

Ensuring European AI that Protects and Promotes Equality for All

Equinet's recommendations for the trilogues to strengthen the enforcement of non-discrimination in the context of AI

In summary, Equinet is proposing the following changes:

-  **Recital 79** (*amend*)* to refer to the proposed Directives on standards for Equality Bodies
-  **Article 29a** Fundamental rights impact assessment for high-risk AI systems (*adopt amendments by European Parliament*)
-  **Article 52** (*adopt amendments by European Parliament on information rights to enable the shift of the burden of proof*)
-  **Article 59 (4)** (*amend*)* to foresee Equality Bodies building the capacity of supervisory authorities
-  **Article 63 (7)** (*amend*)* to ensure stronger cooperation between supervisory authorities and Equality Bodies
-  **Article 64 (3)(4)** (*amend*)* to clearly ensure access to information for Equality Bodies that is practically useable in their work
-  **Article 65 (2)** (*adopt amendments by European Parliament*) to ensure that Equality Bodies are involved in the process and may require corrective action where a risk of discrimination is identified
-  **Articles 68a** (*amend based on amendments by the European Parliament*)* to ensure that Equality Bodies have clearer rights to be involved in relevant processes before the supervisory authorities
-  **Articles 68b and 68c** (*adopt amendments by European Parliament*) to enhance the procedural rights of those turning to the supervisory authorities

*See appendix for proposed amendments.

Why are improvements necessary?

The AI Act could be a new frontier in the protection of equality in the age of expanding and diversifying AI uses. However, the AIA lacks **clarity and legal certainty in relation to the enforcement of equality and non-discrimination obligations**. This risks to weaken existing protection against discrimination and to undermine the potential of the AIA to protect against discriminatory AI systems.

What improvements are necessary?

Ensure access to justice for rights-holders

Why is this important?

Under EU law Member States have the legal obligation to ensure the provision of independent assistance to victims of discrimination through specialized Equality Bodies. Equality Bodies are a crucial **access to justice mechanism** for those affected by discriminatory AI systems, offering the following comparative advantages:

- **legal advice** and/or **financial assistance** for rights-holders to bring cases to courts
- **free of charge procedure**
- **more readily accessible complaints procedure, with fewer administrative burdens**
- **strategic litigation** and litigation addressing **structural and systemic discrimination** through bringing cases **in their own name, including without identifiable victims**.

How to achieve this?

Clear and accessible information

Technical complexity and the sheer volume of the documentation gathered under the AIA would prevent Equality Bodies from being able to effectively assess and tackle AI-enabled risks to equality and non-discrimination. Ensuring the provision of easily understandable information and the ability to Equality Bodies to rely on technical assistance by supervisory authorities whenever the documentation is not sufficiently clear is crucial both for the legal casework on discrimination and the broader work on promoting equality and preventing discrimination (*amend Article 64(3), lines 5-6 and Article 64(5)*).

Strong mandate, independence and resources

Protection against discrimination under the AIA should reinforce and not interfere with existing institutional protection of equality through Equality Bodies. This could be ensured through safeguards against infringement on the task, power and independence of Equality Bodies through adopting the relevant provision of Recital 79a of the Council's General Approach and including a reference to the proposed Directives on standards for Equality Bodies.

Power to access information for all Equality Bodies across all Member States

Some EU Member States have not given Equality Bodies the power to access information and the current, somewhat unclear, formulation in Article 64(3) opens the door to different levels of protection against discriminatory AI systems across States, thus having the potential of undermining legal certainty and creating an uneven playing field. A clarification in the text that brings the relevant provision in the article in line with the corresponding recital could remedy this.

Harmonized and consistent enforcement of non-discrimination obligations

Why is this important?

In all EU Member States over 30 Equality Bodies already decide on cases and issue sanctions. However, the proposed AIA contains no safeguards to ensure coherence and alignment of decisions by Equality Bodies, on one hand, and by supervisory authorities, on the other hand. In the lack of such alignment, there could be two parallel enforcement mechanisms with divergent or even contradictory findings. Crucially, provisions guaranteeing alignment will improve the reliability and accuracy of discrimination risks' evaluation as they would ensure that the technical expertise of supervisory authorities is complemented with the legal expertise on equality and rich experience with non-discrimination complaints by Equality Bodies.

