



AN EQUINET
**POSITION
PAPER**

Moving forward the European Commission's proposals for Directives strengthening Equality Bodies

Moving forward the European Commission's proposals for Directives strengthening Equality Bodies 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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**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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Introduction

In December 2022, to fulfil their potential and maximise their impact, the European Commission proposed legislation for binding standards on the mandate, independence, resources, tasks and powers of Equality Bodies to (1) engage in the prevention of discrimination and awareness raising activities, and (2) deal with cases of discrimination/assist victims.

The Directives will be the first ever international, legally binding standards for Equality Bodies. This is an important step to better implement the EU's equal treatment legislation, and ensure that our societies become more equal. Therefore, Equinet welcomes the Commission's proposals, with some suggestions for improvement.

In the hope that these will be considered and accepted in the upcoming negotiations, it will now be important that EU Institutions and Member States show leadership in the field of equality by swiftly adopting, transposing and implementing the Directives with strong provisions and without any regression in existing standards.

This document contains Equinet's main policy positions and proposals with regard to the European Commission's proposals for Directives strengthening Equality Bodies.

Background

National Equality Bodies are independent public institutions promoting equality and combating discrimination in their countries. Every Member State, and several other countries around Europe, have an obligation under existing EU Equal Treatment Directives¹ to designate an Equality Body or Bodies to promote equality and combat discrimination. However, the current provisions on Equality Bodies leave a large discretion to the Member States as to the mandate, powers, independence, and resources of these bodies. Differences between the Member States in the structure and functioning of Equality Bodies result in unequal protection against discrimination across the EU and an inadequate implementation of the EU's equal treatment legislation.

In 2018, the Commission published a [Recommendation on standards for Equality Bodies](#). While it isn't a legally binding document, it was a strong signal for Member States to strengthen their Equality Bodies. It came shortly after a revised [recommendation from the Council of Europe's](#)

¹ Directive 2000/43/EC, Directive 2004/113/EC, Directive 2006/54/EU and Directive 2010/41/EU

[European Commission against Racism and Intolerance](#), setting out clear and comprehensive standards for Equality Bodies.

In 2021, the Commission published a [report on the application of the Racial Equality Directive and the Employment Equality Directive](#). The report looked into the implementation of the Commission's 2018 Recommendation and was accompanied by a more detailed [Staff Working Document on equality bodies](#). The report highlighted that Equality Bodies have emerged as necessary and valuable institutions for change at the level of individuals, institutions and society at large. However, most of the issues that the Recommendation aimed to address remained unresolved, hindering some Equality Bodies in carrying out their role in an effective way. This showed that the Recommendation was not sufficient and in December 2022, led to the Commission proposing legislation to strengthen the role of Equality Bodies.

As the [Commission put it](#), *'Equality bodies are essential in assisting victims of discrimination and making sure that EU law on non-discrimination is implemented on the ground. This new legislation will ensure that equality bodies can achieve their full potential. It will better protect victims of discrimination and contribute to the prevention of discrimination.'*

This also goes in line with the [EU Anti-racism Action Plan](#), the [LGBTIQ+](#) and [Roma Equality Strategies](#), the [Strategy for the Rights of Persons with Disabilities](#) the [European Pillar of Social rights Action Plan](#), as well as the [Strategy on Combating Antisemitism and Fostering Jewish Life](#), in which the Commission raised the possibility of proposing EU-level legislation to strengthen the role and independence of Equality Bodies.

Such legally binding standards have the potential to make Equality Bodies more independent, effective, respected and accessible. *These standards will allow them to play their role as the cornerstones of national equality infrastructures even more effectively, in close cooperation with other important actors, such as NHRIs, Ombud institutions, civil society organisations, trade unions and other public bodies such as education and labour inspectorates.*

The following sections address some of the key provisions of the proposed Directives, including possible problematic areas and Equinet's proposed solutions to them.

Legal basis

The Commission published two proposals on 7 December 2022: one concerning [Equality Bodies working on the ground of sex in the field of employment and occupation](#); and another concerning [Equality Bodies working on the ground of sex in the field of goods and services and social security, on the grounds of religion or belief, disability, age or sexual orientation in the field of employment and occupation and on the ground of racial or ethnic origin in multiple fields](#). The provisions in the two proposals are practically identical.

