



AN EQUINET  
**HANDBOOK**

# Minimal Guidelines on Improving Complaints Data Collection by Equality Bodies

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Equinet brings together 48 organisations from across Europe which are empowered to counteract discrimination as National Equality Bodies across a range of grounds, including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation.

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

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## Objectives

Equinet members, through the work of Equinet’s Group on Research and Data Collection, have identified the need to study comparatively data collection practices among European Equality Bodies in order to identify ways to improve internal complaints data collection and ensure comparability of complaints data between Equality Bodies. These guidelines respond to the call to improve the collection of reliable and comparable equality data—including an explicit focus on complaints data—at European and national level in a number of Commission’s initiatives, including the [Gender Equality Strategy](#), the [LGBTIQ Equality Strategy](#), the [EU Roma Strategic Framework](#) and the [Anti-racism Action Plan](#).

### The specific aims of the Guidelines include:

-  Developing a standardized and consistent approach to complaints data collection for all Equality Bodies, based on a minimum of collected information;
-  Facilitating comparison of complaints data collected by Equality Bodies by ensuring coherence and compatibility of the minimal information collected by all Equality Bodies;
-  Providing practical guidance for Equality Bodies on how to produce—with minimal and easy-to-implement adjustments to already existing complaints data collection practices—more comprehensive, reliable, and comparable complaints data;
-  Facilitating future monitoring of the [European Commission proposals for Directives on Standards for Equality Bodies](#) which will rely on data on Equality Bodies’ own activities through contributing to the comparability of such data.

Finally, while highlighting the importance of complaints data, these Guidelines should be implemented with the awareness that complaints data is only one of several different sources of equality data and given its inherent limitations, it should be used in conjunction with these other sources in order to reflect more accurately the scale and prevalence of discrimination in society. In specific, complaints data is not representative of the general population affected by discrimination due to underreporting by rights-holders.

## Content and structure

The 2021 Equinet Complaints Data Report reveal that there is a minimal set of information gathered in relation to every discrimination complaint by most Equality Bodies, regardless of differences among Equality Bodies in terms of their size, mandate, structure, and competences. The present Guidelines focus on the collection of this already existing minimum of complaints information, proposing actionable and specific steps on how the management and staff of Equality Bodies could implement minimal changes in current practices of complaints data collection to improve complaints data comparability across different Equality Bodies.

The Guidelines are structured in two parts. The first section addresses heads of Equality Bodies and senior staff with decision-making responsibilities and outlines different reasons for the adoption of these guidelines. The second section targets staff of Equality Bodies who work at the operation level with complaints, whether through registering, assessing or otherwise processing information related to complaints.

To ensure consistency of responses and interpretation by stakeholders, the guidelines use as a minimal standard the EU legislative framework using definitions of different grounds, areas of life and forms of discrimination based on EU's non-discrimination legislation and its interpretation by the caselaw of the CJEU. Beyond this minimum of complaints information that Equality Bodies are encouraged to collect, the guidelines also include the option, where applicable, to collect information on grounds and areas of life for a complaint, which are covered under national law. In addition, where relevant, the guidelines also suggest tips for improving the overall quality of the information collected on complaints, through readily applicable and minimally resource-intensive measures.





## **Section I: Why Should Management and Governing Boards of Equality Bodies Adopt the Minimal Guidelines on Improving Complaints Data Collection?**

## A. Rationales for their implementation

### Improving assistance to victims

Improving the quality of complaints data through implementing the minimal guidelines will result in the availability of more systematic, comprehensive, and reliable information on various aspects of handling complaints. This information could be used by the Equality Body to improve both the process of providing assistance to victims (e.g., through accessible modalities for submitting complaints, confidentiality safeguards) and the quality of the legal action. At European level, comparable information on complaints data by Equality Bodies could reveal gaps or deficient implementation of non-discrimination legislation and policy, thus creating opportunities to improve assistance to victims through changes in European legislation and policy.

### Strengthening capacities for the prevention of discrimination and the promotion of equality

Complaints data is a valuable source of insight on recurrent or specific discriminatory practices, thus enabling Equality Bodies to develop informed, targeted, and effective prevention and awareness raising activities. Complaints data could point to certain areas and/or specific target groups on which the Equality Body should focus its work on promoting equality duties, good practices, positive action and equality mainstreaming among public and private entities. As mentioned by Equinet's Complaints Data report, complaints data could also serve as a reference point in engaging in public debate in order to combat stereotypes and raise awareness about diversity.

#### **Good Practice Example: Ombudswoman of the Republic of Croatia**

The Governmental Office for Human Rights and the Rights of National Minorities of Croatia is in the process of developing a national-wide large-scale survey on discrimination in the area of goods and services. The Office of the Ombudswoman Croatia was requested to provide complaints data to identify the most affected discrimination grounds, as well as the specific fields within the otherwise broad area of goods and services where discrimination occurs most frequently. Since the Ombudswoman's office collects data on all received discrimination complaints, including disaggregated by area and discrimination ground, the Equality Body was able to provide the government with precise historical data on the number of complaints in the area of access to goods and services, as well as on the most common discrimination grounds and kinds of services involved (e.g. restaurants/bars, shops, tourist services, public transport etc.). This complaints data



informed the design of the future survey by feeding into the Terms of Reference for the survey that described its scope and methodology. In this way, the availability of detailed complaints data enabled important nation-wide work providing substantial insight into the state of discrimination, its causes and consequences in Croatian society and which will subsequently serve in drafting public policies.

