



# Equality Bodies and the Pay Transparency Directive: impacts and opportunities

*by* Working Group on  
Gender Equality

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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.

Equinet Secretariat | Place Victor Horta, 40 | 1060 Brussels | Belgium |

info@equineteurope.org | www.equineteurope.org

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### Contributing Equality Bodies

Ombudsperson for Gender Equality, **Croatia** | Institute of Women, **Spain** | Public Defender of Rights, **Czech Republic** | Institution of Human Rights Ombudsman of Bosnia and Herzegovina, **Bosnia and Herzegovina** | Institute for the Equality of Women and Men, **Belgium** | Commission for Citizenship and Gender Equality, **Portugal** | Slovak National Centre for Human Rights, **Slovakia** | Danish Institute for Human Rights, **Denmark** | Equality Ombudsman, **Sweden** | Federal Anti-Discrimination Agency, **Germany** | Office of the Equal Opportunities Ombudsperson, **Lithuania** | Ombud for Equal Treatment, **Austria** | Commissioner for Human Rights, **Poland** | National Commission for the Promotion of Equality, **Malta** | Office of the Ombudsman, **Latvia** | Office for the Commissioner for Administration and the Protection of Human Rights, **Cyprus** | Greek Ombudsman, **Greece** | Office of the Commissioner for Fundamental Rights, **Hungary** | Advocate of the Principle of Equality, **Slovenia** |

### Authors

- **Flora Alvarado-Dupuy**, Ombud for Equal Treatment, Austria
- **Moana Genevey**, Equinet, European Network of Equality Bodies
- **Renee Laviera**, National Commission for the Promotion of Equality (NCPE), Malta
- **Barbara Ortiz**, Institute for the Equality of Women and Men, Belgium
- **Aleksandra Szczerba**, Commissioner for Human Rights, Poland

### Editorial and Publication Coordination

**Moana Genevey**, Equinet, European Network of Equality Bodies

### Formatting

**Chiara D’Agni**, Equinet, European Network of Equality Bodies

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# Introduction

In March 2021, the European Commission issued a Proposal for a Directive on Pay Transparency<sup>1</sup>. The proposed legislation grants new powers to Equality Bodies regarding implementing the principle of equal pay in the EU. Because of the so-called Gender Recast Directive of 2006<sup>2</sup>, Equality Bodies have already been essential mechanisms ensuring the fight against pay discrimination in Europe. Depending on the national context, they can investigate cases of unequal pay, bring them to court, raise awareness of the gender pay gap, etc. The Pay Transparency Directive will considerably strengthen their powers in this field. A political agreement on this Directive was reached between the European Parliament and the Council in December 2022.

The following report aims at examining the current powers of Equality Bodies regarding pay transparency and the obstacles Equality Bodies face in the field of equal pay, as well as critically assessing the potential impact of the proposed Pay Transparency Directive on their work on this issue.

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<sup>1</sup> 2021/0050 (COD): Proposal for a Directive of the European Parliament and of the Council to Strengthen the Application of Equal Pay for Equal Work or Work of Equal Value Between Men and Women Through Pay Transparency and Enforcement Mechanisms.

<sup>2</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)



# **1. The Pay Transparency Directive – mapping the status quo for Equality Bodies**

The proposed Directive on Pay Transparency allocates three types of functions to Equality Bodies: access to information, remedy and access to court for equal pay. It also opens the way to allocate a new mandate for Equality Bodies, to potentially become “monitoring bodies” in relation to the implementation of the pay transparency measures foreseen in this Directive. This section aims at mapping the *status quo* of Equality Bodies regarding pay transparency, examining the diversity of work they are undertaking on pay transparency before the Directive is adopted and transposed. It focuses on legal and policy gaps, as well as good practices from Equality Bodies.

This section is based on a questionnaire filled in by 19 Equality Bodies<sup>3</sup> through Equinet’s Working Group on Gender Equality<sup>4</sup>. The questionnaire was based on the proposed Pay Transparency Directive and looked into different types of pay transparency functions that could be granted to Equality Bodies. These functions are organised in three groups: access to information and remedy, awareness raising and monitoring, as well as administrative and judicial proceedings. The goal of the questionnaire was to precisely evaluate and map the current situation of Equality Bodies in the area of pay transparency compared to their new powers proposed in the Pay Transparency Directive.

## 1.1. Access to information and remedy

One way to enhance pay transparency is to improve access to information on pay for Equality Bodies. This includes requesting information from employers on worker’s individual pay levels and average gender pay levels (which can ease the work of Equality Bodies when they assist victims of pay discrimination) but also asking employers for clarifications about

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<sup>3</sup> Ombudsperson for Gender Equality (Croatia), Institute of Women (Spain), Public Defender of Rights (Czech Republic), Institution of Human Rights Ombudsman of Bosnia and Herzegovina (Bosnia and Herzegovina), Institute for the Equality of Women and Men (Belgium), Commission for Citizenship and Gender Equality (Portugal), Slovak National Centre for Human Rights (Slovakia), Danish Institute for Human Rights (Denmark), Equality Ombudsman (Sweden), Federal Anti-Discrimination Agency (Germany), Office of the Equal Opportunities Ombudsperson (Lithuania), Ombud for Equal Treatment (Austria), Commissioner for Human Rights (Poland), National Commission for the Promotion of Equality (Malta), Office of the Ombudsman (Latvia), Office for the Commissioner for Administration and the Protection of Human Rights (Cyprus), Greek Ombudsman (Greece), Office of the Commissioner for Fundamental Rights (Hungary), Advocate of the Principle of Equality (Slovenia).

