



AN EQUINET  
**PERSPECTIVE**

# Equality Bodies and Reasonable Accommodation Beyond the Ground of Disability

*by* Niall Crowley



*Equality Bodies and Reasonable Accommodation Beyond the Ground of Disability* is published by Equinet, European Network of Equality Bodies. Equinet brings together 47 organisations from across Europe which 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.

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# Contents

<b>Acknowledgements</b>	<b>iii</b>
<b>1. Introduction</b>	<b>5</b>
1.1 The concept	6
1.2 An Equinet perspective	8
<b>2. Starting points</b>	<b>11</b>
2.1 Equality Body viewpoints	12
2.2 International Provisions	14
2.3 Provision within Europe	17
<b>3. Action by Equality Bodies</b>	<b>19</b>
3.1 Casework of Equality Bodies	20
3.2 Research and policy work of Equality Bodies	22
3.3 Promotion of good practice by Equality Bodies	24
<b>4. Issues noted by Equality Bodies</b>	<b>26</b>
<b>5. Looking forward</b>	<b>29</b>
5.1 Equality Bodies	30
5.2 Policy makers	30



# 1. Introduction

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## 1.1 The concept

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The concept of reasonable accommodation, and the need for reasonable accommodation on grounds beyond the disability ground, has usefully been elaborated on by the European network of legal experts in the non-discrimination field in a 2013 publication:

‘Reasonable accommodation is related to the quest for substantive equality. It is based on a fundamental observation: some individuals, because of an inherent characteristic (for instance, disability, sex, age, race, culture or language), face barriers to full participation in society on an equal footing. They might, for instance, be prevented from performing a task or from accessing certain spaces in conventional ways. Since society is organised primarily on the basis of the needs of people who do not share such characteristics or differences, those individuals are unable to access employment, services, or other activities’.<sup>1</sup>

The requirement to make reasonable accommodation on the ground of disability, to ensure access for and participation by people with disabilities in employment and service provision and beyond, is well established in anti-discrimination law, at UN and European levels.

The UN Convention on the Rights of Persons with Disabilities requires States Parties to take all appropriate steps to ensure reasonable accommodation is provided, in order to ‘promote equality and eliminate discrimination’ (Article 5). It defines reasonable accommodation in terms of ‘necessary and appropriate modifications and adjustments’ where ‘needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms’ (Article 2)<sup>2</sup>. This is subject to the proviso of ‘not imposing a disproportionate or undue burden’ (Article 2).

The EU Employment Equality Directive defines reasonable accommodation in terms of requiring employers to take ‘appropriate measures, where needed in a particular case, to enable a person

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<sup>1</sup> Bribosia E., and Rorive I., supervised by Waddington L., [Reasonable Accommodation beyond Disability in Europe?](#), European network of legal experts in the non-discrimination field, DG Just, European Commission, 2013, p. 8.

<sup>2</sup> [Art. 2](#), UN Convention on the Rights of Persons with Disabilities. Hyperlinks were accessed on 5<sup>th</sup> December 2022.

with a disability to have access to, participate in, or advance in employment, or to undergo training’ (Article 5)<sup>3</sup>. This too is subject to the proviso of such measures not imposing ‘a disproportionate burden on the employer’, noting that the burden is not disproportionate where it is sufficiently remedied by measures within the existing framework of a Member State’s disability policy (Article 5).

This provision for reasonable accommodation on the disability ground is well established in the casework and promotional work of Equality Bodies, in relation to, among others, employment, education, and service provision.<sup>4</sup> This provision is framed as a positive duty, alongside prohibitions on direct and indirect discrimination in the Directive. The nature of this provision, in the onus it places on employers and service providers, is noted by Equality Bodies as being of central importance in realising its potential to advance the achievement of full equality in practice on the ground of disability.

This provision, as enshrined in law and as evident in the work of Equality Bodies, while focused on the single ground of disability, actually captures an understanding of diversity that is relevant to all grounds:

- diversity has practical implications – right holders covered by the different protected characteristics and holding diverse identities have needs that are specific to both their group and, as a result, themselves as individuals, rooted in the manner in which they live out their identity, and
- where organisations fail to take account of and adapt for these practical implications (and such adaptations can often be low cost despite the gains they offer), access and participation barriers present and people from these different grounds end up being excluded, which
- contributes to the situations of disadvantage and experiences of exclusion for these different groups.

A wider understanding of reasonable accommodation, beyond the ground of disability, is thus central to any ambition for substantive equality across all the discrimination grounds. Substantive equality is concerned with realising outcomes, going beyond the creation and offer of opportunities that is at the core of formal equality. In this, substantive equality is rooted in the elimination of discrimination and the deployment of positive action, taking measures to address the disadvantage

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<sup>3</sup> [Art. 5](#), Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>4</sup> Equinet, Discussion paper: [Reasonable accommodation for persons with disabilities](#), 2021



accruing to those groups subjected to discrimination and advance the achievement of full equality in practice. It further requires the approaches to respond to the practical implications of diversity that are involved in the concept of reasonable accommodation, including the provisions already made for this on the disability ground.

This understanding of the centrality of the concept of reasonable accommodation to achieving equality for all grounds covered by equal treatment legislation has yet to find specific provision in such legislation at European level or across European jurisdictions. This would be important for advancing equality across all grounds of discrimination.

The European network of legal experts in the non-discrimination field, further note that it could help in addressing the issue of intersectional characteristics for people with disabilities, given that ‘there is hardly any debate on whether the accommodation duty should be extended to protect people who are disabled but who may also require a specific accommodation because of another characteristic protected by equality law’<sup>5</sup>.

