



Understanding the New EU Directives on Standards for Equality Bodies

Legal Digest on Standards for Equality Bodies

*by Equal Rights Trust for Equinet
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Understanding the New EU Directives on Standards for Equality Bodies - Legal Digest on Standards for Equality Bodies is published by Equinet, European Network of Equality Bodies. Equinet brings together 47 organisations from across Europe which are empowered to counteract discrimination as national Equality Bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation.

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Together for Equality, Stronger for All

Implementing Strong European Standards for Equality Bodies

Binding legislation on standards for Equality Bodies is a major step towards better and more uniform implementation and enforcement of EU equal treatment legislation, helping to fulfill its ultimate goal of creating equal societies and eradicating discrimination.

Effective and ambitious national implementation of the Directives on Standards for Equality Bodies can lead to Equality Bodies that have stronger guarantees for their independence and the necessary resources to promote equality, fight discrimination effectively, and ensure accessibility to all. This will include assisting victims and ensuring better access to justice for all, with more adequate powers to achieve the objectives of full equality, and wider mandates to cover all manifestations of discrimination.

While the Directives on Standards for Equality Bodies set minimum requirements for the effective and independent operation of Equality Bodies in a number of key areas, Member States can and should go further. They should be encouraged to strive for an ambitious transposition and an implementation strategy that leads to stronger and better-equipped Equality Bodies throughout Europe, and use the opportunity of adapting their legislation to identify improvements that ensure their citizens enjoy the highest levels of protection against discrimination. In this context, stakeholders and allies at the national level can play a crucial role in advocating and supporting implementation strategies that realise Equality Bodies' full potential by vesting them with the powers, mandates, independence, and resources required by these Directives.

Learn more on Standards for Equality Bodies: <https://equineteurope.org/what-are-equality-bodies/standards-for-equality-bodies/>.

Advocating for a successful transposition

This resource, together with the publications 'Key Principles derived from the Legal Digest on Standards for Equality Bodies' and 'Advocating for a successful transposition: Civil Society Toolkit', was funded by the [German Federal Antidiscrimination Agency \(FADA\)](#) as a part of a project to support National Equality Bodies and allies in ensuring a successful transposition of the Standards Directives. These resources aim to strengthen National Equality Bodies', Civil Society Organisations', and equality stakeholders' understanding of the Directives, providing them with the tools and information needed to meaningfully engage in the implementation process and advocate for ambitious transposition at the national level. The FADA-funded project is overseen by **Mariam Camilla Rechchad**, Project Officer at Equinet, European Network of Equality Bodies.

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Introduction

Equality Bodies play an essential role in combatting discrimination, advancing equality, and promoting positive social change. The number of Equality Bodies in Europe has proliferated since the early 2000s, driven in part by the adoption of the European Union Equality Directives.¹

However, not all of the Equality Directives require the establishment of Equality Bodies, while those which do detail only a small set of competencies that such Bodies must possess. The wide margin of discretion accorded to States in their transposition of the Equality Directives has led to some positive practices emerging at the national level. However, it has also resulted in uneven levels of protection against discrimination. Efforts to improve the situation, including the adoption of two non-binding recommendations since 2017, have largely failed to address the implementation gap, prompting calls for new legislation.²

On 7 May 2024, two new Directives were adopted which establish a set of harmonised, minimum standards for Equality Bodies.³ Covering the topics of purpose, mandate, independence, resources, powers and accessibility, they require States to take specific and concrete measures to guarantee the independence of Equality Bodies and ensure their effectiveness in combatting discrimination and promoting equality. These Standards Directives have the potential to be transformative. But if their potential is to be fully realised, they must be properly understood, transposed and implemented.

With funding from the German Federal Anti-Discrimination Agency, in June 2024, Equinet – the European Network of Equality Bodies – commissioned the Equal Rights Trust to undertake an independent legal analysis of these Standards Directives. The findings of this analysis are set out in this Digest.

¹ These instruments are discussed in Section C of this Chapter. The term “Equality Directives” as it is used in this report, refers specifically to the Framework Employment Directive (2000/78/EC); the Gender Goods and Services Directive (2004/113/EC); the Gender Recast Directive (2006/54/EC); the Gender Self-Employment Directive (2010/41/EU); the Gender Social Security Directive (79/7/EEC); and the Race Equality Directive (2000/43/EC).

² European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017; Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies. For a recent assessment of progress, see European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final.

³ See Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 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 amending Directives 2006/54/EC and 2010/41/EU; and Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters 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 amending Directives 2000/43/EC and 2004/113/EC. As described further below, while these documents are almost identical in respect of the standards they establish, they differ in their scope of application.

Over the following pages, the history of the Standards Directives is explored, their essential elements distilled and a set of core principles for their interpretation are identified. These core principles are based on a holistic assessment of the text of the Articles read in light of the purpose clause of the Standards Directives, together with the recitals, preparatory materials and other existing legal instruments and authoritative recommendations. The aim is to assist States, Equality Body staff, legal practitioners, and other stakeholders to operationalise the standards in their future work. To accompany the Digest, a Key Principles document, which summarises the essential elements, and a Toolkit for Civil Society have also been prepared. Each of these documents has been developed on the basis of, and should be read together with, this legal Digest.

At the time of the finalisation of the Digest, an issue regarding defective translation of some of the terminology and concepts used depending on the language versions of the Standards Directives has raised. While the European Commission has been notified and action is expected, it should be pointed out that the analysis in this Digest is based on the English version of the Standards Directives.

1 History and background

Equality and non-discrimination are two of the foundational values on which the European Union is established.⁴ The Charter of Fundamental Rights provides for the equality of all persons before the law, prohibiting discrimination in the application of European Union law on the basis of an extensive and open-ended list of protected characteristics.⁵

Since the 1970s, several Directives have been adopted which require Member States to take measures to combat discrimination and advance equality on particular grounds and in particular areas of life.⁶ The Race Equality Directive, adopted in 2000, was the first Directive to expressly require Member States to “designate a body or bodies for the promotion of equal treatment”.⁷ Subsequent Directives extended this duty to cover the additional grounds of sex and gender.⁸

However, only Directives related to race and ethnic origin and gender incorporated this requirement, meaning that no explicit obligation existed to establish Equality Bodies to prevent and address discrimination on the grounds of religion or belief, disability, age or sexual orientation⁹ – though many States did, in practice, extend the mandate of existing bodies to cover these grounds.¹⁰ Moreover, the four Equality

⁴ Treaty on European Union, Article 2.

⁵ Charter of Fundamental Rights of the European Union, Articles 20-21.

⁶ See, for example: Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. For an overview of contemporary EU instruments with a bearing on the rights to equality and non-discrimination see Equinet, “The EU Legislative Framework”, 2024, available at: <https://equineteurope.org/equality-in-europe/eu-legislative-framework/>.

⁷ The Race Equality Directive (2000/43/EC), Article 13.

⁸ See the Gender Goods and Services Directive (2004/113/EC), Article 12; the Gender Recast Directive (2006/54/EC), Article 20; the Gender Self-Employment Directive (2010/41/EU), Article 11; and the Pay Transparency Directive (2023/970), Article 28. These Directives are discussed further in Part C of this Chapter.

⁹ See for example, the Framework Employment Directive (2000/78/EC).

¹⁰ The European Commission has found that “In all but three Member States (...) equality bodies are competent in relation to all the grounds covered by the Employment Equality Directive. In around two thirds of Member States, equality bodies are competent in relation to all the grounds and all the fields mentioned in the Recommendation”. See European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, p. 4.

Directives which did contain such a requirement provided little specificity, setting out only a limited set of competencies that Equality Bodies must have and providing no direction on the structures, resources or powers required to discharge these competencies.¹¹

Despite these limitations, the Equality Directives had a significant impact on the establishment of Equality Bodies throughout the European Union. Prior to their adoption, a minority of Member States had Equality Bodies in place,¹² but over the course of the 2000s many new bodies were established. In some countries, States sought to give effect to their obligations by expanding the mandate of existing institutions, including national human rights institutions and ombuds.¹³ As these institutions already had existing resources, structures and mechanisms in place, the equality mandate could be quickly – though not always completely – assumed.¹⁴ In others, a combination of ground-specific and multi-ground Bodies were created with different competencies. In some, single Bodies were established with a mandate covering all grounds of discrimination. Despite the range of different structural and institutional models, in most countries, the Equality Bodies which have been established go beyond the minimum requirements of the Equality Directives,¹⁵ with powers to address discrimination on a broader range of grounds and in additional areas of life, or with a broader range of powers and functions.

This diversity of models and approaches has proven to be both a strength and a weakness. The wide margin of discretion accorded to States in their transposition of the Equality Directives has led to some positive practices emerging across Europe.¹⁶ However, it has also resulted in uneven levels of protection against discrimination, and significant disparities in the powers and resourcing of designated institutions.¹⁷ What is more, in the absence of clear standards on independence, mandate, resources, powers and accessibility, States have failed to ensure that their Equality Bodies are fully equipped, enabled and empowered to be effective in practice. These Bodies have also proved to be vulnerable to external threats. In the wake of the 2007-2008 global financial crisis, for example, several Equality Bodies were restructured and saw their effectiveness hampered as a result of diminishing resource allocations.¹⁸

Concerned by a lack of progress, Equinet launched an initiative to develop standards for Equality Bodies.¹⁹ Equinet first formally proposed the adoption of new standards in a Working Paper, published in 2016. This paper, entitled *Developing Standards for Equality Bodies*, was developed based on consultation within the Equinet Project on Standards and with the broader Equinet membership. The paper called for the designation of Equality Bodies with a “broad mandate to promote and support the achievement of full equality in practice

¹¹ See further, the discussion in Part C of this Chapter.

¹² See further, Elizondo-Urrestarazu, J., “Equality bodies: New standards, new challenges”, *IgualdadES*, 9, 2023, p. 248.

¹³ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, p. 7.

¹⁴ *Ibid.*, p. 7.

¹⁵ *Ibid.*, p. 4

¹⁶ See Directive 2024/1499, recital 10.

¹⁷ This point is acknowledged in the Directives on Standards and was spotlighted as a key driver for their adoption in the Commission’s original proposal. See Directive 2024/1500, recital 9; Directive 2024/1499, recital 11. See also, European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, *Strengthening the Role and Independence of Equality Bodies*, 2023, p. 16.

¹⁸ Benedi Lahuerta, S., “Equality Bodies: Advancing towards more responsive designs?”, *International Journal of Law in Context* (2021), 17, p. 391.

¹⁹ *Ibid.*, p. 391.

and to combat and eliminate all forms of discrimination in all areas of society”.²⁰ It proposed detailed standards in four areas – mandate, complete independence, effectiveness and institutional architecture.

The proposals put forward in the Working Paper have been promoted and discussed extensively over the last eight years. Equinet promoted the adoption of the standards in its engagement with European Union institutions and in its public outreach, while also developing detailed proposals on the work of Equality Bodies in areas such as data collection, equality mainstreaming, policy advice and recommendations, litigation, sanctions and remedy, among others.²¹

Between 2017 and 2018 the European Commission against Racism and Intolerance (ECRI) and the European Commission each issued recommendations in this area.²² ECRI’s *General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level* (the ECRI GPR No. 2r), adopted in December 2017, provided detailed guidance on standards for Equality Bodies for the first time. In addition to its 41 recommendations, the document includes a detailed explanatory memorandum, which provides additional detail. Less than a year later, in June 2018, the European Commission adopted its own Recommendation 2018/951 (the European Commission Recommendation), with the purpose of setting out measures to improve the independence and effectiveness of Equality Bodies “in particular as regards their capacity to ensure that individuals and groups that are discriminated against can fully enjoy their rights”.²³

However, in 2021, the Commission concluded that:

The Recommendation serves as a common standard for the effective and independent functioning of equality bodies (...) However, a limited and unequal level of implementation of the Recommendation continues to hinder some equality bodies in effectively exercising their role. In practice, this leads to different levels of protection against discrimination across the EU.²⁴

Having concluded that the “Recommendation, due to its non-binding nature, was only partially implemented”,²⁵ the Commission proposed the adoption of binding legislation: Directives on Standards for Equality Bodies. In December 2022 the European Commission published proposals for two new Directives.

²⁰ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 4.

²¹ See, for example: Stocker, R., Urbanikova, M., and Banjac, B., “Collection and Use of Complaints Data by Equality Bodies”, *Equinet*, 2021; and Equinet, *Compendium of Good Practices on Equality Mainstreaming: The Use of Equality Duties and Equality Impact Assessments*, 2021. Throughout this Digest, reference is made to the publications of Equinet and others that elaborate standards or provide guidance on measures needed to promote equality in areas covered by the new standards.

²² European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017; Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

²³ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, Article 1.

²⁴ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, p. 29.

²⁵ 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, COM/2022/688 final, 2022/0400 (COD), p. 12.

Almost identical in respect of the legally binding provisions themselves,²⁶ the Directives mainly differ in respect of the personal and material scope of their application and the procedure for their adoption.²⁷

Throughout 2023 and early 2024, the Commission's proposed Standards Directives were negotiated between the European Parliament and Council. As part of this process, the Commission's proposals were examined by European Parliament expert committees, which consulted with experts (including Equinet and Equality Bodies), reviewed the draft and engaged with the Commission and the Council. In July 2023, the co-rapporteurs of the Parliament committees published a draft report with proposed amendments to the Commission's proposals. The Council was involved throughout. The Parliament adopted the final text of the Standards Directives on 10 April 2024. The Council adopted the Standards Directives on 7 May 2024. States have two years to transpose the Standards Directives into the national legal framework, with a deadline of 19 June 2026.

2 Purpose and structure

This publication aims to assist States and Equality Bodies as they work to transpose and implement the new Directives on Standards. It provides a legal analysis of the Directives, through a close assessment of the text of the Articles, read together with the recitals, preparatory materials, existing legal instruments and authoritative recommendations issued by ECRI and the European Commission. It aims to explain and “unpack” the provisions of the Standards Directives, providing clear and practical guidance for implementation based on an assessment of the Standards Directives as a whole, viewed in light of the purposes clause.

The publication is divided into seven thematic Chapters. The first Chapter examines the purpose of the Standards Directives. Each of the subsequent chapters examines a different area in which the Directives establish standards: mandate, independence, resources, powers, accessibility and implementation.

Chapters are organised thematically, rather than on an Article-by-Article basis. As a result, some focus on a single Article, while others consider multiple Articles together. Article numbers are clearly cited throughout, to assist the reader.

Where necessary, Chapters are divided into Sections to examine provisions which set standards in different areas. Each Chapter, Section or Sub-section is divided into three parts:

²⁶ The Directives cross-refer to one another, specifying that “the same minimum standards for the functioning of equality bodies” are established under each instrument. See Directive 2024/1499, recital 14; Directive 2024/1500, recital 11.

²⁷ Because of the different legislative status of the Equality Directives which they sought to amend, the Standards Directives were negotiated under different procedures. Directive 2024/1500 was negotiated between the European Parliament and the European Council under the “ordinary legislative procedure” provided in Article 157 of the Treaty on the Functioning of the European Union, while Directive 2024/1499 was negotiated under a special legislative procedure. For further discussion, see: Elizondo-Urrestarazu, J., “Equality bodies: New standards, new challenges”, *IgualdadES*, 9, 2023, p. 248.

Part A examines the process of standard development and considers pre-existing standards and recommendations. These parts start with a discussion of the requirements of the Equality Directives. They go on to examine proposals made by Equinet in its 2016 Working Paper, alongside research, findings and recommendations adopted by other interested stakeholders. Finally, these parts consider the non-binding Recommendations issued by ECRI and the European Commission, alongside indicators developed by the Equinet Project on Standards, which have been endorsed by all Equinet members as an effective means to assess the implementation of standards for Equality Bodies.

Part B discusses the essential elements of each Article. In these parts, the individual words and phrases within the provisions are examined and analysed. These parts set out how the text should be read, for the purposes of transposition and implementation. As set out in Section D below, this is a legal analysis of terminology, informed by a holistic reading of the Standards Directives, documents produced during the process of their development and other instruments of international and European law.

Part C sets out key principles, derived from the analysis of the essential elements of each provision. The aim is to provide clear and accessible guidance on how to interpret, transpose and implement the Standards Directives' different Articles and provisions, informed by the legal analysis.

As a close-text legal analysis of the Directives on Standards – each of which contains more than 25 Articles and more than 50 recitals – this Legal Digest is a lengthy and detailed publication. While every effort has been made to use accessible language, the nature of a legal analysis such as this is a constraint, particularly in respect of length. Recognising this and the need to provide simple, clear and accessible guidance, the Equal Rights Trust prepared for Equinet a Key Principles document, which compiles and synthesises the principles set out in Part C of each chapter, following the same structure as this Digest, and with clear cross-references to the relevant Articles of the Standards Directives. The Key Principles document provides a high-level overview of the Directives' requirements, while this Digest sets out why and how the key principles have been derived from the text of the Directives themselves.

3 Relevant legal instruments

3.1. Directives on Standards for Equality Bodies



The focus of this Legal Digest is on two European Union Directives: Directive (EU) 2024/1499; and Directive (EU) 2024/1500. As noted above, these two Directives establish the same minimum standards on the

functioning of Equality Bodies.²⁸ They differ in respect of the legislative procedure through which they were enacted, the personal and material scope of their application and the previous Directives they amend.²⁹ Directive 2024/1499 contains a small number of additional recitals which are not present in Directive 2024/1500. This results in a mismatch between the recital numbers of the two Directives. In this publication, the body text refers to “the recitals”, while a cross-reference is provided to the relevant recital number in Directives 2024/1499 and 2024/1500 in the footnotes. The new instruments are referred to collectively, as “the Directives on Standards”, “the Standards Directives” or simply “the Directives”.



3.2. Equality Directives

The Directives on Standards seek to strengthen the application of the principle of equal treatment derived from existing EU Directives. The Race Equality Directive (2000/43/EC), the Gender Goods and Services Directive (2004/113/EC), the Gender Recast Directive (2006/54/EC), and the Gender Self-Employment Directive (2010/41/EU), each require States to designate one or more Equality Bodies for the promotion of equal treatment and establish a minimum number of competences that such Bodies must possess.³⁰ The references to Equality Bodies within these instruments are deleted and replaced by the new Directives on Standards.³¹ In this publication, these instruments are referred to collectively as the “four existing Directives”. Additionally, Directive 2024/1499 brings rights and obligations derived from the Gender Social Security Directive (79/7/EEC) and the Framework Employment Directive (2000/78/EC) within its scope, requiring States to ensure that the mandate of Equality Bodies extends to the grounds and areas of life covered by these instruments.³² For the purposes of this Digest, these six Directives are referred to collectively as the “Equality Directives”.

4 Analytical approach

This Digest provides a legal analysis of the Directives on Standards and derives key principles for their transposition and implementation. The approach to this analysis is contextual: each provision is examined in light of existing European and international standards on equality and non-discrimination, in the context of the Directives as a whole, and in the context of the purpose and intent of the legislator. Where provisions are ambiguous, unclear or open to different interpretations, the reading is based on a strictly limited number of legal sources, which are examined in a hierarchy based on their relevance.

²⁸ Directive 2024/1499, recital 14; Directive 2024/1500, recital 11.

²⁹ There are a small number of textual differences between the two Directives. For example, Article 6(1) of Directive 2024/1500 specifies that the term “victims” includes “all persons, irrespective, for example, of their socio-economic status, political opinion, age, health, nationality, residence status, language, colour, level of literacy, gender, gender identity, gender expression or sex characteristics, who consider that they have experienced discrimination for the purposes of this Directive”. This point is explored further in Chapter V.2.1.B.

³⁰ Additionally, the powers of Equality Bodies to address issues of discrimination falling within the scope of Article 15 of the Work-Life Balance for Parents and Carers Directive (2010/18/EU), is extended by virtue of the changes effected to the Gender Recast Directive (2006/54/EC), under Article 23 of Directive 2024/1500.

³¹ On the Race Equality Directive (2000/43/EC) and the Gender Goods and Services Directive (2004/113/EC), see Directive 2024/1499, Article 23. On the Gender Recast Directive (2006/54/EC) and the Gender Self-Employment Directive (2010/41/EU), see Directive 2024/1500, Article 23.

³² See Directive 2024/1499, Articles 1(1) and 1(2). On the scope of the equality mandate see Chapter II.1.

First, consideration is given to how words, terms or phrases should be read in light of the Equality Directives and other instruments of international human rights law.³³ As discussed above, the four existing Directives that provide for the designation of one or more Equality Bodies provide only limited guidance in many areas. Indeed, this is a key shortcoming that the new Standards Directives are intended to address. Nevertheless, provisions of the Directives on Standards must be read consistently with the existing EU legal framework on equality and non-discrimination.

Second, consideration is given to how terms and provisions should be read to be consistent with the stated purpose of the Directives. Article 1(1) provides that the Directives establish “minimum requirements for the functioning of equality bodies to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment”. As a clear and unambiguous statement on the purpose for which the Directives have been enacted, Article 1 provides the key interpretative lens through which other provisions must be understood.³⁴

Third, each Article is examined in the context of relevant recitals to the Directives. Each Directive contains almost 50 recitals, which expand upon the intended purpose and meaning of the Articles themselves. As a statement of the intent of those engaged in the development and enactment of the Directives, the recitals provide an essential tool for understanding and interpreting the substantive Articles.

Fourth, the analysis draws upon the preparatory materials for the Standards Directives. The European Commission’s 2022 *Proposal for a Directive of the European Parliament and Council on Standards for Equality Bodies*³⁵ is examined, considering both the proposed Directive itself and the explanatory memorandum that accompanied it. The *Draft Report on the proposal for a directive of the European Parliament and of the Council on standards for Equality Bodies*, published by the Committees on Employment and Social Affairs and on Women’s Rights and Gender Equality of the European Parliament following an examination of the Commission’s Proposal, was also considered.³⁶ These preparatory materials provide important insights into the considerations of those involved in the legislative process, in particular as to the use and meaning of particular terms.

Fifth, the non-binding Recommendations issued by the Council of Europe (through ECRI)³⁷ and by the European Commission itself³⁸ are examined. The Directives set out standards at a relatively high level, while the two sets of Recommendations provide much more detailed and specific guidance on the interpretation

³³ For example, the Chapter on Accessibility considers standards in the Convention on the Rights of Persons with Disabilities, and General Comments issued by the Committee on the Rights of Persons with Disabilities.

³⁴ In Chapter I.C six overarching principles are identified that can be derived from the statement of purpose in Article 1(1), namely, empowerment, effectiveness, independence, agency and autonomy, meaningful consultation, and minimum standards.

³⁵ 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, COM/2022/688 final, 2022/0400 (COD).

³⁶ European Parliament Committee on Employment and Social Affairs and Committee on Women’s Rights and Gender Equality, *Draft Report on the 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*, COM(2022)0688 – C9-0409/2022 – 2022/0400 (COD).

³⁷ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017.

³⁸ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

and application of these standards. The Directives make explicit reference to these two Recommendations, underlining their utility as tools for interpretation.³⁹

Finally, where necessary and relevant – in particular in cases where terms are not defined in the Directives themselves and where the other sources examined provide no guidance on appropriate interpretation, sources developed by Equinet are examined. Key among these sources are the proposed indicators for self-assessment developed by the Equinet Project on Standards for Equality Bodies and presented in its 2023 publication *Measuring Standards for Equality Bodies*.⁴⁰ The indicators are the result of an extensive process of consultation with Equinet’s member Equality Bodies. Endorsed by the full Equinet membership, the indicators provide essential insights into how – at a practical level – the standards can be effectively implemented and what is necessary to ensure their effectiveness in practice. Using these indicators as a tool for interpretation also respects the voice of Equality Bodies in the transposition and implementation of the Standards Directives – something which is clearly foreseen in the Directives themselves.⁴¹

Overall, the aim is to provide a rigorous legal analysis of the Standards Directives, to establish how the provisions should be understood, interpreted and applied, if their purpose is to be given full effect.



³⁹ Directive 2024/1499, recital 13; Directive 2024/1500, recital 12.

⁴⁰ Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023.

⁴¹ See further, the discussion in Chapter I.

I. Purpose



Article 1 sets out the purpose, subject and scope of the Directives in simple and direct terms: each Directive “lays down the minimum requirements for the functioning of equality bodies to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment” as defined in the Equality Directives.⁴²

Article 1 provides a clear and unambiguous statement of purpose for the Directives. As it sets down, the ultimate objective is to strengthen the application of the principle of equal treatment as laid down in the Equality Directives. This is to be achieved through ensuring that Equality Bodies are independent and effective. The Directives establish the minimum requirements to ensure that this independence and effectiveness is achieved.

While apparently setting down a simple statement of purpose, Article 1 in fact provides essential guidance for understanding, interpreting and implementing the Directives on Standards. Indeed, it establishes both the interpretative lens through which other provisions should be understood and the benchmark against which implementation should be measured. There are a number of reasons why Article 1 should be understood as the key provision for interpreting the Directives.

First, the Article makes clear the intent of those involved in the development and adoption of the Directives. Where other provisions may be open to interpretation or may leave States with discretion as to the application of the standards, Article 1 establishes a clear standard that must be achieved. **The intent and purpose of the Directives is to ensure that Equality Bodies are properly equipped, enabled and empowered to strengthen the enjoyment of the principle of equal treatment. This is the standard against which measures to transpose and implement the Directives should be assessed.**

Second, the Article makes an **explicit link between the adoption of the new standards and the proper implementation of the Equality Directives.** This link is reinforced in the recitals, which underline that minimum standards are needed to ensure that Equality Bodies can play an effective role in implementation of the Equality Directives. The recitals note the challenges facing Equality Bodies “in particular concerning (...) resources, independence and powers” and the “significant differences” between Equality Bodies in different States. They then state that minimum standards for the functioning of Equality Bodies are needed “[t]o ensure that equality bodies can effectively contribute to the enforcement of [the Equality Directives]”.⁴³ These recitals make clear that the Directives on Standards were adopted to meet a need and to fill a gap in respect of the implementation of the Equality Directives. **Understood in this context, Article 1 requires an**

⁴² Directives 2024/1499 and 2024/1500, Article 1. Directive 2024/1499 makes explicit reference to four Equality Directives: the Gender Social Security Directive (79/7/EEC); the Race Equality Directive (2000/43/EC), the Framework Employment Directive (2000/78/EC) and the Gender Goods and Services Directive (2004/113/EC). Directive 2024/1500 refers to the Gender Recast Directive (2006/54/EC) and the Gender Self-Employment Directive (2010/41/EU). See further, the discussion in Part C of the introduction to this Digest.

