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| **EQUINET WORKING GROUP ON POLICY FORMATION**  **Meeting II summary** |
| **Tuesday 19th September 2017 (09:00 – 16:00)** |

**Venue:** Office of the Ombudswoman (Zagreb, Croatia)

**Participants:**

* Bogdan Banjac (Commissioner for Protection of Equality, Serbia)
* Ikram Belajouza (FADA, Germany)
* Stephanie Borg Bonaci (NCPE, Malta)
* Niall Crowley (Independent Expert)
* Carl Ekström (Equality Ombudsman, Sweden)
* Baki Hyuseinov (Commission for Protection against Discrimination, Bulgaria)
* Walter Jayawardene (Irish Human Rights and Equality Commission)
* Tamas Kadar (Equinet)
* Natalija Krajnovic (Office of the Ombudswoman for Persons with Disabilities, Croatia
* Magdalena Kuruś (Commissioner for Human Rights Office, Poland
* Miha Lobnik (Advocate for the Principle of Equality, Slovenia)
* Jessica Machacova (Equinet)
* Branka Meic (Office of the Ombudswoman for Persons with Disabilities, Croatia)
* Veronika Molnár (Equal Treatment Authority, Hungary)
* Dimitra Mytilinaiou (Greek Ombudsman)
* Blerina Pirani (Commissioner for the Protection against Discrimination, Albania)
* Constanze Pritz-Blazek (Ombud for Equal Treatment, Austria)
* Tena Simonovic Einwalter (Office of the Ombudswoman, Croatia)
* Rachel Zalztman (EHRC, Great Britain)
* Diana Ureche (NCCD, Romania)
* Milla Vidina (Commission for Protection against Discrimination, Bulgaria)

**Supporting documents** are available on the [Equinet Members’ Area](http://www.equineteurope.org/-Policy-Formation,94-) *(restricted area – please contact [jessica.machacova@equineteurope.org](mailto:jessica.machacova@equineteurope.org) in case you cannot find the login information of your organisation).*

**Welcome session**

The following **national updates** were shared by the participants:

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| **Tena Simonovic Einwalter (Office of the Ombudswoman, Croatia)** | * **September:** publication of a piece of research by the Office of the Ombudswoman examining knowledge of the legal anti-discrimination framework and occurences of discrimination. |
| **Carl Ekström (Equality Ombudsman, Sweden)** | * Government have recommended that an NHRI be set up. Currently Parliament’s Constitutional Committee is seized with the matter. An independent expert has presented an analysis that is likely to prolong discussions. |
| **Dimitra Mytilinaiou (Greek Ombudsman)** | * **New anti-discrimination legislation in Greece** with new grounds such as social status and gender identity. Also expanded the mandate of the Greek Ombudsman. * Current draft law on disability outside employment. The Greek Ombudsman will be appointed soon UNCRPD Monotoring Mechanism. |
| **Blerina Pirani (Commissioner for the Protection against Discrimination, Albania)** | * **New legislation on EU accession**: the Commissioner is working on amendments. |
| **Stephanie Borg Bonaci (NCPE, Malta)** | * NCPE (Equality body) will become an **NHRI** in the coming months (not clear when). * **New anti-discrimination legislation** is still under discussion. |
| **Bogdan Banjac (Commissioner for Protection of Equality, Serbia)** | * The equality body is currently developing an **indicator framework** for monitoring discrimination on the grounds covered by the Serbian legislation. The project is implemented in cooperation witht the British Embassy. |
| **Veronika Molnár (Equal Treatment Authority, Hungary)** | * The equality body is involved in a **lawsuit against a private company**. The complaint deals with an advertisement for a catering company, which used the picture of a naked woman. The hearing took place in November. |
| **Constanze Pritz-Blazek (Ombud for Equal Treatment, Austria)** | * The **ground of gender was regionalised**, which means in practice people can launch a complaint to the regional office of the Ombud for Equal on this ground. |
| **Magdalena Kuruś (Commissioner for Human Rights Office, Poland)** | * **Political threats** from the government on the mandate of the Commissioner. * Some progress were made on the **employment certificate for Trans people.** * The Commissioner also produced a report on **access to justice of persons with disablities**, and is currently working on its reports to CEDAW and ECRI. |
| **Diana Ureche (NCCD, Romania)** | * A **new president of the NCCD** was recently appointed. |
| **Miha Lobnik (Advocate for the Principle of Equality, Slovenia)** | * **Negative political attitudes** towards the new equality body. The Advocate is not able to deal with the complaints they receive because of a lack of resources. * Focus on **public awareness** about the equality body. A research about the perception of discrimination among the population will also be undertaken. |
| **Ikram Belajouza (FADA, Germany)** | * **Same-sex marriage legislation** was just adopted and will be effective in June 2018. * A law in Parliament about the **rehabilitation of men who were prosecuted as homosexual**s was passed. People are starting to get compensation. |
| **Baki Hyuseinov and Milla Vidina (Commission for Protection against Discrimination, Bulgaria)** | * 2016: **Hughest number of decisions** given by the Commission since its creation. * Publication of a **handbook on anti-discrimination** for employment official, social assistance agencies... * Will carry out the functions of **UNCRPD Independent Monitoring Mechanism** with the ombudsperson institution. |
| **Branka Meic and Natalija Krajnovic (Office of the Ombudswoman for Persons with Disabilities, Croatia)** | * Commissioned a **research on human rights of persons with disabilities in foster homes and care institutions**. Huge human rights violation were found. The research received attention from the media, general public and ministries. Hope to influence policy formation. |
| **Walter Jayawardene (Irish Human Rights and Equality Commission)** | * **Recent international reporting for Ireland**: CEDAW, Convention against Torture. * **Housing and homelessness**: serious crisis in Ireland. A new ground of discrimination on advertising in relation with rental and housing was introduced. * Discussions on the question of **women’s reproductive health**. New parliamentary committee examining recommendations to amend the constitution in order to introduce a more liberal regime when it comes to abortion. IHREC expects to appear before the committee. * **Brexit** is a big issue for Ireland. The new EU frontier on the island will have an impact on mobility, for instance for Irish people working and/or living in Northern Ireland. |
| **Rachel Zalztman (EHRC, Great Britain)** | * **Brexit:** The EU withdraw bill is under discussion. No role is foreseen for the Charter of Fundamental Rights. The EHRC is developing a strategy and put forward amendments to the bill. * Current work with a Parliament committee on an inquiry: survey to understand **the experience of LGBTI in employment**. Biggest survey that was carried out in the world on the issue. * Positive developments to **address barriers to gender reassignment procedures for Trans people**. * **Universal Periodic Review**: EHRC delivered a statement because the government only accepted 48% of recommendations. * The UK was also reviewed by the **UNCRPD Committee in August.** |

**FACTSHEET: Equality Bodies contributing to the List of Actions by the European Commission to advance LGBTI equality**

**Presentation & debriefing session**

* **The final version of the Factsheet is available** [**here**](http://www.equineteurope.org/Equality-Bodies-contributing-to-the-List-of-Actions-by-the-European-Commission)**.**
* It was disseminated to relevant contacts at the European Commission, the European Parliament Intergroup on LGBTI Rights and external Equinet’s audience.
* **Debriefing:**   
  - Next time, more time should be put into the conception and the design of the product, as well as the construction of the questionnaire. It will help the drafters.   
  - Maybe the type of product (Factsheet or other product) should not be defined in advance.   
  - It would be great to know where members already have experience, and from who interesting practices should be expected.   
  - We should prioritise quality over quantity of examples.

**PERSPECTIVE: The specificities of ombudspersons as equality bodies   
Discussion**

**Note Developed from Policy Formation Working Group: Towards an Equinet Perspective**

**Ombudsperson Office**

The term Ombudsperson is used in different ways. It does not always describe a traditional Ombudsperson Office. The term, in its Swedish original, holds the general meaning of ‘someone who represents someone else’.

There can be different types of Ombudsperson Offices. These can address a particular issue, a particular group of people, or a particular sector of the administration. The parliamentary ombudsperson model is more closely linked to Parliament.

The traditional Ombudsperson Office tends to:

* Have a long history and a strong standing in the public eye.
* Be established through the Constitution or, in some cases, through legislation.
* Address issues of mal-administration by public sector bodies. Mal-administration can reference a minimum standard that relates to no abuse of power issues and issues of being just, accessible and effective.
* Take complaints, provide opinions and make non-binding recommendations. The Office relies on a moral authority. The personality of the Ombudsperson is important in this regard.
* Use recommendations on foot of cases and an annual report as its key tools. In some instances, it can turn to the Constitutional Court.