The preamble to the UN CRPD captures the importance of this aspect, in relation to the ground of disability, in articulating the concern ‘about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status’ and in emphasising ‘the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities’.<sup>6</sup>

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## 1.2 An Equinet perspective

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The importance of this wider understanding of reasonable accommodation, beyond the ground of disability, has become increasingly evident in the work of Equality Bodies. This work points up the need for policy makers, and for employers and service providers, to respond more adequately and appropriately to this issue in legislating and policy making, and in organisational practice. Equality Bodies themselves are also challenged to broaden the scope of their work on diversity to encompass this wider understanding of reasonable accommodation, to secure progress on their ambitions for

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<sup>5</sup> Bribosia E., and Rorive I., supervised by Waddington L., [Reasonable Accommodation beyond Disability in Europe?](#), European network of legal experts in the non-discrimination field, DG Just, European Commission, 2013, p. 6.

<sup>6</sup> [Preamble](#), UN Convention on the Rights of Persons with Disabilities. Hyperlinks were accessed on 16<sup>th</sup> December 2022.



equality. It is this need and this challenge that has inspired the preparation of this Equinet perspective.

The current focus on and review of the Race Equal Treatment Directive and the Employment Equal Treatment Directive at EU level, create a relevant context for such a perspective and the debate it provokes<sup>7</sup>. The review of the Directives opens up the possibility for new legislative initiatives in the field of equal treatment legislation at European level. This possibility should include a focus on provision for reasonable accommodation beyond the ground of disability.

In a previous perspective on ‘European equality policy strategies, equal treatment directives, and standards for Equality Bodies’, Equinet emphasised the need for legislative change at EU level in a manner that included provisions on reasonable accommodation beyond the ground of disability<sup>8</sup>. The Perspective stated:

‘The reasonable accommodation provisions on the ground of disability are an important response to the need for adaptation to respond to practical issues of diversity. The manner in which diversity is expressed across the other grounds often has practical implications. Thus, provisions for reasonable accommodation should be provided for all discrimination grounds, in both employment and service provision. This would ensure an adequate and appropriate response to diversity and enhance the elimination of discrimination and the achievement of full equality in practice.’

This perspective seeks to build on this proposal and contribute to further progress in its implementation. The perspective was developed through:

- debates and presentations at an Equinet Policy Formation Working Group meeting, which draws its membership from all member Equality Bodies of Equinet;

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<sup>7</sup> See: [Report from the Commission](#) to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘the Racial Equality Directive’) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (‘the Employment Equality Directive’), COM(2021) 139 final, Brussels, 19.3.2021.

<sup>8</sup> Crowley N., Taking Stock, A perspective from the work of equality bodies on: [European equality policy strategies, equal treatment directives, and standards for equality bodies](#), Equinet, 2020.

- a membership survey that was completed by nine Equality Bodies in nine jurisdictions<sup>9</sup>; and
- discussion and finalisation of the draft perspective by the Equinet board.

The perspective first explores Equality Body viewpoints on the concept of reasonable accommodation beyond the ground of disability, and the provisions made for such reasonable accommodation. It examines the work done by Equality Bodies that has included a focus on reasonable accommodation beyond the ground of disability and the issues encountered in and noted from this work. Finally, it takes a future perspective in making some proposals for possible action on reasonable accommodation beyond the ground of disability by Equality Bodies and by policy makers.

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<sup>9</sup> UNIA, Belgium; Commission for Protection against Discrimination, Bulgaria; Office of the Ombudswoman, Croatia, Office of the Public Defender of Rights, Czechia; Federal Anti-Discrimination Agency, Germany; Irish Human Rights and Equality Commission, Ireland; National Commission for the Promotion of Equality, Malta; National Council for Combating Discrimination, Romania; Commissioner for Protection of Equality, Serbia.



## **2. Starting points**

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## 2.1 Equality Body viewpoints

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Equality Bodies point to the importance of provision in equal treatment legislation for reasonable accommodation across all grounds of discrimination covered. This would better reflect how people choose to live out their identity and the need to make provision for the specific needs that flow from this, if people across the discrimination grounds are to fully participate in society and if equality is to be achieved.

It is argued by Equality Bodies that this provision would ensure equality law drives more effective approaches to equality. It would enhance the ambition of this legislation in terms of addressing and removing the barriers to participation encountered across all the discrimination grounds, in bringing about positive change across these discrimination grounds, and in terms of reaching more forcefully towards achieving substantive forms of equality, the achievement of full equality in practice.

Reasonable accommodation across all grounds, it is suggested, would allow all rights holders to participate and to make their contribution. The concept of reasonable accommodation beyond the ground of disability ensures a focus on both the tangible and less obvious barriers that effectively inhibit equality. It allows different social groups, with different personal characteristics, equal treatment and non-discrimination in the enjoyment of their rights. It acknowledges difference and the need to take steps to accommodate this difference if equality is to be realised.

Equality Bodies note the potential in provisions on both indirect discrimination, with its capacity to capture discrimination by impact, and positive action, with its capacity to progress the achievement of full equality in practice,<sup>10</sup> to bring forward and respond to issues of reasonable accommodation on grounds beyond the disability ground.

However, they note the impediments to effective casework on indirect discrimination and that such an approach loses the vital element of a duty in relation to making reasonable accommodation. This element enables the emphasis to be on the things that need to be done to foster equality more than on the things that should not be done.

They further note the difficulties in an effective mobilisation of positive action to serve the concept of reasonable accommodation. Once again, there is the absence of a legal duty in most provisions related to positive action. Reliance on positive action, with its group focus, could further lose the individual basis of the reasonable accommodation duty, which can be very important to capture and

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<sup>10</sup> Also see Equinet Report: Exploring positive action as a means to fight structural discrimination in Europe, 2022

respond to the specific needs arising from diversity for individuals from across the discrimination grounds.