<sup>4</sup> Equinet is the European Network of Equality Bodies. Equinet brings together 47 institutions 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.



gender pay differences or accessing joint pay assessments prepared by employers and trade unions.

The proposed Pay Transparency Directive offers to increase access to pay information for workers through Articles 7, 8, and 9 (all granting new roles to Equality Bodies).

#### Article 7

##### Right to information

Workers shall have the right to receive information on their individual pay level and the average pay levels, broken down by sex, for categories of workers doing the same work as them or work of equal value to theirs (...)

4. Workers shall have the possibility to request the information referred to in paragraph 1 through their representatives or an equality body.

#### Article 8

##### Reporting on pay gap between female and male workers

1. Employers with at least 250 workers shall provide the following information concerning their organisation,(... )

(a)the pay gap between all female and male workers;

(b)the pay gap between all female and male workers in complementary or variable components;

(c)the median pay gap between all female and male workers;

(d)the median pay gap between all female and male workers in complementary or variable components;

(e) the proportion of female and male workers receiving complementary or variable components;

(f) the proportion of female and male workers in each quartile pay band;

(g) the pay gap between female and male workers by categories of workers broken down by ordinary basic salary and complementary or variable components.

5. The employer shall provide the information referred to in paragraph 1, point (g) to all workers and their representatives, as well as to the monitoring body referred to in paragraph 6. It shall provide it to the labour inspectorate and the equality body upon their request. If available, the information from the previous four years shall also be provided upon request.

7. Workers and their representatives, labour inspectorates and equality bodies shall have the right to ask the employer for additional clarifications and details regarding any data provided, including explanations concerning gender pay differences. The employer shall respond to such request within a reasonable time by providing a substantiated reply. Where gender pay differences are not justified by objective and gender-neutral factors, the employer shall remedy the situation in close cooperation with the workers' representatives, the labour inspectorate and/or the equality body.

## Article 9

### Joint pay assessment

1. Member States shall take appropriate measures to ensure that employers with at least 250 workers conduct, in cooperation with their workers' representatives, a joint pay assessment where both of the following conditions are met:

(a) the pay reporting conducted in accordance with Article 8 demonstrates a difference of average pay level between female and male workers of at least 5 per cent in any category of workers;

(b) the employer has not justified such difference in average pay level by objective and gender-neutral factors.

2. The joint pay assessment shall include the following:

(a) an analysis of the proportion of female and male workers in each category of workers;

(b) detailed information on average female and male workers' pay levels and complementary or variable components for each category of workers;

(c) identification of any differences in pay levels between female and male workers in each category of workers;

(d) the reasons for such differences in pay levels and objective, gender-neutral justifications, if any, as established jointly by workers' representatives and the employer;

(e) measures to address such differences if they are not justified on the basis of objective and gender-neutral criteria;

(f) a report on the effectiveness of any measures mentioned in previous joint pay assessments.

3. Employers shall make the joint pay assessments available to workers, workers' representatives, the monitoring body designated pursuant to Article 26, the equality body and the labour inspectorate.

4. If the joint pay assessment reveals differences in average pay for equal work or work of equal value between female and male workers which cannot be justified by objective and gender-neutral criteria, the employer shall remedy the situation, in close cooperation with the workers' representatives, labour inspectorate,

and/or equality body. Such action shall include the establishment of gender-neutral job evaluation and classification to ensure that any direct or indirect pay discrimination on grounds of sex is excluded.

## Data collected

The data gathered suggests that there are **significant disparities** between Equality Bodies in Europe on access to information.

To be able to assess a case of pay discrimination it is important to have access to salary information, not only of the complainant, but also of other employees. This is necessary to compare the wages of different workers and establish if there has been a pay inequality. However, many Equality Bodies do not have competences regarding the access to information. Therefore, they cannot ask employers to provide salary information on their employees, making any investigation extremely difficult. Among the Equality Bodies surveyed, seven of them<sup>5</sup> indicated that they did not have any (explicit) competences in this area.

On the other hand, Equality Bodies in Croatia, Sweden, Lithuania, Austria, Bosnia and Herzegovina, Latvia, Greece and Slovenia have been granted the power to request information from employers on workers' individual pay levels and average pay levels broken down by sex. The Belgian Equality Body can request this type of information, but only through their labour inspectorate (not directly to employers). Furthermore, the Equality Bodies in Cyprus, Malta, Hungary, Poland, Slovakia and Slovenia can request this type of information when investigating cases of alleged discrimination, and in Hungary, the Equality Body can request information on the pay gap between female and male workers by categories of workers. The Polish Commissioner may request this type of data from public employers under the obligation of an authority, organization or institution (being an employer) to co-operate and provide to the Commissioner due assistance.

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<sup>5</sup> Equality bodies in the Czech Republic, Denmark, Germany, Poland, Portugal, Slovakia and Spain.

Hence, the Directive will strengthen the powers of Equality Bodies as workers will have the possibility to ask for information on their individual pay levels and average pay levels of categories of workers doing same work or work of equal value through Equality Bodies.

Equality Bodies in Sweden, Lithuania, Austria, Latvia, Cyprus and Greece can also ask for clarifications on employers' reports on their gender pay gap, including explanations concerning any gender pay differences in their organisations. Finally, Equality Bodies in Austria, Bosnia and Herzegovina, Lithuania and Greece can request access to joint pay assessments made by an employer with trade unions/workers representatives.

The proposed Directive will thus strengthen the powers of Equality Bodies if they will be involved in the joint pay assessments in accordance with art. 9(4) of the proposed Directive (described below).