## Enabling enforcement of the future Standards Directives

The two proposals for Directives on Standards for Equality Bodies suggest the creation of a legal obligation for governments to submit every 5 years a report to the European Commission containing all relevant information for the implementation of the Directives. Data collected by Equality Bodies on their own activities, which crucially for all Equality Bodies includes complaints data, is explicitly mentioned as feeding into this monitoring report.

Complaints data could be instrumental in revealing limitations in the functions of Equality Bodies and thus suggest possible ineffective and inadequate implementation of the Directives. These findings, in turn, could be leveraged to put external pressure on governments to strengthen the Equality Body through, for example, more resources, stronger powers, additional safeguards for its independence.

Ways in which complaints data could be used to uncover and highlight the lack of sufficiently strong functions of the Equality Body include for example: lack of complaints by specific vulnerable groups (possible interpretation: limited powers related to outreach and limited territorial coverage of the services provided by the Equality Body), uneven distribution of complaints across different fields of life (possible interpretation: inadequate resources for promotion activities by Equality Bodies such as training of service providers in various fields of life).

### **Good Practice Example: German Federal Anti-Discrimination Agency (FADA)**

In October 2022, the Federal Anti-Discrimination Agency (FADA) published the results of the research project “Minimum standards for the documentation of anti-discrimination counselling”. In a participatory exchange process between the German Centre for Integration and Migration Research (DeZIM Institute) and various anti-discrimination counselling agencies and enabled by funding by FADA, the DeZIM Institute developed minimum standards for the documentation of complaints and requests for counselling in the anti-discrimination field in Germany. The minimum standards can support anti-discrimination counselling agencies in establishing and developing their documentation procedures, but also serve as a basis for pooling data from different anti-discrimination counselling agencies. Thus, the minimum

standards that emerged from this process are not meant to replace the existing documentation systems of anti-discrimination counselling agencies. They can be used as an add-on or inspire the development of an individual system that is compatible with the minimum standards.

## Developing an effective Strategic Plan

Reliable, comprehensive and consistent complaints data will enable the Equality Body to better monitor its own activities and make informed decisions about planning its activities, setting strategic priorities and assessing impact of activities to guide allocation of resources. The two proposals for Directives on Standards for Equality Bodies create an explicit obligation for Equality Bodies to engage in strategic planning. Own complaints data is indispensable for such planning and is already used in annual reports submitted by all Equality Bodies.

## Assessing impact of own activities

Complaints data is essential for assessing the impact of Equality Body's work. Improving collection of complaints data involves collecting information on a wide range of activities that depending on the mandate of the Equality Body could include providing legal advice to victims, including in pursuing their complaints; engaging in activities of mediation and conciliation; representing complainants in court; and acting as *amicus curiae* or expert where required; engaging or assisting in strategic litigation to address structural or systematic discrimination; deciding on cases with legally binding decisions, imposing adequate, effective and proportionate sanctions.<sup>1</sup> All of these actions in response to complaints provide information, which is valuable not only for monitoring the work of the Equality Body for reasons of accountability and transparency but crucially for evaluating its impact.

## Developing thematic regional cooperation between Equality Bodies

In cases where complaints data suggests discrimination in the context of a more general, cross-border problem (e.g., trafficking of Roma or migrant children, treatment of refugees depending on national origin or race), it could be used to initiate collaboration between competent EBs for addressing the problem.

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<sup>1</sup> Commission Recommendation of 22.06.2018 on standards for Equality Bodies, p. 6: [https://ec.europa.eu/info/sites/info/files/2\\_en\\_act\\_part1\\_v4.pdf](https://ec.europa.eu/info/sites/info/files/2_en_act_part1_v4.pdf).

## B. Collecting Complaints Data in a GDPR-compliant way: How does the EU General Data protection Regulation (GDPR) support the implementation of the present Guidelines?

### GDPR as the European legal framework for the collection and use of personal data

The European legal framework guarantees fundamental rights related to the protection of personal data such as the right to respect for private and family life from Article 8 of the EU Charter of Fundamental Rights.<sup>2</sup> That also encompasses the right to respect for information relating to private life.<sup>3</sup> In this respect, the most important legal instrument at the EU level is General Data protection Regulation (GDPR).<sup>4</sup> It was adopted in May 2016 and applied since 25 May 2018. As a regulation, it has direct application in all EU Member States.

Equality data, including complaints data, could include significant amount of personal data, and its collection and use are subject to a legal framework at European and national (Member States) levels. Although the way complaints data is used most often by Equality Bodies should not trigger any restrictions for its collection by Equality Bodies under the EU General Data protection Regulation (GDPR), there could be misunderstanding about the applicability of the GDPR.

Personal data means any information related to an identified or identifiable natural person. A person is identified when they can be distinguished or 'singled out' from a bigger group of persons from the information directly. A person is identifiable when they have not been identified yet but when identification is possible with a combination of available pieces of information.<sup>5</sup>

### GDPR does not apply to anonymised data collection

It is important to be aware that the principles of data protection do not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable.<sup>6</sup> The GDPR considers data anonymous only when it cannot be identified by any means

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<sup>2</sup> Article 8 of the EU Charter of Fundamental Rights stipulates that everyone has the right to the protection of personal data concerning him or her, and that such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

<sup>3</sup> European Court of Human Rights (ECtHR), *Amann v Switzerland* (16 February 2000); ECtHR, *MS v. Sweden* (27 August 1997); *S. and Marper v. the United Kingdom* (4 December 2008), paragraph 67.