The reason for these parallel initiatives lies in the legal basis – the Directive on gender equality in employment is based on Article 157(3) of the Treaty on the Functioning of the European Union (for ease of reference, hereafter Article 157 Directive), while the other Directive is based on Article 19(1) of the Treaty on the Functioning of the European Union (hereafter Article 19 Directive).

There are multiple implications of this:

- 🇪🇺 On the one hand, the Directive addressing Equality Bodies working on gender equality in employment does not need to be adopted unanimously in the Council of the EU, rather with qualified majority voting.
- 🇪🇺 On the other hand, while currently the text of the two Directives is practically identical, this may well change during the legislative process, especially given that the European Parliament will have co-decision powers on the Article 157 Directive, but not on the Article 19 Directive. It may be useful to assess the possible implications of the two texts diverging significantly and possible ways to prevent this from happening. While the majority of Member States would hopefully decide to transpose the more ambitious provisions for the whole mandate of all Equality Bodies, there may be issues with contradicting provisions or with confusing and complex national provisions.
- 🇪🇺 In case only one of the Directives is adopted (or is adopted much quicker), it would be up to Member States' goodwill whether they introduce the new provisions for the whole mandate of the Equality Body and for all Equality Bodies in the country. There are very few examples of Equinet members that currently cover only gender equality in employment (e.g. [CITE in Portugal](#))², but there are many more that only cover (part of) the material scope of the Article 19 Directive (e.g. [Unia in Belgium](#), [Non-Discrimination Ombudsman in Finland](#) or single ground disability Equality Bodies in [Austria](#), [Croatia](#) and

² There are more Equality Bodies covering the single ground of gender, but they tend to also cover gender equality outside employment, falling under the scope of the Article 19 Directive.

[Malta](#)). It would raise serious issues if weaker or no standards were to be applied to Equality Bodies in this second category.

Equinet proposals

Given the complexity of two parallel Directives setting out standards for Equality Bodies, it will be vital to ensure that their provisions remain identical. Diverging or even contradicting provisions in the two Directives would lead to a confusing and ineffective system and would undermine the desired objectives.

General approach to legal duties

It is noteworthy and welcome that most provisions in the Directives are introduced as ‘Member States shall ensure’ or ‘Equality bodies shall be able to’. This indicates an acknowledgment that it is Member States that bear the ultimate responsibility for ensuring equality and the proper functioning of Equality Bodies, by creating the conditions for them to perform all their functions effectively.

Scope of the Directives

The Directives broaden the mandate of Equality Bodies and the obligation of Member States, by requiring them to designate Equality Bodies to promote equality and combat discrimination on the grounds of age, disability, religion or belief and sexual orientation in the field of employment and on the ground of sex in the field of social security.

This, however, does not extend the material scope of EU equal treatment legislation as these areas are already covered by existing EU Directives. The novelty is to ensure that Equality Bodies have the competence to promote equality and combat discrimination in all the fields and on all the grounds covered by EU law. According to the Explanatory Memorandum, *‘The present initiative does not introduce legislation in a new area. It revises already existing legislation to increase its effectiveness. There is already common agreement that EU-level action is necessary in this area and that it is in line with the principle of subsidiarity.’*

This also means that the proposals do not introduce new grounds of discrimination to be protected by EU law, so that sex discrimination in education and age, disability, religion or belief and sexual orientation discrimination in fields outside of employment will remain outside the scope of EU law.

Equinet proposals

The existence of discrimination on other grounds, for instance gender identity, expression and sex characteristics, health status and socio-economic status could be acknowledged in the Recitals, as proposed by [Equinet's recent research paper](#) and following the progressive approach of the [Charter of Fundamental Rights of the EU](#) (a source of EU primary law that must be applied by the EU and Member States when they act in the scope of EU law), providing an open list of grounds. Interestingly and importantly, in the context of promotional work, the proposals already mention other grounds such as economic status, literacy, nationality, residence status and lack of access to online tools (Article 5, last sentence: 'They shall focus in particular on disadvantaged groups whose access to information can be hindered, for example by their economic status, age, disability, literacy, nationality, residence status or their lack of access to online tools.').