As the survey showed, **having strong competences on access to information is not very common among the Equality Bodies which were surveyed.** In fact, none of the Equality Bodies surveyed can request information on the pay gap between female and male workers by categories of workers. Yet, through the proposed Directive Equality Bodies will be empowered to request such information from employers either on behalf of the employees (with respect to their rights to information – art. 7(4)) or on their initiative/upon their own request (with respect to reporting on pay gap between female and male workers: art. 8 (5), art. 8 (7) and art. 8 (6) – if designated as “monitoring body”<sup>6</sup> in the sense of art. 26) as well as with regard to joint pay assessment: art. 9 (3).

In the latter context the directive obliges the employers - if the joint pay assessment reveals differences in average pay for equal work or work of equal value between female and male workers which cannot be justified by objective and gender-neutral criteria - to remedy the situation in close cooperation with (i.a.) Equality Bodies (art. 9(4)). Against this suffice it to say that no Equality Body indicated that they are already cooperating with employers to remedy gender pay gaps and gender pay discrimination. **This indicates that the “remedy”**

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<sup>6</sup> Monitoring bodies are discussed in the section below.

function foreseen in the proposed Directive would be a significant innovation for Equality Bodies.

It should be noted that the right to information may be limited to the Equality Body (or the workers' representatives) under the conditions envisaged by art. 10 (3)<sup>7</sup>. As the provision allows the Member States to grant this right only to the workers' representatives while not granting it to the Equality Body, this may result in further differentiation of the competences of the Equality Bodies on access to information.

The differences in the mandate of the Equality Bodies with respect to access to information may be correlated with the differentiation of national law on pay transparency. The national legal systems of the Member States range from lack of any regulation on this subject-matter (e.g. Poland, Malta, Slovenia) to the right of an individual to request information on the average monthly gross remuneration under certain conditions (e.g. from employers with more than 200 employees) (Germany) to the employers' obligation to gather data on the average pay by gender and/or report them on regular basis – on its own initiative or upon the request of an entitled entity (Lithuania, Austria, Belgium).

## 1.2. Awareness raising and monitoring

Equality Bodies can also contribute to improving pay transparency by raising awareness on the right to pay transparency and the principle of equal pay, by devising tools to improve equal pay and tackling the root causes of pay inequalities but also by collecting data on pay and the gender pay gap. In the proposed Directive, these competencies are foreseen to be held by so-called "monitoring bodies". The wording of the Directive suggests that Equality Bodies could receive this mandate in some countries. However, if they are not designated by Member States as the monitoring body, Equality Bodies will not have this competence as indicated in Article 26(3) c), d) and potentially e) under the Pay Transparency Directive.

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<sup>7</sup> "Member States may decide that, where the disclosure of information pursuant to Articles 7, 8 and 9 would lead to the disclosure, either directly or indirectly, of the pay of an identifiable co-worker, only the workers' representatives or the equality body shall have access to that information. The representatives or equality body shall advise workers regarding a possible claim under this Directive without disclosing actual pay levels of individual workers doing the same work or work of equal value. The monitoring body referred to in Article 26 shall have access to the information without restriction".

## Article 26

### Monitoring and awareness-raising

1. Member States shall ensure the consistent monitoring of the implementation of the principle of equal pay between women and men for equal work or for work of equal value and the enforcement of all available remedies.

2. Each Member State shall designate a body ('monitoring body') for the monitoring and support of the implementation of national legal provisions implementing this Directive and shall make the necessary arrangements for the proper functioning of such body. The monitoring body may be part of existing bodies or structures at national level.

3. Member States shall ensure that the tasks of the monitoring body include the following:

(a) to raise awareness among public and private undertakings and organisations, social partners and the general public to promote the principle of equal pay and the right to pay transparency;

(b) to tackle the causes of the gender pay gap and devise tools to help analyse and assess pay inequalities;

(c) to aggregate data received from employers pursuant to Article 8(6), and publish this data in a user-friendly manner;

(d) to collect the joint pay assessment reports pursuant to Article 9(3);

(e) to aggregate data on the number and types of pay discrimination claims brought before the courts and complaints brought before the competent public authorities, including equality bodies.

4. Member States shall provide the Commission with the data referred to in paragraph 3, points (c), (d), and (e) to the Commission annually.

## Data collected

Almost all Equality Bodies (except for Cyprus) indicated that they are currently raising awareness among public and private undertakings and organisations, social partners and the general public to promote the principle of equal pay and the right to pay transparency.

Nine of them indicated that they are working on tackling the causes of the gender pay gap and devise tools to help analyse and assess pay inequalities, namely Equality Bodies in Croatia, Spain, Belgium, Bosnia and Herzegovina, Portugal, Denmark, Lithuania, Malta and Slovenia. Such pay structures contribute to detect and address discrimination, and as envisaged by art. 4(2) of the proposed Directive tools and methodologies will be established to assess and compare the value of work across the Member States.

When it comes to data collection, Equality Bodies in Croatia, Belgium, Germany, Hungary and Greece are aggregating data on the number and types of pay discrimination claims brought before the courts and/or complaints brought before the competent public authorities, including or exclusively the National Equality Bodies (Germany).

Furthermore, two equality bodies have specific functions in relation to monitoring the implementation of equal pay regulations. The Swedish Equality Ombudsman's mandate includes the power to monitor employers' compliance with their obligation to undertake pay surveys, and the Spanish Institute of Women participates in regular meetings with the Ministry of Labour and social partners to monitor the implementation of the equal pay regulation.

