

Equinet Advice on the Flanders Human Rights Institute

Introduction

The Government of Flanders has announced in 2019 their withdrawal from the interfederal agreement establishing the current mandate of Unia. Instead, the Government of Flanders wishes to establish a Flanders Human Rights Institute (VMRI) through a decree of the Parliament of Flanders.

Given that Unia is a member of Equinet and that the VMRI would hold a strong equality body mandate covering Flemish competences, Equinet was asked to provide advice on the issue.

This advice focuses on the future VMRI's equality mandate, but Equinet underlines that where an equality body is part of an institution with multiple mandates (for instance covering also human rights), the equality body mandate should receive adequate visibility, attention and resources (preferably with an own budget line)¹.

This advice is based on European legislation, soft law and good practices and it cannot aspire to provide detailed advice on all aspects of the expected major institutional changes. At the same time Equinet wishes to emphasise the importance of the Flemish Parliament deciding on the best regulatory and institutional models for the future VMRI through a transparent, thorough and participatory process, with particular attention to taking into account the experiences and advice from Unia and other equality bodies existing in Belgium.

Standards for equality bodies

As the VMRI will hold the mandate of an equality body in Flanders, it is important that the legislation setting it up takes into account existing recommendations from the EU² and Council of Europe³ on standards for equality bodies, in particular linked to their mandate, powers, independence, resources, accessibility and coordination and cooperation with other bodies. The legislation setting up the VMRI could also take into account the ongoing legislative process at EU level⁴ that will lead to legally binding rules on standards for equality bodies, in particular the issues mentioned above. The European Commission is expected to publish its proposal for a Directive or Directives in September 2022.

¹ [Commission Recommendation \(EU\) 2018/951 of 22 June 2018 on standards for equality bodies](#), 1.3 on Coordination and cooperation and [ECRI General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level](#), section II on Institutional Architecture

² Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies

³ ECRI General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level

⁴ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13098-Equality-bodies-binding-standards_en, see also Equinet's advice: <https://equineteurope.org/wp-content/uploads/2021/04/Legislaating-for-strong-more-effective-NEBs-Recommendations.pdf>



Accessibility of the equality body

We note that the institutional architecture for combatting discrimination is inevitably going to become significantly more complex with the creation of the VMRI. We find it to be of utmost importance that those discriminated, at risk of being discriminated or simply wishing to avail themselves of information and advice on equality and non-discrimination should not suffer from the consequences of this added complexity. Acknowledging that there will always be cases where the body holding jurisdiction will not be clear-cut, Equinet finds it crucial that legislators, policymakers and all relevant equality bodies and other bodies holding an equality mandate cooperate closely to ensure a smooth ‘one-stop shop’ experience for all victims of discrimination and other persons wishing to contact them for advice. At the same time, this cooperation should not in any way undermine the independence and the mandate of any of the institutions in question. The well-established close cooperation between Unia and the Institute for the Equality of Women and Men should be considered as a good practice in this regard.

Good accessibility of the equality body should be understood in the broadest possible way, including, if necessary, local offices, multiple options (including language options) to submit a complaint or get advice and accessibility to all persons with disabilities⁵.

Adequate protection to victims of discrimination

It is important to ensure that people in Flanders and Brussels have equivalent protection from discrimination and can benefit from equivalent levels of assistance from the equality body as in the rest of Belgium and that the level of protection does not decrease in any way compared to the status quo.

Adequate protection should include providing legal and other assistance and advice both in front of the courts and outside the courts. Legal assistance may also include the equality body making decisions on the merits of the complaint, in which case ECRI and Equinet consider it a good practice to grant the equality body the power to adopt legally binding decisions and the capacity to issue effective, proportionate and dissuasive sanctions⁶.

It is also important to ensure that the equality body can take up cases and ensure an authoritative decision on the merits either through its own procedure or in front of the courts in the absence of identifiable victims⁷.

In order to guarantee effective protection from discrimination and promotion of equality, the VMRI should ideally be fully operational by the time it is due to take over competences from Unia. This requires good cooperation and coordination between the two equality bodies to facilitate the quick absorption of Unia’s experience and expertise by the VMRI, including the possibility of taking over some staff members.

⁵ See 1.2.3 of the European Commission Recommendation and Section IX of ECRI GPR No. 2

⁶ <https://equineteurope.org/wp-content/uploads/2021/04/Legislating-for-strong-more-effective-NEBs-Recommendations.pdf> and ECRI GPR No. 2, point 17

⁷ European Commission Recommendation 1.1.2.(1) and (3) and ECRI GPR No. 2, point 17





About Equinet

Equinet is the European Network of Equality Bodies bringing together 47 organisations from across Europe. Equinet is a membership organisation which promotes equality in Europe by supporting and enabling the work of national equality bodies. Equality bodies are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation.

This advice from Equinet was prepared on the request of the Flemish Government. It does not necessarily reflect the position or opinion of individual members of Equinet or the European Commission.



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