

AN EQUINET STRATEGY DEVELOPMENT REPORT

JOINT RESPONSIBILITY FOR EQUAL TREATMENT: HOW EQUALITY BODIES WORK WITH DUTY BEARERS

Joint responsibility
for equal treatment:
how equality bodies
work with duty
bearers

An Equinet Report

December 2013

Joint responsibility for equal treatment: how equality bodies work with duty bearers is published by Equinet, the European Network of Equality Bodies.

Equinet brings together 41 organisations 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.

Equinet members: Ombud for Equal Treatment, **Austria** | Interfederal Centre for Equal Opportunities, **Belgium** | Institute for Equality between Women and Men, **Belgium** | Commission for Protection against Discrimination, **Bulgaria** | Office of the Ombudsman, **Croatia** | Gender Equality Ombudsperson, **Croatia** | Public Defender of Rights – Ombudsman, **Czech Republic** | Office of the Ombudsman, **Cyprus** | Board of Equal Treatment, **Denmark** | Danish Institute for Human Rights, **Denmark** | Gender Equality and Equal Treatment Commissioner, **Estonia** | Ombudsman for Equality, **Finland** | Ombudsman for Minorities, **Finland** | Commission for Protection against Discrimination, **Former Yugoslav Republic of Macedonia (FYROM)** | Defender of Rights, **France** | Federal Anti-Discrimination Agency, **Germany** | Office of the Ombudsman, **Greece** | Equal Treatment Authority, **Hungary** | Office of the Commissioner for Fundamental Rights, **Hungary** | Equality Authority, **Ireland** | National Office Against Racial Discrimination, **Italy** | National Equality Councillor, **Italy** | Office of the Ombudsman, **Latvia** | Office of the Equal Opportunities Ombudsperson, **Lithuania** | Centre for Equal Treatment, **Luxembourg** | National Commission for the Promotion of Equality, **Malta** | National Commission for Persons with Disability, **Malta** | Netherlands Institute for Human Rights, **Netherlands** | Equality and Anti-Discrimination Ombud, **Norway** | Human Rights Defender, **Poland** | Commission for Equality in Labour and Employment, **Portugal** | High Commission for Immigration and Intercultural Dialogue, **Portugal** | Commission for Citizenship and Gender Equality, **Portugal** | National Council for Combating Discrimination, **Romania** | Commissioner for the Protection of Equality, **Serbia** | National Centre for Human Rights, **Slovakia** | Advocate for the Principle of Equality, **Slovenia** | Council for the Promotion of Equal Treatment and Non-Discrimination on the Grounds of Racial or Ethnic Origin, **Spain** | Discrimination Ombudsman, **Sweden** | Equality and Human Rights Commission, **UK – Great Britain** | Equality Commission for Northern Ireland, **UK – Northern Ireland**

Equinet Secretariat | Rue Royale 138 | 1000 Brussels | Belgium

info@equineteurope.org | www.equineteurope.org

ISBN 978-92-95067-74-5

© Equinet 2013

Reproduction is permitted provided the source is acknowledged.

This publication is supported by the European Union Programme for Employment and Social Solidarity - PROGRESS (2007-2013).

This programme is implemented by the European Commission. It was established to financially support the implementation of the objectives of the European Union in the employment, social affairs and equal opportunities area, and thereby contribute to the achievement of the Europe 2020 Strategy goals in these fields.

The seven-year Programme targets all stakeholders who can help shape the development of appropriate and effective employment and social legislation and policies, across the EU-27, EFTA-EEA and EU candidate and pre-candidate countries.

For more information see: <http://ec.europa.eu/progress>

This publication was prepared by Equinet's Working Group on Strategy Development. The views expressed in this publication reflect the authors' views and neither Equinet nor the European Commission are liable for any use that may be made of the information contained therein. The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

CONTENTS

Preface	4
Executive summary	5
Chapter 1: Definition of duties & duty bearers	7
Chapter 2: Specific positive obligations on duty bearers	12
Introduction.....	12
1. Reasonable accommodation and accessibility.....	13
2. Positive actions and the use of employment quotas.....	16
3. Public sector equality duties	17
4. Monitoring and reporting	19
5. Actions to promote equality following an allegation of discrimination	21
6. Quotas on corporate boards	22
Chapter 3 – Guidelines for engaging with duty bearers	24
Introduction.....	24
1. Analyse the situation, and identify the topic and the pertinent duty bearers	26
2. Establish a committee with duty bearers	28
3. Elaborate a strategy	29
4. Hold duty-bearers accountable for their actions.....	31
Chapter 4 – Different tools that equality bodies use	34
Introduction.....	34
1. Legal.....	35
2. Information and awareness raising.....	37
3. Research	38
4. Training.....	40
5. Advice and guidance	41
6. Engagement and provision of practical support	43
7. Cooperation with regulatory bodies	44
8. Dialogue.....	46
Chapter 5 – Choosing the right tools	48
Introduction.....	48
1. The nature of the problem	48
2. The competences of the equality body in light of the equality legislation.....	49
3. The aim of the project or action	49
4. The suitability of the tool	49
5. Scientific reasons for selecting a tool.....	50
6. Agreement / code of conduct with the duty bearer	51
7. Distribution of duties and workload	51
8. The resources available to accomplish a project/action	51
9. Experience in using the particular tool	52
10. Expected effectiveness and impact of the particular tool	52
11. Monitoring and adjusting the project	53
List of Working Group Members and chapters’ authors	54

PREFACE

Equinet, the European Network of Equality Bodies, brings together 41 member organisations from 31 European states and provides them with a platform for exchange and cooperation.

Equinet's working group on Strategy Development consists of experts working within national equality bodies and focuses on these bodies' mandate and the effective implementation of European Union (EU) Equal Treatment Law. The working group evaluates the most effective and strategic use of their very diverse powers and competences with a view to define their strategic role in society, to work actively and to go beyond the simple opposition to discrimination.

In 2010 the working group focussed in more detail on key strategies aimed at empowering civil society. In the definition of the working group civil society comprised individuals and so-called rights groups like trade unions and NGOs. These are organisations which are also responsible for assisting victims and for putting pressure to achieve changes in the law, but also in society. To develop a strategic approach vis-à-vis these organisations the working group identified tools such as training, advice and recommendation.

Providing independent assistance to victims of discrimination in pursuing their complaints is also a key competence of national equality bodies. The working group analysed the requirements of the most strategic use of this power in 2011.

This time the working group took a two years period (2012 and 2013) to have a deeper look at engagement with duty bearers and to have the opportunity to monitor several projects of national equality bodies in this field. During 2012 the working group met twice for initial discussions on the topic, exchanged experiences and started to monitor several projects which were introduced by members of the working group. The working group also met twice during 2013 to summarise these discussions and to prepare an Equinet training event on "Engaging and Working with Duty Bearers" in Zagreb on the 24-25 October 2013. The report contains the main topics the working group discussed during the last two years and also takes into account the discussions from the training event.

It is to be noted that the conclusions are based on the work of the working group members, and as such they do not represent the experience of all Equinet member equality bodies even if it was very useful to share and test these conclusions with many members of Equinet during the training event in Zagreb. Accordingly, these conclusions neither necessarily represent the position or opinion of the national equality bodies that have been involved in preparing this report, nor of the other members of Equinet.

On behalf of Equinet, we would like to thank all of those who contributed to this report for their time, expertise and support.

Sandra Konstatzky
Working Group Moderator

Tamás Kádár
Equinet Senior Policy Officer

EXECUTIVE SUMMARY

The basic mandate for national equality bodies is often seen as providing independent assistance to victims of discrimination by means of counseling and supporting them. In its last report the working group elaborated on the different mandates and tools national equality bodies have in providing independent assistance to victims of discrimination.

However, EU anti-discrimination directives empower national equality bodies not just to assist victims of discrimination but also to conduct surveys concerning discrimination and to publish reports and make recommendations on any issue relating to discrimination. Although there is a range of possibilities and realities on how Member States transpose the directives, it appears that a clear objective of the legislators was that equality bodies should not just combat discrimination but also promote (full) equality within society. Traditional measures and tools such as legal support have a limited capacity to ensure the effective promotion of equality and to bring about positive changes in the culture of society. If they are to live up to this challenge, national equality bodies and other actors will have to take proactive steps.

Focusing on and engaging with duty bearers represents such a proactive approach for national equality bodies, going beyond direct assistance to victims of discrimination. As the working group has already dealt with civil society and “rights groups” in 2010, members intended to focus now very clearly on “responsibility groups”. Chapter 1 outlines a possible definition of duty bearers that was discussed and used in the preparation of this report by the working group and it gives an overview of some key existing legal duties on the basis of EU law.

According to EU legislation, Member States can go beyond anti-discrimination and develop positive duties. They are also enabled to introduce positive action measures. Some of these measures are instrumental in ensuring that national equality bodies can actively develop a fruitful engagement with duty bearers and work on concepts such as gender mainstreaming or diversity management. Chapter 2 describes a range of different examples of positive duties and actions that exist in some, but not all, Member States. The examples also testify to the different national – legal – contexts.

It is necessary for national equality bodies to identify and determine their specific role and position when engaging with duty bearers, and in doing so they must also be aware of the potential risks and pitfalls in this field. Chapter 3 discusses some potential guidelines for engaging with duty bearers. It also suggests that national equality bodies have to take into account the risk of having or seen as having a „bias against” duty bearers based on the fact that their main role is seen (externally, but often internally as well) as providing independent assistance to victims. If national equality bodies start to work with duty bearers more actively, they will have to work out an internal strategy first and, moreover, identify the topic and the types of duty bearers they want to address.

Chapter 4 provides a possible categorisation of the range of tools that national equality bodies could use in their engagement with duty bearers and it describes the different purposes and strengths of those tools, illustrated by examples from the practice of national equality bodies.

Although the report cannot aim to provide a full strategy fitting every national equality body, the last chapter attempts to offer a practical framework and important factors for decision-making when choosing the right tool for engaging with duty bearers.

The report is rich in examples of national equality bodies successfully engaging with duty bearers, demonstrating the potential of such engagements to lead to more equality and avoiding discrimination in the future. Full descriptions of these examples, going beyond the basic information presented in this report, are available on the webpage of the report in the Publications section of the Equinet website¹.

As the discussions in the working group and during the training event showed, engaging with duty bearers is a very effective means for national equality bodies to combat discrimination and promote equality. Some of them have long experience and already stimulated a culture of compliance and built relationships with duty bearers whereas others have only limited experiences with ad-hoc activities and initiatives. It is hoped that the report can provide a guidance to establish strategically planned activities and further develop existing ones.

¹ <http://equineteurope.org/Joint-responsibility-for-equal>

CHAPTER 1: DEFINITION OF DUTIES & DUTY BEARERS

The notion of duties and consequently duty bearers is not easy to define and in different fields and relations it can have different meanings. One could think of moral duties, financial duties and family duties to name but a few. However, this report focuses on the different legal equality duties binding and guiding persons and organisations, and monitored by equality bodies.

In order to understand the concepts and the categories used in this paper we must first give a quick overview of the EU legislation against discrimination.

The EU emphasizes equality before the law of every person as well as the protection against discrimination as a universal human right, which is also established in several international legal acts, like the Universal Declaration on Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination against Women, the International Convention on the Elimination of all forms of Racial Discrimination, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories and to which the EU has pledged to accede.

According to Article 2 of the Treaty on European Union (TEU) the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. Article 9 of the TEU, as well as Articles 8, 10, 18, 19 and 157 of the Treaty on the Functioning of the EU go further by stipulating an obligation for equality mainstreaming and for the prevention of any kind of discrimination on the ground of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. The Charter of Fundamental Rights of the EU contains a further enumeration and powerful guarantee of fundamental rights, among them the right to equality and non-discrimination.

Discrimination may undermine the values of freedom and liberty in the EU and the achievement of the objectives of the Treaties, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living, economic and social cohesion and solidarity. It may also undermine the objective of the EU as an area of freedom, security and justice.

In the years between 2000 and 2006 the Council of the European Union enacted four equal treatment directives, which prohibit discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation. These directives are described below and they, complemented by other directives guaranteeing gender equality, represent the backbone of EU equality law.

The EU equality directives designate certain groups of people as requiring special protection. The objective is to improve their integration into the labour market and to prevent or eliminate discrimination in the access to and supply of goods and services. The EU obliges its Member States to

implement the directives in their national legal provisions and to undertake appropriate measures to eliminate and prevent discrimination.

The EU-equality Directives

1. European Racial Equality Directive (2000/43/EC)

The European Racial Equality Directive, which was adopted by the Council of the European Union on the 29 June 2000, implements the principle of equal treatment irrespective of race or ethnic origin. Their provisions prohibit discrimination on grounds of race and ethnic origin in the field of employment and vocational training, education, social protection, social advantages and access to goods and services including housing.

2. Framework Directive on Employment (2000/78/EC)

The provisions of the Framework Directive on Employment demand to establish a general framework for equal treatment in employment and occupation. Through this directive, the European Union pursues the objective of creating a general framework to combat discrimination on grounds of religion or belief, disability, age or sexual orientation in employment and vocational training. The directive was enacted by the Council of the European Union on the 27 November 2000.