<sup>4</sup> GDPR, [Regulation \(EU\) 2016/679](#).

<sup>5</sup> Article 4 (1) the General Data Protection Regulation (EU), 2016/679 (GDPR).

<sup>6</sup> Recital 26 of GDPR.

“reasonably likely to be used ... either by the controller or by another person”. This means that if the data could be re-identified by any person using ‘reasonable effort’, it would not be considered to be anonymised. The Regulation further states that the GDPR does not concern the processing of such anonymous information, including for statistical or research purposes.

Even though that publishing and processing of equality data in an aggregated and anonymised form is not problematic from a GDPR perspective as it cannot be linked back to the individual, Equality Bodies that process special categories of personal data in order to create aggregated and anonymised equality data, could themselves at that point link all data to individuals concerned. It is therefore important that Equality Bodies implement certain safeguards when processing data (such as temporary nature of data storage, limited access to data by employees, etc.).

## GDPR principles regarding the collection, use and protection of personal data

GDPR sets out the guiding principles to be observed when processing personal data (Article 5), such as: lawfulness, fairness, transparency and accountability, integrity, confidentiality, purpose limitation, data minimisation, accuracy and storage limitation. Compliance with the spirit of key principles is therefore a fundamental building block for good data protection practice.<sup>7</sup>

Three particularly relevant principles for the collection of complaints data by Equality Bodies are transparency, accountability and storage limitation. In general terms, the transparency principle requires that the data subject is fully aware of the processing of any personal data, and accountability principle requires collector to take responsibility for what they do with personal data and how they comply with other principles. The principle of storage limitation further obligates the data controller not to keep personal data for longer than they need it and to erase or anonymise this data when they no longer need it.

Complaints data, like all data based on personal circumstances, is open to interpretation from different actors. While some see concrete data (in an aggregated and anonymised form) illustrating different inequalities based on personal circumstances (racial or ethnic inequalities) as a basis for policymaking that would remedy such inequalities, the same data can also be interpreted and communicated in a way that could further stigmatise and even trigger intolerance and additional discrimination of specific target groups. If data collectors, particularly state authorities, do not clearly and transparently communicate the purpose of data collection as well as the meaning of the results of data collection activities, such danger becomes even more apparent and tangible. Such

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<sup>7</sup> In order to be to be lawful, processing of personal data should comply with Article 6 of GDPR.

fears could also lead already vulnerable target groups to being disinclined to (any) data collection activities.

## GDPR as legal basis for the collection and use of personal data

GDPR and in particular, Art. 6 enables the collection of equality data, which is personal data, through laying down clear and specific conditions for the lawfulness of the processing of personal data. As long as at least one of those conditions are met, there should be no legal obstacles for the collection of equality data, which contains personal data. The [opinion of the European Data Protection Supervisor](#) on the European Commission proposals for Standards Directives further clarifies that the GDPR enables the collection of equality data and access to disaggregated equality data through stipulating conditions that such collection should comply with. Nevertheless, sometimes personal data protection requirements in GDPR are misunderstood as prohibiting collection of personal data, which could significantly limit the comprehensiveness of the complaints data collected by Equality Bodies. State authorities, institutions and organisations could invoke the argument that such collection of sensitive personal data is not permitted in Article 9(1) of GDPR and in Article 8(1) in the EU Charter of Fundamental Rights. Under Article 9(1), the processing of special categories of personal data refers to data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

This argumentation lacks understanding and knowledge regarding legislative framework and its interpretation since the GDPR provides clear conditions for collecting, processing, storing and transferring data, including “special categories” of personal data (such as ethnic origins, religious or philosophical beliefs, data concerning health or data concerning a natural person's sex life or sexual orientation) by institutions. [Article 9 \(2\)](#) in GDPR clearly states that processing of personal data is explicitly NOT prohibited when at least one of following apply:

- When the data subject has given **explicit consent** to the processing of those personal data for one or more specified purposes.
- It is worth noting that when public authorities, such as Equality Bodies, act as data controllers there are lawful bases other than consent that are, in principle, more appropriate to the activity of public authorities.<sup>8</sup> This is due to the clear imbalance of power in the relationship between public authorities as data controllers and the data subject. Specifically, Article 6 (1c) and (1e) could provide more suitable legal bases for EBs to rely on when

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<sup>8</sup> European Data Protection Board Guidelines on consent under Regulation 2016/679. See in particular §16. Available at: [https://edpb.europa.eu/sites/default/files/files/file1/edpb\\_guidelines\\_202005\\_consent\\_en.pdf](https://edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf)

processing personal data. Article 6 (1e) is discussed in the second paragraph below. Article 6 (1c) allows personal data processing when it is necessary for **compliance with a legal obligation to which the controller (that is, the Equality Body) is subject;**

- When processing is necessary **for reasons of substantial public interest, on the basis of Union or Member State law** which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject;
- When processing is necessary for archiving purposes **in the public interest, scientific or historical research purposes or statistical purposes** in accordance with Article 89(1) which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.