Multiple and intersectional discrimination

In the Directives, there is no explicit mention of multiple and intersectional discrimination, unlike in the [Pay Transparency Directive](#) proposal. Mentioning them would be important to acknowledge the reality of inequalities and discrimination often affecting persons on more than one ground, creating new forms of disadvantage. This would also contribute to ensuring better access to justice for victims of discrimination.

However, Recital 15 in the Article 157 Directive provides that: *'In promoting equal treatment, preventing discrimination and assisting victims of discrimination, equality bodies should pay particular attention to discrimination based on several of the grounds protected by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC, 2004/113/EC, 2006/54/EC and 2010/41/EU.'* Interestingly, the otherwise identically worded Recital 16 in the Article 19 Directive differs slightly as it does not mention Directives 2006/54/EC and 2010/41/EU. The practical relevance of this is limited, as Directives 2006/54/EC and 2010/41/EU concern the ground of sex, which is anyway covered in Recital 16 through Directives 79/7/EEC and 2004/113/EC.

These Recitals could arguably open the door for courts to address issues of multiple and intersectional discrimination.

The last sentence of Article 5 cited above is also noteworthy from the point of view of multiple and intersectional discrimination as it implicitly acknowledges the different life experiences of, for instance, older persons, persons with disabilities, or persons living in poverty.

Equinet proposals

The Directives should explicitly acknowledge and name the phenomena of multiple and intersectional discrimination, including with a view to ensuring coherence with other legislative proposals of EU equal treatment law.

Independence

The Directives' provisions on independence can be considered quite strong, especially when compared with the 2018 Commission Recommendation.

Article 3(1) provides that *'Member States shall take measures to ensure that equality bodies are independent and free from external influence in performing their tasks and exercising their competences, in particular as regards their legal structure, accountability, budget, staffing, and organisational matters'*. The reference to 'free from external influence' is valuable and strong, comparable to the wording used by the CJEU concerning Data Protection Authorities in C-288/12, C-614/10, and C-518/07.

Article 3(2) concerns the selection, appointment, revocation and potential conflict of interest of the staff of Equality Bodies, in particular persons holding a managerial position, to guarantee their competence and independence.

Article 3(3) concerns safeguards for the internal structure of Equality Bodies, notably where some competences require impartiality and others focus on support to victims. This requires a 'firewall' between, for instance, decision-making and litigation or promotional functions.

Article 3(4) concerns multi-mandate bodies, requiring *'the autonomous exercise of the equality mandate'*. According to the Explanatory Memorandum, this concerns conflict between the different mandates, in terms of resources and in terms of exercise of powers and also requires 'structural firewalls'.

Equinet proposals

- The provisions of Article 3(1) could be further strengthened if they included the clarifications of Recital 17, requiring that Equality Bodies should not be set up as part of a ministry or body taking instructions from the government.
- While Recitals clarify that managerial positions should also include members of a board managing the Equality Body, it would be useful to spell this out in Article 3(2) as well.
- The provisions in Article 3(3) should be further defined and interpreted to prevent an unnecessary strict firewall between different competencies.
- It is welcome that the Directives contain provisions for multi-mandate bodies, to ensure the necessary resources and visibility for the equality function. However, the meaning of ‘autonomous exercise of the equality mandate’ in Article 3(4) will have to be further defined and interpreted, ensuring also that it does not require a hermetic separation between the different mandates in cases where they can be used to strengthen and complement each other, especially as this is for the benefit of the people who turn to the institution as well as efficient spending of public funds.

Resources

The Directives’ provisions on resources can be considered quite strong.

Article 4 of the Directives provides that *‘Member States shall ensure that each equality body is provided with the human, technical and financial resources necessary to perform all its tasks and to exercise all its competences effectively, on all the grounds and in all fields covered by Directives [...] including in the event of increases in competences, increases in complaints, litigation costs and the use of automated systems’*.

