



**THE GREENS/EFA**  
in the **European Parliament**

**EQUINET**  
European Network  
of Equality Bodies



# **FUTURE OF EQUALITY LEGISLATION IN EUROPE**

## **SYNTHESIS REPORT OF THE ONLINE ROUNDTABLE**

### **14 OCTOBER 2020**



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Final agenda: [here](#)

List of speakers: [here](#)

Event webpage: [here](#)

CSO statements: [here](#)

Recording of the Roundtable: [here](#)

Find out more about Equinet and equality bodies: [here](#)

## Introduction

During the last decades, and with the approval of the 2000 Directives ([Race Equality Directive](#) and the [Employment Equality Directive](#)), EU equality and anti-discrimination legislation grew from the ground of gender to other grounds such as ethnic and racial origin and age, disability, sexual orientation and religion or belief. At the same time, this new generation of equality legislation also refreshed and improved protection against discrimination on the ground of gender. The EU was progressively protecting more and more citizens from discrimination, harassment and violence.

Nonetheless, European Union anti-discrimination law does not equally protect all vulnerable groups in Europe. The [draft EU “Horizontal Directive”](#), pending since July 2008 aims to offer more symmetric protection to victims of discrimination and would extend the mandate of Equality Bodies to also cover discrimination based on disability, sexual orientation, religion or belief, age and the intersectional and multiple discrimination that results from the combination of these grounds. This would be a milestone for building a fairer and more equal Europe.

The events of 2020, including the COVID-19 pandemic and the global movement against systemic racism, have shown us that now more than ever equality matters and should be at the forefront of any policy and legislative response. Equality is a necessity and not a luxury. Strong laws are needed to ensure that all inhabitants of the EU can be protected, especially in times of crisis. We need to progress, taking into account the learnings from this year and the last decades, in constructing a strong, complete and inclusive legislative framework.

Equality Bodies have proven their potential during these times, working endlessly to protect victims of discrimination. In this context, Equinet, the European Network of Equality Bodies, published in June the [Recommendation for a fair and equal Europe – rebuilding our societies after COVID-19](#). We believe that the current crisis is an opportunity to rebuild Europe and our societies in a fair and equal way, that should include, among others:

- Addressing and dismantling systemic and institutional discrimination in our societies
- Rigorously assessing the equality impacts of EU and national measures
- Reducing inequalities by targeted measures, including positive action
- Drastically improving the collection of equality data to inform policy-making
- Adopting an intersectional approach, paying particular attention to the most vulnerable within all marginalised groups
- Effective enforcement of equality legislation including effective and dissuasive sanctions

Equinet, together with our Roundtable co-organiser, MEP Alice Bah Kuhnke, Vice-President of the Greens in the European Parliament, and rapporteur for the Horizontal Directive, want to build on the work done by Equinet since 2008 to show the need for the swift approval of the Horizontal Directive and open the conversation about what the future of equality legislation in Europe should look like.

Throughout the different panel sessions, we aimed at gathering these ideas, by focusing on the Horizontal Directive proposal and on current legislation [to take stock](#) and identify the necessary steps to strengthen equality legislation. We are here to ensure that no one is left behind.

## Panel I: Horizontal Directive

During this panel session, panellists shared one idea that could help to get the Horizontal Directive and its provisions across the line, including how equality bodies could assist in implementing this idea. The following is a very succinct collection of the main ideas shared.

The main cross-cutting message resided in that people require and deserve better protection and there is an overall need for action, and for the actions to be **coordinated** in the form of alliances to push for equality. This requires **strategic thinking and action** at all levels, including very importantly, action and campaigns at the national level. The crucial role of **communication** was recalled by all speakers in order to translate the importance of Equality to both legal and policy makers and the general population.

The proposal has been blocked in the Council of the European Union (the Council) for 12 years now. The **European Commission** (EC) has actively engaged with different Council presidencies to advance the file. The Commission will continue to engage with the presidencies, even more intensely now that the first-ever Commissioner for Equality (Commissioner Helena Dalli) has been appointed.

