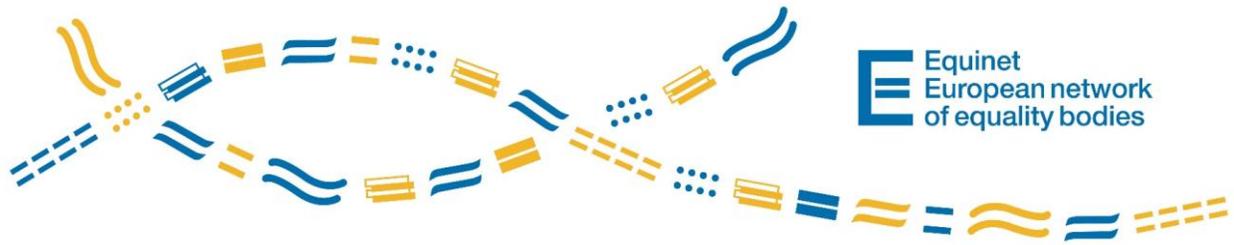


Equinet – European Network of Equality Bodies

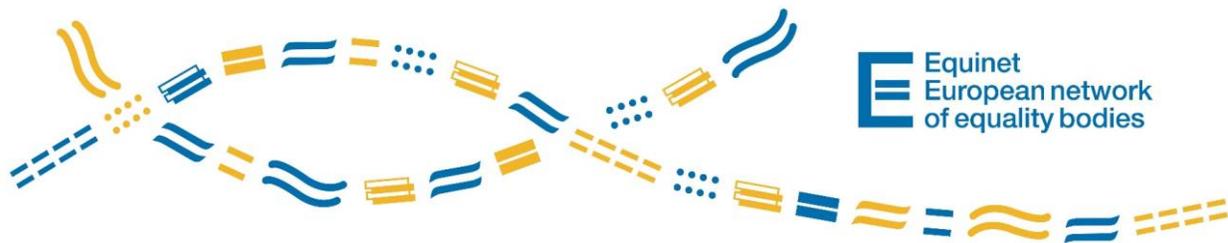
Response to the European Commission’s public consultation on the
First Preliminary Outline of a European Pillar of Social Rights

December 2016



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Equinet and Equality Bodies Protecting, Respecting and Fulfilling Social and Economic Rights

Equinet, the European Network of Equality Bodies, brings together 46 organizations from 34 European countries, which are empowered to counteract discrimination as national equality bodies across a range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. Equality bodies are independent public institutions promoting equality and combating discrimination in their countries, empowered by national legislation to implement the European Union Equal Treatment Directives¹ with a mandate to provide independent assistance to victims of discrimination, conduct independent surveys concerning discrimination, publish independent reports and make recommendations on any issue relating to discrimination in their country.

Institutions “such as...equality bodies have an essential role to play in times of economic crisis. As statutory and independent advocates of human rights and equality, [they] have great potential to promote human rights-compliant responses to the crisis and protect people from discriminatory measures which result in inequalities.”² Equinet trusts that the experience of its members will be of use to the European Commission in its efforts to protect, respect and fulfill social rights.

Equinet bases the present response on its recent publication ‘Equality Bodies Contributing to the Protection, Respect and Fulfillment of Economic and Social Rights’,³ which provides an overview over the work of national equality bodies in Europe in the field of economic and social rights. Both the research findings of equality bodies and their case work on economic and social rights will be used to elucidate ways in which the different policy domains proposed in the First Preliminary Outline of a European Pillar of Social Rights could be strengthened to fully respect and be in compliance with the social and economic rights the European Union and its member states have agreed to be bound by.⁴

- National Equality Bodies continue to support monitoring of social and economic rights at member state level, and could fruitfully be strengthened to fulfil this role where that is not yet the case
- National Equality Bodies could be involved in developing suitable and human rights compliant indicators for measuring and monitoring social and economic rights within the framework of the European Semester