⁴³ Directives 2024/1499, recitals 10-13 and 2024/1500, recitals 8-10.

approach to the interpretation of the Standards Directives that keeps the purpose of enacting them at the forefront (purposive approach): the standards should be interpreted in such a way that they strengthen the ability of Equality Bodies to effectively prevent and address discrimination and promote equality.

Third, the Article creates a necessary implication that all of the Directives' Articles should be read in a holistic way. The standards in the Directives concerning the mandate and structure, independence, resources, powers and accessibility of Equality Bodies are all established with the purpose of strengthening the ability of these Bodies to prevent and address discrimination and advance equality. The purpose of the Directives is to establish a set of minimum standards, the application of which should render Equality Bodies more effective to strengthen application of the principle of equal treatment. The implication is that the standards should be read holistically and consistently, with a focus on achieving this ultimate objective. The Article establishes an overarching logic for the Directives, focused on guaranteeing independence and ensuring effectiveness.

For each of these reasons, Article 1 should be seen as establishing a requirement to interpret the Standards Directives purposively and holistically. The overarching purpose of the Directives – empowering Equality Bodies to effectively strengthen implementation of the principle of equal treatment – must be considered in the interpretation, transposition and implementation of the Directives' standards. In this way, Article 1 establishes the key interpretative lens through which other provisions must be understood and applied: the standards which are set out in the rest of the Directives are the “minimum requirements” to guarantee the independence and ensure the effectiveness of Equality Bodies. Where any other provision in the Directives is open to multiple interpretations, it must be read in light of this purpose clause: the provision should be interpreted in the way most likely to empower an Equality Body to strengthen the application of the principle of equal treatment.

While not explicit in the provision itself, Article 1 also necessitates – by logical extension – consultation and meaningful engagement with Equality Bodies on the structure, resources and powers which they consider necessary to guarantee their independence and ensure their effectiveness. Equality Bodies have the knowledge, experience and expertise – as well as the research and data – to determine what they need to give effect to the principle of equal treatment. As such, seeking and responding to their views is essential for the proper application of the standards in the Directives.






For the reasons set out above, Article 1 establishes the interpretative standard for the Directives as a whole. It also establishes the benchmark against which measures taken for the transposition and implementation of the Directives should be measured. Article 1 requires that, in transposing, implementing and applying the Directives, States must ensure that they interpret the standards in such a way as to guarantee the independence of Equality Bodies and to enhance their effectiveness.

A. Standard Setting

Equinet's 2016 Working Paper proposes standards in four areas – mandate, complete independence, effectiveness and institutional architecture. The Working Paper does not include a “purpose” clause, but it does set out five overarching principles to ensure that the full potential of an Equality Body is achieved:



Standards should:

-  Ensure the broadest mandate for Equality Bodies in relation to equality and non-discrimination.
-  Set out and underpin the conditions required for Equality Bodies to be independent and effective.
-  Locate Equality Bodies appropriately within a wider institutional infrastructure to promote equality and combat discrimination.
-  Enable Equality Bodies to realise their potential.
-  Ensure there is no regression in the situation of any Equality Body.⁴⁴

While the ECRI GPR No. 2r does not include a purpose clause, the European Commission Recommendation does, in relatively similar terms to those adopted in the Directives on Standards. It provides that the purpose of the Recommendation is to “set out measures that Member States may apply to help improve the equality bodies' independence and effectiveness, in particular as regards their capacity to ensure that individuals and groups that are discriminated against can fully enjoy their rights”.⁴⁵ However, in its review of progress in 2022, the Commission concluded that the objectives and purpose of its 2018 Recommendation had not been achieved, explaining that:

When it comes to policy options for a possible new EU action, non-legislative options have already been tested without fully producing the expected results. Non-legislative interventions have included (...) the non-binding 2018 Commission Recommendation (...) While all these measures produced positive effects and will remain in place in the future, the Recommendation, due to its non-binding nature, was only partially implemented.⁴⁶

In its Proposal for new Directives, the Commission set out its aim to create a “strengthened framework for equality bodies in the European Union to promote equal treatment and equal opportunities and combat discrimination on all grounds and in the fields set out by the Equality Directives”.⁴⁷

⁴⁴ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 3.

⁴⁵ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, Chapter 1(1).

⁴⁶ 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, COM/2022/688 final, 2022/0400 (COD), p. 12.




⁴⁷ *Ibid.*, p. 1.

B. Essential Elements


Strengthen the application of the principle of equal treatment

Article 1(1) states that the purpose of the Directives is to guarantee the independence of Equality Bodies and improve their effectiveness in order to strengthen the application of the principle of equal treatment. In so doing, it provides the interpretative lens through which all other provisions of the Directives must be understood and the benchmark against which measures to transpose and implement the Directives should be evaluated: whether the approach proposed strengthens the ability of the Equality Bodies to effectively prevent and address discrimination and to promote equality. Where any provision in the Directives is open to multiple interpretations, it must be read in light of the purpose clause and be applied in a manner that best empowers Equality Bodies.

Dimensions of effectiveness: If the objectives of the Directives are to be achieved Equality Bodies must be effective. The term 'effective' is not defined, although different dimensions of effectiveness are elaborated throughout the Directives in specific provisions on resources, powers and accessibility. The Directives lay down minimum standards in respect of both the functions and powers which Equality Bodies need to have to be effective, and the resources they need to use these powers. It is important that each of these provisions – while distinct – is seen as part of a whole and that each is read in light of the overarching focus on enhancing effectiveness to strengthen the application of the principle of equal treatment. Article 1 must be read reflexively: it both informs and is informed by other substantive provisions of the Directives. Taking the Directives as a whole, the principle of effectiveness can be understood to encompass four dimensions:

-  **Agency and Autonomy Dimension:** In order to be effective, Equality Bodies must have *agency* and *autonomy* in decision-making. They must be able to decide how they work, how they use resources, and their institutional structure. They must also be free to determine and pursue courses of action which they determine are necessary – based on their knowledge and expertise and the data and information they possess – to give effect to the principle of equal treatment. This in turn requires that Equality Bodies should have a central role in evaluating whether they have the resources and powers they need to deliver their mandate effectively: the recommendations of Equality Bodies in this respect should be key to determining the approach which the State adopts. Autonomy, agency and independence are closely linked, but not synonymous. Independence is a broader standard, encompassing elements of legal status, structural and institutional independence, freedom from interference and procedures to ensure transparent and accountable leadership. Agency and autonomy are one essential element of independence – independence in respect of decision-making – and are also central to effectiveness.
-  **Resource Dimension:** In order to be effective, Equality Bodies must have the practical ability to operate in ways which they determine are necessary. In addition to being functionally independent and having agency and autonomy in decision-making, Equality Bodies must have the **resources** – financial, human, practical and technical – which they need to use their powers and functions to address the needs which they identify and to give effect to the principle of equal treatment.
-  **Functional Dimension:** If Equality Bodies are to be effective in practice, they need to be equipped and empowered to exercise different functions, powers and competencies. In order to strengthen the application of the principle of equal treatment, Equality Bodies must have powers to **promote equality and prevent discrimination**, to **support victims of discrimination to access justice and secure remedy (including through litigation)**, and to **receive and handle complaints**. These powers are the means through which Equality Bodies can achieve their objectives and purposes. In order to deploy

these functions, Equality Bodies need to be independent and to be empowered with both the agency and autonomy, as well as the resources, they need to use them.

 **Accessibility Dimension:** To advance equality, Equality Bodies must be – and must be seen to be – open and accessible to all. This requires measures to ensure accessibility – specific measures to ensure that individuals can engage with Equality Bodies on an equal basis with others. It also necessitates a focus on diversity and inclusion – the leadership of Equality Bodies should reflect the diversity of society, while recognising the realities of intersectional discrimination and lived experiences of disadvantage. Ultimately, in order to be effective, Equality Bodies should seek to be accountable to those exposed to discrimination and disadvantage and should be suitably equipped and empowered to achieve this.

To guarantee their effectiveness, Equality Bodies must be provided with the functions and powers necessary to prevent discrimination and to address it where it occurs. This means a focus on providing full and effective support to victims, strengthening protection from discrimination and promoting equality and non-discrimination. It also requires a focus on measures to prevent and ultimately eliminate discrimination.

While not explicit in the provision itself, Article 1 necessitates consultation and meaningful engagement with Equality Bodies on the structure, resources and powers which they consider necessary to guarantee their independence and ensure their effectiveness. Equality Bodies possess unique and essential knowledge, experience and expertise – as well as research and data – to assess what is needed to strengthen the implementation of the principle of equal treatment. Accordingly, seeking and responding to their views is essential for the proper transposition and application of the Directives.⁴⁸

Independence

As noted above, independence is central to the ability of Equality Bodies to deliver on the objective of strengthening the principle of equal treatment. Without independence, Equality Bodies cannot act to identify and respond to problems of discrimination and inequality. To operate effectively, Equality Bodies must possess both functional and institutional independence (including independent leadership), be free from external influence and have independent control over their resources. They must be enabled to identify and respond to problems that hinder the principle of equal treatment in the ways they determine are necessary. The importance of independence is reflected in Article 3, which elaborates specific standards that are central to ensuring the complete independence of Equality Bodies.⁴⁹

Minimum requirements

Article 1(1) clearly states that the Directives on Standards set down minimum standards for the functioning of Equality Bodies. This has two clear implications.

First, it is clear that the Directives set out essential minimum requirements in the areas of independence and effectiveness. In respect of effectiveness, the Directives outline the resources Equality Bodies need to

⁴⁸ The requirement to engage Equality Bodies in decisions regarding structures, resources and powers is implicit in many of the Directives other provisions. Article 15 establishes a proactive duty of consultation on government in respect of any law, policy, procedure or programme “related to the rights and obligations” derived from the Equality Directives. See the discussion in Chapter V.1.3 of this Digest.

⁴⁹ See further, the discussion in Chapter III of this Digest.


effectively carry out their responsibilities and the powers of prevention and promotion, support and litigation and the handling of complaints which they need to strengthen implementation of the principle of equal treatment. All of these standards are basic, minimum requirements for independence and effectiveness.⁵⁰

The Directives set a minimum level of standards and Member States must not go below these. Measures that undermine or reduce the independence or the effectiveness of Equality Bodies contravene the Directives. However, the Directives do not restrict States from implementing more ambitious or expansive measures. These two related notions – that the Directives provide a floor but not a ceiling – are reinforced by the non-regression clause in Article 20, which clarifies that States “may introduce or maintain provisions which are more favourable than the minimum requirements” and explicitly states that the implementation of the Directives shall “under no circumstances constitute grounds for a reduction in the level of protection against discrimination”.⁵¹

Second, when viewed in light of the recitals, it appears clear that the Directives are to be considered minimum framework requirements, to be interpreted in light of the more detailed guidance provided in the non-binding recommendations issued by the European Commission and ECRI.⁵² In view of the different roles that an Equality Body may play, and the diversity of institutional arrangements in Member States, in many areas, the ‘measures’ that States are required to adopt are not clearly defined. Instead, the Directives establish minimum standards against which the effectiveness of measures in meeting the Directives’ objectives are to be assessed.⁵³ In this regard, the Recommendations provide important guidance for those seeking to transpose and implement the Directives and should be regarded as important tools for their proper application.

C. Key Principles

Article 1(1) of the Directives sets out their purpose: to establish minimum standards for the functioning of Equality Bodies, to guarantee their independence and ensure their effectiveness in strengthening the application of the principle of equal treatment. Article 1 is the key interpretive principle through which all other provisions must be understood and applied. Six core principles can be derived from the statement of purpose in Article 1(1):

 **Empowerment:** Equality Bodies must be fully empowered – both in law and in practice – to strengthen the application of the principle of equal treatment. Equality Bodies must have the agency and autonomy to determine which course of action is required to give effect to the principle of equal treatment, be provided with the powers and competencies necessary

⁵⁰ See further, the discussion in Chapter V of this Digest.

⁵¹ Directives 2024/1499 and 2024/1500, Article 20.

⁵² As the recitals note, the “minimum standards laid down in this Directive take into account Commission Recommendation (EU) 2018/951, drawing on some of its provisions and the approach recommended therein. They also draw on other relevant instruments, such as the revised General Policy Recommendation No. 2 on equality bodies adopted by the European Commission against Racism and Intolerance”. See Directive 2024/1499, recital 13; Directive 2024/1500, recital 10.

⁵³ See further, the discussion in Chapter III on independence, Chapter IV on resources and Chapter VI on accessibility. In each of these areas, the Directives impose a positive obligation on States to adopt measures to ensure that the minimum standards established by the Directives are fulfilled.

to take these actions and be equipped with the resources needed to discharge these powers effectively.

Effectiveness: Member States must ensure that Equality Bodies are empowered, equipped and enabled to play an effective role in strengthen the application of the principle of equal treatment, through preventing and addressing discrimination and promoting equality, with real impact.

Independence: The law must guarantee the institutional and functional independence of Equality Bodies. They must be free from any interference, have the agency and autonomy to determine and pursue courses of action they deem necessary and have independent control over their resources.

Agency and autonomy: Equality Bodies must be free to determine and pursue courses of action which they determine are necessary to give effect to the principle of equal treatment. They must be free to decide upon their activities, use of resources, and institutional structure.

Meaningful consultation: Equality Bodies must play a central role in evaluating whether they have the structure, independence, agency and autonomy, resources and powers they need to effectively deliver their mandate and ensure equal access to their services. The recommendations of Equality Bodies should be key to determining the approach to implementing the Directives. When these recommendations are not followed, the State must justify its decision against reasonable and objective criteria.

Minimum standards: The Directives set minimum standards. They provide a floor below which States should not fall but establish no ceiling for their ambitions. As Article 20 clarifies, States may take measures which are “more favourable than the minimum requirements”, but there must be no regression – the implementation of the Directives must not result in a reduction in protection. Non-compliance with the Directives could give raise to infringement proceedings by the European Commission. The Directives establish a framework, which should be interpreted and applied in light of both the European Commission Recommendation and the ECRI GPR No. 2r.

References to these overarching principles for interpretation are repeated throughout the subsequent sections, where they inform the proper and holistic understanding of other provisions of the Directives.



II. Mandate



Articles 1(2) and 2 of the Directives consider the mandate of Equality Bodies. Article 1(2) concerns the **scope** of the mandate – the grounds of discrimination and areas of life in which Equality Bodies must promote the implementation of the principle of equal treatment.

Article 2 concerns the **delivery** of the mandate, in particular the requirement of States to designate one or more bodies to exercise the competences set down in the Directives. This provision should be read alongside Articles 3(3) and 3(4), which establish minimum standards relating to the internal structure of Equality Bodies, and Article 4, which includes a discrete clause on resourcing, relevant to multi-mandate institutions.

1 Scope of the mandate

Article 1(2) of Directive 2024/1499 provides that “[t]he obligations placed on Member States and the tasks of equality bodies under this Directive cover the rights and obligations derived” from the Gender Social Security Directive, the Race Equality Directive, the Framework Employment Directive, and the Gender Goods and Services Directive. Through the inclusion of the Gender Social Security Directive and the Framework Employment Directive, Article 1(2) has the effect of requiring States to extend the mandate of Equality Bodies in their jurisdiction to cover the grounds of religion or belief, age, disability and sexual orientation in the area of employment and sex and gender in the area of social security, if they have not already done so.

A. Standard Setting

Four of the existing Equality Directives – the Race Equality Directive, the Gender Goods and Services Directive, the Gender Recast Directive and the Gender Self-Employment Directive – require States to designate one or more Equality Bodies for the promotion of equal treatment in areas falling within their respective scope of application.⁵⁴ As noted, the Framework Employment Directive and the Gender Social Security Directive created no such obligation, although in practice, many States established Equality Bodies with mandates to cover the additional grounds and areas of life covered by these instruments.⁵⁵

Equinet’s 2016 Working Paper recommended the extension of Equality Bodies’ mandates to cover all grounds of discrimination covered by the Equality Directives and Article 19 of the Treaty on the Functioning of the European Union, giving “due consideration” to those grounds listed in the Charter of Fundamental Rights, and recognising the phenomenon of multiple discrimination. It further recommended that the mandate of

⁵⁴ Several additional EU Directives foresee a potential role for Equality Bodies in upholding the anti-discrimination law framework. This includes the Work-Life Balance for Parents and Carers Directive (2010/18/EU), the Measures to Facilitate Freedom of Movement for Workers Directive (2014/54/EU), the Pay Transparency Directive (2023/970) and the recent Combatting Violence against Women and Domestic Violence Directive (2024/1385).

⁵⁵ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, p. 4.

Equality Bodies should cover both the public and private sector and the areas of life regulated by the Race Equality Directive.⁵⁶

The ECRI GPR No. 2r stated that the mandate of Equality Bodies should cover (individually or collectively), the “discrimination grounds covered by ECRI’s mandate” including “‘race’, colour, language, religion, citizenship, national or ethnic origin, sexual orientation and gender identity, as well as multiple and intersectional discrimination on these grounds”, in addition to grounds “covered by Article 14 of the European Convention on Human Rights”. The recommendation notes that the mandate of Equality Bodies may also extend to cover additional grounds, including “sex, gender, age and disability”.⁵⁷

Conversely, the 2018 Recommendation of the European Commission on Standards for Equality Bodies, reflected the narrower scope of the existing Equality Directives, recommending that Member States:

[C]onsider designating an equality body to cover the discrimination on the grounds of religion or belief, disability, age or sexual orientation within the scope of application of Directive 2000/78/EC (...) Member States should consider extending the equality bodies' mandate so that it covers, for all prohibited grounds of discrimination, the areas of employment and occupation, access to and supply of goods and services, education, social protection and social advantages, including hate speech related to these grounds in these areas.⁵⁸

In practice, the mandate of Equality Bodies in many countries extends beyond the minimum requirements of the Equality Directives, with powers to address discrimination on a broader range of grounds in additional areas of life.⁵⁹

B. Essential Elements

Rights and obligations derived from the Directives

Article 1(2) of Directive 2024/1499 has the effect of requiring States which have not yet done so to extend the mandate of their Equality Bodies to cover the grounds of religion or belief, age, disability and sexual orientation (in the area of employment) and sex and gender (in the area of social security). Article 1(2) is reinforced by repeated references – for example in Article 4 on resources and Article 8 on inquires – to Equality Bodies working to strengthen the application of the principle of equal treatment. This objective is recognised centrally in the purposes clause under Article 1(1).

⁵⁶ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 5.

⁵⁷ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 4.

⁵⁸ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para 1.1.1.

⁵⁹ As the European Commission noted in its 2018 Recommendation, “most Member States have extended the mandate of their equality bodies' to encompass generally the scope of application of discrimination on the grounds of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation in the areas of employment and occupation, access to and supply of goods and services, education, social protection and social advantages, therefore covering the scope of Directive 2000/78/EC, as well as other areas”. See *Ibid.*, recital 17. For further discussion on the personal and material scope of anti-discrimination legislation in Europe, see Ganty, S., and Benito Sanchez, J.C., “Expanding the List of Protected Grounds within Anti-Discrimination Law in the EU”, *Equinet*, 2021.

This is a welcome step, creating an immediate opportunity for Equality Bodies which do not currently have a mandate covering the full range of grounds and areas of life regulated by the Equality Directives to expand the scope of their work. As the recitals note, while there are many Equality Bodies across the European Union that are already competent to deal with matters falling within the scope of the Gender Social Security Directive and the Framework Employment Directive, “that is not the case in all Member States, which leads to different levels of protection against discrimination as regards the matters covered by those Directives”.⁶⁰ The Directives on Standards correct this discrepancy, and in this way go further than the European Commission’s non-binding recommendation, discussed above.⁶¹

However, Article 1(2) goes no further than this, despite the repeated proposals by Equinet and its members to expand the personal scope of Equality Bodies’ mandate. In its 2016 Working Paper, Equinet made two discrete proposals: (1) that the standards cover, at a minimum the grounds set out in Article 19 of the Treaty on the Functioning of the European Union - sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation; and (2) that “due consideration” be given to the grounds in Article 21 of the Charter of Fundamental Rights - sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. The first recommendation is reflected in Directive 2024/1499, in that Article 1(2) clearly states that the Directive covers the rights and obligations derived from the two Directives which did not include an explicit obligation to establish an Equality Body. The second recommendation is not, however, fully reflected. Indeed, recital 15 clarifies that “[t]he minimum requirements laid down in this Directive should only concern the functioning of equality bodies and should not extend the material or personal scope” of the Equality Directives. This position, is, however, qualified in at least two important ways – which are discussed further below.

Due consideration to other disadvantaged groups

While Article 1(2) restricts the scope of the Standards Directives to those grounds and areas of life covered by the Equality Directives, and recital 15 is clear that there is no intention to extend the scope of these instruments, other provisions indicate that Equality Bodies must consider a wider range of characteristics in order to ensure the accessibility of their services and publications.

Article 12(1) of the Directives imposes an obligation on States to “guarantee access to equality bodies’ services and publications on an equal basis for all”. Article 5(3) expands upon this obligation, requiring States and Equality Bodies, when engaging in awareness-raising and communication activities, to “focus in particular on groups whose access to information can be hindered” with reference to economic status, age, disability, nationality and residence status. Notably, there are no explicit references to the Equality Directives in either of these provisions, as is found in other Articles. The recitals link equal access to the need to “ensure that people know their rights and are aware of the existence of and services offered by equality bodies”, something which is “particularly important for disadvantaged groups and groups whose access to that information can be hindered”, on the basis of factors such as those listed in Article 5(3).

The Directives’ accessibility requirements are expanded under Article 12(2), which requires Equality Bodies to ensure that there are “no barriers” to the submission of discrimination complaints. While this provision is

⁶⁰ Directive 2024/1499, recitals 12 and 13.

⁶¹ Kádár, T., “Position Paper: Moving forward the European Commission’s proposals for Directives strengthening Equality Bodies”, *Equinet*, 2023, p. 7.

directed towards Equality Bodies themselves, States must ensure that Equality Bodies are enabled to receive complaints of discrimination (falling within the scope of the Equality Directives) from all persons “irrespective, for example, of their socio-economic status, political opinion, age, health, nationality, residence status, language, colour, level of literacy, gender, gender identity, gender expression or sex characteristics”.⁶² The reference to “all persons” within this Article closely reflects the language of Article 12(1), which establishes that Equality Body services (including complaints-handling) must be accessible on “an equal basis” to “all”.

The minimum standard established by Article 12 is equal access for all: while the Directives do not expand the scope of the existing EU legislative framework on non-discrimination, a denial of access to Equality Body services on *any* discriminatory ground would conflict with this requirement.⁶³ This would include, for example, the situation in which a person with disabilities is prevented from making a complaint of sex-based discrimination due to discriminatory rules governing legal and mental capacity; or where a person is prevented from submitting a complaint of racial discrimination because their identity documents do not match with their gender identity or gender expression.⁶⁴

As described in Chapter VI of this Digest, in order to ensure the accessibility of their services and publications, States and Equality Bodies must adopt proactive measures to identify and address access barriers. This, in turn, requires that due consideration be paid to the different needs of groups exposed to discrimination, including on grounds that are not expressly protected by the Equality Directives, and groups whose access is compromised as a result of other factors, such as low levels of literacy. In practice, a wide range of barriers - physical, social, linguistic, communicative, financial, geographical - may prevent equality of access. Where these barriers are not addressed, individuals will be unable to claim rights accorded to them, and Equality Bodies will be unable to fully discharge their powers and responsibilities, thus preventing the effective implementation of the Standards Directives.

Particular attention to intersectional discrimination

While not directly referenced in Article 1(2), the recitals to the Directives make clear that in all of their functions, Equality Bodies should be attentive to intersectional discrimination. In respect of their promotional and preventative activities, discussed in Chapter V.1 of this Digest, Article 5(2) specifies that “equality bodies can take into consideration specific situations of disadvantage resulting from intersectional discrimination”. The recitals go further, stating plainly that “[i]n promoting equal treatment, preventing discrimination,

⁶² See Directive 2024/1500, Articles 6(1) and 6(2). This extended list of characteristics is not included in Directive 2024/1499. However, recitals to the Directives make clear that each establishes equivalent standards on the functioning of Equality Bodies. This point is discussed further in Chapter V.2.1.B. See Directive 2024/1499, recital 14; Directive 2024/1500, recital 11.

⁶³ In this way, the Directives map onto the requirements the Charter of Fundamental Rights, which – under Article 21 – prohibits discrimination in the application of Union Law on an extensive and open-ended list of characteristics. The importance of the Charter and its non-discrimination provisions is reflected in its inclusion in recital 1 of the Directives, which refer to equality and non-discrimination as “essential values of the Union”.




