

EQUINET CONFERENCE

EQUALITY BODIES AND THE NEW FREEDOM OF MOVEMENT DIRECTIVE – CHALLENGE OR OPPORTUNITY?

08 December 2015, Espace Batignolles, Paris



CONTENT

<u>Equinet and Conference Background</u>	2
<u>Conference Agenda</u>	4
<u>Conference Summary</u>	6
<u>Opening Speech</u>	7
<u>Session 1: Taking Stock and challenges ahead</u>	8
<u>Session 2: The experience of researchers and practitioners</u>	11
<u>Session 3: The experience of equality bodies</u>	15
<u>Concluding Speech</u>	20

Equinet warmly thanks all the chairs, speakers and participants for having contributed to the success of this event.

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CONFERENCE BACKGROUND

Equinet is **the European Network of Equality Bodies**, a membership organisation bringing together [45 equality bodies](#) from 33 European countries including all EU Members States.

Equality bodies are public organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and promoting equality. They are legally required to do so in relation to one, some or all the grounds of discrimination covered by European Union law – **gender, race and ethnicity, age, sexual orientation, religion or belief, and disability**.

Equinet aims to promote equality in Europe by enhancing the strategic capacity of its members and developing the skills and competences of their staff. Equinet also works to identify and communicate the learning from the work of equality bodies, and enhance their recognition and strategic positioning in relation to all stakeholders at European level.

Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers was adopted in April 2014. It stipulates that “each Member State shall designate one or more structures or bodies (...) for the promotion, analysis, monitoring and support of equal treatment of Union workers and members of their family without discrimination on grounds of nationality (...) and shall make the necessary arrangements for the proper functioning of such bodies”. The competences of these bodies are similar to competences of equality bodies under EU equal treatment legislation, albeit they appear to go further in some respect. Whereas some Equinet members already hold a mandate to deal with nationality-based discrimination, this Directive could potentially give new competences to other equality bodies.

This Equinet conference is dedicated to the role of equality bodies in combating nationality-based discrimination in the framework of the implementation of the new Directive. It will bring together equality bodies and relevant European stakeholders to analyse the role and potential challenges for equality bodies under the Directive and generally in addressing nationality-based discrimination.

This conference is designed to:

- Inform equality bodies about the new Directive
- Position equality bodies as key actors in combating nationality-based discrimination
- Allow equality bodies to share their experience, expertise and good practices with other Equinet members and European stakeholders
- Discuss the challenges equality bodies might face under the new Directive

The conference was based on a discussion paper, which has been produced by *Equinet Working Group on Equality Law*. Entitled *Equality Bodies and Freedom of Movement*, this paper discusses and sums up the challenges identified by equality bodies regarding the Directive, and provide a selection of relevant cases encountered by equality bodies as regards to EU migrant workers and their family.

CONFERENCE AGENDA

PROGRAMME – 8 December

08.30-09.00	Registration and Welcome	
09.00-09.30	Opening speech: Evelyn Collins – Chair of Equinet, Chief Executive of the Equality Commission for Northern Ireland Jacques Toubon – Defender of Rights, France	
09.30-11.00	SESSION 1 – Taking stock and challenges ahead This session will take stock of the situation regarding labour mobility within the EU and it will present and discuss with the European Commission the key findings of an Equinet Discussion Paper on free movement of EU workers. Chair: Evelyn Collins – Chair of Equinet, Chief Executive of the Equality Commission for Northern Ireland	
09.30-09.50	Taking stock of the situation and statistics – 2015 Annual report on labour mobility	Elena Fries-Tersch <i>Milieu</i>
09.50-10.10	Presentation of key findings of the Equinet Discussion Paper on free movement, including potential challenges for equality bodies (<i>prepared by the Equinet Working Group on Equality Law</i>)	Jayne Hardwick Senior Lawyer, Equality and Human Rights Commission, Great Britain
10.10-10.30	Responses from the European Commission and their view on the Directive’s potential – what role for equality bodies?	Dimitrios Kontizas, European Commission, DG Employment, Social Affairs and Inclusion, Head of Sector Free Movement of Workers, Unit D1
Questions & Answers – Discussion (30')		
11.00-11.30	Coffee break	
11.30 – 13.00	SESSION 2 – The experience of researchers and practitioners This session will convene specialist experts and organisations to further discuss the implications of the Directive and the potential role of equality bodies. Chair: Néphéli Yatropoulos, International Counsellor at the Defender of Rights, France	