Recital 18 of the Article 157 Directive and Recital 19 of the Article 19 Directive usefully detail this provision, rendering the text even more in line with Equinet’s recommendations: *‘The lack of appropriate resources is a key issue hampering the ability of equality bodies to adequately fulfil their tasks. Therefore, Member States should ensure that equality bodies receive sufficient funding, can hire qualified staff and have appropriate premises and infrastructure to carry out each of their tasks*

effectively, within reasonable time and within the deadlines established by national law. Their budgetary allocation should be stable, except in case of increase in competences, planned on a multi-annual basis, and allow them to cover costs that may be difficult to anticipate such as costs linked to litigation. To ensure that equality bodies are provided with sufficient resources, their budget should for instance not suffer cuts that are significantly higher than the average cuts to other public entities; similarly, their annual growth should at least be pegged to the average growth in funding to other entities. Resources should increase proportionally if equality bodies' tasks and mandate are expanded'.

There is a dedicated Recital in the proposals (Recital 18 of the Article 157 Directive and Recital 19 of the Article 19 Directive) concerning automated systems: *'Automated systems, including artificial intelligence, represent a useful tool to identify discrimination patterns, but algorithmic discrimination is also a risk. Equality bodies should therefore have access to qualified staff or services, able to use automated systems for their work on the one hand and to assess them as regards their compliance with non-discrimination rules on the other hand. Particular attention should be devoted to equipping equality bodies with appropriate digital resources, be it directly or by way of subcontracting.'*

Equinet proposals

Key provisions of the Recitals cited above should be spelled out in Article 4 as well, to provide even more robust guarantees for the adequate funding of Equality Bodies.

Prevention, promotion and awareness raising

Article 5 makes it the responsibility of Member States to adopt an awareness-raising strategy, with specific attention to those at risk of discrimination, on their rights and on the existence of Equality Bodies and their services.

Member States will also have to ensure that Equality Bodies develop a strategy for their work on prevention, promotion and awareness-raising, including engagement in public dialogue, the promotion of equality duties, equality mainstreaming and positive action measures.

Interestingly, as mentioned above under 'Scope of the Directives', in the context of promotional work, the proposals mention other grounds such as economic status, literacy, nationality, residence status and lack of access to online tools (Article 5, last sentence: *'They shall focus in particular on*

disadvantaged groups whose access to information can be hindered, for example by their economic status, age, disability, literacy, nationality, residence status or their lack of access to online tools.’).

This article represents a welcome focus on the powers and activities of Equality Bodies going beyond assistance to victims, related to prevention, promotion and awareness raising. To enable an effective use of these powers, adequate resources must be available to the Equality Body, as stipulated in Article 4.

Assistance to victims and amicable settlements

Article 6 provides a general framework on assistance to victims of discrimination. All Equality Bodies will have to provide extensive information, not only on the legal framework (including procedural aspects, remedies and possibility to litigate) as it applies to the concrete case and on the services of the Equality Body, but also on confidentiality rules, data protection and on the possibilities to obtain psychological or other types of relevant support from other bodies or organisations.

Following the provision of information, Equality Bodies shall issue a preliminary assessment of a complaint based on information voluntarily submitted by the parties involved. According to the Recitals, *‘Member States should be in charge of defining the modalities under which the equality body would issue this assessment, such as the timeframe of the process or procedural safeguards against repetitive or abusive complaints’.*

Article 7 addresses the possibility to seek an amicable resolution to the dispute, subject to agreement of the parties and led by the Equality Body or another dedicated entity. This is a method that most Equality Bodies already use in suitable cases, either formally or informally. Therefore, its mention and formalisation in the proposals is welcome.

Equinet proposals

- It is important to specify in the Directives that the ‘preliminary assessment’ required from Equality Bodies should not be burdensome and it should not bind the Equality Body in its further actions and decisions. The objective of providing ample information and a tangible outcome for complainants is welcome. However, depending on the procedures Member States foresee for the issuing of a ‘preliminary assessment’, this may put a substantial extra burden on Equality Bodies, potentially also undermining the procedural autonomy and effectiveness of Equality Bodies – especially those, whose main tool has been, is and will be to litigate in front of the courts. Furthermore, overly formalised and burdensome procedures for this ‘preliminary assessment’ may also go against the interests of people turning to Equality Bodies and of Member States, undermining the Equality Body’s status as a low threshold and quick complaint-handling public institution.
- Furthermore, as detailed below, Equality Bodies should not have to rely solely on information submitted voluntarily but should be empowered by law to request and oblige the handing over of information.