The **European Parliament and MEPs** can proceed in a twofold way. The first idea would be for the LIBE committee to raise the question of lifting the file from the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council, seeing how little the file has advanced during this long decade, to the Justice or General Affairs Council. The second idea entails MEPs engaging with national governments. This can be done regardless of whether the Government supports or does not support the adoption of the Horizontal Directive so that good practices can be shared, and peer pressure can be applied to influence and convince those hesitating. The group of the Greens/EFA announced that they will start a petition in November 2020 to strengthen and start-up discussions about the proposal to create some pressure at the national level.

**Equality bodies** can support the movement for the need to approve the Horizontal Directive at the national level by engaging with their governments and communicating the need for the approval of the Directive through making equality law palatable (by answering questions such as ‘What is the value of equality?’ ‘What does the law say?’ ‘What is discrimination?’ ‘Why is it so important that we fight discrimination?’) and by sharing real-life cases. There is a need to demonstrate the importance of equality law and show how flagrantly and often purposefully discriminatory practices, policies and laws are incompatible with democracy and **rule of law**. Equality law needs to be brought to the citizens in an easy to understand way, to better illustrate which laws are missing and how that would change the reality of persons who suffer discrimination.

## Panel II: Equality legislation beyond the Horizontal Directive

Following the events in 2020 and, in particular, the [EU Anti-racism Action Plan](#), the EU has a strategic opportunity to reshape and improve its equality legislation. Panellists were requested to (1) identify shortcomings and areas for improvement in current EU equality legislation, and (2) to discuss concrete proposals for improving EU equality legislation and how these will lead to a more equal Europe. Shortcomings and proposals were presented intertwined. We have tried to gather the main ideas in the following lines.

A clear starting point was recognising the **asymmetric nature and formulation** of the current legislation which, through different Directives, offers different levels of protection to different grounds; also lacking any protection for victims of **intersectional discrimination**. This formulation also influenced the way the legislative provisions were transposed to national law across the Member States. For instance, the Employment Equality Directive does not require Member States to designate an equality body to protect victims of discrimination on the grounds of disability, sexual orientation,

religion or belief or age. Some Member States have, ex officio, extended the mandate of equality bodies to cover victims of discrimination on these grounds. Nonetheless, some Member States still lack an equality body that would protect victims of discrimination on these grounds, leaving them unprotected.

**Equality bodies** are essential for ensuring that individuals and groups facing discrimination can enjoy their rights in full and should be able to effectively perform the tasks assigned to them under EU legislation. A strong institutional architecture is indispensable for an effective drive towards equality, and equality bodies are a crucial part of this architecture. Until 2018, when the EC published the Recommendation on standards for equality bodies, there was no guideline or regulation at the EU level regarding minimum requirements for the functioning of equality bodies. Albeit powerful, these standards are not binding. The EC announced in its Anti-racism Action Plan in September 2020 that the possibility of proposing new binding legislation will be explored to help make equality bodies reach their full potential and ensure their independence. Equality bodies in the panel illustrated how such a regulation would be necessary and would apply in practice at the Member State level, enabling them to fulfil their vast potential and protecting them from political interference and attacks.

Several concrete shortcomings were identified by the legal practitioners from equality bodies when applying the **existing legislation**. First of all, attention was drawn to the fact that the model followed to legislate on equality and anti-discrimination law in the EU was the Anglo-Saxon model, while most of the Member States follow a continental or civil law tradition. This has caused misunderstandings among legal practitioners, given that the same general principles that would apply in other areas of law, such as the burden of proof, apply differently in equality law. For instance, the lack of access to **evidence** has been a contested topic in CJEU case-law, as it has been at the national level. A proposal was put forward to overcome this problem, by adding a provision in the future, regarding a duty for the judge to facilitate access to enforcement and evidence.