The European network of legal experts in the non-discrimination field reinforces this viewpoint in noting that ‘the boundaries between legal concepts such as reasonable accommodation, indirect discrimination and positive action are blurred’ but emphasising that ‘(a)lthough there is a similar philosophy behind these legal tools, they operate, as we have seen, in different ways’<sup>11</sup>.

Reasonable accommodation has already emerged on the agendas of Equality Bodies across a range of grounds beyond that of disability. Equality bodies identify that reasonable accommodation is relevant to all grounds. The grounds of racial or ethnic origin, sexual orientation, gender identity, religion or belief, age and gender have all featured in the work of Equality Bodies in this regard.

**On the ground of racial or ethnic origin**, issues emerge in the work of Equality Bodies in relation to:

- language barriers and the specific need for interpreters and translation in engagement with public authorities, the courts, health services, and the workplace, and education services; lack of language skills on the part of service providers hampering and precluding access to and outcomes from service provision; and landlords denying rental agreement as they do not expect people whose first language is different to understand contracts or house rules.

**On the ground of sexual orientation**, issues emerge in the work of Equality Bodies in relation to:

- failure to recognise and take account of different family forms, including same sex parents, in particular in areas such as education and social protection for example.

**On the ground of religion or belief**, issues emerge in the work of Equality Bodies in relation to :

- Muslim employees or students not having the possibility to pray in their workplace or school; Jewish students have to take exams on Saturdays (sabbath); failure to provide for religious minorities to have days off on their religious holidays or to effectively implement legislation providing for this; failure to accommodate dietary or fasting requirements; failure to afford the flexibility to allow time for worship; and failure to allow for specific dress codes required by certain religions.

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<sup>11</sup> Bribosia E., and Rorive I., supervised by Waddington L., [Reasonable Accommodation beyond Disability in Europe?](#), European network of legal experts in the non-discrimination field, DG Just, European Commission, 2013, p. 7.

On the ground of age, issues emerge in the work of Equality Bodies in relation to:

- failure to take account of digital exclusion of older people in the provision of online services; failure to upskill older people in computer and occupation training; and failure to make provision for gradual forms of requirement, where work commitments can be reduced after a certain age without retiring and terminating employment.

On the ground of gender/gender-identity, issues emerge in the work of Equality Bodies in relation to:

- failure to provide appropriate working arrangements for pregnant women; lack of flexibility in working time and working arrangements for persons with family responsibilities; and lack of practical measures to assist those with caring responsibilities<sup>12</sup>; and
- failure to recognise employees and service users in the gender with which they identify; lack of gender inclusive application forms for services; and lack of gender-neutral facilities.

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## 2.2 International Provisions

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Legislative provisions for reasonable accommodation beyond the ground of disability could draw from provisions already made in this regard in other jurisdictions such as the USA and Canada.

**In the US**, provision for reasonable accommodation on the religion ground, in employment, pre-dated but is now provided for alongside the disability ground.

Title VII of the Civil Rights Act of 1964<sup>13</sup> prohibits employers with at least 15 employees, as well as employment agencies and unions, from discriminating in employment based on race, colour, religion, sex, and national origin. Discrimination on the religion ground includes denial of a requested reasonable accommodation of an applicant's or employee's sincerely held religious beliefs or practices, or lack thereof, if an accommodation will not impose more than a *de minimis* cost or burden on business operations.<sup>14</sup>

The US Equal Employment Opportunity Commission clarifies that common methods for such reasonable accommodation include: scheduling changes, voluntary substitutes, and shift swaps;

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<sup>12</sup> [DIRECTIVE \(EU\) 2019/1158 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL](#) of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU in effect addresses some of these elements of reasonable accommodation on the ground of gender.

<sup>13</sup> Civil Rights Act of 1964 (Pub. L. 88-352) (Title VII), as amended, as it appears in volume 42 of the United States Code, beginning at section 2000e.

<sup>14</sup> See: [Questions and Answers: Religious discrimination in the workplace](#), US Equal Employment Opportunity Commission, website accessed 5<sup>th</sup> December.

changing an employee's job tasks or providing a lateral transfer; making an exception to dress and grooming rules; use of work facility for a religious observance; accommodations relating to payment of union dues or agency fees; and accommodating prayer, proselytizing, and other forms of religious expression.<sup>15</sup>

In Canada, the Canadian Human Rights Act 1985 prohibits discrimination in employment, by employee associations, and in the provision of goods, services, facilities or accommodation customarily available to the general public (Articles 5-9). It covers thirteen grounds: race; national or ethnic origin; colour; religion; age; sex; sexual orientation; gender identity or expression; marital status; family status; genetic characteristics; disability; and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered (Article 3(1))<sup>16</sup>.

The reasonable accommodation requirements of the Act apply to all thirteen grounds. The stated purpose of the Act includes 'the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated ... without being hindered in or prevented from doing so by discriminatory practices' (Article 2). For any discriminatory practice to be justified, the duty holder must show that 'the accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost' (Article 15(2)).<sup>17</sup>

Barnet et al., in their examination of this duty to accommodate, note that 'one important purpose of the equality guarantees contained in human rights laws ... is to promote substantive equality and not just formal equality. Formal equality dictates only that every citizen should be treated similarly, yet this can lead to inequalities given that people have different needs, resources and abilities. Substantive equality involves accounting for people's differences and historical disadvantages and taking active steps to address the discriminatory effects of any policies or initiatives'. They further note that to 'achieve full substantive equality, barriers or obstacles that prevent people's full participation in society would have to be removed'<sup>18</sup>.