3. Gender Goods and Services Directive (2004/113/EC)

This equal treatment directive ensures the equal treatment of women and men in the access to and supply of goods and services. The directive was enacted on 13 December 2004.

4. Gender Recast Directive (2006/54/EC)

This directive brings together in one document the rules relating to equal treatment of women and men in the field of employment and occupation. The first EU Directive in this field was introduced in 1975 for Gender Equality in relation to Equal Pay followed by a directive in 1976 for Gender Equality at the workplace. There were also several Directives that came up to clarify the law as a result of European court decisions. All in all these rules were combined in directive 2006/54/EC, which requires the implementation of the principle of equal treatment for men and women regarding the access to employment, vocational training, promotion, occupational social security and working conditions.

All in all, it should be noted that the level and extent of protection against discrimination in EU law is different on the different grounds, with the grounds of gender and race and ethnic origin prohibited in a greater number of fields and relationships. Although this 'hierarchy of protection' is seen as problematic by many, a good number of EU Member States went beyond the minimum levels of protection required by these Directives, thereby stipulating additional rights and duties.

Forms of discrimination

The equal treatment directives of the EU describe various forms of discrimination. Discrimination can take a direct or indirect form. It can also take the form of harassment, sexual harassment, victimisation or instruction to discriminate.

Direct discrimination shall be taken to occur when a person is treated less favourably than another person is, has been or would be treated in a comparable situation on one of the grounds of race or ethnic origin, gender, religion or belief, a disability, age or sexual orientation. It is closely associated with blatant prejudice. In many EU states for example, express prejudice is still encountered against Roma and other Gypsy and Travelling people. A refusal of service to Roma or Gypsies in shops, bars and restaurants is still frequently encountered. National equality bodies use a variety of tools to raise awareness that such practices are unlawful and to bring an end to direct discrimination.

Example: A woman earns markedly less than a male colleague for the same work. This constitutes a case of direct discrimination on grounds of sex.

Indirect discrimination shall be taken to occur when a person or group based on their race or ethnic origin, gender, religion or belief, disability, age or sexual orientation are being particularly disadvantaged by apparently neutral provisions, criteria or practices unless those provisions, criteria or practices are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Challenging indirect discrimination often means challenging systemic discrimination and it has a potential to change society over and above that which could be achieved from direct discrimination only.

Example: A wage agreement fails to provide certain benefits to part-time employees for reasons not related to the work at hand. If most of the part-time employees of the company are women, this constitutes a form of indirect gender-related discrimination.

Harassment and sexual harassment are also explained by the equal treatment directives of the European Union as a form of discrimination.

Harassment shall be taken to occur, when an unwanted conduct related on the above mentioned grounds of discrimination takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

Sexual harassment is defined as unwanted conduct of a sexual nature that has the effect or purpose of violating the dignity of the person involved. Unlike harassment, sexual harassment does not necessarily involve the creation of an environment of humiliation.

Example: Male employees make suggestive remarks in the presence of a female colleague. They also send her e-mails with pornographic content.

Victimisation provisions are designed to protect individuals from facing adverse consequences as a result of bringing a complaint or taking part in a proceeding aimed at enforcing the principle of equal

treatment. Without an express protection such as this, individuals may be very reluctant to bring forward a complaint. It also protects individuals who may give evidence in support of a complainant and individuals who have brought a complaint but subsequently moved to another employer in their new employment. The prohibition of victimisation is really important in protecting the integrity of the anti-discrimination laws. If a person faces adverse consequences because they have brought a discrimination complaint then individuals will be very reluctant to raise a complaint at all and others will not be prepared to act as witnesses.

Example: The Equality and Human Rights Commission in Great Britain is providing legal representation to Mr X in his appeal to the Court of Appeal against the finding of the Employment Appeal Tribunal that it had no jurisdiction to hear his claim of post-employment victimisation.

Mr X had been given a poor reference by a former employer after lodging a claim for age discrimination and so subsequently lodged the claim for victimisation in relation to the reference. However, the EAT has found that the Equality Act 2010 does not provide a remedy for post-employment victimisation as it was expressly excluded under section 108 - the section of the Act which deals with relationships that have ended.

In the EHRC's view, this is contrary to EU law and the EAT should have read the Equality Act consistently with EU law (or dis-applied section 108 to enable Mr X to pursue his claim).

The Commission is aware that a number of other complaints have been stayed pending the outcome of Mr X's appeal. The EHRC has also raised this issue with the Government and has notified the European Commission as part of the Commission's review of the General Framework and Race Directives.

Finally, EU legislation also prohibits **instructions to discriminate** in order to ensure a full and comprehensive protection against discrimination. This provision can prove very important for example in cases where an employer instructs a job agency not to recommend prospective employees of a certain age or ethnic origin.

Definition of duty bearers

In the widest sense of the expression, every person is a duty bearer as the duty of equal treatment and non-discrimination is universal. Individuals, companies, public bodies all have an obligation not to discriminate and to ensure equal treatment. However, in the narrower sense the category of duty bearers is defined based on the existing legislation detailed above and by focusing on the functions and activities of the person in the specific relationship. Therefore, in this paper we employ a more restrictive definition, concentrating on those persons and organisations that have an explicit legal duty under EU and national equality legislation.

In this context, the EU directives imply a legal duty in particular for employers and providers of goods and services not to discriminate and to avoid any kind of harassment or sexual harassment on the above mentioned grounds.

They could be termed as duty bearers in the sense of the EU-equal treatment directives because they have the specific obligation to practice equality in the field of employment (e.g. free access to the

labour market and vocational training, employment and working conditions, including dismissal and pay), social protection, including social security and healthcare, social advantages, education as well as the access to and supply of goods and services, including housing.

In some cases, notably in collective bargaining processes which refer to equal pay between men and women, social partners (trade unions and employers' organisations), as well as parts of the public administration can be defined as duty bearers too. Public bodies can fit the definition of duty bearers also when they provide specific services to the public. Education providers are also classic duty bearers as they need to ensure equality for all pupils and students. The media can also be seen as duty bearer, particularly in their function as service provider. Courts can also be seen as duty bearers especially if they have specific duties to monitor and report cases of discrimination.

Admittedly there is sometimes only a fine line between duty bearers and other persons and organisations with different roles in combating discrimination. In the preparation of this report the working group also used the categories of 'strategic partners' and 'control mechanisms' to designate those structures that equality bodies find it very useful or inevitable to cooperate with even if they themselves do not hold primary legal duties in the field of non-discrimination.

Employer associations and trade unions are not duty bearers in a classic sense. However, they are strategic partners for national equality bodies to successfully and effectively work and engage with duty bearers. Supervisory and regulatory bodies, such as labour inspectorates, boards of education or supervisory bodies in the field of healthcare, are not duty bearers but rather strategic partners and control mechanisms that equality bodies seek to cooperate with.

At the end of the day it is a rather difficult exercise, if not impossible, to create a comprehensive list of duty bearers in the field of equality. This is to a large extent due to the fact that the categorisation will always depend on the functions and activities of the person or organisation in the specific relationship and it will have to be assessed on a case-by-case basis. We hope, nevertheless, that this chapter will be helpful in identifying key elements of the definition of duty bearers and that this will facilitate and encourage national equality bodies to seek cooperation with them.

CHAPTER 2: SPECIFIC POSITIVE OBLIGATIONS ON DUTY BEARERS

Introduction

Membership of the EU requires Member States to respect the principle of equality. Equality, first adopted as a general principle in the 1970s, is presently primarily defined in the four Directives described in Chapter 2.

These equality Directives have had important influences in shaping national non-discrimination provisions in Member States. Even though Member States have distinct legal systems and differing histories of equality protections, each Member State is now required by its EU membership to have in place provisions for the pursuit of non-discrimination as set out in the Directives. Additionally the European Convention on Human Rights and the EU Charter of Fundamental Rights have also had important influences on Member States in how they have regulated for equality.

Against this background of the Directives, this chapter focuses on the positive obligations on duty bearers and does so by offering examples of how national equality bodies have worked, and are working with, duty bearers to facilitate, encourage and require duty bearers to meet their equality obligations.

The EU Directives and the international instruments require Member States to introduce national arrangements for eliminating discrimination and to establish a structure within the country to promote equality (i.e. a national equality body). There is a considerable variation across Member States in terms of the scope and reach of the equality duties. By virtue of EU law, there is legislation prohibiting discrimination in respect of employment and training issues and discrimination is outlawed in the provision of goods and services, education, social protection, accommodation and healthcare. In prohibiting discrimination many Member States went beyond the requirements of EU law, for example also preventing discrimination on the grounds of age, sexual orientation, religion and belief and sexual orientation in the field of goods and services. In a number of Member States there are positive duties on employers and service providers to be proactive in delivering equality. This is most common in respect of disabled persons' access to employment and to service provision so that the equality legislation will require reasonable adjustments to enable disabled people to participate fully in society.

In a number of Member States in addition to the more usual legal provisions based on the model of individual enforcement there are positive requirements which aim to address structural inequalities. These are requirements for example to monitor and report on inequalities, to carry out wage surveys and to develop equality plans. These positive duties apply not just to employers and service providers but also on occasion to policy makers. In a number of countries public authorities in

carrying out their functions must have due regard to equality for specified groups such as disabled persons, men and women, those of different ages and racial groups.

Furthermore in a number of Member States, frequently following an investigatory activity such as detailed research or formal investigation, a duty bearer or a group of companies will enter into a voluntary agreement to implement a series of positive actions even though such action is not a legal requirement. Similar action can be initiated by a specific decision on a discrimination case which leads the employer to make changes for many more employees than those involved in the legal case.

This chapter gives a number of examples of these positive or active obligations in Member States across Europe.

The chapter is structured in terms of:

1. Duties to provide reasonable accommodations
2. Positive Action and the use of employment quotas
3. Public sector equality duties
4. Monitoring and reporting
5. Actions to promote equality following an allegation of discrimination
6. Quotas on corporate boards

Each of these types of duties is considered and then examples from Member States are outlined to illustrate how these specific obligations have been addressed and complied with.

1. Reasonable accommodation and accessibility

Most jurisdictions now recognise that the failure to provide reasonable accommodation, for disabled persons in particular, also constitutes discrimination and this has been strengthened by the United Nations Convention on the Rights of Persons with Disabilities.

The EU Framework Directive on Employment requires employers to ensure reasonable accommodation for people with disabilities although a number of Member States had included such an obligation in advance of the Directive. Article 5 of the Directive defines reasonable accommodation as a duty for employers to 'take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer'. Some Member States also have provisions for reasonable accommodation for disabled people in non-employment situations (access to services) and some provide for reasonable accommodation for other grounds, most usually for people belonging to specific religions.

Reasonable accommodation focuses on changes that employers and service providers can make taking into account the specific conditions, situation and characteristics of a particular employee or client in a particular case. In contrast, accessibility, also introduced as a positive obligation in a number of Member States, contains a more general duty to anticipate and prevent problems that may occur. Accessibility ensures that every person, regardless of their disability, age or any other characteristic, is able to fully benefit from the service and employment opportunity in question.

The concepts of reasonable accommodation and accessibility are distinct from direct and indirect discrimination as they are not focused on similar treatment but rather on what revisions and changes employers and service providers could make to allow an individual to carry out the work or to access the service.

EXAMPLE: REASONABLE ADJUSTMENT FOR DISABLED PERSON IN SERVICE PROVISION IN NORTHERN IRELAND

The complainant alleged disability discrimination against a building society when she experienced difficulty accessing banking services at the defendant's Cookstown branch.

The complainant has a medical condition and she uses a wheelchair. She alleged that from street level there was one step to the door of the branch and to the right of the door was a push button to activate the opening of the door which opened above a second step into the main premises. The complainant alleged that she could not get over the first step. Following an earlier complaint by the complainant the defendant had fitted a bell to the outside wall of the branch so that a staff member could attend on disabled customers. The complainant alleged that she found difficulty with this arrangement as the bell was often not working or was unanswered. Even if someone did attend on her she had to conduct her business on the footpath and this compromised her personal privacy and security. The complainant wished to access the same service or level of service as non-wheelchair users and believed that the arrangements provided placed her at a substantial disadvantage compared with other customers.

The defendant agreed to pay the complainant £5,000 compensation and to pay her court costs. The defendant apologised to the complainant and affirmed its commitment to equality. The defendant agreed to implement a permanent wheelchair access solution to its Cookstown branch. While this was being put in place the defendant agreed to provide alternative disabled access to its other branch in the town. The defendant agreed to the Equality Commission for Northern Ireland (i.e. the equality body) inspecting the adjustments to its premises.

EXAMPLE: THE EQUALITY COMMISSION FOR NORTHERN IRELAND (ECNI) AND THE DISABILITY DISCRIMINATION ACT OF 1995

The Northern Ireland Disability Discrimination Act (DDA) specifies that service providers have clear duties not to discriminate against disabled people by providing less favourable treatment or failing to make reasonable adjustments to the way services are provided. The DDA specifies that service providers should not wait until disabled people begin using a service or try but fail, but rather should anticipate the requirements and the adjustments that may need to be made.

In 2013 ECNI commissioned detailed research work on the state of disability access. This encompassed primary research comprising:

- A Northern Ireland-wide survey of the experiences of disabled people when using services;
- An assessment of the experiences of disabled people as "Mystery Shoppers" at a selection of 100 services across five towns and cities;
- Technical audits of access to services in 25 of the premises that were "mystery shopped".

