

COVID-19 Vaccination Issues Meeting for members

Online meeting, Wednesday 8 December 2021 at 10:00 – 11:30 (CET)

This meeting was confidential, under Chatham House Rules, and was open to all Equinet members to attend if they wished. It was not obligatory and did not have a formal agenda, rather it was a forum for members to share their experiences, work and concerns so far and to ask any questions on this topic of other members. The discussion was chaired by Patrick Charlier, Co-Director of Unia (Belgian Equality Body) and was preceded by an online poll of the 26 Equality Body (EB) participants to have further food for thought. The poll consisted of these questions:

- Has your institution assessed or is it planning to assess whether any Covid-19 vaccination-related regulations/requirements are in compliance with equality (and human rights)?
- What were your findings?
- What actions have you taken or are you planning to take on the basis of these findings?

The notes for this meeting have been compiled respecting the [Chatham House rule](#). This implies that “[When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker\(s\), nor that of any other participant, may be revealed](#)”. This in turn implies that Members are free to use the information contained in these notes, as long as they are not attributed to any member in particular or any country thereof.

MINUTES

General considerations

An EB mentioned having created a **taskforce** to assess and address COVID 19 related measures and complaints.

It was reported that in certain Member states, COVID- related restrictions, and especially those related to emergency measures were **challenged in court** (for instance by service provider unions), whether on discrimination grounds or others, having had a lot of media attention. It was pointed out that there was personal bias from judges regarding the cases. One EB reported that certain COVID-related measures are being challenged at the Constitutional Court level, and therefore could render valuable case law regarding the proportionality tests to be carried out, as well as the interpretation of certain discrimination grounds. Another EB stated that in fact they had been asked to provide opinions regarding the legality of compulsory vaccination in certain sectors, but they considered it to be outside of their scope due to their mandate and the respect to the separation of powers.

A number of EBs reported having received many complaints regarding any and every kind of COVID measures. A phenomena that was discussed was that there seems to be pressure groups across Europe against COVID measures and vaccines that provide for templates for complaints and therefore, EBs have been flooded by **identical complaints**.

PCR tests

Several EBs reported having performed discrimination assessments regarding the **accessibility of PCR tests** on the ground of socio-economic grounds. One EB mentioned that in their country PCR tests remain free to avoid any discrimination in that regard.

COVID Passport

Most EBs had at one point or another carried out studies regarding whether requesting the so-called COVID passport (called different names depending on the country) was **discriminatory**. No EBs reported having done a such study and having concluded that requesting the COVID passport to access goods and services was discriminatory on any ground, provided there were alternatives to only-vaccination and taking into account medical exceptions.

Another issue raised by several EBs is that they have received complaints from people who **received a vaccine in another country outside of the EU which is not approved at the national level**. While getting a vaccine in another country is not always problem, those vaccinated with vaccines not approved would not get the COVID passport.

Compulsory vaccination

All EBs seem to affirm that the primary course of action has been to use soft powers to try to convince citizens to get **voluntarily vaccinated**. Consequently, most EBs mentioned that there is currently **no compulsory vaccination** for either the general population or specific sectors.

Nonetheless, a number of EBs mentioned that either the topic is being **debated** in the parliament at the moment or **laws will be presented shortly** about compulsory vaccination of either the population in general or for specific sectors.

Some member states have started to impose (or are considering) **compulsory vaccination for specific sectors**, including public officials at all levels, healthcare workers, social workers, teachers, public transport workers, government workers and first responders among others.

Legislation is ongoing and it is difficult to assess legal drafts that have not been presented yet, albeit some EBs mention that they have been consulted in the course of drafting the laws.

In one member state, the national government has allowed **employers** to decide freely whether they require their employees to be vaccinated or not. The employee would have 45 days to comply with the requirement and could be dismissed or sent on unpaid leave if refuse to do so. An exception has been provided by law for those that, for health reasons, cannot or should not receive the vaccine. A question that could be asked in this regard is whether reasonable accommodation could be requested in this sense, by asking the employer to be placed in a position in which the Covid passport or the vaccine proof were not considered as a primary requirement.

Regarding **assessments** carried out regarding discrimination on the basis of being vaccinated, studies varied regarding the ground(s) taken into account to assess whether discrimination has happened or not. These variations respond to the grounds protected under national laws: health status, belief,

personal circumstances (as opposed to personal decisions), political belief or socio-economic status, among others. Given **belief** is the only mentioned ground protected across member states (albeit Directive 2000/78 only establishes such obligation as regards the field of employment), it was discussed as key during the session. Nonetheless, many Equality Bodies lack the mandate to work as regards this ground given Directive 2000/78 does not impose the obligation upon member states to designate an EB to work on the grounds covered by it. Further, there is little case law regarding the ground of belief. There seems to be an agreement that belief should be differentiated from personal opinion, which would not be covered under the ground 'belief'. Further, depending on which specific grounds are covered under national law (such as political belief or personal circumstances) the interpretation of what is and is not covered is even more difficult to assess.

One EB mentioned that they carried out an assessment and concluded that compulsory vaccination for all would be considered discriminatory. Nonetheless, other EBs have also carried out different assessments and come to the contrary conclusion. Another EB mentioned that in their country there exists an obligation to get vaccinated for certain sectors. If this is not followed, employers can dismiss those persons. In assessing whether this is legal or illegal, an **individual assessment** is carried out, since different factors come into play. **Proportionality tests** were mentioned as key to assess whether a mandate for certain groups or sectors is legal or not. When doing such an assessment, scientific information should be used.

Finally, the issue of **children's** vaccination was raised, given the different recommendations that have been issued by the scientific community and the fact that children have been proven to be a factor of contagion, but there was no time to discuss that in this discussion.

Non-documented persons also have problems regarding access to the vaccine and access to covid passports, which are increasingly being asked as a requirement to access a bigger number of goods and services.

Materials shared during meeting:

From Georgia - <https://www.ombudsman.ge/eng/akhali-ambebi/sakhalkho-damtsvelis-gantskhadeba-kveqanashi-shekmnil-epidemiologiur-vitarebastian-dakavshirebit>

From Unia, Belgium - <https://www.unia.be/fr/legislation-et-recommandations/recommandations-dunia/vaccin-covid-et-discrimination-dans-le-domaine-de-lemploi> and <https://www.unia.be/fr/legislation-et-recommandations/recommandations-dunia/vaccin-covid-et-acces-aux-biens-et-services-2021>

From Belgium - <https://federalinstitutehumanrights.be/publication/vaccination-obligatoire-covid-safe-ticket-et-droits-humains>

Recent report from the WHO - <https://unric.org/en/who-mandatory-vaccinations-are-a-last-resort/>