Current legislation has also proven not to live up to its full potential regarding **sanctions**. There is very little guidance in the Directives that only mention that sanctions “must be effective, proportionate and dissuasive”. Currently, sanctions applied across Member States do not guarantee effective redress nor do they act as an effective deterrent. Some panellists proposed requiring potentially enabling punitive damages for sanctions when there is a reiteration, no collaboration with equality bodies, or lack of enforcement of recommendations. It would be necessary to have a paradigm shift that would allow us to focus more on the perpetrator and the prevention of the societal harm effected by discrimination, thereby avoiding victims becoming victims in the first place, instead of offering reparation once their rights have been violated (from a **reparative model towards a deterrent model**). The way proposed to do that is through effective deterrents, including and focusing mainly on raising the monetary amount granted in cases of discrimination (which at the moment is too low) to raise the interest in compliance with equality law. Following successful regulation models in other areas of fundamental rights, such as the General Data Protection Regulation (GDPR), under the menace of sanctions reaching millions of Euros, companies would have a real incentive for change. Equality is a fundamental principle of the EU contained in the treaties and a fundamental right. Reinforcing sanctions would show society that these are rights that matter to society. Sanctions truly need to be effective, proportionate and dissuasive.

The challenges posed by **artificial intelligence** were also mentioned by panellists, although it was suggested that current equality legislation is suited to dealing with most of these risks. Referring back to sanctions, some panellists proposed that as discrimination through artificial intelligence is a massive new risk potentially affecting large groups at the same time, the visibility and media attention it has been receiving can also be turned into an opportunity, justifying the need for more effective and dissuasive sanctions.

**Access to justice** by private individuals regarding equality law has proven to be challenging: the costs of litigation and risks are too high, and there is an overall lack of understanding among legal practitioners about equality legislation. Effective enforcement in this sense can only be guaranteed by **public enforcement**. Equality bodies have the infrastructure and prior knowledge to do this. Therefore, the EC request for the Member States to enable **strategic litigation** powers to equality bodies is a good step forward. Any regulation in this sense should allow equality bodies to apply for concrete sanctions in discrimination cases.

The possibilities brought with the presentation of the Action Plan against Racism were applauded, including the requirement for Member States to enact **national anti-racism plans** and the role foreseen for equality bodies in the formulation and monitoring of these plans. Likewise, the need for **systematic equality mainstreaming** was mentioned, thereby implementing the equality perspective in other related and relevant areas of law such as the Rule of Law or migration and asylum.

Looking forward, the **Charter of Fundamental Rights of the European Union** and the possibilities it opens as regards reinforcing equality legislation, especially the potential it may have as an enabler to legislate in other grounds of discrimination, was mentioned. Just like compliance with the Charter should be used as a condition for any EU funding, Member States should also consider equality and non-discrimination as conditions for any public procurement. Likewise, the need to explore and potentially expand the legal base for the EC to be able to legislate on **Anti-hatred legislation** for other grounds beyond race, the need to fully implement **UNCPRD recommendations** and the need for **robust and disaggregated data** were mentioned as crucial steps in the future of equality legislation in Europe.

All panellists agreed on the importance of equality as a shared and fundamental value of the EU and its Member States and the need to **communicate** this to the whole society, through the use of **real-life stories and values-based messages**.

*“Violating rights should come with a cost. We should not accept what is going on. The mental shift to a broader picture needs to happen. If we do not fight for our rights now, the right not to be discriminated, when shall we fight then? It has never been more important - the time is now. They are on the way to be undermined, and there are strong forces that are trying to make us see the right to equality as something fluffy, as something extra, something that will come afterwards... because right now we have so many ‘more important things’ to handle. We can’t give up, we must do more.”*

- **Alice Bah Kuhnke, Vice-President, Greens/EFA in the European Parliament and rapporteur of the Horizontal Directive**

*“We - Equinet and national equality bodies - as always, stand ready to cooperate with legal and policymakers, as well as civil society organisations and other allies in finding the best formula to make the promise of equality a reality. Equality matters. Equality is a necessity, not a luxury.”*

- **Tena Šimonovic Einwalter, Chair of Equinet Executive Board and Deputy Ombudswoman of Croatia**