⁶⁴ Gender identity, gender expression and sex characteristics are each expressly referenced in Article 6(1) of Directive 2024/1500. As a party to the Convention on the Rights of Persons with Disabilities, the European Union is bound by international law to ensure persons with disabilities’ equal recognition before the law and equal access to justice. See further, Convention on the Rights of Persons with Disabilities, Articles 5, 12 and 13; Committee on the Rights of Persons with Disabilities, *General Comment No. 1*, UN Doc. CRPD/C/GC/1, 2014, paras. 32-35 and 38-39. In its most recent concluding observations on the European Union, issued in 2015, the CRPD Committee expressed some concern in this area. See Committee on the Rights of Persons with Disabilities, *Concluding Observations on the European Union*, UN Doc. CRPD/C/EU/CO/1, 2015, paras. 36-37.

collecting data on discrimination and assisting victims in accordance with this Directive, it is important that equality bodies pay particular attention to intersectional discrimination”.⁶⁵ The term “intersectional discrimination” is defined in the same recital as discrimination that arises on a combination of the grounds protected by the Equality Directives. While this definition is potentially restrictive, the Standards Directives are the latest EU instruments to explicitly refer to the concept of intersectional discrimination and mark a growing recognition of the concept – and its importance – in the European Union legislative arena.⁶⁶

Non-diminution and more favourable requirements

While recital 15 is clear that the Directives on Standards do not extend the scope of the existing Equality Directives, nor do they serve to restrict the mandate of Equality Bodies to these grounds. Indeed, as discussed above; to give effect to their accessibility and public promotion activities, States and Equality Bodies must pay due consideration to a wider range of characteristics. Across Europe, the mandate of many Equality Bodies already covers grounds of discrimination and fields that are not expressly regulated by the Equality Directives. This practice is consistent with Article 20(1) of the Standards Directives, which permits States to “introduce or maintain provisions which are more favourable than the minimum requirements” established therein. Article 20(2) further provides that the implementation of the Directives “shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded”. This provision should be read in light of the recitals, which provide that the Directives should “not serve to justify any regression in relation to the situation which already prevails in each Member State”.⁶⁷

C. Key Principles

-  **Rights and obligations derived from the Directives:** States must ensure that Equality Bodies have a mandate to address and prevent discrimination and to promote equality on the basis of all of the grounds protected by the existing Equality Directives. Equality Bodies must be empowered to exercise the full range of their powers in respect of all of these grounds effectively.
-  **Due consideration to other disadvantaged groups:** In the delivery of public awareness and accessibility obligations under the Directives, due consideration should be given to the needs of groups exposed to discrimination on grounds other than those protected by the existing Equality Directives, such as socio-economic status, political opinion, age, health, nationality, residence status, language, colour, level of literacy, gender, gender identity, gender expression or sex characteristics.
-  **Particular attention to intersectional discrimination:** Equality Bodies must be empowered to be attentive to intersectional discrimination. This requires considering intersectionality in the exercise of all of their powers, including, for example, litigation, research and communication. Intersectional discrimination for the purposes of the Directives can arise on the basis of any combination of the grounds protected by the existing Equality Directives.

2 Delivery of the mandate

The four existing Directives which required States to designate one or more Equality Bodies provided no guidance on the form or structure that such Bodies should take. In practice States have exercised a large

⁶⁵ Directive 2024/1499, recital 16; Directive 2024/1500, recital 15.

⁶⁶ See also, the recent Pay Transparency Directive (2023/970) and the Combatting Violence against Women and Domestic Violence Directive (2024/1385).

⁶⁷ Directive 2024/1499, recital 47; Directive 2024/1500, recital 46.

margin of appreciation in this area, and the result is that institutional models for Equality Bodies vary significantly across the European Union. The Standards Directives recognise this diversity but impose requirements – under Articles 3 and 4 – relating to the structure of Equality Bodies, which are designed to protect the equality mandate, and ensure effective resourcing, including in multi-mandate institutions.⁶⁸

A. Standard Setting

Under the four existing Directives, Member States were able to designate a “body or *bodies*” for the promotion of equal treatment.⁶⁹ As a result, a range of different approaches were adopted, both in respect of the coverage of different grounds, and in respect of the combination (or not) of the equality mandate with other human rights related issues. On the one hand, some States decided to create multiple, separate **single-ground Equality Bodies** while others opted for one **multi-ground Equality Body**. Furthermore, in some States, multiple separate Equality Bodies were established to discharge different parts of the equality mandate (for instance separating promotional and decision-making responsibilities). In 2016, Equinet highlighted in its Working Paper that where multiple separate Equality Bodies are established, “linkages should be created to ensure a coherent application of the principles of non-discrimination and equality and that the needs of people at intersections between the grounds are addressed”.⁷⁰

On the other hand, whereas some States established dedicated institutions focused on delivering the equality mandate – **single-mandate bodies**; others empowered existing institutions – such as the national human rights institution – with the equality mandate, or established institutions with multiple mandates – **multi-mandate bodies**.⁷¹ In 2021, multi-mandate Equality Bodies existed in around half of Member States,⁷² including Bodies that combined an equality mandate with a human rights mandate, as well as Bodies that combined an equality mandate with an ombuds mandate.⁷³ As the European Commission has noted, “[t]he text of the equality Directives leaves a wide margin of discretion to Member States on the structure and functioning of equality bodies”,⁷⁴ and each of these different models is, in principle, consistent with the requirements of the Equality Directives.

Equinet highlighted five standards that should be met by Member States as regards multi-mandate bodies: (1) a coherent legal basis and powers for all parts of the mandate; (2) adequate resources; (3) an internal structure that allows focus on all parts of the mandate; (4) a capacity to develop an integrated approach to all parts of the mandate; and (5) a multi-disciplinary competence across its staff.⁷⁵ Where multi-mandate Equality Bodies have been established, research reports have highlighted that there is a need for active

⁶⁸ Directives 2004/1499 and 2004/1500, Articles 3(3)-(4) and 4.

⁶⁹ See the Race Equality Directive (2000/43/EC), Article 13; the Gender Goods and Services Directive (2004/113/EC), Article 12; the Gender Self-Employment Directive (2010/41/EU), Article 11(1); and the Gender Recast Directive (2006/54/EC), Article 20(1) (emphasis added).

⁷⁰ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, pp. 7-8.

⁷¹ European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, *Strengthening the Role and Independence of Equality Bodies*, 2023, p. 29.

⁷² European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, section 2.1.2.2., p. 6.

⁷³ European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, *Strengthening the Role and Independence of Equality Bodies*, 2023, p. 28.

⁷⁴ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, recital 18.

⁷⁵ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 70.

management.⁷⁶ This is due to the fact that “there are tensions between the traditions associated with each mandate”.⁷⁷ Furthermore, previous reports have highlighted the significance of having an integrated approach to realise the potential of Equality Bodies. This applies to both multi-mandate bodies and to multiple separate Equality Bodies. In both cases, institutional structures should allow for linkages to be made between different Bodies and mandates.⁷⁸

The ECRI GPR No. 2r addresses the institutional architecture of Equality Bodies, confirming that they may take different forms, but that certain conditions, including those highlighted by Equinet, should apply in cases of multi-mandate institutions.⁷⁹ The Recommendation also called for the expansion of the equality mandate to ensure consistency in the coverage of grounds of discrimination; and increased cooperation and collaboration between designated institutions (within and between States).⁸⁰ It highlighted that the competences and powers attached to all mandates in Equality Bodies “should be harmonised and levelled up so that each mandate should, as far as possible, enjoy the broadest competences and powers available to any of the other mandates”.⁸¹ Part of this harmonisation includes the need to establish procedural safeguards to ensure the effectiveness and independence of Equality Bodies in fulfilling their roles and objectives.

The European Commission Recommendation, while recognising States’ discretion in respect of the institutional architecture of their Equality Bodies, noted that the different approaches taken by States had led “to unsatisfactory access to protection for citizens, a protection which is unequal from one Member State to another”.⁸² The Recommendation requires that, both for single-mandate and multi-mandate Equality Bodies, the “internal structure should ensure a focus on each part of the mandate and a focus on each ground (...) proportionate to the impact of the related ground of discrimination, and resources should be balanced appropriately”.⁸³

In 2023, Equinet published a set of self-assessment indicators to measure compliance with standards for Equality Bodies. The document includes specific indicators to measure the compliance of multi-mandate institutions.⁸⁴

B. Essential Elements

Member States shall designate one or more bodies

Article 2(1) requires Member States to “designate one or more bodies (‘equality bodies’) to exercise the competences laid down” in the Directives. This provision reflects the diversity of Equality Bodies which exist

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ Crowley, N., “Enhancing the Impact of Equality Bodies and Ombudsperson Offices: Making Links”, *Equinet*, 2017, p. 15.

⁷⁹ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, paras. 5-9.

⁸⁰ *Ibid.*, paragraphs 1, 4, and 5-9; Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, Sections 1.1 (on the mandate of equality bodies) and 1.3 (on coordination and cooperation).

⁸¹ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 8.

⁸² Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, recital 18.

⁸³ *Ibid.*, para. 1.1.1(3).

⁸⁴ Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, pp. 5-17.

across the European Union and upholds the principle that States have broad discretion as to the institutional architecture of the Equality Body (or Bodies) in their State.

Consistent with the four existing Directives, States are required to “designate” an Equality Body, rather than to “create” or “establish” one. On the one hand, this wording seems to reflect the reality that Equality Bodies already exist in States across the European Union, as a function of the Equality Directives. On the other, the use of the word “designate” reflects the fact that States can discharge their obligations through designating an institution with one or more other functions – a national human rights institution or an ombuds institution – with the equality mandate (a multi-mandate body).

Similarly, the requirement is to designate “one or more bodies”, reflecting the fact that States are free to designate multiple bodies to fulfil different aspects of the equality mandate. In practice, this may take the form of different institutions focused on addressing and preventing discrimination on different grounds or in different areas of life – separate institutions focused on discrimination in the workplace and in other areas of life, for example. It may also take the form of different bodies exercising different functions within the mandate, with States, for example “entrusting one body with prevention of discrimination, promotion of equal treatment and assistance to victims of discrimination, and another with decision-making functions”.⁸⁵

While recognising this diversity of approaches, Article 2(1) makes clear that States are required to ensure that the Equality Body (or Bodies) they designate meet the standards set down in the Directives. They are required to “exercise the competences laid down in this Directive”. They are referred to explicitly as “Equality Bodies”, recalling the language in Article 1(1) and linking to the substantive standards set out in the Articles on independence, resources, powers and accessibility. Irrespective of the institutional architecture which they choose, States must ensure the effectiveness and guarantee the independence of the Equality Bodies which they designate.

Two principles can be derived from Article 2(1) read together with Article 1 on the purpose of the Standards Directives. The first is that, while States have discretion as to the structure of the Equality Bodies which they designate, they are under an obligation to ensure that the whole mandate can be and is in fact delivered effectively. States must ensure that where multiple institutions deliver the mandate, together they are able to do so effectively and completely. Measures of cooperation and coordination must be established, to ensure that there are no gaps in protection and that promotional and preventative activities address all grounds of discrimination effectively.

The second is that there must be complete adherence to the minimum standards established in the Directives as a result of the institutional architecture which is adopted. Accordingly, to the extent that States designate an existing institution to implement part of the functions of an Equality Body – for example where an employment tribunal is empowered to decide complaints of discrimination and so discharges that part of the Equality Body mandate – these institutions are subject to the same standards of independence and effectiveness established in the Directives. Equally, where the equality mandate is delivered in a multi-mandate institution, there must be a “levelling up” to the extent necessary to ensure that the delivery of the equality mandate meets the standards in the Directives.⁸⁶

⁸⁵ Directive 2024/1499, recital 17 and 2024/1500, recital 16.

⁸⁶ On “levelling up”, see: European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, paras. 8-9.

Accordingly, while States have discretion as to the institutional structure and architecture of the Equality Body which they designate, this freedom is not unlimited. If it is not possible to ensure the full and effective delivery of the whole mandate, with no diminution from the standards of independence and effectiveness set down in the Directives within a particular architecture, then that architecture will not meet the requirements of the Directives and must be adapted or abandoned. The purpose of the Directives must be achieved: States must guarantee the independence and ensure the effectiveness of Equality Bodies to strengthen the application of the principle of equal treatment.

Independence, resourcing and effectiveness of multi-mandate bodies

While Article 2(1) clearly envisages and provides for the existence of multi-mandate institutions, it provides no specific guidance on their operation. Instead, this is set out in Article 3(4) on the internal structure of multi-mandate bodies, and Article 4 on resources.

Article 3(4) provides a clear requirement for States to meet: they must ensure that “the internal structure of multi-mandate bodies guarantees the effective exercise of the equality mandate”. This leaves no room for doubt – States must ensure that the whole mandate is delivered without diminution from the standards set out in the Directives. In one sense, therefore, this provision simply serves to make explicit that which is implicit in Article 2(1) – the equality mandate must be effectively and completely fulfilled.

In another sense, however, the provision imposes a positive obligation on States that opt for multi-mandate bodies to ensure that they can exercise the equality mandate effectively. Both Equinet and ECRI have provided clear guidance as to how States can establish such an internal structure, and these recommendations should be used as the basis for States to evaluate whether their institutional architecture meets the necessary minimum standards. Specifically, where States designate a multi-mandate Body, they should ensure that: (1) legislation explicitly sets out the equality mandate; (2) appropriate human and financial resources are allocated; (3) governing, advisory, and management structures should be organised in a manner that provides for clear leadership, promotion and visibility; and (4) Reporting arrangements should give adequate prominence to the equality mandate.⁸⁷ In all four respects, the focus must be on ensuring the full and effective delivery of the equality mandate.

Article 4 complements Article 3(4) in respect of the resource dimension, clarifying that the requirement that States ensure that Equality Bodies are “provided with the human, technical and financial resources necessary to perform [their] tasks and to exercise all [their] competences effectively” applies where States maintain multi-mandate institutions. As the recitals note, “[w]here the equality body is part of a multi-mandate body, the resources necessary to carry out its equality mandate should be ensured”.⁸⁸

Coordination and cooperation between multiple Equality Bodies

As with multi-mandate bodies, while Article 2(1) clearly envisages and provides for the existence of multiple Equality Bodies charged with delivering the equality mandate, it provides no specific guidance on their operation. This is set out in Article 14, which provides clear guidance to States on ensuring coordination and cooperation, to ensure that the whole mandate is delivered effectively.

⁸⁷ *Ibid.*, paras. 8-9. See also: Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023.

⁸⁸ Directive 2024/1499, recital 22 and 2024/1500, recital 21.

Article 14 concerns cooperation with a wide range of different institutions – including “private entities, including labour inspectorates, the social partners, and civil society organisations”. To this extent, the provision recognises that cooperation between Equality Bodies and other entities “is key for mutual learning, coherence and consistency, and it can broaden the outreach and impact of their work”.⁸⁹

However, the Article begins with a clear requirement in respect of cooperation between Equality Bodies: States must “ensure that equality bodies have appropriate mechanisms in place to cooperate, within their respective fields of competence, with other equality bodies within the same Member State”. The Directives provide no guidance as to what “appropriate mechanisms” might entail in practice. However, when considered in light of the purpose of the Directives as set down in Article 1, the phrase should be read as requiring cooperation and coordination to ensure the effective delivery of the whole mandate in a consistent manner. As the 2018 Commission Recommendation set out: “[w]here several equality bodies exist in the same Member State, Member States should enable them to set up regular and effective coordination in order to ensure that they apply non-discrimination principles in a consistent way”. The principle of effective and consistent delivery of the mandate should be the focus of mechanisms for cooperation between Equality Bodies at the national level.

C. Key Principles

Designation of Equality Bodies:: States must designate one or more institutions as Equality Body. The designation of an Equality Body requires either legislative or constitutional provision designating a body or bodies to fulfil the mandate. Any entity designated as an Equality Body is the subject of the Directives and States must ensure that the standards set down in the Directives are applied to them.

Discretion on institutional architecture:: States have discretion as to the institutional structure of any body or bodies designated as Equality Body. States may: designate a single, dedicated body with the equality mandate; designate an institution with multiple mandates to exercise the equality mandate; designate multiple bodies to exercise the equality mandate; or designate different bodies to exercise different parts of the equality mandate, in the areas that the Directives allow for it. However, States’ discretion is not unfettered. States must ensure that the whole equality mandate – as set out in the Directives – is delivered at least according to the conditions set out by the Directives. This implies that any body that holds the equality mandate or part of the mandate is bound by these standards. If this is not possible within a given institutional architecture, that structure should be adapted or abandoned.

Whole mandate: States must ensure that the body or bodies which they designate as Equality Bodies are empowered to deliver and discharge the whole equality mandate, as established in the Directives on Standards. These bodies must be fully independent and must have the resources and powers which they require to effectively ensure the application of the principle of equal treatment.

Complete adherence to the minimum standards: States must ensure that, in designating an Equality Body, there is no diminution from the minimum standards set down in the Directives on Standards. Where parts of the equality mandate – for example the decision-making powers – are delivered by institutions which hold other mandates, these institutions must be subject to the same standards set down in these Directives, to the extent that they are delivering the equality mandate. Similarly,

⁸⁹ Directive 2024/1499, recital 41 and 2024/1500, recital 40.

where separate institutions exercise the mandate in particular areas of life, or on particular grounds, the minimum standards must be adhered to by each institution.

Active management of the equality mandate: Where the equality mandate is delivered through a multi-mandate institution, States must ensure that the equality mandate is actively managed and that the internal structure of such bodies guarantees the effective exercise of the equality mandate. This requires, at a minimum, ensuring that: (1) legislation explicitly sets out the equality mandate; (2) appropriate and adequate human and financial resources are allocated to ensure the effective delivery of the equality mandate; (3) governing, advisory, and management structures are organised in a manner that provides for clear leadership, promotion and visibility of all aspects of the equality mandate; and (4) Reporting arrangements give adequate prominence to the equality mandate.

Effective and consistent delivery of the mandate: Where multiple institutions are designated to deliver the equality mandate– either separate Equality Bodies, or institutions, delivering one aspect of the equality mandate such as mediation mechanisms – States must ensure that the structures are in place to ensure cooperation and coordination to enable the effective and consistent delivery of the equality mandate.



III. Independence



Article 3 of the Directives requires States to “take measures to ensure that equality bodies are independent”. The importance of independence is stressed throughout the Directives and guaranteeing the independence of Equality Bodies is part of the overarching purpose and objectives set out in Article 1. The independence of Equality Bodies is critical to the effective delivery of the equality mandate: to ensure that Equality Bodies are enabled to contribute towards the realisation of the right to non-discrimination, they must be structurally and institutionally independent and free from any external influence. They must also have agency and autonomy in decision-making and the independent resources which they need to identify and pursue courses of action which they consider necessary.

A. Standard Setting

Article 3 of the Standards Directives expands upon and clarifies the measures and provisions needed to ensure the full independence of Equality Bodies. Independence has always been central to the role and functions of Equality Bodies. For example, the four existing Directives that require the designation of one or more Equality Bodies stated that such Bodies should have the competencies to: (1) provide independent assistance to victims of discrimination; (2) conduct independent surveys; and (3) publish independent reports.⁹⁰ The word “independent” is repeated three times, in respect of each of the core competencies listed. However, the four existing Directives do not expand on the meaning of independence in this context, nor on the necessary elements of such independence. In the absence of further detail, a majority of Equality Bodies in Europe have enjoyed some degree of functional independence, but this has not guaranteed their *de facto* (in practice) institutional and operational, independence.⁹¹ Yet, as the European Commission has observed, *de facto* independence is “vital” for Equality Bodies to exercise their functions.⁹²

To ensure their *de facto* independence, in its 2016 Working Paper, Equinet proposed that Equality Bodies should be established with their own legal personality and a mandate defined in law. It was also proposed that the governance structures of Equality Bodies be diverse and reflective of society, that systems of accountability be put in place to ensure independence, that there should be safeguards against direct or indirect external pressure, and that Equality Bodies should exercise agency and autonomy in the “management and deployment of staff” and resources.⁹³

The European Commission Recommendation focused on how the organisation and administrative structure of Equality Bodies, as well as their resource allocation and leadership appointment procedures, can impact their

⁹⁰ See, the Race Equality Directive (2000/43/EC), Article 13; the Gender Recast Directive, Article 20; the Gender Goods and Services Directive (2004/113/EC), Article 12; and the Gender Self-Employment Directive (2010/41/EU), Article 11.

⁹¹ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, section 3.1, p. 16.

⁹² *Ibid.*, p. 18.

⁹³ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, pp. 5-6.

independence.⁹⁴ It also provided that the staff of Equality Bodies, including those in leadership or governance positions, should be prevented from engaging in any conflicting or incompatible actions.⁹⁵ The ECRI GPR No. 2r takes a similar approach, providing that Equality Bodies “should function without any interference [and] be fully independent at institutional and operational level”.⁹⁶

In 2018, the European Equality Law Network identified issues of independence in respect of legal status, accountability and appointments. Particular concern was expressed regarding the leadership of Equality Bodies, which it stated was “central to their independence”.⁹⁷ Issues with leadership related principally to the procedures established for appointments, especially in cases where the Government or specific ministers play a prominent role in the appointment process, or where a transparent, competency-based appointment process was absent.⁹⁸ Respondents to a public consultation by the European Commission in 2022 identified a number of criteria that are essential to guarantee the independence of Equality Bodies, including: “an independent legal personality; the ability to recruit and manage staff; limited possibilities to remove the body’s leadership; and a transparent selection procedure of its leadership”.⁹⁹

In 2023, Equinet published a set of self-assessment indicators to measure the independence of Equality Bodies. Indicators were elaborated in four key areas: legal framework; independence in the carrying out of functions; budget and resources; and leadership positions.¹⁰⁰ These indicators can provide detailed guidance – drawn from the experience of Equality Bodies themselves – on what is required to guarantee independence in practice, including, for example, that there should be legal guarantees of independence in the performance of functions, that the Equality Body has the ability to carry out its functions without undue interference, and that the Equality Body has the ability to manage and decide on the management of financial and human resources.¹⁰¹

B. Essential Elements

Take all necessary measures

The Standards Directives require States to “take measures” to guarantee the independence of Equality Bodies.¹⁰² The use of the word “measures” is instructive. It clarifies that the standards established by Article 3 are not aspirational. Rather, Article 3 establishes a positive obligation which requires proactive measures and actions on the part of the State to ensure that the conditions of independence are fulfilled. Independence, in this sense, is contextual. Measures must “contribute” towards independence, but no single measure will suffice, and what is needed to guarantee independence in practice may vary from State to State. The Directives also make clear that independence cannot be measured in purely functional terms, linked to

⁹⁴ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.2.1(1).

⁹⁵ *Ibid.*, para. 1.2.1(2).

⁹⁶ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 22.

⁹⁷ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 11.

⁹⁸ *Ibid.*

⁹⁹ European Commission Directorate-General Justice and Consumers, *Binding standards for Equality Bodies: Factual summary report - Open Public Consultation*, 2022, section 4.

¹⁰⁰ Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, pp. 18-28.

¹⁰¹ *Ibid.*, Indicators 1.3, 2.1 and 3.1.

¹⁰² Directives 2024/1499 and 2024/1500, Article 3(1).

specific outputs.¹⁰³ For Equality Bodies to carry out their mandate and perform their tasks independently, institutional safeguards must be put in place.¹⁰⁴

Protection against external influence

To guarantee their independence, Article 3(1) of the Directives requires States to take measures to ensure that Equality Bodies are “free from external influence”. These Bodies must not “seek or take instructions from the government or from any other public or private entity while performing their tasks and exercising their competencies”.¹⁰⁵ Although the term “external influence” is not further elaborated in the Directives, ECRI has provided relevant examples. Threats and intimidation directed towards the institution and its staff, for instance, would meet the definition. Similarly, pressure exerted on Equality Bodies by the executive or legislature through budget cuts and attempts (actual or threatened) to remove the Body’s “competencies and powers” would fall within its scope.¹⁰⁶ In its practice under the former Data Protection Directive (95/46/EC), the Court of Justice of the European Union drew a distinction between direct and indirect modes of influence. While the former concept would encompass, for example, direct instructions, requiring a responsible Body to reach a particular decision, indirect influence is broader in scope, covering a diverse range of acts that are “liable to have an effect” on the independence of an entrusted institution.¹⁰⁷

In practice, a wide range of safeguards are needed to protect Equality Bodies from external influence (whether direct or indirect) and ensure the proper exercise of their mandate.¹⁰⁸ As described further below, one such safeguard – recommended by ECRI – is to set out the competences, powers and resourcing of Equality Bodies in law.¹⁰⁹ Specific safeguards against interference must be established where State actors are the subject of the powers which Equality Bodies are required to exercise. Thus, for example, particular attention must be given to ensuring freedom from interference for Bodies assigned a decision-making function, who may be required, amongst other things, to decide complaints brought against State actors; and to those engaging in litigation where State actors are the respondent.¹¹⁰ To comply with the requirements of the Directives, States are also required to abolish rules, or ameliorate existing requirements for Equality Bodies that are not conducive to independence. This would include, for example, measures which prevent

¹⁰³ See the discussion at the outset of this Chapter.

¹⁰⁴ See the detailed explanation of the proposal for Article 3. 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, COM/2022/688 final, 2022/0400 (COD), p. 16.

¹⁰⁵ Directives 2024/1499 and 2024/1500, Article 3(1).

¹⁰⁶ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 14.

¹⁰⁷ In this way, direct influence is closely tied to the concept of functional independence (the ability of an Equality Body to use its powers and discharge its functions independently). To address the risk of indirect influence, safeguards must be established to protect the institutional independence of Equality Bodies. See further, Court of Justice of the European Union, *Commission v Austria*, Case C-614/10, 2012, paras. 41-44. See also, European Union Agency for Fundamental Rights, *GDPR in Practice: Experiences of Data Protection Authorities*, 2024, Section 1.2, pp. 29-33.

¹⁰⁸ Indicators developed by Equinet identify a range of measures that may contribute towards independence and safeguard Equality Bodies against external interference in the delivery of their work. See further, Equinet, *Equinet, Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, pp. 18-28.

¹⁰⁹ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 14.

¹¹⁰ *Ibid.*, explanatory memorandum, para. 11.

Equality Bodies from making statements or publishing reports, without the prior approval or notification of government or other external actors.¹¹¹

Institutional structure

In the original proposal for what would become Directive 2024/1500, recital 16 specified that “equality bodies should not be set up as part of a ministry or body taking instructions directly from the government”.¹¹² This proposal mirrored the 2018 European Commission Recommendation which had expressed concern that establishing an Equality Body “as part of a ministry” could impede its independence.¹¹³ The ECRI GPR No. 2r is more explicit, stating simply that Equality Bodies should “be separate legal entities placed outside the executive and legislature” operating “without any interference from the State”.¹¹⁴ In the adopted text, the strength of the original recital is diluted. Rather than an outright proscription, the recitals state that Equality Bodies “may be part of a ministry or another organisational entity”.¹¹⁵ However, this condition is qualified. States must ensure that “the necessary safeguards are in place” to ensure Equality Bodies are able to perform their tasks independent from “political, financial, religious or any other influence”. The same recital proceeds to lay out a series of non-exhaustive conditions necessary to guarantee independence in practice.¹¹⁶

Accordingly, it is clear that while States are not precluded from establishing Equality Bodies within a ministry, if they do so they must ensure that all of the minimum standards of independence are observed. Due to the increased risks that such an arrangement may pose for the independence of an Equality Body, a higher threshold regarding the guarantees set up to ensure its full independence may be required to avoid the risk (or appearance) of any direct or indirect influence.¹¹⁷ In this context it is particularly important that the competences, powers and rules on the resourcing of Equality Bodies are set out in law. The same applies to rules relating to the appointment and tenure of the staff of Equality Bodies holding decision-making or managerial positions.¹¹⁸ In transposing the Directives, Article 24(1) requires Member States to “bring into force the laws, regulations and administrative provisions” that are necessary to ensure compliance with Article 3. A combination of measures is required. In those countries where Equality Bodies are established within a ministry, these measures are likely to come under increased scrutiny.