11.30-12.00		Free movement of EU workers – the situation, challenges and solutions. What will the Directive change?	Dr. Herwig Verschueren , University of Antwerp – Free University of Brussels (Vrije Universiteit Brussel)
12.00-12.20		The work of the FRA on free movement and nationality-based discrimination	Gabriel Toggenburg , EU Agency for Fundamental Rights (FRA)
12.20-12.50		The work of and cooperation with existing information and assistance services: SOLVIT	Damien Foizon and Katarzyna Plonowska SOLVIT National Centre France
<i>Questions & Answers – Discussion (20')</i>			
13.10-14.15	<i>Lunch</i>		
14.15 – 15.45	<p>SESSION 3 – The experience of equality bodies</p> <p>This session will delve into the experience of equality bodies already addressing free movement issues and nationality discrimination cases, with particular attention to bodies that have already been designated under the Directive.</p> <p>Chair: Patrick Charlier, Equinet Board member, Interfederal Centre for Equal Opportunities, Belgium</p>		
14.15-14.45	Experience, expectations and strategies – the role of equality bodies under the Directive	<ul style="list-style-type: none"> ▪ Liisa Pakosta, Gender Equality and Equal Treatment Commissioner, Estonia ▪ Chrysoula Malisianou, Defender of Rights, France ▪ Sinéad Lucey, Irish Human Rights and Equality Commission 	
14.45-15.15	Case studies from equality bodies on free movement and nationality-based discrimination – how to deal with these cases?	<ul style="list-style-type: none"> ▪ Veronika Bazalová, Public Defender of Rights, Czech Republic ▪ Madalina Rosu, National Council for Combating Discrimination, Romania ▪ Ina Vandenberghe, MYRIA, Federal Centre of Migrations, Belgium 	
<i>Questions & Answers – Discussion (30')</i>			
15.45 16.00	<p>Closing of the Conference</p> <p>Anne Gaspard – Executive Director, Equinet</p>		

CONFERENCE SUMMARY



OPENING SPEECH



Evelyn Collins, Chair of Equinet and Chief Executive of the Equality Commission for Northern Ireland welcomed the participants to the Conference and expressed her thanks to the **Defender of Rights** for hosting and supporting the organisation of the Conference. Reminding the participants that it was the last major event of a very busy year for Equinet, she introduced **Directive 2014/54/EU** and elaborated on need for the explicit

designation by Member States of bodies mandated to strengthen the protection of EU workers and their family against nationality-based discrimination. She then explained that having realized the relevance of this new Directive for equality bodies, **Equinet's Working Group on Equality Law** issued a Discussion Paper on the potential challenges it implied for equality bodies, which serves as basis for the Conference. She then explained the structure of the conference, divided in 3 sessions: one focused on taking stock and on challenges implied by the Directive, one focused on the experience of researchers and practitioners and finally one focused on the experience of equality bodies with the new Directive. Afterwards, she introduced the **Jacques Toubon**, French Defender of Rights, and wished everyone a successful conference.



Jacques Toubon, Defender of Rights in France, started his speech by thanking Equinet, underlining that the former HALDE and the new Defender of Rights have been very active within Equinet. He continued by stating that one of the specific assets of the Defender of Rights is the **different mandates** it holds, including on topics such as the rights of children, which give the institution a chance to take a more intersectional approach. He also highlighted the **importance of the national political context** for the work of equality bodies. In France, regional elections showed a trend for favoring the extreme right, and this is indicative for the whole of Europe as well. In his view, elections are not only about economic policies, but about discourse, and moderate parties are

adopting the discourse used by the extreme right. He added that the **Directive is important in the political puzzle of Europe** nowadays, as it underlines the importance of EU values of free movement as opposed to the restrictions, and the **legal and physical walls undermining Schengen**. He concluded by stating that the best answer

equality bodies can give to the current context, is to work even harder for equality and the rights of all people.

SESSION 1 – TAKING STOCK AND CHALLENGES AHEAD



The Chair of the Session, Evelyn Collins, Chair of Equinet and Chief Executive of the Equality Commission for Northern Ireland, welcomed the speakers and introduced the aim of the session – to take stock of the European labour mobility situation and to discuss the challenges implied by the Directive for equality bodies.