### **Good practice – Monitoring meetings** (Institute of Women, Spain)

The Institute participates in bi-annual meetings to monitor the implementation of the equal pay regulation, together with the Ministry of Labour, the Ministry of Equality and social partners. The goal of these meetings is to analyse the effectiveness of tackling the gender pay gap in order to guarantee the correct implementation of the principle of equal pay between women and men.



**Good practice – Monitoring the application of pay surveys** (Equality Ombudsman, Sweden)

The mandate of the Equality Ombudsman includes the power to monitor employers' compliance with their obligation to undertake pay surveys. "Monitoring" in this context means having the responsibility to independently review and assess whether the relevant duty bearer's activities fulfil the requirements ensuing from the Discrimination Act. To this end the Equality Ombudsman has the power to request the relevant information from employers. While a decision of the Equality Ombudsman in which the Ombudsman concludes that a duty bearer has not met its obligations in the Act is not legally binding, the Ombudsman has the possibility to also make an application to the Board against Discrimination for an order to be issued directing the employers to undertake the necessary actions. Such an order is binding for the employer and is to be combined with a conditional financial penalty in the case of non-compliance.

**Good practice – Raising awareness of the gender pay gap and the gender pension gap**

(Ombudsperson for Gender Equality, Croatia)

The Ombudsperson for Gender Equality coordinated the implementation of the EC project "Equal rights – Equal Pay – Equal Pensions" – Expanding the scope of implementation of gender equality actions and legal standards towards achieving gender equality and combating poverty in Croatia from October 2018 to February 2021. The project aimed at ensuring standards, measures and actions to contribute to raising awareness about the problem of pay and pension gaps between men and women with a view to reducing the risk of poverty for women. Target groups were representatives of competent authorities, public and private companies, trade unions and high school students at national and local levels. This project put the nearly invisible issue of gender pay and pension gap in the public space in Croatia. For the first time, there was a comprehensive approach to pay inequalities between women and men: the topic was researched and analysed, target groups were educated, guidelines for the national legislative framework for equal pay and pensions were created and visibility and awareness about the topic were raised. The project advocated for the introduction and development of pay transparency measures at the national level in all industries.

**Good practice – Raising awareness on pay transparency and the gender pay gap** (Danish Institute for Human Rights - Denmark's National Human Rights Institute)

In 2017, the Institute published a report on pay transparency, which garnered attention and created public debate. In December 2020, the Institute published a report on the wage gap between female and male dominated job types within the public sector. This report started a significant public debate, which is still ongoing. In June 2021, the Danish nurses were on strike for better pay, since they have historically been paid less than job types, which require similar education, skill etc.

**Good practice – Tool-box to identify pay discrimination** (Federal Anti-Discrimination Agency – FADA, Germany)

“Eg-check.de” is a tool-box for a gender-oriented analysis of the wage structure on the basis of the legal principles "equal pay for equal work or work of equal value". With this tool-box, employers, employee representatives, collective bargaining parties and – as far as data is provided – employees themselves can check pay regulations and pay practices in order to identify possible direct and indirect pay discrimination. The following pay components can be examined: basic pay (factor-based), pay levels (experience-based), performance pay, overtime pay, hardship allowances.

FADA supports the application of eg-check.de by hosting the homepage and supporting the actualization of eg-check.de.

**Good practice – Application on the gender composition of the workforce and the gender pay gap** (Gender Equality and Equal Treatment Commissioner, Estonia)

The equality body led a project funded by Horizon 2020, the European Union's Rights, Equality and Citizenship Program (2014 - 2020) that, in cooperation with Statistics Estonia, University of Tartu and Tallinn University of Technology, developed a web application <https://palgad.stat.ee/en>. This application makes occupation-based gender composition and wage gap more transparent. The application helps to visualise for over 100 most common occupations in Estonia items of information regarding (1) the number of men and woman working full time and (2) the distribution of monthly gross wages. The State collects the information on salaries actually paid broken down by gender of each employee and ISCO code of each working post. It would be possible to make this information public with a click, but until now the information has been kept general. Moreover, grey areas appear in situations where there are less than 20 employees from one gender.

### **1.3. Judicial and administrative proceedings**

Workers can be assisted by equality bodies to access justice in cases of differential treatment in pay, by acting on behalf of or in support of victims. This is important to relieve the burden of workers to bring a claim of pay discrimination, particularly for workers who are in vulnerable situations or fear victimisation<sup>8</sup>.

The powers of Equality Bodies to bring or engage in cases of pay discrimination vary greatly across countries. Different Equality Bodies are empowered to carry out one or more of the following actions covered in the survey, namely to bring or engage in judicial or administrative proceedings to enforce the obligations resulting from the principle of equal pay between men and women on behalf of or in support of a worker or several workers; or else in the absence of an identifiable complainant.

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<sup>8</sup> [https://ec.europa.eu/info/sites/default/files/aid\\_development\\_cooperation\\_fundamental\\_rights/swd-2021-41\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/aid_development_cooperation_fundamental_rights/swd-2021-41_en_0.pdf)

## Article 13

### Procedures on behalf or in support of workers

1. Member States shall ensure that associations, organisations, equality bodies and workers' representatives or other legal entities which have, in accordance with the criteria laid down by national law, a legitimate interest in ensuring equality between men and women, may engage in any judicial or administrative procedure to enforce any of the rights or obligations related to the principle of equal pay between men and women for equal work or work of equal value. They may act on behalf or in support of a worker who is victim of an infringement of any right or obligation related to the principle of equal pay between men and women for equal work or work of equal value, with the latter's approval.

2. Equality bodies and workers' representatives shall also have the right to act on behalf or in support of several workers, with the latter's approval.