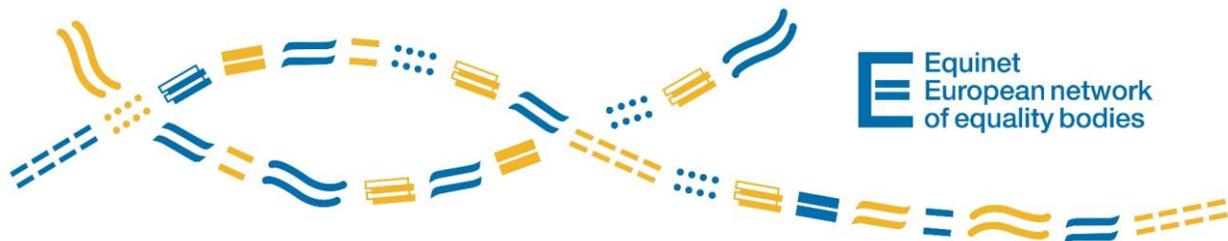
At the outset, Equinet offers the opinions of three of its members for general consideration when designing the next iteration of the proposed Pillar of Social Rights:

¹ ‘Race’ Directive 2000/43/EC; ‘Gender Goods and Services’ Directive 2004/113/EC; ‘Gender Recast’ Directive 2006/54/EC.

² ‘Safeguarding human rights in times of economic crisis.’ N Lusiani and I Saiz. (2013). Council of Europe. (p. 8)

³ ‘Equality Bodies Contributing to the Protection, Respect and Fulfillment of Economic and Social Rights.’ N. Crowley. (2015).

⁴ Please see the next section on ‘Context’ for a list of relevant legal instruments.



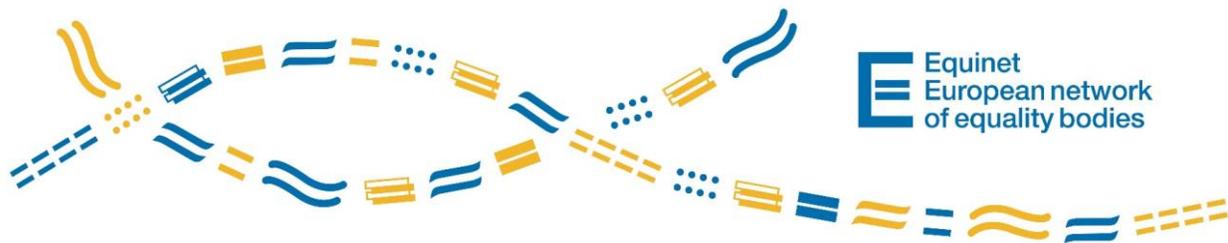
- The Irish Human Rights and Equality Commission submitted a report (2015) to the UN Committee on Economic, Social and Cultural Rights in which the Commission inter alia raised “[t]he need for a state to invest in, develop and promote wider use of Social Impact Assessments as a monitoring tool for the impact of budgetary decision-making on the socio-economic status of people living in poverty in a range of policy areas.”⁵
- The Equality Commission for Northern Ireland, in its communication with national government departments, has inter alia urged that “equality considerations, including the need to identify and mitigate any adverse impacts of policy on equality groups are taken into account. The Commission has drawn attention to the obligations to prevent retrogression of rights and to promote ‘progressive realization’ of the relevant rights to the maximum of available resources.”⁶
- In its investigation of a case where the complainant was adversely impacted by austerity measures in 2013, the Ombudsman of the Republic of Latvia opined that the austerity measures in question “should not have been applied to vulnerable groups and may not affect such areas as health care, education and social security.”⁷

In line with the concerns of its members, Equinet highlights the need for attention to be paid to equality and non-discrimination concerns in all proposed policy domains, and to consider throughout the policy design the need for progressive, and not retrogressive, realization of social and economic rights.

⁵ ‘Equality Bodies Contributing to the Protection, Respect and Fulfillment of Economic and Social Rights.’ N. Crowley. (2015). (p. 21)

⁶ Ibid, (p. 24)

⁷ Ibid, (p. 16)



Context for the First Preliminary Outline of a European Pillar of Social Rights

Equinet welcomes the European Commission's First Preliminary Outline of a European Pillar of Social Rights as an important step in the programme outlined in 'Completing Europe's Economic and Monetary Union' (also known as the Five Presidents' Report).⁸ It is our hope that the proposed Pillar embodies a renewed commitment to the human rights of all persons living in the European Union, of which social and economic rights form an indivisible part. It is our hope that the proposed Pillar will contribute to a holistic European legislative and policy framework recognizing the interdependence of sustainable growth with respect for the rights of individuals.⁹

The importance of ensuring a mutually reinforcing link between economic development and human development has long been recognized in the European Commission's development cooperation with third countries, following the paradigms set forth in the UNDP's human development concept (1990),¹⁰ and Equinet looks forward to seeing these principles applied within Europe's borders as well as outside them.