Agency and autonomy and resource independence

Article 3 of the Directives reinforce the important role of agency and autonomy in decision-making to the independence of Equality Bodies. Such Bodies should be enabled to actively “manage their own financial and

¹¹¹ See Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, p. 23. This position is made clear on the face of Article 3, which specifies that Equality Bodies must not be required to “seek or take instructions from the government or from any other public or private entity”.

¹¹² 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, COM/2022/688 final, 2022/0400 (COD), recital 16.

¹¹³ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, recital 22.

¹¹⁴ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 2.

¹¹⁵ Directive 2024/1499, recital 18; Directive 2024/1500, recital 17.

¹¹⁶ *Ibid.*

¹¹⁷ As noted at the outset of this section, independence under the Directives is contextual. The specific measures needed to safeguard independence may vary from State to State.

¹¹⁸ This point is discussed further below.

other resources and to adopt their own decisions with regard to their internal structure, accountability, staffing and organisational matters”.¹¹⁹ This provision must be read “in line with the objectives” of the Directives. This phrase links provisions on the independence of Equality Bodies – specifically their decision-making and resource management – back to the Directives’ purpose of strengthening the application of the principle of equal treatment. This explicit link back to the overarching purpose of the Directives indicates a clear intention that these dimensions of independence must be interpreted such as to ensure that Equality Bodies full and effective independence is guaranteed. The ability of Equality Bodies to decide upon their own internal modes of operation is a central tenet of independence. To effectively deliver on their mandate, Equality Bodies must be enabled to make decisions on how to use available resources, in service of their overarching strategic objectives. Independence in this area is closely linked to resource allocation and effectiveness. Where, for example, funding is made contingent on an Equality Body reaching a particular decision, or where an Equality Body is prevented from appointing suitably qualified staff, they will be unable to deliver on their mandate.

Appointments and tenure

Under Article 3(2) of the Directives, States are required to “provide for transparent procedures concerning the selection, appointment, revocation and potential conflicts of interest of the staff of equality bodies holding decision-making or managerial positions, and where applicable members of the governing board, in order to guarantee their competence and independence”. The Directives do not provide further detail in this area, and a diversity of approaches has emerged in the practice of Member States.¹²⁰ However, in line with the broader requirements of Article 3(1), States are required to adopt specific measures to ensure that the conditions of Article 3(2) are met.

According to the ECRI GPR No. 2r, a “primary safeguard for securing independent leadership of equality bodies” is to select candidates following a transparent and “competency-based process” with “safeguards against any decisive influence by the executive in any stage of the selection”.¹²¹ This includes the initial identification, pre-selection and nomination of candidates, through to final decisions on appointments.¹²² One way in which transparency can be ensured is through “publishing vacancy notices” as part of an open selection procedure.¹²³ The ECRI GPR No. 2r, the Paris Principles, and guidance of the Committee on the Rights of Persons with Disabilities each stress the importance of participatory procedures, which should ensure the active engagement of stakeholders working with and on behalf of disadvantaged communities.¹²⁴

¹¹⁹ Directives 2024/1499 and 2024/1500, Article 3(1).

¹²⁰ Some, for example, do not possess board members or management committees. The term “where applicable” should be viewed in this context. Article 3(2) applies to all persons exercising decision-making or senior leadership positions within equality bodies. For further discussion on independence and leadership rules, see European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, pp. 17-18.

¹²¹ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 95.

¹²² *Ibid.*, explanatory memorandum, para. 95.

¹²³ Directive 2024/1499, recital 18; Directive 2024/1500, recital 17.

¹²⁴ Where equality bodies are established as part of a multi-mandate human rights institution or designated as an independent mechanism under Article 33 of the Convention on the Rights of Persons with Disabilities, regard should be had to the Paris Principles and the guidance of the CRPD Committee. See further, European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at*

Ensuring that selection processes are participatory can mitigate the appearance of undue influence exercised by the executive or legislative branch, and inspire confidence in the selection process.

The Directives foresee the possibility of both permanent and temporary appointments, although there is no discussion of renewable mandates.¹²⁵ Renewable and temporary appointments can each present challenges for independence.¹²⁶ When senior staff are appointed on a short-term basis, they may not have sufficient time to implement their mandate, impairing the proper functioning of the Equality Body. When terms are made renewable, there is risk that appointees may be pressured into acting in a certain way to secure the extension of their mandate. Different measures can help mitigate these risks. The Paris

Principles, for example, suggest that appointments should be set out in “an official act” establishing the duration of the mandate.¹²⁷ As described further below, public accountability measures can also help ensure that “exchanges between the executive, the legislature and equality bodies [are] open and transparent”.¹²⁸ In rare cases, there may be reasons why persons in leadership positions within Equality Bodies can be “dismissed or excluded from the selection process that could lead to a renewal”.¹²⁹ These circumstances are expected to be exceptional and should be clearly established in law.¹³⁰

The self-assessment indicators developed by Equinet on the basis of extensive consultation with Equality Bodies across Europe elaborate different measures that may be required to facilitate independence in the appointment and tenure of Equality Body leadership. Mirroring the Directives, they suggest that the “selection and appointment of persons holding leadership positions” should be “transparent, competency-based and follow participatory procedures taking into account gender balance and diversity in society”.¹³¹ Safeguards should be put in place according “functional immunity” to those in leadership positions, accompanied by protections “against arbitrary dismissal or arbitrary non-renewal”.¹³² Specific rules should be adopted to “avoid extended vacancies between two leadership mandates” and should include “transitional provisions ensuring the regular functioning, independence and effectiveness of the Equality Body” in the event of vacancies.¹³³ As an additional guarantor of independence, it is recommended that “the remuneration

National Level, 2017, explanatory memorandum, para. 96; *Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights* (the Paris Principles), UN Doc. A/RES/48/134, 1993, Part B, para. 1; Committee on the Rights of Persons with Disabilities, *Guidelines on independent monitoring frameworks and their participation in the work of the Committee on the Rights of Persons with Disabilities*, UN Doc. CRPD/C/1/Rev.2, Annex, para. 15.

¹²⁵ Directive 2024/1499, recital 18; Directive 2024/1500, recital 17.

¹²⁶ The European Commission against Racism and Intolerance has recommended the appointment of “at least one full-time or part-time leader concentrating on managing and directing the equality body, who is paid a competitive salary. The length of their mandate should allow time for them to make an impact and secure their independence”. See European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 99.

¹²⁷ *Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights* (the Paris Principles), UN Doc. A/RES/48/134, 1993, Part B, para. 3.

¹²⁸ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 15.

¹²⁹ *Ibid.*, explanatory memorandum, para. 96.

¹³⁰ *Ibid.*

¹³¹ Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, p. 26.

¹³² *Ibid.*, p. 26.

¹³³ *Ibid.*, pp. 27-28.

for leadership positions within the Equality Body is suitable and is comparable with remuneration provided for leadership positions in similar public bodies in the country”.¹³⁴

Conflicts of Interest

Article 3 requires States to establish transparent procedures regarding potential conflicts of interest. As with other aspects of Article 3, the Directives do not define the term “conflict of interest”. The European Commission Recommendation does, however, provide further detail, observing that States should “ensure that the staff of equality bodies, including persons holding leadership positions and board members, are prevented from engaging in any action incompatible with their duties and do not, during their terms of office, engage in any conflicting activity whether gainful or not”.¹³⁵ As part of the measures States should take, the ECRI GPR No. 2r states that the “law should set out any activities and affiliations which are incompatible with holding leadership positions”.¹³⁶ In practice, in some Member States, a distinction is made between the incompatibility of holding certain types of role (that are regulated by law, encompassing for instance, links to political parties or lobby organisations) and conflicts of interest that arise in an individual case. Both dimensions should be taken into account when assessing the standards provided by the Directives.

Accountability

The only explicit reference to accountability within the Directives can be found in Article 3(1), which requires that Equality Bodies “shall” be enabled to establish their own internal accountability measures, within “the applicable legal framework”.¹³⁷ This reflects a change from the Commission’s original proposal, which placed an obligation on States to “ensure that equality bodies are independent and free from external influence in performing their tasks and exercising their competences, in particular as regards their legal structure [and] accountability”. Through the amendments, accountability is framed principally as an internal organisational matter. This point is reinforced through the inclusion of Article 17, which itself serves as an important accountability measure, detailing the procedure that Equality Bodies must follow to produce an annual activity report, including information on the annual budget, staff, and financial reporting. The term “within the applicable legal framework” is not further elaborated. However, it may be understood as referring to broader accountability rules established for public bodies to ensure good governance (such as presenting the annual report in the Parliament or submitting accounts to audit). In the explanatory memorandum to its Recommendation, ECRI observed that subjecting Equality Bodies “to public service law and financial

¹³⁴ Similar safeguards are established in several Member States for members of the judiciary, which – as described at the outset of this Chapter – may be of particular relevance to Equality Bodies that hold a decision-making function. Whilst the new Directives do not directly address this topic, threats to reduce the remuneration of senior Equality Body staff may constitute a form of external influence, prohibited under Article 3(1). In this connection, Principle 11 of the Basic Principles on the Independence of the Judiciary provides that “adequate remuneration, conditions of service, [and] pensions” should be “secured by law”.

¹³⁵ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, Section 1.2.1, para. 2.

¹³⁶ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 25.

¹³⁷ See 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, COM/2022/688 final, 2022/0400 (COD), Article 3(1).


accountability rules” is consistent with the principle of independence.¹³⁸ However, these must “not be misused to hinder the activities of the equality body”.¹³⁹

Internal structure and multi-mandate bodies


Article 3(3) requires Member States to ensure that Equality Bodies “establish an internal structure that guarantees the independent, and where appropriate impartial, exercise of their competences”.¹⁴⁰ Article 3(4) draws attention to the particular situation of Equality Bodies operating in multi-mandate institutions. These provisions are concerned primarily with the effective exercise of the equality mandate. To the extent that they might raise independence (and impartiality) concerns they are discussed in Chapters II.2 and V.2.6 of the present Digest.

C. Key Principles

Article 3 imposes a positive obligation on States to take measures to ensure that Equality Bodies are independent. Independence is a minimum standard. Whilst the kind of mechanisms needed to guarantee independence may vary from country to country, States must adopt the measures necessary to guarantee the independence of Equality Bodies in both law and practice.

 **Institutional independence:** For Equality Bodies to discharge their mandate and perform their tasks independently, institutional safeguards must be put in place. In particular, the law should regulate:

- **Legal status and structure:** States must establish clear rules regarding the composition, powers, and resourcing of Equality Bodies. In order to guarantee and safeguard their independence, these rules should be set out in legislation.
- **Appointments and tenure:** Appointments to leadership should be based on transparent, competency-based and participatory procedures. The tenure of appointments must be protected, to safeguard against interference: the law should specify the duration of tenure and protect against arbitrary dismissal, non-renewal and reductions to remuneration.
- **Conflicts of interest:** States must ensure that persons appointed to leadership positions do not engage in any activities or hold affiliations that are incompatible with their duties.

 **Freedom from external influence:** States must adopt measures to ensure that Equality Bodies are fully independent and free to conduct their work without direct or indirect interference by the executive or legislative branch or any other State or non-State actor.

¹³⁸ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 106. See also, Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, p. 20.

¹³⁹ *Ibid.*, ECRI, explanatory memorandum, para. 106.

¹⁴⁰ Directive 2024/1499, Article 3(3) and recital 19; Directive 2024/1500, Article 3(3) and recital 18. The original proposal identifies some measures that can help address these concerns, for instance, by “adopting an appropriate structure for the body, where these powers and/or mandates are exercised by different dedicated departments or staff members (...) putting structural ‘firewalls’ in place”. See 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 3, p. 17.

Resource independence and autonomy: Equality Bodies must be able to act with agency and autonomy in all organisational matters and be enabled to decide upon the course or courses of action which they feel are needed to effectively deliver their mandate and advance the realisation of the principle of equal treatment. Equality Bodies must be enabled to make decisions relating to their own structure, staffing and resourcing and on internal accountability.

Accountability: Consistent with the above principles, Equality Bodies must be able to make decisions and discharge their functions without the prior approval of any political actor. Whereas Equality Bodies may be subject to generally applicable financial accountability rules and public service regulations without their independence being compromised, such rules must not be applied selectively or otherwise abused.



IV. Resources



Article 4 of the Directives requires States to ensure that any Equality Body has the “resources necessary to perform all its tasks and to exercise all its competences effectively”. This is an essential provision, which lies at the heart of the Directives’ purpose of ensuring that Equality Bodies can operate effectively to “strengthen the application of the principle of equal treatment”.¹⁴¹ For Equality Bodies to be effective, they need the funding, staff, premises and infrastructure required to promote and prevent discrimination, support victims, and handle complaints. Some of the functions which Equality Bodies may be required to fulfil to discharge these powers and competencies – litigation for example – can bring significant resource requirements. Sufficient resources are a precondition of effectiveness.

Indeed, resourcing is central to both of the purposes – effectiveness and independence – of the Directives, as set out in Article 1. Resources are essential if Equality Bodies are to deliver their mandate and purpose: an Equality Body which lacks resources cannot be effective, irrespective of the range of functions, powers and competencies ascribed to it. Equally, in the absence of sufficient resources, or where the availability of resources is uncertain, unstable or outside the direct control of the Equality Body, the independence of the Body will be compromised.

A. Standard Setting

Article 4 marks an important step, establishing a clear standard in respect of resourcing of Equality Bodies which was both absent and clearly needed before the Directives on Standards were adopted. Whereas the four existing Directives established a requirement on States to “designate a body or bodies for the promotion of equal treatment”,¹⁴² they were silent on the question of resourcing.

In practice, in the absence of clear requirements, the level of resources available to Equality Bodies has varied significantly between States, with many Equality Bodies reporting that they lack the funding and other resources needed to discharge their functions effectively.¹⁴³ As Niall Crowley, an expert on standards for Equality Bodies, noted shortly before the Directives were adopted “[t]he most significant impediment faced by equality bodies has been inadequate resourcing”.¹⁴⁴

In its 2018 assessment of Equality Bodies, the European Equality Law Network found that “few have a level of funding that is adequate to make a real impact”, concluding that the absence of resources is “the most significant barrier to effectiveness”, with the effect that “the full potential of equality bodies can still only be

¹⁴¹ Directives 2004/113/EC and 2002/1500, Article 1(1).

¹⁴² See for example, the Gender Goods and Services Directive (2004/113/EC), Article 12.

¹⁴³ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, section 3.2.

¹⁴⁴ Crowley, N., “Standards for equality bodies – nearly done”, *Social Europe*, 2024.

imagined and has never been fully tested”.¹⁴⁵ In a public consultation conducted by the European Commission in 2022, only 35% of respondents stated that the Equality Body in their country had “sufficient resources”.¹⁴⁶ A separate study, assessing the implementation of the European Commission Recommendation on standards for Equality Bodies, found that “[m]ost equality bodies point to inadequate resources (e.g. lack of funding, insufficient staff or lack of appropriate qualifications) as the main factor limiting their ability to” deliver their functions effectively.¹⁴⁷

In its 2016 Working Paper, Equinet proposed standards in respect of resources as a necessary precondition for effectiveness. The Working Paper called for three separate but related standards on resourcing, requiring: (1) financial resources adequate to implement all functions and powers; (2) staff resources adequate to fully implement the mandate of the body; and (3) physical resources, in particular premises, suitable to implement its mandate.¹⁴⁸

The ECRI GPR No. 2r provides that Equality Bodies “should be provided with sufficient staff and funds to implement all their functions and competences with a real impact”.¹⁴⁹ The explanatory memorandum to the Recommendation provides that “[t]he adequacy of funding and staffing (...) should be calculated on the basis of objective indicators” and lists some potential indicators, including: population size; number and nature of reports of discrimination; “the range, capacity and contribution of other bodies working on equality”; and the costs for the Equality Body in implementing its functions “to a scale and quality necessary to make an impact”.¹⁵⁰ The European Commission Recommendation also provides detailed standards, listing human, technical and financial resources, and premises and infrastructure specifically.¹⁵¹

Equinet’s self-assessment indicators identify some essential measures of effective resourcing, put forward by Equality Bodies themselves. For instance, the report suggests that the budget for Equality Bodies should be included as a separate line item in the State budget, which is approved by the Parliament on an annual or multi-annual basis, and that Equality Bodies should be involved in the development of the budget. More broadly, the report suggests that Equality Bodies should receive “adequate human, technical and financial resources to fulfil its mandate effectively within reasonable time”.¹⁵² Different measures will be needed to ensure that this condition is fulfilled.

B. Essential Elements

Resources necessary to perform all tasks and exercise all competences effectively

Central to the appropriate interpretation of Article 4 is the question of what constitutes sufficient resources for an Equality Body. The Article provides clear direction in this respect, through an explicit link to

¹⁴⁵ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, pp. 11-12.

¹⁴⁶ European Commission Directorate-General Justice and Consumers, *Binding standards for Equality Bodies: Factual summary report - Open Public Consultation*, 2022, section 4.

¹⁴⁷ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, section 3.2.

¹⁴⁸ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 6.

¹⁴⁹ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para 28.

¹⁵⁰ *Ibid.*, explanatory memorandum, para. 104.

¹⁵¹ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, paras 1.2.2 and 1.2.3.

¹⁵² Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, Resources, Indicators 1.1, 1.2, 1.3 and 2.1.

effectiveness: Equality Bodies must be provided with the resources which they need to deliver their mandate, performing all tasks and exercising all competences effectively. This phrase – “resources necessary to perform all tasks and exercise all competences effectively” – is the central principle informing the meaning of Article 4, establishing the standard for determining the appropriate allocation of resources, and providing the lens through which the rest of the Article should be viewed.

The wording in the Article is reinforced by the recitals, which provide that States should ensure that Equality Bodies have the resources necessary “to carry out each of their tasks effectively, within a reasonable time or within the deadlines established by national law”.¹⁵³ The receipt of “such sufficient resources is key to the effective functioning of equality bodies and the fulfilment of their tasks”.¹⁵⁴

The recitals reflect the language of the European Commission Recommendation which notes that: “[r]esources can only be considered adequate if they allow equality bodies to carry out each of their equality functions effectively, within reasonable time”.¹⁵⁵ Positively, they also appear to go further than the ECRI GPR No. 2r, which provide for “sufficient staff and funds to implement all [Equality Body] functions and competences”.¹⁵⁶ As noted, the explanatory memorandum to the ECRI GPR No. 2r sets out that the adequacy of Equality Bodies’ resources should be assessed with reference to “objective indicators”, providing a non-exhaustive list of such indicators including “the costs involved for the equality body in implementing its functions and competences to a scale and quality necessary to make an impact”.¹⁵⁷ This standard – resources required to make an impact – is central to the requirement of effectiveness, which is included in the Directives.¹⁵⁸

Establishing what resources are necessary for any given Equality Body to work effectively requires the involvement of that Body in the resource allocation process. Equality Bodies themselves are the entity best placed to determine what resources are necessary to “carry out each of their tasks effectively, within a reasonable time” based on their assessment of the problems which they are working to address and the activities and measures which they need to undertake. In its 2016 Working Paper, Equinet recommended that “[t]he equality body should be enabled to make a proposal for the resources required to the relevant entity”.¹⁵⁹ Similarly, in the indicators for self-assessment, Equinet’s membership recommended that “[t]he Institution directly negotiates its budget or at least is consulted prior to the proposal and approval of the budget”.¹⁶⁰ While this language was not included expressly in the Directives, it is the only logical interpretation of the principle in Article 4: it is not possible to establish what resources any Equality Body will need without the direct involvement of the Body itself.

¹⁵³ Directive 2024/1499, recital 21; Directive 2024/1500, recital 20.

¹⁵⁴ *Ibid.*

¹⁵⁵ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para 1.2.2.

¹⁵⁶ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para 28.

¹⁵⁷ *Ibid.*, explanatory memorandum, para. 104.

¹⁵⁸ Directives 2024/1499 and 2024/1500, Articles 1(1) and 4. See also, the discussion in Chapter I of this Digest.

¹⁵⁹ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 6.


¹⁶⁰ Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, Resources, Indicator 1.3.

In accordance with national budgetary processes

The phrase “in accordance with national budgetary processes” was added to the Directives as part of the negotiation process.¹⁶¹ The phrase is not defined or explained in the recitals, is not used in the Commission Recommendation or original proposal for the Directives, and is not a term which appears in other European Union legislation. When read in the context of the Directives as a whole, it appears that this phrase is intended to recognise and allow for variation between States in the way in which national budgets are drawn up, while also recognising the need for safeguards to ensure independence and effectiveness. While the Directives recognise States’ margin of appreciation in the way in which budgets are developed, there must be a clear, transparent, consultative and accountable process, to ensure that Equality Bodies’ independence is not compromised.¹⁶² For the reasons outlined above, it is essential that the national budgetary process provides for consultation and engagement with Equality Bodies in the decision-making process. The process must be transparent, stable, be “planned on a multi-annual basis and allow equality bodies to cover costs that can be difficult to anticipate”.¹⁶³ It is also essential that in providing Equality Bodies with the resources they need, the budget or resources of other institutions with a role to play in upholding the equality and non-discrimination framework are not diminished.¹⁶⁴

Human, technical and financial resources

The inclusion of the words “human, technical and financial resources” in Article 4 reflects the position advocated for by Equinet and that adopted by the European Commission in its Recommendation, regarding the different dimensions of resourcing. As with other elements of the Article, the recitals to the Directives provide important guidance as to the correct interpretation of this phrase.

 **Human:** The recitals state that Equality Bodies should have “qualified staff (...) to carry out each of their tasks effectively”.¹⁶⁵ The requirement of effectiveness should be read as informing the interpretation of “qualified staff” here, implying requirements in respect of both the number of staff and their qualifications. This would reflect the more detailed language of the European Commission Recommendation, which states that Equality Bodies should have a staff which is “sufficiently numerous and adequately qualified in terms of skills, knowledge and experience, to fulfil adequately and effectively each of the equality bodies’ functions”.¹⁶⁶ Equinet’s self-assessment indicators provide important guidance on what this means in practice. The relevant indicators state that human resources (at least) implies that Equality Bodies should have sufficient resources to “hire enough people with various and complementing set of skills to perform all its duties and functions effectively and efficiently” and “offer competitive salaries and working conditions”.¹⁶⁷

¹⁶¹ Contrast with the language included in Article 4 of the original 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, COM/2022/688 final, 2022/0400 (COD).

¹⁶² On independence, see further Chapter III of this Digest.

¹⁶³ Directive 2024/1499, recital 22; Directive 2024/1500, recital 21.

¹⁶⁴ Directive 2024/1499 and 2024/1500, Articles 2(2) and 20(2).

¹⁶⁵ Directive 2024/1499, recital 21; Directive 2024/1500, recital 20.

¹⁶⁶ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para 1.2.2.

¹⁶⁷ Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, Resources, Indicators 2.2.1.1 and 2.2.1.2.



Technical: The term “technical resources” is a novel addition in the Directives: in its working paper, Equinet made no reference to technical resources, and the ECRI GPR No. 2r discusses resources only in respect of human and financial resources, together with premises and infrastructure. Unlike human and financial resources, the recitals do not elaborate on necessary technical resources,¹⁶⁸ although they do provide that States should ensure that Equality Bodies have “appropriate premises and infrastructure”.¹⁶⁹ Given the ambiguous nature of the term, it appears logical to interpret it as the necessary third “limb” of resourcing – that is, the technical resources which Equality Bodies require beyond their staff and their funding to deliver their functions. In the Equinet indicators for self-assessment, this is indeed how Equality Bodies appear to understand the term, requiring at least that Equality Bodies should be provided with premises (either for free or with a dedicated budget); infrastructure; and with resources to meet their IT needs.¹⁷⁰



Financial: The recitals provide the most detail on the interpretation of the term “financial resources”. As noted, they state that resources should be allocated through national budgetary processes, but provide clear guardrails for this allocation, stating that financial resources should “remain stable, be planned on a multi-annual basis and allow equality bodies to cover costs that can be difficult to anticipate”, for example including “increases in complaints, litigation costs and the use of automated systems”.¹⁷¹ As with the other elements of Article 4, the determination of the amount of financial resources should be informed by what is required for the effective fulfilment of functions and competencies, with Equality Bodies themselves consulted on their needs. The Equinet self-assessment indicators provide useful guidance in this area, exploring financial resourcing as it relates to the exercise of the equality mandate, the functions of Equality Bodies, the stability of – and increases in – the budget, and budgetary independence and agency.¹⁷²

Including where the Equality Bodies are part of multi-mandate bodies

Article 4 also has a clear requirement that States must ensure that Equality Bodies have the funding needed to perform their tasks and exercise their competencies where they are part of multi-mandate institutions. While respecting the agency and independence of each Equality Body, this is aimed at mitigating the risk that in institutions where the equality and human rights mandates are combined, the equality mandate is under-resourced, and is the logical application of the principle that Equality Bodies should have the resources required to implement all of their functions.

As set out in Chapter II, where the equality mandate is exercised as part of a multi-mandate institution, States must ensure that the body in question is able to exercise the whole mandate, with no diminution from the standards set out in the Directives. Thus, the allocation of budget to the part of a multi-mandate Body fulfilling the equality function must – as in single mandate Bodies – be stable, transparent and consultative, with the Body itself consulted on the resources required to effectively fulfil the mandate.