Elena Fries-Tersch, from Milieu, started the session by taking stock of the EU labour mobility situation and statistics, introducing the **2015 Annual report on labour mobility**, which is a comparison across time and EU Member States on EU mobile citizens and workers. She explained that the report consists of two parts: an analysis of stocks and flows by using EU-wide data sources and an analysis

of national data sources, which, however, are only of limited use for cross-country comparisons, which is why they are not used for the main analysis. She then highlighted some important numbers: in 2014, long-term mobility (at least one year) constituted 3.5% of the EU and EFTA countries working age population, which represents 12.5

million of people, of which 8.3 million were working or looking for a job in another EU Member State **Cross-border mobility** (EU/EFTA citizens working in another EU/EFTA country than they reside in) represented 1.6 million people in 2014. She explained that cross-border workers are more likely to be employed in craft, and on temporary contracts. Furthermore, she added that the most common **countries of residence** for intra- EU movers of working age in the EU are the United Kingdom, Spain, France, Germany, Italy and Switzerland, while the most common **countries of origin** of intra-EU movers of working age are Romania, Poland, Italy, Poland, Portugal and Germany. In Belgium, EU movers of working age represent 8% of the working age population of the country. She further explained that, in most EU Member States, intra-EU movers who moved in 2004 or later have higher activity rates than national workers and that employment among older EU movers is higher than among the older national population in several Member States. She concluded by highlighting how data on labour mobility is relevant for legislation and for the work of national equality bodies. She explained that it gives indications of **possible areas of discrimination** since the data can highlight structural differences between intra-EU movers and nationals. By looking at these structural differences the data can also indicate in which Member States there may be higher risks of discrimination on an individual level, although it cannot identify the number of actual discrimination cases. Finally, by presenting the size of the group of intra-EU movers, these data also give indications on the number of persons possibly affected by discrimination or simply provide with basic figures for further research.

Presentation available [here](#)



Jayne Hardwick, Senior Lawyer at the Equality and Human Rights Commission from Great Britain, presented the key findings of the [Equinet Discussion Paper](#) on free movement, including potential challenges faced by equality bodies. She started by introducing the **Working Group on Equality Law**, which is composed of equality lawyers from 24 National Equality Bodies, and which annually produces reports comparing the **implementation of EU equality law in Member States**. She continued by elaborating on the new freedom of movement Directive, which is based on

Articles 18 and 45 TFEU, and on Article 21 of the EU Charter of Fundamental Rights. She explained that the **main objectives** of this Directive were to lessen nationality discrimination, close the gap between rights on paper and rights in practice, empower migrant workers and reduce incidence of unfair disadvantages vis-à-vis migrant workers. She also elaborated on the **scope of the Directive** and explained what would be the core duties of designated bodies: providing independent legal and/or other assistance, becoming a contact point for migrant workers and their family, publishing

surveys and analyses, reports and recommendations, and information. She concluded by highlighting the **key challenges** of the Directive identified by the Working Group. Particularly, the obligation of legal assistance and the scope of the Directive could cause a problem when equality bodies are asked to perform helpdesk-like functions. This might be problematic for equality bodies focusing on strategic cases only. Moreover, the difference in same-sex marriage recognition between countries of residence and countries of origin can become a challenge for same-sex families, and undermine the legal recognition of same-sex couples.

Presentation available [here](#)



Dimitrios Kontizas, from DG Employment, Social Affairs and Inclusion of the European Commission, delivered a presentation with **responses** on the Equinet Discussion Paper, and their view on the **Directive's potential**, particularly regarding the role of equality bodies. He started by explaining that the Directive introduced **new rights for enforcement, but not new**

