

## TERMS OF REFERENCE

Research project on the addition of “other grounds” to equality legislation, with a focus on health status and socio-economic status

### EQUINET

Equinet is the European Network of Equality Bodies, a membership organisation bringing together 47 equality bodies from across Europe, including all EU Member States.

National equality bodies are public institutions designated by EU law to combat discrimination based on race and ethnic origin and gender discrimination. Some Member states have gone beyond the EU law minimal requirements and extended the mandate of equality bodies to grounds such as disability, age, sexual orientation, religion or belief, gender identity and/or other grounds.

Equinet promotes equality in Europe through supporting and enabling the work of national equality bodies. It supports equality bodies to be independent and effective as valuable catalysts for more equal societies.

More information about Equinet and equality bodies is available on [the Equinet website](#).

### BACKGROUND & CONTEXT

The lack of comprehensive protection in EU law against discrimination on all grounds has long been raised as an issue. Further to this, the 2020 COVID-19 pandemic powerfully exposed the limitations of the current list of discrimination grounds in the equality and non-discrimination law of the European Union.

Fixing the number of grounds to only six, as is the case at the EU level, potentially means excluding and undermining the significance of whole categories and manifestations of unjust exclusion and subordination, such as those based on criteria and identity markers different than gender, race and ethnic origin, disability, religion or belief, age, or sexual orientation. For instance, inequalities based on health status (those conditions not covered by the UNCRPD definition of disability) and socio-economic status, which have been and continue to be at the forefront of the societal harm and individual suffering inflicted by the ongoing global pandemic, deserve further attention. It is noteworthy that a large number of European countries have decided to extend the list of protected grounds or apply an open-ended list in their national equality laws.

## OBJECTIVES

The Equinet Work Plan for 2021 commits to commissioning ‘a study, which will focus on the following question: **How could the expansion of the list of protected grounds, in particular through the inclusion of health status and socio-economic status, enhance the effectiveness of the European anti-discrimination legal framework and its implementation?** The envisioned research will analyse how this could be done and underline the advantages and disadvantages of having the list of protected grounds expanded. For this, the use of ‘other grounds’ (i.e. grounds in addition to the six protected characteristics set by EU equality directives) in national, European and international legal fora will be researched, with an emphasis on health status and socio-economic status. The existing experiences and potential roles of equality bodies with these ‘other grounds’ will be used extensively as a unique contribution to the debate.’

Accordingly, the commissioned researcher (respectively, team of researchers) will be expected to produce an Equinet Report (recommended approximate length of maximum 50 pages, including Annexes). The purpose of the Report is to:

- Analyse **the uses and added value of ‘other grounds’** (i.e. grounds in addition to the six protected characteristics set by EU equality directives) in national, European and international legal fora, with an emphasis on **health status and socio-economic status**.

While the researcher(s) is encouraged to independently identify and study relevant other grounds that are present in a large number of jurisdictions in addition to health status and socio-economic status, the experiences of equality bodies justify targeted consideration of the grounds “sex characteristics” and “gender identity.”

The emphasis of the analysis should not be on the enumeration of other grounds and on the identification of the jurisdictions where they are used but rather on how these other grounds work and on how useful they are in practice;

- Based on the above analysis, draw up a **list of advantages and disadvantages** of having the list of protected grounds expanded (again with a focus on health status and socio-economic status) for the purpose of strengthening the effectiveness of the European anti-discrimination legal framework and its implementation;
- Showcase promising examples of the use of “other grounds” by equality bodies, with specific attention to health status and socio-economic status, in order for relevant legislators, at both the national and European level, to gain a **better understanding of the need to expand the existing list of protected grounds in national and European legislation** and of **the crucial role of national equality bodies in both guiding and implementing this expansion of the protected grounds**;
- Showcase promising examples of the use of “other grounds” by other relevant actors at the national, European and international levels, with specific attention to health status and socio-economic status, in order to equip legal and policy experts from equality bodies with **arguments for promoting the adoption and use of relevant new grounds in their national legislation**.

## EXPECTED APPROACH

During the process, the researcher (respectively, team of researchers) will be expected to:

- 1) Conduct a review of relevant literature and case law
- 2) Make use of the extensive preexisting Equinet database regarding equality bodies and conduct a survey of Equinet members to collect their inputs, perspective and information on the topic. The survey should include, among other things, questions that enable 1) the identification of “other grounds” (that is, “other grounds” beyond and in addition to “health status” and “socio-economic status”), which are (or can be) of practical value and/or frequently used by equality bodies; and 2) a clear explanation of the comparative advantages of these other grounds.
- 3) Conduct interviews with selected equality bodies (at least 6 interviews, in consultation with the Equinet Secretariat, observing a geographical balance and a balance in the mandate and competences of the equality bodies) that

- a) Have had the ground “health status” recently added to their national legislation or already existing in the national law at the time when the equality body was created, and have used it successfully (i.e. positive outcomes for the complaint(s)) in their non-discrimination work (legal, policy and general awareness-raising lines of work).

If possible, when selecting equality bodies for interviews, preference should be given to those equality bodies, whose experience with the addition of a new ground to their national equality legislation illustrates 1) the added value and impact of this new ground on their work, as compared to the preexisting situation in the past without the ground; and/or 2) a story of effective advocacy by the equality body for the adoption of a new ground and, if relevant, the successful overcoming of initial challenges and resistance to the introduction of that ground.