Opinions and decisions

Article 8(1) provides that, following the preliminary assessment described in Article 6, Equality Bodies should be empowered to further investigate the case.

Article 8(2) enables Equality Bodies to carry out fact-finding. It also requires that Equality Bodies be provided with effective rights to access information which is necessary to establish whether discrimination has occurred, if necessary, through cooperation with relevant public bodies (the recitals specifically mention labour inspectorates and education inspectorates).

Article 8(3) allows Member States to introduce provisions whereby the alleged perpetrator and any third party is legally bound to provide any information and documents requested by Equality Bodies.

Article 8(4) requires Equality Bodies to record their assessment of the case, either through a non-binding opinion (called this way to differentiate it from policy and legislative recommendations) or

through a binding, enforceable decision. They should also publish summaries of these opinions and decisions, without disclosing personal data.

Article 8(4) also requires opinions and decisions to include measures to remedy the violation and to prevent further violations. It is welcome that such measures are expected not only to remedy the concrete occurrence of discrimination, but also to act proactively, preventing further occurrences. Opinions shall be followed up and decisions shall be enforced.

Article 9(5) stipulates that no investigation may be initiated or continued while court proceedings on the same case are pending. This provision, which is not further detailed in recitals or in the Explanatory Memorandum, is at odds with national procedural rules in certain jurisdictions, where the Equality Body may conduct investigations even when court proceedings on the same case are pending, for instance with a view to render a non-binding opinion.

Equinet proposals

- The Directives should create a minimum requirement of introducing the power for all Equality Bodies to oblige the alleged perpetrator and third parties to provide any information and documents requested by the Equality Body, not leaving this to the discretion of Member States as is currently the case.
- The concrete difference, if any, between investigation powers under Article 8(2) and 8(3) should be clarified.
- The Directives should clarify that Equality Bodies may use investigation powers under Article 8(2) and 8(3) and may engage in court proceedings using the evidence so gathered without the prior need to issue an opinion or decision.
- Article 8(4) should be amended to clarify that the Equality Body may disclose personal data in opinions, decisions or their summaries, if they so decide and this has a legal basis, for instance as a sanction in discrimination cases.
- Article 9(5) has to be deleted. There are some jurisdictions where the Equality Bodies can initiate or continue proceedings while court proceedings on the same case are pending. For them, such a blanket prohibition would represent a great risk of regression, contrary to Article 17.

Litigation

Article 9(1) provides legal standing for Equality Bodies in administrative and civil law matters.

Importantly, the recitals clarify that *‘while those court proceedings should be subject to national procedural law, including national rules on admissibility of actions, such rules, and in particular any condition of legitimate interest, cannot be applied in a way so as to undermine the effectiveness of the equality bodies’ right to act’*.

Importantly, Recital 35 in the Article 19 Directive and Recital 34 in the Article 157 Directive clarify that the provisions on the Equality Bodies’ right to act in court proceedings do not alter the rights of victims and of associations, organisations or other legal entities that enforce the rights of victims which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the relevant EU equal treatment Directives are complied with, as laid down in those Directives. This is a relevant clarification for the rights of CSOs, trade unions or other public bodies, for instance, that enforce the rights of victims.

Article 9(2) and (3) clarify that the powers of Equality Bodies shall include:

- Acting as defendant in case of a judicial review of a decision of the Equality Body,
- Amicus curiae briefs,
- Initiating or participating in proceedings on behalf or in support of one or several victims, with the approval of the victim(s),
- Initiating proceedings in its own name, in particular in order to address structural and systematic discrimination (the recitals acknowledge that this can be done also in cases where there is no complainant)

The recitals clarify that the above powers will also allow Equality Bodies to *‘strategically select the cases they decide to pursue in front of national courts, and to contribute to the proper interpretation and application of equal treatment legislation’*.