## Data collected

Some Equality Bodies can defend the principle of equal pay in judicial and administrative procedures. However, the way in which Equality Bodies can access courts and take part in administrative procedures varies greatly from one country to another and is determined by national laws. The tables below identify these various trends, according to the new functions granted to Equality Bodies in the proposed Directive. It is to be noted that some Equality Bodies only indicated their powers in relation to judicial proceedings or in relation to administrative proceedings. This may indicate either that they currently do not have any powers in relation to the other type of procedures or that there is a lack of clarity as to what exactly is meant by these powers in the context of administrative or judicial proceedings. The clarification of this question goes beyond the limits of this report, but it is a strong indication that in the process of transposition and implementation further clarification will be necessary from the EU Institutions, including, if necessary, the Court of Justice of the EU.

**Table 1: Judicial Proceedings<sup>9</sup>**

Judicial proceedings	BG	BA	HR	DK	HU	LT	PL <sup>10</sup>	SK	SI	SE	LV <sup>11</sup>
Bringing any judicial proceedings to enforce the obligations resulting from the principle of equal pay between men and women on behalf of or in support of a specific worker	■	■			■		■	■	■	■	■
Bringing any judicial proceedings to enforce the obligations resulting from the principle of equal pay between men and women in the absence of an identifiable complainant	■				■		■	■	■		
Bringing any judicial proceedings to enforce the obligations resulting from the principle of equal pay between men and women on behalf of or in support of several specific workers					■		■	■		■	■

<sup>9</sup> The Equality Bodies in the Czech Republic, Germany, Portugal and Spain have no competencies in relation to judicial and administrative procedures.

<sup>10</sup> The Commissioner for Human Rights of the Republic of Poland can bring and engage in proceedings but not as a party's representative and not in horizontal disputes.

<sup>11</sup> The Ombudsman's Office of Latvia has the right to submit an application regarding the initiation of proceedings in the Constitutional Court if an institution that has issued the disputable act has not rectified the established deficiencies within the time limit stipulated by the Ombudsman. This could be also the case with the pay discrimination.

<b>Judicial proceedings (continued)</b>	<b>BG</b>	<b>BA</b>	<b>HR</b>	<b>DK</b>	<b>HU</b>	<b>LT</b>	<b>PL</b>	<b>SK</b>	<b>SI</b>	<b>SE</b>	<b>LV</b>
Engagement in any judicial procedure to enforce the right to equal pay of men and women on behalf of or in support of a specific worker(s)	■	■	■	■		■	■	■	■		
Engagement in any judicial procedure to enforce the right to equal pay of men and women on behalf of or in support of several specific workers			■	■		■	■	■	■		
Engagement in any judicial procedure to enforce the right to equal pay of men and women in the absence of an identifiable complainant	■					■	■	■	■		

**Table 2: Administrative Proceedings**

<b>Administrative proceedings</b>	<b>AT</b>	<b>CY</b>	<b>DK</b>	<b>EL</b>	<b>LT</b>	<b>MT</b>	<b>PL</b>	<b>SI</b>	<b>HU</b>
Bringing any administrative proceedings to enforce the obligations resulting from the principle of equal pay between men and women on behalf of or in support of a specific worker	■	■	■		■		■	■	■
Bringing any administrative proceedings to enforce the obligations resulting from the principle of equal pay between men and women on behalf of or in support of several specific workers		■	■		■		■	■	■
Bringing any administrative proceedings to enforce the obligations resulting from the principle of equal pay between men and women in the absence of an identifiable complainant	■		■		■		■	■	■
Engagement in any administrative procedure to enforce the right to equal pay of men and women on behalf of or in support of a specific worker(s)	■		■	■	■	■	■		
Engagement in any administrative procedure to enforce the right to equal pay of men and women on behalf of or in support of several specific workers			■	■	■		■		
Engagement in any administrative procedure to enforce the right to equal pay of men and women in the absence of an identifiable complainant	■			■	■	■	■		

## 1.4. Independent Investigations Followed by Reports or Decisions

The Equality Bodies of Hungary, Sweden, Croatia and Malta carry out independent investigations on cases of alleged discrimination. The Office of the Commissioner for Fundamental Rights of Hungary can issue legally binding enforceable decisions; the Croatian Ombudsperson for Gender Equality can issue decisions that are not enforceable, and the Maltese Equality Commissioner can issue findings that are only binding on the parties if they expressly declare so in writing. In Sweden, an investigation may result in a decision, which is not legally binding. An investigation may also result in a civil proceeding, as the Equality Ombudsman has the power to bring an action on behalf of an individual who consents to this. Moreover, the Spanish Institute of Women can provide reports required by a labour authority or within a judicial procedure on the application or breach of the gender equality principle.

In general, there are quite **significant disparities** of legal standing and access to courts among Equality Bodies. This is the result of the procedural autonomy of the Member States. Against this the data suggest that **the biggest innovations proposed in the Directive would be for the Equality Bodies to have the competence to instigate or engage in judicial proceedings for collective claims, and on behalf of workers** – if the Equality Body is not competent to provide legal assistance and instigate proceedings in its own name (art. 13 of the proposed Directive).

**Good practice – Case of pay discrimination** (National Commission for the Promotion of Equality, Malta)

In 2015 the NCPE Commissioner investigated an alleged case of pay discrimination. The complainant had alleged that she was receiving a lower wage than her male counterparts, and was not given her own private office, even though she had more experience.