The traditional Ombudsperson Office is likely to be a member of the International Ombudsman Institute (IOI). There is also the Association des Ombudsmans de la Méditerranée (AOM).

The traditional Ombudsperson Office has been changing over recent years. It has developed its work to be more vocal on issues and more visible to the citizens. This change has been accompanied by, and could be linked to, Ombudsperson Offices increasingly taking on a human rights mandate in recent times.

The inclusion of an NHRI mandate in bodies that have both an Ombudsman Office mandate and an Equality Body mandate needs to be considered in the Perspective.

**Commonalities and Differences**

Commonalities and differences can be explored in terms of powers and functions and of traditions, practices, and culture. This exploration also needs to have in mind the differences between Equality Bodies in terms of functions accorded to them – adjudicatory, promotional and support functions.

What Equality Bodies and Ombudsperson Offices can have in common:

* Based in legislation.
* Independence.
* Addressing complaints. This applies to Equality Bodies that have adjudicatory functions.
* Addressing complaints against a minimum standard – non-discrimination for Equality Bodies and mal-administration for Ombudsperson Offices. Discrimination could also be viewed as a form of mal-administration.
* Deploying similar tools when it comes to receiving complaints and making recommendations on foot of complaints and when it comes to annual reports.
* Roles of communication, in particular as Ombudsperson Offices seeks to be vocal and to be more visible.

Differences that can be evident between Equality Bodies and Ombudsperson Offices:

* Ombudsperson Office can be dominated by a complaints-based tradition whereas Equality Bodies can have a tradition that combines enforcement with promotional functions. Ombudsperson Office can tend to have a predominantly reactive approach whereas Equality Bodies can combine a reactive and a proactive approach. Equality Bodies can claim a more activist tradition that is more connected to civil society.
* Equality Bodies can have more tools to intervene in different ways both legally and promotionally.
* Ombudsperson Office works to protect a minimum standard whereas Equality Bodies work to protect a minimum standard of non-discrimination and to promote an ambition to achieve full equality in practice – positive action.
* The scope the Ombudsperson Office is confined to the public sector, sometimes including the judiciary (from a maladministration perspective). The scope of Equality Bodies covers a wider range of sectors, including the private sector and civil society.
* Some Equality Bodies can make legally binding decisions in cases. Some Equality Bodies can apply sanctions where discrimination is found. The procedures in handling cases can differ particularly when it comes to evidence with the Equality Body more likely to hold a hearing and when it comes to application of the shift of the burden of proof by the Equality Body.
* Equality Bodies have a ground focus whereas the traditional Ombudsperson Offices have a focus on fields of administration. Some Ombudspersons Offices are established to focus on the rights of a specific group of people.
* Equality Bodies are concerned with individuals who are members of particular groups whereas Ombudsperson Offices address all citizens as individuals.
* Equality Bodies have a tradition of strategic litigation. It is suggested they can also take ex-oficio cases whereas Ombudsperson Office might not have this power or, if they do, might be less likely to use it.
* Equality Bodies provide assistance to those who experience discrimination in bringing their cases forward. This can be at issue for equality bodies with an adjudicatory function and they can be more akin to Ombudspersons Offices who are less likely to provide such assistance due to issues of impartiality.
* The expectation of impartiality on the part of the Ombudsperson Office and the expectation of an advocacy role on the part of the Equality Body can be at the heart of a cultural difference between the two types of body.
* There can be different origins where the Ombudsperson Office emerges in some jurisdictions as part of asserting a new democracy and where Equality Bodies emerge from European Union legislation.
* As a rule, Ombudspersons Offices appear to larger in size.

**Making Links: General**

Links can encompass working relationships and exchange of information, joint activities and partnership, and mergers. Links can be informal and formal.