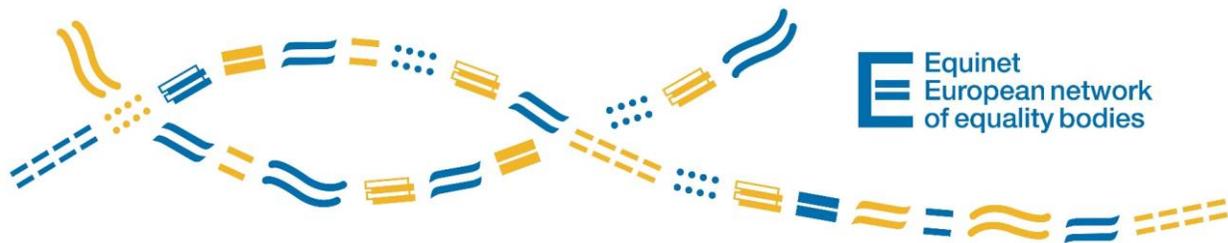
⁸ 'Completing Europe's Economic and Monetary Union'. JC Juncker. (2015). European Commission

⁹ 'Towards Social Investment for Growth and Cohesion' (2013). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, COM(2013)83

¹⁰ "[W]hile growth in national production (GDP) is absolutely necessary to meet all essential human objectives, what is important is to study how this growth translates - or fails to translate into human development in various societies...The link between economic growth and human development is by no means automatic.

Theories of human capital formation and human resource development view human beings primarily as means rather than as ends. They are concerned only with the supply side - with human beings as instruments for furthering commodity production. ..But human beings are more than capital goods for commodity production. They are also the ultimate ends and beneficiaries of this process.

Human welfare approaches look at human beings more as the beneficiaries of the development process than as participants in it." (<http://ec.europa.eu/europeaid/human-development>, accessed 14 December 2016).



In order to secure that the European Union’s governance structures fully protect, respect and fulfill social and economic rights, and in order to fully enable member states to do the same, full **equality mainstreaming** of the European Pillar of Social Rights is recommended, with a view to integrating these principles with the governance structures of the European Union. The equality mainstreaming should ensure **substantive equality for all**, not merely seek to respect formal equality.

In submitting this document to the European Commission, Equinet follows its member, the Irish Human Rights and Equality Commission, in stressing the distinction between social policies on the one hand, and economic and social rights on the other hand:

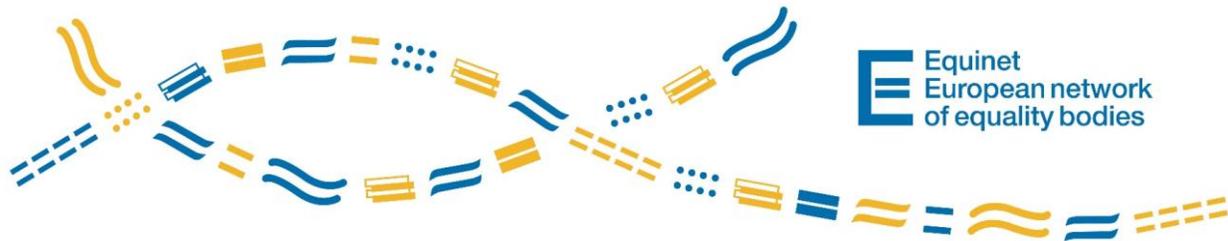
“The Irish Human Rights and Equality Commission draws attention to the distinction between social policy and social rights. Social policies are the legislative, funding, programmatic and other implementation tools that are designed to secure the realization of social rights. The success or otherwise of a social policy depends not only on whether the policy achieved the objectives that are stated for it but also – vitally – whether the stated objective is itself in conformity with social rights.”¹

As such, Equinet stresses the importance of ensuring that the policy objectives stated in the First Preliminary Outline are themselves in conformity with the wide range of social rights enshrined in the Charter of Fundamental Rights of the European Union, which were integrated, reflected or recast¹ from the legally binding UN and ILO instruments variously signed and ratified by EU member states,¹ as well as the Council of Europe’s European Social Charter (1961) or the Revised European Social Charter (1996).

The First Preliminary Outline is a useful first step in the right direction toward ensuring that European Union policy – whether economic, monetary, social or otherwise – is truly integrated, formulated “on the basis of EU law,”¹¹ and in conformity with the obligations the European Union and its member states have agreed to be bound by.