NCPE's Commissioner concluded the investigation by stating that gender discrimination in the wage of the female employee (complainant) occurred. Furthermore, the Commissioner had stated that the company's arguments on having no set salary scale for managers, should not act as a detriment towards the company's employees and that the company should strive for more transparency in the manner in which wages are set. After some weeks, management offered complainant a rise in salary.



### **Good practice – Case of pay discrimination** (Office of the Public Defender of Rights, Czech Republic)

This case is about a female head physician in a hospital (private legal person). In 2013 the Public Defender of Rights was consulted in the case of Ms. M. S., a head physician in a hospital, with a complaint concerning possible discrimination in remuneration. The complaint was based on a finding that she was earning considerably less than her male colleagues, receiving approximately half of the wages of her male colleagues in comparable positions (in the same workplace). Since a legal proceeding had been initiated, the Public Defender of Rights did not open an inquiry. However, as part of its authority to oversee respect for equal treatment legislation, the Public Defender offered its legal opinion to the attorney of Ms. M. S. The Defender came to the conclusion that in case a female employee proves a difference in remuneration compared to her male colleagues performing work of equal value, it is up to the employer to offer evidence that the difference was not connected to the gender of the employee. If the employer remunerates its employees according to a system which fully lacks transparency, the employer has to prove the neutrality of the system and that it does not lead to discrimination in potential legal proceedings. At the end, however, the court decided against the claimant and accepted the employer's justification that the wages were a "contractual matter".

## **1.5. Conclusions**

In general, the data gathered suggest that:

- On **access to information**, there are significant disparities among equality bodies, and the most "common" function is to request individual pay information from employers. However, in general having strong functions on access to information (including requesting information on the gender pay gap or accessing joint paid assessment) is not common for the equality bodies which were surveyed.
- On **remedy**, no Equality Bodies indicated that they are currently vested with this power what indicates that if it is kept in the proposed Directive, it would be a significant innovation for Equality Bodies.

- On awareness raising and monitoring, almost all Equality Bodies are currently raising awareness on pay inequalities. This is a very common feature for Equality Bodies. It is not the case for other “monitoring” functions, as less than half of Equality Bodies surveyed consider they are tackling the root causes of pay inequalities and devising tools to assess them, only a third are aggregating data on discrimination complaints and none of them are aggregating and publishing data from employers or collecting joint paid assessment reports.
- On administrative and judicial proceedings, there are significant disparities of legal standing among Equality Bodies. As per Article 13 of the proposed Directive, a significant innovation would be for Equality Bodies to bring collective claims in front of judicial courts.



## **2. Challenges faced by Equality Bodies when addressing equal pay and the gender pay gap**

Equal pay is a subject that is at the heart of the fight for gender equality. It is, however, a complex topic which demands insights in the multiple and intersecting reasons behind the existing inequalities. As shown in the previous chapter, European Equality Bodies have been working in diverse ways on the topic for many years, developing a level of expertise on the matter. However, most Equality Bodies report that addressing the gender pay gap has proven to be a difficult task.

In the previous part, it was already pointed out that Equality Bodies can be limited in their access to court and in their access to salary information. In what follows, a brief overview will be given of the other main challenges faced by Equality Bodies when addressing equal pay and gender pay discrimination. The overview is based on the data collected in the abovementioned survey among members of Equinet's Working Group on Gender Equality.

## **2.1. Pay transparency regulations**

European Member States have different regulations and legislations regarding pay transparency and equal pay. Some Member states have specific equal pay acts (such as Belgium, Denmark, Germany, and Ireland). In others, pay transparency provisions are included in labour legislations (e.g. Austria, Greece, Hungary, Lithuania, Portugal, Slovakia and Spain) or in anti-discrimination or gender equality acts (e.g. Estonia and Sweden), or in both (e.g. Croatia and Cyprus). Certain countries have pay transparency provisions in other regulations (Bosnia and Herzegovina). In countries such as Malta and Slovenia, no regulations on pay transparency are yet in place.

Even where they are in place, the application of existing regulations and their effectiveness differs depending on the country. Countries such as Belgium, Germany and Sweden, noted the lack of enforcement of the pay transparency and equal pay regulations. There are, for example, no effective sanctions in place for employers who do not fulfill their obligations. This weakens any regulation on the matter and makes addressing the topic of equal pay very challenging. In Germany, there are also other obstacles, such as the fact that claims can only be made by large employers with at least 200 employees. The entitlement also only exists if there are at least six employees in the company who hold comparable positions.

## 2.2. Underreporting and lack of data

Even when regulations are in place, an important issue that is often mentioned by Equality Bodies, is the underreporting of cases of gender pay discrimination. Except for Austria that regularly treats cases of pay discrimination, most other Member States receive a very limited number of complaints or even no complaints at all on this topic. Underreporting is a problem that occurs for most types of discrimination and for a variety of reasons: people are unaware they are a victim, they do not wish to take action because they do not believe in a positive outcome, they are afraid of the consequences, they do not know where to file a complaint, etc.

For cases of pay discrimination, the main reason for the underreporting is a lack of awareness of the problem. People do not realise certain pay inequalities can be discriminatory. They are relatively unaware of the existence of a gender pay gap and of regulations in their country, and of the impact this could have on their lives. This can, among others, be seen in Bosnia and Herzegovina, Czech Republic, Greece, Portugal, and Slovakia. Croatia reports that not only employees themselves are unaware of the issue, social partners also lack knowledge on the gender pay gap and on its causes. This leads to a lack of social dialogue on the issue. In Slovakia, equal pay is not considered a priority for trade unions.

