

Equinet submission to the European Commission's Initiative

'Equality bodies – binding standards'

Roadmap - Ares(2021)4733543

Brussels, 19 August 2021

Equinet welcomes that, as announced in the [EU Anti-racism Action Plan](#), the [LGBTIQ Equality Strategy](#), the [Disability Strategy](#) and the [EU Roma Strategic Framework for Equality, Inclusion and Participation](#), the Commission intends to present legislation to strengthen the role and independence of equality bodies. We have noted and pointed out in different Equinet papers (the latest one being [our paper published in spring 2021](#)¹, following the release of the European Commission's [report on the implementation of the Race and Employment Equality Directives](#)) that due to the wide margin of discretion left to the Member States by the current provisions on equality bodies, there are important divergences in their implementation. This affects many aspects and, in particular, the mandate, powers, leadership, independence, resources, accessibility, and effectiveness of equality bodies. We agree with the Commission's assessment that while part of the situation is linked to the variety of legal traditions and legal systems in Member States, it also reflects different levels of ambition and achievement in Member States pursuing the objectives of the EU Directives.

We support the Commission's identification of the ultimate problem: that this situation results in a very unequal protection against discrimination across the European Union, undermining key values of the EU, in particular the foundational value of equality, and undermining the effective implementation of EU legislation. This in itself underlines the importance and pertinence of this initiative.

We welcome that Equinet and national equality bodies are identified as main stakeholders in the process and that in-depth interviews will be carried out with all equality bodies.

In the following, Equinet offers its input to this roadmap.

About Equinet

The European Network of Equality Bodies ([Equinet](#)), comprises 47 [national equality bodies](#) (NEBs) from 37 jurisdictions across the wider European region, including all EU Member States. Equinet promotes equality in Europe by supporting and enabling the work of national equality bodies, as well as supporting equality bodies to be independent and effective catalysts for more equal societies.

¹ Legislating for stronger, more effective equality bodies: Key elements for and expectations from future EU legislation on equality bodies

Equality bodies are public institutions set up across Europe to promote equality and tackle discrimination on grounds of gender, race, age, sexual orientation, religion and belief, disability or other grounds. Equality bodies are at the heart of the national infrastructure for equality, cooperating with all relevant equality stakeholders. They are authoritative voices in matters of equality and non-discrimination. As the first point of contact for victims of discrimination, they have an extensive understanding of how discrimination affects people in Europe, and they can provide reliable “on the ground” information about the existing challenges.

Equality Bodies play a fundamental role in the non-discrimination architecture of their countries. Their role is defined in accordance with EU equal treatment legislation requiring Member States (and EU accession countries) to set up equality bodies to combat discrimination based on race and ethnic origin, as well as gender. Many Member States have gone beyond these requirements and ensured that equality bodies can also deal with discrimination based on other grounds. These bodies have a distinct role from national governments and civil society organisations.

The need for ambitious legislation

As the Commission’s [report on the implementation of the Race and Employment Equality Directives](#) and the accompanying [Staff Working Document on equality bodies](#) point out, the [Commission Recommendation on standards for equality bodies](#) provides a useful common standard, but its implementation (as a non-binding instrument) has been limited and unequal across the European Union. This calls for further developing the Recommendation into a legally binding standard.

The need for understanding and taking into account the diversity of equality bodies

The Roadmap rightly points out that some differences between equality bodies are due to the variety of legal traditions and legal systems. Equinet also underlined in the paper cited above that while EU legislation should aspire to achieve convergence especially in fields such as the independence and effectiveness of equality bodies, it should recognise that one size does not fit all, and different national traditions and models could lead to equally valuable and effective outcomes. In other words, while strict and unambiguous rules are necessary on certain issues, in other issues differences may be acceptable as long as the outcome, the effective promotion of equality and protection against discrimination, is achieved. An example of this could be the choice of certain Member States, but not others, to set up equality bodies with quasi-judicial powers.

The need for robust monitoring

Equinet welcomes the Roadmap’s mention of a monitoring system as we pointed out that EU legislation on equality bodies should be enforceable and it should be coupled with the setting up of a robust monitoring system for its effective implementation in practice. Setting up such a monitoring system will be a key, albeit complex, exercise as it requires the ability to consider all relevant aspects

of the setting up and work of equality bodies. It is particularly important to avoid basing the monitoring system on only a few selected indicators, such as the number of complaints received (often suggested for nearly exclusive use in such monitoring), to ensure a comprehensive and realistic assessment of the Member State's compliance with the EU standards for equality bodies. Finally, to ensure the consistency and comprehensiveness of the monitoring exercise, indicators should be developed for provisions included in the legislation. Equinet has already developed and is currently testing and piloting such indicators on the [mandate](#) and [independence](#) of equality bodies that could serve as inspiration for this process.

