

New Spanish comprehensive anti-discrimination law

After a long legislative process, the [Comprehensive Law for Equal Treatment and Non-Discrimination has been approved in Spain](#). The [Alliance for the Comprehensive Law on Equal Treatment](#) (a joint project from different NGOs) has advocated to strengthen the joint effort of NGO working with (potential) victims of discrimination, which has also made important contributions to the content of the law.

On 7 September 2021, ARDI (European Parliament Anti-racism and Diversity Intergroup), the Spanish Alliance for an Equal Treatment Law (Accem, Asociación Rumiñahui, Comisión Española de Ayuda al Refugiado, Cruz Roja Española, Fundación Cepaim, Fundación Secretariado Gitano, Movimiento por La Paz-Mpdl and Red Acoge) and Equinet organised an event to discuss some of the necessary steps the Member States should take in areas such as intersectional discrimination, redress and sanctions, or standards for Equality Bodies. You can read a summary of the outcomes of the event in the [Brussels Morning Newspaper](#).

The approval of this law is a major step forward in Spain for the protection of equal rights and includes comprehensive and innovate legal provisions. It will be applied to everyone, including public and private undertakings and individuals (when they are in, based or operate in Spain).

Substantive provisions in the law

The **concept of discrimination** (art 4 and art 6) includes direct and indirect discrimination; multiple and intersectional discrimination; harassment; instructions, orders induction to discriminate or committing an intolerant act; discrimination by association and by mistake; non-compliance with positive action measures derived from normative or conventional obligations; inaction; abandonment of functions or non-compliance with duties; denial of reasonable accommodation measures; or retaliation.

The Law extends the **grounds** of discrimination (art 2) that will be protected under Spanish law to: birth, race or ethnic origin, sex, religion or belief, age, disability, sexual orientation or identity, gender expression, illness and health status, serological situation, genetic features, language, socioeconomic status or any other condition or personal situation (without defining any of the concepts).

The **fields** protected (art 3) have also been extended, including, notably, Artificial Intelligence:

- Employment, access, promotion, work conditions and formation related to employment in the public sector. (art 9, art 10, art 11)
- Affiliation and belonging to political, trade, business, professional or economic or social interest organisations. (art 12)
- Education (art 13, art 14)
- Healthcare (art 15)
- Citizen safety (art 18)
- Justice (art 19)



- Social protection, social benefits, and social services (art 16)
- Access, offer and supply of goods and services available to the public, including housing (art 20), that is offered beyond the private and familiar life ambit, including transport. (art 17)
- Sports and culture. (art 24)
- Access and permanence in establishments and open public spaces (art 21)
- Advertisement, media and information society services, internet, social media, and phone applications. (art 22)
- Artificial intelligence and massive data management systems (art 23)
- School segregation (art 6.8)

Article 25 of the new law includes a provision establishing that protection against discrimination obliges to apply methods and instruments sufficient to allow for **early detection** (of discriminatory treatment), adoption of **preventive measures** and establishment of measures to make the discriminatory treatment stop. Administrative, civil, and even criminal sanctions are foreseen in case of non-compliance. These sanctions will include full **restitution** (where possible) and **compensation** until effective and whole redress has reached for victims. **Moral damages** will be presumed when discrimination is proven. The amount of the moral damages will be calculated on the basis of the circumstances of the case, concurrence, or interaction of different grounds of discrimination (multiple or intersectional discrimination), gravity of the damage (considering the diffusion or audience where applicable). Additionally, there is a positive obligation on the authorities charged with monitoring the application of the law to **ensure that it never happens again**, especially in cases in which the discriminator is a public authority. Further, employers or owners of the businesses in which the discriminatory treatment takes place will have **secondary responsibility** (as long as discrimination related prevention measures were not in place).

The new law foresees the option of establishing **precautionary measures** that could include compensation and reinstatement

Several organisations are given the right to **act on behalf of the victim** with their consent (art 29, art 31).

The **burden of the proof** is reversed (and public equality organisms may be asked for a report in this regard) except when criminal proceedings are brought, as well as for administrative sanction related processes (art 30).

Promotion of the principle of equality: **Positive action measures** are made obligatory for public authorities and a positive obligation is bestowed upon them to promote the equality between private actors. Businesses will be required to **take equality duties** as part of their corporate responsibility, both inside the organization and regarding their social sphere.

Public authorities will promote **educational measures**, formation and sensibilization of to eradicate prejudice, defective knowledge, indoctrination, fanaticism, or radicalizations that feed into discrimination or intolerance, stigmatization, hostility and hate and violence (art 33).

With due regard to the separation of powers in between the autonomic communities, the Minister's Counsel will approve a 4-year **National Equality and Non-discrimination strategy**, which will be prepared, monitored, and evaluated by a Sectorial Equality Conference with ensured participation of CSOs in the process. After the 4-year period, a report will be drafted for its evaluation.



