

VERSION FRANÇAISE AU VERSO

Equality Bodies Combating Discrimination on the Ground of Racial or Ethnic Origin

 **Equinet**
European network
of equality bodies

An Equinet Perspective
2012

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Equinet brings together 38 organizations from 31 European countries which are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. Equinet works to enable national equality bodies to achieve and exercise their full potential by sustaining and developing a network and a platform at European level.

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1. Introduction

1.1 Equinet *Perspective*

Equinet is the European network of equality bodies. It has a membership of thirty eight equality bodies. Equinet works to enable these organisations to achieve their full potential by developing the skills of their staff members, by supporting the strategic capacity of equality bodies and by identifying and communicating the learning from their work to policy makers.

Each year Equinet publishes a number of *perspectives* to inform policy development within the European institutions and at Member State level and to support this dimension to the work of equality bodies. These *perspectives* draw from the work and experience of the equality bodies. The current *perspective* surveys the work of equality bodies on the ground of racial or ethnic origin and seeks to establish relevant learning from this experience.

This *perspective* aims to:

- Examine the law governing the work of equality bodies on the ground of racial or ethnic origin and explore the strategic approaches developed by them in this field.
- Identify the body of work carried out on the ground of racial or ethnic origin by the diversity of equality bodies across Europe.
- Analyse this body of work, the law governing this work and the strategic approach to this work.
- Present suggestions for the further development of this work by equality bodies and identify the implications for policy formation at EU and Member State levels.

1.2 Rationale

The European Union Directive 2000/43/EC prohibits direct and indirect discrimination, harassment, instruction to discriminate and victimisation on the ground of racial or ethnic origin. The Directive has a broad scope. It covers employment, occupation and vocational training as well as social protection, including social security and healthcare, social advantages, education and access to goods and services, including housing.

The Directive contains a number of exemptions and does not cover difference of treatment based on nationality and is without prejudice to conditions and provisions of entry into and residence of third country nationals and stateless persons on the territory of Member States.

A broad field for positive action is allowed with a view to ensuring full equality in practice.

Member States are required to designate a body or bodies for the promotion of equal treatment on the ground of racial or ethnic origin. These equality bodies are to provide independent assistance to victims of discrimination in pursuing complaints, conduct independent surveys concerning discrimination, and publish independent reports and make recommendations on issues relating to such discrimination.

Equality bodies have been designated or established in all Member States in response to this requirement and, in many instances, these bodies go beyond this requirement. It is important to examine the work they have been able to develop on the ground of racial or ethnic origin based on this mandate.

Eurobarometer¹ (Discrimination in the EU in 2012, Special Eurobarometer 393) identified that discrimination on the ground of ethnic origin is seen as the most widespread in the EU with 56% of European citizens thinking that it is very or fairly widespread in their country. This is a reduction from 2009 when the figure was 61% of European citizens. There is considerable variation of opinion on this across the Member States but in most countries the situation is thought to have improved since 2009.

27% of European citizens who identified that they belong to a minority ethnic group said they had felt discriminated against in the previous twelve months on the ground of racial or ethnic origin. This is third highest behind the grounds of sexual orientation and of disability.

Given the significant and widespread scale of discrimination on the ground of racial or ethnic origin it is appropriate to explore the work equality bodies have been able to develop on this ground.

The work of the European Union Agency for Fundamental Rights has identified high levels of under-reporting on the ground of ethnic or racial origin². The EU-MIDIS study surveyed 23,500 people from minority ethnic and immigrant groups in twenty seven Member States. On average – across all groups surveyed in EU-MIDIS – 82% of those discriminated against in the past twelve months did not report their most recent experience of discrimination either at the place where it occurred or to a competent authority.

The scale of this under-reporting has the potential to undermine the effectiveness of the equal treatment legislation. In such a context it is necessary to track the progress made by equality bodies on this ground.

The Directive requires that the European Commission draw up a report to the European Parliament and Council every five years on the application of the Directive. The European Commission is currently preparing such a report.

It is timely to establish the work done by equality bodies under this Directive and to establish the learning from this work so as to provide some foundations for a more detailed input by Equinet and the equality bodies into this review.

1.3 Approach

The preparation of this *perspective* began with a debate at a meeting of the Policy Formation Working Group of Equinet. This meeting discussed the purpose of the perspective, the work of the equality bodies on the ground of racial or ethnic origin, and the issues that should be explored in the *perspective*.

The key input for this *perspective* was a survey of Equinet members to identify the following areas of the work of equality bodies on the ground of racial or ethnic origin:

- Legal work (dealing with enquiries and providing legal support or deciding cases);
- Work in supporting good practice (guidance and support to employers and service providers to implement good practice to promote equality and combat discrimination);
- Research work (conducting or commissioning surveys or research projects);
- Communication work (informing people who experience discrimination and building a culture of rights).

¹ Discrimination in the EU in 2012, Special Eurobarometer 393, November 2012, available from: http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf.

² FRA (2010), EU – MIDIS. Data in Focus Report. Rights awareness and equality bodies, http://fra.europa.eu/sites/default/files/fra_uploads/663-FRA-2011_EU_MIDIS_EN.pdf.