¹⁶⁸ However, they do note that “appropriate human and technical resources” should “enable equality bodies to use automated systems for their work on the one hand and to assess such systems as regards their compliance with non-discrimination rules on the other”. See Directive 2024/1499, recital 22; Directive 2024/1500, recital 21.

¹⁶⁹ Directive 2024/1499, recital 21; Directive 2024/1500, recital 20.

¹⁷⁰ Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, Resources, Indicators 2.2.2.1, 2.2.2.2, 2.2.2.3 and 2.2.2.4.

¹⁷¹ Directive 2024/1499, recitals 21-22 and Directive 2024/1500, recital 20-21.

¹⁷² Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, Resources, Indicators 2.2.3, 3.1, 3.3, 3.4, 4, and 5. See also, Independence, indicator 3 on budget and resources.



C. Key Principles

Required for effectiveness: States must provide Equality Bodies with the resources they need to be effective. This is a higher standard than adequacy or sufficiency. It requires states to consider the allocation of budget and other resources through the lens of outcome and impact. Equality Bodies must be meaningfully consulted to determine the resources which they require to be effective, based on their assessment of need.

Responsiveness to need: The determination of the level and nature of resources necessary for an Equality Body to fulfil its tasks, functions and competencies cannot be undertaken without the involvement of the Equality Body itself. States must establish a procedure through which an Equality Body can prepare the budget and request the human, technical and financial resources it deems necessary to ensure its effectiveness.

Full range of resources: Taken together, the requirement to ensure that Equality Bodies have the “human, technical and financial resources necessary” establishes an obligation to provide the full range of resources which the Body deems necessary to be effective. This includes at a minimum – but is not limited to – a staff cohort with the requisite numbers, competences and skills; a budget which enables the implementation of all functions and powers with real impact; and the premises, infrastructure, information technology and other technical resources it requires.

Stability, certainty and adaptability: In order that Equality Bodies can plan and operate effectively, the allocation of resources must be planned in advance and should be stable over time. The process of allocating resources must reflect and allow for uncertainty, providing Equality Bodies with sufficient resources to adapt in response to new challenges or demands.





V. Powers

As set out in Chapter I, ensuring that Equality Bodies are able to “strengthen the application of the principle of equal treatment” requires States to ensure that these Bodies are fully empowered. Equality Bodies must be fully independent and adequately resourced: this ensures that Equality Bodies have the agency and autonomy they need to determine and pursue the courses of action which they consider necessary to prevent and address discrimination. Independence and resources are not sufficient, however: full empowerment also necessitates that Equality Bodies are equipped with the full range of functions and powers which they need to fulfil their mandate. As Equinet set out in its 2016 Working Paper: “Equality bodies must [be able] to deploy all their functions and powers, within their legal mandate, to a scale and in a manner that can achieve an impact and realise their full potential”.¹⁷³

The Equality Directives which first provided for the designation of Equality Bodies spoke not in terms of powers for these Bodies, but rather in terms of “competencies”. Article 13 of the Race Equality Directive, for example, set out that Equality Bodies must have at least three core competencies: (i) providing independent assistance to victims of discrimination in pursuing complaints; (ii) conducting independent surveys; and (iii) publishing independent reports and making recommendations on discrimination issues. However, the list was clearly indicative and illustrative,¹⁷⁴ and in practice, many Equality Bodies were equipped with a wider range of powers and functions.¹⁷⁵

The Directives on Standards set out, for the first time, clear standards in respect of the full range of powers which Equality Bodies should be equipped with and how these powers should be deployed. Articles 5 to 10 of the Directives establish standards in respect of the main powers which Equality Bodies should have and how they should be empowered to use them. The powers discussed in these Articles are diverse, ranging from powers of equality mainstreaming to powers to initiate litigation. They include powers focused on both preventing discrimination and promoting equality and addressing discrimination where it occurs. These Articles are supplemented by elements of Articles 15, 16 and 17 which establish additional functions in the areas of consultation, data collection and public reporting which have significant potential as preventative and promotional powers.

¹⁷³ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 4.

¹⁷⁴ Article 13 of the Directive provided that States should “ensure that the competencies (...) include”. See the Race Equality Directive (2000/43/EC), Article 13(2). See also the Gender Recast Directive (2006/54/EC), Article 20(2); the Gender Goods and Services Directive (2004/113/EC), Article 12(2); and the Gender Self-Employment Directive (2010/41/EU), Article 11(2).

¹⁷⁵ For a discussion of the powers and functions exercised by Equality Bodies in practice, see European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018.

Remedial and proactive powers




In order to fulfil their mandate, achieve impact and realise their potential, Equality Bodies must have – and be able to use – powers to both address and respond to discrimination (remedial powers) and to proactively prevent discrimination and promote equality (proactive powers).

In practice, States have taken divergent approaches to the establishment of Equality Bodies, in particular in respect of the powers which they have been equipped with. Equality Bodies in different States have fulfilled the remedial function in a variety of different ways. In some States, Equality Bodies have been equipped with the powers to take decisions on complaints from victims of discrimination, while in others, these powers have been reserved for courts or tribunals, with Equality Bodies acting in support of victims through advice, support and engaging in litigation. In some cases, Equality Bodies have powers to both receive and resolve complaints and to engage in litigation. Standards for Equality Bodies have been developed with this diversity of approaches in view. In the ECRI GPR No. 2r, for example, Equality Bodies' powers are discussed in respect of three "functions", with the third – decision-making function – presented as optional:

ECRI GENERAL POLICY RECOMMENDATION NO. 2 (2017)



Equality Bodies should be assigned:

-  The function to promote equality and prevent discrimination (promotion and prevention function) (...)
-  The function to support people exposed to discrimination and intolerance and to pursue litigation on their behalf (support and litigation function) (...) and may also be assigned:
-  The function to take decisions on complaints (decision-making function) (...) ¹⁷⁶

In this publication, the powers of Equality Bodies are grouped into two: (1) those focused on the promotion of equality and prevention of discrimination and (2) those focused on access to justice and remedy. In this second section, the roles of Equality Bodies in respect of both the support and litigation function and what ECRI has referred to as the "decision-making function" are considered together. This approach involves an examination of two sets of functions which have, in general, been considered separately. This approach has been adopted for three reasons.

First, this approach reflects the fact that while States must ensure that persons exposed to discrimination have effective access to justice, remedy and sanction, they have a margin of appreciation in determining how this is achieved, including in respect of the role which Equality Bodies play. International law requires that persons exposed to discrimination can secure effective remedy, including recognition, reparation, and sanction;¹⁷⁷ this in turn requires that they can access justice and that rules of evidence are adapted.¹⁷⁸ Equality Bodies can contribute to this in a diversity of ways, ranging from the adjudication of complaints

¹⁷⁶ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para 10.

¹⁷⁷ See UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, Part 2.II.

¹⁷⁸ *Ibid.*, Part 2.III.

through to litigation with and on behalf of victims. The Directives on Standards recognise this diversity of approaches. Examining the relevant provisions holistically reflects this.

Second, this approach reflects the structure of the Directives. Article 6 sets out the role of Equality Bodies in receiving complaints and providing assistance, information and advice to “persons who consider that they have experienced discrimination”. The following Articles (7 – 10) set out different roles and powers an Equality Body may exercise in respect of a complaint.

Finally, this approach enables a discussion of the internal structure of Equality Bodies. Where Equality Bodies have a role in making decisions on cases, they must act with due impartiality. Where the same Bodies are simultaneously made responsible for advising potential victims of discrimination (a party to a complaint), suitable structures and procedures must be put in place to avoid a potential conflict of interest. This has been achieved, for example, by setting up differentiated and unconnected departments to ensure a separation of functions. Article 3(3) of the Directives requires Member States to “ensure that equality bodies establish an internal structure that guarantees the independent, and where appropriate impartial, exercise of their competences”.

Structure of this Chapter

This Chapter is structured to reflect the issues discussed above. In Section 1, **preventative and promotional powers** are considered. This includes powers connected with public awareness-raising (Article 5(1)) and the proactive powers of Equality Bodies to prevent discrimination and promote equality (Article 5(2)), as well as powers in respect of consultation (Article 15), data collection and use (Article 16) and public reporting (Article 17(c)).

In Section 2, those powers related to Equality Bodies’ role in ensuring **access to justice and remedy** in discrimination cases – the role of Equality Bodies in addressing discrimination where it occurs – are considered. This starts with Article 6 on providing assistance, before examining alternative dispute resolution (Article 7), inquiries and investigative powers (Article 8), powers to issue opinions and decisions (Article 9) and powers to engage in litigation (Article 10); concluding with a discussion of procedural safeguards (Article 11) and the necessary internal structures of Equality Bodies (Article 3(3)).

1 Promotion and Prevention

Article 5 of the Directives establishes obligations on States to empower Equality Bodies to promote equal treatment and to prevent discrimination. The requirement to provide Equality Bodies with these proactive, positive powers is an important new obligation on States, which has the potential to be transformative in the way in which the principle of equal treatment is pursued at the national level.


While the four existing Directives that provide for the designation of an Equality Body provide that States should establish “a body or bodies for the promotion (...) of equal treatment”,¹⁷⁹ the promotional element of the mandate is not elaborated in those Directives. In fact, those competencies that are listed – the provision of independent assistance, the conducting of independent surveys and the publication of independent


¹⁷⁹ The Race Equality Directive (2000/43/EC), Article 13; the Gender Goods and Services Directive (2004/113/EC), Article 12; the Gender Recast Directive (2006/54/EC), Article 20; and the Gender Self-Employment Directive (2010/41/EU), Article 11.

reports – correspond to analysis, monitoring and support – leaving “promotion” as the only function without an explicit corresponding competence. More broadly, the four existing Directives adopt an “essentially retrospective (...) individualised and victim-centred” approach to protection.¹⁸⁰

Article 5 of the Directives on Standards sets down explicit standards in respect of both awareness-raising and the prevention of discrimination and promotion of equal treatment, requiring States to enable Equality Bodies to move from the reactive, remedial approach to discrimination towards a proactive, preventative and promotional approach.¹⁸¹ The explanatory notes provided by the Commission underline the significance of the new powers which the Directives require States to provide to Equality Bodies: “[t]his provision now clarifies the role of equality bodies in the promotion of equal treatment and in the prevention of discrimination (...) with the goal of preventing (re)occurrences of discrimination”.¹⁸²

In transposing and applying Article 5, it is important to engage with the different powers provided. While each of the elements of Article 5 contributes to the goal of preventing discrimination, the three paragraphs impose distinct obligations on States, and equip Equality Bodies with different powers:

 Article 5(1) is focused on obligations of the State to raise public awareness of “the rights under the Directives (...) and on the existence of equality bodies and their services”. Article 5(1) requires particular attention to be paid to those exposed to discrimination in these awareness-raising efforts. Article 5(1) is supplemented by Article 5(3) which requires States and Equality Bodies to adopt appropriate means of communication to engage with different groups exposed to discrimination. However, Article 5(1) is a broader obligation: it imposes a duty on the State – not only on the Equality Body – to raise awareness of the rights to non-discrimination and equality and of the existence of Equality Bodies and their services among all sectors of society, not only those exposed to discrimination.

 Article 5(2) requires that Equality Bodies are empowered to undertake policy and practical measures to prevent discrimination and promote equality. While Articles 5(1) and (3) focus on preventing discrimination and promoting equal treatment indirectly, through public education and sensitisation, Article 5(2) envisages Equality Bodies taking a wide range of enforcement and implementation measures designed to directly prevent discrimination and promote equality.

Each of these components of Article 5 – awareness-raising and preventative and promotional measures – are examined below.

¹⁸⁰ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 5, p. 18.

¹⁸¹ Equinet and others have been calling for a shift to incorporate a preventative approach for some time. See, for example, the different contributions made in the Equinet, *Future of Equality Legislation in Europe: Synthesis Report of the Online Roundtable*, 2020, p. 3. See also Tudisco, V., and Lantschner, E., “Preventing and Reacting to Discrimination through Sanctions and Remedies”, *Equinet*, 2022.

¹⁸² 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 5, p. 18.



1.1. Awareness-raising

Article 5(1) requires States to proactively raise awareness of the rights to non-discrimination and equality and of the existence of Equality Bodies and their services. The new provision goes significantly further than the four existing Directives, which refer broadly to the promotion of equal treatment and provide that Equality Bodies should have the competencies to produce reports but provide no general power of public awareness raising.¹⁸³ Moreover, this provision establishes a duty directly on the State itself, rather creating than an obligation to empower Equality Bodies.

Article 5(1) goes beyond the standard initially advocated by Equinet – which focused on equipping Equality Bodies with powers to promote good practice, communicate with stakeholders and engage in public debate¹⁸⁴ – and establishes an obligation focused on outcomes: the raising of public awareness. In a similar way, the provision encompasses, but is broader and more substantive than, the relevant standard provided in the ECRI GPR No. 2r,¹⁸⁵ which itself went further than other existing standards.

Article 5(1) is central to the Directives' aim of strengthening “the application of the principle of equal treatment”. Lack of awareness and understanding of the right to non-discrimination, enforcement procedures and the remedies and sanctions available is a major obstacle to the enforcement of rights.¹⁸⁶ More broadly, public awareness – amongst rights-holders, duty-bearers and those responsible for implementation – is a prerequisite for the prevention of discrimination and the promotion of equal treatment. As such, Article 5(1) represents a key opportunity for Equality Bodies to build upon, expand and strengthen their existing work on public communication and education.

A. Standard setting

Although the four existing Directives did not expand upon the role of Equality Bodies in raising awareness, it has become increasingly clear that these institutions have “the potential to contribute to social change for individuals, institutions and society” and that in order to do this, they should “promote awareness and engage equality values in society”.¹⁸⁷ Public awareness about equality and non-discrimination law is also imperative to address the issue of under-reporting of cases of discrimination.¹⁸⁸

As concluded by Ammer et al., through their work on awareness-raising, Equality Bodies have “had an impact in developing a culture of compliance with equal treatment legislation among employers and service

¹⁸³ The importance of public awareness-raising is, nonetheless, reflected in recital 38 of the Gender Recast Directive (2006/54/EC).

¹⁸⁴ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 6.

¹⁸⁵ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, paras. 13(b), (e), and (f).

¹⁸⁶ See, Equal Rights Trust and the International Lawyers Assisting Workers Network, *A Promise Not Realised: The Right to Non-Discrimination in Work and Employment*, 2024, section 6.2.

¹⁸⁷ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 58.

¹⁸⁸ European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, *Strengthening the Role and Independence of Equality Bodies*, 2023, p. 21.

providers”.¹⁸⁹ Awareness-raising has been undertaken by most Equality Bodies and has included the provision of training and sensitisation, organisation of awareness-raising events, and cooperating with civil society organisations and partners.¹⁹⁰

Equinet’s 2016 Working Paper suggested that the general powers of Equality Bodies should include their engagement in public debate on issues relating to equality, diversity and non-discrimination.¹⁹¹ This was reiterated and expanded in the ECRI GPR No. 2r, which stated that Equality Bodies should have the competences to “build a continuous dialogue with groups experiencing discrimination (...) and with organisations working more generally on human rights and equality issues”, “build across society awareness (...) of and respect for equality”, and “build (...) knowledge about the rights and remedies established under the equal treatment legislation”.¹⁹² The European Commission Recommendation further reaffirmed the need for Equality Bodies to be enabled to engage in public debate.¹⁹³

B. Essential elements

Member States shall

Article 5(1) is distinct from the other provisions of the Directives relating to powers and competencies, in that it imposes obligations directly on the State, rather than requiring the State to empower the Equality Body. Articles 5(2), 6(1), 8(1), 9(1) and 10(1) all begin with identical wording: “Member States shall ensure that equality bodies”, while Article 7 begins simply “Equality bodies shall be able to”. Article 5(1) differs, in that the duty to raise awareness is imposed directly on the State. This the central element of the standard established in Article 5(1).

This distinctive formulation reflects the fact that States have public awareness raising obligations under the Equality Directives. Article 15 of the Gender Goods and Services Directive, for example, requires States to “take care that the provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of the persons concerned by all appropriate means throughout their territory”. Article 5(1) should be understood as elaborating this existing obligation and expanding it. Whereas the existing requirement is one of action – to “bring attention to” – the duty imposed by Article 5(1) is focused on outcomes, requiring the State to “raise awareness of”.

The fact that Article 5(1) imposes a duty directly on States also reflects the nature of duty, which includes a requirement to “raise awareness (...) of the existence of equality bodies and their services”, a duty which rightly rests with the State, rather than with the Equality Body itself.

While Article 5(1) puts the burden on States, read together with Article 5(2), the relevant recitals and the original proposals made by the Commission as well as Article 15 on consultation, it should be interpreted as requiring them to involve the Equality Body in the preparation and implementation of awareness-raising

¹⁸⁹ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., “Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC: Synthesis report”, *Human European Consultancy & Ludwig Boltzmann Institute*, Netherlands, 2010, p. 134.

¹⁹⁰ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, section 2.2.2.4, p. 14.

¹⁹¹ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 6.

¹⁹² European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, paras. 13(b), (e), and (f).

¹⁹³ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2(12).

measures, as appropriate. Article 5(2) clearly envisages a central role for Equality Bodies in public education and awareness-raising, with direct reference to these bodies “engaging in public debate” and “communicating with relevant stakeholders”. This reading is reinforced by the recitals, which provide that it is “vital” that Equality Bodies communicate and engage in public debate.¹⁹⁴ Finally, it is important to reflect on the stated intention of the Commission that the Directives aim “at establishing [Equality Bodies] as public entities, in charge of fostering knowledge and building capacities (...) with the goal of preventing (re)occurrences of discrimination.”¹⁹⁵

It is clear that the distinctive approach adopted in Article 5(1) is intended to reflect the fact that it is the duty of the State itself to raise public awareness of the right to non-discrimination and equal treatment and of the Equality Body which exists to promote these rights. Nevertheless, this duty should be properly discharged in collaboration with the Equality Body itself, given its broader role in promoting the principle of equal treatment.

Appropriate measures

Article 5(1) requires that States adopt “appropriate measures” to raise awareness. The term is not defined, though “strategies” are referred to as an example of an appropriate measure.

In the absence of a definition in the text, it is instructive to examine the development of the Directives. In the original proposal by the Commission, Article 5 stated simply that “Member States shall adopt a strategy to raise awareness”. An amendment was proposed during the negotiation process, to include the words “appropriate measures”, clearly intending to expand the scope of the duty.

It is also important to put this phrase in context of the Directives as a whole. Article 5(1) is one component of an Article focused on preventing discrimination and promoting equal treatment, and is part of a Directive with the stated purpose of setting down “minimum requirements” to enable Equality Bodies to “strengthen the application of the principle of equal treatment”. Considered in this context, “appropriate measures” should be understood as requiring States to take any and all measures necessary to raise awareness among the public – any assessment of whether the duty has been discharged should be made with reference to levels of public awareness.

Raise awareness of the rights and the existence of Equality Bodies and their services

This phrase is central to the interpretation of Article 5(1). The deliberate use of the words “raise awareness”, rather than the narrower “are brought to the attention” formulation in the Equality Directives indicates a clear intention to establish a duty focused on outcomes, rather than action. This reading is reinforced by the choice to use language which is distinct from, and broader than, that in the European Commission Recommendation, which mandates specific actions, including engaging in public debate and communicating

¹⁹⁴ See Directive 2024/1499, recital 21; Directive 2024/1500, recital 22.

¹⁹⁵ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 5, p. 18.

with discriminated groups.¹⁹⁶ The duty established by the Article is one of result, outcome and impact, not one tied to the performance of specific activities.

In the explanatory notes provided with its initial proposal for the new Directives, the Commission linked the duty to raise awareness with the wider aim of preventing discrimination: “public entities, in charge of fostering knowledge (...) with the goal of preventing (re)occurrences of discrimination”.¹⁹⁷ Article 5(1) establishes two distinct areas of focus for awareness-raising: the rights protected by the Equality Directives and the functions of Equality Bodies and the services which they offer. Read in light of the Commission’s explanation, this should be understood as giving rise to an obligation to equip rights-holders and duty-bearers with an understanding of the rights to equality and non-discrimination and the means through which these rights are enforced and implemented.

The recitals to the Directives frame the awareness-raising obligation as an aspect of the broader duty to prevent discrimination and promote equality and the effort to “address the structural aspects of discrimination and contribute to social change”.¹⁹⁸ Accordingly, Article 5(1) should be read in light of United Nations guidance on the “explicit proactive obligations on States to address prejudice, stereotypes and stigma” through measures including education and awareness-raising effort.¹⁹⁹

Appropriate communication tools and formats

Article 5(3) sets down detailed requirements on both Member States and Equality Bodies to engage and communicate with different groups. In line with the directive in Article 5(1) to pay particular attention to individuals and groups at risk of discrimination, this Article requires that awareness-raising efforts are designed to communicate effectively with “groups whose access to information can be hindered”. This gives rise to a general duty to identify and remove barriers to effective communication in areas which include for instance language, culture, geography, economic status and disability. This is a duty to accommodate difference and ensure accessibility for all, with a particular focus on groups who may face particular barriers.

Particular attention to individuals and groups at risk of discrimination

Article 5(1) calls for States to direct particular attention to those at risk of discrimination. This reflects the critical importance of knowledge and understanding of their rights and the means for enforcement if those exposed to discrimination are to effectively access justice.²⁰⁰ This phrase should be understood as requiring a specific focus on increasing knowledge and understanding among rights-holders, including in considering means of communication which are appropriate and accessible – Article 5(3) elaborates on this obligation, as discussed below.

¹⁹⁶ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2(11).

¹⁹⁷ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 5, p. 18.

¹⁹⁸ Directive 2024/1499, recital 23; Directive 2024/1500, recital 22.

¹⁹⁹ See UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, Part 6.






²⁰⁰ See Equal Rights Trust and the International Lawyers Assisting Workers Network, *A Promise Not Realised: The Right to Non-Discrimination in Work and Employment*, 2024, section 6.2.

Nevertheless, the phrase “particular attention” should not be interpreted in such a way as to limit the focus of awareness-raising only to rights-holders. If awareness-raising is to contribute to the goal of strengthening the application of the principle of equal treatment and preventing – rather than only remediating – discrimination, these efforts must engage with duty-bearers and with public at large.

Groups whose access to information is hindered

Article 5(3) establishes important standards in respect of the effectiveness of awareness raising measures, giving due regard to accessibility for groups exposed to discrimination, and so reinforcing standards on equal access to Equality Bodies’ services set out in Article 12. In keeping with requirement to “pay particular attention” to groups exposed to discrimination, this paragraph provides that in developing communications approaches, States should “focus in particular” on groups whose access to information is “hindered”. An illustrative, non-exhaustive list of factors which may hinder access to information is provided: “economic status, age, disability, level of literacy, nationality or residence status, or due to their lack of access to online tools”. It is notable that this list includes grounds of discrimination which are not included in the existing Equality Directives, including economic status, or place of residence.

C. Key principles

-  **A duty on the state:** Article 5(1) imposes an obligation and a responsibility directly on the state. Nevertheless, this duty can only be properly discharged if States work with relevant stakeholders, including Equality Bodies and groups working with and on behalf of disadvantaged communities.
-  **Obligation of results:** States have an obligation to raise awareness among the general population of the rights protected by the existing Equality Directives and of the existence of Equality Bodies and their services. This is an obligation of results, not of action: it is a proactive duty to increase knowledge and understanding, rather than simply to promote the rights.
-  **Awareness of rights and Equality Bodies:** States’ duty to raise awareness of rights goes beyond promoting the existence of the Directives and requires an approach that is focused on fostering knowledge and understanding of discrimination, how it occurs, and what can be done to remedy it. It necessitates a focus on the resources available to those exposed to discrimination, including from Equality Bodies, as well as a focus on public awareness raising as a means to combat stigma, stereotype and prejudice.
-  **All appropriate measures:** Article 5(1) focuses on raising awareness as a means to contribute to the prevention of discrimination and the promotion of equality. Understood in this context, it imposes an obligation on the state to adopt all appropriate measures to raise awareness. Such measures must be understood in light of impact, including levels of awareness among the population.
-  **Accessible and appropriate communication:** States and Equality Bodies must pay particular attention to raising awareness among groups exposed to discrimination. In order to do this, Article 5(3) requires that they ensure that they are using means of communication which are adapted to the needs of different groups, ensuring that communication is accessible and appropriate to all.



1.2. Proactive measures

Article 5(2) requires States to empower Equality Bodies to “carry out activities to prevent discrimination and promote equal treatment”. It also sets out an expansive – but non-exhaustive - list of ways in which Equality Bodies can exercise this preventative and promotional role.

This provision has the potential to be amongst the most important and impactful of any of those in the Directives on Standards, in that it requires States to provide Equality Bodies with the powers which they need to proactively prevent discrimination and promote equality. This is a decisive shift from the approach adopted under the Equality Directives. As the Commission noted in its original proposals:

The protection mechanisms put forward by the existing equality Directives are essentially retrospective (after an incident of discrimination has taken place), individualised and victim-centred. The Directives do not include comprehensive preventive mechanisms, and prevention was not explicitly part of the original equality bodies’ tasks (...) This provision now clarifies the role of equality bodies in the promotion of equal treatment and in the prevention of discrimination that is closely related.²⁰¹

Article 5(2) is central to the Directives’ aim of strengthening “the application of the principle of equal treatment”. The full application of this principle requires that Equality Bodies are empowered to provide not only effective mechanisms for enabling victims to access justice and secure remedy and sanction, but to develop a comprehensive programme of measures focused on preventing discrimination.

A. Standard Setting

The four existing Directives created an obligation to establish “bodies for the promotion of equal treatment”.²⁰² As the European Commission has noted, the role of Equality Bodies with regard to prevention and promotion has always been clear; what has been less clear is what *exact* powers of promotion Equality Bodies enjoy.²⁰³ This lack of clarity has resulted in disparities in the competences accorded to or implemented by Equality Bodies in the prevention of discrimination and promotion of equality,²⁰⁴ though where these

²⁰¹ 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, COM/2022/688 final, 2022/0400 (COD), p. 18.