## **Section II: How can the Staff of Equality Bodies Implement the Minimal Guidelines in their Everyday Work**

The below section of the guidelines addresses staff of national Equality Bodies, who register, process, or otherwise influence the collection of complaints data throughout the whole cycle of complaints data collection. The below guidelines are meant to serve as a practical roadmap for relevant staff of Equality Bodies, so that they know what minimal information about a complaint to collect and how to record it through the different phases in the processing of a complaint.

For organizations that do not provide direct assistance to victims, these guidelines could be communicated to partners so that the information received contains a common minimum set of data that could be comparable across countries.

Suggested list of information items to be gathered is based on the common practices of EBs identified through the Equinet Report on Collection and Use of Complaints Data. The focus is on already existing complaints information that the majority of Equality Bodies in Europe collect.

To make the below measures for a more systematic approach to complaints data collection easy to implement, the guidelines are structured according to the simplified life-cycle of a complaint.

Although the system of processing a complaint might be specific based on competences and internal structures of EBs, simplified three-step cycle should encompass most of the realities of EBs work.

## Before we start: 5 steps, 5 guiding principles

The guidelines below are premised on five core pillars. They reflect the main underlying principles that aim to ensure both better quality and improved comparability of the complaints data collected by Equality Bodies.

### 1. Harmonize the definition of a complaint

The first step for ensuring comparable and reliable complaints data among Equality Bodies is to decide on what constitutes a complaint. Based on results by Equality Bodies from a questionnaire on complaints data and for the purpose of harmonizing definitions between different European Equality Bodies, these Guidelines adopt the following broad definition of a complaint.

#### **COMPLAINT**

A request submitted to the Equality Body to evaluate situation of alleged/possible discrimination, filed either by the potential victim or another person/institution that is not personally affected by discrimination and ex officio investigations. As a complaint will also be counted information about possible/alleged discrimination submitted to the Equality Body that does not include a request for handling the case.

## 2. Standardize data collection points

Ensure that points for data collection within the life cycle of a complaint are standardized. This means that the same type of data is to be collected in the predefined form at the same point of handling a complaint

Depending on the structure, mandate and powers of your organization, the points for data collection might be different and might take place in a different order:

1. Complaint submission/reception of a complaint (i.e., a moment when complaint is received by EB);
2. Assessment of a complaint (i.e., a moment when EB officer conducts legal analyses, investigation and the EB or the partner organizations, providing assistance to victims on behalf of the Equality Body, takes action);
3. Follow-up of the complaint – data on decision(s) of other authorities or remedies (e.g., court decisions, tribunals).

## 3. Standardize information on complaints to be collected

All employees responsible for data collection (e.g., frontline registration staff, legal officers, statisticians and research staff, members of partner organizations handling complaints on behalf of your organization) should collect a predefined minimum information on complaints. Different staff could be responsible for collecting information at different specific phases in the processing of a complaint and accordingly, the specific information items to be collected by them might also be different. For example, frontline registration staff might collect data at the reception of a complaint, legal officers in further stages, external relations might be responsible for data collected during follow-up.

## 4. Standardize data collection methods

There are several tips to increase the quality of the collected data by standardizing the method:

- minimize the number of steps in which data are being transmitted from one source to another source (e.g., from paper to electronic form, from several documents into one database);
- automatize as much as possible the necessary steps for transmitting data (e.g., the same information collected via paper forms and via electronic versions, software or applications which enable you to export documents into other formats or to unify documents);

- implement predefined categories (e.g., options to select from a list instead of writing own formulations);
- in case of collection of data from various sources into one database, adapt internal guidelines how to collect data and how to transmit them to eliminate mistakes and increase unified approach;
- for further evaluation of data or for transmitting data for which you need an expert assessment (not automatic copying), minimize the number of persons responsible for this step.

## 5. Harmonize the definition of main information items

For information on complaints data to be useful (e.g., for the purposes of advocacy, monitoring, promotion) with respect to external stakeholders — whether at the national or European level — you need to ensure at least at a minimum level of comparability of the classifications used to collect data on complaints. In practice, this means to the extent possible to harmonize and ensure compatibility and comparability of the gathered data with complaints data collected by other national and international stakeholders. Efforts should focus on harmonizing definitions and scope for the following:

- classification of grounds of discrimination, areas of life and/or forms of discrimination based on national anti-discrimination law;
- classification of information about a complainant if collected (e.g., vulnerable groups);
- classification of outcomes;
- classification of information about the perpetrator.



## **Phase 1: Data collection at the Reception of a Complaint**



The formal submission of a complaint (in its broad definition) is the first opportunity to gather relevant information important not only for further evaluation of a complaint but also for statistics and monitoring.

For this purpose, various tools and communication channels might be used by your organization or a partner organization that provides direct assistance to victims of discrimination on behalf of your Equality Body. This might include an internal form or questionnaire (paper or through digital software) filled in by a member of your Equality Body's staff, phone hotline, emails and an online form filled in directly by a complainant.

Regardless of the specific method used, collection of complaints data for registration purposes should not pose a barrier for submitting the complaint itself. It is vital to link this initial complaints data collection phase with subsequent steps in the internal life cycle of a complaint. This could be enabled through registering the case into a shared internal database accessible and used by other employees of the Equality Body, who collect and use complaints information.

