



## TERMS OF REFERENCE

### The Sanctions Regime in Discrimination Cases and its Effects

#### An Equinet Paper

#### EQUINET

Equinet is the European Network of Equality Bodies, a membership organisation bringing together 42 equality bodies from 32 European countries including all EU Member States.

National equality bodies are public institutions established by law to promote equality and combat discrimination, on grounds including gender and gender identity, racial or ethnic origin, disability, age, sexual orientation, religion or belief and other grounds.

Equinet promotes equality in Europe through supporting and enabling the work of national equality bodies. It supports equality bodies to be independent and effective as valuable catalysts for more equal societies.

More information about Equinet and equality bodies is available [on the Equinet website](#).

#### OBJECTIVES

The Equinet Work Programme 2015 commits to commissioning ‘a study on the sanctions applied in discrimination cases in Europe and their effects. The study will build on previous research in the field and it will, as a starting point, examine and compare relevant sources of EU and international law and their provisions on sanctions and remedies. This will be complemented by an analysis of trends and good practices in leading case law from international, EU and national courts and national equality bodies. The study will conclude with observations on the effects of the sanctions currently applied in discrimination cases and it will put forward ways in which equality bodies and other actors can contribute to making those sanctions more effective.’

Accordingly, the contractor will be expected to produce an Equinet paper. The purpose of the paper is to:

- Analyse relevant international, European and national legal sources and leading case law on sanctions and remedies in discrimination cases.
- Consider the effectiveness of sanctions and remedies and, in particular, any limitations to effectiveness
- Examine the role of equality bodies in promoting and securing effective sanctions and remedies.
- Provide ideas and proposals to increase the effectiveness of sanctions and remedies with particular attention to the potential contribution of equality bodies.



## **BACKGROUND & CONTEXT**

All EU equal treatment directives require Member States to lay down rules on sanctions or penalties in discrimination cases and to ensure that they are effective, proportionate and dissuasive (see e.g. Article 15 of Directive 2000/43/EC; Article 17 of Directive 2000/78/EC; Article 14 of Directive 2004/113/EC; Article 18 and 25 of Directive 2006/54/EC; Art. 10 of Directive 2010/41/EU).

However, as pointed out by the European Commission in the Joint report on the application of the Race and the General Framework Directives<sup>1</sup>: ‘...there are still potential grounds for concern as regards the availability of remedies in practice and whether sanctions that are imposed in concrete cases comply fully with the requirements of the Directives. The national courts appear to have a tendency to apply the lower scale of sanctions provided for by law and in terms of the level and amount of compensation awarded. In the ACCEPT case, the CJEU pointed out that Directive 2000/43/EC precludes national law under which sanctions are purely symbolic and that under certain conditions it would be in breach of the Directive if it is only possible to give a warning in a case of discrimination. In the light of these issues, the Commission will closely monitor the standards applied in the use of sanctions and remedies in the Member States’.

The European Commission’s report on the application of the Gender Recast Directive<sup>2</sup> points to the lack of effective sanctions and sufficient compensation as an obstacle of accessing justice in pay discrimination cases.

A number of studies and articles have previously analysed sanctions in EU law and in national legislation. Some notable examples are:

- Migration Policy Group: Discrimination in Working Life – Remedies and Enforcement (2004)
- Christa Tobler: Remedies and Sanctions in EC Non-discrimination Law (2005)
- Romanita Iordache, Iustina Ionescu: Discrimination and its Sanctions – Symbolic vs Effective Remedies in European Anti-discrimination Law (2014)

## **EXPECTED APPROACH**

During the process, the contractor will be expected to:

- Conduct a review of relevant literature and case law
- Conduct a survey of Equinet members to collect their inputs, perspective and information on the topic

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<sup>1</sup> Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’)

<sup>2</sup> Report on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

- Conduct interviews with selected equality bodies (at least 6 interviews, observing a geographical balance and a balance in the mandate and competences of the equality bodies) that
  - Litigated in discrimination cases where the level or appropriateness of sanctions was an issue, or
  - Decided discrimination cases and applied sanctions as quasi-judicial equality bodies
- Engage with key stakeholders including the European Commission
- Engage with the Equinet Board, Secretariat and Working Groups as appropriate

### **EXPECTED OUTPUT**

The paper (to be produced in English) is expected to:

- Provide an overview of relevant international, European and national legal sources and leading case law on sanctions and remedies in discrimination cases.
- Provide a typology of sanctions applied in discrimination cases
- Analyse differences in sanctions by
  - Type of discriminatory behaviour (including direct and indirect discrimination, discrimination by association, harassment, sexual harassment, victimization, instruction to discriminate)
  - Grounds of discrimination
  - Fields of discrimination
  - Countries
- Examine in particular the role of equality bodies in promoting and securing effective sanctions and remedies and the challenges they face in this.
- Analyse the problems stemming from inadequate sanctions in discrimination cases including systemic problems that could justify infringement procedures.
- Provide ideas and proposals (including legal as well as policy tools) to increase the effectiveness of sanctions and remedies with particular attention to the potential contribution of equality bodies.

### **EXPERTISE REQUIREMENT**

The selected expert(s) or team to be commissioned for this report/paper is expected to demonstrate:

- A track record of research work in the field of equality and human rights, and, in particular, in relation to the institutions established in this field
- Publication(s) in the field of EU equal treatment law
- Good knowledge of the work of national equality bodies and their diversity
- Excellent drafting skills in English

### **SELECTION PROCESS**

The Equinet Secretariat and Board will select the winning tender.



In the selection process the following criteria will be taken into account:

- Price
- Demonstrated expertise in the field
- Quality and content of the proposal

The proposal offering the best value for money will be selected.

### **TIMEFRAME**

The indicative timeframe for the commissioned paper is as follows:

- Result of the selection process: 30 April
- Start of the work in May 2015
- Present interim results to Equinet by July 2015 based on survey results and interviews conducted by that stage
- Draft paper presented to the Equinet Secretariat and Board by early September 2015
- Completion of the work by the end of September 2015
- The contractor might be invited to present the findings of the paper at the Equinet Annual General Meeting in Brussels on 9 October

### **BUDGET**

The maximum budget for the commissioning of this paper is **12.000 EUR** (VAT included).

It is estimated that **twelve working days** will be needed to produce this Equinet paper.

Costs for travel (if and as necessary) or relating to presentation/discussion of the paper will be covered by Equinet separately (if and as necessary).

### **SUBMISSION OF PROPOSALS**

**A detailed proposal of the suggested approach, methodology and timeline as well as proposed budget and expert CV** needs to be submitted by **Friday 17 April 2015** to the attention of: Anne Gaspard, Equinet Executive Director: [anne.gaspard@equineteurope.org](mailto:anne.gaspard@equineteurope.org)

#### **CONTACT PERSON FOR QUERIES**

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