The research concluded that disabled people's access to services in Northern Ireland is not yet good or satisfactory. The lowest score came from disabled people who had mental health support needs while the highest scores were from people with learning disabilities.

ECNI will in the next period focus on developing and implementing a wide range of recommendations including the requirement to educate private and public sector duty bearers. The proposals include:

Private Sector:

- Preparing a strong business case for targeting the disabled consumer market
- Raising awareness of the value of the disabled consumer
- Establishing high level champions of business people to lead the campaign
- Partnering with business organisations
- Collecting case studies illustrating the positive impact of increased accessibility

Public sector:

- Campaigning to engage public bodies regarding access to public services
- Preparing guidance on effective accessible communications for public services
- Auditing current accessible information by public services

Across all sectors ECNI will develop a 'Time and Space' message to promote small, low cost changes to assist disabled people. It will also look at whole town approaches with local delivery groups and will continue to use legal cases to help define reasonable adjustment as covering issues such as attitudes and staff training, and not just the physical issues of doors and ramps.

EXAMPLE: SAVING MONEY BY INVOLVING DISABLED PEOPLE IN THE DECISION MAKING PROCESS IN LEICESTER CITY COUNCIL IN GREAT BRITAIN

Background

Between 2006 and 2008 a number of street changes were made to Leicester City Centre. The city's Council assessed the impact of these changes and found that a number of them had had an adverse impact on people with disabilities, for example, increased walking distances to the shops and a loss of Blue Badge parking spaces.

Action Taken

Leicester Council worked in partnership with Vista, a voluntary sector organisation supporting blind and partially sighted people, and the Centre for Integrated Living to listen to the experience of blind and partially sighted people and take these into account in the planning and development of any built environment and public realm scheme (this includes publicly owned street, pathway, right of way, park, publicly accessible open spaces and all public and civic buildings and facilities).

Disability groups and disabled people got involved in activities, such as consultation exercises, as well as running an Inclusive Design Advisory Panel (IDAP). The Panel advised the Council planners on the implications of their plans for disabled people. All planning and design projects now come through the IDAP, which is chaired by a Councillor with an interest in Inclusive Design.

Benefits

The approach has proven to be cost effective to the organisation. Before the Panel's existence, disabled peoples' access and built environment requirements often got picked up too late, when projects were completed. Problems were then costly to rectify, and the resultant negative feedback impacted poorly on the Council's reputation.

EXAMPLE: ACCESSIBILITY IN FRANCE

In France, the law provides for the right to reasonable accommodation and accessibility of the built environment. It committed that over the next 10 years public transportation and all public areas whether publicly or privately owned must be made accessible to disabled persons. Accessibility of the whole transportation network is considered to be an essential element of an inclusive society. Also in respect of transport issues in France and indeed throughout the European Union the EU regulation (EC) no 1107/2006 legislated for disabled persons and persons with reduced mobility when travelling by air to be provided with assistance from air carriers and managing bodies of airports.

2. Positive actions and the use of employment quotas

While positive discrimination is generally prohibited in most Member States, the EU Equal Treatment Directives provide that Member States may make provision for specific measures to prevent or compensate for past disadvantage. Furthermore, international human rights law recognises that positive action may be necessary to overcome past discrimination. In general, it is recognised that measures designed to permit substantive equality of opportunity may be permitted. The limits to such positive actions are defined in the Directives, national equality legislation and the extensive case law of the Court of Justice of the EU (addressing mainly positive action on the ground of gender). It is important to point out on this basis that positive action measures always have to aim at a well-defined objective, be limited in time and provide an unconditional advantage.

EXAMPLE: NORTHERN IRELAND POLICE ACT OF 2000

In Northern Ireland, the Police Act of 2000 was designed to deal with the underrepresentation of Roman Catholics in the Police. The establishment of a representative Police Service was considered to be of great importance in the establishment of a peaceful society. The Act specifically required, for a period of ten years, the appointment of equal numbers (50:50) of Catholics and others (Protestants and those of other religions) to the police force. This positive action measure was specifically recognised and mentioned in the Employment Directive. The Equality Commission, having given careful consideration to this proposal, concluded that the temporary arrangements were appropriate and proportionate. The measure was time-limited and at the end of the ten year period the change in the composition was considered to have achieved a critical mass. The measure has now concluded and the Police Service has commenced its first large recruitment drive after the ending of the 50:50 measure.

EXAMPLE: POSITIVE ACTION AND QUOTAS FOR DISABILITY IN FRANCE

The French Law no 2005-102 Of 11 February 2005 on Equal Rights and Opportunities, Participation and Citizenship provides for a unified legal protection of disabled persons.

Companies employing more than 20 persons shall respect a quota of 6% of disabled persons of their total workforce.

Disability access must also be provided in respect of housing and public and residential buildings must be accessible to disabled persons.

EXAMPLE: POSITIVE ACTION CONCERNING TRAVELLERS IN FRANCE

France also has a positive action measure concerning Travellers. Municipalities of more than 5000 inhabitants are obliged to accommodate travelling populations by providing settlement areas, with the technical requirements of these areas specified by decree.

EXAMPLE: POSITIVE ACTION CONCERNING SOCIO-ECONOMIC ORIGIN IN FRANCE

France has a number of positive action measures concerning discrimination on the basis of socio-economic origin.

For example, regarding the area of higher education, the Paris Institute for Political Studies (Sciences Po), which has a selective entry system, has developed a special admissions track for students from high-schools in economically disadvantaged areas. Under this scheme such students are exempted from the competitive examination and go through a less challenging admission procedure.

There are also a number of housing provisions which aim to challenge segregation in housing and encourage social mixing.

EXAMPLE: EMPLOYER OBLIGATIONS IN SWEDEN

In Sweden employers are obliged to work to ensure that people have the opportunity to apply for vacant positions regardless of sex, ethnicity, religion or other belief. Employers are also to promote an equal distribution of women and men in different types of work and when the distribution of women and men is not more or less equal in a certain type of work or in a certain employee category the employer is to make a special effort when recruiting new employees to attract applicants of the under-represented category.

3. Public sector equality duties

A number of Member States have introduced specific active duties on public bodies. These duties usually require public authorities to eliminate discrimination, promote equality and encourage good relations in the delivery of public services.

Great Britain

In Great Britain, the public sector equality duty applies to public authorities in respect of all their functions and the courts have clarified that the general equality duty applies to the carrying out of any function of the public authority.

The first aim of the general duty is to have due regard to the need to eliminate discrimination, harassment and victimisation in respect of the nine protected characteristics of:

- Age
- Disability

- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

The second and third aims of the duty are to advance equality of opportunity and to foster good relations.

A general equality duty on public authorities such as this aims to integrate equality issues into the day to day business of public bodies.

Public bodies subject to these duties must have due regard to the aims of the general duty. There has been much discussion in the literature (and in the courts) about the meaning of due regard. The courts have emphasised that:

- Those who take decisions must be aware of the duty
- It involves a conscious approach
- It requires consideration before (not after) a decision is taken
- It must be exercised in substance, with vigour and an open mind
- It cannot be delegated
- It is a continuing duty
- It requires the retention of records showing that the duty was fulfilled.

EXAMPLE: PUBLIC SECTOR EQUALITY DUTY IN GREAT BRITAIN

When a body subject to the public sector equality duty identifies disadvantage, it can implement positive action measures.

A police authority identifies from a local online survey that gay men in the area have a significantly greater fear of crime than others. Their own data also indicates that gay men in the area experience disproportionately high levels of hate crime. In response to this the police authority decides that it is appropriate to adopt a more visible policing profile in areas they know are frequented by gay men and where previous incidents have occurred.

Northern Ireland

In Northern Ireland, there are two statutory duties on public authorities. The first duty is the Equality of Opportunity duty which requires public authorities in carrying out their functions to have due regard to the need to promote equality of opportunity between the nine equality categories.

The second duty is a Good Relations duty and requires public authorities in carrying out their functions to have regard to the desirability of promoting good relations between these groups.

These duties are often referred to as “mainstreaming” incorporating equality and good relations in all public policies, at all levels and at all stages.

In Northern Ireland, public authorities, in carrying out these statutory duties, must submit an Equality Scheme to the Equality Commission stating the authority’s commitment to the duties and setting out the procedures for its performance. The Equality Commission approves equality schemes. The schemes set out the way public authorities will assess the likely impact of their policies on the promotion of equality of opportunity. The legislation also requires effective consultation with those likely to be affected by an authority’s policies. The legislation also provides for individuals to make complaints, initially to the authorities and subsequently to the Equality Commission, if they believe a public body has not complied with the commitments given in an equality scheme. The Equality Commission may also undertake investigations of its own volition.

EXAMPLE: NORTHERN IRELAND

In Northern Ireland the local government department with responsibility for transport decided to discontinue the financial support for accessible buses (Easibus) operating in two towns (Bangor and Londonderry). The department decided that this was not a policy that should be subject to the detailed consideration of the equality impacts within the provision of its statutory equality duties. The buses provided an accessible, regular and comfortable means of public transport for wheelchair users and others with a disability and older people. The department argued that it could not continue the funding as the Easibus service largely duplicated the existing services.

The Equality Commission investigated and concluded that the Department had not given adequate consideration to the equality implications of its decision. It recommended that it should carry out a review of the decision to consider the effectiveness of the measures introduced to mitigate against the ending of the service and if need be to consider additional mitigation and to report back to the Equality Commission.

4. Monitoring and reporting

A proactive equality duty in use in some countries is that of monitoring and reporting. Such duties are most often present in the field of employment. Monitoring and reporting on statistics, strategies, practices and cases revealing the state of equality within a company or a sector is a useful tool facilitating the work of equality bodies as well as policy makers. Information revealed by such monitoring and reporting systems can contribute to better policy responses and it can also be used to underpin actions by supervisory and regulatory bodies. Ultimately such information can also be useful in court proceedings.

EXAMPLE: NORTHERN IRELAND

In Northern Ireland any employer which has 11 or more people who each work more than 16 hours per week must register with the Equality Commission. Once they have registered the employer must collect information from employees and job applicants on if they are from the Protestant or Roman Catholic communities (or none). Employers must then make an annual monitoring return to the Equality Commission. This has been a legal requirement since 1990.

All employers are required to provide religious monitoring information on:
Employees

Appointees
Applicants
Apprentices

In addition, public sector employers and other employers with more than 250 employees are required to submit information on:

Promotees (moved within the company to a job with higher pay)
Leavers

The information must be provided to the Equality Commission by religious background (Protestant or Roman Catholic or Neither), gender (male or female), and occupational classification.

The advantage of such monitoring and reporting, in addition to fulfilling the legal requirements, is that it enables employers to assess their performance and to compare the religious composition of their workforce with information from census and other sources on the available workers, to set targets where under-representation is shown and to measure progress against such targets.

Since the duties on employers to monitor religious community composition and to report on this annually to the Equality Commission were introduced, there has been a consistent trend towards fair participation. When the duties were firstly introduced, the Roman Catholic community was under-represented, however at present the composition of the total workforce is now broadly in line with the current estimate for the community shares of those available for work. Furthermore, the gap in unemployment rates (the Roman Catholic community had for many years a much higher unemployment rate) for the two communities has narrowed considerably.

EXAMPLE: AUSTRIA

In Austria, private companies with more than 150 employees have to compile data reports on the average salaries of male and female employees every two years. Although the reports are not publicised, they are disclosed within the company and to the Work Council. In the absence of a Work Council the report is provided to the employees. Such reports are of considerable use when an equal pay claim is proceeding.

EXAMPLE: FRANCE

In France private employers of at least 300 employees must report to their Works Council and the employee representatives on the comparative pay situation of men and women. An executive summary of the report must be published in the work premises or on the company website.

Smaller companies of at least 50 employees must include in their collective bargaining occupational equality issues such as pay gap, training, part time work and issues of reconciliation of work and family life. Companies are required to have an action plan on gender equality. There are specific requirements set out for such an action plan and there are fines where the issues in the action plan are not appropriately addressed.

EXAMPLE: DENMARK

In Denmark an employer with a minimum of 35 employees each year is required to prepare gender segregated wage statistics. This information enables consulting and informing the employees of the pay gaps within the enterprise. If however the employer enters into an agreement with the employees to prepare a report the obligation shall lapse.

EXAMPLE: GREAT BRITAIN EQUALITY AND HUMAN RIGHTS COMMISSION MONITORING THE PUBLIC SECTOR DUTY

Public Authorities in England (and non-devolved bodies in Scotland and Wales) which were subject to the specific public sector equality duties had until the 31st January 2012 to publish information to demonstrate compliance with the general equality duty. The Equality and Human Rights Commission (EHRC) published guidance to help public authorities decide what equality information they need to publish. If public authorities do not publish equality information as required by the specific duty regulations, they risk being subjected to legal challenge (including enforcement action by the Commission), as well as potential damage to their reputation.

