**Gender Equality Working Group
MEETING MINUTES**

**DAY ONE
20 April 2016**

**Welcome**

Director of the Executive Office of Northern Ireland, **Andrew Elliott**, welcomed participants and gave a brief overview of the situation in Northern Ireland in the field of equality. He outlined that there is ongoing work to develop a gender equality strategy for 2017, and that domestic and sexual violence, and gender balance in decision making will be priorities. There is also a strategy for older people under development.

**Tour de table**

Northern Ireland

* Gender equality strategy 2017: NEB published recommendations on occasion of 40 year anniversary of sex discrimination legislation
* There is an appeal on 9 May for the bakery case (refusal to bake wedding cake for same sex couple) after successful first instance ruling

France

* Start to restructure the Defender of Rights
* Launched a public call on discrimination on the basis of origin
* Started the discussion on a new legislation on equality and citizenship
* Another legislation proposal which will extend the protection of women after they come back from maternity leave (it will extend up to 10 weeks). This will also be the same for men

Czech Republic

* Become a partner in a project of an NGO on Gender Pay Gap

Sweden

* More focus on proactive measures rather than individual complaints
* Also more counselling on rights rather than taking cases to court

Albania

* Good competitive legislation framework on gender equality. What is satisfactory it is also the changes in the civil code.
* Problem: no penalty if legislation is not implemented or if it is poorly implemented – this is due to weak monitoring systems

Poland

* Long parental leave for parents in Poland – however it is still the mothers who take more of the leave
* Restriction in abortion rights

Denmark

* We have done projects on discrimination based on pregnancy
* Current discussions on equal pay

Ireland

* CEDAW list of issues
* Seminar next week on the potential of the public sector for gender mainstreaming
* First drafts of the gender identity act (?)

Greece

* Case on maternal leave

Portugal

* Abortion law
* Adoption for same-sex couples (parental leave also includes same-sex couples)
* Even if the legislation is in place, it is still mothers taking most of the leaves
* We have been working on three EU grants (one on sexual and moral harassment – which will also be translated into English)

Hungary

* Many project of reasonable accommodation (as a follow up to the Vienna seminar)

Malta

* Elderly women and men
* Diversity aiming at capacity building within the organisation
* Now we are working on equality beyond gender roles in employment – i.e. discrimination that men have to face when they take up genderised positions
* Currently collaborating with EIGE (particularly to collect data in the labour market)

Germany

* In March they started off with publishing guidelines for employers on the field of sexual harassment – they will also give training courses on this issues
* Access to education when you’re already employed

Austria

* Two-year focus on companies and service providers (this is just at the beginning)
* Gender pay gap: <http://www.genderpaygap.eu/>

**Discussion** on Pay Transparency Recommendation

The moderator of the working group, **Theresa Hammer,** gave a presentation on the survey results on the status of implementation of the Commission’s recommendation on pay transparency. Please find attached her PowerPoint presentation for reference.

Eleonora Sadauskaite (European Commission): There is a plan to draft a report which will be adopted by the end of the year. Now they are in the process of assessing all the data from Member States.

Theresa: It seems the Austrian equality body was the only one involved in the reporting process of the Member States

Malta: There is a challenge in that even if we are involved in the process, we do not know the final position that it is send to the Commission.

Denmark: We also do not see the final report – yet it is important to see the final report for equality bodies to ensure transparency and accuracy.

Although it is also clear for us that the state is concerned that the Equality Body can criticise

Eleonora Sadauskaite (Commission): The Commission is certainly open to cooperate, and be in contact in the evaluation and reporting process that is coming up.

**DAY TWO
21 April 2016**

Welcome address

**Liesbet Stevens**, Co-Director of the Institute for the Equality of Women and Men, welcomed participants and provided an orientation on two ongoing issues for the institute in Belgium: the question of equal access for all women to beauty contests, and access for girls aged 12-17 to mixed water polo competitions.

Summary of previous discussion by the Policy Formation Working Group on INTERSECTIONALITY
by **Stefania Minervino**

Main points:

* Gender is the ground that intersects most frequently with other grounds
* Intersectionality causes overlap between equality issues and human rights issues (e.g. migrant women)
* Crucial to address the setting where intersectional discrimination takes place. Vulnerable settings include:
	+ Healthcare
	+ Criminal justice system
	+ Education
	+ Care work
	+ Homelessness
* Not sufficient research on intersectional discrimination
* Challenges in the legal work:
	+ How to frame an intersectional case?
	+ Is the justice system sensitive to intersectional discrimination?
	+ Identity is complex. There is tension between considering whether a single ground is able to reflect the complexity of a person’s identity on the one hand, while considering the chances of a given case being successful on the other hand.