A number of Equality Bodies have made no links with Ombudsperson Offices. The reasons for this are not stated. (Germany, Malta, Romania and Sweden at the meeting)

Links around joint activities and partnership have been pursued to:

* Cross referral of cases. (Albania, Bulgaria, Hungary, Serbia, Slovenia)
* Addressing cases jointly. (Austria)
* Responding to reporting requirements of international human rights instruments (Albania, Bulgaria, Ireland)
* Supporting Ombudsperson Offices to understand and have regard to the legal standards for discrimination and harassment and to apply a grounds-based lens in their work. (Britain)
* Create linkage mechanisms, a forum for ombudspersons and other regulatory bodies, and provide training on the public sector duty. Memoranda of Understandings are not being used as mechanism to govern links as the equality body is moving away from this model. (Britain)
* Linking with the Ombudsperson Office in inquiries being conducted where the field for the inquiry falls within the remit of the Ombudsperson Office. (Britain)
* Linking with Ombudspersons in relevant activities such as work being done on access to justice that includes Ombudsperson Office staff who deal with complaints to assist in identifying trends. (Britain)
* Request to take a case to the Constitutional Court, where the Ombudsperson Office had the power and the Equality Body did not. (Hungary)
* Submit a joint report to Parliament every four years. (Germany)

**Making Links: Merger**

A small number of Equality Bodies are merged with Ombudsperson Offices – Greece, Poland and Croatia at the meeting.

Formulating the mission:

* There is a challenge to embrace both traditions.
* There could be separate vision/mission for each mandate, a joined-up vision/mission that includes each mandate, or a single integrated vision/mission.

Structure for progressing work under the mandates:

* Equality Body functions in a distinct section within the larger merged body. (Croatia, Greece, Poland). It is of interest that the distinction between the NHRI function and the Ombudsperson Office function is not so clear in some bodies that also have a human rights function (Croatia).
* In finding a structure there can be a challenge to manage the difference in the ground focus of the Equality Body and the administrative field focus of the Ombudsperson Office.

Processes in managing the mandates require attention:

* There is a challenge in the triage and internal cross-referral of cases. There can be challenges of internal communication and shared expertise. People need to know at least a bit about each of the mandates.
* There is a challenge to ensure an adequate distribution of resources for the Equality Body function. The promotional activities of the Equality Body function can require additional resources.

Synergies can be identified between the mandates in particular areas of work that can be pursued in a joined-up or integrated manner:

* Annual Planning
  + This can start in individual departments but move to a collegial setting that encompasses all mandates. A single institutional plan emerges. Links between activities under the different mandates can emerge out of the second level of this process.
* Comment and recommendations in relation to legislation and the need for legislation.
  + Input can be led by one mandate with the other mandates contributing.
* Operation of regional offices.
* Annual report
  + This can be a joined-up report drawing in the reports of each mandate under the one report. Is there potential for a more integrated approach without losing visibility for any of the mandates?
* Public relations.
  + An approach based on raising the profile of the office rather than its particular mandates or alongside its particular mandates, and on diversifying the messages to get a balance between different mandates or grounds.
* International relations.
* Administration.

**The Case for Making Links including Mergers**

Linking and mergers are currently evolving in many jurisdictions. This is a situation of change.

Advantages include:

* The fight against discrimination being part of a bigger picture is useful in a context where some discrimination issues have become increasingly controversial.
* Enhancing the independence of the Equality Body with the Constitutional Status of the Ombudsman Office.
* Offering the citizen a choice of avenues of redress, particularly in a merger context, and giving the body a wider range of mandates through which to address issues that are brought to its attention.
* Cross-referral of cases between the bodies.
* Avoidance of parallel recommendations on the same issue.
* Cost savings.
* Citizen accessibility.
* Mutual support between bodies sharing similar values and concerns.

Challenges include:

* Danger of one mandate being overshadowed by another, particularly in a merged context. There can be issues of visibility and of resourcing in this regard.
* Difficulty in distinguishing cases that should go to the Equality Body and to the Ombudsperson Office, particularly in a merged context.
* Danger of one mandate’s tradition or culture dominating in a manner that limits the scope or ambition in the work under the other mandate, particularly in a merged context.
* Complexity of integrating mandates in a merged context.
* No right to impose sanctions if, in a merged context, the equality body holds the same powers of the Ombudsperson Office.
* Limitations in scope if private sector not included in a merged context, potentially also jeopardizing adherence to the EU equal treatment Directives.

There can be tensions in situations where the bodies can take cases against each other.

Linking is not a matter of a hierarchy of powers but of getting the best out of the powers each body has.

**STUDY VISIT: Institutions with multiple mandates – A practical case   
Visit and presentation by the Croatian Office of the Ombudswoman**

The presentation of the study visit is available [here](http://www.equineteurope.org/-Policy-Formation,94-).