The EHRC undertook an assessment of the information published by public authorities between February and April 2012. This covered 1,159 public authorities in England. The websites of public authorities were reviewed, to assess to what extent they had published relevant and accessible information. The aims of the assessments were to:

- Identify whether equality information could be found and how accessible the information was
- Determine how comprehensive the published equality information was
- Establish whether there were differences in performance and /or approach among public authorities and sectors
- Identify and disseminate examples of effective approaches and good practice

A report '*Publishing Equality Information: Commitment, Engagement and Transparency*' sets out the findings of the assessment. The report not only looks at performance on the specific duty, but it also sets out what good practice looks like. The report concludes with a number of recommendations for public authorities on how to improve their performance. The findings in the report should enable public authorities to learn from each other and to improve the quality, extent and clarity of the equality information they produce and publish, in order to improve their equality outcomes.

EXAMPLE: CROATIA

In Croatia all authorities and persons to whom the Anti-discrimination Act refers to are obliged to report reasonable suspicion of discrimination to the Ombudsman or to special ombudsmen (with the consent of the person who is allegedly a victim of discrimination) as well as to provide all information and all requested documents related to discrimination at the request of the Ombudsman or a special ombudsman.

There is also one specific duty for the courts and the Ministry of Justice. Namely, courts are obliged to keep records of cases related to discrimination and of discrimination grounds and to deliver them to the Ministry of Justice which, after the end of each year, delivers this data to the Ombudsman.

5. Actions to promote equality following an allegation of discrimination

Across the European Union, equality bodies can pursue equality of opportunity based on an allegation of discrimination. On occasions this type of follow up may also occur when a case has not been determined by a Court or Tribunal, but has concluded by way of a settlement between the parties. On other occasions, a case which is determined by a Court or Tribunal may also include wider changes to practices beyond the circumstances of the original complainant. The active duties and

actions imposed following these procedures are decided on a case-by-case basis and they can prove extremely effective and useful in remedying discrimination but also in changing the equality culture of a certain duty bearer and, ultimately, the society.

In Northern Ireland where a Tribunal finds that a complaint of religious discrimination is well founded the Tribunal can:

- Make an order declaring the rights of the complainant
- Require the respondent to pay the complainant compensation
- Make a recommendation that the respondent take action to obviate or reduce the effect on the complainant and
- Require the respondent to obviate or reduce the adverse effect on any other person

EXAMPLE: NORTHERN IRELAND

A mixed-race man who worked in Northern Ireland in a butchery business was regularly harassed because of his race. He was told he was dirty-looking. He was referred to as “the stupid Paki”. He was told “if I was Hitler I would have you gassed”.

The case concluded by way of settlement. The employer agreed to pay the Claimant £30,000. The employer also agreed to review its policies and practices and procedures with the Equality Commission for Northern Ireland. Furthermore, it agreed to give full consideration to any recommendations by the Commission.

6. Quotas on corporate boards

In 2012, the EU proposed that companies must have clear gender neutral criteria for choosing non-executive directors, and that if candidates are found to be equally qualified, then preference should be given to women. A goal of 40% by 2020 was also identified.

However, the proposals have not as yet become mandatory as many EU Member States voiced concerns that such measures should not be enacted for the EU but rather would prefer the issue to be considered and if necessary, enacted at national level. At present a minority of EU Member States (11) have introduced legal instruments to promote gender equality on company boards.

In favour of quotas, it is noted that this is a fast and effective way to increase the proportion of women. It is also claimed that a diverse board stimulates creativity and innovation. Furthermore, a company with a diverse Board is more likely to have women in senior management positions.

Those against quotas raise concerns about equally qualified men who would be discriminated against simply because they are not women. Concerns are also expressed that a mandatory quota may result in less able or qualified women. Women Board members will be seen as token rather than people with skills and abilities. Mandatory quotas do not address the reasons why, or barriers to, women having fair representation.

EXAMPLE: FRANCE

In France it is provided that members of each sex shall occupy at least 20% of Boards of Directors and Supervisory Boards within 3 years (i.e. by 2014) and 40% within six years (i.e. by 2017). In circumstances where the Board of Directors has more than 8 members the difference between the numbers of directors of each gender shall not exceed 2. This requirement applies to companies listed on the Stock Exchange, to non-listed companies with at least 500 workers and with revenues over 50 million euro, to public companies and other public bodies.

In terms of public services the civil service, the hospital services and the local government services there are similar provisions as in the private sector in terms of gender composition of the Boards. The law requires that women make up 40% of public boards and the law also requires an increase in women's representation so that women account for 40% of high level public service staff by 2018.

CHAPTER 3 – GUIDELINES FOR ENGAGING WITH DUTY BEARERS

Introduction

Working and creating partnerships with duty bearers offers a unique opportunity for national equality bodies (NEBs) to promote and protect anti-discrimination and equality laws. Engaging with these actors presents several advantages, increasing their awareness of certain rights and their capacity to fulfil their obligations.

NEBs defend and promote citizens' rights and liberties. As unbiased third parties, they offer impartial expertise for the common good. Their central mission is first and foremost assisting victims of discrimination. In order to fulfil this objective, they may:

- Provide information on anti-discrimination laws and access to legal recourse
- Help injured parties and discriminators come to mutual agreements
- Provide legal advice and representation to victims of discrimination

In addition to this primary mission, equality bodies also engage in different activities aimed at promoting equality such as:

- Conducting independent surveys
- Publishing reports and making recommendations concerning discrimination
- Awareness-raising campaigns
- Good practice sharing

Given these missions, a certain rigor is necessary in order to guarantee the principles of independence and impartiality of NEBs when working with duty bearers. Formulating an ethical code within the equality body can help to ensure that these principles will be respected and will enable NEBs to collaborate with duty bearers in a neutral and vigilant manner. Partnerships with these actors present certain risks for NEBs, such as conflicts of interest or the adoption by NEBs of the view point of or a bias towards duty bearers, thus obscuring the main objective of engaging with these actors which is ultimately to benefit and empower rights holders and potential victims of discrimination. An example for the challenges of such engagements could be the experience of some NEBs with joint recommendations. Joint recommendations can be a very useful tool as they facilitate and presuppose a deep and thought-through engagement between the NEB and duty bearers, thereby facilitating the formulation of a strategic approach and holding the potential of a genuine development of more equal policies. However, there is a risk that the duty bearers who were involved in the formulation of such joint recommendations could rely on those when discrimination cases arise, asserting that they have already shown enough engagement, making the task of the NEB more challenging. Therefore, adherence to certain ethical values is even more vital in these

situations. The following rules, taken as an example from the practice of the Defender of Rights in France, can be instructive as to pertinent content appearing in an ethical chart that can be applied to the process of engagement.

National equality bodies and their staff should:

- Inform of any situation which may create a legitimate doubt, even superficial, as to the independence and impartiality of the NEB. For example, in cases when their participation would compromise the neutrality of the institution because of family relations, professional or associative activity, or even material or moral interests.
- Adopt a neutral attitude and assuring equal treatment of both rights holders and duty bearers
- Not express their political, union, or religious convictions while exercising their professional activity
- Display discretion in any written or oral communication regarding their personal opinion on rights holders and duty bearers
- It is forbidden to divulge, outside of the workplace, any information or documents related to their function
- Assure that all representatives of the institution are aware of the ethical code²

Other than these general rules concerning the proper and impartial conduct of representatives of NEBs, it is necessary that NEBs conform to certain guidelines when engaging with duty bearers. When working with duty bearers, it is important to adopt a balanced approach; the focus should be not so much on sanctioning and vilifying them for their failings but rather creating common ground from which a constructive dialogue and concrete action can arise in the domain of antidiscrimination and equality. However, even if it is recommended to adopt a 'soft and constructive approach' it is to be noted that in the experience of NEBs it is important to have strong legal powers 'in the background' so as to ensure the willingness and openness of duty bearers to cooperate and that the NEB has a leverage over them and it can hold duty bearers accountable.

It is recommended that equality bodies should set out their priorities and the procedures they apply for their engagement with duty bearers in a comprehensive internal strategy. In order to attain the objectives of the engagement with duty bearers, it is also important to follow certain guidelines that will ensure a successful course of action. The main guidelines to adhere to can be summarised as follows:

- Analyse the situation and identify the topic and the pertinent duty bearers
- Establish a committee with duty bearers
- Elaborate a strategy
- Hold duty bearers accountable for their actions

² These principles can be found in the « Ethical code of the [French] Defender of Rights » (« Code de déontologie du Défenseur des droits »)

1. Analyse the situation, and identify the topic and the pertinent duty bearers

In order to engage duty bearers, the first step is to conduct a broad situation analysis in order to assess the context in which the intervention will take place. A situation analysis assists in identifying where problems lie and in which domains progress needs to be made in the fight against discrimination. This can be accomplished through several methods, for example:

- Field studies
- Statistics
- Opinion polling
- Examining existing public policies in the domain of intervention as well as the activities of pertinent actors in the field

EXAMPLE: GERMANY

In Germany, a study showing that simply having a Turkish sounding name decreased the chances of being invited for a job interview by fourteen percent brought to light the problem of job recruitment discrimination and led the Federal Anti-Discrimination Agency to identify the need for non-discriminatory practices in the recruitment process of civil servants.

A broad situation analysis rarely identifies a single and unique problem concerning discrimination but rather makes clear the range of actions possible for the intervention of NEBs in cooperation with duty bearers. Once the range of possible action has been identified, NEBs must determine in which areas their action would be most useful. When considering the advantages of a possible intervention, NEBs can consider first of all the impact that their action would have on target groups. How relevant is the action for those groups we are aiming to help? How many people will be concretely affected by the intervention? It is also important to weigh the capacity for effectiveness that a given action will have, which should help to orient the limited resources available to NEBs. Does the NEB have the resources to make a difference in a given area of intervention? It is preferable that an NEB takes on a project small in scope that can be carried out successfully rather than a far reaching program that is unlikely to fulfil its objectives.

Once the main problems have been determined, one must then seek out the causes. In order to do so, examining several aspects can be helpful in identifying where problems stem from. A good starting point is to assess current laws and policies and whether or not they address the question of discrimination. In the case where laws addressing these issues do exist, a thorough examination of their enforcement should be conducted in order to identify any failings in their implementation. Equally important is ensuring the diffusion and ready availability of information concerning citizens' rights as it relates to discrimination. Are those populations most vulnerable to discriminatory practices familiar with anti-discrimination legislation? Are there shortcomings in the circulation of information? Another important element in identifying the causes of a given problem in the domain of discrimination is examining the institutional services and tools available in the fight against discrimination and the promotion of equality. This can be done by evaluating the channels through which victims of discrimination can file complaints and identifying failings in these systems such as obstacles preventing victims from seeking justice. Finally, when discriminatory practices can be

identified, it is important to discern the nature of the discrimination in question. Is the problem in question due to direct or indirect discrimination? This is a particularly critical step, as it will help orient the range of possible solutions.

Identifying problems and their causes will help determine where attention should be focused during the strategy elaboration phase of the engagement process.

Broad situation analysis allows NEBs to decide which areas they will intervene in, giving them the opportunity to see which duty-bearers best fit with a given topic. Once these initial steps have been taken, NEBs can proceed to identifying duty bearers with whom they wish to create a dialogue. These actors can be identified through discussion with organisations representing civil society or by referring to public policy and judicial norms in the domain considered. In order to correctly identify pertinent duty bearers, one must consider which type of duty bearer corresponds with the objectives of the action, may it be legal, moral, governmental, nongovernmental or private. Other important aspects to take into account when choosing duty bearers is their work in the field, their relationship with rights holders, their credibility in their domain, and their position on the issues brought to light by the situation analysis. Finally, it is important to analyse in detail the obligations of duty bearers and their capacity to fulfil these obligations. To what extent are duty bearers informed and aware of these obligations and how far do they have a willingness and resources compatible with the realization of these objectives?

A comprehensive assessment of the context of the intervention and the position of the respective duty bearers will allow for the identification of problematic areas and the programming of priorities. The identification of duty bearers does not exclude the identification and involvement of rights holders, as it can allow for a better understanding of the needs and expectations of those benefitting from antidiscrimination and equality measures.

EXAMPLE: FRANCE

The example of the work of the Defender of Rights (DDD) on employment discrimination in France illustrates well this situation analysis and identification of duty bearers.

The Liaison Committee with Employment Intermediaries (CLAIE) was created in 2007 after launching a project concerning employment discrimination, with a particular focus on discrimination in the recruiting process. Given the central role these actors play in the job search and their close proximity to job seekers, employment intermediaries were deemed the actors most apt to intervene in this aspect of employment discrimination. The seven different employment intermediary businesses participating in the Liaison Committee with Employment Intermediaries (CLAIE) and identified as the main duty bearers in this domain were chosen for their significant representativeness and legitimacy in the field. It is important to keep in mind that in certain instances, duty bearers may initiate the engagement process on their own initiative. This is usually the case of duty bearers seeking to avoid eventual litigation, in particular when their practices, or the use made of their organisation by those publics to whom they offer their services, have been identified as discriminatory. Also, duty bearers may seek to work with NEBs after they have been found guilty of discrimination in order to rectify shortcomings and prevent further legal proceedings.

EXAMPLE: ROMANIA

The Romanian Office for Adoptions sought a partnership with the National Commission for Combating Discrimination (NCCD) when they realized that during adoption proceedings a

considerable number of families made discriminatory demands. For example, 24.94 % of families seeking to adopt do not want a Roma child. Having observed this trend, the Romanian Office for Adoptions sought to work with the NCCD to help train case managers in respecting non-discrimination. These actors were chosen because of their active involvement as well as their legal responsibility in the adoption process.