Following on from the conclusions of the Five Presidents’ Report, it is Equinet’s understanding that the proposed European Pillar of Social Rights aims to be integrated more fully with existing European legislative and policy measures in the social as well as economic domains than what was the case under the previous framework, in order to secure full protection, respect and fulfillment of social rights in Europe. Equinet welcomes this approach and looks forward to the Commission’s proposals for a cohesive economic and monetary framework that is fully compliant with social and economic rights as

¹¹ ‘Completing Europe’s Economic and Monetary Union’. JC Juncker. (2015). European Commission. (p. 7.)

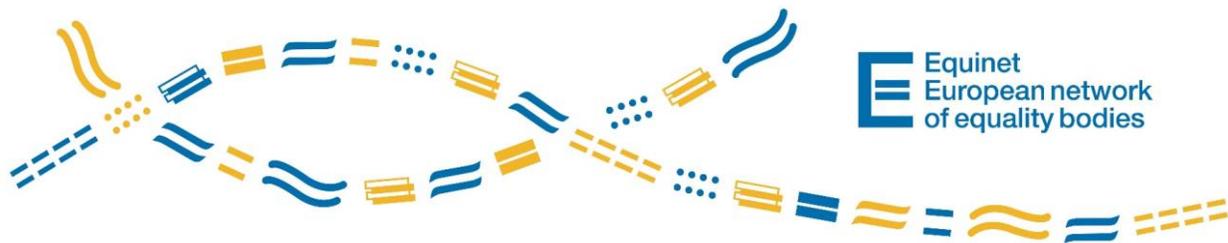


human rights. It is in this context crucial to ensure that the European Union’s legal and policy measures in other fields support and do not undermine the stated aims of the European Pillar of Social Rights.

Equinet is equally looking forward to the Commission’s proposals for a fully integrated legal and policy framework, where the relationship and synergies between the proposed Pillar and other existing and proposed instruments (such as the proposed package on Work-Life Balance or the existing structural and investment funds) is elucidated.

Equinet trusts that the next iteration of the Pillar of Social Rights will fully protect, respect, and fulfil the economic and social rights that the European Union and its Member States have agreed to be bound by in all the policy domains listed, and looks forward to seeing due consideration for social rights fully integrated with the monitoring mechanisms of the Economic and Monetary Union (EMU), including through formalizing common standards with the help of “specific standards and indicators”,¹² as proposed in the Five Presidents’ Report.

¹² Ibid, (p. 9)



Chapter I: Equal Opportunities and Access to the Labor Market

Equinet recognizes the importance of the twenty policy domains listed in the First Preliminary Outline, and welcomes the presence of a dedicated chapter to equal opportunities.

Yet the First Preliminary Outline fails to take account of the European Union's own **non-discrimination and equality mainstreaming commitments** in several of the policy domains listed in the first Chapter, including in domains 1 (skills and education), 2 (flexible and secure labor contracts), 3 (secure professional transitions), and 4 (active support to employment). The approach taken by the document aims at formal equality at best, while the European Union's commitments and aspirations would call for a **substantive approach to ensuring equality** for all in their enjoyment of economic and social rights.

Policy domain 1 (skills, education, and lifelong learning) does not tackle the persistent challenges faced by vulnerable groups such as Roma in accessing education and training opportunities, despite the European Commission's ongoing legal proceedings aimed at tackling segregation in education. The access of Roma to education has been highlighted as a recurring challenge by the Hungarian Commissioner for Fundamental Rights, the Irish Human Rights and Equality Commission, as well as the Cyprus Commissioner for Administration and Human Rights.¹³ The Ombudsman of the Republic of Latvia has highlighted education as a field where austerity measures are particularly to be avoided in order to ensure equality of opportunity¹⁴. Equinet is concerned that the policy domain does not sufficiently highlight the importance of education both for building inclusive societies, as well as for building knowledge based societies.