- b) Have had the ground “socio-economic status” recently added to their national legislation or already existing in the national law at the time when the equality body was created, and have used it successfully (i.e. positive outcomes for the complaint(s)) in their non-discrimination work (legal, policy and general awareness-raising lines of work).

If possible, when selecting equality bodies for interviews, preference should be given to those equality bodies, whose experience with the addition of a new ground to their national equality legislation illustrates 1) the added value and impact of this new ground on their work, as compared to the preexisting situation in the past without the ground; and/or 2) a story of effective advocacy by the equality body for the adoption of a new ground and, if relevant, the successful overcoming of initial challenges and resistance to the introduction of that ground.

In the course of their work, the researcher or team of researchers should regularly update the Equinet Secretariat on their progress, and if and when needed and appropriate,

should consult with the Equinet Executive Board and thematic Working Groups. In specific, the researchers are encouraged to inform the Equinet Secretariat in a timely manner and seek support from the Secretariat team, should they encounter any obstacles and delays in the any of the above steps, and especially, if these obstacles and delays involve or are caused by members of Equinet.

## EXPECTED OUTPUT

The Report (to be produced in English) is expected to:

- Provide an **overview of legal literature and key jurisprudence** (at the relevant international, European and national levels, if applicable) on the use of “other grounds” (again, with an emphasis on health status and socio-economic status). The overview should include uses by both relevant stakeholders at national, European and international levels (e.g. national and European courts, UN treaty bodies), as well as by equality bodies;
- Develop a **comparative table/matrix**, which outlines in a clear and condensed way the **relative advantages and disadvantages** of the introduction of health status, socio-economic status and other new relevant grounds (to be identified by the researcher(s)). The advantages and disadvantages should be conceptualized and identified with reference to the leading question for this research, which is set by the Equinet Work Plan 2021, namely: ***whether or not the addition of a given new ground to the legislation would enhance the effectiveness of the existing equality legal framework and its national implementation.***
- Develop a **catalogue of promising examples** of the use of “other grounds, with specific attention to health status and socio-economic status, to be leveraged by equality bodies, who contemplate the promotion or are already promoting the adoption of relevant new grounds to their national legislation;
- Develop **two sets of recommendations** regarding the use and added value of new grounds (again, with an emphasis on health status and socio-economic status), targeting respectively **equality bodies**, and **national and European legislators** with decision-making powers with respect to national and European legislation.

## EXPERTISE REQUIREMENT

The selected expert(s) or team to be commissioned for this report/paper is expected to demonstrate:

- A track record of research work in the field of equality and human rights, and, in particular, in relation to the institutions established in this field
- Publication(s) in the field of EU equal treatment law
- Good knowledge of the work of national equality bodies and their diversity
- Excellent drafting skills in English

## SELECTION PROCESS

The Equinet Secretariat and Board will select the winning tender.

In the selection process the following criteria will be taken into account:

- Quality and content of the proposal
- Demonstrated expertise in the field
- Price

The proposal offering the best value for money will be selected.

## TIMEFRAME

The indicative timeframe for the commissioned paper is as follows:

- Deadline for applications to be submitted: 11 April
- Result of the selection process: 30 April
- Start of the work – beginning May 2021
- Surveying members (network wide survey of all members) – middle of May until middle of June 2021
- Check-in with Equinet Secretariat (at conclusion of the surveying process) - to confirm and discuss relevance and sufficiency of members' inputs from the survey
- Individual interviews with members (maximum 6 members) - middle of June until middle of July 2021 (to allow identification of appropriate interviewees based on results from the survey)
- Stakeholders' interviews (e.g. EC, FRA, CoE, relevant European-level civil society organisations) - middle of May until middle of June 2021 (concurrent with the surveying of all members and individual interviews)
- Present interim results to Equinet by first week of August 2021, based on survey results and interviews conducted
- First draft of the Report presented to the Equinet Secretariat by middle of September (by the 17<sup>th</sup> September 2021)
- Feedback on 1<sup>st</sup> draft of the Report by the Equinet Secretariat – by the 1<sup>st</sup> October 2021
- Implementation of revisions and amendments suggested by the Equinet Secretariat – by the 15<sup>th</sup> of October
- Submission of second draft of the Report to the Equinet Executive Board – 18 October
- The researcher(s) might be invited to present the main findings (based on the first draft of the Report) at Equinet Annual General Meeting in October 2021
- Feedback on the second draft of the Report by the Equinet Executive Board – 29 October
- Completion of the work by the end of December 2021, including an approval by the Board of the final changes

## BUDGET

The maximum budget for the commissioning of this paper is **15.000 EUR** (VAT included).

Costs for travel (if and as necessary) or relating to presentation/discussion of the paper will be covered by Equinet separately (if and as necessary).

## SUBMISSION OF PROPOSALS

**A detailed proposal of the suggested approach, methodology and timeline as well as proposed budget and expert CV** needs to be submitted by **Sunday 11 April 2021** to the attention of Tamás Kádár, Equinet Deputy Executive Director and Head of Legal and Policy (tamas.kadar@equineteurope.org). Please put the following Equinet Secretariat staff member in copy, when submitting your application: Milla Vidina, Policy Officer in charge of coordinating this research project (milla.vidina@equineteurope.org)

### **CONTACT PERSON FOR QUERIES**

**Milla Vidina, Equinet Policy Officer**

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