²⁰² See the Race Equality Directive (2000/43/EC), Article 13; the Gender Goods and Services Directive (2004/113/EC), Article 12; the Gender Recast Directive (2006/54/EC), Article 20; and the Gender Self-Employment Directive (2010/41/EU), Article 11.

²⁰³ 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, COM/2022/688 final, 2022/0400 (COD), p. 18.

²⁰⁴ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 91.

powers have been deployed they have proved to be “central to the developmental role of Equality Bodies and their contribution to institutional change”.²⁰⁵

In 2016, Equinet highlighted that prevention and promotion requires positive duties that should be supported and enforced by States.²⁰⁶ Accordingly, in its 2016 Working Paper, Equinet called *inter alia* for Equality Bodies to be equipped with powers to “promote and support good equality and diversity practice”.²⁰⁷

The ECRI GPR No. 2r established prevention and promotion as one of the core functions of Equality Bodies.²⁰⁸ The Recommendation included the development of standards; and the provision of information, advice, guidance and support to “individuals and institutions in the public and private sectors on good practice for promoting and achieving equality and preventing discrimination” as means through which this function could be deployed.²⁰⁹ The European Commission Recommendation outlines the provision of “training, information, advice, guidance and support to duty bearers having obligations under the equality Directives, institutions and individuals” as part of Equality Bodies’ prevention and promotion powers.²¹⁰

The standard established in Article 5(2) goes beyond the recommendations made by Equinet in its Working Paper. It aligns with – but is arguably clearer and more expansive than – the relevant provisions in the non-binding recommendations issued by both ECRI and the European Commission itself.

B. Essential elements

Empowered to

Article 5(2) is the first of three Articles which use the formulation “Member States shall ensure that Equality Bodies are empowered to” – the other two being Article 8 (on inquiries) and Article 9 (on opinions and decisions). In the case of Article 5(2), this phrase was added during the negotiation process. In the Commission’s original proposal, the provision began with the words “Member States shall (...) ensure that equality bodies engage in”.²¹¹ It appears clear that the intention of the amendment was to provide Equality Bodies with an expansive remit to act; to ensure their effective agency and autonomy in deciding when, where and how to take action.

Ensuring that Equality Bodies are empowered to act requires that they have the independence, and agency and autonomy to determine and pursue courses of action which they consider necessary to meet the defined objective, as well as a policy and legal framework and remit to do so. It also requires that they have the resources required to implement the activities which they choose.

²⁰⁵ *Ibid.*

²⁰⁶ Crowley, N., “Making Europe more Equal: A Legal Duty?”, *Equinet*, 2016, p. 72.

²⁰⁷ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 4.

²⁰⁸ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 13.

²⁰⁹ *Ibid.*

²¹⁰ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2(11).

²¹¹ 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, COM/2022/688 final, 2022/0400 (COD), proposed Article 5, p. 32.

Prevent discrimination

Article 5(2) requires that Equality Bodies be empowered to act in pursuit of two ends: (1) the prevention of discrimination and (2) the promotion of equal treatment. All States have obligations under both European Union and UN laws to prevent discrimination, both through refraining from discrimination in law, policy and practice and through enacting and enforcing laws which prohibit discrimination by public and private actors.²¹²

Article 5(2) marks a decisive shift, which not only “clarifies” the preventative role which was previously “apparent but never explicitly specified” but has the effect of establishing Equality Bodies as “public entities, in charge of fostering knowledge and building capacities of public and private entities on matters related to equal treatment, with the goal of preventing (re)occurrences of discrimination”.²¹³

Article 5(2) has the purpose and effect of requiring States to equip and empower Equality Bodies to take a role in proactively preventing discrimination. It does not in any way supersede or subsume States’ existing preventative obligations pursuant to the purposes of the Equality Directives and the requirement in Article 20 of the Directives on Standards.

Promote equal treatment

The second of the stated purposes of the powers provided for under Article 5(2) is the promotion of equal treatment. The prevention of discrimination and the promotion of equal treatment are, in the words of the Commission, “closely related”. Indeed, in the Equality Directives, the principle of equal treatment is defined as meaning “that there shall be no direct or indirect discrimination”. Thus, one reading is that the prevention of discrimination and the promotion of equal treatment are essentially one and the same. The decision of the Directive’s drafters to include both terms clearly indicates that the promotion of equal treatment has a broader meaning in Article 5(2).

Considered in context, it seems clear that the role of Equality Bodies in promoting equal treatment which is envisaged in Article 5(2) requires a focus on addressing and redressing substantive inequalities, rather than only on preventing discrimination. This reading is reinforced by the fact that Article 5(2) explicitly recognises “promoting positive action” as the first of the actions which Equality Bodies may undertake, pursuant to the objective of promoting equal treatment.

Activities which may include

Article 5(2) provides an extensive and expansive list of activities which Equality Bodies may undertake in order to both prevent discrimination and promote equality. This list includes: promoting the use of positive action

²¹² UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, part 1; and, for example, the Race Equality Directive (2000/43/EC), Articles 1 and 2(1).

²¹³ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 5, p. 18.

and gender mainstreaming and equality mainstreaming²¹⁴ among State and non-State actors; providing training, advice and support to these actors; engaging in public debate and communicating; and promoting the exchange of good practices.

Each of the listed activities, implemented with a clear focus on prevention and promotion, has the potential to have significant impact. It is worth noting the potential of equality mainstreaming approaches in particular: these approaches seek to integrate and centralise equality considerations in all decision-making, with significant potential to change behaviour.²¹⁵ Equally, it is essential that where Equality Bodies undertake these activities, the approach is informed by international best practices.²¹⁶

Yet the list of activities provided in Article 5(2) is clearly illustrative and non-exhaustive. As noted, Article 5(2) requires States to empower Equality Bodies to take action to prevent discrimination and promote equality. This in turn requires that Equality Bodies have the agency and autonomy and resources to identify patterns of discrimination and inequality and to devise activities to address these. The activities listed in Article 5(2) should be seen as examples and Equality Bodies should be enabled to develop additional and alternative approaches, responding to the challenges which they identify.

Intersectional discrimination

Article 5(2) of the Directives on Standards provides that – in undertaking their preventative and promotional activities – equality bodies “can take into consideration specific situations of disadvantage resulting from intersectional discrimination”. As described further in Chapter II.1.B of this Digest, the term “intersectional discrimination” is defined to include discrimination arising on a combination of grounds recognised as protected by the Equality Directives.²¹⁷ Importantly, while Article 5(2) uses the phrase “can take into consideration”, the duty to ensure that equality bodies are empowered to carry out activities to prevent discrimination and to promote equal treatment rests on the State. In other words, States must ensure that Equality Bodies are empowered to address the harms of intersectional discrimination in their work. This is a minimum standard. Equality Bodies, however, exercise agency and autonomy in deciding the most appropriate course of action in a given context.²¹⁸ Notwithstanding the discretion afforded to Equality Bodies in this area, recitals to the Directives stress the importance that Equality Bodies pay “particular attention to intersectional discrimination” in their work.²¹⁹ This is linked to the achievement of the overarching objectives of the Directives on Standards, which seek to strengthen the application of the principle of equal treatment.²²⁰

²¹⁴ The reference in Directive 2024/1500 is specifically to gender mainstreaming while Directive 2024/1499 refers to Equality Mainstreaming. This responds to the legal basis of both Directives, but together with the purpose and required intersectional reading of the article, equality mainstreaming should be understood to also cover gender mainstreaming.

²¹⁵ See further, Equinet, *Compendium of Good Practices on Equality Mainstreaming: The Use of Equality Duties and Equality Impact Assessments*, 2021.

²¹⁶ See *Ibid.* On equality mainstreaming and equality impact assessment, see further UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 71-73 and 117-119.

²¹⁷ Directive 2024/1499, Article 5(2) and recital 16; Directive 2024/1500, Article 5(2) and recital 15.

²¹⁸ For instance, to address the exclusion of women from a particular field of employment, an Equality Body may decide to promote the adoption of gender-specific positive action measures amongst public and private bodies.

²¹⁹ Directive 2024/1499, recital 16; Directive 2024/1500, recital 15.

²²⁰ See further, the discussion in Chapter I of this Digest.

C. Key principles

Effective empowerment: States have a duty to equip, enable and empower Equality Bodies to undertake activities to prevent discrimination and promote equality. Ensuring that Equality Bodies are empowered to act effectively requires that they have the independence and agency and autonomy to determine and pursue courses of action which they consider necessary to address the problems which they identify, and the powers and resources required to implement these actions.

Prevention of discrimination and promotion of equality: Equality Bodies must be empowered to decide upon and take active measures to prevent discrimination and promote equality. This necessitates a shift in focus away from approaches which have often been responsive and remedial and towards one which is proactive, pre-emptive, preventative and promotional. Equality Bodies must be enabled to play a role focused on preventing the occurrence and recurrence of discrimination through developing and implementing proactive programs of action. Equality Bodies must be enabled to promote equal treatment, through measures designed with a view to achieving full equality in practice.

Activities which are effective: Article 5(2) provides an illustrative list of the kinds of activities which Equality Bodies may undertake in their preventative and promotional role. This list of activities is indicative only. Equality Bodies must have the agency and autonomy to determine and pursue courses of action which they consider appropriate to addressing patterns of discrimination and inequality which they identify.

1.3. Consultation



Article 15 requires States to consult with Equality Bodies in the development and implementation of laws, policies, procedures and programmes related to the rights and obligations derived from the Equality Directives. While the four existing Directives that provided for the designation of Equality Bodies established the competence of such Bodies to make “recommendations on any issue relating to (...) discrimination”,²²¹ the new provision affords them a much greater and more substantive role in the law- and policy-making process.

Whereas Equality Bodies have always had the competence to make recommendations to government and public bodies, Article 15 imposes a proactive duty on these actors to consult Equality Bodies. Going forward, governments will be subject to a duty to seek the recommendations of Equality Bodies, as an integral part of the legislative and policy-making process. Equally, it should be for the Equality Body – exercising its agency and autonomy and reflecting the resources available to it – to determine whether it needs to examine specific laws, policies and procedures and to consider where it makes recommendations.

It is clear from the wording of the provision and from the recitals that this consultation is expected to be meaningful in “mainstreaming” equality considerations. Consultation should result in changes to law, policy or

²²¹ See the Race Equality Directive (2000/43/EC), Article 13(2); the Gender Goods and Services Directive (2004/113/EC), Article 12(2)(c); the Gender Recast Directive (2006/54/EC), Article 20(2)(c); and the Gender Self-Employment Directive (2010/41/EU), Article 11(2)(c).

practice, where Equality Bodies identify potentially discriminatory impacts or the potential to advance equality. Equality Bodies must have the right to publish their recommendations and request follow-up.

A. Standard Setting

As noted, the four existing Directives that provided for the designation of Equality Bodies included the competence of Equality Bodies to make recommendations on “any issue relating to (...) discrimination”.²²² In practice, a majority of Equality Bodies were endowed with the functions and competences to make recommendations to government and public authorities.²²³ However, they lacked any specific rights or powers to be consulted.

Equinet’s 2016 Working Paper suggested that Equality Bodies should have the power “make recommendations to legislators and policy makers in relation to issues of equality and non-discrimination”,²²⁴ but did not expand on consultation powers. In contrast, the ECRI GPR No. 2r suggested that Equality Bodies should have the competences to “take part in the consultation procedures for new policy, legislation and executive acts” and to make recommendations on (existing) policy, legislation and executive acts.²²⁵ The European Commission Recommendation added that public authorities should “inform the Equality Bodies of how the recommendations have been taken into account and make this information public”²²⁶. Overall, however, the preceding standards focused on the right of Equality Bodies to make recommendations, rather than the duty of public authorities to consult.

B. Essential elements

Shall put in place procedures to ensure

Article 15 begins with a clear and unambiguous requirement: States must establish procedures to ensure that Equality Bodies are consulted in the law and policy making process. The word “procedures” means that States are required to adopt a systematic approach, through which consultation with Equality Bodies becomes an integral part of the decision-making process. In order to meet the requirements of Article 15, the State must ensure that the procedure which it adopts both requires and enables consultation with Equality Bodies during the legislative and policy process.

Requiring consultation means that any procedure which is adopted should impose a clear consultation duty on those involved in law- and policy-making. The responsibility must be clearly on those undertaking such processes to actively seek the input of Equality Bodies. Consultation should be a clearly demarcated step in the law- and policy-making process, with clear guidance on when, where and how to engage Equality Bodies and clear instructions for sharing information and seeking input. Failure to consult – or to do so adequately – should be followed by sanctions.

²²² *Ibid.*

²²³ European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, *Strengthening the Role and Independence of Equality Bodies*, 2023, p. 37.

²²⁴ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 6.

²²⁵ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 13(j).

²²⁶ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2(10).

Enabling consultation means that the procedure which is adopted should provide Equality Bodies with the information, time and resources which they require. Ensuring that Equality Bodies have the resources which they require – as envisaged by Article 4 – will be particularly important. In light of the overarching principle of effectiveness, States must ensure that Equality Bodies have the human and technical resources which they require to undertake their consultative role.

While the procedure adopted by the State must both require and enable consultation, it must not impose an obligation on Equality Bodies to respond and make recommendations on all laws, policies, procedures and programmes. The functional independence, agency and autonomy of Equality Bodies – including in how to use their powers and deploy their resources – means that these Bodies must be free to determine which laws, policies and practices they can and should make recommendations on.

Consult Equality Bodies

The recitals to the Directives note that “Equality bodies cannot fulfil their role as experts in equal treatment nor contribute to equality mainstreaming if they are not consulted in sufficient time during the policymaking process on matters related to rights and obligations”.²²⁷ This provides important guidance both to the purpose of Article 15 and the content of the duty to consult.

On the question of purpose, the reference to “equality mainstreaming” is critical: the objective of consultation is to ensure that equality considerations are taken into account as an integral part of the law- and policy-making process. Recommendations received from Equality Bodies through consultation should result in changes to eliminate potential discriminatory impacts and maximise potential positive equality impacts.

On the content of the duty, as noted, the duty rests on the State to establish suitable procedures, and on law- and policy-makers to ensure that consultation takes place. Such procedures must embed and integrate consultation into the policy-making process. The recital stresses that procedures should ensure consultation “in a timely manner” and should enable Equality Bodies to “make recommendations (...) in time for them to be taken into consideration”. The phrase “in time for them to be taken into consideration” underlines the need for States to adopt a consultation procedure which allows Equality Bodies’ input to have a meaningful impact.

Looking at both the purpose and the content of the consultation obligation set out in the recitals, it is clear that the recommendations of Equality Bodies must be actively considered. Indeed, amendments made to Directives during the negotiation process strengthen the consultation requirement. Whereas – in the Commission’s original proposal – Equality Bodies would have the right to require feedback, in the final version, Equality Bodies have the right to request follow-up on their recommendations, implying a corresponding obligation on duty-bearers to take action in light of the recommendations received.²²⁸

²²⁷ Directive 2024/1499, recital 42; Directive 2024/1500, recital 41.

²²⁸ See 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, COM/2022/688 final, 2022/0400 (COD), Article 13.

Legislation, policy, procedure and programmes

The formulation “legislation, policy, procedure and programmes” is expansive. It clearly envisages that Equality Bodies must be consulted on all aspects of law- and policy-making and the process to adopt, as well as the implementation of, laws, policies and procedures. The term should be read inclusively to incorporate all aspects of law, policy and procedures and programmes: any attempt to exclude aspects of government decision-making on the grounds that they do not fall within the scope would undermine the purposes of, and be inconsistent with, Article 15. The recitals stress that effective consultation is necessary for Equality Bodies to fulfil their function as legal experts. Equality Bodies themselves must, therefore, play a role in determining which matters fall within their respective competence, and those matters falling within the scope of the Equality Directives.²²⁹

Notably, Article 15 does not appear to restrict the consultation obligation to the development of new laws, programmes or policies. States are required to establish a framework to facilitate effective consultation. Equality Bodies, in turn, are provided with a right to make recommendations in respect of these areas, which may be exercised at their own discretion.²³⁰ This reading is consistent with the overarching objectives of the Directives, which seek to strengthen application of the principle of equal treatment.²³¹ Under the Equality Directives, States have an overarching obligation to refrain from discrimination in law, policy and practice. Article 15 can help facilitate the realisation of this obligation by enabling Equality Bodies – as recognised experts in the field – to make recommendations on the repeal or amendment of existing laws and policies which are discriminatory or to strengthen their effectiveness.

Related to the rights and obligations

The phrase “related to the rights and obligations” in the Equality Directives is, unfortunately, liable to narrow interpretation – that the obligation to consult is restricted to equality law and policy, rather than being focused on assessing equality impacts throughout the law and policy making process. Such a reading would be incompatible with the intention of the provision as set out in the recitals. This makes clear that the intention of the consultation is to enable Equality Bodies to contribute to “equality mainstreaming”, something which requires examination of the potential equality impacts of all laws, policies and practice. Similarly, the use of the phrase “matters related to rights and obligations” makes clear an intention that consultation looks beyond laws and policies dedicated to equality and non-discrimination and considers any law, policy or practice which could impact on these rights.

Again, it must be recalled that the responsibility is on the State to establish a procedure for consultation and on public bodies to follow such procedure. No corresponding obligation is established on Equality Bodies to review and provide recommendations on all laws, policies and practices. The functional independence, agency and autonomy of Equality Bodies means that these Bodies must be free to determine which laws, policies and practices they can and should make recommendations on.

²²⁹ See Directive 2024/1499, recital 42; Directive 2024/1500, recital 41.

²³⁰ Directives 2024/1499 and 2024/1500, Article 15.

²³¹ See further, the discussion in Chapter I of this Digest.

C. Key principles

- Proactive and integrated consultation:** The objective of consultation is to ensure that equality considerations are taken into account as an integral part of the law- and policy-making process. States have a duty to establish procedures which require and enable proactive consultation with Equality Bodies. States must establish such procedures, while those involved in law- and policy-making must ensure that they consult during these processes. The onus is on government and public authorities to ensure engagement with Equality Bodies in a timely and appropriate manner while ensuring that they have the resources needed to engage.
- Agency and autonomy:** States have a duty to ensure that public authorities consult Equality Bodies. Equality Bodies have the right to make relevant recommendations and to request follow-up. Equality Bodies have discretion to decide on which law, policy, procedure and practice they make recommendations. Equality Bodies are under no obligation to review and provide recommendations on every law, policy, procedure and practice.
- Meaningful consultation:** States have an obligation not only to consult Equality Bodies but to give due regard to their recommendations. Where Equality Bodies make recommendations on how potential discriminatory impacts can be prevented, or how positive equality impacts can be secured, they have a right “to request follow-up regarding such recommendations”. This in turn requires that public authorities give due consideration to how proposed laws, policies, procedures and practices should be adapted.
- All legislation, policy and practice:** The duty to consult applies to all aspects of law, policy, procedure and practice and should be interpreted such as to include all aspects of government decision-making and practice, not only those explicitly focused on equality and non-discrimination. The objective is to integrate equality considerations throughout the law- and policy-making process. The duty applies both in respect of the development and implementation of new laws, policies and procedures and in respect of the review of existing laws and policies.
- Adequate information, time and resources:** The duty on states to establish procedures to ensure that Equality Bodies are consulted creates an obligation to ensure that Equality Bodies have the information, time and resources which they need to participate in the process, should they decide so. Consultation procedures should provide clear guidance on the information to be provided and the format. States must work with Equality Bodies to understand the time and resources which they need to engage in consultation processes and establish a procedure to do ensure that these requirements are met.

1.4. Data collection



Article 16 sets down a range of standards in respect of the collection, management and use of equality data. The Article is important because data is central to Equality Bodies’ effectiveness in multiple fields. As the recitals to the Directives set out, compellingly:

Equality data are crucial for raising awareness, sensitising people, quantifying discrimination, showing trends over time, proving the existence of discrimination, evaluating the implementation of equality legislation, demonstrating the need for positive action and contributing to evidence-based policymaking.²³²

Good equality data provides the foundations for effective action by Equality Bodies, in particular in respect of their public reporting and awareness-raising activities, as a means to inform preventative and promotional activities implemented under Article 5, and even in litigation matters. Accordingly, it is essential that Article 16 is transposed and applied with a focus on equipping Equality Bodies with the data they need, including by ensuring that they can require the collection of data and use data generated or collected by others.

A. Standard Setting

Data collection is “crucial” to the work of Equality Bodies, “but remains challenging”.²³³ All Equality Bodies engage in some form of data collection, which assists them in their various mandates, such as publishing reports, making recommendations, and receiving and handling complaints.²³⁴ However, Equality Bodies’ capabilities for data collection varies across States, which has developed in the context of limited standards and guidance on data collection.

Existing standards include the ECRI GPR No. 2r, which suggests that Equality Bodies’ reports and recommendations “be expert and evidence based through the use of research, investigation, [and] documentation”.²³⁵ The European Commission Recommendation expanded upon this, stating that Equality Bodies should be enabled to “carry out independent surveys regularly”, and “the scope and design of surveys should ensure the gathering of a sufficient amount of sound quantitative and qualitative data on discrimination”.²³⁶

B. Essential elements

Collection of data

Article 16(1) requires States to “ensure that” Equality Bodies collect data on their own activities. Accordingly, the duty on the State is not only to require or permit the collection of data, but to actively empower Equality Bodies to do so, including through ensuring adequate resourcing, in line with Article 4, and ensuring agency and autonomy in decision-making around when, where and how data should be collected.

The power to collect data – as with the power to access data collected by others provided in Article 16(3) – must be viewed in light of the stated purposes for data collection. Article 16(1) makes explicit reference to reporting obligations in both Articles 17(b) and 17(c). Whereas Article 17(b) creates a narrow obligation on Equality Bodies to produce an annual report on their own activities, Article 17(c) creates a more expansive

²³² Directive 2024/1499, recital 43; Directive 2024/1500, recital 42.

²³³ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, section 2.2.2.1, p. 11.

²³⁴ Stocker, R., Urbanikova, M., and Banjac, B., “Collection and Use of Complaints Data by Equality Bodies”, *Equinet*, 2021, p. 7.

²³⁵ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 31.

²³⁶ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 7.

power, requiring States to ensure that Equality Bodies produce reports on “the state of equal treatment (...) in the state”. Viewed in this light, Equality Bodies’ powers and abilities to gather data must be sufficiently broad in scope to enable conclusions to be drawn about patterns of discrimination on different grounds, in different sectors and at different times and places.

More broadly, this power and the others in Article 16 must be considered in light of the clear intent set out in the recitals, which elaborate the broad range of purposes for which data should be collected, including “quantifying discrimination”, “evaluating the implementation of equality legislation” and “contributing to evidence-based policymaking”. It is clear that the intention is to equip and enable Equality Bodies to gather data not only for the purposes of reporting and awareness-raising, but also to inform and drive policy.

Conduct of surveys

Article 16(2) reiterates one of the three competencies explicitly provided to Equality Bodies under the four existing Directives: “conducting independent surveys concerning discrimination”. As such, it does not impose a new obligation on the State, nor provide Equality Bodies with new powers. Nevertheless, this provision must be considered as part of Article 16 as a whole: in this context, the power to conduct surveys should be considered as one specific means by which Equality Bodies can generate, collect and access the data which they require to report effectively, and to inform policy making.

Access to statistics

Article 16(3) requires States to provide Equality Bodies with the power to access and use existing data produced by other public and private entities. The provision makes clear that it is for Equality Bodies themselves to determine the statistical data which they need, requiring that they are able to access data where they “deem such statistics necessary to make an overall assessment of the situation regarding discrimination in the Member State”. While this power is to be exercised “in accordance with national law” it is potentially expansive, allowing Equality Bodies to requisition the data which they identify is needed both for reporting and to inform decision-making. From the Commission’s original proposal, which expressly listed “public and private entities including public authorities, trade unions, companies, and civil society organisations” it can be gathered that coordination and cooperation with other entities was envisioned.²³⁷ If Equality Bodies are to be able to use equality data, and carry out their functions effectively, data should be provided in a timely manner and in accessible formats.²³⁸

Recommendations on data to be collected

As the recitals to the Directives note, in addition to collecting data on their activities, publishing and using data, “Equality bodies can contribute to the development of equality data (...) for example by organising

²³⁷ See 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, COM/2022/688 final, 2022/0400 (COD), Article 14(3). On this point, see also Directive 2024/1499, recital 41 and Directive 2024/1500, recital 40, emphasising the cooperation requirement under Article 14.

²³⁸ See Directive 2024/1499, recital 43 and Directive 2024/1500, recital 42, noting that “Equality data are crucial for raising awareness, sensitising people, quantifying discrimination, showing trends over time, proving the existence of discrimination, evaluating the implementation of equality legislation, demonstrating the need for positive action and contributing to evidence-based policymaking”.

roundtables gathering all relevant entities”. With this in mind, Article 16(4) provides that States should ensure that Equality Bodies are able to “make recommendations on which data is to be collected” and that they “play a coordination role in the collection of equality data”.²³⁹

This provision can be considered as the fourth essential component of Equality Bodies’ powers in respect of data, ensuring that they are able to gather, access and use all data which they consider necessary to assess and understand patterns of discrimination and inequality. Specifically, it must be seen as a complementary power to that provided in paragraph (3), regarding access to data collected by others. Interpreted in light of the requirement that Equality Bodies should be able to access statistics as they “deem necessary”, States must ensure that where Equality Bodies recommend the collection of new data, this recommendation results in action to collect such data.

Disaggregation of data

Article 16(1) includes a second paragraph, providing that data collected by Equality Bodies should be “disaggregated on the grounds and fields” covered by the Equality Directives and in accordance with indicators developed under Article 18. Disaggregation is essential if equality data are to be useful, and this provision should be seen as a necessary measure to ensure the collection of data which Equality Bodies can use in practice. While paragraph (1) is the only one of the four in Article 16 which make an explicit reference to disaggregation, it is clear that the intention is for this to apply in all cases; this reading is reinforced by the fact that the other provisions in the Article all contribute to the collection of data by Equality Bodies.

Anonymisation and pseudonymisation

The second paragraph of Article 16(1) includes a second necessary safeguard: that equality data be either anonymised or pseudonymised. This provision reflects the importance of ensuring the protection of personal data – a requirement made explicit in Article 21.