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<sup>15</sup> See: [Questions and Answers: Religious discrimination in the workplace](#), US Equal Employment Opportunity Commission, website accessed 5<sup>th</sup> December.

<sup>16</sup> [Canadian Human Rights Act](#), R.S.C. 1985.

<sup>17</sup> [Canadian Human Rights Act](#), R.S.C. 1985.

<sup>18</sup> Barnett L., Nicol J., Walker J. (2012) and Revised by: Mason R., Nicol J., Walker J. (2020), [An Examination of the Duty to Accommodate in the Canadian Human Rights Context](#), Background Paper, Parliamentary Research Service, Library of Parliament.



At level of the UN, the work of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, has opened up a focus on reasonable accommodation on a socio-economic status ground, pointing to an important case before the UN Committee of Economic Social and Cultural Rights<sup>19</sup>. De Schutter states that ‘a failure to provide reasonable accommodation to consider the specific individual situation of a person experiencing poverty should be treated as discriminatory’ noting that ‘A measure that does not directly discriminate against people in poverty, and that does not result in an indirect discrimination in general, may still fail to account for the individual circumstances faced by people in poverty and their particular vulnerability’. He emphasises ‘In education and employment, the duty to provide reasonable accommodation is particularly relevant to people in poverty since such individuals often have non-standard life courses’.

De Schutter sets out the case of *Lorne Walters v. Belgium*, the Committee on Economic, Social and Cultural Rights<sup>20</sup>: The Committee found a violation of the right to housing under article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, combined with the non-discrimination clause of article 2 (2), based on the consideration that the individual circumstances of the author were not taken into account, and that the legislation allowing landlords to terminate the lease periodically without having to provide a reason had instead been applied inflexibly. The Committee noted that the author had lived in the same apartment for 25 years, had always fulfilled his contractual obligations and was now an older person with limited income who had strong social ties to his neighbourhood. Despite this, no alternatives had been explored that would have allowed him to stay in his apartment. Belgium, the Committee concluded, should review the legislation allowing the landlord to terminate the lease without cause “in order to introduce flexibility and special measures to avoid a disproportionate impact on the right to adequate housing of disadvantaged groups, such as older persons in a disadvantaged socioeconomic situation”.

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<sup>19</sup> Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter: [Banning discrimination on grounds of socioeconomic disadvantage: an essential tool in the fight against poverty](#), United Nations General Assembly, 13 July 2022, Paragraphs 35 and 36.

<sup>20</sup> [United nations general assembly, Promotion and protection of human rights: Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms. Extreme poverty and human rights. Note by the Secretary-General A/77/157: Banning discrimination on grounds of socioeconomic disadvantage: an essential tool in the fight against poverty](#), 15 July 2022, A/77/157, para. 12.8.

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## 2.3 Provision within Europe

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There is no specific provision identified by the Equality Bodies in equal treatment legislation for reasonable accommodation on the full spectrum of grounds, beyond the ground of disability, in Europe.

Equality bodies identify provision made in relation to requirements for reasonable accommodation on the gender or family status grounds. Such provision is made most often in labour legislation or legislation providing for maternity or parental leave. This provision relates to: specific responses to pregnant employees' health and safety needs; responding to ante-natal and post-natal care needs of women; accommodating breastfeeding employees; and putting in place workplace flexibilities and leave arrangements for parents. This provision is finding further and broader expression in Member State legislation on foot of transposition of the EU work-life balance Directive<sup>21</sup>. Provision in relation to reasonable accommodation on the ground of religion is also noted, in terms of provision of leave for different religious holidays.

The provisions in equal treatment legislation prohibiting indirect discrimination are noted by Equality Bodies as having offered some scope for progressing the concept of reasonable accommodation beyond the ground of disability. However, the limitations in this approach are noted in that it can be difficult to successfully bring forward and argue cases of indirect discrimination, and most importantly, reliance on the indirect discrimination provisions leads to a reactive approach rather than the more effective approach inherent in the duty that underpins the concept of reasonable accommodation.

There is evidence of some political interest in relation to making provision on reasonable accommodation broadly and beyond the disability ground. In [Malta](#), for example, with the tabling of the Equality Bill in Parliament in 2019<sup>22</sup>. While not enacted due to Parliament's dissolution in March 2022, it could be tabled again in the new legislature.

The Equality Bill made provisions for reasonable accommodation on all the grounds covered. The sixteen grounds to be covered were: age; belief, creed or religion; colour, ethnic or national origin, or race; disability; family responsibilities or pregnancy; family or civil status; gender expression or

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<sup>21</sup> [DIRECTIVE \(EU\) 2019/1158 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL](#) of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU in effect addresses some of these elements of reasonable accommodation on the ground of gender.

<sup>22</sup> [The Equality Bill 2019](#), Malta.

gender identity; genetic features; health status; language; nationality; political opinion; property; sex or sex characteristics; sexual orientation; and social origin (Article 4).

The Equality Bill provided that 'failure to provide reasonable accommodation' was a form of unlawful discrimination whether on single or multiple grounds (Article 5(3)(g)). It defined reasonable accommodation as 'adjustments or alterations not imposing a disproportionate or unjustifiable burden where needed to ensure the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms' (Article 2).



## **3. Action by Equality Bodies**

This understanding of reasonable accommodation beyond the ground of disability, and the need for policy makers and organisations to respond appropriately to this issue has become increasingly evident in and from the work of Equality Bodies.

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### 3.1 Casework of Equality Bodies

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The casework of Equality Bodies has managed to address reasonable accommodation beyond the ground of disability in some instances, despite the lack of specific provision in regard to this. The prohibition of indirect discrimination assists in this regard, and in some instances the breadth of definition or interpretation of direct discrimination assists. In this regard, same treatment has been found, in some cases, to be discriminatory where the circumstances of the person are different and there is failure to respond to specific needs of members of particular groups.