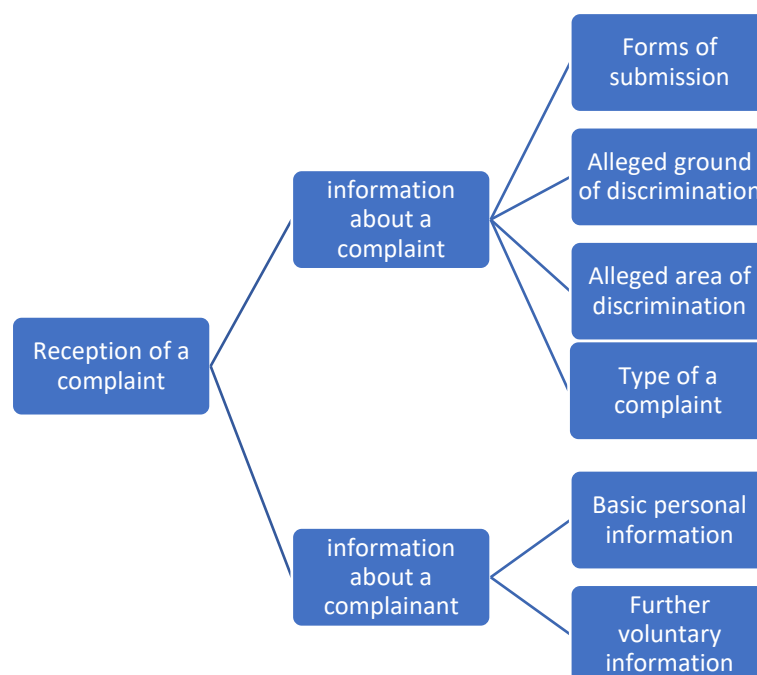


Figure 1: Explaining the procedure for receiving complaints

## 1.1 Information about a complaint

### Explanation

Before the evaluation of the complaint, many aspects might be unknown or not verified. Even though information initially provided by a complainant potentially might not prove to be as reliable,



complete or legally relevant, you should use the below information items to ensure that the same minimum information is consistently gathered for each complaint.

Data collection at this stage is crucial to reflect the subjective perception of discrimination (that is, the perceived area and ground (s) of discrimination) and the discrimination experience of the complainant. Importantly, this initial data collection allows comparison across the same information fields (that is, ground(s) and area of life) as they are assessed during the legal analysis of the complaint. To differentiate between information collected during the two phases of handling a complaint, record information using the fields “alleged ground of discrimination” and “alleged area of discrimination”.

If the existing practices of your organization cannot be easily modified to allow the inclusion of information on grounds and area of life as determined by the complainant, then at a minimum this information should be collected in a standardized way (based on these Guidelines) at the stage of assessing the complaint. See for more information below.

Systematic data collection about the complaint at the point of its submission, which is based on the assessment of the complainant, would lend credibility and validity of the complaints data gathered by your organization as it would be in compliance with some recommendations from the UN [Human Rights-based Approach to Data - Leaving No One Behind in the 2030 Agenda for Sustainable Development](#).

## Minimal information to collect

### Forms of complaint submission

- telephone/mobile,
- postal,
- mail,
- personal.

### Type of a complaint

- complaints filed by the potential victim
- complaints filed by another person or institution
- reports of discrimination without wish for counselling

## Alleged ground of discrimination

### Explanation

Record the discrimination ground or grounds in line with what the complainant has stated using the below list of grounds. This list and definitions of the individual grounds are based on EU non-discrimination law.

In order to collect information on cases of multiple and intersectional discrimination, check separately more than one of the below grounds. For additional grounds not covered by EU law, use the “other” field to indicate the ground or grounds concerned.

If your organization only collects data on a single ground, then record information for that ground and where possible and applicable, also indicate other additional intersecting grounds from the below list.

Enter information on grounds using the following definitions<sup>9</sup>.

#### — **Racial and ethnic origin**

*Clarification:* This includes all variations in the terminology directly linked to “racial and ethnic origin” such as, for example, “ethnicity”, “ethnic affiliation”, “alleged race”, “belonging, whether real or supposed, to an ethnic origin [...], a race “. This also includes grounds that that are “arguably linked to or of relevance for ‘racial or ethnic origin.’ Such grounds include, for example, nationality or national origin, language, colour and membership of national minority. When you indicate “racial or ethnic origin” for cases, where grounds closely linked to race and/or ethnicity are invoked, mark those grounds separately under the “other” field.

Example: complainant alleging discrimination because they are Nigerian: mark “ethnic and racial original” and in addition, check the field “other status” where, as applicable and depending on your national legislation, you write the closely linked ground(s). In this case, for example, under “other status”, “nationality” and “immigration status” could be written.