Article 9(4) stipulates that the Equality Body may not submit in court proceedings evidence that it has obtained through the exercise of powers pursuant to Article 8(3) – i.e. where the alleged perpetrator and any third party is legally bound to provide any information and documents. The recitals clarify that the reason for this limitation is that Equality Bodies’ rights to act in court must respect the principles of fair trial and equality of arms. Litigation where Equality Bodies act as a party in proceedings on the enforcement or judicial review of an own decision or act as amicus curiae are exempted from this provision.

Article 9(4) is highly problematic for a number of reasons:

- There are Equality Bodies that currently already have similar effective investigation powers (e.g. in Finland, Latvia, Sweden). For them, and the rights-holders they support, this provision would represent a regression, standing in contrast with the non-regression clause in Article 17(2), prohibiting a reduction in the level of protection against discrimination already afforded by Member States.
- This provision also stands in contrast with other fields of law, where such investigation powers are granted to a public authority, for instance to Data Protection Authorities (see Article 57(1)f) and h), Article 58(1) and Article 58(5) of the [GDPR](#)) and Competition Authorities (see Article 5(2) and Article 30 of [Directive \(EU\) 2019/1](#)).
- These provisions are also contrary to the principle of subsidiarity, regulating in a manner and at a depth that undermines the national procedural autonomy of Member States. It is also to be noted that Article 10 stipulates general procedural safeguards and in particular that the rights of defence of natural and legal persons involved are duly protected.
- Furthermore, the 'equality of arms' justification is questionable in light of one of the most important and basic objectives of equal treatment law: to counterbalance the typically stronger position of perpetrators of discrimination. This provision also has the potential to undermine the effects of shifting the burden of proof, an important procedural guarantee for victims of discrimination, introduced by EU law.
- The practical viability of this provision is also questionable: For instance, it remains to be seen what happens if, for instance, the Equality Body obtains evidence using its power under Article 8(3), bases its Article 8(4) opinion or decision on such evidence, but then it is the victim or an NGO that litigates. In such a case, arguably, the evidence so obtained could effectively be used in court proceedings, as Article 9(4) only limits the Equality Body, but not others, in using it.
- Finally, these provisions run the risk of creating a perverse effect in that all perpetrators (and possibly third parties) may refuse to cooperate with Equality Bodies, until they are legally bound to do so under Article 8(3). Once that happens, they can be sure that in court proceedings, the Equality Body will not be able to use any of the documents and information so obtained. Conversely, Equality Bodies that plan to litigate will have an incentive not to use their investigation powers under Article 8(3), if possible. This has the strong potential of undermining the effectiveness of the Directives and EU equal treatment law in general.

Equinet proposals

- The Directives should make it clear that Equality Bodies may initiate court proceedings directly following the preliminary assessment and/or the use of investigation powers under Article 8(2) and 8(3), without the prior need to issue an opinion or decision.
- Article 9(2) should be clarified to ascertain whether Equality Bodies are required to hold all three forms of right to act in court proceedings mentioned therein, taking into account the objectives of the Directives, national constitutional practices and international guidance, such as ECRI's GPR No.2.
- Article 9(4) of the Directive has to be deleted, as clarified in the arguments mentioned above, thereby allowing Equality Bodies to use in court proceedings evidence collected through their Article 8(3) investigation powers.

Procedural safeguards

Article 10 sets out standard procedural safeguards, such as the right of defence and judicial review of binding and enforceable decisions of the Equality Bodies.

Equality Bodies will be asked to guarantee the confidentiality of witnesses and whistle-blowers, and as far as possible, of complainants. This may necessitate new provisions and procedures in a number of Equality Bodies.

Access, accessibility and reasonable accommodation

Article 11 requires that there shall be no barriers to accessing the Equality Bodies services and, in particular, to submitting complaints.

It also requires that services shall be provided at no cost for the complainant.

Equality Bodies shall provide their services throughout their territory, including in rural and remote areas. The recitals give examples of how this could be achieved: through *'the establishment of local offices, including mobile ones, the organisation of local campaigns or cooperation with local delegates or civil society organisations'*.