Questions on the transposition of the Directive 2000/43/EC, the experience of its implementation and suggestions for its further development were included.

The survey was conducted in September/October 2012. Twenty-one equality bodies responded to the survey³. These equality bodies were based in eighteen different countries: seventeen EU Member States and Croatia. Six of these equality bodies were predominantly tribunal type equality bodies⁴. Fourteen of them were predominantly promotional type equality bodies⁵.

In compliance with Directive 2000/43/EC, all, bar one, of the responding equality bodies have a legal mandate to deal with cases of discrimination on the ground of racial or ethnic origin both within and beyond the labour market. In the one instance where this was not the case the equality body had a mandate to address discrimination on this ground within the labour market and another body addressed discrimination on this ground beyond the labour market.

It is important to note that the survey results can provide a qualitative rather than a quantitative picture even when numerical indicators such as those of casework are mentioned.

The *perspective* was presented in draft form to the Policy Formation Working Group and to the Executive Board of Equinet for final drafting.

³ From Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark (2), Germany, Hungary (2), Ireland, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Sweden and United Kingdom.

⁴ Predominantly tribunal type equality bodies spend the bulk of their time and resources on hearing, investigating and deciding on individual instances of discrimination brought before them, while in some cases also performing a number of tasks identified for promotional type bodies.

⁵ Predominantly promotional type equality bodies spend the bulk of their time and resources on supporting good practice, raising awareness of rights, developing a knowledge base on equality and providing legal advice and assistance to victims of discrimination.

2. Strategic Approach

2.1 Racism

Racism is a complex and constantly changing phenomenon. The quality of the understanding of this phenomenon that is achieved will shape the quality of the strategic approach of those that seek to challenge discrimination on the ground of racial or ethnic origin. It is useful therefore, at the start of this *perspective*, to set out some of the key dimensions to the debate on racism.

Racism involves negative attitudes and practices towards people because they belong to groups that are deemed to be different on the basis of certain physical or cultural characteristics. These negative attitudes and practices create contexts of discrimination and disadvantage.

Racism has been underpinned by 'race' thinking⁶. This is an understanding of human beings as being divided into different 'races'. 'Races' are determined on the basis of selective physical criteria. Fixed characteristics are associated with the different 'races'. Biology is therefore deemed to determine behaviour. A hierarchy is established where some 'races' are deemed inferior to others. A false racial science has evolved to sustain this supposedly scientific form of racism.

This 'race' thinking has been challenged firstly as a form of stereotyping. It has been more fundamentally challenged with the scientific work done by UNESCO in particular⁷. This work has stressed that there is no scientific basis to this division of the world into 'races' and that there is only one human race. It has concluded that 'race' is a social myth that has created huge human and social damage.

'Race' thinking still persists and these supposedly scientific forms of racism continue, based on biological difference. However, there has been a shift from the more supposedly scientific forms of racism to a cultural racism. Cultural difference is increasingly viewed as the catalyst used for contemporary manifestations of racism.

Cultural forms of racism are not grounded in arguments that specific groups are biologically inferior. These new forms of racism pose culture as the determining factor for negative characteristics. Culture is deemed to be non-negotiable and unchanging. Stereotyping remains a key factor in this racism. The links to certain physical features remain but are now disguised in a form of biological culturalism.

The understanding of how racism operates has also evolved. Individual attitudes and behaviours were predominantly deemed to be the cause of racism. Work to combat racism focused on promoting tolerance and changing attitudes and on prohibiting discrimination and changing behaviours. However the persistence of inequality and disadvantage for people covered by the ground of racial or ethnic origin, despite action to change attitudes and prohibit discrimination, suggested that this focus on the individual level is inadequate. The focus in the debate on challenging racism has increasingly been on the need to address institutional racism⁸.

6 Downing J & Husband C, *Representing Race: Racisms, and the Media*, Sage, 2005.

7 Declaration on Race and Racial Prejudice, UNESCO, 1978

8 Dominelli L, *Anti Racist Social Work*, 3rd ed, Palgrave Macmillan, 2008.

The UK MacPherson Inquiry report of 1999⁹ into the response of the London Metropolitan Police to the killing of Stephen Lawrence, a Black teenager, provided a valuable definition of institutional racism as:

the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage ethnic minority people.

Institutional racism is more difficult to address than individual racism. It is based on taken for granted institutional practices. It is usually unwitting and unconscious. It can even be based on the best intentions. It is only visible in the outcomes of disadvantage from institutional practice for people covered by the ground of racial or ethnic origin¹⁰.

Addressing institutional racism is key to any ambition to eliminate racism¹¹. It is at this level of the institution that racism is regenerated and passed on from one generation to another. It is at this level of the institution that the disadvantage that accrues to people covered by the ground of racial or ethnic origin accumulates and is made intergenerational.