substantive rights. Concerning the **scope of the legislation**, the Directive also covers residence of workers, jobseekers and family members. It covers matters of recognition of professional qualifications for access to employment and working conditions. Moreover, the Directive covers supplementary social security rights. The notion of EU workers is the same as for Article 45 TFEU and for Regulation 492/2011, while for their family members the Directive, in its recital 1, refers to Article 2 of Directive 2004/38. The Directive also covers the right of associations to provide assistance with protection of rights, but if there are national collective action rules, those provisions are unaffected. He further explained that, regarding Article 4 bodies, **it would be logical to designate equality bodies if they already fulfil similar tasks.** As for the provision of information expected from Article 4 bodies, they would have to publish information on national implementation of EU rules. It would also be the duty of Member States to provide information to all stakeholders about rights conferred by the Directive, in more than one official language. He added that, for the issue of the legal recognition of same-sex partners, the European Parliament tried to insert a provision but this amendment was not adopted. Furthermore, the provision of information by Article 4 bodies should not only be 'on demand', but also proactive: there should be a regular provision of relevant information. He finally stressed the importance of having equality bodies with adequate resources, adequate qualified experts and staff as well as a situation of genuine independence.

Presentation available [here](#)

SESSION 2 – THE EXPERIENCE OF RESEARCHERS AND PRACTITIONERS



The Chair of the Session, Néphéli Yatropoulos, International Counsellor at the Defender of Rights, in France, welcomed the speakers and introduced the aim of the session - to present the experience of various experts on the Directive, from an academic perspective, from an EU agency and from a national actor.



Dr Herwig Verschueren, from the University of Antwerp and the Free University of Brussels (Vrije Universiteit Brussel), delivered a presentation on the **situation, challenges and solutions for the free movement of EU workers and explained what will the Directive change**. He started by explaining which legal texts regulated freedom of movement of EU workers (notably Article 45, 56 and 21 TFEU). He

then focused on the **added value of the Directive**. Underlining that the personal and material scope of the Directive did not constitute innovations but a confirmation of existing instruments, he explained however that the Directive was making an **explicit reference to nationality-based discrimination** – even if there is no definition of direct and indirect

discrimination. He added that economically inactive citizens are not covered by the Directive, contrary to jobseekers. The right to reside per se is not covered but the access to education for children of migrant workers is covered. Posted workers are not covered either. However **Article 3 of the Directive, on the defence of rights introduces new rights**, on access to justice for EU migrant workers. He then identified possible legal issues in the future, including family reunification, the definition of migrant workers, same-sex marriage, language requirement and discrimination by private parties. He discussed the retention of status of a worker in cases of temporary inability to work as a result of illness or accident. If losing a job, an EU worker shall keep its worker status for at least 6 months. He also explained that frontier workers may be regularly in contact with Article 4 bodies, with problems mostly linked with social security and taxes. He then explained that **direct discrimination of EU migrant workers is relatively rare**, except for public sector jobs. It is often difficult to justify in front of the courts and in particular the CJEU, which has a very restrictive interpretation in that matter: it is only accepted for positions involving a direct or indirect role in exercising public powers. Exceptions are made for public policy, public security and public health or sport teams. He added **that indirect discrimination is more widespread** with professional practice such as residence requirements, language requirements, recognition of national professional experience only or calculation of seniority based only on periods worked in the host Member State. Even if indirect discrimination can be justified, budgetary justification is not allowed. He notably quoted a controversial Dutch legislation requiring a language test for access to social assistance. In conclusion, he explained that there is a very broad scope and numerous tasks for Article 4 bodies.

Presentation available [here](#)



Gabriel Toggenburg, from the EU Agency for Fundamental Rights (FRA), presented the work of the FRA on free movement and nationality-based discrimination. He started his presentation by stating that movement is actually in **the DNA of the EU integration process**, as Article 45 is at the heart of the EU acquis. On the free movement of LGBT families, FRA

delivered several legal analyses on the topic. As for the 2014 EU LGBT survey, he indicated that an [update](#) would be available soon. Relying on the definition of family in Article 2 of Directive 2004/38/EC, he explained that in 9 member States, there is **neither marriage nor registered partnership available for LGBT people**. In all of these (apart from Latvia and Slovakia) same-sex couples do not qualify as family members in the context of free movement (or the situation is unclear). 12 Member States do not

distinguish between same-sex and different sex spouses for the purpose of free movement. In 5 Member States a marriage between persons of the same sex entered into abroad is equated to a registered partnership and in 4 Member States the situation is unclear. Concerning the situation of Roma EU citizens moving to and settling in other EU Member States, he mentioned **the FRA's 2009 Roma Report**, where 165 Roma were interviewed in five locations in five countries. He concluded by stating that free movement could be touched upon in FRA Annual Work Program 2016-2017, but any other ideas on the situation are welcome.