C. Key Principles

- Collection and requisition of data:** Equality Bodies must be empowered to collect data both directly, through surveys, independent research and other means, and indirectly, through commissioning such data from public and private entities. Equality Bodies must have the resources which they need to collect and access the data which they require. Recommendations from Equality Bodies on new data to be collected should result in action to ensure that such data is collected.
- Data necessary to assess and report on the situation of discrimination:** Equality Bodies must be able to access the data they need to accurately assess the situation of discrimination in the country and produce reports that give a complete and accurate assessment of the state of equal treatment.
- Data necessary to inform policy:** Equality Bodies must be able to access the data they need to inform policy making, including through identifying and documenting patterns of discrimination, making evidence-based recommendations, and requesting follow up in line with the requirements of Article 15.

²³⁹ *Ibid.*



1.5. Public reporting

Article 17 establishes three requirements in respect of planning and reporting by Equality Bodies. Paragraph (a) requires that Equality Bodies produce and adopt a work plan, while paragraph (b) creates an obligation to produce an annual activity report setting out both activities and financial data. These duties are dealt with in Chapter VII of this Digest, on Implementation.

Paragraph 17(c) establishes an entirely different requirement to that in the other two parts of Article 17(c): that Equality Bodies produce a “state of the nation” style report on discrimination and inequality in their country. As the recitals set out plainly: “[i]n addition to publishing an annual activity report, equality bodies should regularly publish a report including an overall assessment of the situation regarding discrimination falling under their mandate in the Member States, as well as other reports relating to discrimination”.²⁴⁰ As such, Art 17(c) creates significant opportunities for Equality Bodies to influence public perceptions, and to play a role in combating stigma, prejudice and stereotypes.

A. Standard Setting

The requirement in Article 17(c) builds upon and strengthens the provisions from the four existing Directives, which required that Equality Bodies have the competence to publish “independent reports and [make] recommendations” on any issue relating to discrimination.²⁴¹

The 2016 Working Paper produced by Equinet recommended a number of related standards, including that Equality Bodies have “general powers” to “commission and conduct research on any issue relevant to their mandate”, “make recommendations to legislators and policy makers”; “communicate with stakeholders and engage in public debate”.²⁴²

In its 2018 Recommendation, the European Commission provided that States should enable Equality Bodies to publish independent reports that “make possible an overall assessment of the situation regarding discrimination in the Member State for each of the grounds covered”.²⁴³ Similarly, ECRI’s GPR No. 2r stated that Equality Bodies should “publish annual reports, which should be discussed by parliament or its relevant committees and by government, but which should not be subject to their approval”.²⁴⁴ Such reports should facilitate dialogue with government and “should identify the core issues arising with respect to equality, discrimination and intolerance and the recommendations of the equality body”.²⁴⁵

²⁴⁰ Directive 2024/1499, recital 45; Directive 2024/1500, recital 44.

²⁴¹ The Race Equality Directive (2000/43/EC), Article 13(2); the Gender Goods and Services Directive (2004/113/EC), Article 12(2)(c); the Gender Recast Directive (2006/54/EC), Article 20(2)(c); and the Gender Self-Employment Directive (2010/41/EU), Article 11(2)(c).

²⁴² Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 6.

²⁴³ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2 (9).

²⁴⁴ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 35.

²⁴⁵ *Ibid.*, explanatory memorandum, paras. 111-113.

B. Essential Elements

Member States shall ensure

States are required to ensure that Equality Bodies publish reports on the “state of equal treatment and non-discrimination” in the State in question. In order to ensure that Equality Bodies produce such reports, States cannot merely impose a requirement, they must enable them to do so. Enabling Equality Bodies to produce public reports requires that they have the information and resources they require.

Ensuring that Equality Bodies have the information they require implies that they are effectively empowered to collect and access data, as required under Article 16. Equality Bodies must be able not only to collect data on their own activities and to conduct surveys. They must also be able to access statistics related to the rights where they “deem such statistics necessary to make an overall assessment of the situation regarding discrimination in the Member State” and to request that other data is gathered. Equality Bodies will only be able to produce the reports envisaged by Article 17(c) if States ensure their access to relevant data held by public and private actors and ensure that their recommendations on additional data collection are acted upon.

Ensuring that Equality Bodies have the resources they require – as envisaged by Article 4 – is essential, given the potential scale of the task of developing a report on the state of equal treatment. The collection of data marks the start – rather than the end – of the reporting process. Such data must be rigorously analysed by Equality Body staff to generate a full and accurate account of the state of equal treatment within a given jurisdiction, and to ensure that the information is properly contextualised. This is a heavily resource-intensive exercise. In light of the overarching principle of effectiveness, States must ensure that Equality Bodies have the human and technical resources which they consider necessary, and the budget which they require, to produce these reports.

Finally, in line with the principles established under Article 3, States must ensure that Equality Bodies have full agency and autonomy to determine the scope, scale and focus of the reports which they produce, based on their assessment of the patterns of discrimination in the country in question.

Reports on the state of equal treatment and discrimination

The focus of the reports to be published under Article 17(c) is set out clearly in the provision and in the relevant recital.²⁴⁶ Equality Bodies must be enabled and empowered to produce reports providing an “overall assessment of the situation regarding discrimination” in their State. It is for Equality Bodies themselves to determine how this assessment is undertaken, taking account of the data they have access to, the resources at their disposal and patterns of discrimination identified through the performance of their functions. The report (or reports) in question should include relevant recommendations. In this way, the reporting requirement is closely linked to the consultation provisions of the Directive.²⁴⁷ Additionally, to the extent that reports published pursuant to Article 17(c) make specific recommendations to public authorities, Equality Bodies must be able to request follow-up.²⁴⁸

²⁴⁶ Directive 2024/1499, recital 45; Directive 2024/1500, recital 44.

²⁴⁷ In this connection, public reporting may be considered as “one of the procedures” that States are required to adopt to facilitate consultation with Equality Bodies. See Directives 2024/1499 and 2024/1500, Article 15.

²⁴⁸ *Ibid.*, Article 15.

One or more reports, at least every four years

Article 17(c) establishes a clear minimum requirement in respect of public reporting: that Equality Bodies should produce at least one report, at least every four years. It imposes no maximum requirement and it is clear that Equality Bodies should be free to produce additional reports or produce reports more frequently, should they so decide. Again, this provision should be read in light of the overarching requirement that Equality Bodies have agency and autonomy to determine and pursue courses of action which they consider necessary to strengthen the principle of equal treatment: it is for Equality Bodies to determine the number and frequency of their reports, as well as to decide upon the scope, scale and focus of these reports.

C. Key principles

Equality Bodies empowered to provide an overall assessment of equal treatment: States must both require and empower Equality Bodies to develop and publish reports providing an overall assessment of the state of equal treatment. At a minimum, this requires that Equality Bodies are able to collect, access and request the data they need for their analysis and have the human, technical and financial resources which they require to report effectively.

Minimum requirements: At minimum, Equality Bodies should be required and enabled to publish reports providing an overall assessment of the state of equal treatment once in every four years. Equality Bodies may choose to produce additional reports, or to report more frequently. Consistent with the principle of agency and autonomy, it is for Equality Bodies to determine the scope, scale and focus of the reports which they produce to provide an overall assessment of the state of equal treatment.

Reporting with recommendations: Reports produced by Equality Bodies should include recommendations for changes to law, policy and practice on how actual or potential discriminatory impacts may be prevented, or how positive equality impacts can be secured. Equality Bodies should be empowered to request follow up to their recommendations. In keeping with the principle of meaningful engagement, public authorities should give due consideration to such recommendations and to how laws, policies, procedures and practices should be adapted.

2 Access to Justice and Remedy

Under the Equality Directives, Member States are required to establish rules and procedures to promote the enforcement of the anti-discrimination law framework and to guarantee victims right to an effective remedy.²⁴⁹ These requirements are reflected in both the Charter of Fundamental Rights and the European Convention on Human Rights, which contain provisions on remedy.²⁵⁰ Yet, despite some important developments in the field, the traditional approach of anti-discrimination law (exemplified by the Equality Directives) has been reactive and responsive, placing the burden on a victim of discrimination to step forward

²⁴⁹ See for example, the Race Equality Directive (2000/43/EC), Articles 7-9.

²⁵⁰ Charter of Fundamental Rights of the European Union, Article 47; Convention for the Protection of Human Rights and Fundamental Freedoms, Article 13. On remedy more broadly, see also, Treaty on European Union, Article 19.

and challenge the violation of their rights before the courts.²⁵¹ Research conducted by the Equal Rights Trust and the International Lawyers Assisting Workers Network in 2024,²⁵² as well as Equinet research in the area,²⁵³ demonstrates the limitations of this approach. Factors including inaccessible and complex legal procedures, prohibitive court costs, a lack of legal aid and support, uncertainty about ones' rights or a lack of knowledge of the governing legal framework, and a fear of victimisation, can each undermine faith in the system and prevent a person from bringing a discrimination claim.

Across Europe, Equality Bodies play an essential function in promoting access to justice for victims of discrimination, although their exact role and responsibilities can differ both within and between jurisdictions.²⁵⁴ Equality Bodies can facilitate access to justice in different ways. In a majority of countries, Equality Bodies are responsible for providing information and advice to victims, informing them of their rights and the corresponding obligations of duty-bearers. In some countries, Equality Bodies have been invested with a litigation function, supporting victims to bring legal action or taking cases in their own name (including in the public interest). Equality Bodies can also play a more direct role in resolving complaints, for instance, by offering alternative dispute resolution services, investigating discrimination claims, and issuing recommendations. In a small number of countries, Equality Bodies possess a quasi-judicial function, with the power to issue binding decisions in discrimination cases and offer appropriate forms of relief.²⁵⁵

While the four existing Directives that provide for the designation of Equality Bodies envisage a clear role for such Bodies in facilitating access to justice, they provide little detail, stipulating only that designated institutions should be empowered to provide "independent assistance to victims of discrimination in pursuing their complaints" and to act in the defence of rights (in accordance with national law and practice) where a violation of the right to non-discrimination has occurred.²⁵⁶ In some countries, these Directives have been interpreted expansively, allowing Equality Bodies to make observations on individual cases and issue relevant recommendations.²⁵⁷ But practice in this area has been uneven. Research undertaken by the European Commission in 2021 found that Equality Bodies in less than 10 States had the power to represent a victim in legal proceedings.²⁵⁸ Some bodies possessed no litigation competencies, whilst a lack of resources and a

²⁵¹ Tudisco, V., and Lantschner, E., "Preventing and Reacting to Discrimination through Sanctions and Remedies", *Equinet*, 2022, p. 13.

²⁵² Equal Rights Trust and the International Lawyers Assisting Workers Network, *A Promise Not Realised: The Right to Non-Discrimination in Work and Employment*, 2024. Similar issues have been identified in European Union Member States. See further, *Ibid.*, p. 13.

²⁵³ Pompili, M., "Conference Synthesis Report: The other side of the law: Enforcement of anti-discrimination legislation", *Equinet*, 2023.

²⁵⁴ European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs, *Strengthening the Role and Independence of Equality Bodies*, 2023, pp. 10-11.

²⁵⁵ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, pp. 7-10.

²⁵⁶ See for example, the Race Equality Directive (2000/43/EC), Articles 7(2) and 13(2). Member States are required to ensure that "associations, organisations or other legal entities" may "engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations" under the Directive. The European Commission has observed that "States have discretion in setting criteria and conditions for the legal standing of those entities" and in practice, equality bodies in some countries do not possess a litigation function. See *Ibid.*, p. 8.

²⁵⁷ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 8, p. 19.

²⁵⁸ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, pp. 8-9.

fragmentation of powers has led to disparities in the number of cases pursued.²⁵⁹ Similar issues were identified regarding the resolution of complaints, where a lack of follow-up to Equality Body recommendations, and limited powers to impose sanctions were found to impede effective redress for victims.²⁶⁰

The Directives on Standards seek to address these shortcomings, giving explicit powers to Equality Bodies to act in support of victims, and to facilitate access to justice. Article 6 provides clarity on the forms of assistance Equality Bodies are required to provide to individuals who believe that their rights have been violated. The same Article establishes the right of Equality Bodies to receive discrimination complaints, whilst Articles 7-9 set out detailed rules covering alternative dispute resolution, the investigation of claims and conducting of inquiries, the issuing of opinions and decisions, and remedy. Article 10 strengthens existing provisions on the defence of rights by setting out the right of Equality Bodies to act in court proceedings and to make submissions to the court.

Together, the minimum standards established by these Articles seek to overcome fragmentation in States' legal frameworks, whilst offer powerful tools to Equality Bodies to address discrimination when it occurs, and to promote justice for victims. However, the exact role played by Equality Bodies may differ from State to State. For instance, whilst some powers and responsibilities (such as Equality Bodies' litigation function) cannot be delegated to any other body, others (such as alternative dispute resolution) may be performed by another institution. In this way, the Directives recognise the diversity of approaches to combatting discrimination in Member States, and the different ways in which Equality Bodies may contribute to improved justice outcomes.

Broadly, the Directives foresee two potential roles for Equality Bodies.²⁶¹ First, Equality Bodies may provide direct support to victims, including through the provision of information and advice, and by pursuing litigation. Second, Equality Bodies may play a role in resolving discrimination complaints. These functions can pull in different directions and lead to tensions within the equality mandate. This is because the support and litigation function may require an Equality Body to take a side in a case to "ensure adequate support to complainants".²⁶² In contrast, resolving complaints requires impartiality.²⁶³ In light of this tension, good practice has been identified as ensuring that each of these functions is provided by a different department, by different staff in the Equality Body, or by different bodies, and ensuring that adequate resources are allocated to support the delivery of the whole equality mandate.²⁶⁴

Articles 6-10 must be read in light of the broader objectives of the Directives. If Equality Bodies are to be effective, they must be provided with sufficient resources to ensure that all aspects of the equality mandate are fulfilled.²⁶⁵ Equality Bodies must be enabled to act with agency and autonomy and decide upon their own

²⁵⁹ *Ibid.*, p. 9.

²⁶⁰ *Ibid.*, p. 10.

²⁶¹ On the division between the support and litigation function, and the decision-making or complaints-handling function see European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para 10.

²⁶² European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, section 2.2.1.2., p. 10; European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 45.

²⁶³ *Ibid.*

²⁶⁴ *Ibid.*

²⁶⁵ On resourcing, see the discussion in Chapter IV of this Digest.

institutional structure and modes of practice. Equality Bodies should be able to decide upon the courses of action that are needed to realise the principle of equal treatment and be provided with the powers necessary to carry out their obligations.²⁶⁶ Where other bodies are responsible for delivering aspects of the equality mandate, they must meet the same standards established for Equality Bodies and perform their entrusted tasks up to the standard that the Equality Body would. Any decision regarding delegating bodies needs to be made with the best interest of the rights-holders in mind. Collaboration and coordination between responsible actors is essential.²⁶⁷ In this way, the Directives require a holistic and systems-based approach to transposition, which recognises the diversity of practice in Member States and the different roles played by Equality Bodies in strengthening implementation of the right to equal treatment and facilitating access to justice.²⁶⁸



2.1. Assistance to victims

Under Article 6(1) of the Directives, “Member States shall ensure that equality bodies are able to provide assistance to victims”. Some of the different forms of assistance are elaborated under Article 6(3) which focuses on the provision of information regarding the legal framework, possible remedies, confidentiality and data protection rules, and the availability of services, including the possibility of obtaining psychological and other forms of support. Unlike the ECRI and European Commission recommendations, the Directives do not combine the advice provision and assistive role of Equality Bodies with the litigation function. Rather, the provision of advice (and where applicable the submission of a complaint under Article 6(2)) is seen as a first step in a process that may lead to one or more of the subsequent forms of action detailed under Articles 7-10.²⁶⁹

A. Standard Setting

Discrimination claims are complex, and individuals often require support to understand their rights, and the procedures established under national law to seek remedy and redress. Previous research undertaken by Equinet found that “uncertainty” regarding a victim’s prospects of success in a discrimination case acts as a key barrier to justice.²⁷⁰ A lack of knowledge of available forms of support (including financial, technical, and other forms of assistance) may similarly dissuade a person from seeking to enforce their rights.²⁷¹

²⁶⁶ On agency and autonomy, see the discussion in Chapter I of this Digest.

²⁶⁷ See further, Chapter II.2 of this Digest.

²⁶⁸ For instance, where alternative dispute resolution is provided by another body (requiring impartiality), the Equality Body may act in support of a victim. Similarly, where inquiries are conducted by a tribunal, an Equality Body should be able to submit observations to that body. As noted above, the support and complaints-handling functions of Equality Bodies can generate impartiality concerns. These concerns will differ from State to State and can only be addressed with the input of the Equality Body itself.

²⁶⁹ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 6, p. 18.

²⁷⁰ Tudisco, V., and Lantschner, E., “Preventing and Reacting to Discrimination through Sanctions and Remedies”, *Equinet*, 2022, p. 13.

²⁷¹ *Ibid.* See more broadly, Equal Rights Trust and the International Lawyers Assisting Workers Network, *A Promise Not Realised: The Right to Non-Discrimination in Work and Employment*, 2024, pp. 75-114.

In this area, Equality Bodies can play an important role. The Race Equality Directive, the Gender Goods and Services Directive, the Gender Recast Directive and the Gender Self-Employment Directive each require Member States to provide Equality Bodies with the competence to offer independent assistance to victims of discrimination.²⁷² However, these instruments do not define specific forms of assistance. The ECRI GPR No. 2r and the European Commission Recommendation provide additional guidance to States, observing that assistance should include the provision of “personal support and legal advice”.²⁷³ Each of the recommendations then goes on to detail broader forms of assistance, which may include participating in alternative dispute resolution processes, supporting or representing victims in legal proceedings, taking legal action in the Equality Body’s own name, and making expert submissions to court (including by acting as *amicus curiae*).²⁷⁴ These wider aspects of support are discussed further in the following sections.

Article 6(2) of the Directives on Standards provides that Equality Bodies “shall be able to receive complaints of discrimination”. Complaints-handling is a key responsibility of Equality Bodies in many countries, and the Directives place States under an obligation to ensure that such bodies possess, and are enabled to fulfil, this important function.²⁷⁵ The four existing Directives provide little detail on the complaints-handling process, specifying only that Equality Bodies should assist victims “in pursuing their complaints”. The Standards Directives offer clearer guidance in this area, elaborating standards that seek to overcome accessibility barriers that may prevent or deter a victim from seeking to enforce their rights.²⁷⁶

B. Essential Elements

‘Victim’ status

A person does not need to prove that they have experienced discrimination to enjoy the support of Equality Bodies. The recitals to the Directives clarify that “any person can be a victim” and should “benefit from the assistance of equality bodies (...) irrespective of whether discrimination has been established”.²⁷⁷ Proactive measures are needed to ensure that individuals are able to access Equality Bodies on an equal basis, with special attention paid to the needs of service users who may experience information barriers for reasons linked to their age, disability, literacy levels, nationality or residency status, socio-economic situation, or other factors.²⁷⁸

²⁷² The Race Equality Directive (2000/43/EC), Article 13(2); the Gender Goods and Services Directive (2004/113/EC), Article 12(2)(a); the Gender Recast Directive (2006/54/EC), Article 20(2)(a); and the Gender Self-Employment Directive (2010/41/EU), Article 11(2)(a).

²⁷³ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 14(a); Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2(1).

²⁷⁴ *Ibid.*

²⁷⁵ Directives 2024/1499 and 2024/1500, Articles 6(1) and 6(2). See also E European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 84.

²⁷⁶ See further, the discussion of accessibility in Chapter VI.

²⁷⁷ See Directive 2024/1500, recital 23 and Directive 2024/1499, recital 24.

²⁷⁸ *Ibid.*, Article 12. See also Directive 2024/1500, recital 37; Directive 2024/1499, recital 38.

The term “victims” is defined differently between the two Directives (2024/1499 and 2024/1500), reflecting their different scopes of application.²⁷⁹ The latter includes an additional clause, clarifying that a person may be considered a ‘victim’ irrespective of their “socio-economic status, political opinion, age, health, nationality, residence status, language, colour, level of literacy, gender, gender identity, gender expression or sex characteristics”.²⁸⁰ This is an important addition, which strengthens the links to intersectionality (discussed in Chapter II) and accessibility (discussed in Chapter VI).²⁸¹ While the Directives do not extend the personal or material scope of existing EU legislation, Member States are bound by the Charter of Fundamental Rights to guarantee non-discrimination in the application of Union law.²⁸²

Equality Bodies are important duty-bearers, and a failure to assist victims on discriminatory grounds would clearly conflict with the objects and purposes of the Directives.²⁸³ In this way Directive 2024/1500 makes explicit what is left implied in Directive 2024/1499. Whereas Equality Bodies retain discretion to identify “cases they decide to pursue in court proceedings”, the obligation to assist victims, through the provision of information and advice, is mandatory.²⁸⁴

Forms of Assistance

Different forms of assistance are listed under Article 6(3), which is closely aligned with the ECRI GPR No. 2r. In the first instance, Equality Bodies should provide victims with advice regarding the applicable legal framework. This advice must be tailored to the individual and “targeted to their specific situation”.²⁸⁵ Victims should be provided with information on the availability of Equality Bodies’ services, the different steps in complaints procedures, possible avenues of redress (including the availability of alternative dispute resolution provided by the Equality Body or another service provider); access to adjudicatory mechanisms and the availability of remedies (including the possibility of court action).²⁸⁶ Victims should also be provided information on the processing of their personal data, and applicable confidentiality rules.²⁸⁷ The Directives recognise the importance of such rules in addressing “one of the causes of underreporting, namely the fear of reprisals”.²⁸⁸

²⁷⁹ Under the former, a ‘victim’ includes any person who considers that they have experienced discrimination within the meaning of the Race Equality Directive (2000/43/EC), the Framework Employment Directive (2000/78/EC), the Gender Goods and Services Directive (2004/113/EC), or the Gender Social Security Directive (79/7/EEC). The latter defines victims in relation to the Gender Recast Directive (2006/54/EC) and the Gender Self-Employment Directive (2010/41/EU).

²⁸⁰ Directive 2024/1500, recital 23.

²⁸¹ Notably, the list of grounds referenced is more extensive than those referred to in the recitals, other substantive Articles, and grounds expressly listed in the Charter of Fundamental Rights. See Directive 2024/1499, recital 16 and Article 5(2); Directive 2024/1500, recital 15 and Article 5(2).

²⁸² Charter of Fundamental Rights of the European Union, Article 21.

²⁸³ As set out in recital 23 to Directive 2024/1500, “Any person can be a victim of discrimination on the basis of sex and should benefit from the assistance of equality bodies”. See also, recital 37 and Article 12.

²⁸⁴ This is indicated by the phrase “shall provide” in Article 6(3). See Directive 2024/1499, recital 31; Directive 2024/1500, recital 30.

²⁸⁵ *Ibid.*, Article 6(3)(a).

²⁸⁶ Directives 2024/1500 and 2024/1499, Article 6(3). See also, European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 14, and explanatory memorandum, paras. 71-73.

²⁸⁷ *Ibid.*, Article 6(3)(d).

²⁸⁸ Directive 2024/1499, recital 25; Directive 2024/1500, recital 24.

Additionally, Equality Bodies are required to inform victims of “the possibility of obtaining psychological or other types of relevant support from other bodies or organisations”.²⁸⁹ This is an important addition to the Directives, and one that is retained from the original proposal. As ECRI has observed, victims of discrimination “often need, as a first step, personal and emotional support in order to deal with the discrimination or intolerance they experience”.²⁹⁰ In order to discharge the assistance function effectively, Equality Body staff must have the necessary knowledge of the legal framework and skills to deal with victims in a way that is appropriate, sensitive and safe. These principles are reflected at different points of the Directives and are central to achieving their overarching objectives, outlined in Chapter I.

Assistance and complaints

Equality Bodies are often responsible for handling discrimination complaints. The term ‘complaint’ is not defined in the Directives, although one of the key functions of an Equality Body is to provide information on available redress mechanisms, thereby assisting victims to make an informed decision on the best course of action.²⁹¹ In appropriate circumstances, Equality Bodies may continue to provide advice and other forms of assistance to victims, following the initial handling of their complaint.²⁹² In this way, the complaints-handling and assistance functions, whilst related, should be viewed separately, with assistance representing part of a broader obligation.²⁹³

Handling discrimination complaints

The Commission’s original proposal explained that the receipt of a complaint will often serve as a first step in a process that is followed by one or more further actions, including alternative dispute resolution, inquiries, the delivery of a decision or opinion, or litigation.²⁹⁴ Different units or staff within an Equality Body may provide the complaints-handling and advisory functions, depending on systems established at the national level and the different aspects of the equality mandate exercised by the Equality Body.²⁹⁵

The Commission’s original proposal for a directive would have required Equality Bodies to conduct a “preliminary assessment” of complaints received. Equinet expressed concern that such a requirement could place a “substantial extra burden on Equality Bodies” undercutting their “procedural autonomy and effectiveness”, whilst compromising their ability to serve as a “low threshold and quick complaint handling public institution”.²⁹⁶ No equivalent provision can be found in the Directives on Standards, which reinforce the

²⁸⁹ *Ibid.*, Article 6(3)(e).

²⁹⁰ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 72.

²⁹¹ Directives 2024/1499 and 2024/1500, Article 6(3)(a) and (c).

²⁹² For example, when other “competent entities” have been entrusted to undertake inquiries, oversee alternative dispute resolution, or where a person decides to initiate legal proceedings. See further, the discussion in the final section of this Chapter.

²⁹³ As noted in the final section of this Chapter, victim assistance can raise impartiality concerns where an Equality Body is responsible for resolving complaints. The exact nature of advice and other forms of assistance provided by Equality Bodies after the initial handling of a complaint will therefore differ from State to State.

²⁹⁴ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 6, p. 18.

²⁹⁵ On the need for such rules, see the discussion of impartiality at the end of this Chapter.