The need for a comprehensive mandate

While the majority of EU Member States went beyond the EU requirement of designating equality bodies for the grounds of race or ethnic origin and sex (based on Directives 2000/43/EC, 2004/113/EC, 2006/54/EC, and 2010/41/EU), there are still considerable variations in the mandate of equality bodies, resulting in practice in different levels of protection against unequal treatment. Therefore, Equinet welcomes the Roadmap's proposal to extend the mandate of equality bodies to the grounds and fields covered by the Employment Equality Directive and the Gender Equality Directive in the field of social security.

The European Commission could also consider going further in its proposal. As other important elements concerning the mandate of equality bodies, Equinet suggested in the paper cited above that:

- All fields of life should be covered by the mandate of equality bodies. This means covering all fields currently covered by the Racial Equality Directive², but also including actions by the state or its organs, such as the police.
- The mandate of equality bodies should cover both the public and private sectors.
- The mandate of equality bodies should cover all forms of discrimination (direct discrimination, indirect discrimination, harassment, sexual harassment, and instruction to discriminate), as well as victimisation and hate speech (hate speech is currently included in the mandate of around half of national equality bodies).
- EU legislation on equality bodies should not be used to justify any regression or narrowing of the existing mandate of equality bodies at the national level.

² Article 3 of the Racial Equality Directive provides: '1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to: (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations; (e) social protection, including social security and healthcare; (f) social advantages; (g) education; (h) access to and supply of goods and services which are available to the public, including housing.'

The need for full independence

Guaranteeing the full, both formal and functional, independence of equality bodies in all Member States ought to be a cornerstone of the future EU legislation. Equinet welcomes the fact that the Roadmap lists independence as one of the possible areas where standards could be strengthened and would like to stress the importance of developing strong, clear, concrete, and effective rules in this regard, coupled with an effective enforcement mechanism. Equinet suggests that the Commission Recommendation of 2018 provides a good basis for this by listing some key elements of independence that Member States 'should take into consideration'. This could usefully be further developed and strengthened into enforceable standards, possibly also taking into account relevant provisions of [ECRI's GPR No.2 on Equality bodies to combat racism and intolerance at national level](#) and the [Paris Principles](#) applied to National Human Rights Institutions (NHRIs).

Further elements for consideration

Equinet would like to call attention to some other aspects that could usefully be addressed in the legislative proposal by the Commission.

1. Adequate powers for equality bodies: All equality bodies should hold powers to effectively promote and mainstream equality, to gather evidence in their procedure and to make recommendations on equality issues. Furthermore, EU legislation should require that all equality bodies have robust litigation powers (including for strategic litigation) with legal standing before the courts (in individual and collective complaints and ex officio) and/or authoritative decision-making powers with legally binding decisions and the capacity to issue effective, proportionate, and dissuasive sanctions. If an equality body is vested with both functions, it is important to ensure a firewall between the parts of the institution carrying out these two functions.
2. Adequate resources for equality bodies: As the Commission's reports have also found, currently, several equality bodies struggle to fully implement all their functions and use all their powers due to a lack of adequate resources. Therefore, Equinet welcomes the Roadmap's listing of resources as an area that standards could address. In our paper, Equinet proposed the development of a method for calculating a minimum adequate level of resources for equality bodies, covering staff, financial and technical assets enabling an effective performance of all functions of the body. It will also be particularly important to ensure that any additional function/s attributed to the equality body come/s with adequate additional resources and that EU legislation prohibits any disproportionate cuts to the resources of the equality body when compared with other public bodies. A further aspect is the link between accessibility of the equality body and an adequate level of resources, including for the setting up of local and/or regional offices.
3. Coordination and cooperation: EU legislation should guarantee that where an equality body is part of an institution with multiple mandates (for instance, being also a National Human Rights Institution or an Ombud Institution), the equality body mandate receives adequate visibility, attention, and resources (preferably with an own budget line). Where multiple equality bodies exist in a country (for instance covering different grounds of discrimination),

EU legislation should require that their powers, independence, and resources are comparable and that they coordinate and cooperate closely with each other, including in cases of intersectional inequalities or discrimination.

These three elements above are further detailed in Equinet's paper '[Legislating for stronger, more effective equality bodies: Key elements for and expectations from future EU legislation on equality bodies](#)'.

Equinet and equality bodies as key stakeholders

Looking ahead, we welcome the fact that Equinet and national equality bodies are identified as main stakeholders in the process and that in-depth interviews will be carried out with all equality bodies. Equinet is available and looks forward to assisting the process as appropriate, including support for the setting up of such interviews if necessary, responding to the open public consultation, meetings with the European Commission and attending the workshops foreseen on specific issues such as data collection and accreditation/monitoring options. Other such workshops could also be dedicated to independence, resources, or coordination and cooperation.