

## Equinet submission to the European Commission's Targeted Stakeholder Consultation

### '2020 Rule of Law Report'

Brussels, 4 May 2020

#### About Equinet

The European Network of Equality Bodies (Equinet) comprises 49 national equality bodies (NEBs) from the wider European region, including all EU Member States. Equinet supports the work of NEBs in promoting equality in Europe and as effective catalysts for more equal societies. Equality Bodies are independent public institutions tackling discrimination based on gender, race and ethnic origin, as well as other grounds, in accordance with EU equal treatment legislation.

<https://equineteurope.org/>

#### NEBs and the Rule of Law

Equality is a fundamental value on which the EU is built, alongside the rule of law. Rule of law, equality and fundamental rights are parallel values. This is also underlined in several EU documents including the Treaty on the EU or the Charter. Failing to guarantee one will harm the others as well. It is thus essential to have properly functioning independent NEBs, as they are best positioned to safeguard the equality principle as envisaged in EU legislation. The absence or weak status of NEBs will have a direct negative effect on rule of law in the country. Actions undermining the rule of law in the country may also have a direct impact on NEBs and their work. When assessing the situation of rule of law in Member States, independent institutions including NEBs play a dual role. They monitor and report on the situation, being a valuable source of information, but at the same time their own independence, resources and power are put to the test. Threats to these independent institutions are thus serious and alarming signs. In 2018, the EC adopted a Recommendation on Standards for Equality Bodies, setting minimum standards concerning their independence, effectiveness, resources, mandate as well as national institutional architecture for equality. Without ensuring the implementation of these, NEBs will be unable to safeguard the equality principle, which is to be seen as a threat to the rule of law. As such, respect for the standards for NEBs needs to be monitored in the framework of the Commission's rule of law mechanism. Information from academia, CSOs and NEBs themselves show the current shortcomings of Member States in providing a sufficient mandate and powers, full independence, and sufficient resources to NEBs.

#### Equinet Recommendations for the Report

The independence of NEBs must be ensured and protected. Governments introducing non-democratic or arbitrary measures breaching the rule of law may negatively impact and limit the mandate and work of NEBs. The requirement of independence of NEBs prohibits such actions from affecting the effectiveness of their work and the right of victims to receive adequate assistance.

Their administrative structure should remain independent from elected authorities and the procedures for appointing and dismissing personnel, should not be influenced by the political power in place. The grounds of discrimination covered by mandates of NEBs should not be limited or defined against EU anti-discrimination law due to arbitrary ideologies of extremist pressure groups. Independence is crucial in that NEBs must not be forcefully advised against investigating certain issues and must allow them to continue raising awareness of their work and various issues of equality so that victims of discrimination know where to turn. Rule of law breaches may impact the functions of NEBs as semi-judicial bodies (where applicable) and providers of legal assistance to victims of discrimination. In this respect, breaches to the independence of courts poses particularly serious risks. Judges subordinated to governments may not be impartial to discrimination and inequality cases, especially when the government is the defendant and/or has advised against investigating cases on a given issue. This constitutes a serious problem to both victims seeking legal assistance and NEBs aiming to help provide it.

NEBs work in a complex and delicate system of institutions and stakeholders. Threats to this system are also a hurdle for NEBs to fulfil their functions. Threats to the civil society and to the media also endanger key partners and sources of information of NEBs, thereby limiting their effectiveness even in the absence of measures targeting NEBs. NEBs are a valuable source of information concerning the situation of other relevant actors. They also collect and provide input on the developments in the society on matters of equality and in relation to the rule of law. Such information can be used when analysing and measuring the situation of rule of law in EU countries. Breaches to the rule of law and the resulting risks for independent institutions threaten the availability of sources of information and limit the role that NEBs can play in the complex system.

Sufficient resources for NEBs must remain fair and adequate to ensure the effectiveness of equality bodies in line with European standards. Any budget cuts by the government may be used as a direct or indirect pressure to hinder NEBs independence. Insufficient resources may result in the decrease of effectiveness of NEBs. It risks the functioning of NEBs by not having enough resources to effectively perform tasks covered by mandates. This may include not being able to support victims of discrimination seeking assistance, not being able to raise awareness or hire enough staff. While not all budget cuts to NEBs raise rule of law concerns, any cuts that are disproportionate and go beyond cuts to other public bodies and structures need to be investigated also from a rule of law angle.