How to achieve this?

Coherent evaluation and enforcement against discrimination risks

In line with the European Parliament's amendments to *Article 65(2)*, whenever risks to non-discrimination and other fundamental rights are identified, this should trigger: 1) an obligation for supervisory authorities to "inform immediately" and "cooperate fully" with Equality Bodies and other fundamental rights authorities; 2) the ability of Equality Bodies and other fundamental rights authorities to require corrective actions, withdrawal or recall of products by AI operators.

Alignment between decisions by supervisory authorities and Equality Bodies

Include an obligation to consult Equality Bodies in the proceedings on equality and non-discrimination complaints (*amend Art. 68a on the right to lodge a complaint*).

Building the non-discrimination expertise of supervisory authorities

Include a reference to Equality Bodies building the capacity of supervisory authorities (*amend Article 59(4)*).

Stronger cooperation at national level

Ensure regular exchanges and interinstitutional cooperation between the supervisory authorities and Equality Bodies through amending *Article 63(7)*.

Impact of AI uses on equality as a precondition for enforcement

Non-discrimination law is enforced in relation to the uses of AI systems and specifically, their impact on equality. Fundamental rights impact assessments are therefore necessary to identify this impact in a systemic, transparent and consistent manner. The proposed inputs by Equality Bodies during these impact assessments would enhance the effectiveness of equality protection and ensure coherence with non-discrimination law (*adopt new Article 29a*).

Ability of rights-holders affected by AI systems to claim non-discrimination protection

Why is this important?

Under the EU non-discrimination law, rights-holders benefit from specific remedies, such as:

- **Submitting complaints to Equality Bodies and the courts**
- **More favorable requirements on evidence through a reversal of the burden of proof on those perpetrating AI-enabled discrimination**
- **Ability of organizations, including Equality Bodies, to bring cases on their behalf or in their support.**

The lack of remedies for those affected under the AIA will significantly weaken non-discrimination protection against AI systems and may undermine the effectiveness of existing remedies.

How to achieve this?

Information rights for those affected by AI systems to enable reversal of the burden of proof (*adopt amended Article 52 and new Article 68c*).

Ability of Equality Bodies and other public interest organizations to submit complaints to supervisory authorities, in defense of rights-holders and in their own name, including without any identifiable victims (*amend new Art. 68a on the right to lodge a complaint by persons affected by AI systems*).

Ensure the **right to lodge a complaint** and **the right to an effective judicial remedy** against the decisions by supervisory authorities (*keep new Chapter 3a Remedies and in specific, Article 68a and Article 68b*).

Who are we?

Equinet is the European Network of National Equality Bodies. 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 EU law to designate an Equality Body or Bodies to promote equality and combat discrimination. With strong focus on the provision of redress to victims of discrimination, as well as with mandate covering both the private and public sectors, Equality Bodies possess a unique insight into the state of equality and non-discrimination. That knowledge is of utmost importance in the development, monitoring and impact assessments of Artificial Intelligence (AI) systems.



Equinet’s recommendations for the trilogues to strengthen protection against discriminatory AI systems

Proposed amendments are indicated in **bold**.