In these cases, the initial phase of working with duty bearers will be reversed. The duty bearers having been determined in advance, NEBs must conduct a situation analysis afterward to find the root causes of the problem at hand as well as which actors within the organization seeking the NEBs' help should be targeted for a given intervention. Due to the limited capacity and resources of NEBs it is also important, however, to analyse the root causes of the problem in question and whether addressing this issue fits in the list of priorities established in the internal strategy of the NEB before accepting the proposition of a certain duty bearer for close cooperation. Finally, it is of paramount importance to ensure that the duty bearer's willingness to cooperate is based on a genuine wish to improve its equality practices and is not simply a symbolic action.

2. Establish a committee with duty bearers

Once the evaluation of the situation has been completed and the pertinent duty bearers identified, it is recommended that a committee be created. A committee bringing together duty bearers and NEBs is an opportunity for duty bearers to share their observations, actions carried out, and obstacles encountered. It is also an opportunity to raise awareness of the commitment, activities and involvement of the NEB in the area of anti-discrimination and equality. In order to do so, NEBs should consider two strategies.

First, calling the attention of duty bearers to national and international norms as well as presenting specific decisions made by the NEB regarding claims of discrimination and inequality. Thoroughly informing duty bearers of their judicial obligations is a particularly crucial aspect of the engagement process for two reasons. First, in certain cases duty bearers may unintentionally commit discriminatory acts, unaware of the legislation and what constitutes discrimination. Properly informing duty bearers of anti-discrimination legislation can help them avoid this type of misunderstandings. For example, a recent case in France concerning an employee fired for wearing a beard revealed that the employer was unaware that physical appearance was a characteristic protected by anti-discrimination legislation. Informing and reminding duty bearers of their obligations also permits them to integrate these concrete examples in their internal activities, such as sensitivity training.

Another useful strategy in regards to piloting committees with duty bearers is highlighting the work of NEBs in the promotion of rights and equality. Any tools conceived for the use of duty bearers in the objective of promoting anti-discriminatory policies and practices, such as pamphlets and brochures, should be presented and made readily available to duty bearers participating in the engagement process so as to assist in the establishment of best practices in the domain. For example, the Liaison Committee with Employment Intermediaries (CLAIE) in France regularly informs

participating duty bearers of their work and materials available concerning employment discrimination.

Aside from bringing to light the role of NEBs in the fight against discrimination, establishing a committee clarifies the obstacles and risk factors duty bearers confront while working in the field. Feedback from duty bearers regarding aspects that diminish their capacity to fulfil their responsibilities and obligations can lead to the creation of working groups around specific themes. The CLAIE in France led to the creation of working groups on the question of paradoxical orders, or injunctions calling for greater diversity in the workplace while forbidding reserving jobs for minority groups.

The benefits of committees are numerous. The establishment of this type of partnership allows for better coordination when creating measures promoting equality, bringing together the competency and capacity of NEBs and duty bearers. This type of balanced approach in turn ensures the equal representation of viewpoints during the elaboration of strategy. Moreover, the committee is an opportunity to provide guidance to duty bearers concerning equality matters and also provides an occasion for good practice sharing with NEBs and amongst duty bearers working in the same domain.

EXAMPLE: GREAT BRITAIN

In Great Britain the Equality and Human Rights Commission established a task force of stakeholders in the meat processing industry (industry bodies and major supermarkets) following a 2008 formal inquiry into working conditions in the meat packing industry that revealed gross violation of workers' rights. The task force aimed at creating a dialogue with duty bearers in order to address the concerns raised in the inquiry and to encourage and support voluntary changes in the sector. This initiative eventually led to the development and adoption of management practices by industry duty bearers in regulation with the respect of workers' rights.

3. Elaborate a strategy

Once the main problems have been identified and a commission established to encourage dialogue, the next step is to proceed with the elaboration of a strategy capable of rectifying any shortcomings as to anti-discrimination and equality measures. The strategy adopted should set clear goals and outline which practices and actions would best contribute to the realization of these goals. Strategies should equally focus on assisting the groups most vulnerable to discriminatory practices and addressing the root causes of unequal treatment to the extent to which it is possible.

When elaborating a project, it is important to explain:

- The immediate and root causes of the problem
- The role of different actors and their part of responsibility for shortcomings
- How the collaboration between the duty bearer and the NEB will reinforce the ability of duty bearers to respect their obligations
- The advantages of the collaboration for rights holders
- The objectives of the strategy

- The resources and tools necessary to accomplish program objectives

While the elaboration of a strategy is intended to be a cooperative process, bringing together NEBs and duty bearers in order to find common goals, it is important that NEBs elaborate an internal strategy beforehand in regard to the intervention. Doing so will ensure that it is NEBs rather than duty bearers who lead the engagement process.

The following examples help to elucidate the process of strategy development between duty bearers and NEBs.

EXAMPLE: GREAT BRITAIN

The Equality and Human Rights Commission (EHRC) entered into a binding agreement with Thames Valley Police Constabulary regarding their disproportionate use of stop and search powers with black and minority ethnic groups. According to the agreement, the EHRC worked with the police force to develop an intelligence-based use of stop and search powers rather than one based on racial stereotypes. A follow up report sets out good examples of how the police force tackled excess and disproportionate use of the power to stop and search. It showed that if stop and search is used proportionately and intelligently the police can protect the public, reduce crime and improve relations with black and minority ethnic groups.

EXAMPLE: GERMANY

In Germany, the Federal Anti-Discrimination Agency created a depersonalized application process which used application documents that omitted the name, gender, age and civil status of candidates. The objective was to impede the use of discriminatory practices in the recruitment of civil servants, thereby increasing the ability of public administrations to comply with their equal opportunity obligations. For applicants, the program ensured that they each had an equal chance of being invited to a job interview, regardless of their gender, age or ethnic background.

EXAMPLE: FRANCE

The Liaison Committee with Employment Intermediaries (CLAIE) in France decided that an official agreement, entitled Together for More Recruitment Equality, be resigned in October of 2013 as part of their strategy to fight employment discrimination. The agreement requires that employment intermediaries put in place an active policy of equal opportunity and non-discriminatory practices.

This commitment consists of the following components:

- The implementation of non- discrimination and equality awareness campaigns and actions both within and outside of the organization
- The refusal of all discriminatory requests and the application of equal treatment in recruiting procedures
- Recruiting transparency and objectivity
- Promotion of equal opportunity amongst candidates
- Informing the Defender of Rights of all measures taken regarding the commitment and sharing examples of good practices in this domain
- Communicating the organisation's commitment to all those involved in the recruitment process (recruiting agencies, employers)

The creation of strategies promoting equal opportunity and antidiscrimination necessitates the mobilization of different tools at the disposal of NEBs. These tools shall be described in detail in the following chapter.

4. Hold duty-bearers accountable for their actions

The main objective of engaging with duty bearers must always be obtaining clear and sustainable results, thus furthering the cause of antidiscrimination and equality. Any program undertaken should in effect be oriented towards capacity building of duty bearers, meaning that it is necessary to identify obstacles to the realization of obligations and to find solutions in order to overcome them. Holding duty bearers accountable for their actions and measures taken, or the lack thereof, is a central aspect of the engagement process. When launching a partnership between an NEB and duty bearers, it is essential to ensure that the duty bearers involved are held accountable for any failure to meet their obligations. The implementation of accountability measures reinforces the credibility and legitimacy of NEBs and duty bearers, ensuring that the commitment is respected not only in words but in acts. In order to ensure accountability, NEBs must monitor the progress of any programs developed in cooperation with duty bearers and evaluate the results of these initiatives.

First, it is important to monitor the implementation of programs conceived in cooperation with NEBs that seek to ensure the compliance of duty bearers. Monitoring a program of this type means firstly observing the conduct of duty bearers and making sure they believe in and adhere to its objectives. Moreover, it is important to stay vigilant as to any possible effects, positive or negative, that the mission may have on rights holders. Finally, putting in place a feedback system and investigating any complaints is instrumental in correcting flaws that may arise during the implementation of the strategy.

EXAMPLE: SWEDEN

In Sweden between 2006 and 2008, the Equality Ombudsman conducted a study on employers' compliance with equal pay legislation as stated in the Swedish Discrimination Act. The Equality Ombudsman set out to monitor the provisions on pay surveys (a sample population of 20% of the total labour force), by inspecting almost 600 of the largest companies and government agencies. The monitoring focused on pay differentials between women and men performing equal work of equal value and companies' obligation to rectify unwarranted pay differentials. After this initial investigation, which led to the salary adjustment of 5 800 employees, a follow-up investigation was launched in 2013 in order to see whether the employers' efforts to close the pay gap had continued since the last audit by inspecting the action plans for equal pay.

Once the program has been put into place, it is important that NEBs carry out an assessment of the results and their impact on antidiscrimination and equality. In order to properly evaluate the actions of duty bearers, one must determine the time period to be considered in the assessment (a year, a month, a two year period) and select what indicators will be used to evaluate duty bearers' performance. Some examples of indicators for evaluation are:

- Changes in policy and practice

- Increase in resources (both material and non-material) used to fight discriminatory practices
- Changes in standards
- Increase in the awareness and responsiveness of duty bearers
- Contribution to the attainment of the NEB's objectives
- The actions taken are successful in reaching target groups and have a positive impact on them
- The actions affect groups most vulnerable to discrimination

The methods deployed for the broad situation analysis in the first phase of the engagement process can be used also in this final step of working with duty bearers.

EXAMPLE: GREAT BRITAIN

In England, the Equality Information Monitoring Project sought to ensure that public authorities adhered to the Equality Act 2010, which required that public authorities publish equality information on their websites. Public authorities were given a year's time to make this information available on their website. After this period, an assessment was carried out in order to confirm that the duty bearers in question acted in compliance with the law. The evaluation concentrated on several dimensions, mainly the presence, comprehensiveness and accessibility of information. The evaluation also compared difference in performance amongst public authorities and sectors. This assessment made possible the identification of certain failings concerning the accessibility of this information on the website of public authorities and led to recommendations for improvement.

EXAMPLE: GREAT BRITAIN

Another example of effective accountability procedures can be found in the work done by the Equality and Human Rights Commission (EHRC) and the Thames Valley Police Constabulary. The binding agreement between the two organisations stipulated that the formal agreement would only come to an end once the police force had showed significant improvement on the conditions below. The conditions of the agreement required:

- A decrease in the figures for race disproportionality in the use of its stop and search
- A decrease in the number of excess stop and searches carried out on Black and Asian people
- The force taking action to ensure that the powers are being used in a non-discriminatory and lawful manner
- The force taking action to reduce their race disproportionateness ratios

In 2012 the EHRC was able to end the formal agreement with Thames Valley Police Constabulary as they had met the criteria for improvement and had reduced the significant and persistent race differences in stop and search.

The engagement process is a perfect example of "soft power", focusing on cooperation with duty bearers, but this does not exclude the possibility of taking more forceful actions, such as the use of sanctions, against noncompliant duty bearers.

If the results of an evaluation of the partnership are negative, NEBs may consider using more coercive measures in order to get duty bearers to comply with the partnership's objectives. Although many NEBs do not have the capacity to directly impose sanctions, other measures can also be effective when dealing with unwilling duty bearers. The most common way to correct duty bearers is

by putting an end to the partnership or demand their removal from a committee. NEBs may also contact media outlets in order to make the failure of duty bearers to cooperate on issues of equality promotion public knowledge, thus compelling them to correct their actions. NEBs can also decide to compel duty bearers that do not comply with equality legislation or with the objectives of a partnership into a binding agreement in order to avoid legal action, as was the case with the EHRC and the Thames Valley Police. In certain instances, NEBs have the power to bring duty bearers to court by contacting semi-judicial bodies or the public prosecutor in order to initiate judicial proceedings, as in the case of Austria.

EXAMPLE: AUSTRIA

The Austrian equality body can bring cases of discrimination before the Equal Treatment Commission (ETC) – a quasi-judicial body which comes to non-legally binding decisions. If the ETC comes to the conclusion that discrimination has occurred, it may forward a proposal for the better implementation of equal treatment to the duty bearer in question. Duty bearers have about two months to implement the proposal. If it is not implemented, members of the ETA and the equality body will bring an action for a declaratory judgment (i.e. a judgment whose sole purpose it to establish that the employer violated the law; no sanctions are applied at this point) before the court.

CHAPTER 4 – DIFFERENT TOOLS THAT EQUALITY BODIES USE

Introduction

National equality bodies (NEBs) use a large number of tools in their work with duty bearers under their national anti-discrimination and equality laws. Since it would be very difficult to list all of the tools in this report, a set of categories is used to show their range and versatility. There are a number of ways of categorising the tools that NEBs use in their work that focuses on duty bearers. The one used in this report consists of eight categories:

- legal (enforcement)
- information and awareness raising
- research
- training
- advice and guidance
- engagement and provision of practical support
- cooperating with regulatory bodies
- dialogue

Some activities by NEBs may be included in more than one category. For example, the Commission for Equality in Labour and Employment (CITE) in Portugal combined *training* and *co-operating with regulatory bodies* in a project to develop tools and methodologies for labour inspectors who work for the Portuguese Labour Inspection Authority.