#### — **Sex and gender**

*Clarification:* In the absence of a clear differentiation between “sex” and “gender” in EU law and considering that the EU gender equality directives only employ the terms ‘sex discrimination’ or ‘discrimination on the grounds of sex’, the above ground should be interpreted to include gender, gender identity, gender expression, and discrimination based on sex characteristics. Under EU law, sex discrimination can be based upon gender

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<sup>9</sup> European Commission, Directorate-General for Justice and Consumers, Chopin, I., Germaine, C., A comparative analysis of non-discrimination law in Europe 2019 : the 28 EU Member States, Albania, North Macedonia, Iceland, Liechtenstein, Montenegro, Norway, Serbia and Turkey compared, Publications Office, 2020, <https://data.europa.eu/doi/10.2838/797667>

stereotypes or gender reassignment surgery, and EU law employs measures such as Gender Mainstreaming to achieve sex equality<sup>10</sup>. The ground “sex” commonly refers to the perceived biological features of a person, while “gender” means the social and cultural significance (e.g., preferences, assumptions, expectations, stereotypes, or norms<sup>11</sup>) of the ascription “male” or “female.”

#### — Sexual orientation

*Clarification:* This includes sexual orientation towards persons of the same sex, persons of the opposite sex, or persons of either sex. Where national law does not list sexual orientation among the protected grounds but covers this ground through other provisions (for example, an open-ended list of ground), mark the applicable grounds separately under the “other” field.

#### — Disability

*Clarification:* This includes all forms of “a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.”<sup>12</sup>

#### — Religion or belief

*Clarification:* This includes all religious beliefs, atheist, and agnostic beliefs, as well as beliefs or philosophical convictions that are not of a religious nature.<sup>13</sup> Political opinion is not

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<sup>10</sup> Ulrike Lembke (2016), ‘Tackling sex discrimination to achieve gender equality? Conceptions of sex and gender in EU non-discrimination law and policies’, European equality law review No, 2/2016, pp. 46-47; available at: <https://www.equalitylaw.eu/downloads/3938-european-equality-law-review-2-2016>.

<sup>11</sup> Ibid., p. 48.

<sup>12</sup> CJEU, Judgment of 11 April 2013, *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S*, Joined Cases C-335/11 and C-33711, ECLI:EU:C:2013:222. Reference in A comparative analysis of non-discrimination law in Europe 2021, Isabelle Chopin and Catharina Germaine, p. 21-22.

<sup>13</sup> European Commission (2014), 2: Report from the Commission to the European Parliament and the Council – Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’), SWD (2014) 5 final accompanying COM (2014) 2 final, 17 January 2014, available at <http://eur-lex.europa.eu/>. Cited in A comparative analysis of non-discrimination law in Europe 2021, Isabelle Chopin and Catharina Germaine, p. 18.

covered under beliefs of non-religious nature. The concept of religion covers both the “fact of having a belief” and “manifestation of religious faith in public.”<sup>14</sup>

— **Age**

*Clarification:* This includes all ages, ensuring the old and the young re protected.

## Alleged area of discrimination

### Explanation

Mark the relevant area of life indicated in the complaint. The list of areas of life and their definitions are based on EU non-discrimination law.

— **Employment and working conditions**, including dismissals and pay;

*Clarification:* all sectors of public and private employment and occupation, including contract work, self-employment, military service and statutory office;

— **Membership of and involvement in an organisation of workers or employers**, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;

— **Access to and supply of goods and services** which are available to the public, including housing;

— **Social advantages**;

*Clarification:* This includes advantages of an economic and cultural nature, which may be granted by both private and public entities.<sup>15</sup> Examples include child benefits, parental care allowance, childbirth allowance and price concessions for public transport.

— **Social protection**, including social security and healthcare;

*Clarification:* This includes all state social security and healthcare, as well as occupational social security schemes.

— **Education**.

## 1.2 Information about a complainant

### Explanation

Information on complainants is systematically collected by the majority of Equality Bodies, and therefore should be readily available in your own organization. This information is essential in order

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<sup>14</sup> CJEU, Judgment of 14 March 2017, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV*, C-157/15, ECLI:EU:C:2017:203, para 28.

<sup>15</sup> A comparative analysis of non-discrimination law in Europe 2021, Isabelle Chopin and Catharina Germaine, p. 58.

to gain better understanding of the sources of complaints, identify possible patterns and ultimately, use this information to more effectively tackle underreporting.

For the purpose of these Guidelines, the information on complainant(s) should include all possible sources of legal anti-discrimination complaints submitted to your organization and not only those submitted directly from a possible discrimination victim.

Since the collection of information about a person submitting a complaint might be sensitive for several reasons, such as data protection considerations, personal safety and preventing repeated victimization and retaliation, information collected on complainant(s) should be minimal.

In line with above, please record information on complaints only for the below items. If in the process of submitting a complaint, the complainant or complainants voluntarily reveal further information, record it using the suggested information fields below.

#### Minimal information to collect:

- sex/gender
- natural or legal person
- whether complainant is the victim of alleged discrimination

#### Further possible information provided on a voluntary basis:

- self-identification with vulnerable group(s): sexual orientation, gender reassignment, single parent, ethnic/national minority, religious minority, third country national, etc.
- economic activity or social status (e.g., unemployed, employed, beneficiary of retirement, beneficiary of other social support)

### 1.3 Information about alleged perpetrator

- Natural/legal person
- State/private/NGO (in case of legal person)
- Sex (in case of natural person)
- Relationship with the victim (e.g., employer, provider of services, spouse/partner)





## **Phase 2: Data Collection during the Processing and Assessment of a Complaint**



## Explanation

Another phase suitable for collection of data is during the processing and legal assessment<sup>16</sup> of the complaint in order to determine and initiate suitable action. At this point, further data might be collected, and existing information reassessed.