Council General Approach	European Parliament Report	Equinet suggested amendments
<p>(79a) This Regulation is without prejudice to the competences, tasks, powers and independence of relevant national public authorities or bodies which supervise the application of Union law protecting fundamental rights, including equality bodies and data protection authorities. Where necessary for their mandate, those national public authorities or bodies should also have access to any documentation created under this Regulation. A specific safeguard procedure should be set for ensuring adequate and timely enforcement against AI systems presenting a risk to health, safety and fundamental rights. The procedure for such AI systems presenting a risk should be applied to high-risk AI systems presenting a risk, prohibited systems which have been placed on the market, put into service or used in violation of the prohibited practices laid down in this Regulation and AI systems which have been made available in</p>	<p>(79) In order to ensure an appropriate and effective enforcement of the requirements and obligations set out by this Regulation, which is Union harmonisation legislation, the system of market surveillance and compliance of products established by Regulation (EU) 2019/1020 should apply in its entirety. For the purpose of this Regulation, national supervisory authorities should act as market surveillance authorities for AI systems covered by this Regulation except for AI systems covered by Annex II of this Regulation. For AI systems covered by legal acts listed in the Annex II, the competent authorities under those legal acts should remain the lead authority. National supervisory authorities and competent authorities in the legal acts listed in Annex II should work together whenever necessary. When appropriate, the competent authorities in the legal acts listed in Annex II should send competent staff to the national</p>	<p>(79) In order to ensure an appropriate and effective enforcement of the requirements and obligations set out by this Regulation, which is Union harmonisation legislation, the system of market surveillance and compliance of products established by Regulation (EU) 2019/1020 should apply in its entirety. For the purpose of this Regulation, national supervisory authorities should act as market surveillance authorities for AI systems covered by this Regulation except for AI systems covered by Annex II of this Regulation. For AI systems covered by legal acts listed in the Annex II, the competent authorities under those legal acts should remain the lead authority. National supervisory authorities and competent authorities in the legal acts listed in Annex II should work together whenever necessary. When appropriate, the competent authorities in the legal acts listed in Annex II should send competent staff to the national supervisory authority in order to assist in the performance of its tasks. For the purpose of this Regulation, national supervisory authorities should have the same powers and obligations as market surveillance authorities under Regulation (EU) 2019/1020. This Regulation is</p>



<p>violation of the transparency requirements laid down in this Regulation and present a risk.</p>	<p>supervisory authority in order to assist in the performance of its tasks. For the purpose of this Regulation, national supervisory authorities should have the same powers and obligations as market surveillance authorities under Regulation (EU) 2019/1020. Where necessary for their mandate, national public authorities or bodies, which supervise the application of Union law protecting fundamental rights, including equality bodies, should also have access to any documentation created under this Regulation. After having exhausted all other reasonable ways to assess/verify the conformity and upon a reasoned request, the national supervisory authority should be granted access to the training, validation and testing datasets, the trained and training model of the high-risk AI system, including its relevant model parameters and their execution /run environment. In cases of simpler software systems falling under this Regulation that are not based on trained models, and where all other ways to verify conformity have been exhausted, the national supervisory authority may exceptionally have access to the source code, upon a reasoned request. Where</p>	<p>without prejudice to the competences, tasks, powers and independence of relevant national public authorities or bodies which supervise the application of Union law protecting fundamental rights, including equality bodies and data protection authorities. Where necessary for their mandate, such national public authorities or bodies should also have access to any documentation created under this Regulation. With regard to equality bodies, the implementation of this Regulation shall take into consideration provisions, including in relation to resources, in the proposed Directive on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU and the proposed Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC.</p>
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	<p>the national supervisory authority has been granted access to the training, validation and testing datasets in accordance with this Regulation, such access should be achieved through appropriate technical means and tools, including on site access and in exceptional circumstances, remote access. The national supervisory authority should treat any information, including source code, software, and data as applicable, obtained as confidential information and respect relevant Union law on the protection of intellectual property and trade secrets. The national supervisory authority should delete any information obtained upon the completion of the investigation.</p>	<p>After having exhausted all other reasonable ways to assess/verify the conformity and upon a reasoned request, the national supervisory authority should be granted access to the training, validation and testing datasets, the trained and training model of the high-risk AI system, including its relevant model parameters and their execution /run environment. In cases of simpler software systems falling under this Regulation that are not based on trained models, and where all other ways to verify conformity have been exhausted, the national supervisory authority may exceptionally have access to the source code, upon a reasoned request. Where the national supervisory authority has been granted access to the training, validation and testing datasets in accordance with this Regulation, such access should be achieved through appropriate technical means and tools, including on site access and in exceptional circumstances, remote access. The national supervisory authority should treat any information, including source code, software, and data as applicable, obtained as confidential information and respect relevant Union law on the protection of intellectual property and trade secrets. The national supervisory authority should delete any information obtained upon the completion of the investigation.</p>
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Rationale: The proposed amendment clarifies that the AIA should reinforce existing protection of equality and fundamental rights through equality bodies and other relevant public authorities. They follow the approach suggested in Recital 79a of the Council general approach,