The range of tools allows NEBs to use different particular objectives in different contexts. The contexts can include:

- dealing with an individual duty bearer or a group of duty bearers to ensure compliance
- communicating directly with duty bearers
- communicating indirectly with duty bearers, for example through a third party such as an industry body, research institute or via the media
- engaging in policy or regulatory initiatives that have the potential to strengthen anti-discrimination or equality requirements on duty bearers

The objectives can include:

- requiring a duty bearer to fully observe existing anti-discrimination laws
- establishing standards of practice that should be observed in order to comply with anti-discrimination laws
- ensuring that duty bearers have information on the *existence* of their duties
- ensuring that duty bearers have information on the *content* of those duties

- seeking to include equality standards or objectives that go beyond minimal legal compliance in the work of duty bearers
- seeking to build skills and competence in relevant officials in duty bearers, both at the ‘front line’ and in leadership and policy-setting roles
- seeking to build systems for equipping people who have or will come to have roles
- developing systems in individual organisations and across organisations to embed equality in their operations
- gathering information and data from duty bearers to generate and share knowledge about approaches to including equality in the work of duty bearers and the effectiveness of those approaches
- generating support for enhanced anti-discrimination and equality objectives, in society and the economy generally and in particular sectors

1. Legal

A number of EU directives require that each Member State has one or more bodies that have the legal competency to provide independent assistance to victims of discrimination in pursuing their complaints of discrimination (see the Equinet report *Providing Independent Assistance to Victims of Discrimination*³).

In practice, many Member States provide other competencies to NEBs in legal proceedings. These include:

- empowering the NEB to take legal cases in its own name against duty bearers that are acting in breach of the equality laws
- empowering the NEB to take legal cases on behalf of a victim or in the victim’s name
- investigation powers and powers to monitor compliance with equality laws
- power to implement situational testing procedures
- the right to appear before courts or tribunals as *amicus curiae*
- preparing legal codes of practice
- power to make recommendations for law reform or other legal changes
- powers to decide cases or to make recommendations
- powers to ensure the execution or implementation of legal decisions

EXAMPLE: AUSTRIA

In Austria the Ombud for Equal Treatment has a right to information pursuant to the Equal Treatment Act (ETA). In the case of alleged infringement of the ETA, the Ombud may request information from the employer, service provider, work council or other responsible body and these persons must provide the information requested. The ETA also entitles the Ombud to request information from the social security body about the income of a specific person if her or his colleague has strong reasons to assume direct discrimination with regard to payment.

³ Equinet Europe (2012) *Providing Independent Assistance to Victims of Discrimination*, Brussels. Available at <http://equineteurope.org/Providing-Independent-Assistance>

EXAMPLE: PORTUGAL

In Portugal, the Commission for Equality in Labour and Employment (CITE) has been given the legal power to appraise the legality of collective agreements for their compliance in relation to gender equality.

EXAMPLE: GREAT BRITAIN

In Great Britain, as part of its enforcement powers the Equality and Human Rights Commission (EHRC) has the competency to undertake a formal inquiry.

In 2010 and 2011 the EHRC used this competency to investigate the effectiveness of the English care and support system in protecting and promoting the human rights of older people receiving home based care and support. The report revealed evidence that the poor treatment of many older people is breaching their human rights.

A second legal power was evident in the EHRC's work on the use of 'stop and search' powers by police. The EHRC entered into a legally binding agreement with two police forces under Section 23 of the Equality Act (as an alternative to using other enforcement powers available to the EHRC following research that found Black people were six times more likely, and Asian people twice more likely than white people to be stopped and searched by police). Under the legally binding agreement, the two police forces agreed to take a series of steps over 18 months to reduce the disproportionate use of stop and search powers on Black and Asian people.

EXAMPLE: FRANCE

In France, the Defender of Rights investigates the claims it receives, using the investigative powers at its disposal. At the initiative of civil, criminal and administrative courts, or at the request of parties in a case, the court may request the Defender to present observations on the instances of discrimination submitted to it. The Defender may itself ask to submit evidence to such courts; and in those circumstances the right to submit evidence is automatic.

For example, three paraplegic passengers filed a complaint about a low-cost airline company with the public prosecutor because they were denied boarding between 2008 and 2010. The public prosecutor investigated the cases and requested the intervention of the High Commission against Discrimination and for Equality (HALDE⁴, now part of the Defender) in 2010. The Board of the HALDE gave an opinion finding discrimination based on disability. Following the opinion of the HALDE, the Prosecutor brought the case before the Bobigny Criminal Court and requested the observations of the HALDE. The Board decided in April 2011 to present observations to the Bobigny Criminal Court.

A second example concerns access to a school. In a decision in June 2012, the Defender of Rights decided to present its observations before an administrative tribunal concerning the refusal by a school to enrol or admit a Bulgarian child based on his Roma origin.

⁴ Since this case, HALDE has become part of the Defender of Rights and this kind of work has moved with HALDE to the Defender of Rights

2. Information and awareness raising

In order to comply with their obligations under equality laws, duty bearers need to know about those duties. It is unsurprising, therefore, that NEBs devote resources to activities designed to raise the awareness of duty bearers and provide information to them.

The provision of information and work on awareness raising can have a number of different objectives. These include:

- making duty bearers aware of the existence of equality and non-discrimination duties
- providing information on the content of those duties
- providing information on steps a duty bearer can take to seek to comply with its duties
- providing information on how duty bearers can go beyond minimum compliance to seek to achieve equality in practice

Staff, directors, managers and officials who are employed by duty bearers are also members of the public, and in that capacity are part of the target-group for many public awareness and public information activities by NEBs. Those information activities may provide information to rights holders, or may be neutral with information for both rights holders and duty bearers.

An information and awareness raising activity can deal with a range of equality grounds – gender, disability, sexual orientation, etc. – or deal with particular inequalities on one ground. The activities can also be addressed to people in a range of settings such as the provision of goods and services generally, or target specific settings, such as schools or financial institutions.

A number of different products or activities can be used to raise awareness and provide information, including:

- information booklets
- leaflets
- posters for use by workplaces, schools, etc.
- billboard campaigns
- posters on buses, trams and trains
- radio advertising
- newspaper advertising
- websites
- thematic conferences, seminars, etc. (e.g. with teachers, with employers and trade unions, with professional bodies, etc.)
- presentations
- promotional stands at business conferences

EXAMPLE: FRANCE

In France in September 2012, the Defender of Rights published on its website a “frequently asked questions” section that has the aim of informing companies and employment intermediaries of the rights of people with disabilities in employment and of the obligations of employers. Information

that is included is about a duty under EU law to provide reasonable accommodation to people with disabilities, and about a requirement under French law that all companies employing more than 20 people shall respect a quota of 6 percent of disabled people in their total workforce.

EXAMPLE: PORTUGAL

In Portugal in 2000, the Commission for Equality in Labour and Employment (CITE) launched the 'Equality is Quality Award', which has since been expanded to be a joint initiative of CITE and the Commission for Citizenship and Gender Equality (CIG). It is a well-respected award that, since its first edition, about 190 companies and other employers have applied for. A total of 35 enterprises or organisations have received it so far. They can use it to promote themselves as enterprises or organisations that are non-discriminatory and gender-equality friendly. The award is valid for two years. The award jury is composed of representatives from public administration bodies, professional associations, social partners and representatives from Government. The specific objectives of the award are:

- to distinguish companies and entities that perform or promote positive action in the area of gender equality and quality in work, employment and vocational training
- to publicise exemplary cases and measures in this area
- to promote the adoption of specific measures to improve equality between women and men at work, in employment and vocational training
- to create demand among the public for goods and services from organisations that have received the award

3. Research

A number of EU Directives require Member States to have one or more NEBs with the competences to conduct independent surveys concerning discrimination and to publish independent reports on any issue relating to such discrimination. In practice, this is often implemented by commissioning or undertaking research.

The engagement with duty bearers in research work takes the form of obtaining data and information from them for the purposes of the research. This differs from gathering data and information for other purposes, such as gathering evidence for legal proceedings, an investigation or legal monitoring. In some research activities, the duty bearer may not be aware that they are engaging with the NEB, particularly if the research is undertaken by another body on behalf of the NEB.

Research can examine different aspects of inequality and discrimination including:

- the diversity and equality situation in duty bearers
- the policies that duty bearers have in place
- the practices and procedures duty bearers apply
- the effectiveness of measures to improve equality
- barriers to equality
- the case for equality

Research can be undertaken by the NEB itself or it can be commissioned by the NEB and undertaken by external entities. A particular advantage of commissioning external entities to undertake research is that duty bearers can be more willing to provide data and information to entities they perceive to be neutral, rather than to an NEB itself. Depending on the laws that apply in a particular country, it may be possible to guarantee them that the NEB will not be given access to the primary data on an individual duty bearer, and this may facilitate higher rates of participation in a research study. In some countries, in practice it is not possible for the NEB to undertake research without the participants being aware that the research is being undertaken for the NEB.

EXAMPLE: FRANCE

In France, the Defender of Rights, in collaboration with the International Labour Organisation, has annually conducted an opinion poll on employees' perceptions of discrimination in the workplace, covering both the private and public sectors ('ILO Barometer'). This was done with the help of the CSA Group (specializing in market studies and surveys). The results of the survey that were made public in January 2012 found that, for example, the main grounds of discrimination perceived by the victims in France are gender and pregnancy⁵. The results of these surveys help in making recommendations to:

- companies so that they report their action to promote equality and set up whistle-blowing systems
- employee representatives so that they monitor anti-discrimination efforts
- social partners so that they negotiate agreements in this area and recommend that the government make such negotiations mandatory

EXAMPLE: IRELAND

Between 2005 and 2011, the Equality Authority in Ireland published a series of four research reports⁶ on the impact on businesses of workplace equality policies and practices. Three of the studies drew on data from surveys of Irish employees or firms and the fourth reviewed and synthesised existing international research. The studies found, variously, that having equality policies or that the active management of equality and diversity are associated with:

- lower levels of work stress
- higher levels of both job satisfaction and organisational commitment
- stronger belief among employees that opportunities for recruitment, pay and conditions and opportunities for advancement and career development were fair and equal in their organisations
- higher levels of labour productivity, business innovation and employee retention
- lower levels of work pressure and work-life conflict
- higher levels of output innovation

⁵ <http://www.ilo.org/public/french/region/eurpro/paris/actualites/download/discrim2012synthese.pdf>

⁶ The four studies are:

- Philip O'Connell and Frances McGinnity (2005) *Equality at Work?: Workplace Equality Policies, Flexible Working Arrangements and the Quality of Work*. Dublin: The Equality Authority.
- Kathy Monks (2007) *The Business Impact of Equality and Diversity*. Dublin: The Equality Authority and the National Centre for Partnership and Performance.
- Patrick C. Flood, James P. Guthrie, Wenchuan Liu, Claire Armstrong, Sarah McCurtain, Thaddeus Mkamwa and Cathal O'Regan (2008) *New Models of High Performance Work Systems: The Business Case for Strategic HRM, Partnership and Diversity and Equality Systems*. Dublin: The Equality Authority and the National Centre for Partnership and Performance.
- Helen Russell and Frances McGinnity (2011) *Workplace Equality in the Recession? The Incidence and Impact of Equality Policies and Flexible Working*. Dublin: The Equality Authority and the Economic and Social Research Institute.

For companies, other benefits include:

- the ability to resolve labour shortages and recruit and retain high calibre staff
- increased market opportunities with access to more diverse markets
- enhancement of organisational reputation to suppliers, customers and prospective and existing employees, and
- changes to organisational culture such as improved working relations and reductions in litigation.

4. Training

There are a number of ways in which NEBs can engage with duty bearers through training. The simplest is the direct provision of training by the NEB to duty bearers. However, there are further options that have been used by some NEBs. These include:

- establishing panels of independent trainers who provide training to the duty bearers
- providing funds to duty bearers to enable them to procure training
- the development of training modules for use with duty bearers

As with the provision of *information and awareness-raising*, the content and scope of training can vary, covering one discriminatory ground or all of them that are included in the equality laws in the country in question, and ranging from basic awareness raising through to more complex issues such as interview skills for recruitment staff.

An emerging area of interest in the development of training modules is the development and provision of e-learning by national equality bodies.

EXAMPLE: BELGIUM

The Centre for Equal Opportunities and Opposition to Racism in Belgium developed an e-learning module for estate agents on their obligations under the anti-discrimination laws. The module has now been adopted by the profession, and the Belgian professional body for estate agents includes it in the professional training it provides to those wishing to obtain qualification as an estate agent.

EXAMPLE: FRANCE

In France, the Defender of Rights makes prevention tools and e-learning courses available to the general public and professionals. In them, it disseminates concrete measures to help make anti-discrimination efforts more effective. It has committed to design training modules relating to discrimination in collaboration with various public and private partners. In September 2012, the Defender of Rights published updated versions of three e-learning tools that had originally been designed in 2007 by one of its predecessor bodies, the HALDE. These modules are available on the Defender's website. One is about discrimination in general and is aimed at the general public. A second is about the employment sector, and the third is about education. Since their online publication, they have been consulted more than 131,000 times. Once downloaded, the modules are used for internal training programmes and awareness-raising initiatives. The end-users are managers, employees and the general public. The modules are downloaded by:

- local authorities, users' services administration, and public companies
- major distribution businesses, recruitment agencies, the banking and insurance sector, and the construction sector

- teaching staff and their managers, pupils and their parents.