Failure to provide for targeted measures within each policy domain risks significantly diminishing the impact of the proposed policy measures for the target groups, thereby failing to protect the social and economic rights of these groups when it comes to equal opportunities and access to the labor market. Equality bodies' case law demonstrates the persistence (and in many cases rising level) of difficulties faced by certain vulnerable groups in access to the labour market, including discrimination on the basis of race or ethnic origin,¹⁵ religion or belief,¹⁶ and gender.¹⁷ "These include discrimination during

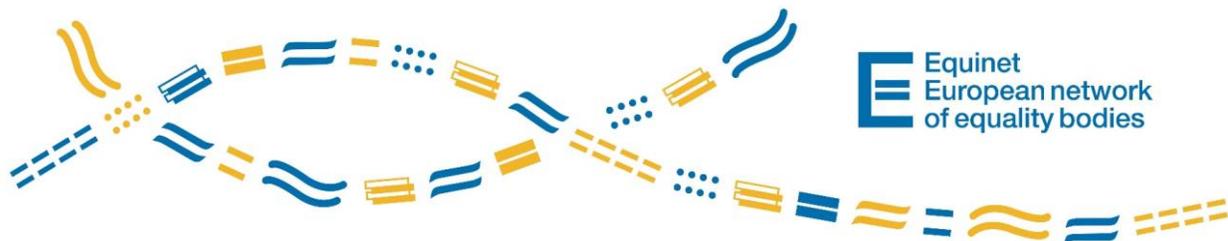
¹³ 'Equality Bodies Contributing to the Protection, Respect and Fulfillment of Economic and Social Rights.' N. Crowley. (2015).

¹⁴ Ibid, (p. 16)

¹⁵ 'Fighting Discrimination on Grounds of Race and Ethnic Origin.' (2016). Equinet report. Forthcoming in 2017

¹⁶ 'A Growing Agenda: the Work of Equality Bodies on the Ground of Religion and Belief.' N. Crowley. (2015). Equinet perspective.

¹⁷ 'The Persistence of Discrimination, Harassment, and Inequality for Women.' N. Crowley. (2015). Equinet perspective.



recruitment, advertisements, interviews, unequal pay for equal work, unjustified dismissals and harassment at the work place.”¹⁸

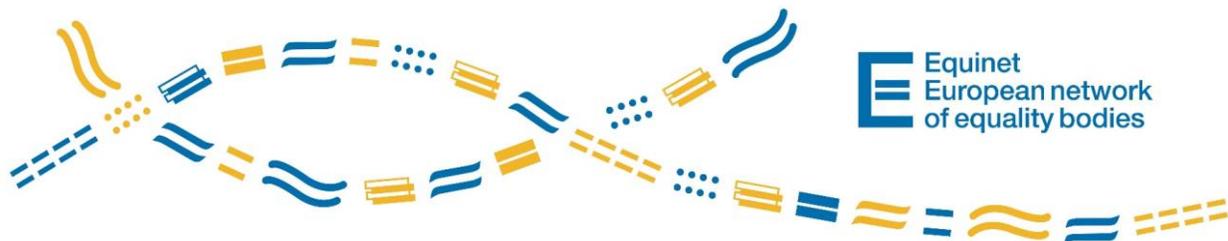
The Hungarian Commissioner for Fundamental Rights pointed out in its decision No. AJB 3025/2012 that Roma, women and persons with health problems could not access the Hungarian public work programme and thus faced particular discrimination in the access to employment opportunities.

Equinet is concerned that the policy domains proposed have not been adequately **equality mainstreamed**, as legal protection can only be effective if coupled with meaningful and targeted policy measures based on the principles of non-discrimination and equality.

Equinet welcomes the presence of policy domain 5 (gender equality and work-life balance), as well as 6 (equal opportunities) and looks forward to the Commission’s proposals for how these domains will be integrated with existing and proposed policy and legislative packages, including benchmarks such as the Barcelona targets for childcare.

Equinet is concerned that the Chapter does not address **transparency**, which is crucial for access to the labour market both in order to secure gender equality and equal access for other discriminated groups. An illustrative example stems from the conclusions of the Greek Ombudsman, which “has repeatedly investigated instances of exclusion from social, economic and political life of Roma people. The main conclusions were that the mainly indirect discriminatory treatment of members of the Roma population is often linked to structural characteristics of society, such as the non-transparent organization of the labor market, [...], and to institutionalized practices that go beyond the individual based investigations.”¹

¹⁸ ‘Fighting Discrimination on Grounds of Race and Ethnic Origin.’ (2016). Equinet report. (p. 18) Forthcoming in 2017



Chapter II: Fair Working Conditions

There are crucial equality and non-discrimination concerns related to the policy domains listed in Chapter II, including domain 7 (conditions of employment), 8 (wages), 9 (health and safety at work), and 10 (social dialogue and involvement of workers).