The shadow report on Racism in Europe of the European Network Against Racism for 2010 to 2011 identifies outcomes of significant disadvantage for people covered by the ground of racial or ethnic origin, across Europe¹². These outcomes are explored in six different fields:

- Employment with a focus on disproportionate unemployment rates and on difficulties in recognition of qualifications, barriers in recruitment processes, glass ceilings in the labour market and unequal working conditions.
- Housing and accommodation with a focus on poor living conditions, segregation and overcrowding and on difficulties in the private rented sector, in access to public housing and in securing loans to purchase property.
- Education with a focus on poor educational attainment and over-representation among early school leavers and on difficulties due to segregation, discrimination, language barriers and bullying.
- Health with a focus on lower health outcomes and on difficulties due to prejudice of staff and patients and due to language and cultural barriers.
- Access to goods and services including bars, places of entertainment, financial services and public transport.
- Criminal justice with a focus on greater likelihood of being stopped and searched, arrested, prosecuted and imprisoned and on difficulties of racist violence and crime.

2.2 The law

The Directive 2000/43/EC is challenged to address all these complexities of racism if it is to be effective in contributing to the elimination of discrimination on the ground of racial or ethnic origin.

The use of the ground that names both racial and ethnic origin usefully captures the changing nature of racism. The ground, with its focus on racial origin, acknowledges the continuing use of specific physical characteristics in the discrimination experienced by people covered by the ground. Recital 6 of the Directive valuably states that 'the European Union rejects theories

9 The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William MacPherson of Cluny, The Stationary Office, UK, 1999.

10 Crowley N, *An Ambition for Equality*, Irish University Press, 2006.

11 Fredman S, *Human Rights Transformed: Positive Rights and Positive Duties*, Oxford University Press, 2008.

12 Racism in Europe: ENAR Shadow Report 2010-2011, ENAR,, Brussels, 2012.

which attempt to determine the existence of separate human races' and that 'the use of the term 'racial origin' in this Directive does not imply any acceptance of such theories'. The focus on ethnic origin equally acknowledges that discrimination against people covered by the ground is also framed in relation to cultural characteristics.

The exclusion of nationality and the difficulties in responding to the experiences of third country nationals can be identified as a gap in the manner in which the grounds have a capacity to address the issue of racism. It is of interest that the survey for this *perspective* found that the mandate of ten of the twenty-one equality bodies includes grounds of nationality and/or national origin.

The provisions of the Directive in relation to both direct and indirect discrimination allow for a response to discrimination at both the level of individual behaviour and of institutional systems. Indirect discrimination has a particular contribution to make to addressing some forms of institutional discrimination in prohibiting an apparently neutral provision, criterion or practice that would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons.

However, unlike the provisions on direct discrimination, the provisions on indirect discrimination are bounded by an exemption that allows a provision, criterion or practice, which is objectively justified by a legitimate aim and where the means of achieving that aim are appropriate and necessary.

The survey for this *perspective* reveals another element of law at the national level that has enabled institutional racism to be addressed. This involves provisions that impose obligations on employers and service providers. These take their most developed form in provisions that impose a duty on public sector organisations to have due regard to equality in carrying out their functions.

2.3 The equality bodies

A number of issues for equality bodies arise in the survey responses when this brief examination of racism and the legislation designed to combat racism is considered. Issues of the scale of work developed on the ground of racial or ethnic origin, of action on institutional racism and of the focus on racism can be identified.

The first issue relates to the scale of legal work that is being implemented by equality bodies on the ground of racial or ethnic origin. Eurobarometer has identified that 56% of European citizens think that this form of discrimination is widespread, highest of all the grounds. It could be expected that such discrimination would form a significant feature of the casework developed by the equality bodies under the Directive.

The numbers of complaints and inquiries on the ground of racial or ethnic discrimination are low for many equality bodies. The numbers do vary greatly among the equality bodies. The nature of the data does not allow comparisons to be usefully made. However, the share of complaints and inquiries on this ground, of all complaints or inquiries received by the equality bodies in 2011, ranged between 50% and 2.4%. It was above 20% for five equality bodies and was 10% or below for five equality bodies. Five equality bodies could not give any information on the scale of complaints or inquiries on this ground.

Under-reporting was identified by eighteen equality bodies in the survey as a significant barrier to their work on this ground. The equality bodies noted different barriers to reporting. These included lack of information, fear of victimisation, poor prospects of success, lack of trust in the institutions, geographical distance from the place at which a complaint is made,

and a social context hostile to people covered by the ground of racial or ethnic origin. Particularly high levels of under-reporting by Roma people were identified in the survey.

The survey demonstrated that equality bodies are giving increasing attention to this issue. There are reports of new and innovative initiatives to take on the challenge of under-reporting. Particular initiatives identified include:

- The use of 'field teams' by the High Commission for Immigration and Intercultural Dialogue in Portugal to inform people of their rights.
- A process of mutual education developed by the Discrimination Ombudsman in Sweden that involves the equality body and people and organisations from minority ethnic groups.
- A transfer of expertise team in the Equality and Human Rights Commission in Great Britain that organises programmes for providers of advice and advocacy and representatives of minority ethnic groups.
- Developing links with NGOs representing people covered by the ground of racial or ethnic origin by equality bodies in Croatia, Ireland, Hungary and Belgium.
- Providing training to people covered by the ground of racial or ethnic origin in lobbying and advocacy and for empowerment by the National Commission for the Promotion of Equality in Malta.
- A Panel Door Policy in every big city in the Netherlands where the City Council, the police and owners of restaurants, bars and clubs cooperate to make it easier to make complaints of discrimination. The Board for Human Rights and Equal Treatment (previously Equal Treatment Commission) is organising an event to enable an exchange of experience between these Panels.
- The development of a Smartphone app to make filing a complaint easier by the Board for Human Rights and Equal Treatment (previously Equal Treatment Commission) in the Netherlands.
- Translations of information materials into different languages by the Federal Anti-Discrimination Agency in Germany.
- A memorandum of cooperation with an attorneys association with a view to increasing support for cases taken by Roma by the Public Defender of Rights in the Czech Republic.
- The Equality Commission for Northern Ireland works with connectors and advice giving bodies to combat under-reporting and has hosted a capacity building event for advisors from with the sector working on the ground of racial or ethnic origin to brief them on the legal services of the Commission.
- Projects of the Danish Institute for Human Rights to reach out to disadvantaged target groups to strengthen local assistance to victims of discrimination and raise awareness of rights and where to make a complaint.

However, low success rates for cases under the anti-discrimination legislation emerge as an issue from the survey that is likely to exacerbate under-reporting. High success rates challenge under-reporting, in particular where this problem is caused by lack of trust in the system or lack of belief that change is possible. The success rates reported in the survey ranged from a high of 54.5% to a low of 0%. Six bodies reported success rates of 10% or less. Seven equality bodies reported success rates of 20% or over. In Britain, the most accurate data is available and tribunal statistics show that discrimination claims have the lowest success rates among the issues dealt with by the tribunals, ranging between 1% and 3%.

The all-pervasive issue of inadequate resources diminishes the capacity of equality bodies to address under-reporting. Almost all equality bodies in the survey identified the barrier of

inadequate human and financial resources. This was noted as curtailing outreach initiatives, communication and public awareness actions, research projects and legal work.

The second issue relates to the level of action on institutional discrimination. This emerges as a limited focus in the work reported by equality bodies. The casework developed by equality bodies on indirect discrimination provides some indication of the focus that has been secured on institutional discrimination. Ten equality bodies reported that none of the cases where discrimination was established related to indirect discrimination. Four equality bodies reported a significant percentage of cases decided that established indirect discrimination but the overall numbers are still very small. Seven equality bodies were unable to provide information on how many cases of established discrimination related to indirect discrimination.

It is not easy to develop casework on indirect discrimination, despite its centrality to eliminating racism, in particular in its institutional form. Under-reporting plays a role in this. However it would also appear from the survey that equality bodies face difficulties in proving indirect discrimination, in particular in gathering evidence and securing necessary data.

In three jurisdictions equality bodies reported a capacity to address institutional racism through the positive duties placed on employers and service providers, in particular public sector organisations, to be proactive in promoting equality and combating discrimination.

Five equality bodies reported using research projects to examine and uncover institutional discrimination. Two of these equality bodies reported the use of situation testing to respond to institutional discrimination, one in the area of recruitment and one in the area of housing. A third equality body reported piloting an initiative based on depersonalized CVs to address institutional discrimination in recruitment. A fourth equality body reported research on the representation of ethnic minorities in the police force. A fifth equality body commissioned research on institutional racism in its jurisdiction in response to the report of the Stephen Lawrence inquiry in the UK¹³. This found that 'race' was not generally seen as important and recommended that leaders in all sectors should recognise the importance of dealing with equality on this ground and take steps to change the culture of their organisations¹⁴.

Two equality bodies reported using other powers to respond to institutional racism. In one instance, a predominantly promotional type body established an inquiry to examine the treatment of agency workers in a specific sector of industry. The objective was to improve employment and recruitment processes in the sector. In another instance, a predominantly tribunal type body conducted an investigation in a college in the higher education sector after a series of complaints on the ground of racial or ethnic origin. This found structural patterns of discrimination and inadequate systems to deal with complaints.

The third issue relates to the focus on racism. A small number of equality bodies reported a named focus on racism in their work. There can be strategic considerations at play in this. However, one equality body that does name the issue of racism noted barriers it experiences in a context where racism remains un-named by most entities. It noted a denial within the media and among policy makers that racism and 'race' discrimination are issues within the country. To the extent that racism is admitted the focus is placed on people with an overt racist ideology. These tend to be individuals and groups that are already marginal. This results in an absence of focus on those who are, for example, employers and landlords. The potential for institutional racism remains invisible.

It appears that most equality bodies do not explicitly name the issue of racism in their work on the ground of racial or ethnic origin. One equality body reported that an initiative that it runs

¹³ <http://www.archive.official-documents.co.uk/document/cm42/4262/4262.htm>

¹⁴ A Wake Up Call on Race: Implications of the MacPherson Report for Institutional Racism in Northern Ireland, McGill and Oliver, Equality Commission for Northern Ireland, 2002.

on workplace discrimination was named as challenging racism but is now named as promoting diversity. This focus on diversity rather than racism is not, however, confined to one Member State.