In Czech Republic, for example, the Equality Body (Public Defender of Rights) has addressed cases related to reasonable accommodation on the religion ground, the gender ground, as well as the disability ground. The cases raised issues in relation to religious duties, school food, religious attire, and parenthood. The issue of reasonable accommodation beyond the ground of disability has been addressed as a form of indirect discrimination.

In Complaint File Ref. 176/2010/DIS/JKV, the Equality Body stated: ‘The employer must fulfil the special requirements of employees having a particular religion to the extent that the employer’s operating conditions allow for this. However, there are limits to this obligation. It is necessary that the employees also take positive steps. If the employer adopts reasonable measures in relation to the inclusion of persons of a particular religion without fully accommodating their requirement (e.g. for time off), it is up to the employees to decide whether they give priority to their religious principles or employment’<sup>23</sup>.

The case involved two members of the Seventh-day Adventist Church making a complaint against discrimination on the grounds of religion. Their employer ceased to respect their requirement for time off on Saturdays, i.e. their rest days, when they were transferred to uninterrupted operation with Saturday shifts required. The Equality Body found that employers must not engage in indirect discrimination, but did not find indirect discrimination in this instance as the employer did not prevent an exchanges of shifts between the complainants and employees having other religions.

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<sup>23</sup> Czechia, Public Defender of Rights, [case 176/2010/DIS](#), 23 May 2011. [Annual Report on the Activities of the Public Defender of Rights 2011](#), Public Defender of Rights, Czechia, 2012 p.97.

In Complaint File Ref. 6481/2017/VOP, a non-binding decision in relation to the provision of vegan school food in kindergartens, the Equality Body stated: 'Kindergartens are obliged to reach an agreement with the children's legal representatives on the extent and manner of the children's catering. In order for the agreement to be concluded, it is necessary to make helpful steps in relation to both children with food intolerances and children whose legal representatives have decided to be vegetarian or vegan'<sup>24</sup>.

In [Ireland](#), the Equality Body (Irish Human Rights and Equality Commission) points to a modest body of case law which has established for employers a 'duty of care' towards primarily migrant workers, to create accommodations that assist their integration into the workplace. This involves obligations similar to those that may be expected under a reasonable accommodation duty.

In the case *A Company v A Worker*, ED/01/27 it was concluded: 'The Court strongly recommends the companies employing non-nationals recognise the difficulties that may arise, provide proper induction courses and that they make resources available to them to deal with any social or cultural differences which might arise in these situations'<sup>25</sup>.

In the case *Campbell Catering Ltd v Rasaq* (Determination Number EED 048), the Labour Court highlighted what in effect amounted to a positive duty on employers in addressing the specific needs of migrant workers. This case suggests that applying the same procedural standards to a non-national worker that would be applied to an Irish national could in some circumstances amount to discrimination. The Labour Court, in the case, found that the claimant had been dismissed on grounds of race discrimination and awarded her €15,000 comprising of €4,000 in lost earnings and €11,000 for the effects of the discriminatory dismissal.<sup>26</sup>

In its finding the Labour Court stated that 'It is clear that many non-national workers encounter special difficulties in employment arising from a lack of knowledge concerning statutory and contractual employment rights together with difficulties of language and culture. In the case of disciplinary proceedings, employers have a positive duty to ensure that all workers fully understand what is alleged against them, the gravity of the alleged misconduct and their right to mount a full defence including the right to representation... Special measures may be necessary in the case of non-national workers to ensure that this obligation is fulfilled and that the accused worker fully

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<sup>24</sup> Czechia, Public Defender of Rights, [case 6481/2017/VOP](#), 15 November 2017. [Summary Report of Protection Against Discrimination 2017](#), Public Defender of Rights, Czechia, 2018, p. 47.

<sup>25</sup> Ireland, Labour Court, *A Company v A Respondent*, ED/01/27, 13 May 2002. Also, [Submission on the Review of the Equality Acts](#), Irish Human Rights and Equality Commission, Ireland, 2021, p.61.

<sup>26</sup> Ireland, Labour Court, *Campbell Catering Limited v Aderonke Rasaq*, EED/02/52, 23 July 2004.

appreciates the gravity of the situation and is given appropriate facilities and guidance in making a defence'<sup>27</sup>.

In [Croatia](#), the Equality Body (Office of the Ombudswoman), in a case of a member of a non-Catholic religion who was not granted additional leave days to celebrate their religious holidays due to some administrative pre-requirements that were not met, found that the Law on National Holidays implicitly provides reasonable accommodation for employees who belong to Islamic and Jewish religions, as it grants additional leave days to those believers upon request, to celebrate their religious holidays.

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## 3.2 Research and policy work of Equality Bodies

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The research and policy work of [Equality Bodies](#) has taken up, explored and made recommendations in relation to the issue of reasonable accommodation beyond the ground of disability. This work has established some detail on the practical implications of diversity and the specific needs that arise for particular groups, and on the need for a practice, policy and legislative response to these in terms of making reasonable accommodation.

In [Germany](#), for example, the Equality Body (FADA) commissioned a legal opinion on 'Reasonable adjustment as a discrimination dimension in law. Human rights requirements for the General Equal Treatment Act'<sup>28</sup>. The principal focus for this opinion was on reasonable accommodation on the ground of disability. The opinion argues that there is a legal obligation to include reasonable accommodation provisions in the Equal Treatment Act because of the UNCRPD, but went further in arguing that the concept is so useful that it should be done for all the discrimination grounds.