Equality bodies have extensive experience both in promoting and seeking to enforce the principle of equal pay.¹⁹ Recent case work demonstrates that the principle of equal pay may be violated in different stages of the employment process, including at the beginning in the conditions of employment, in the setting of wages, and even coded in before employment, with unequal pay enshrined in discriminatory collective agreements.²⁰ These stages correspond to policy domains 7, 8, and 10, respectively.

Establishing clearer guidance based on the case law of the Court of Justice of the European Union (CJEU) on the legal concept of ‘work of equal value’ could fruitfully be incorporated in any guidance provided for a policy domain on wages.

Equinet would like to highlight that while gender is the most prominent ground for pay discrimination, race and ethnic origin is likewise a ground for pay discrimination.¹ As such, there is a need to ensure that the policy domains listed are **mainstreamed for equality and non-discrimination** in order to effectively address challenges faced by vulnerable groups in accessing fair working conditions.

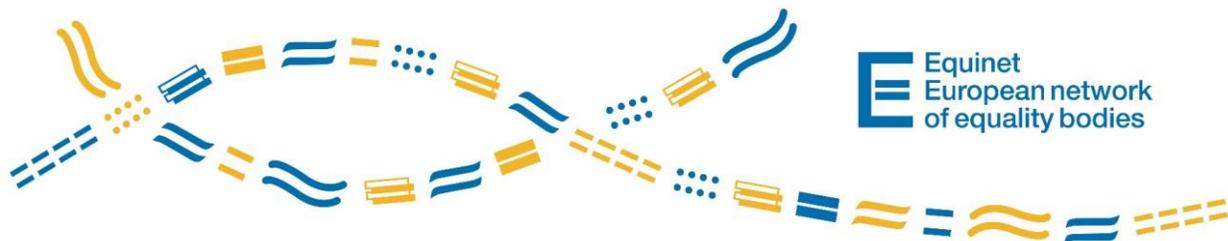
In policy domain 9 (health and safety at work), Equinet looks forward to the European Commission’s proposals for how this domain will serve to strengthen protection for pregnant workers. Several equality bodies have conducted research on pregnancy and motherhood related discrimination, finding it to be one of the most persistent and prevalent forms of discrimination on the labor market.²¹ Integration of policy domain 9 with protection measures previously proposed under the rescinded Maternity Leave Directive and resuscitated in the forthcoming Work-Life Balance Package would be welcome to ensure the proposed Pillar respects and promotes the rights of women, mothers and parents. Continued efforts to ensure protection from harassment and sexual harassment in the workplace, including support to victims of violence against women and gender based violence in the workplace,²² are important areas that could fruitfully be strengthened.

¹⁹ ‘Equal Pay for Equal Work and Work of Equal Value.’ (2013). Equinet report.

²⁰ ‘How to Build a Case on Equal Pay.’ (2016). Equinet Handbook. (pp. 56-63)

²¹ 3 out of 4 mothers surveyed in Britain reported experiencing what they considered discriminatory treatment relating to their pregnancy/maternity. ‘Pregnancy and Maternity Related Discrimination and Disadvantage’. (2016). Equality and Human Rights Commission research (p. 12)

²² ‘The proposed violence against women, domestic abuse and sexual violence duty: Guidance for developing an effective workplace policy’. (2013). Equality and Human Rights Commission report.



Equality bodies in Europe have expressed concerns with the rising levels of in-work poverty, with particularly the Latvian Ombud's conclusions in 2012 highlighting that the Latvian minimum wage at the time did "not guarantee a commensurable income and socially equitable remuneration, because such income is not sufficient to satisfy the basic needs of the employee and his[/her] family."¹ Any policy initiative aiming to achieve fair working conditions cannot ignore in-work poverty and negative discrepancies between minimum levels of remunerations and the poverty thresholds in Member States.