which refers to non-infringement of the tasks, powers and independence of equality bodies. In addition, the amendments ensure coherence with the proposed Union law on equality bodies which specifically mentions algorithmic discrimination in relation to the need for resources. This reflects the reality that AI-related discrimination poses unique challenges that require specialised technical and human resources.



<p>Article 59 Designation of national competent authorities</p>	<p>Article 59 Designation of national supervisory authorities</p>	<p>Article 59 Designation of national supervisory authorities</p>
<p>4. Member States shall ensure that national competent authorities are provided with adequate financial resources, technical equipment and well qualified human resources to effectively fulfil their tasks under this Regulation.</p>	<p>4. Member States shall ensure that the national supervisory authority is provided with adequate technical, financial and human resources, and infrastructure to fulfil their tasks effectively under this Regulation. In particular, the national supervisory authority shall have a sufficient number of personnel permanently available whose competences and expertise shall include an in-depth understanding of artificial intelligence technologies, data and data computing, personal data protection, cybersecurity, competition law, fundamental rights, health and safety risks and knowledge of existing standards and legal requirements. Member States shall assess and, if deemed necessary, update competence and resource requirements</p>	<p>4. Member States shall ensure that the national supervisory authority is provided with adequate technical, financial and human resources, and infrastructure to fulfil their tasks effectively under this Regulation. In particular, the national supervisory authority shall have a sufficient number of personnel permanently available whose competences and expertise shall include an in-depth understanding of artificial intelligence technologies, data and data computing, personal data protection, cybersecurity, competition law, fundamental rights, health and safety risks and knowledge of existing standards and legal requirements. Member States shall ensure that the training needs of personnel of supervisory authorities on non-discrimination and fundamental rights are supported through collaboration with equality bodies and other relevant national authorities or bodies which supervise the application of Union fundamental rights law. Member States shall assess and, if deemed necessary, update competence and resource requirements referred to in this paragraph on an annual basis.</p>



	referred to in this paragraph on an annual basis.	
Rationale: This amendment ensures that the staff of supervisory authorities have the required knowledge and capacity on equality and non-discrimination by drawing on the extensive experience of equality bodies in training public and private duty-holders. In line with the Union's policy strategies on equality, such a cost-effective transfer of knowledge would also ensure that equality considerations are mainstreamed through all activities of supervisory authorities.		



<p style="text-align: center;">Article 63 Market surveillance and control of AI systems in the Union market</p> <p>6. Where Union institutions, agencies and bodies fall within the scope of this Regulation, the European Data Protection Supervisor shall act as their market surveillance authority.</p> <p>7. Member States shall facilitate the coordination between market surveillance authorities designated under this Regulation and other relevant national authorities or bodies which supervise the application of Union harmonisation legislation listed in Annex II or other Union legislation that might be relevant for the high-risk AI systems referred to in Annex III.</p>	<p style="text-align: center;">Article 63 Market surveillance and control of AI systems in the Union market</p> <p>6. Where Union institutions, agencies and bodies fall within the scope of this Regulation, the European Data Protection Supervisor shall act as their market surveillance authority.</p> <p>7. National supervisory authorities designated under this Regulation shall coordinate with other relevant national authorities or bodies which supervise the application of Union harmonisation legislation listed in Annex II or other Union legislation that might be relevant for the high-risk AI systems referred to in Annex III.</p>	<p style="text-align: center;">Article 63 Market surveillance and control of AI systems in the Union market</p> <p>6. Where Union institutions, agencies and bodies fall within the scope of this Regulation, the European Data Protection Supervisor shall act as their market surveillance authority.</p> <p>7. National supervisory authorities designated under this Regulation shall cooperate with other relevant national authorities or bodies which supervise the application of Union harmonisation legislation listed in Annex II or other Union legislation that might be relevant for the high-risk AI systems referred to in Annex III, including in relation to non-discrimination and other fundamental rights.</p>
<p>Rationale: The cross-sectoral impact of AI systems and the specific aim of this regulation to strengthen fundamental rights enforcement necessitate that supervisory authorities work closely with non-discrimination and other fundamental rights enforcement mechanisms. This amendment clarifies the need for interinstitutional cooperation between the supervising authorities and Equality Bodies and other authorities protecting fundamental rights.</p>		