The argument was developed along the lines that, while the concept of reasonable accommodation has been advanced under the law on the equal treatment of persons with a disability, it may not be confined to it. The concept provides an adequate basis from which to establish the obligations to act that would be necessary to protect persons from discrimination on grounds of sex, faith or age. In this manner, the concept would fulfil the same purpose as on the disability ground, which is to define the terms and conditions required for the social participation of persons potentially facing discrimination and to substantiate specific imperatives to act<sup>29</sup>.

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<sup>27</sup> [Annual Report 2004](#), Equality Authority, Dublin, 2005.

<sup>28</sup> Eberhard Eichenhofer Prof. Dr. H. C., [Reasonable adjustment as a discrimination dimension in law. Human rights requirements for the General Equal Treatment Act](#), FADA, Germany, 2018, p.63 onward.

<sup>29</sup> Factsheet in English: [The FADA's research at a glance](#).



The opinion concluded that: "reasonable accommodation" is a fundamental concept of the general equal treatment law. Therefore, it should also be incorporated as a fundamental concept into the General Equal Treatment Act (AGG) and, implicitly, secure every person protected under section 1 AGG the legal entitlement to reasonable accommodation<sup>30</sup>.

The Equality Body organised a public release event for the legal opinion with an expert discussion that included researchers, policy makers, employers and disability activists. The Equality Body's 4th Report to the Bundestag, in 2021, took up the argument of the 2018 legal opinion. It lists a range of discrimination complaints on various grounds and notes that these could have been addressed by means of reasonable accommodation<sup>31</sup>.

This report of the Equality Body stated that 'the lack of appropriate precautions or the failure to take into account specific life situations or specific needs is also a form of discrimination that is reported by those seeking advice in connection with various characteristics protected in the AGG in different areas of life'<sup>32</sup>. Issues are noted on the grounds of racial or ethnic origin, religion, age, and gender identity.

In **Ireland**, for example, the Equality Body (Irish Human Rights and Equality Commission) has raised the issue of reasonable accommodation on grounds other than disability in the debates on an ongoing review of the Irish equal treatment legislation. It has recommended the need for provisions on reasonable accommodation to be extended from the disability ground to all nine grounds covered by this legislation: gender, civil status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community<sup>33</sup>.

This recommendation of the Equality Body argues that: 'Reasonable accommodation requires a focus on the tangible and less obvious barriers that effectively inhibit equal opportunities. It acknowledges that every person has abilities. It acknowledges difference and the need to take steps to accommodate this difference if equality of opportunity is to be realised. Arguably, a fundamental task of a just society is to organise in a manner that allows all to participate and to make their contribution'<sup>34</sup>.

In **Malta**, for example, the Equality Body (National Commission for the Promotion of Equality) recommends in its input to all relevant national policies put out for public consultation that

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<sup>30</sup> Factsheet in English: [The FADA's research at a glance](#).

<sup>31</sup> [Discrimination in Germany - experiences, risks and case constellations](#), FADA, Germany 2021.

<sup>32</sup> [Discrimination in Germany - experiences, risks and case constellations](#), FADA, Germany 2021, p. 249.

<sup>33</sup> [Submission on the Review of the Equality Acts](#), Irish Human Rights and Equality Commission, Dublin, 2021.

<sup>34</sup> [Submission on the Review of the Equality Acts](#), Irish Human Rights and Equality Commission, Dublin, 2021, pp. 60-61.

‘reasonable diversity accommodation’ be included alongside training on its implementation. This is to address the grounds of: gender, age, racial or ethnic origin, religion or belief, sexual orientation, and gender identity, gender expression, and sex characteristics.

In Croatia, the Equality Body (Office of the Ombudswoman) conducted a research on a matter that explored the boundaries that could exist in relation to reasonable accommodation on the religion ground. It published this as a brief analysis related to reasonable accommodation provided to medical staff who expressed a conscientious objection to performing pregnancy termination proceedings and the impacts this accommodation had on other human rights, e.g. women's right to health. The research contained recommendations on what needs to be changed in the application of reasonable accommodation based on such conscientious objection, in order to prevent its abuse and misuse in terms of accessibility of medical services<sup>35</sup>.

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### 3.3 Promotion of good practice by Equality Bodies

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The promotion of good practice work of Equality Bodies has included a focus on the practical steps required by employers and service providers to make reasonable accommodation for employees and service users from the discrimination grounds beyond the ground of disability. This work has identified and promoted the systems, adaptations and flexibilities required to address the practical implications of diversity beyond the ground of disability, and the specific needs that arise in this regard for people across the discrimination grounds.

In Belgium, for example, the Equality Body (UNIA) addresses the practical implications of diversity across the full spectrum of discrimination grounds in the training it provides to companies and organisations on managing diversity. Practical guidance and good practice examples for diversity management with an inclusive approach to diversity, are provided on its website<sup>36</sup>. Success in this work is noted as depending on the willingness of organisations to work towards an inclusive organisation in managing diversity.

The Equality Body makes use of a specific methodology in this work that makes it possible to work on solutions for everybody's needs within a specific context. The PGDC, (the Highest Common Denominator), designates this management philosophy, which makes it possible to bring ‘benefit to all from a particular request’<sup>37</sup>. This is a concept that can be applied to managing diversity of service

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<sup>35</sup> See the Office of the Ombudswoman's website, here: <https://www.ombudsman.hr/hr/analiza-priziv-savjesti-pravni-izvori-i-standardi>

<sup>36</sup> See: [www.ediv.be](http://www.ediv.be)

<sup>37</sup> See website: [here](#).

users and of employees. It does not favour the needs of any individual, and works on a common basis of how to deal with everybody's needs.

The Equality Body has a preference for the terminology of 'managing diversity' so as not to confuse regarding the legal provision for reasonable accommodation on the disability ground.