Presentation available [here](#)



Damien Foizon and Katarzyna Plonowska, from SOLVIT National Centre in France, delivered a presentation on the work of and cooperation with existing information and assistance services for Article 4 bodies. They first presented SOLVIT, explaining that it was **created in 2002** with the aim of setting up a rapid reaction system for cross-border legal disputes.

SOLVIT is present in all 28 EU Member States and EEA countries, it is a **network based on cooperation between SOLVIT centres**. In France, it is the Secretariat General for European Affairs, an interministerial service, which hosts the national SOLVIT centre. They added that SOLVIT provides an informal, result-oriented approach and constitutes a good tool for preventing conflicts and discrimination. Any solution found by SOLVIT needs to comply with EU law. They explained that the **number of complaints has been increasing**. In practice, the centre of the country of origin is contacted, then checks the case and contacts the SOLVIT centre in the country of residence, which in turns gets in touch with the public service in question. They explained that SOLVIT cannot work with, for example, information requests. They continued the presentation by presenting some cases they received (mostly between France and Spain). For cases of **direct discrimination**, they presented for instance a case of refusal to provide a scholarship to a French resident in Spain due to the short duration of their stay in the country. They also presented the case of entry ticket price to a monastery in Romania which was twice as expensive for non-Romanian nationals. For cases of **indirect discrimination**, they presented various cases, including one of a refusal of healthcare card by Spain for a French national working in Spain due to his residence in France. They concluded by highlighting the **potential links between SOLVIT and Article 4 bodies**. They explained that designated bodies should be well-informed about SOLVIT, that a more effective protection should be ensured. They can send each other cases which correspond to the

scope of the other. As there is a complementarity in terms of competence and functioning, only a few cases could be taken by both institutions.

Presentation available [here](#)

SESSION 3 – THE EXPERIENCE OF EQUALITY BODIES



The Chair of the Session, Patrick Charlier, Equinet Board member and co-director of the Interfederal Centre for Equal Opportunities in Belgium, introduced the aim of the session, to share equality bodies' expertise on addressing free movement issues and nationality discrimination cases, with particular attention to bodies that have already been designated under the Directive.

Experience, expectations and strategies – the role of equality bodies under the Directive



Liisa Pakosta, from the Gender Equality and Equal Treatment Commissioner in Estonia presented the work of her equality body, which has been designated as an Article 4 body under the new Directive since May 2015. She introduced some examples of nationality-based discrimination: she notably presented the case of

barriers for Estonian tourist guides or bus drivers in some other EU countries, as they

are “missing a special license” or as “the bus must undergo a thorough control”. She also explained that in Russian language public schools and kindergartens, there are segregation problems. She also underlined some salient challenges in relation to freedom of movement, notably concerning a lack of adequate resources for the equality body following its appointment and a need to get more information for the families and local governments. She finally presented the Estonian project of e-Residency which is a transnational digital identity available to anyone in the world interested in administering a location-independent business online.

Presentation available [here](#)



Chrysoula Malisianou, from the Defender of Rights (DDD) in France presented the work of her equality body, which has been designated as an Article 4 body. She started by explaining what will be the extent of the work of the DDD in relation to the Directive. She mainly underlined that this Directive will grant a new comprehensive legal arsenal to the DDD and French judges,

regarding freedom of movement. She then gave an overview of types of cases dealt with by the DDD on nationality-based discrimination for migrant workers. She highlighted that most nationality-based discrimination cases received by her equality body are linked to employment. However, even in this field, there is a lack of reporting as compared to other grounds of discrimination (such as ethnic origin, health or disability). For the private sector, she quoted a case of the unfair and discriminatory dismissal of an employee due to her Romanian nationality. For the public sector, she quoted the case of an unnecessary French nationality requirement for an internship in a military hospital. She concluded her presentation by discussing the increased duties of the DDD following its designation as Article 4 body and the challenges it creates. She notably explained that the DDD will have to be careful not to overstep on competencies of other bodies, such as SOLVIT. She also explained that the creation of a dedicated helpline for migrant workers could be initiated.