Equinet Project Officer, **Jessica Machacova**, informed of the survey currently circulated among Equinet members on experiences with intersectional discrimination. The working group is encouraged to ensure that their equality bodies provide input to the survey that will form the basis of Equinet’s paper on the topic of intersectionality, and later a conference on the same topic in December 2016.

Presentation of the European Network of Legal Experts’ upcoming paper on the concept of Intersectionality in European Law by **Alexandra Timmer**

Outline of the report authored by Professor Fredman:

1. Introduction
2. Definition and concepts
	1. Intersectionality is a complex concept
	2. Early research on intersectionality focused on identity
	3. Does the law generate subgroups by addressing intersectionality? How are such “subgroups” handled?
	4. Should the law focus on underlying structures of power and domination instead of focusing on identity per se?
	5. Existing grounds of discrimination were construed to address power structures. Ask courts to see grounds of discrimination as a reflection of relationships of power, rather than identity.
3. Country examples
	1. Of the states surveyed, 13 had multiple discrimination enshrined in local legislation, some of them without defining the concept in the legislation. The provisions usually speak of enhanced compensation; some define positive duties. Serbia has intersectionality enshrined in national law.
	2. Report shows that even with provisions in national law, there is little case law on intersectional discrimination
4. Overview of countries surveyed (28 member states, EFTA countries and candidate countries)
5. Obstacles to intersectional approach in EU law
	1. The segmented nature of non-discrimination law is a challenge, as the scope, justifications and exceptions allowed are different
	2. The list of grounds is closed
	3. The need for identifying a comparator is a challenge
6. Way Forward
	1. The proposed Horizontal Directive would be one way forward
7. Case law of the European Court of Justice
	1. No real intersectionality in the case law
	2. Older women and same sex couples emerge as distinct intersectional groups treated in the case law
	3. Much depends on how the litigant frames the case and what the court accepts
8. Proactive Measures and Mainstreaming
	1. Expresses need to use possibilities in existing legislation
	2. Suggests that a single ground case should be able to incorporate all aspects of identity, and therefore also other grounds

*The report was since published and is now available here:* [*http://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb*](http://www.equalitylaw.eu/downloads/3850-intersectional-discrimination-in-eu-gender-equality-and-non-discrimination-law-pdf-731-kb)

**Follow-up discussion** on the European Network of Legal Experts’ paper on Intersectionality

The discussion continued by juxtaposing the individual focus of current anti-discrimination legislation with the structural inequality suffered by certain groups in society. It was outlined that the CEDAW and the CRPD recognises women and disabled persons as persons suffering a certain structural disadvantage. It was suggested that these international instruments implicitly recognize that being a woman or a disabled person has consequences for the persons’ situation vis-à-vis structural power relations. Nevertheless, it was reminded that in the work of equality bodies information about the structural level is garnered through engagement with the individual level (DK).

At the same time, it was highlighted that there must be recognition for diversity within groups. German research has shown that 1/3 victims of discrimination state that their experience was intersectional [DE]. Fredman’s suggestion that intersectionality should be dealt with within any single legal ground of discrimination was picked up, and the question arose whether this would be most fruitful as a communication tool, a policy tool or a legal tool. The question also arose of whether this could be a way forward toward a “post category” approach to discrimination [DE].

Fredman suggests that “Intersectionality does not work in a framework of formal equality”, and as such the concept of intersectionality could have transformative power in addressing substantive equality rather than purely formal equality. As such, it was questioned whether a socio-economic ground of discrimination or at least a non-exhaustive list of grounds might be a plausible tool to address social and economic power relations that are inextricably linked to substantive equality [IE]. It was also highlighted that the current definition of discrimination (“less favourable treatment”) was restrictive and lacked a human rights perspective [IE].

As regards intersectionality, it was questioned whether the real challenge lies in the law, or in the implementation [MT]. The training of judges at both European and member state level was raised as a possible tool.

**Equality Bodies’ experiences** with Intersectional discrimination

CZ: A case where gender (male), ethnic origin and disability intersected. It was a case of discrimination in access to housing, and the disability ground prevailed.

DK: It was questioned whether intersectionality leads to competing grounds of protection, where the right to gender equality might be pitted against the right to freedom of religion in cases of wearing a hijab, for example.