### 2.1 Information on the applicability of national non-discrimination law

As a first step in the processing of a complaint, you should record data on whether the national non-discrimination law applies to the case. Collection of information on the applicability of national non-discrimination law is crucial as it could reveal potential gaps in the legislation with data on complaints evidencing discriminatory practices that are not covered under the existing non-discrimination legislation.

- National non-discrimination law applies to the case – yes/no

### 2.2 Information on types of actions on a complaint

#### Explanation

Under EU anti-discrimination law, work on complaints falls under the function “independent assistance” to victims. The relevant Equality Directives, in specific, stipulate that Equality Bodies should have the power to “provide independent assistance to victims of discrimination in pursuing their complaints about discrimination.” This minimal requirement is vague, allowing for a number of possibilities on providing assistance on the basis of a complaint, which could range from referral to a competent agency (e.g., police, sector-specific agencies or courts), oral or written legal advice, to representation by a NEB in court proceedings. In addition, a number of Equality Bodies have been given decision-making powers with some of them also having the ability to carry out investigations<sup>17</sup>.

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<sup>16</sup> This applies also to cases where the Equality Body has no decision-making powers—whether these decisions are legally binding or not—but instead provides, as per the EU Equality Directive, assistance to victims via other means, such as, for example legal advice or participating in proceedings. More broadly, legal assessment could take place in the context of different actions that the Equality Body could pursue in relation to a complaint. See the below section for more information.

<sup>17</sup> For strengthening the competence of Equality Bodies to carry out investigations see relevant provisions in Proposal for a Directive of the European Parliament and of the Council 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 Proposal for a Council 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.

To reflect the diversity of different ways in which states have interpreted the requirement for Equality Bodies to provide assistance to victims in pursuing their complaints, information at the stage of assessing a complaint should include the variety of possible actions that an Equality Body could undertake in relation to a complaint. Depending on your national law, your organization could pursue one or more of the below several types of activities based on a complaint. Mark as applicable one or more of the below fields.

- Legal advice to a complainant – yes/no
- Deciding on a case with a legally binding decision - yes/no
- Deciding on a case with non-legally binding decision – yes/no
- Financial assistance to a complainant - yes/no
- Mediation and/or conciliation - yes/no
- Representing complainants before the courts - yes/no
- Acting as amicus curiae or expert before the courts (linked to a complaint) - yes/no
- Bringing proceedings in the Equality Body’s own name - yes/no
- Intervening in support of a party before the courts - yes/no
- Other – please specify as relevant.

## 2.3 Information about a complaint

The below information fields aim to ensure the systematic collection by staff of Equality Bodies of a minimum of information about the results of the legal assessment of a complaint distributed by ground, area of discrimination and form of discrimination (e.g., sexual harassment, direct/indirect discrimination, instruction to discriminate).

It is important to note that the determination of applicable ground (s) of discrimination as well as of area of life might be different at the stage of assessing a complaint from ground and area indicated by a complainant and recorded when registering the complaint (Phase One above). Therefore, it is necessary ideally to collect this information across both categories (ground and area) at both phases or, at a minimum, at this stage.

### Ground of discrimination

Please record the information based on the same approach as in “Alleged ground of discrimination” in section 1.1 “Information about a complaint.”

## Area of life

Please record the information based on the same approach as in “Alleged area of life” in section 1.1 “Information about a complaint”.

## Form of discrimination:

### Explanation

The below list of forms of discrimination and their definitions are based on the EU Equality Directives as a minimal framework.

Based on the results of the legal assessment of the complaint, please mark as relevant one of the below information fields. If you collect information on sexual harassment as a separate subtype within harassment, please mark both fields “Harassment” and “Other,” indicating under the latter “sexual harassment.”

- Direct discrimination,
- Indirect discrimination,
- Harassment (which includes practices such as mobbing, bossing, etc.), including sexual harassment,
- Instruction to discriminate,
- Victimization,
- Other.

## 2.4 Type of perpetrator

### Explanation

To improve understanding of the sources of discrimination and ensure that there is a comparable minimum of information on perpetrators based on complaints data by Equality Bodies, record information for the following fields:

- Natural/legal person
- State/private/NGO (in case of legal person)
- Sex (in case of natural person)
- Relationship with the victim (e.g., employer, provider of services, spouse/partner)

## 2.5 Information about an outcome

Explanation: Another important stage in data collection relates to the outcome of a complaint or whether the action of your Equality Body resulted in or contributed<sup>18</sup> to a finding of discrimination, whether this finding was issued as a result of the Equality Body’s own decision making or through a court or a relevant tribunal.

The recording of information on the outcome of the proceedings in relation to a complaint is also important from the viewpoint of acknowledging the relevance of perceptions of discrimination. Even if the proceedings did not establish the existence of de jure discrimination, this negative finding itself could give valuable information about possible discrepancies between the complainant’s experience of discrimination and the legal protection against discrimination.

When your Equality Body has the competence to engage in mediation and/or conciliation activities, then record whether there has been a settlement.

In cases where your Equality Body decides on a case and when it has the power to provide remedies— sanctions and compensation— record whether a remedy has been awarded, as well as the type of remedy (whether it is a sanction, a compensation or both).

