

TERMS OF REFERENCE

Report regarding redress in discrimination cases: sanctions and remedies

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

Equality and non-discrimination for all is an essential requisite of any democratic society. But equality legislation needs to be effectively implemented and enforced if we are to reach and foster equality for all. Adequate sanctions and remedies in cases of proven discrimination are crucial for this. The EU anti-discrimination Directives contain scarce guidance on such sanctions, which has resulted in the ‘effectiveness’, ‘proportionality’ and ‘dissuasiveness’ to be interpreted in a very heterogeneous fashion across Member States.

The FRA opinion ‘Equality in the EU 20 years on from the initial implementation of the Equality Directives’ in the case of the 2000 Directives (RED and EED), “...calls into question the effectiveness of the measures and institutional arrangements Member States have put in place to enforce non-discrimination legislation, including the rules they have laid down as regards the effectiveness, proportionality and dissuasiveness of sanctions in cases of discrimination”, which coincides with the [Future of Equality Legislation in Europe roundtable discussion conclusion](#) organised by Equinet in that current sanctions “do not guarantee effective redress nor do they act as an effective deterrent”. Further, FRA signals that the problem of underreporting is inextricably linked to the perceived often insufficient redress for the victim and should therefore be reinforced by Member States.

The same is also emphasized by other European institutions, such as the [European Commission has noted](#) that “Some national courts tend to establish rather moderate levels of damages, favour non-monetary compensation or offer amounts of compensation at the lower end of the scale. Such tendencies may discourage victims from taking legal action or from asking for pecuniary compensation in court”. The [European Parliament has also noted that](#) “...at this stage few countries are considered to have appropriate sanctions in place.”

Other areas of law have given further and stronger guidance on sanctions, especially regarding the dissuasiveness of such violations, and are regarded as dissuasive such as Data Protection or Consumer Protection related legislation in the EU.

This commissioned research aims, building upon [Equinet previous work](#) in this area, to explore what redress for the victim means and how it is understood across European countries¹ (supported by recent CJEU case law) and give an understanding of the elements that effective redress should contain. To that end, it should consider parallel damages and underline the requisites to consider a sanction truly dissuasive and effective by also comparing with other EU regulated areas to respect the proportionality principle. The study will conclude with observations aimed at the different enforcement chain actors, including Equality Bodies, about ways in which they can contribute to making legal redress and sanctions truly effective.

OBJECTIVES and OUTPUT

The Equinet Work Plan for 2022 foresees the commissioning of *'The publication of a study by a commissioned expert on legal redress and sanctions applied in discrimination cases'*. The objective pursued by this publication should be that *"All actors in the enforcement chain of Equality and anti-discrimination legislation, especially legal and policymakers, are better informed about legal redress and sanctions in their area of expertise and have a more comprehensive overview of these areas in analogous legislation and their interpretation"*.

Accordingly, the commissioned researcher will be expected to produce an Equinet Report with a view to:

1. Establish a clear relation between redress, sanctions, and remedies.
2. Establish a comparison amongst the countries in which Equinet members are present regarding the legal requirement that establishes what kind of violations carry a sanction, and what kind of sanctions those are. Point to any promising practices.
3. Research under what circumstances may sanctions be considered as 'effective', 'proportionate' and 'dissuasive' through a comparison to other areas of law, for instance, but not limited to, consumer protection law, and data protection law.
4. Establish a relation between sanctions and redress and the compensation to the victim. This should include an analysis regarding how it works in parallel with other types of sanctions, which could also include punitive damages. Make a comparison with other areas of law (such as the ones mentioned above), and establish whether in those, as compared to anti-discrimination law damages and sanctions are kept separate.
5. Suggest if and how should sanctions in anti-discrimination cases be amended, based on successful practices in other areas of law to be truly 'effective', 'proportionate' and 'dissuasive'.

EXPECTED APPROACH

During the process, the researcher will be expected to:

- 1) Conduct a review of relevant literature and case law.

¹ The geographical scope only includes countries in which Equinet members are present

- 2) Make use of the extensive pre-existing 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 help have an overview of antidiscrimination law and its categorization of redress objectives and mechanisms, types of remedies and sanctions and the relationship between compensation to the victim and other types of sanctions available in Equinet member states.
- 3) Conduct interviews with selected equality bodies (maximum 6 members to be chosen together with the secretariat, if relevant, limited to availability of members, observing a geographical balance and a balance in the mandate and competences of the equality bodies).
- 4) Compile and analyse the responses received by equality bodies.
- 5) Analyse in a comparative way redress, remedies, and sanctions in other areas of law, such as consumer protection law and data protection law.
- 6) Assess whether the current redress and sanction regime can be considered effective proportionate and effective.
- 7) Make suggestions and recommendations about how to ensure a truly effective proportionate and dissuasive sanctions regime by using the comparative data with other areas of law.

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 update and inform the Equinet Secretariat in a timely manner and seek support from the Secretariat team regarding the content of the publication, but also 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. Please note that the Equinet secretariat will ultimately be responsible to decide when a publication satisfactorily addresses all requirements of these terms of reference.

EXPERTISE REQUIREMENT

The selected expert to be commissioned for this report is expected to demonstrate:

- A track record of work in the field of equality and human rights
- Knowledge of the work of national equality bodies and their diversity
- Publication(s) in the field of EU equal treatment law
- Knowledge of other areas of law regarding sanctions, such as consumer or data protection law.
- Excellent drafting skills in English

SELECTION PROCESS

The Equinet Secretariat will select the winning tender. In the selection process the following criteria will be considered:

- Quality and content of the proposal & adherence to the request expressed in these terms of reference.
- Demonstrated expertise working on equality



- Price

The proposal offering the best value for money will be selected. There exists no possible appeal against the decision of the secretariat.

TIMEFRAME

The indicative timeframe (all dates refer to 2022) for the commissioned paper is as follows:

- Deadline for applications to be submitted: 28 February
- Result of the selection process: mid- March
- Start of the work: mid-March
- Surveying members (network wide survey of all members): mid-April- mid May
- Check-in with Equinet Secretariat (at conclusion of the surveying process) to confirm and discuss relevance and sufficiency of members' inputs from the survey: end of May
- Individual interviews with members (to allow identification of appropriate interviewees based on results from the survey): by June
- Stakeholders' interviews (e.g., EC, FRA, CoE, relevant European-level civil society organisations): mid-May until mid-June (concurrent with the surveying of all members and individual interviews)
- Present interim results to Equinet, based on survey results and interviews conducted: mid- July,
- First draft of the Report presented to the Equinet Secretariat: 12 September
- Feedback on 1st draft of the Report by the Equinet Secretariat: 1 October
- Implementation of revisions and amendments suggested by the Equinet Secretariat and submission of second draft: 17 October
- Feedback on the second draft of the Report by the Equinet Secretariat: 3 November
- Submission of final draft to the Secretariat for Board approval and comments: 28 November
- Completion of the work, including an approval by the Board of the final changes: 23 December

Additionally:

- 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 late September/ early October 2022
- The researcher(s) might be invited in 2023 to a Conference to present the results of the report.

BUDGET

The maximum budget for the commissioning of this report is **12.000 EUR** (VAT included).

SUBMISSION OF PROPOSALS

Proposals, alongside the expert's CV need to be submitted by **Monday 28 February 2022** to the attention of Jone Elizondo-Urrestarazu, Legal and Policy officer (jone.elizondo@equineteurope.org). She can also be contacted with any queries.