<p style="text-align: center;">Article 64 Powers of authorities protecting fundamental rights</p> <p>3. National public authorities or bodies which supervise or enforce the respect of obligations under Union law protecting fundamental rights, including the right to non-discrimination, in relation to the use of high-risk AI systems referred to in Annex III shall have the power to request and access any documentation created or maintained under this Regulation when access to that documentation is necessary for the fulfilment of the competences under their mandate within the limits of their jurisdiction. The relevant public authority or body shall inform the market surveillance authority of the Member State concerned of any such request.</p> <p>4. By 3 months after the entering into force of this Regulation, each Member State shall identify the public authorities or bodies referred to in paragraph 3 and make the list publicly available. Member States shall notify the list to the</p>	<p style="text-align: center;">Article 64 Access to data and documentation</p> <p>3. National public authorities or bodies which supervise or enforce the respect of obligations under Union law protecting fundamental rights in relation to the use of high-risk AI systems referred to in Annex III shall have the power to request and access any documentation created or maintained under this Regulation when access to that documentation is necessary for the fulfilment of the competences under their mandate within the limits of their jurisdiction. The relevant public authority or body shall inform the national supervisory authority of the Member State concerned of any such request.</p> <p>4. By 3 months after the entering into force of this Regulation, each Member State shall identify the public authorities or bodies referred to in paragraph</p>	<p style="text-align: center;">Article 64 Access to data and documentation</p> <p>3. National public authorities or bodies which supervise or enforce the respect of obligations under Union law protecting fundamental rights, including the right to non-discrimination, in relation to the use of high-risk AI systems referred to in Annex III shall have the power to request and access any documentation created or maintained under this Regulation in accessible language and format when access to that documentation is necessary for effectively fulfilling their mandate. The relevant public authority or body shall inform the national supervisory authority of the Member State concerned of any such request.</p> <p>4. By 3 months after the entering into force of this Regulation, each Member State shall identify the public authorities or bodies referred to in paragraph 3 and make a list publicly available on the website of the national supervisory authority. National supervisory authorities shall notify the list to the Commission, the AI Office, and all other national supervisory authorities and keep the list up to date. The Commission shall publish in a dedicated website the list of all the competent authorities designated by the Member States in accordance with this article.</p>
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<p>Commission and all other Member States and keep the list up to date.</p> <p>5. Where the documentation referred to in paragraph 3 is insufficient to ascertain whether a breach of obligations under Union law intended to protect fundamental rights has occurred, the public authority or body referred to paragraph 3 may make a reasoned request to the market surveillance authority to organise testing of the high-risk AI system through technical means. The market surveillance authority shall organise the testing with the close involvement of the requesting public authority or body within reasonable time following the request.</p> <p>6. Any information and documentation obtained by the national public authorities or bodies referred to in paragraph 3 pursuant to the provisions of this Article shall be treated in compliance with the confidentiality obligations set out in Article 70.</p>	<p>3 and make a list publicly available on the website of the national supervisory authority. National supervisory authorities shall notify the list to the Commission, the AI Office, and all other national supervisory authorities and keep the list up to date. The Commission shall publish in a dedicated website the list of all the competent authorities designated by the Member States in accordance with this article.</p> <p>5. Where the documentation referred to in paragraph 3 is insufficient to ascertain whether a breach of obligations under Union law intended to protect fundamental rights has occurred, the public authority or body referred to in paragraph 3 may make a reasoned request to the national supervisory authority to organise testing of the high-risk AI system through technical means. The national supervisory authority shall organise the testing with the close</p>	<p>5. Where the documentation referred to in paragraph 3 is insufficient, including insufficiently clear and accessible, to ascertain whether a breach of obligations under Union law intended to protect fundamental rights has occurred, the public authority or body referred to in paragraph 3 may make a reasoned request to the national supervisory authority to organise testing of the high-risk AI system through technical means. The national supervisory authority shall organise the testing with the close involvement of the requesting public authority or body within reasonable time following the request.</p> <p>6. Any information and documentation obtained by the national public authorities or bodies referred to in paragraph 3 pursuant to the provisions of this Article shall be treated in compliance with the confidentiality obligations set out in Article 70.</p>
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	<p>involvement of the requesting public authority or body within reasonable time following the request.</p> <p>6. Any information and documentation obtained by the national public authorities or bodies referred to in paragraph 3 pursuant to the provisions of this Article shall be treated in compliance with the confidentiality obligations set out in Article 70.</p>	
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Rationale: Meaningful access to information requires safeguards on accessibility and clarity so that equality bodies and other fundamental rights authorities can make use of the relevant documentation. It is not only the lack of information but also the overwhelming volume and technical complexity of information that prevents an Equality Body from assessing the compliance of an AI system with non-discrimination law. In relation to when access to information should be provided, the amendment clarifies, in line with the relevant recital 79, that such access should be provided when necessary for effectively fulfilling the mandate of equality bodies and other relevant public authorities. Some EU Member States have not given Equality Bodies the power to access information and the current, somewhat unclear, formulation in Article 64(3) opens the door to different levels of equality protection against AI systems across States, thus having the potential of undermining legal certainty and creating an uneven playing field.