If your Equality Body engaged in litigation in relation to a complaint or if it supported the court as an expert or through a third-party intervention, collect information on the decision of the court or where relevant, of the administrative tribunal with relevant jurisdiction. Record information whether or not remedies were issued as a result of these proceedings, as well as on the types of remedies involved.

- Equality Body’s own decisions (legally non-binding recommendation or legally binding decision)
  - no finding of violation
  - finding of violation
    - Sanctions (yes/no)
    - Compensation (yes/no)
- Court decision or administrative tribunal
  - no finding of violation
  - finding of violation
    - Sanctions (yes/no)
    - Compensation (yes/no)

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<sup>18</sup> There are cases where the link between the action by an Equality Body on a complaint and the legal finding of violation/no violation on that case is less direct—for example, when the Equality Body provides financial assistance to a complainant to bring a case to court, when acting as *amicus curiae* or expert on a case before the court or when provide legal advice to a complainant without bringing the case to court. With reference to those cases, the current Guidelines refer to Equality Bodies’ action on a complaint as contributing to, as opposed to resulting in, a finding of discrimination.



## **Phase 3: Data Collected during the Follow-up of a Complaint**

### 3.1 Information on the outcome of a complaint (recommendations, decisions and settlements)

#### Explanation

Standardized and consistent internal complaints data collection is also important from the viewpoint of monitoring and improving knowledge about the effectiveness of your Equality Body's work on complaints. One crucial source of information, which could be used to assess effectiveness, is information on compliance with recommendations, decisions and settlements, which result from proceedings in relation to a complaint. These proceedings could be before the Equality Body itself or before a court or a relevant tribunal.

When your Equality Body has the competence to engage in mediation and/or conciliation activities, then mark as appropriate whether that settlement has been fulfilled, partially fulfilled or not fulfilled.

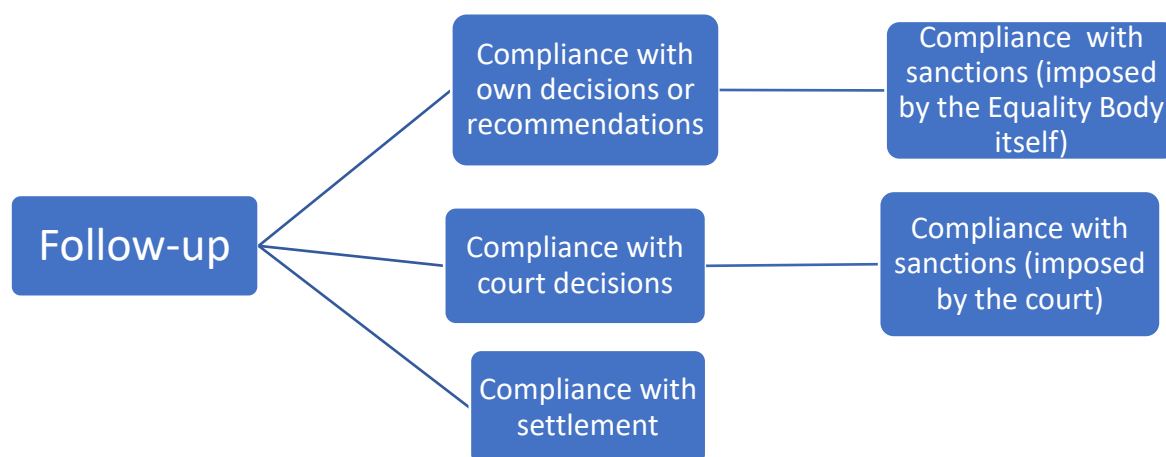


Figure 2: Follow up procedure

In the follow-up phase to a complaint, record information on the following:

- Court decisions or decisions by administrative tribunal
  - fulfilled
  - not fulfilled
  - pending
  - not applicable
- if “Sanctions”:
  - fulfilled
  - not fulfilled
  - pending
  - not applicable
  - amount of the sanction (if applicable)



- Equality Body’s own decisions (legally non-binding recommendation or legally binding decision)
  - ignored
  - fulfilled
  - pending
  - not applicable
  - if “Sanctions”:
    - fulfilled
    - not-fulfilled
    - pending
    - not applicable
    - amount of the sanction (if applicable)
- Settlement (conciliation/mediation)
  - fulfilled
  - partially fulfilled
  - not fulfilled
  - not applicable

### 3.2 Information on engagement with other stakeholders on the follow-up of a complaint

Finally and when available, it might be useful to collect information about further actions of your equality organization which involve follow-up engagement with other stakeholders:

- Consultations with relevant authorities to implement recommendations or decisions.
- Consultations with civil society stakeholders.
- Engagement with individuals and communities affected by the outcome of a complaint.

# 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

Office of the Ombudsman  
[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  
[ncpe.gov.mt](http://ncpe.gov.mt)

## MOLDOVA

Equality Council  
[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  
[bip.brpo.gov.pl](http://bip.brpo.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  
[cite.gov.pt/web/pt](http://cite.gov.pt/web/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.snspl.sk](http://www.snspl.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.inmujeres.gob.es](http://www.inmujeres.gob.es)

## SWEDEN

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

## UKRAINE

Ukrainian Parliament Commissioner for Human Rights  
[www.ombudsman.gov.ua](http://www.ombudsman.gov.ua)

## 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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