3. The Work Being Done by Equality Bodies

3.1 Types of work

This survey focuses on the four types of work identified as being carried out by equality bodies in the Study on Equality Bodies published by the European Commission¹⁵. These four areas of work are:

- Providing legal advice and assistance to individual victims of discrimination or hearing, investigating, and deciding on individual instances of discrimination brought before them.
- Supporting good practice in organisations.
- Developing a knowledge base on equality and non-discrimination.
- Raising awareness of rights.

The exact composition of initiatives will vary as to whether the body is a predominantly promotional type equality body or a predominantly tribunal type equality body. This composition will also be a matter for strategic choices by the individual equality body.

Many equality bodies now have a mandate that covers a broad range of different grounds alongside that of racial or ethnic origin. These equality bodies reported taking a horizontal approach that addresses the ground of racial and ethnic origin in initiatives alongside all the other grounds. In some instances these equality bodies noted other levels to their work where they take a specific focus on issues relating to the ground of racial or ethnic origin and where they have developed initiatives that address the specific issues where the ground of racial or ethnic origin intersects with other grounds.

3.2 Objectives established for the work

Legal Objectives

Only five equality bodies reported having or developing a formal or an informal litigation strategy. Predominantly tribunal type equality bodies have to deal with all cases that are presented, some equality bodies reported dealing with complaints on a case-by-case basis, and others noted that they did not have litigation powers.

The litigation strategies reported are based on two different sets of priorities. In two instances the approach is to prioritise cases that add value to the existing case law. In two instances prioritisation is on the basis of the ground of racial or ethnic origin being identified as a particularly prominent ground or specific groups within this ground being identified in this way. In another instance a combination of these two approaches was used to ensure a critical mass of case-files are opened.

Objectives for Supporting Good Practice

Eight equality bodies reported no set objectives in relation to work in supporting good practice by employers and service providers. It is to be expected that predominantly tribunal type equality bodies would be less active in this field. Six equality bodies reported objectives that focus on raising awareness, training and preventing discrimination by employers. These objectives predominantly relate to individual level racism. Seven equality bodies reported

¹⁵ 'Study on Equality Bodies Set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC', European Commission, 2010, available from <http://www.equineteurope.org/Release-of-the-EC-synthesis-report>.

objectives that relate to changing policy, procedures and practices of employers, service providers and policy makers. These objectives predominantly relate to institutional level racism and are accompanied by objectives that also relate to individual level racism.

The main target groups of duty bearers for the work of equality bodies in supporting good practice are employers and their organisations (reported by nine equality bodies) as well as trade unions (reported by seven equality bodies) and public authorities or administrations (reported by six equality bodies). Other groups reported include NGOs (reported by three equality bodies), the media (reported by two equality bodies), owners of establishments such as restaurants, bars and clubs (reported by two equality bodies), police forces (reported by two equality bodies), legal professionals (reported by two equality bodies), and providers of housing, work councils, national labour councils, property owners, professionals in the education sector and recruitment agencies (each reported by one equality body).

Research Objectives

There is no clear pattern to the research objectives reported in the survey. Six equality bodies reported no objectives and no initiatives in this area on the ground of racial or ethnic origin. Seven equality bodies reported a small number of research initiatives on this ground. These tended to relate to specific issues that arose for the equality body based on the results from their litigation work. In some instances these initiatives concentrated on assessing awareness of rights and levels of discrimination to enable a better functioning of the equality body. Eight equality bodies reported a significant body of research work on the ground of racial or ethnic origin. No particular pattern emerges in this work. There is, however, a particular strand of research evident that has a focus on institutional discrimination with the objective to reveal discriminatory mechanisms in particular sectors.

Communication Objectives

All equality bodies reported some level of communication work aimed at ensuring people covered by the ground of racial or ethnic origin are aware of their rights under equal treatment legislation. Eight equality bodies reported taking specific and targeted initiatives in this regard that went beyond general information provision. Six equality bodies identified specific communication initiatives aimed at informing duty bearers of their obligations and about good practice in promoting equality on the ground of racial or ethnic origin. Only four equality bodies reported communication initiatives aimed at shaping societal attitudes. These tended to focus on promoting the advantages of non-discrimination. Overall the focus for the communication work reported was predominantly on individual level change with some evidence of communication work aimed at achieving institutional change.

3.3 Barriers identified

One overarching barrier to the effective work of equality bodies on the ground of racial or ethnic origin was repeatedly identified in the survey. This is the inadequate financial and personnel resources available to most of the equality bodies.

The legal work of the equality bodies faces barriers of under-reporting, low success rates and accessing data to build sufficient evidence, particularly in cases of indirect discrimination. These were referred to extensively in the responses to the survey. Further barriers are also identified including lack of expertise in the field among the judiciary and limited implementation of burden of proof provisions.

The impact of the economic and financial crisis was reported as a barrier to work in supporting good practice. Reluctance among stakeholders, in particular employers, to engage with this work was reported in a number of instances. This reluctance was also noted as

being linked to denial of the problem of discrimination on the ground of racial or ethnic origin, and the sensitivity of work on this ground due to overlap with religion, and Islamophobia in particular, and to economic migration. One equality body reported developing a training module for which there is now almost no demand among employers and service providers.