Chapter III: Adequate and Sustainable Social Protection

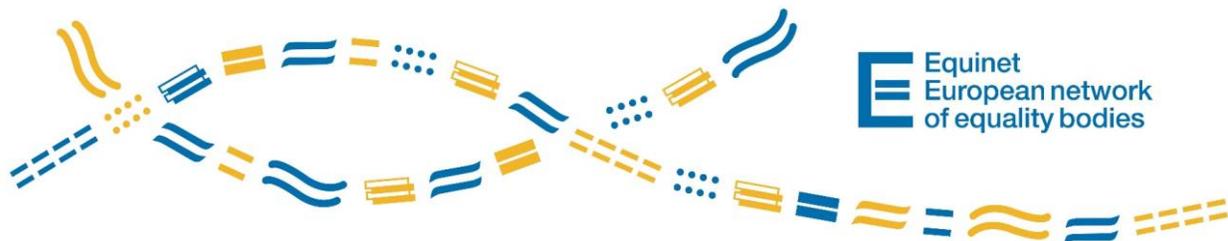
There are several equality and non-discrimination concerns in the policy domains listed under Chapter III, including in policy domains 11 (integrated social benefits and services), 12 (health care and sickness benefits), 13 (pensions), 14 (unemployment benefits), 15 (minimum income), 16 (disability benefits), 17 (long term care), 18 (child care), 19 (housing), 20 (access to essential services).

Equinet welcomes the recognition in the First Preliminary Outline that "Providing universal access to healthcare and addressing health inequalities will reinforce social cohesion and improve economic outcomes", and can only reiterate, following its member the Czech Defender of Rights, the need to take a rights based approach to health, including health insurance.²³

Equinet welcomes the recognition in the First Preliminary Outline that "Measures shall be taken to address the gender pension gap", and looks forward to the European Commission's proposals in this respect, including the relationship of such measures with the economic governance structures of the European Union.

The views expressed by the Ombudsman of the Republic of Latvia cited in the introduction are particularly pertinent to domains 11, 12, 19 and 20, in that they generally remind of the need to avoid adverse impact on these domains in order to protect vulnerable groups from discrimination. In addition to such general concerns, equality bodies have handled discrimination cases in a number of fields listed.

While policy domain 15 (minimum income) recognizes challenges in inadequate benefit levels, the concerns of the Ombudsman of the Republic of Latvia regarding the relationship between a minimum wage and the national poverty threshold¹ are pertinent also here.



The Ombudsman of the Republic of Latvia found discrimination in access to disability pensions, while Britain’s Equality and Human Rights Commission found discrimination in the disproportionate impact of reform in the UK on persons with disabilities,²⁴ both pertinent to policy domain 16. While the First Preliminary Draft recognizes the general vulnerability of persons with disabilities, Equinet looks forward to seeing the European Commission’s proposal for integrating the policy domain with the economic governance of the European Union.

Equinet likewise looks forward to the integration of policy domains 17 and 18 with the economic governance structures of the European Union, as well as a strong and mutually reinforcing link with the European Commission proposed package on Work-Life Balance. The use of indicators and benchmarks is particularly salient in these policy domains, starting from the Barcelona targets for childcare.

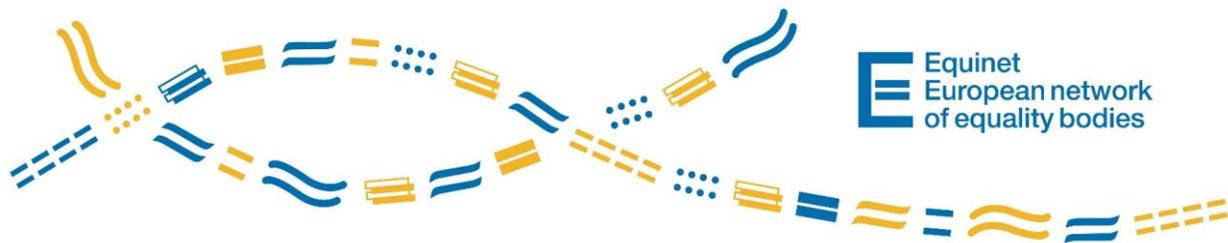
Finally, Equinet welcomes the recognition of the First Preliminary Outline of challenges related to evictions and homelessness in housing, including the proposal to provide “[p]rotection against eviction of vulnerable people” and “[a]ccess to social housing or housing assistance...for those in need”. Equality bodies’ legal work has had significant focus on discrimination in access to housing, particularly on the basis of race or ethnic origin,²⁵ but also on the basis of being a recipient of social transfers or on the basis of having a fixed term contract.²⁶ The particular vulnerabilities of Roma in access to housing and protection from eviction has been highlighted by Equinet in cooperation with several international organizations²⁷, and it wishes in this regard to reiterate the importance of ensuring that housing policies are in compliance with and respectful of the rights of vulnerable groups.

²⁴ Ibid.