Presentation available [here](#)



Sinéad Lucey, from the Irish Human Rights and Equality Commission presented the work of her equality body regarding the new freedom of movement Directive. She explained that the IHREC had been designated in 2014 as an Article 4 body. She explained that IHREC's competence extends to providing information on human rights and equality

rights to the public, and also providing legal and other assistance to individuals seeking to vindicate their rights under the Directive. She identified some challenges stemming from the Directive. She notably explained that Irish Equality law already encompasses "nationality" based discrimination within the Race ground and therefore wondered if the Directive goes further than this definition. She explained that IHREC is presently dealing with the case of a Polish national in Ireland who alleges that she has experienced numerous breaches of her employment law rights, including the right to equal treatment on the ground of her nationality. In the absence of being designated under Directive 2014/54/EU, IHREC could only provide advice and representation in relation to alleged breach of Employment Equality Acts on ground of nationality, but the designation changes this approach. She concluded by explaining that IHREC now has broader competence in dealing with breaches of employment rights of EU workers, than it does in relation to employment rights of Irish or non EU workers.

Presentation available [here](#)

Case studies from equality bodies on free movement and nationality-based discrimination – how to deal with these cases?



Veronika Bazalová, from the Public Defender of Rights in Czech Republic presented a case of nationality-based discrimination from her country. She explained that the Anti-Discrimination Act includes nationality, but that it does not have the same meaning as in EU law. It does not only cover EU citizenship but also the fact of belonging to a nation (which includes a language and a

culture). She added that 10 complaints per year of the Public Defender of Rights

concerns citizenship discrimination. She presented the case of an Irish-Czech couple who was refused the visit of a flat by a real estate agency because one of the owners wouldn't rent his flat to foreigners. She then concluded by emphasizing that there are two ways to handle a case: one, based on the original mandate of the Public Defender of Rights and one on basing the case on discrimination based on nationality ground. Finally, she explained that the Directive can also cover economically inactive citizens.



Madalina Rosu, from the National Council for Combating Discrimination in Romania, presented cases of nationality-based discrimination in her country. She presented two cases. The first one was about the refusal for Chinese residents to embark in an airplane. The airline staff, refused boarding these residents for a flight to Paris on the ground that they couldn't travel without the visa issued by the

French authorities. The petitioners claimed that the denying of their boarding was based on their citizenship, namely the Chinese citizenship, although they hold legal travel documents. After a thorough review, the steering board of the equality body stated that notified aspects by the petitioners could not be classified as act of discrimination, not having fulfilled the conditions required by law, namely the existence of a causal link between the criteria alleged by the petitioners and the notified act. The second case study was about the Democratic Alliance of Hungarians in Romania denouncing an employment announcement of the newspaper "Daily information", that contained the discriminatory condition: "no citizens of Hungarian nationality". The Steering Board recognised the discriminatory aspect of this vacancy post.

Presentation available [here](#)



Ina Vandenberghe, from MYRIA, the Federal Centre of Migrations in Belgium presented cases of nationality-based discrimination in Belgium. After presenting the Centre and explaining that MYRIA was not an equality body, she identified several obstacles to the free movement of workers. At the start, one of the main obstacles is the difficulty for EU

workers to register at the local level. During the stay, there is unequal access to services and at the end of the stay, they face a risk of withdrawal of right of residence. For the difficulty of registering; it is mainly due to technical problems (such as the absence of national number or the requirement of additional documents). For the access to services, she presented an example of indirect discrimination. A Spanish worker in Belgium and his Spanish wife were denied a mortgage for a house because the conditions of the mortgage required a residence permit of unlimited duration (internal rules of the housing company). Finally, for the withdrawal of right of residence, she used the example of an Italian citizen. After 20 years of employment in Italy, he took up a job in Belgium in 2013. He worked for 10 months in Belgium and lost his job. He could benefit from an unemployment allowance. However, after 5 months (with allowance) his right of residence was withdrawn, with the motivation that 'after a long period of inactivity, he had no genuine chance to find an employment'.

Presentation available [here](#)

CONCLUDING SPEECH



Anne Gaspard, Executive Director of Equinet, closed the seminar by thanking the participants and highlighted the outcomes of the Conference. She particularly thanked the Defender of Rights for co-organising the conference. She highlighted the importance of their work on crucial challenges, such as the refugee/migration crisis and the state of emergency imposed by the recent terrorist attacks. Their active involvement on these major topics is a perfect example of the necessity of having independent and effective national equality bodies in Europe.

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