One of the reasons for the lack of awareness is **the lack of pay transparency**. In general, employees do not know how much their colleagues earn and what bonuses or allowances they receive. Especially in the private sector, employers do not advertise their employees' wages (except for Slovakia in which this obligation is envisaged by the labor code) and in some cases, such as in Malta, contracts can even have salary non-disclosure agreements. In Austria, there is no right to pass specific information about colleagues' wages on to clients. Moreover, in many countries, talking about one's salary is, to some degree a taboo topic (e.g. Denmark, Belgium, ...). Employees do not know how much their colleagues earn. Thus, people are unable to identify salary inequalities, let alone pay gaps between women and men.

In the limited number of cases where employees are aware of pay inequalities, many of them decide not to report the case, mostly out of fear of losing their job altogether.

For some Equality Bodies (e.g. Slovenia and Cyprus), the low number of complaints makes it difficult to specialise in this topic. The lack of cases means they have limited possibilities to build experience and expertise in tackling pay discrimination cases.

Furthermore, having limited or no access to salary data makes it difficult for Equality Bodies to monitor the gender pay gap. It limits the possibilities to work on structural pay inequalities or to monitor evolutions of the pay gap. In Slovenia, among others, there is an absence of disaggregated data by gender, which makes studies about the structural gender gap very difficult.

### **2.3. Understanding the principles of equal pay**

Another important issue encountered in judicial proceedings, is the difficulty to understand the key concepts that are part of the definition of equal pay. Several Equality Bodies (e.g. Belgium, Czech Republic, Denmark, Lithuania, and Portugal) report that there is a difficulty to assess in particular the concept of “equal pay for work of equal value”. When two persons perform exactly the same work, this seems relatively clear, but as soon as people have different tasks, questions arise regarding the comparability of their work. Such assessment is even harder when persons have jobs with different job titles or different types of jobs. For example, it can be hard to establish whether an accountant and a legal advisor do work of equal value. This proves to be an important challenge in court proceedings. As the Czech Equality Body points out: *“we are missing tools to counter argue against employers on the incomparability of different positions”*. Faced with this same challenge, judges seem to be reluctant to apply the principles of equal pay, often ignoring the existing European case law on the matter. The chances of winning a case of pay discrimination are therefore meagre.

### **2.4. Conclusion**

In general, the situation of Equality Bodies differs strongly from one Member State to another. There is no uniformity in tackling pay discrimination. All of them are, however,

facing challenges. Equality Bodies point out that there is a lack of tools to tackle the gender pay gap. There is a lack of regulations that guarantee pay transparency, which makes the recollection of data and the identification of cases very difficult. Furthermore, there is a need for tools to help assess cases of pay inequality and determine whether a difference in pay is a pay discrimination or not.

As mentioned, equal pay is a complex topic that requires specific attention and specialisation. In that regard, Equality Bodies underline their lack of necessary resources to follow-up on equal pay or pay transparency. For example, for the Equality Bodies of Denmark, Germany and Slovenia, the limited resources, and the large array of topics that they treat, make an adequate focus on this matter very complicated.

For victims, the meager chances of winning a case of pay discrimination and the high costs of such proceedings is not encouraging to file a complaint. Thus, in practice, pay discrimination often goes unnoticed or unsanctioned.



### **3. Assessment of the proposed directive, recommendations and demands**



The partaking Equality Body's assessment of the proposed Directive has been diverse, but overwhelmingly positive. Most Equality Bodies that participated in the survey have expressed hopes of progress in the field, if the proposed directive was to be enacted.

### **3.1. Most important measures of the proposed Directive, according to Equality Bodies**

#### **3.1.1. Right to information**

The current lack of information about wages and their distribution is an important cause of the continuation of the gender pay gap on individual and structural levels. It makes it hard for individuals to detect and rectify cases of pay discrimination.

Thus, the majority of Equality Bodies consider to be the most important measures those that increase the right to information about individual wages and pay levels as proposed in Art. 7. In the view of the Equality Bodies, this provision should encompass the rights to requesting information from employers:

1. on the pay gap between female and male workers by categories of workers,
2. on worker's individual pay levels and
3. on the average pay level broken down by sex.

Such regulation would make discrimination more visible, which then could be tackled more successfully. The obligation to provide transparency of pay setting and career progression policy (Art. 6) has also been widely mentioned as a positive measure.

The proposed Directive will level up the protection against wage discrimination through contributing to the harmonisation of mechanisms of pay transparency across the EU<sup>12</sup>. The provisions of the proposed directive setting up the minimum requirements in this respect are considered to be the most effective for ensuring gender pay equality by the respondents.

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<sup>12</sup> See the remark on art. 10 (3) of the proposed directive.

### 3.1.2. Reporting on and monitoring of pay structures

Equality Bodies state a lack of knowledge about (gendered) pay structures on societal and organisational levels, among social partners, and particularly employers. They hence agree that good data is required. The harmonised collection of data would also enable comparability between member states, which could further enhance knowledge about the structures of the pay gap.

The proposed Reporting on gender pay gaps (Art. 8) and the requirement for a Joint Pay Assessment (Art. 9) are deemed to be useful tools both for reflection of individual employers/sectors (for prevention and “self-regulation”) and as tools for effectively monitoring the situation and hence taking effective action against the gender pay gap. Equality Bodies also welcome the explicit mention of complementary or variable components, as those often are hidden sources of wage disparities. Equality Bodies also deemed useful the competency to ask clarifications on employer’s reports on gender pay gap.

### 3.1.3. Access to justice

Equality Bodies greatly welcome all measures granting or improving access to judicial and administrative procedures for individuals and Equality Bodies to enforce the right to equal pay for men and women.