Most of the initiatives to support good practice reported are directed at, or developed in cooperation with, public sector institutions rather than with private sector employers or service providers. This imbalance is problematic if the private sector ends up outside the scope of this work being done by equality bodies.

The major barriers to research work relate to data. Equality bodies reported barriers due to the lack of qualitative and/or quantitative data available on racial or ethnic origin and due to the small scale of different ethnic groups in available datasets. Several equality bodies also reported barriers due to negative attitudes or political unwillingness to acknowledge and address discrimination issues on this ground. One equality body reported that such an attitude of denial of race discrimination is reflected in the work of “mainstream” researchers (non-specialised in equality and/or work on the ground of racial or ethnic origin). Other barriers reported include the complexity of intersecting grounds such as gender and race and issues in defining ‘ethnic origin’.

Many equality bodies reported language diversity as a barrier to their communication work. Most reported translating key information materials and many reported providing interpretation. However, one equality body reported not having the means to communicate in languages other than the official language of the State. Two equality bodies reported a hostile social environment as a barrier to communication work, and another noted the denial of the issue by media and policy makers as a barrier to this work. A small number identified lack of expertise in the field of communication work as a barrier.

NGOs offer a valued channel of communication and source of information for equality bodies. Several equality bodies reported on difficulties in reaching certain minority ethnic groups, and in finding the right ways of linking to such groups, in particular when NGOs are underdeveloped. The absence of strong NGOs to act as partners for equality bodies in implementing equal treatment legislation emerges as a significant issue. This issue is getting more serious as the economic crisis is accompanied by cutbacks in public funding to these NGOs.

3.4 Exemplars of work beyond litigation

Many equality bodies reported innovative initiatives within the different fields for their work outside of litigation work. It is useful to flag these as a source of inspiration to and learning for other equality bodies and for policy makers. A number of these initiatives are introduced below in each of the different fields of work.

Supporting Good Practice

Exemplar initiatives in the field of supporting good practice included:

- The Danish Institute of Human Rights in Denmark developed the MIA award scheme to acknowledge companies working for diversity, the Diversity Lab to support management and human resource personnel in companies, the Diversity Wheel as a manual to provide guidance on the promotion of diversity, and the 360 (degree) equality lab to promote and mainstream equal treatment in service provision.
- The Ombudsman Office in Poland developed a handbook on discrimination for the police.

- The Discrimination Ombudsman in Sweden developed good practice guidance products for educational establishments. These include 'Prevent Discrimination – Promote Equal Treatment in Higher Education', 'Prevent Discrimination and Harassment in Pre-Schools', 'The Greenhouse Method – Pre-Schools', 'The Greenhouse Method – Schools', and 'Equal Rights in Schools – the Establishment of Goals and Measures. A web based tool to help schools in developing action plans against discrimination and harassment and a comic book on these issues for students were also produced.
- The Equality Authority in Ireland developed a project on workplace diversity. The main employer representative body was supported to operate a help desk for employers on diversity issues, the umbrella organisation for trade unions was supported to operate a challenge fund to enable trade unions to take action on cultural diversity, local Chambers of Commerce were funded to organise events on workplace diversity, and specific sectors, such as the universities, were supported to develop tools to guide action on workplace diversity.

Research

Exemplar initiatives in the field of research included:

- The development of a socio-economic monitoring mechanism based on ethnic origin by the Centre for Equal Opportunities Opposition to Racism in Belgium. This is based on aggregated data from national registers and social warehouse data and involved close collaboration with the national privacy commission and other public authorities.
- The Public Defender of Rights in the Czech Republic developed an initiative to track the number of Roma children in special schools on foot of an ECtHR finding that too many Roma children were educated in these schools¹⁶.
- The Ombud for Equal Treatment in Austria developed a project to analyse discriminatory advertisements in newspapers on foot of changes to the legislation governing this field. This analysis addressed both overt and covert elements that would discriminate against people on the ground of racial or ethnic origin.
- The National Commission for the Promotion of Equality in Malta are conducting research on the experiences of immigrants and minority ethnic groups in relation to housing and on the experiences of property owners and their representatives. A training programme and leaflets on non-discrimination rights in this field will be developed based on this.
- The Equality and Human Rights Commission in Great Britain developed a measurement framework to track and report on progress against a variety of equality and human rights indicators. 'How Fair is Britain?' reported equality outcomes for specific groups in areas such as health, education, employment, and physical and legal security.
- The Equality Commission for Northern Ireland developed a research project with an aim to outline minimum standards for different types of Traveller accommodation, through the analysis of international and national legislation, the policy environment, the impact of racism and instances of good practice in providing Traveller accommodation.

¹⁶ European Court of Human Rights, *D.H. and others v Czech Republic*, n° 57325/00, 13 November 2007.