Article 11(3) is specifically dedicated to ensuring accessibility and reasonable accommodation for persons with disabilities in all services and activities of Equality Bodies.

Cooperation

Article 12 requires Equality Bodies to cooperate with other Equality Bodies within the same Member State, and with relevant public and private entities.

The recitals clarify that the objective of cooperation is mutual learning, coherence and consistency, and broadening the outreach and impact of their work. Cooperation in the framework of the European Network of Equality Bodies (Equinet) is specifically mentioned in the recitals.

While the article mentions relevant public and private entities, including civil society organisations, the recitals broaden this to data protection authorities, trade unions, labour and education inspectorates, law enforcement bodies, agencies with responsibility at national level for the defence of human rights, authorities managing Union funds, National Roma Contact Points, consumer bodies, and national independent mechanisms for the promotion, protection and monitoring of the UNCRPD.

Equinet proposals

- The Directives should specifically provide for cooperation in the framework of Equinet, the European Network of Equality Bodies, as an organisation supported by the EU.
- Article 12 should specify that such cooperation should be without prejudice to the independence and, where necessary, impartiality of the Equality Body.

Consultation

Article 13 requires Member States to put in place transparent procedures to ensure that the government and other public institutions consult Equality Bodies on legislation, policy, procedure, programmes, and practices related to equality, in a timely manner.

Equality Bodies will have the right to make recommendations on those matters, to publish them and to require feedback from the authorities concerned.

Data collection and access to equality data

According to Article 14(1), Equality Bodies will be expected to collect anonymised, or at least pseudonymised, data on their activities, disaggregated by grounds and fields. These data will also feed into the Commission's monitoring of the implementation of the Directives.

Article 14(2) allows Equality Bodies to access statistics collected by public and private entities including public authorities, trade unions, companies, and civil society organisations where they deem such statistics necessary to make an overall assessment of the situation regarding discrimination in the Member State, an obligation under Article 15, point c).

Article 14(3) allows Equality Bodies to make recommendations on which data is to be collected and to play a coordination role in the collection of equality data.

Article 14(4) requires Member States to ensure that Equality Bodies may conduct independent surveys concerning discrimination.

Equinet proposals

- The Directives could usefully reference existing guidance and resources on equality data, including those developed in the framework of the Subgroup on Equality Data of the EU High Level Group on Non-discrimination, Equality and Diversity.
- Article 14(2) should ensure that the statistical data collected by public and private entities is made available to Equality Bodies in an accessible format so that it can be readily used by Equality Bodies.
- Equality Bodies should be empowered to follow-up recommendations they make on data collection under Article 14(3) to ensure that the recommendations are implemented.
- Article 14(4) could usefully be amended and expanded to include not only conducting independent surveys, but also independent reports and research. Furthermore, it should also allow for Equality Bodies commissioning, not directly conducting, these.

Reports and strategic planning

Article 15, point a) will require Equality Bodies to adopt a multi-annual strategic plan, part of which will be the strategy for their work on prevention, promotion and awareness-raising as required by Article 5, point b).

Article 15, point b) requires Equality Bodies to prepare and make available to the public an annual activity report, including on staff, budget and finances.

Article 15, point c) requires Equality Bodies to publish a report, with recommendations, at least every four years, on the state of equal treatment and discrimination, including potential structural issues, in their Member State.

Monitoring

Article 16 clarifies that monitoring the implementation of the Directives will be the duty of the European Commission, with the help of a 'list of common indicators' (to be adopted by means of an implementing act). The Commission may seek advice from the European Union Agency for Fundamental Rights (FRA) and the European Institute for Gender Equality (EIGE) when preparing the indicators and the explanatory memorandum also clarifies that the indicators developed by Equinet will be taken into account.

Article 16(2) and (3) clarify that the Commission will draw up a report on the application and practical effects of the Directives based on information provided by Member States. Member States' reports should also take into account the reports by Equality Bodies on their activities and on the state of equal treatment and discrimination. The first such report is foreseen 5 years after the date of transposition and then every 5 years. The Commission will also take into account data collected by the FRA and EIGE from other stakeholders.

