



Equinet submission to FREMP-COHOM joint meeting: independent governmental bodies for the promotion and protection of fundamental and human rights

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Equinet welcomes the strong commitment of Member States to strengthening equality bodies and other bodies working on promoting and protecting fundamental rights expressed in the Council Conclusions on the Charter of Fundamental Rights after 10 Years: State of Play and Future Work, adopted on 7 October.

Key components for creating an enabling environment for independent and effective equality bodies in the EU – and beyond

There are one or more equality bodies, promoting equality and combatting discrimination, in all EU Member States. All EU candidate countries and potential candidates, as well as a number of Eastern Partnership countries, have also set up equality bodies underlining the external influence of EU legislation in the field. The majority of equality bodies in Europe were set up as a result of EU equal treatment legislation, in particular the Race Equality Directive and the Gender Equality Directives. This is an achievement that is underpinned by equality as a founding value of the European Union and something that the EU can justifiably be proud of as an EU good practice. This valuing of equality as a fundamental value and rejecting discrimination in all its forms is a necessary starting point for creating an enabling environment for equality bodies where there is a political and societal consensus on the importance of their work.

However, several equality bodies report limitations to their ability of achieving societal change and to fulfilling their full potential, due to a lack of the necessary conditions to do so. This is why the European Commission published in June 2018 a Recommendation on standards for equality bodies. This legal act addressed to Member States summarizes the necessary conditions to create an enabling environment for independent and effective equality bodies. Equinet supports this Recommendation as a concrete and comprehensive guide for ensuring the independence and effectiveness of equality bodies in promoting equality and combatting discrimination.

Based on the Commission Recommendation, equality bodies should be granted a wide mandate that covers all grounds and fields of discrimination, including also hate speech.

Equality bodies should also be granted appropriate powers, including the gathering of evidence, legal standing and, in the case of decision-making bodies, the power to issue legally binding decisions alongside effective, proportionate and dissuasive sanctions. The powers of equality bodies also need to include conducting surveys and issuing reports, as well as promotional powers. Making recommendations is also a part of the mandate of equality bodies and it is important that their recommendations to policy-makers are taken into account and followed up.

In order for equality bodies to be effective, Member States need to ensure that equality bodies are de jure and de facto independent, including a sufficient level of structural independence, a complete independence from all undue external influence with regard to their activities and appropriate procedures for the appointment of staff, in particular for leadership positions.

Member States should grant an appropriate level of human, financial and technical resources to equality bodies to fulfill their potential and mandate. Equality bodies' offices and procedures should be easily accessible to everyone in society, free of charge.

Wherever Member States consider allocating additional tasks to the equality body or merging it with an institution holding a similar function, this decision should be based on a thorough impact assessment and consultation with the best interest of groups and individuals at risk of discrimination in mind. It should not depend solely or dominantly on financial considerations. Where equality bodies are allocated additional tasks, these should be matched with the necessary additional resources.

Benefits of engaging with independent equality bodies

Equality bodies are unique institutions holding an immense potential, to contribute to the better protection and promotion of fundamental rights and to create more equal societies. Their mandate ensures a valuable tailored and field-based expertise in equality and non-discrimination issues, since they are in direct contact with victims of discrimination, and their independence guarantees a better outreach to communities that are at risk of discrimination and other violations of fundamental rights. Contrary to many other independent fundamental rights bodies, the mandate of equality bodies also covers the private sector, enabling them to provide more comprehensive protection.

The right to equal treatment and prohibition of discrimination is a standard part of all human rights treaties and is readily justiciable, even if the substantive right (for instance in the case of economic and social rights) might not be. This enables equality bodies to take effective legal action defending the fundamental right to equal treatment and to provide useful data to policy-makers on the complaints received and processed.

However, the potential and ambition of equality bodies goes beyond their strong watchdog role reacting to violations of the right to equal treatment. Equality bodies also hold a transformative potential at organisational and societal level in their role of promoting equality which goes beyond a reactive approach. In their promotional and proactive role, equality bodies contribute to changing mindsets, practices and approaches of employers, service providers (again, both in the public and in the private sector) and society in general. They also collect useful equality data through their surveys and research work that can inform government policies.

While their independence requires a cautious approach and a clear separation from government, equality bodies can, and in many Member States already do, contribute with their expert advice to the work of committees and other structures tasked with developing national equality and non-discrimination policies and strategies.