In **Malta**, for example, the Equality Body (National Commission for the Promotion of Equality) addresses the concept and practice of 'reasonable diversity accommodation' when doing training with employers and service providers. This includes a focus on the grounds of: gender, age, racial or ethnic origin, religion or belief, sexual orientation, and gender identity, gender expression, and sex characteristics. It emphasises that the organisational infrastructure for diversity management should include this focus on reasonable accommodation across all grounds in the policies, training modules, committees, etc involved in this infrastructure.

In **Lithuania**, for example, the Equality Body (Office of the Equal Opportunities Ombudsperson) includes a focus on how to accommodate the specific needs of employees across grounds of age, gender, and disability, in its work with employers.



## **4. Issues noted by Equality Bodies**

There is a problematic starting point for responding to the need for reasonable accommodation across all grounds of discrimination (beyond the ground of disability,) in that reasonable accommodation on the disability ground itself is unfinished work. In many instances, Equality Bodies note that the current legislative provision on reasonable accommodation on the disability ground falls short of the requirements in the UN Convention on the Rights of Persons with Disability.

While reasonable accommodation on the ground of disability might be well established and protected in legislation, the application of the concept in daily reality remains overall poor. There is widespread lack of understanding of reasonable accommodation and what it might involve or seek to achieve<sup>38</sup>. This concept has yet to emerge as a leading principle within society.

Equality Bodies note that the medical model of disability continues to prevail in the thinking of decision-makers, both policy makers and managers in organisations. This is reflected for example, in a concern for integration and enabling access to jobs that are suitable for people with disabilities, whereas the social model of disability would emphasise job design to reasonably accommodate people with disabilities and secure their full participation in the mainstream.

There are risks to be negotiated in bringing forward this concept of reasonable accommodation across all grounds of discrimination in such a context. These include the risks of:

- diluting the argument for the full and effective application and implementation of the reasonable accommodation provisions on the disability ground by looking for it on all grounds before it is completed for the disability ground;
- expanding provision on reasonable accommodation before the concept and its implications are fully understood; and
- backlash and division with the concept being misconstrued, particularly in relation to grounds that are already a focus for such false controversy, to give fodder to tabloid media, populist politicians, and those who argue to undermine equality.

Many of the battles around the proposed horizontal equal treatment Directive are around provision for reasonable accommodation on the disability ground. These have raised issues of financial cost as a barrier to progress on reasonable accommodation, while not reflecting that most reasonable accommodations are low cost and hold a benefit for organisations and that the Directive would only

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<sup>38</sup> See: [Reasonable Accommodation for Persons with Disabilities](#): Exploring challenges concerning its practical implementation, Discussion Paper, Equality Law in Practice Working Group, Equinet, Brussels, 2021.

require reasonable accommodation that does not generate a disproportionate burden for the organisation.

The principle of reasonable accommodation needs to be a focus for informed public debate on all the discrimination grounds. The concept has yet to be widely embraced in public debate. The principle remains unknown to many stakeholders that should be knowledgeable about it. Public perception can misinterpret reasonable accommodation as being discriminatory rather than as bringing about substantive equality.

There needs to be clarity as to the need for, the gains from and the implications of requirements and practices to make reasonable accommodation across all the discrimination grounds. The practical implications of diversity are not widely known or understood. There is a lack of clarity on and understanding of the boundary established by the concept of 'reasonable'. There are difficulties in understanding and calculating what might be involved in an 'undue or disproportionate burden' exemption.

Building a basis for effective action on reasonable accommodation on the full range of discrimination grounds needs to be underpinned by a public and practical backing for the concept by public authorities and by an espousal of an ambition for substantive equality, to which end action on reasonable accommodation has a key contribution to make. This is currently lacking.



## **5. Looking forward**



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## 5.1 Equality Bodies

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Equality Bodies could usefully stimulate and inform public debate on the concept of reasonable accommodation as it applies across the discrimination grounds. This might involve communication initiatives for debate, and research initiatives to generate material to inform the debate.

Equality Bodies could usefully incorporate a focus on reasonable accommodation on the full spectrum of discrimination grounds in their work of promoting good practice. This might involve:

- the development of standards for the systems required within an organisation to apply the principle of reasonable accommodation;
- the preparation of typologies of interventions that might have relevance to members of the discrimination grounds; and
- the provision of training and guidance on making reasonable accommodation across the full spectrum of discrimination grounds.

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## 5.2 Policy makers

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Ultimately, policy makers at the European and national levels could usefully make provision in equal treatment legislation for reasonable accommodation on all discrimination grounds.

The European Commission could usefully give leadership for this focus on reasonable accommodation. This might involve:

- a clear EU policy commitment on and agreed definition for reasonable accommodation on all grounds other than the disability ground;
- action supported under the various EU equality strategies to explore and give effect to the principle of reasonable accommodation across the discrimination grounds;
- a publication of up-to-date comparative research on reasonable accommodation, the potential and rationale for reasonable accommodation, and the progress made in addressing the policy and practice implications of this concept; and
- guidance that addresses some of the complexities surrounding implementation of the concept such as the provisions in relation to disproportionate burden.

At a national level there could usefully be a similar focus developed on reasonable accommodation in the national level equality strategies, often developed in response to the equality strategies developed at European level. This might usefully include:

- grants made available to organisations to develop and pilot the systems necessary for reasonable accommodation of employees and service providers across the discrimination grounds other than the disability ground;
- making provision for capacity building in relation to reasonable accommodation and responding to its policy and practice implications; and
- promoting public debate on the concept and its importance for a more equal society.