Equinet proposals

- The commitment to seek the advice of Equinet and Equality Bodies when preparing the indicators should be stipulated in the regulatory part of the Directives.
- The Directives should stipulate that reports and findings from Equality Bodies will also feed into the monitoring directly, not only through Member States' reports.
- The Directives should also require the Commission to seek the input of Equinet and its members when preparing its report on the application and practical effects of the Directives.
- Taking into account that the Directives aim at strengthening the effective implementation of existing EU equal treatment law and concern already existing bodies, the first report by Member States should be submitted 3 years after the date of transposition.

Minimum requirements

Article 17 sets out standard provisions, allowing Member States to introduce or maintain more favourable provisions and prohibiting the use of the Directives to reduce the level of protection against discrimination already afforded by Member States in the matters covered by this Directive (non-regression clause).

Equinet proposals

As mentioned above, the interpretation and application of this provision will be particularly important as regards Article 9(4), limiting the possibilities of Equality Bodies to use evidence in court proceedings and article 9-5 which carries the risk of paralysing the investigation powers of some National Equality bodies.

Processing of personal data

Article 18(1) concerns data protection, stipulating that Equality Bodies may collect personal data only where necessary for the fulfilment of a task under the Directives. The Recitals make reference to the [GDPR](#) (Article 6(1)e)), usefully clarifying that processing by Equality Bodies is lawful as seen as performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

Article 18(2) requires further 'suitable and special measures' in case the Equality Body is processing special categories of personal data, namely data on racial or ethnic origin, religion or belief, disability or sexual orientation.

Final provisions

- Article 19 provides for the deletion of the articles concerning Equality Bodies from the existing equal treatment directives.
- Article 20 sets the transposition deadline to 18 months.
- Article 21 provides that the Directive will enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
- Article 22 clarifies that the Directives are addressed to the Member States.

Equinet Member Equality Bodies

ALBANIA

Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA

Austrian Disability Ombudsman
www.behindertenanwalt.gov.at

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.gov.at

BELGIUM

Institute for the Equality of Women and Men
www.igvm-iefh.belgium.be

BELGIUM

Unia (Interfederal Centre for Equal Opportunities)
www.unia.be

BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman of Bosnia and Herzegovina
www.ombudsmen.gov.ba

BULGARIA

Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA

Ombudswoman of the Republic of Croatia
www.ombudsman.hr

CROATIA

Ombudsperson for Gender Equality
www.prs.hr

CROATIA

Ombudswoman for Persons with Disabilities
www.posi.hr

CYPRUS

Commissioner for Administration and Human Rights (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC

Public Defender of Rights
www.ochrance.cz

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.volinik.ee

FINLAND

Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GEORGIA

Public Defender of Georgia (Ombudsman)
www.ombudsman.ge

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND

Irish Human Rights and Equality Commission
www.ihrec.ie

ITALY

National Office against Racial Discrimination - UNAR
www.unar.it

KOSOVO*

Ombudsperson Institution
www.oik-rks.org

LATVIA

Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

MALTA

Commission for the Rights of Persons with Disability
www.crpdp.org.mt

MALTA

National Commission for the Promotion of Equality
www.ncpe.gov.mt

MOLDOVA

Council on Preventing and Eliminating Discrimination and Ensuring Equality
www.egalitate.md

MONTENEGRO

Protector of Human Rights and Freedoms (Ombudsman)
www.ombudsman.co.me

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORTH MACEDONIA

Commission for Prevention and Protection against Discrimination
www.kszd.mk

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Commissioner for Human Rights
www.rpo.gov.pl

PORTUGAL

Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL

Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL

High Commission for Migration
www.acm.gov.pt

ROMANIA

National Council for Combating Discrimination
www.cncd.ro

SERBIA

Commissioner for Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA

Slovak National Centre for Human Rights
www.snslp.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.si

SPAIN

Council for the Elimination of Ethnic or Racial Discrimination
www.igualdadynodiscriminacion.igualdad.gob.es

SPAIN

Institute of Women
www.inmujer.es

SWEDEN

Equality Ombudsman
www.do.se

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
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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