Currently, often there is no equality of arms between the victims of unequal pay and the companies/organisations they work for. The prospect of having to pay the costs in case of loss can discourage victims from starting procedures in the first place. Thus, the provisions concerning the right to compensation (Art. 14), the shift of burden of proof (Art. 16), limitation periods (Art. 18) and legal and judicial costs (Art. 19) are welcomed in relation to upholding the rights of victims of gender pay discrimination.

As individuals often avoid judicial proceedings because of missing resources and knowledge, what could strengthen the effectiveness of the proposed mechanism of pay transparency is the competence to act without having an identifiable victim (to bring *actio popularis* claims). This solution is not envisaged *explicitly* by the proposed Directive. This means that Equality

Bodies will remain competent to instigate judicial or administrative proceedings in the absence of an identifiable complainant if it is laid down in national law (Art. 13 (1) of the proposed directive) what – as results of our survey show – is limited mostly to administrative cases.

Finally, Equality Bodies hope for these provisions to become benchmark standards that could form the basis for wider reforms to strengthen access to justice for all victims of discrimination.

### 3.1.4. Further measures

Some Equality Bodies mentioned the positive impact of the **legal definition** of terms like work of equal value, salary, pay gap, etc. (Art. 3 and 4).

Equality Bodies describe sometimes a weaker commitment to gender equality and equal pay among certain social partners. Thus, the commitment for **social dialogue** is seen as a useful provision (Art. 11). Equality Bodies also deemed positive the coordination between Equality Bodies and other national bodies with inspection function in the labour market (Art. 25).

## 3.2. Equality Bodies as monitoring bodies?

The Equality Bodies expressed very divergent opinions on whether they would like to be designated as monitoring bodies under the proposed directive (Art. 26). Almost half of Equality Bodies were for and half were against adopting this competency. Some did not express an opinion.

**Arguments for** the adoption of the competency were the following:

- Equality Bodies possess expertise in the field of gender equality and wage equality
  - Equality Bodies also have competencies in information and awareness raising
  - The additional collection of data and good practices could improve the equality body's promotional work
- This would lead to potential strengthening of Equality Bodies
- This would avoid the duplication of structures

Most Equality Bodies expressed their concern about the additional workload that would arise with this new competency. Thus, they expressed the clear demand for significant additional human and financial resources in case this mandate should be adopted by them.

Arguments *against* the adoption of the competency were the following:

- Equality Bodies could stay more focused on seeking pathways to justice including strategic litigation
- Taking responsibility away from social partners - transparency must go hand in hand with responsibility
- The task should not be done by a government or government-related body

Alternatively, three other types of institutions were mentioned that could adopt the task:

- Labour Inspectorates
- National Statistical Institutes
- Relevant public departments

In this case, an Equality Body suggested that the competent institutions should be specifically trained from a gender perspective. Another solution envisaged was a distribution of tasks: on the one hand, monitoring could be carried out by another institution, while awareness-raising would be undertaken by the Equality Bodies .

In the face of such diversity, it should be left for the member states to decide which institution to put in charge of the monitoring competency, allowing them to accommodate to their national context. In any case, the future institution that would overtake the monitoring function, will have to be equipped with significant resources to fulfill this important task.

### **3.3. Allocation of fines for the Equality Bodies**

According to the proposal, Member States shall provide Equality Bodies with the adequate resources necessary for effectively carrying out their functions. They shall consider allocating amounts recovered as fines for infringement against pay transparency to the Equality Bodies for that purpose (Art. 25 para 3).

The majority (12 of 19) of Equality Bodies partaking in the survey are **against** this proposition, mainly because it carries the risk of creating a conflict of interest, or at least the suspicion of it. It could be perceived that an Equality Body has a financial interest in using its pay transparency functions, if any resulting fines stood to be allocated to the Equality Body. There may be a risk this would be used to undermine the integrity of the work of Equality Bodies in relation to pay transparency. Also, some stated that it would make the financial situation of Equality Bodies contingent on the potentially uncertain outcome of infringement proceedings, and thus create an unstable financial situation for Equality Bodies.

Some Equality Bodies also mentioned that other institutions, such as labour inspectorates, are currently responsible for imposing fines, or would probably be the ones taking over these tasks.

Some Equality Bodies **welcomed** the proposition by arguing that thereby the fines would directly contribute to ensuring gender equality. They also underlined the pressing need for additional funding for the Equality Bodies, that they hoped to receive with this provision. Nonetheless, they stated, that fines could only constitute an additional financial source and that the basic funding must be guaranteed regardless.

An Equality Body contributed the alternative proposal to require states to allocate funds for strategic litigation in general. It argues that there should be a central duty of the state to provide for effective support to the victims. Moreover, the Equality Body stated that the resources shall not come only from the fines collected.



# Conclusion

In sum, the proposed Pay Transparency Directive would harmonize a very fragmented landscape when it comes to Equality Bodies and equal pay. The text would bring significant innovations for Equality Bodies, including the possibility to bring collective claims in front of judicial courts or the creation of a remedy function. In general, Equality Bodies are in favour of strengthening their powers when it comes to access to information and access to courts. However, some provisions of the Directive are not widely welcome by Equality Bodies, including the allocation of fines on equal pay cases to their budget and the possibility to automatically become monitoring bodies.

It is also important to note that some key obstacles identified by Equality Bodies to ensure equal pay are under-reporting and poor understanding of the principle of equal pay by stakeholders. These are issues that will not necessarily be solved by the proposed Directive, and which require significant investment in terms of accessibility, education and awareness-raising.

# Equinet Member Equality Bodies

## ALBANIA

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

## AUSTRIA

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

## AUSTRIA

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