Communication

Exemplar initiatives in the field of communication included:

- The Federal Anti-Discrimination Agency in Germany organised a joint initiative with the daily Turkish newspaper Hürriyet. This enabled people who had experienced discrimination to contact FADA through the newspaper.
- The Ombudsman Office in Cyprus conducted three major awareness campaigns in 2005, 2007 and 2010. This included TV, radio and printed messages on discrimination on the ground of racial or ethnic origin and other grounds.
- In the Netherlands the National Board for Human Rights and Equal Treatment (previously Equal Treatment Commission) gave priority to one particular case on the ground of racial or ethnic origin for which they had made a finding of discrimination. They did extensive media work around the case and provided a follow up presentation to the staff of the respondent involved.
- The Board for Equal Treatment in Denmark produces a monthly newsletter with information on casework decisions by the Board.
- The Ombudsman Office in Croatia has concluded an agreement with five NGOs that have become regional contact points for the office. These agreements support the work to inform citizens about discrimination issues.
- The High Commission for Immigration and Intercultural Dialogue in Portugal organised a conference about 'Media and Immigration' and launched an annual 'Journalism for Cultural Diversity' prize to acknowledge journalists providing positive images of immigrants or intercultural dialogue.

4. Issues Being Addressed in the Work of Equality Bodies

The work being done by the equality bodies on the ground of racial or ethnic origin highlights a wide range of discriminatory issues on this ground. These issues arise first and foremost in the legal work of the equality bodies. However they are further developed in the research initiatives, the work of supporting good practice by employers and service providers and within communication activities.

4.1 Workplace

In the workplace the most common issues being addressed by equality bodies on the ground of racial or ethnic origin are discrimination in the recruitment process, discriminatory dismissals and harassment. Issues that are reported to a lesser degree include working conditions, promotion and unequal pay. The particular issue of agency workers was reported as a focus by one equality body.

4.2 Beyond the labour market

In the provision of goods and services a wide range of issues are reported as being addressed by equality bodies on the ground of racial or ethnic origin. The denial of access to restaurants, clubs and hotels emerges most frequently along with discrimination in the field of housing, particularly the private rented sector, and in the provision of education and in health services. Work has also focused on discrimination in public transport, financial services and social services. The core issues are those of access and, to a lesser extent, harassment.

4.3 Intersecting grounds

The ground of racial or ethnic origin can intersect with other grounds covered by the equal treatment Directives. The most common grounds reported as intersecting with this ground are gender and religion. Several equality bodies mentioned an intersection with the disability, age and sexual orientation grounds. The intersection of the ground of racial or ethnic origin with the ground of socio economic status was identified although only a small number of equality bodies have a mandate in relation to a socio-economic ground. This intersection was particularly mentioned in relation to Roma people.

4.4 Other issues

The criminal justice system, particularly the operations of the police, is a focus for five equality bodies. Two of these bodies are also national human rights institutions and one is also an ombudsman office. This important area tends to fall outside the mandate of equality bodies.

Three equality bodies reported work on refugee and asylum seeker issues. One body was also an ombudsman office and the other two were also national human rights institutions. This important area also tends to fall outside the mandate of equality bodies.

Five equality bodies reported that they have a legal mandate in relation to hate crime and/or speech. One of these bodies was also a national human rights institution and another was also an ombudsman office. There are differences in the levels of work reported on this issue. One body reported as many as 248 case-files on this issue whereas another reported a single case-file.

A small number of equality bodies responded that they use the powers they have to influence responses to hate crime and/or speech. In some instances it has been possible, although difficult on occasion, to take up such issues under the harassment provisions in the legislation. In other instances the issues have been raised as part of the communications work of the equality bodies.

5. Issues in the Law

In the survey the equality bodies reported a number of issues in relation to difficulties with the implementation of the current legislation in their jurisdiction. The major issues related to sanctions and the need for sanctions that are effective, proportionate, and dissuasive.

5.1 Sanctions

Only one equality body reported that it regarded the imposed sanctions as effective, proportionate, and dissuasive. It noted that compensation on the ground of racial or ethnic origin tended to be higher than on other grounds. Seven equality bodies did not report information in relation to sanctions.

Twelve equality bodies reported shortcomings regarding the effectiveness, proportionality and/or dissuasiveness of the sanctions applied in cases where discrimination is established. In particular they considered that the levels of awarded compensations are insufficient. This is reported as being particularly at issue in cases dealing with discrimination outside of the labour market. It was noted that the levels of compensation in cases of employment discrimination in some jurisdictions depend on the income of the complainant and that this can lead to sanctions that are not dissuasive where incomes are low. It was noted that cases of multiple discrimination do not lead to higher levels of compensation.

A significant number of predominantly tribunal type equality bodies do not have the power to impose sanctions and/or make findings that are legally binding. Two of these equality bodies further noted that the procedures before the Courts to request compensation are time- and resource consuming. Overall, the fact that an equality body does not have the possibility to impose sanctions and/or make legally binding decisions was seen as a shortcoming in the area of sanctions by the equality bodies reporting.

Two equality bodies made recommendations in relation to sanctions. One recommendation was to allow for Court orders requiring respondents found guilty of discrimination to report back to the Court or to the equality body after a certain period of time on the measures undertaken to address the finding and to avoid further discrimination. Another recommendation was to allow for recommendations based on a finding of discrimination that would impact on the wider workforce or customer base, and not only the individual claimant.