Equality data should be compiled (art 36), including police complaints; legal complaints, judicial decisions and judgements with a discriminatory element will be processed in statistical programs based on self-identification.

Actions in the pursue of equality and non-discrimination will be made obligatory for **public grants and optional in public procurement** (art 37)

Art 38 establishes a legal duty for public authorities to **educate** theoretically and practically about equality and non-discrimination. Art 39 puts on Public authorities a positive obligation to promote **standing dialogue with CSOs**.

A new Spanish Equality Body

A new Independent Equality and non-discrimination authority will be created. While it is planned that a Statute will be prepared and approved by Royal Decree for the Authority, the law established certain functions already. The authority will be charged with **protecting and promoting** equality and non-discrimination in the areas and grounds established by the law. The law, in its article 40 establishes a number of minimum **functions and clarifies that the Authority will be the body competent in the Kingdom of Spain for the purposes of provided for in article 13 of RED**.

The authority will have powers over the **public and private spheres**, having **independent and autonomous legal standing**. **The head** of the independent authority will be named by the Government for a 5-year non-renewable term, amongst persons with proven record and prestige in equality and non-discrimination issues. Its **employees** will generally be public servants or persons working in national or international contexts with a proved record in equality and non-discrimination issues.

The **financing** of the body will be established in the general state budget based on their own proposed budget. The body may also be recipient of subsidies and contributions that are granted in its favour, assets and rights that constitute your assets, considerations derived from the collaboration agreement and others. The economic and financial management of the Authority will be under the control of the general intervention of the state administration. The accounts will have to be presented to the Spanish Court of auditors. The authority will establish the ways and procedure to ensure the **participation of organisations** and CSOs that represent the interest of right-holders, including trade unions.

Third parties are obliged to collaborate with the Authority and provide all information requested by the Authority, even information deemed sensitive if it is necessary for the Authority to carry on their job. Public and private persons will have a deadline of 10 days to provide the requested information (art 44)

Notably, the sixth additional provision of the law establishes that **within one year from when the Independent Authority for Equal Treatment and Non-Discrimination begins to effectively perform its functions and tasks, it will present a comprehensive report on the current Spanish legal framework**, pointing out to issues or aspects contrary to equality that may persist and are incompatible with the purpose of this Law. The Government and Congress will receive the report and will propose the changes needed.



Infringements and sanctions

Due to the differences in competences between autonomous communities, the new law may or not be of application to each autonomous community. In those in which a sanctions regime is already in place, the specific regulation will be of preference.

Infringements

Infringements are classified as mild, severe, or very severe. Statute of limitations for the infringements is applied taking this classification into account (1 year, 3 years, and 4 years to be exact).

Mild infringements will be applicable in cases in which there is no discriminatory intent or effect or motivated by discriminatory reasons. (penalty fee 300-10.000 €)

Severe infringements (penalty fee 10.001-40.000 €) will be applicable when:

- acts or omissions when they constitute direct or indirect discrimination, discrimination by association, by mistake, induction, or instructions to discriminate.
- Retaliation
- non-cooperation when it comes to enforcement of the law.
- A third (or more) mild infractions in the last year.

Very severe infringements (penalty fee 40.001-500.000 €) are considered:

- Multiple discrimination
- Harassment
- Severe pressure infringed upon public servants or bodies when enforcing the law.
- A third (or more) severe infringements in the last 2 years.

The amount perceived from these sanctions will be invested in the promotion of equality and non-discrimination, sensibilization and fight against intolerance.

Article 49 provides for criteria to establish the grade in which the penalty fees will be imposed. It is established that it will have to be adequate and proportionate to the gravity of the infraction, in a way that it is not more beneficiary for the offender to pay the fine than avoiding breaching the law.

Additionally, when from the infringement that is being sanctioned there are other infringements linked, the most severe grade will be applied.

Statute of limitations for the sanctions is applied the mild, severe, and very severe classification into account (1 year, 4 years, and 5 years to be exact).

According to article 50, when **sanctions are very severe, accessory sanctions** may be imposed as well, including:

- the suppression, cancellation or total or partial suspension of official aid that the sanctioned person had or had requested
- the closure of the establishment in which the discriminatory treatment happened
- the cessation of the economic or professional activity carried out by the offender for in between 5 and 10 years



In the case of non-very severe infringements, the penalty fee could be substituted by:

- the provision of their unpaid cooperation in public interest with social interest and educational value or reparation of the damage caused or generally to support and assist victims of discrimination
- Attending sensibilisations courses and trainings or other likewise sessions.

Assistance, support, and information to victims of discrimination

Public powers will be obliged to provide assistance (both in-person and telematic, including health and social services and by providing specialised services in the cases involving new tech or social networks) and to promote sensibilisation and campaigns, targeting schools as well.