The education module was designed in collaboration with the Ministry of Education and it proved to be particularly successful (13,000 consultations per year). It has been integrated into the Distance Education (FOAD) website⁷ which is the platform of distance training for the staff of the Ministry of National Education.

Strategic approaches to the provision of training can include giving priority to training for trainers so that a 'multiplier effect' comes into operation. A second strategy used by some national equality bodies to maximise the effect of their training work is to provide training to key audiences and groups whose role is particularly important for equality policy and practice.

EXAMPLE: GREECE

Among those that the Ombudsman in Greece has identified as key targets for the provision of training are students in the National School of Public Administration and students in the Faculty of Primary Education at the University of Athens.

EXAMPLE: PORTUGAL

In Portugal, the Commission for Equality in Labour and Employment (CITE) developed training curriculums for auditors and consultants to enable them to acquire the expertise needed to implement gender equality plans.

EXAMPLE: AUSTRIA

In Austria, the Ombud for Equal Treatment has developed training on how companies should undertake pay surveys. This is designed to assist companies to meet legal requirements to provide income reports which show the gender profile of income earned by their employees.

5. Advice and guidance

The distinction between *advice and guidance*, on the one hand, and *information and awareness raising and training*, on the other hand, is not a rigid one. In this report, the distinction is grounded, entirely for convenience, on a difference in the nature of the relationship with the work of the duty bearer. We use the term *advice and guidance* to indicate that the engagement involves application of equality to the particular role, industry, circumstances or other characteristic of the duty bearer or the activity concerned; information and awareness raising are (in this report) more general in nature.

Work on advice and guidance often entails research on the particular sector or activity in order for the advice or guidance to set out how equality can be embedded in it. This can entail the NEB learning how the sector or activity functions and how changes need to be introduced into it if they are to be effective.

EXAMPLE: IRELAND AND GERMANY

⁷ Formation Ouverte et a Distance – <https://foad.orion.education.fr>

A common example across a number of NEBs is the provision of advice and guidance to various public authorities.

In Ireland, the Equality Authority, in partnership with the state body responsible for school planning, developed guidelines for second-level schools on how they can integrate equality into their school development plans.

In Germany, the Federal Anti-Discrimination Agency in co-operation with the federal states of Brandenburg and Hamburg and the municipalities of Stuttgart and Nuremberg undertook the project “Diversity Mainstreaming in and by public administration” between November 2010 and December 2012. The main objective of this project was to provide recommendations for public authorities on the issue of how diversity processes can be initiated in and by public administration. The results of this project are summarized in several publications. They provide background information on diversity within the context of public authorities, show challenges and possible approaches to solutions for their practical implementation and offer specific recommendations. There is also a publication which shows best practice examples regarding diversity mainstreaming in the member states of the European Union and a guide regarding equality rights and their meaning for public administration.

Work on advice and guidance by NEBs has not been confined to duty bearers that are public sector bodies.

EXAMPLE: GREAT BRITAIN

The Equality and Human Rights Commission has worked with the Association of Labour Providers to produce two toolkits on ‘Identifying Migrant Worker Maltreatment’ and on ‘Communicating with a Multi-language Workforce’ based on an inquiry into discrimination in employment in the meat processing sector.

EXAMPLE: FRANCE

In France in May 2012, the Defender of Rights and the French Data Protection Authority (CNIL), after consultation with many experts, published a methodological guide to measuring diversity. It is called *Measuring progress towards equal opportunities*⁸. This project was funded by the European Union under the PROGRESS Programme 2007–2013. This publication is intended primarily for employers. French legislation prohibits the collection of sensitive data such as “personal data that reveal, directly or indirectly, the racial or ethnic origins, the political, philosophical or religious opinions, or the trade union membership of persons”⁹. This extensive booklet of 106 pages aims at answering questions employers may have such as

- To which extent does my company respect the principle of equality and diversity?
- How to identify discrimination based on origin if it is prohibited to collect racial data?
- What action can I take in favour of one particular group?

⁸ Original title in French: *Mesurer pour progresser vers l'égalité des chances*. It is available at http://www.defenseurdesdroits.fr/sites/default/files/upload/promotion_de_%20legalite/progress/fiches/ldd_cnil_interactif.pdf

⁹ Article 8 of Law no. 78-17 of 6 January 1978, on files, data processing and individual liberties, as amended by Law no. 2004-801 of 6 August 2004, on the protection of individuals in the processing of personal data

Twenty-five practical information sheets give in detail the actions to be taken by companies to answer such questions and also their limits in order not to breach the law. For example, the third and fourth parts of the guide describe the relevant methodology to analyse the HR management files and to conduct monitoring (protocol, categories of useful data, etc.). It also provides for specific templates (e.g. to obtain the consent of the workers to collect specific data). Staff of the Defender of Rights and the CNIL went on a road show in June and July 2012 to present this guide locally in three big cities (Marseille, Paris, and Lyon). They coordinated workshops based on case-studies for HR and diversity managers, representatives of associations and consultants.

The provision of advice by a national equality body can be constrained by a number of factors. One of the more sensitive of these arises when there may be a conflict of interest or the perception of a conflict of interest. For example, the advice and the process of providing advice must not lead to the possibility of the NEB being unable to represent an individual who has been the victim of discrimination by the organisation which receives the advice. A further risk could be that the organisation that has received the advice can claim that it has a guarantee of compliance or be perceived to have been given such a guarantee.

6. Engagement and provision of practical support

The inclusion of a category entitled *engagement and provision of practical support* in this chapter reflects the fact that some NEBs undertake activities with duty bearers that is deeper than simply the provision of information or of training. That deeper engagement often takes the form of a specific piece of work with a duty bearer or a group of duty bearers over a period of time where the NEB has ongoing interaction or provides additional support above information or training. Examples of this kind of work have included

- providing expertise to enable a duty bearer to undertake an audit of accessibility for people with disabilities,
- developing and co-ordinating a forum of companies seeking to work together to improve gender equality in their employment practices, and
- providing funding and a suitably qualified consultant to work with a company to undertake an employment equality review and prepare and employment equality action plan.

EXAMPLE: GERMANY

Research has shown that suitably qualified candidates are often not called for employment interviews because information on their application form or curriculum vitae shows their age, gender, or ethnicity. The Federal Anti-Discrimination Agency (FADA) worked with a number of employers to develop a mechanism where applicants for posts were selected for interviews on the basis of 'depersonalised applications'. Participating companies included DHL Deutsche Post, Deutsche Telekom, and the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. The project generated significant levels of interest, and a number of the German states (Länder) have announced their own projects applying this principle.

EXAMPLE: IRELAND

In Ireland the Equality Authority worked with education partners – the Inspectorate of the Department of Education and Skills, the Department's professional support service, the teachers' trade union at primary level, and the representatives of the owners of primary schools – to develop a resource setting out a process and a set of tools for undertaking an equality audit in a primary school. In 2012, with funding from the European Union under the PROGRESS Programme 2007–2013, the Equality Authority provided support to three primary schools to test the resource. The project to support the three schools involved funding to pay for the support of an external equality expert who had a deep knowledge and understanding of schools and how they operate. The project had two distinct aims:

- Each school worked with the equality expert to identify its own strengths and challenges in relation to equality, and to develop an equality action plan that addressed its own particular needs identified in the audit.
- The Equality Authority received from each equality expert an assessment of the strengths and weaknesses of the process and tools when actually implemented.

7. Cooperation with regulatory bodies

NEBs are not the only statutory authorities with powers *vis-à-vis* duty bearers. Depending on the legal system in a country, different other regulatory bodies may have roles that are or could be relevant. For example, labour inspectorates exist in many European countries. Similarly, national school inspectorates exist in a number of countries.

The term 'regulatory body' is used here in a broad way. Regulatory bodies vary widely in the details of the powers they have and how they may use those powers. Some regulatory bodies may have the power to determine rules or regulations; other regulatory bodies may have a role that is limited to ensuring that the entities they regulate comply with certain rules or regulations. Some regulatory bodies may be required to check compliance by everybody that they regulate, others may only have powers to deal with complaints.

Work with regulatory bodies differs from much of the other work that NEBs undertake concerning duty bearers because the regulatory body itself is not the duty bearer that is of interest to the NEB. Instead, the focus is the functions of the regulatory body and how these can be used to promote or require the target duty bearers to incorporate equality into their actions. The legal system in

different countries may permit regulatory bodies to engage with equality and non-discrimination in two important ways:

- by ensuring that existing anti-discrimination and equality laws are complied with by the duty bearers that they regulate, or
- by developing regulations for the sector that include equality and anti-discrimination requirements.

EXAMPLE: IRELAND

In Ireland, the Equality Authority supported the Further Education and Training Awards Council (FETAC) in the development of its quality assurance (QA) standards for providers of further education, covering issues such as programme development, delivery and review; communications; assessment of learners; etc. Seven principles are identified for providers of further education and training in order to acquire or retain accreditation, and equality is one of these seven principles. Further education providers are required to provide equality training to staff and to have an equality plan based on an audit of current provision. The FETAC guidelines state the following:

'Programmes of education and training and related services should be delivered in a manner that accommodates diversity, combats discrimination and promotes equality of opportunity. Delivery agencies should have an institutional capacity and commitment to combat discrimination, to accommodate and make adjustments for diversity.

Equality Policy(ies) should be prominently displayed and circulated to all. Responsibility for implementing the policy(ies) should be assigned with procedures for implementation and handling discrimination complaints.

*A provider's Equality Policy should express its commitment to equality in employment and service provision and harassment.'*¹⁰

EXAMPLE: SWEDEN

From June 2012, the Equality Ombudsman in Sweden worked with the National Board of Health and Welfare to produce education materials on discrimination in the health care sector. Questions explored in the materials included inequalities, discrimination, unbalanced meetings in terms of power, democratic involvement by the patient in decisions in health care, and systematic work for non-discriminatory practices in health care.

EXAMPLE: ROMANIA AND BELGIUM

In both Romania and Belgium, national equality bodies are asked by media regulators for advice on hate speech in the mass media. In both cases, the power and responsibility for regulating the hate speech lies with the relevant media regulators, but in seeking to implement their functions, they recognise that the national equality body can be a source of relevant expertise that can assist them in that task.

¹⁰ FETAC Quality Assurance in Further Education and Training Policy and Guidelines for Providers, v1.3, page 24. http://www.fetac.ie/fetac/documents/Policy_and_Guidelines_on_Provider_QA_v1.3.pdf

8. Dialogue

Dialogue is distinct from the other categories of tools because it consists of processes and mechanisms that are ‘inputs’ rather than ‘outputs’.

Dialogue between duty bearers and NEBs can take a number of forms and have a number of different purposes. Dialogue can be used as a preparatory process to engage duty bearers that leads to joint activity. The dialogue may also include other stakeholders such as employees or organisations representing people who experience discrimination. In countries where formal social partnership processes apply, NEBs may be able to engage with those processes, and therefore with duty bearers, to contribute to the development of national policy on equality and anti-discrimination or to encouraging acceptance or securing recognition of the validity of the implementation of the equality and anti-discrimination legislation.

EXAMPLE: PORTUGAL

In Portugal, the Commission for Equality in Labour and Employment (CITE) is formally a tri-partite body, consisting of relevant state authorities, representatives of employers, and representatives of workers. Much of its work is therefore grounded in an approach that involves dialogue between the social partners and the State.

EXAMPLE: IRELAND

The Equality Authority in Ireland used formal national social dialogue mechanisms in the 2000s when it worked with two committees established under the ‘national partnership’ process: the ‘Equal Opportunities Framework Committee’ and the ‘National Framework Committee for Family Friendly Policies’.

NEBs can also establish other dialogue mechanisms, either in the absence of existing national structures or in parallel with them for specific purposes.

EXAMPLE: FRANCE

In France, the Defender of Rights has established a number of working groups (WGs).

- The Small and Medium Enterprise WG gathers the Assemblies of the Chambers of Commerce and Industry, those of Trades, the general confederation of the SMEs, the employers’ federations, consultants, representatives of the competent Ministries, etc. An example of the work of this WG is the design of the brochure called *Prevention of Labour Market Discrimination: A guide for SMEs, very small firms and crafts*.
- The Private Housing WG brings together the main federations of the leading players of the real estate market. For example, this group helped realise a brochure called *Renting without discriminating*.
- The Social Housing WG gathers the Social Housing Union (Union sociale pour l’habitat), which is a representative organisation of 770 social housing bodies through five federations, and the Federation of the local public-sector enterprises. It led to the publication of a guide concerning the non-discriminatory procedures for allocating social housing.

- The Job Evaluation WG gathers trades unions and experts (economists, lawyers, etc.). It has prepared a guide which will be helpful within the negotiation of the next branch collective agreements concerning gender equality.

CHAPTER 5 – CHOOSING THE RIGHT TOOLS

Introduction

The mandate to implement and to promote the principle of equal treatment is common to all equality bodies of EU member states, irrespective of the differences amongst them in terms of their competences¹¹. All equality bodies may use as a whole or elements of the strategy of engagement with duty bearers described in this report, provided that they make the necessary adjustments in view of their own mandates and competences as prescribed in their national legislation.