<p style="text-align: center;">Article 68a</p> <p style="text-align: center;">Union testing facilities in the area of artificial intelligence</p>	<p style="text-align: center;">Article 68a</p> <p style="text-align: center;">Right to lodge a complaint with a national supervisory authority</p> <p>1. Without prejudice to any other administrative or judicial remedy, every natural persons or groups of natural persons shall have the right to lodge a complaint with a national supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement if they consider that the AI system relating to him or her infringes this Regulation.</p> <p>2. The national supervisory authority with which the complaint has been lodged shall inform the complainant on the progress and the outcome of the complaint including the possibility of a judicial remedy pursuant to Article 78.</p>	<p style="text-align: center;">Article 68a</p> <p style="text-align: center;">Right to lodge a complaint with a national supervisory authority</p> <p>1. Without prejudice to any other administrative or judicial remedy, every natural persons or groups of natural persons shall have the right to lodge a complaint with a national supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement if they consider that the AI system relating to him or her infringes this Regulation.</p> <p>1a Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Regulation are complied with, including equality bodies and other relevant national authorities or bodies which supervise the application of Union fundamental rights law, may lodge a complaint with a national supervisory authority.</p>
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		<ol style="list-style-type: none">2. The national supervisory authority with which the complaint has been lodged shall inform the complainant or the entities in Article 1a on the progress and the outcome of the complaint including the possibility of a judicial remedy pursuant to Article 78.3. When a complaint is related to non-discrimination and other fundamental rights, the national supervisory authority shall inform and cooperate, as appropriate, with equality bodies and other relevant national authorities or bodies which supervise the application of Union fundamental rights law.
<p>Rationale: The amendments ensure coherence with remedies to individuals or groups affected by discrimination under the EU equality law such as the ability of equality bodies and other public interest entities to bring cases to the courts. Given, the particularly great difficulties for victims of AI-enabled discrimination to know that they are subject to discrimination and claim their rights, the ability of Equality Bodies and other public interest organizations to submit complaints to supervisory authorities, including in their own name and without any identifiable victims, is essential safeguard for the protection of equality. The proposed amendment on cooperation in handling of complaints by supervisory authorities ensures alignment of decisions, while contributing that supervisory authorities benefit from the specialized expertise and extensive experience of equality bodies related to non-discrimination complaints.</p>		