# Equinet Member Equality Bodies

## ALBANIA

Commissioner for the Protection from Discrimination  
[www.kmd.al](http://www.kmd.al)

## AUSTRIA

Austrian Disability Ombudsman  
[www.behindertenanwalt.gov.at](http://www.behindertenanwalt.gov.at)

## AUSTRIA

Ombud for Equal Treatment  
[www.gleichbehandlungsanwaltschaft.gov.at](http://www.gleichbehandlungsanwaltschaft.gov.at)

## BELGIUM

Institute for the Equality of Women and Men  
[www.igvm-iefh.belgium.be](http://www.igvm-iefh.belgium.be)

## BELGIUM

Unia (Interfederal Centre for Equal Opportunities)  
[www.unia.be](http://www.unia.be)

## BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman of Bosnia and Herzegovina  
[www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

## BULGARIA

Commission for Protection against Discrimination  
[www.kzd-nondiscrimination.com](http://www.kzd-nondiscrimination.com)

## CROATIA

Ombudswoman of the Republic of Croatia  
[www.ombudsman.hr](http://www.ombudsman.hr)

## CROATIA

Ombudsperson for Gender Equality  
[www.prs.hr](http://www.prs.hr)

## CROATIA

Ombudswoman for Persons with Disabilities  
[www.posi.hr](http://www.posi.hr)

## CYPRUS

Commissioner for Administration and Human Rights (Ombudsman)  
[www.ombudsman.gov.cy](http://www.ombudsman.gov.cy)

## CZECH REPUBLIC

Public Defender of Rights  
[www.ochrance.cz](http://www.ochrance.cz)

## DENMARK

Danish Institute for Human Rights  
[www.humanrights.dk](http://www.humanrights.dk)

## ESTONIA

Gender Equality and Equal Treatment Commissioner  
[www.volinik.ee](http://www.volinik.ee)

## FINLAND

Non-Discrimination Ombudsman  
[www.syrjinta.fi](http://www.syrjinta.fi)

## FINLAND

Ombudsman for Equality  
[www.tasa-arvo.fi](http://www.tasa-arvo.fi)

## FRANCE

Defender of Rights  
[www.defenseurdesdroits.fr](http://www.defenseurdesdroits.fr)

## GEORGIA

Public Defender of Georgia (Ombudsman)  
[www.ombudsman.ge](http://www.ombudsman.ge)

## GERMANY

Federal Anti-Discrimination Agency  
[www.antidiskriminierungsstelle.de](http://www.antidiskriminierungsstelle.de)

## GREECE

Greek Ombudsman  
[www.synigoros.gr](http://www.synigoros.gr)

## HUNGARY

Office of the Commissioner for Fundamental Rights  
[www.ajbh.hu](http://www.ajbh.hu)

## IRELAND

Irish Human Rights and Equality Commission  
[www.ihrec.ie](http://www.ihrec.ie)

## ITALY

National Office against Racial Discrimination - UNAR  
[www.unar.it](http://www.unar.it)

## KOSOVO\*

Ombudsperson Institution  
[www.oik-rks.org](http://www.oik-rks.org)

## LATVIA

Office of the Ombudsman  
[www.tiesibsargs.lv](http://www.tiesibsargs.lv)

## LITHUANIA

Office of the Equal Opportunities Ombudsperson  
[www.lygybe.lt](http://www.lygybe.lt)

## LUXEMBURG

Centre for Equal Treatment  
[www.cet.lu](http://www.cet.lu)

## MALTA

Commission for the Rights of Persons with Disability  
[www.crpdp.org.mt](http://www.crpdp.org.mt)

## MALTA

National Commission for the Promotion of Equality  
[www.ncpe.gov.mt](http://www.ncpe.gov.mt)

## MOLDOVA

Council on Preventing and Eliminating Discrimination and Ensuring Equality  
[www.egalitate.md](http://www.egalitate.md)

## MONTENEGRO

Protector of Human Rights and Freedoms (Ombudsman)  
[www.ombudsman.co.me](http://www.ombudsman.co.me)

## NETHERLANDS

Netherlands Institute for Human Rights  
[www.mensenrechten.nl](http://www.mensenrechten.nl)

## NORTH MACEDONIA

Commission for Prevention and Protection against Discrimination  
[www.kszd.mk](http://www.kszd.mk)

## NORWAY

Equality and Anti-Discrimination Ombud  
[www.ldo.no](http://www.ldo.no)

## POLAND

Commissioner for Human Rights  
[www.rpo.gov.pl](http://www.rpo.gov.pl)

## PORTUGAL

Commission for Citizenship and Gender Equality  
[www.cig.gov.pt](http://www.cig.gov.pt)

## PORTUGAL

Commission for Equality in Labour and Employment  
[www.cite.gov.pt](http://www.cite.gov.pt)

## PORTUGAL

High Commission for Migration  
[www.acm.gov.pt](http://www.acm.gov.pt)

## ROMANIA

National Council for Combating Discrimination  
[www.cncd.ro](http://www.cncd.ro)

## SERBIA

Commissioner for Protection of Equality  
[www.ravnopravnost.gov.rs](http://www.ravnopravnost.gov.rs)

## SLOVAKIA

Slovak National Centre for Human Rights  
[www.snslp.sk](http://www.snslp.sk)

## SLOVENIA

Advocate of the Principle of Equality  
[www.zagovornik.si](http://www.zagovornik.si)

## SPAIN

Council for the Elimination of Ethnic or Racial Discrimination  
[www.igualdadynodiscriminacion.igualdad.gob.es](http://www.igualdadynodiscriminacion.igualdad.gob.es)

## SPAIN

Institute of Women  
[www.inmujer.es](http://www.inmujer.es)

## SWEDEN

Equality Ombudsman  
[www.do.se](http://www.do.se)

## UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland  
[www.equalityni.org](http://www.equalityni.org)

*\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.*



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