The preceding chapters gave a definition of duty bearers; they provided examples of specific positive obligations on duty bearers with regard to respecting and applying EU legislation pertaining to equal treatment; they underlined the importance of the guidelines, such as the legal, practical and ethical principles which should be employed by the equality bodies when they enter into engagements with duty bearers; and analysed the tools that may be used by equality bodies in their engagement with duty bearers.

This chapter will discuss some of the key factors in an equality body's decision-making when embarking on a project/action by focusing on the reasons which must influence the choice of a particular tool or tools employed in the project or action. The success of a project depends upon several variables, which may in fact determine the choice of the tool to be used in resolving a situation. While listing all these variables might not be possible within the constraints of this publication, the following list may provide a useful framework helping equality bodies in their decision-making.

1. The nature of the problem

Evidently, if the key issue faced by the partners is the lack of data at their disposal, that will require a different approach and different tools compared to challenges in the field of awareness or reporting of discrimination cases. Therefore, some basic questions relating to the nature of the challenge faced by the equality body and its duty bearer partners have to be analysed and answered in order to find the right tool to be applied. Such questions could include for example:

- Is it an issue that concerns a particular individual or a large group?
- Does it concern a single violation of the law or is it a complex, multiple discrimination issue?
- Does the existing legislation cover the issue at hand effectively?

¹¹ See pertinent legislation in Chapter 1

Depending on the answer to these questions, the equality body can determine firstly whether it has the competence to intervene on the issue and secondly the choice of tools at its disposal.

2. The competences of the equality body in light of the equality legislation

Based on its mandate and duties, and depending on the nature of the problem, the equality body will decide if it will, for example, choose to appear on behalf of the victim in court, if it will initiate a large scale media campaign or if it will recommend changes in the legislation. Thus, the powers and competences of the equality body determine to a large extent the tool with which it will attempt to resolve a situation. The same competencies also constitute the basis on which its engagement with potential duty bearers is built.

The equality body will also have to take into account if there are specific rules that must be applied to the engagement with duties bearers (public and private agencies). As detailed in Chapter 4, it is also important to assess to what extent the equality body can collaborate with duty bearers without risking to appear to compromise its status as an organisation that is impartial or supporting those who suffered discrimination. Therefore, the first assessment that should be made pertains to the authority the equality body uses to intervene and to the manner in which it will engage with a duty bearer. Optimization of its discretionary powers is key in ensuring the success of the equality body's intervention and engagement with a duty bearer in any given situation.

Importantly, equality bodies across Europe have differing levels of constraints relating to the use of their legal powers and the other tools listed in the previous chapters. However, typically equality bodies would have a much narrower scope for deciding on the use of their legal powers but would have more freedom in launching, for instance, information campaigns or research projects.

3. The aim of the project or action

A clear definition of the goal set and a precise delineation of the boundaries of the work to be done by the equality bodies and the involved duty bearer will ensure good planning and implementation of the project. It is crucial that the equality body dedicates due attention to strategically planning the engagement and to setting clear goals and benchmarks. This, in turn necessitates a good analysis of the situation at the start of the project, also allowing for effective monitoring and measurement of the results achieved. The tools at the disposal of equality bodies and described in the previous chapter are different in nature and they are best suited to reach different goals. Therefore, an adequate assessment of the concrete aims of the project will also help the equality body to identify the tool that is best suited to reach those objectives.

4. The suitability of the tool

The competences of the equality body and the nature and the aim of the project/action selected to work on very often set clear limits in terms of the methodology that can be used to put it in practice. In other cases equality bodies might have more freedom in view of the nature and aims of the project/action to identify and choose a certain tool.

In both cases, however, using the wrong tool to execute the project/action or an improper use of the right tool may jeopardize the whole effort. An example for the former may be the overuse of the legal powers at the disposal of equality bodies even in projects/actions where other tools (e.g. practical support or advice) could be more appropriate and effective. An example for the latter may be the choice of the tool “information campaign”, using posters in order to advance the general public’s knowledge with regard to the rights of members of socially vulnerable groups, (e. g Roma, or older people). If the poster campaign is not developed and designed properly, the project may backfire and instead of alleviating social stereotypes it could reproduce or strengthen them.

A number of factors (both scientific and practical) can help equality bodies and duty bearers in identifying the most suitable tool for their common projects/actions. Some of these factors are detailed below.

5. Scientific reasons for selecting a tool

Depending on the aim of the project, equality bodies will have to assess the pros and cons of the different existing methods to be employed on each particular occasion. For instance, if the aim of the project is to acquire knowledge of a situation, (as it is in the case of a research project implemented by the Greek Ombudsman which aims to determine if there is a *link between the income of women and their access to available instruments in order to claim their rights*, for the purpose of making policy recommendations to the state), then a tool such as empirical research appears to be the most appropriate. Furthermore, in order to choose the most suitable empirical research method from the ones available in the scientific field (i.e. written surveys, telephone interviews, qualitative personal interviews, analysis of historical records, etc.) consideration has to be given to the needs which arise from the subject matter in question.

In the aforementioned case, the absence of data, the difficulty in identifying the particular target group and the complexity in establishing a link between human behaviour and the acquirement or claim of institutional benefits were the underlying reasons for selecting the method of written surveys as the most appropriate one. Depending on the case, different concerns may play a role and equality bodies must cooperate¹² with the relevant duty bearer in order to decide the best possible path to follow.

In the preceding chapters there are several projects illustrating innovative uses of available tools and/or an imaginative combination of them. Clearly, in the planning stage of a project/action due consideration must be given to the variety of scientifically suitable methods which could be employed in the particular situation.

¹² Forming committees, partnerships, as does the CITE in Portugal, or working groups, as does the Defender of Rights in France, are some of the ways whereby though collaboration with the duty bearer the Equality bodies can create methods that would bring about optimum results

6. Agreement / code of conduct with the duty bearer

In previous chapters references are made to the cooperation agreement and the strategic approach that should be adopted and used in every engagement with a duty bearer in order to obtain the best results from the collaboration. The duty bearer's assessment/opinion on the situation, its experience on best practice and solutions to resolve the problematic situation, and feedback following the implementation of the project is indispensable. Therefore, the duty bearer should also be closely involved in identifying the most suitable tool for reaching the desired objectives.

The "*engagement committees*" used by France's Defender of Rights represent a good practice example in this field. A similar procedure is followed by the Commission for Equality in Labour and Employment (CITE) in Portugal, for example in their project for "*Equality is Quality Award*". While attention must be paid to the possibilities which the collaboration with the duty bearer may open up for improving the results of the project, the equality body should remain in charge of the process.

7. Distribution of duties and workload

A part of selecting a particular tool and collaborating with a duty bearer means that the workload required for the completion of a project will have to be divided and agreed upon from the beginning. The workload requirements that may be imposed on the staff of the equality body are also a factor in deciding which tool to use. This is especially important in terms of the capacity (resources) of the equality body and the demands of the situation. In the aforementioned example of the Greek Ombudsman carrying out research, the equality body and the duty bearer undertook each to execute different parts of the research. Considerations of who had the necessary expertise, who had the technical capacity to reach the target population, who could disseminate information, etc. therefore had to be resolved before deciding to select this tool.

8. The resources available to accomplish a project/action

The question of resources must be taken into account during the planning of a project. Human as well as financial resources need to be mobilized in order to execute successfully the project/action in collaboration with the duty bearer.

Equality bodies across Europe have different expertise and different numbers of personnel. The range of expertise of their staff affects the way in which they are able to carry out their mandates and certain specific projects. Thus, in institutions where the staff consists of experts from different fields (i.e. sociologists, economists, journalists, political scientists, lawyers, etc.) research, for example, may be conducted by the equality body's own staff. In other cases, equality bodies may

need to allocate funds to commission research, or expert opinions, to bring in external expertise. An example for the latter is referred to in Chapter 3, where the Equality Commission of Northern Ireland commissioned detailed research work on the state of disability access.

Further to human resources equality bodies should also take into account financial resources, the time available for the project/action, internal experience and expertise in handling the particular issue at hand and the existence of any networks and/or platform of duty bearers which may be used in disseminating the results of the cooperation.

Another question may arise in cases where the implementation of the project necessitates specific legal permissions or certain qualifications. For instance, when launching an awareness-raising campaign in primary schools on the issue of non-discrimination on the basis of religion or sexual orientation, due consideration must be given to the fact that in some countries there may be limitations as to the qualifications of the persons carrying it out (i.e. a specific license or official recognition of the person to engage with young pupils in a school environment) or as to the content and placement of any posters.

Efficient utilization of available resources on a project constitutes a key concern and a fundamental reason for selecting a particular tool. Given the typically limited resources at the disposal of equality bodies, maximum optimization of the resources should be of central concern in the decision making of equality bodies during the planning of a project, and consequently in the process of choosing the proper tool to materialize it.

9. Experience in using the particular tool

Equality bodies also need to analyse whether they have enough experience and expertise in the use of a certain tool. Although the lack of such experience and expertise does not have to rule out the utilization of the tool, it might necessitate a different approach, allowing for internal learning and/or bringing in external expertise.

10. Expected effectiveness and impact of the particular tool

Envisioning what is to be gained through the implementation of a project/action most often provides the impetus for the equality body to initiate it. Equality bodies and duty bearers need to have a clear vision of the expected outcomes and impact of their common projects.

While all the tools described in the previous chapter are effective means of achieving impact, the equality body will have to make a separate analysis in each and every case to identify the tool that promises the highest and most beneficial impact and positive change. A careful and unbiased consideration must be given to the foreseeable benefits for selecting the tool to carry it out. Factors such as efficiency, effectiveness and the opportunity of multiplication of possible positive results should guide the choice of the tool to be used.

11. Monitoring and adjusting the project

The cycle of planning and implementation is by no means concluded when the equality body, together with its duty bearer partners, have chosen the tool or tools for the implementation of their project.

Monitoring the results, the functioning and the effectiveness of the tools chosen is a crucial element of the engagement and the project, ensuring that potential problems and dysfunctions are recognised at an early stage. This, in turn, allows for adjustments to be made to the use of the tool or, in case of more serious problems, for changing the tool and choosing another, more suitable, effective and impactful one for the project.

In conclusion, it is evident that it is impossible to enumerate all possible factors, circumstances, or occurrences that may play a role in the direction a project/action undertaken by an equality body. In selecting what appears to be the most suitable tool for an action, the goal of the equality body is both to avoid possible pitfalls and to maximize the benefits that may ensue from the project. Collaborating with the duty bearer as suggested in this report is conceived as a form of engagement which is mutually beneficial since the duty bearer is mobilized to assist and complement the equality body and its efforts to realize the aim of protecting victims of discrimination and promoting equal treatment for all.

LIST OF WORKING GROUP MEMBERS AND CHAPTERS' AUTHORS

Sandra Konstatzky (Executive Summary) <i>Moderator</i>	AUSTRIA	Ombud for Equal Treatment
Patrick Charlier	BELGIUM	Interfederal Centre for Equal Opportunities
Signe H. Andersen	DENMARK	Danish Institute for Human Rights
Denis Roth Fichet (Chapter 3) <i>From 2014: Sarah Benichou</i>	FRANCE	Defender of Rights
Michael Stahl (Chapter 1) <i>From 2014: Alexander Sopp</i>	GERMANY	Federal Anti-discrimination Agency
Andriani Papadopoulou (Chapter 5)	GREECE	Greek Ombudsman
Dimitra Mytilinaiou		
Lilla Berkes	HUNGARY	Commissioner for Fundamental Rights
Cathal Kelly (Chapter 4)	IRELAND	Equality Authority
Lars Christoffer Kolberg	NORWAY	Equality and Anti-discrimination Ombud
Isabel Elias	PORTUGAL	Commission for Citizenship and Gender Equality
Maria Natividade Coelho	PORTUGAL	Comission for Equality in Labour and Employment
Anita Sares		
Cristina Vlad	ROMANIA	National Council for Combating Discrimination
Ljiljana Loncar	SERBIA	Commissioner for Protection of Equality
Nina Panikova	SLOVAKIA	National Centre for Human Rights
Paula Lejonkula <i>From 2014: Christine Gilljam</i>	SWEDEN	Equality Ombudsman
Heather Hunt	UK - GREAT BRITAIN	Equality and Human Rights Commission
Eileen Lavery (Chapter 2)	UK - NORTHERN IRELAND	Equality Commission for Northern Ireland
<i>Equinet support: Tamás Kádár (Senior Policy Officer)</i>		

EQUINET MEMBER EQUALITY BODIES

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.at

BELGIUM

Interfederal Centre for Equal Opportunities
www.diversite.be and www.diversiteit.be

BELGIUM

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

BULGARIA

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

CROATIA

Office of the Ombudsman
www.ombudsman.hr

CROATIA

Gender Equality Ombudsperson
www.prs.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

ITALY

National Equality Councillor
www.lavoro.gov.it/ConsiglieraNazionale/

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

MALTA

National Commission for Persons with Disability
www.knpd.org

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.snslp.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

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
www.equalityni.org



With the support of the European Commission



facebook.com/EquinetEurope

[@equineteurope](https://twitter.com/equineteurope)



ISBN 978-92-95067-74-5

© Equinet 2013

www.equineteurope.org

E Equinet
 European network
 of equality bodies