One equality body reported that, although it cannot impose sanctions, follow-up work by the equality body has resulted in a more meaningful impact from the cases where findings of discrimination were made. It noted that in about 70% of the successful cases the defendant took some action to remedy the discriminatory situation. Another equality body reported that the practice when settlements are reached in cases of employers and service providers agreeing to conduct policy and practice reviews and to implement the recommendations of the equality body has proven effective.

5.2 Further issues

The responding equality bodies identified a number of further issues they face in implementing the equal treatment legislation.

Some of these relate to particular legal provisions:

- The interpretation of access in relation to vocational guidance, vocational training and work experience.
- Capacity to address victimisation after the relationship has ended.

- In one instance reported where victimisation is defined as requiring a comparator and where harassment has been defined in terms of “on grounds of” racial or ethnic origin rather than “relating to” such characteristics.
- Problems due to national procedural law that requires the equality body only to consider cases on the basis of written evidence

Some relate to the scope of the legislation:

- Lack of inclusion of nationality as part of the ground.
- Capacity to address harassment on the internet.
- Capacity to address discrimination in leasing.
- Capacity to address discrimination by the police.
- Lack of coverage of multiple discrimination.

Others relate to the justice system:

- Low levels of expertise among the judiciary.
- Inadequate implementation of burden of proof requirements.
- The short time limits applied in relation to lodging cases.
- The absence of a standard for the minimum level of assistance that should be available to a complainant.
- The doctrine of illegality of contracts and the impact of this on discrimination against those employed illegally.

6. Conclusion

This *perspective* has been developed at a moment when the European Commission is preparing a report on the application of Directive 2000/43/EC. It is hoped that this record and analysis of the work of equality bodies on the ground of racial or ethnic origin will assist this initiative.

Respondents were invited to comment in relation to the areas that this review could usefully cover. Their responses suggest three such areas:

1. *Existing provisions that could be improved.*

A number of equality bodies addressed the need for more detailed provision in relation to sanctions including setting out a diversity of sanctions that could be applied to achieve systemic change; for greater clarity in the provisions on access to vocational guidance, vocational training and work experience; for greater clarity in relation to liability for harassment by third parties; and for guidance in relation to the implementation of Article 14 of the Directive in relation to coherence with existing laws, regulations, administrative provisions and collective agreements.

2. *Addressing provisions in relation to equality bodies.*

A number of equality bodies addressed the need to further develop the provisions in relation to equality bodies. The purpose of this would be to establish more detailed provisions on standards required for the effectiveness and independence of these bodies; and to give more detail on the functions currently set out in the Directive for these bodies so that minimum standards across all Member States could be achieved for the operation of each function.

3. *Additional provisions that could be considered.*

A number of equality bodies identified the need for the Directive to address issues of hate speech and incitement to hatred on the ground of racial or ethnic origin; to encompass a ground of nationality; to address intersectionality with other grounds including the ground of socio-economic status; to develop positive duties in particular in relation to procurement, employment, service provision and policy making in the public sector; and to allow for litigation by means of class action.

Equinet is committed to further developing these ideas and preparing more detailed inputs to this review by the European Commission of Directive 2000/43/EC.

This *perspective* offers valuable peer learning for equality bodies. Four specific learning issues can be identified. These are:

- The importance of innovative action to address high levels of under-reporting on the ground of racial or ethnic origin. Linked to this issue is the need to better understand the low rates of success in cases on the ground of racial or ethnic origin.
- The value in equality bodies naming racism as an issue and promoting an understanding that enables a focus on institutional racism.
- The need to share the experience of equality bodies that have developed a body of work that address institutional level racism and to build a more comprehensive approach by all equality bodies that encompasses initiative to challenge both individual level racism and institutional level racism.
- The challenge to achieve a comprehensive focus on the issue of racism and to learn from the equality bodies that have managed to build some focus on key sites for potential discrimination that can lie outside the mandate of equality bodies. These

include the criminal justice system and the refugee and asylum system and the issues of hate speech and hate crime.

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Equinet member organisations

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.at

BELGIUM

Centre for Equal Opportunities & Opposition to Racism
www.diversite.be and www.diversiteit.be

BELGIUM

Institute for the Equality of Women and Men
<http://figvm-iefh.belgium.be>

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Office of the Ombudsman
www.ombudsman.hr

CYPRUS

Office of the Commissioner for Administration
(Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Office of the Public Defender of Rights
www.ochrance.cz

DENMARK

Board of Equal Treatment
www.ast.dk

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.svv.ee

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FINLAND

Ombudsman for Minorities
www.ofm.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Equal Treatment Authority
www.egyenlobanasmod.hu

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Equality Authority
www.equality.ie

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

(FYRO) MACEDONIA

Commission for the Protection against Discrimination
www.kzd.mk/mk/

MALTA

National Commission for the Promotion of Equality
www.equality.gov.mt

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Human Rights Defender
www.rpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL

High Commission for Immigration and Intercultural Dialogue
www.acidi.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.org.ro

SERBIA

Commission for the Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

National Centre for Human Rights
www.snsip.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.net

SPAIN

Spanish Race and Ethnic Equality Council
www.igualdadynodiscriminacion.org

SWEDEN

Equality Ombudsman
www.do.se

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

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