia Maxwell, University of Ulster
Julie McBride, Equality Commission for Northern Ireland
Jacqui McKee, Equality Commission for Northern Ireland
Antoinette McKeown, Equality Commission for Northern Ireland
Eithne McLaughlin, Queen's University of Belfast
Ivan Millen, Office of the First Minister and Deputy First Minister (OFMDFM)
Katie Radford, Save the Children UK
Sheila Rogers, Commission for Racial Equality
Geraldine Scullion, Equality Commission for Northern Ireland
David Zilkha, Commission for Racial Equality

European Commission:

Anthony Lockett, DG Employment and Social Affairs, Unit for Anti-discrimination, Fundamental Rights and Civil Society

Migration Policy Group:

Janet Cormack
Jan Niessen

TOWARDS THE UNIFORM AND DYNAMIC IMPLEMENTATION OF EU ANTI-DISCRIMINATION LEGISLATION: THE ROLE OF SPECIALISED BODIES

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 *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation* ('Framework Directive', prohibiting discrimination on the grounds of religion or belief, disability, age and sexual orientation) enhance the potential to combat discrimination in the European Union. These compliment the existing legislative programme on sex discrimination, which was most recently added to by Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. All EU Member States required legislative change to ensure compliance with these Directives.

Under Article 13 of the Racial Equality Directive, a specialised body (or bodies) must be designated for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies that have a wider brief than racial and ethnic discrimination. Article 8a of Directive 76/207/EEC as amended by Directive 2002/73/EC requires the same in relation to discrimination on the grounds of sex. The bodies' tasks are to provide independent assistance to victims of discrimination, conduct independent surveys on discrimination, and publish independent reports and make recommendations on any issue relating to such discrimination. Many States have thus been faced with the challenge either of establishing a completely new body for this purpose, or revising the mandate of an existing specialised body.

The project *Towards the uniform and dynamic implementation of EU anti-discrimination legislation: the role of specialised bodies* is funded by the European Community Action Programme to Combat Discrimination (2001-2006). It creates a network of specialised bodies with the objective of promoting the uniform interpretation and application of the EC anti-discrimination directives, and of stimulating the dynamic development of equal treatment in EU Member States. It promotes the introduction or maintenance of provisions that are more favourable to the protection of the principle of equal treatment than those laid down in the Directives, as allowed under Article 6(1) of the Racial Equality Directive and Article 8(1) of the Framework Directive. The partners of the project are the Ombud for Equal Employment Opportunities (Austria), the Centre for Equal Opportunities and Opposition to Racism (Belgium), the Equality Authority (Ireland), the Equal Treatment Commission (Netherlands, leading the project), the Ombudsman against Ethnic Discrimination (Sweden), the Commission for Racial Equality (Great Britain), the Equality Commission for Northern Ireland, and the Migration Policy Group (Brussels).

The project provides a platform for promoting the exchange of information, experience and best practice. Specialised bodies from other existing and acceding EU Member States are also participating in the activities of the project.

This is the report of the last in a series of 7 experts' meetings conducted under the project, which was hosted by the Equality Commission for Northern Ireland in Belfast on 17-18 June 2004. The meeting addressed *Considerations for Establishing Single Equality Bodies and Integrated Equality Legislation.* The six previous publications in this series are *Proving Discrimination, Protection against Discrimination and Gender Equality: how to meet both requirements, Equal Pay and Working Conditions, Discrimination in Working Life – Remedies and Enforcement, Combating discrimination in Goods and Services,* and *Strategic Enforcement and the EC Equal Treatment Directives.*

CENTRUM VOOR GELIJKHEID VAN KANSEN EN VOOR RACISME BESTRIJDING
CENTRE POUR L'ÉGALITÉ DES CHANCES ET LA LUTTE CONTRE LE RACISME
MPG
OMBUDSMANNEN MOT ETNISK DISKRIMINERING
DO
CGB
Commissie Gelijke Behandeling
Equality Commission
FOR NORTHERN IRELAND
THE EQUALITY AUTHORITY
AN EQUALITY IN A DIVERSE IRELAND
COMMISSION FOR RACIAL EQUALITY
BUNDESMINISTERIUM
FÜR SOZIALE SICHERHEIT UND GENERATIONEN
Anwältin für Gleichbehandlungsfragen