SE: A case where a man was fired from his job because he could not shake hands with women for religious reasons.

Another case where a woman did not want to shake hands with her male doctor, and the doctor subsequently refused to treat her (referred her to a female doctor instead). The appeal court ruled that the male doctor had not discriminated against the woman.

Issues to be addressed in the **Equinet paper on Intersectionality**

FR: French legislation does not address intersectionality in any way. There is no incentive in the law to use the concept, as it has no consequences for the sanctions that may be issued.

In policy work, the following intersectional issues have been addressed:

* Pressure to conform to a certain standard of physical appearance at work is more prevalent for women than for men
* Disabled women as a particularly vulnerable group
* Lesbian women suffer more homophobia than homosexual men
* Young men of minority ethnic origin suffer compound discrimination in ethnic profiling (particularly in stop and search actions)
* Women of minority ethnic origin suffer more from sexual harassment
* Certain sectors have gendered power relations:
	+ Cleaning services
	+ Transport services

It is important to note the social context of the individual victim of discrimination. Important to “contextualize” any given case, and there is French sociological research investigating the particular context of the sectors mentioned above. The ECJ case law mentions “particular vulnerabilities”, without ever addressing intersectionality as a concept. This may be a strategy on the part of the court to address structural power relations.

IE: Returning to the German research cited above, there is a need for all data collection to include an intersectional dimension by breaking the data down into subgroups.

It is noted that transgender issues are by nature intersectional, as they are located at the intersection of the LGBT agenda and the gender equality agenda.

PL: There is research in Poland addressing the particular situation of women with disabilities and elderly women. It was found that specialized institutions rejected women applicants, either because they did not consider their mandate to cover women, or because they did not consider their mandate to cover disability. The result was that the women got passed from place to place. The research resulted in naming the problem, which was already an important awareness raising tool, also for intersectional discrimination.

The **Handbook** on Equal Pay

There was discussion on amendments to be made to the Handbook. Please see the draft attached for details, and please note that some of the comments have already been incorporated in the attached draft, while others are yet to be addressed and amended (including an e-mail comment received after the working group meeting, which does not appear here). A timeline for follow-up is also attached.

**Sarah Cooke O’Dowd**, Equinet Communication Officer, presented a communication template for dissemination of the Handbook once it is finalized. It is the intention of Equinet that a dissemination strategy be developed for all upcoming publications, so the appropriate format is identified at the beginning of the work for the appropriate audience.

There was a brief discussion on dissemination of the Handbook on Equal Pay. It was proposed that a one-page check-list/summary should be produced that members could get translated into their national languages in order to gauge interest for the product. This one-page document will include links to the full online version (including a QR code). It was suggested that if the Handbook is printed in hard copy, this will not include the Annexes, which will only be available online.

Possible actors at the national level that are deemed suitable audiences for dissemination included:

* All social partners (trade unions as well as employers’ organizations, as the latter could use the Handbook as a preventive tool)
* National associations of lawyers/attorneys
* Labor inspectorates
* Universities
* Judges, as well as educational institutions for judges
* Ministries of Labor
* NGO advice centers

**Work Plan 2017**

The working group presented their ideas for topics that could be of interest to work on next year:

* Training on how to use the Handbook on How to Build a Case on Equal Pay for practitioners (follow up on publication)
* A publication on Gender Equality in Education (follow-up on seminar on same topic in Prague, 2016)
* Gender identity, an intersectional perspective – intersex and trans persons included (potential cooperation with other Working Groups)
* Following up goods and services by looking at gender segregated services, i.e. healthcare services
* Equal treatment at the workplace – looking at career advancement and promotion patterns
* Violence Against Women in the context of CEDAW (reporting?)

These ideas will be taken forward into the discussions on the 2017 work plan with the Board in June, and will after consideration by the Board potentially be incorporated into the proposed work plan for 2017 that will be presented to the Annual General Assembly in October 2016.

The working group is invited to consider what format is desirable for the working group’s outputs in 2017, keeping in mind that several tools are put in place in the [Equinet Communication Strategy 2016-2018](http://equineteurope.org/IMG/pdf/equinet_communication_strategy_2016-18.pdf).

**Next working group meeting**

The working group suggested that the next meeting be held on a date in November 2016, and it will be considered whether the NCPE in Malta will be able to host the next meeting, in light of the upcoming Maltese Council Presidency in 2017.