²⁵ Hungarian Equal Treatment Authority and the Irish Human Rights and Equality Commission

²⁶ The Belgian Interfederal Center for Equal Opportunities (UNIA)

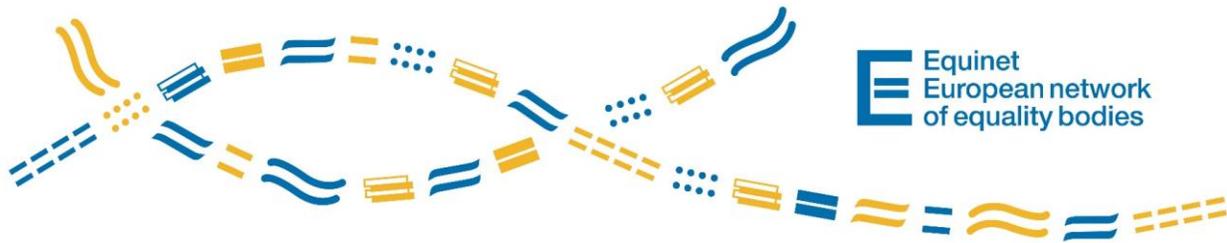
²⁷ Press release: Stop Evictions of Roma and Travellers (29 June 2016): <http://www.equineteurope.org/Press-Release-Stop-Evictions-of-Roma-and-Travellers>



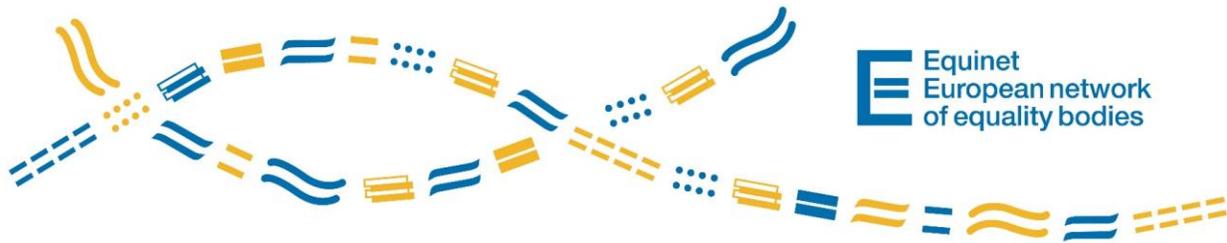
Conclusions

Equinet therefore concludes that

- The European Commission could usefully conduct an equality mainstreaming exercise to ensure that the final version of the European Pillar of Social Rights takes into account the needs of all vulnerable groups and to ensure that it furthers a substantive approach to equality.
- There is a need for a coherent and integrated legislative and policy framework at the European level, including appropriate and rights-based social indicators as well as benchmarks to secure the implementation of social and economic rights at both European and member state level
- Protecting, respecting and fulfilling social and economic rights by both European and member state duty bearers should include ex ante social impact assessments for any planned legislative or policy measures
- Should an ex ante social impact assessment reveal a risk of negative impact on equality groups, both European and member state level duty bearers ought to ensure that the negative impact is mitigated.
- In order to achieve this, protection of, respect for and fulfillment of social and economic rights ought to be integrated with European and member state level economic governance
- The experience of national equality bodies demonstrates that several of the policy domains listed are crucial to building inclusive societies and as such ought to be exempt from the negative impacts of austerity measures. Particularly, the need to secure the following in the European Pillar is stressed:
 - Inclusive education
 - Equal and rights-based access to social services, including
 - Care services
 - Disability support
 - Healthcare
 - Housing services
 - Targeted measures to secure equal labor market access for all, including transparency in
 - Hiring processes
 - Remuneration policies
 - Promotion policies
- The European Pillar of Social Rights could fruitfully recognize that while labor market inclusion is crucial to securing inclusive societies, there is currently a need to address significant levels of in-work poverty and to secure a decent standard of living for those not able to participate in the labor market for various reasons. This includes the need to ensure minimum income (whatever source it may derive from) does not drop below the local poverty threshold.
- The European Pillar of Social Rights could be used to crystalize and strengthen the European Union's commitments in the field of economic and social rights and to align these commitments with other international standards at UN and Council of Europe level.



- National equality bodies continue to lend their expertise to monitor and ensure protection, respect and fulfilment of social and economic rights at national level, and as such could fruitfully be strengthened to continue fulfilling their function.



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