²⁹⁶ Kádár, T., “Position Paper: Moving forward the European Commission’s proposals for Directives strengthening Equality Bodies”, *Equinet*, 2023, p. 13.


importance of agency and autonomy in decision-making, and the need for Equality Bodies to determine their own internal structure, processes and use of resources.²⁹⁷ These principles must inform the understanding of Article 6 as requiring Equality Bodies to put in place clear procedures for the handling of complaints, which should be adapted to local contexts, reflecting the different roles an Equality Body may play in respect of a discrimination complaint.²⁹⁸

Procedural rules and data collection

If Equality Bodies believe that there are grounds for pursuing a complaint, or if they plan to close a complaint, they must inform the complainant “within a reasonable time”.²⁹⁹ States are responsible for setting out the process and procedure for informing complainants, which should be decided in agreement with the Equality Body and include clear information on timeframes.³⁰⁰ This process should also consider “procedural safeguards against repetitive or abusive complaints” which can have the effect of depleting the available resources and hindering the ability of Equality Bodies’ to support victims.³⁰¹ In establishing rules on the complaints-handling process, Equality Bodies and States must consider the broader requirements of the Directives. In particular, discrimination complaints offer an essential source of data on the prevalence of discrimination within a given jurisdiction. Information collected can also improve “the process of providing assistance to victims”.³⁰²

C. Key Principles

 **Identify and remove barriers to assistance:** When transposing the Directives, states should take a unified approach to understanding the term ‘victim’ as described in article 6. No person should be prevented from accessing assistance for reasons related to their socio-economic status, political opinion, age, health, nationality, residence status, language, colour, level of literacy, gender, gender identity, gender expression, sex characteristics or any other status. This requires an intersectional, adaptive and responsive approach. Equality body staff must be sensitive to the needs and experiences of service users.

 **Individualised advice and information:** The duty of Equality Bodies to provide information and advice to victims of discrimination aims to overcome a key barrier to justice. Victims must be informed of the availability of services, the legal framework, remedies, confidentiality and data protection rules, and relevant processes and procedures, alongside the possibility of obtaining psychological and other forms of support. All information should be individualised and tailored to a person’s situation.

²⁹⁷ See further the discussion in Chapter I.


²⁹⁸ Different avenues of redress may exist within a State, and the Equality Body may play a different role in respect of each, requiring a differentiated procedure. See further, European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 14, and explanatory memorandum, paras. 76.


²⁹⁹ Directives 2024/1499 and 2024/1500, Article 6(4).

³⁰⁰ See further, the discussion of the consultation requirements of Article 15 in Chapter VI.1.

³⁰¹ Directive 2024/1499, recital 24; Directive 2024/1500, recital 23.

³⁰² Ujházyová, M., Banjac, B., Papadopoulou, A., Patalen, N., and Stroligo-Urankar, N., “Minimal Guidelines on Improving Complaints Data Collection by Equality Bodies: An Equinet Handbook”, *Equinet*, 2023, pp. 9-10. On data collection, see the discussion in Chapter V.1.4. As the Equinet report notes, such data will also feed into monitoring reports required by Article 18 of the Directives. The collection of any personal data must meet the requirements of Article 21. On this point, see further, Equinet (above), pp. 12-15.

 Establish transparent rules and procedures: States and Equality Bodies must ensure that clear rules and procedures are established regarding the handling of complaints. These procedures may include procedural safeguards against “repetitive or abusive complaints” which can deplete the resources of Equality Bodies. Victims of discrimination should be informed of relevant procedures and be provided with information on possible avenues of redress, and the timeframe for the review of their complaint.

 Collect equality data: In accordance with the Directives’ broader rules on data-collection, Equality Bodies should collect information on complaints to monitor the situation of discrimination within the country. This information is essential to addressing discrimination, and improving the quality of services provided.



2.2. Alternative Dispute Resolution

Article 7 of the Directives provides that Equality Bodies should have the power to offer parties to a discrimination complaint “the possibility of seeking an alternative resolution”. Different models of alternative dispute resolution (ADR) exist in Member States, and the Directives recognise this diversity. Rather than prescribing a specific process, the Directives specify some of the different forms ADR can take – including mediation or conciliation – whilst leaving the arrangements to States, subject to their national law and practice.³⁰³

A. Standard Setting

The Equality Directives do not establish a concrete procedure for Equality Bodies to provide ADR in the context of providing assistance to victims. However, the importance of the availability of ADR has been highlighted by ECRI, which has noted that “conciliation can be a quick and consensual process to put an end to discrimination or intolerance” and is “particularly advantageous where discrimination or intolerance has occurred in an ongoing relationship”.³⁰⁴ Despite this importance, the availability of ADR provided by Equality Bodies has differed across Member States.

Equinet’s 2016 Working Paper stated that the general powers of Equality Bodies should include the ability to “mediate between the parties in cases of discrimination, as appropriate and agreed”.³⁰⁵ Expanding on this, the ECRI GPR No. 2r lists within the support and litigation function of Equality Bodies the competence to “have recourse to conciliation procedures when appropriate”.³⁰⁶ Finally, the European Commission Recommendation includes mediation and conciliation in the functions of Equality Bodies when providing independent assistance.³⁰⁷

³⁰³ Directives 2024/1499 and 2024/1500, Article 7.

³⁰⁴ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 74.

³⁰⁵ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 7.

³⁰⁶ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 14(b).

³⁰⁷ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2(1).

B. Essential Elements

'Competent entities'

Under the Directives, Equality Bodies may assume direct responsibility for ADR or may delegate responsibility for the process to "another competent entity". The term "competent" is key, and is further clarified by the recitals, which stress the importance of ensuring that "the person or persons in charge of the resolution process" be "independent, impartial and possess the necessary expertise" as well as the required resources to do so effectively. As described further below, discrimination claims are complex and raise unique procedural and evidentiary requirements. Discrimination can occur in different ways, on a range of grounds, in different areas of life. Any "competent entity" would need to possess sufficiently expert knowledge of these frameworks to meet the requirements of Article 7. They would also need to meet the same standards of independence under Article 3 and be provided with sufficient resources to ensure their continued operation on a "durable basis".³⁰⁸ In Member States that do not currently provide for alternative dispute resolution, Equality Bodies may be well placed to assume this function, both on account of their understanding of the anti-discrimination law framework and pre-existing independence and resourcing requirements.

Forms of Support

Recitals to the Directives clarify that the purpose of ADR is to provide parties to a discrimination complaint with a "quick, affordable, out-of-court resolution" of their dispute.³⁰⁹ This objective is necessarily defeated if one party to a dispute (such as an employer) is able to leverage their comparatively greater resources and power to exert pressure on a victim. In this regard, the recitals stress the important role of social partners, such as trade unions, in providing advice and assistance to those engaged in ADR processes.³¹⁰ Where the ADR function is delegated to another entity, Equality Bodies may also play an important role in providing support to victims. The Directives state that Equality Bodies should have the power to "formulate observations" to the institution responsible for ADR.³¹¹ While this phrase is not further elaborated, similar language is used in the recitals, to describe Equality Bodies' powers to make "expert submissions" to the courts.³¹² Clear procedures must be established setting out the modalities of alternative dispute resolution and Equality Bodies must be consulted as part of this process.

Guaranteed court access

Rules regarding ADR should be established "in accordance with national law and practice". This position is, however, qualified. As Article 7 makes plain, "the absence of a resolution shall not preclude the parties [to a dispute] from exercising their right to act in court proceedings". By extension, this requirement also applies to Equality Bodies, that could choose to exercise one or more of the litigation powers detailed under Article 10. To protect the rights of victims to initiate court action "Member States shall ensure that there is a sufficient limitation period to guarantee that the parties to a dispute have access to court, for example by suspending the limitation period while the parties engage in an alternative dispute resolution process".³¹³ The standard established by the Directives is of guaranteed court access. Such access must not be inhibited, either by

³⁰⁸ Directive 2024/1499, recital 26; Directive 2024/1500, recital 25. On resources, see Chapter IV.

³⁰⁹ Directive 2024/1499, recital 26; Directive 2024/1500, recital 25.

³¹⁰ *Ibid.*




³¹¹ Directives 2024/1499 and 2024/1500, Article 7.

³¹² See Directive 2024/1499, recital 32; and Directives 2024/1500, recital 31.

³¹³ *Ibid.*, Article 7.

States' rules of civil and administrative procedure, or by the provisions of an employment or service contract. The Directives do not specify the form that ADR should take, but whilst the modalities of ADR are left to States, the term "offer" indicates that the process should be made optional, rather than mandatory.³¹⁴

C. Key Principles

-  **Entrust competent bodies:** States must ensure that bodies providing ADR are able to act impartially and are provided with the resources needed to guarantee the quality of their services. Where this function is delegated, such service providers must meet the same standards established for Equality Bodies under the Directives. At minimum they must be independent, established on a durable basis and possess sufficiently expert knowledge of the anti-discrimination law framework.
-  **Facilitate the quick and low-cost resolution of disputes:** ADR aims to remove barriers to justice. To overcome power and resource asymmetries that often exist in discrimination cases, states should ensure that civil society and other social partners are able to provide advice and assistance to victims. Where ADR services are delegated to another competent entity, Equality Bodies should also be empowered to assist victims, in either a direct or indirect capacity.
-  **Ensure effective access to the courts:** The possibility of ADR must not preclude a person from exercising their rights under the existing Equality Directives to initiate legal proceedings. States should respect the agency and autonomy of victims to decide upon the most appropriate course of action and ensure that their national procedural rules - such as those setting a limitation period on claims - do not prevent a person from achieving redress through formal justice mechanisms.

2.3. Investigation and Inquiries



Article 8 of the Directives requires Member States to "ensure that Equality Bodies are empowered to conduct an inquiry into whether a breach of the principle of equal treatment" has occurred.³¹⁵ The term inquiry is not defined in the Directives but appears to cover two sets of circumstances. Firstly, inquiries are linked to the powers of Equality Bodies to issue opinions and (where relevant) decisions on complaints of discrimination.³¹⁶ Second, inquiries may be conducted on an Equality Bodies own motion, to investigate potential violations of the right to equal treatment. Article 8 establishes the right of Equality Bodies to access information and documents. The importance of information in discrimination cases is reflected in the Equality Directives' provisions governing the burden of proof. However, these Directives did not establish an independent right of access for Equality Bodies. In this respect, the Standards Directives break new ground, adding an important tool to Equality Bodies' arsenal.

³¹⁴ While the original proposal indicated that ADR should be made "subject to the agreement of the parties", this language was removed from the text. Instead, the recitals merely note that ADR is more likely to be successful, when it is agreed upon. See 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, COM/2022/688 final, 2022/0400 (COD), 2022, Article 7.

³¹⁵ Directives 2024/1499 and 2024/1500, Article 8(1).

³¹⁶ Indeed, in the Commission's original proposal, provisions on inquiries were subsumed within an Article covering "opinions and decisions" (now Article 9).

A. Standard Setting

The competence of Equality Bodies to conduct investigations and inquiry was not present in the Equality Directives. Nevertheless, these powers have been conferred upon many Equality Bodies and have been linked to the general promotion and prevention and decision-making competences of such bodies.³¹⁷ In its 2016 Working Paper, Equinet proposed that the powers of Equality Bodies should include conducting general investigations and inquiries on inequality.³¹⁸ Similarly, the ECRI GPR No. 2r recommended that Equality Bodies should “have powers to obtain evidence and information”.³¹⁹ The competence of Equality Bodies to conduct inquiries on their own initiative was also recommended by ECRI. These recommendations formed part of their own chapter in the Recommendation, to underscore their importance.³²⁰ In 2021, The European Commission reported that in two thirds of Member States, Equality Bodies had the power to carry out *ex officio*, or *suo moto*, investigations.³²¹

B. Essential Elements

Effective access to information and documents

The scope of Equality Bodies' fact-finding and investigatory powers are detailed under Article 8(2). Accordingly, States must establish a framework that provides “equality bodies with effective rights to access information and documents”. This provision is largely aligned with the Commission’s original proposal, although the final text makes clearer the distinction between information and documents, both of which Equality Bodies are entitled to receive as part of their investigations. While the Commission’s original proposal suggested that Member States “may” establish a legal requirement of access, in the final version, this language was removed. Instead, the Directives concentrate on “effectiveness” which is the central interpretive principle underpinning Article 8.

To ensure compliance with the principle of effective access, Equality Bodies should be provided with new powers (where not already established), for instance, to compel the production of documents, to undertake inspections and conduct interviews.³²² Article 8 establishes a right for Equality Bodies, implying the existence of a corresponding obligation for duty-bearers. Effective access may also require cooperation with “relevant public bodies”, such as labour and education inspectorates.³²³ The Directives require States to put in place the framework to facilitate such cooperation, but do not specify how it should be achieved. Given the uniqueness of each actor involved it may be advisable to establish bilateral cooperation agreements with relevant institutions. The Directives do not define the term public bodies. However, it would encompass courts and

³¹⁷ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 47.

³¹⁸ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 6.

³¹⁹ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 21.

³²⁰ *Ibid.*

³²¹ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, section 2.2.1.2., p. 9.

³²² European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 21.

³²³ Directive 2024/1499, Article 8(2) and recital 28; Directive 2024/1500, Article 8(2) and recital 27.

tribunals who can help ensure effective access by issuing enforceable orders where a person declines to provide information or requested documents.³²⁴

‘Competent’ bodies

Article 8(3) of the Directives provides that "Member States may also entrust another competent body, in accordance with national law and practice, with the powers referred to" above. This was a new addition to the Directives, not included in the Commission’s original proposal. Since the adoption of the Equality Directives, States have put in place different mechanisms for the investigation of discrimination complaints. The amendments respect this diversity, while clarifying that actors entrusted to undertake inquiries must possess the required competency. Wherever other entities are entrusted to exercise this dimension of the equality mandate, they must meet the same minimum standards of expertise, independence, resourcing and impartiality established by the Directive.³²⁵ Where another body (such as a labour inspectorate) is entrusted with part of the mandate regarding investigations, it is essential to keep in mind that investigations need to be performed covering the whole mandate (grounds and fields) covered by the Equality Directives. At the conclusion of the inquiry process, the Equality Body should be updated on the outcome (upon their own request).³²⁶

In addition to the powers of Equality Bodies

There is a possible ambiguity in Article 8. The inclusion of the word “also” suggests that where another competent body (such as a tribunal or ombuds) is entrusted with an inquiry and fact-finding mandate, its powers should be exercised ‘in addition to’ those possessed by an Equality Body, rather than ‘instead of’. This view is supported by the plain language of Article 7, which makes clear that informal dispute resolution may be “led by the equality body itself or by another competent entity” (emphasis added). The recitals to the Directives also support this reading. For instance, they specify that where another entity is empowered to undertake inquiries, they are required to update the Equality Body on the results “to avoid a duplication of processes”.³²⁷ They further provide that an Equality Body should be able to undertake an inquiry wherever it suspects “a possible violation of the principle of equal treatment”.³²⁸

Suo moto investigations

In the Commission’s original proposal, the decision-making and fact-finding powers of Equality Bodies were combined under a single article on ‘opinions and decisions’. In the revised text, a new article on inquiries was introduced, drawing a sharper distinction between the two. Importantly, recitals to the Directives clarify that Equality Bodies should be able to conduct inquiries “on their own initiative”. In this way, the Directives affirm that the powers of Equality Bodies to investigate potential violations of the right to equal treatment extend beyond the receiving and processing of individual complaints. ECRI has stressed the importance of *suo moto* (on its own motion) powers to conduct inquiries and gather information “to establish, expose, and address the, sometimes invisible, norms and processes within institutions that end up disadvantaging particular

³²⁴ See, for example, European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 21.

³²⁵ See the discussion in Chapters I - IV of this Digest.

³²⁶ Directives 2024/1499 and 2024/1500, Article 8(3).

³²⁷ Directive 2024/1499, recital 28; Directive 2024/1500, recital 27.

³²⁸ Directive 2024/1499, recital 27; Directive 2024/1500, recital 26.

groups”. According to the Commission, “these inquiry activities are important in uncovering and establishing the evidence of discrimination or intolerance that ultimately enables these experiences to be redressed”.³²⁹

C. Key Principles

- Ensure effective access to information:** In order to effectively perform their inquiry power, Equality Bodies have the right to access information and documents. This right should not be impeded, including where similar competencies are established for other entities. Mechanisms must be put in place to promote effective cooperation between Equality Bodies and other public institutions, including the courts, who can support the investigatory function by issuing relevant legal orders.
- Entrust competent bodies:** Where the inquiry function is entrusted to another entity, that entity must meet the same standards of independence, expertise, and impartiality required of an Equality Body, and be provided with the resources needed to effectively deliver the equality mandate. Such bodies should collaborate with and inform Equality Bodies of the process and outcome of the investigations.
- Retained competence:** The powers accorded to Equality Bodies under Article 8 exist in addition to powers granted to any other body, such as competent entities designated under Article 8(3). Equality Bodies’ must be provided – and retain – the right to investigate possible violations of equal treatment legislation on their own motion, including in the absence of a complaint.
- Procedural safeguards:** The new powers accorded to Equality Bodies to receive information and documents and conduct inquiries must be exercised subject to appropriate procedural safeguards, described below. In particular, hearings must ensure that “the rights of defence of natural and legal persons involved are protected.” *Inter alia*, this requires that provisions on the burden of proof are applied by designated bodies and that the broader requirements of EU law (for instance, on equality of arms) are upheld. Importantly, the Directives do not impose any limitation on the use of information collected by Equality Bodies through their investigatory and fact-finding powers in judicial proceedings.

2.4. Opinions and Decisions



The Standards Directives assert a strong role for Equality Bodies in addressing discrimination complaints. Article 9 establishes the power of Equality Bodies to issue opinions or decisions in discrimination cases. While States possess discretion in determining whether such observations are of a binding or non-binding nature, they are required to adopt specific procedural mechanisms to ensure appropriate follow-up and implementation. Importantly, the Directives include new standards on the remedial powers of Equality Bodies, and their preventative obligations. In these ways, the Directives seek to establish a stronger, more unified, framework for addressing discrimination in Europe, and promoting implementation of the right to equal treatment.

³²⁹ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 53.

A. Standard Setting

The four existing Directives that provide for the designation of Equality Bodies, establish the competence of such Bodies to issue recommendations. In some States this was interpreted as a power to make observations on individual complaints of discrimination.³³⁰ In others, Equality Bodies have been invested with a quasi-judicial function.³³¹ However, practice in this area has been uneven, and whilst many Equality Bodies do now possess an opinion or decision-making competence, there are disparities in the ways in which these powers have been framed and deployed, limiting the effectiveness of Equality Bodies in promoting access to justice for victims.³³²

In the ECRI GPR No. 2r, it was suggested that Equality Bodies with a decision-making function should be able to receive and examine both individual and collective complaints of discrimination and impose effective, proportionate and dissuasive sanctions.³³³ Moreover, they should be able to require specific action “to put an end to discrimination, achieve full equality, and avert future discrimination”.³³⁴ Where Equality Bodies are not provided with a binding decision-making function, the Recommendation suggested that Equality Bodies should be able to issue non-binding recommendations and publish these recommendations as appropriate.³³⁵

The European Commission Recommendation largely reiterates these points but stops short of recommending that Member States authorise Equality Bodies to issue legally binding decisions. Rather, it suggests that where Equality Bodies fulfil this function, they should have the capacity to issue “adequate, effective and proportionate sanctions”.³³⁶ Both the ECRI and European Commission Recommendations emphasise that parties to a dispute should be able to appeal to a court against the decision of an Equality Body, where it makes binding decisions.³³⁷

Despite these recommendations, the remedial powers of Equality Bodies across Europe remain weak. Of the relatively small number that possess a decision-making function, some do not have the power to impose sanctions, following a finding of discrimination.³³⁸ In others, sanctions do not meet the standard of “dissuasiveness” required by the Equality Directives.³³⁹ As the European Network of Legal Experts in Gender Equality and Non-Discrimination has observed, this situation negatively impacts Equality Bodies’ ability “to

³³⁰ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 8, p. 19.

³³¹ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, pp. 9-10.

³³² *Ibid.*, pp. 9-10.

³³³ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 17.

³³⁴ *Ibid.*

³³⁵ *Ibid.*, paras. 17-18.

³³⁶ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2.

³³⁷ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 19; Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2(6).

³³⁸ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, pp. 9-10.

³³⁹ *Ibid.*, pp. 9-10.

make an impact through enforcement of the equal treatment legislation”.³⁴⁰ Indeed, only around 10% of respondents to the European Commission’s public consultation in 2022 agreed that their national Equality Bodies issue adequate sanctions that are effectively enforced.³⁴¹ A recent Equinet report made similar findings:

Equality Bodies endowed with binding decision-making powers do not always have the power to issue sanctions, therefore requiring other institutions to be involved. Lack of resources may limit Equality Bodies’ capacity to follow up on the implementation of their decisions, even if they are legally binding. Moreover, more powers effectively used by Equality Bodies, especially if decisions are targeting the executive, the public administration or political figures, may also entail more pressure by political authorities, therefore making standards and, with that, ensuring the independence of Equality Bodies essential.³⁴²

Similar issues can arise in respect of Equality Bodies that have the power to issue non-binding opinions. Whilst the ECRI GPR No. 2r notes the potential of such powers, which “can have a considerable impact, even if they are not binding”, a lack of mechanisms for feedback can limit their effectiveness.³⁴³ The Directives address these challenges in different ways: first, by requiring the adoption of clear procedural mechanisms for case follow up and feedback; second, by reinforcing the remedial role of Equality Bodies; third by expressly connecting the opinion and decision-making powers of Equality Bodies to the duty to prevent discrimination, and fourth by promoting accountability and impact.³⁴⁴

B. Essential Elements

Delivering opinions and decisions

Following the procedures detailed in the preceding sections, Article 9(1) of the Directives requires States to empower Equality Bodies to “provide and document their assessment of the case”. Under this Article, Equality Bodies must be empowered to establish the material facts and provide a “reasoned conclusion on the existence of discrimination”.

The assessment can take one of two forms, either (binding) decisions or (non-binding) opinions. Equality Bodies play diverse roles in Member States, and not all are granted a strict enforcement power. The Commission’s original proposal recognises this diversity, stressing that some recommendations – including a requirement that Equality Bodies possess binding decision-making powers – were not put forward out of

³⁴⁰ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 110.

³⁴¹ European Commission Directorate-General Justice and Consumers, *Binding standards for Equality Bodies: Factual summary report - Open Public Consultation*, 2022, p. 7.

³⁴² Tudisco, V., and Lantschner, E., “Preventing and Reacting to Discrimination through Sanctions and Remedies”, *Equinet*, 2022, p. 32.

³⁴³ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 84.

³⁴⁴ This final component is discretely linked to the duty to publish summaries of decisions, under Article 9(3).

“respect” for “the procedural autonomy of Member States”.³⁴⁵ The proposal also clarifies the distinction between recommendations and opinions, the latter of which relates specifically the “competence of equality bodies to issue conclusions in individual cases”.³⁴⁶

Slightly different procedures are established depending on the nature of Equality Bodies’ powers. Where such bodies are enabled to make binding decisions, States are required to establish “appropriate mechanisms” for their effective enforcement. Equality Bodies must be afforded the right to participate in enforcement proceedings and be empowered to secure information on the implementation of their decisions.³⁴⁷ Where Equality Bodies issue non-binding opinions, specific mechanisms must be put in place to ensure they are actively considered and followed up, including through the introduction of specific “feedback obligations”.³⁴⁸ Article 9 concludes by further strengthening the links between the decision-making and promotion and prevention aspects of the mandate, requiring Equality Bodies to publish a summary of the decisions or opinions “which they consider to be of particular relevance”.³⁴⁹

Remedying discrimination

Perhaps the biggest contribution made by Article 9 concerns remedy. Under the Equality Directives, Member States are required to establish appropriate avenues for the enforcement of the right to non-discrimination. This, in turn, requires remedy in the event of violations. Consistent with the principle of procedural autonomy, the Equality Directives provide a degree of flexibility in this area. The Race Equality Directive, for example, simply provides that States are required to “lay down” rules on sanctions, without detailing specific measures.³⁵⁰ While sanctions may include compensation, compensation per se will not constitute an effective remedy, when it fails to recognise the harm experienced by the victim.³⁵¹

To meet the requirements of the existing Directives, sanctions must be “effective, proportionate and dissuasive”.³⁵² The Directives on Standards build out from these requirements in important ways. In particular, they specify that – “where appropriate” – binding decisions and non-binding opinions should include “specific measures to remedy any breach of the principle of equal treatment found and to prevent further occurrences”.³⁵³ The term “appropriate” in this section must be read as relating to the sanctions themselves: in some cases, recognition of the harm experienced by a victim may constitute an appropriate remedy.³⁵⁴ Other remedies that are appropriate in a given case will vary depending on the circumstances but

³⁴⁵ 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, COM/2022/688 final, 2022/0400 (COD), p. 8, footnote 35.

³⁴⁶ *Ibid.*, explanation of Article 8, p. 19.

³⁴⁷ Directives 2024/1499 and 2024/1500, Article 10(4).

³⁴⁸ Directives 2024/1499 and 2024/1500, Article 9(2).

³⁴⁹ *Ibid.*, Article 9(3).

³⁵⁰ Race Equality Directive (2000/43/EC), Article 15.

³⁵¹ Court of Justice of the European Union, *Diskrimineringsombudsmannen v Braathens Regional Aviation AB*, Case C-30/19, 2021, paras. 44-49.

³⁵² *Ibid.*; Directive 2000/43/EC, Article 15.

³⁵³ Directives 2024/1499 and 2024/1500, Article 9(2).




³⁵⁴ Court of Justice of the European Union, *Diskrimineringsombudsmannen v Braathens Regional Aviation AB*, Case C-30/19, 2021, paras. 44-49.

may include sanction, compensation and restitution.³⁵⁵ In many cases, a combination of measures will be required to ensure justice to victims.³⁵⁶

Forward-looking, institutional and societal remedies

Beyond redressing harm in an individual case, Article 9 envisages the application of a broader set of measures, designed to prevent discrimination from reoccurring. In this way, the Standards Directives move beyond a reactive approach to addressing discrimination, towards a proactive and preventative model of rights protection. Such measures might include a requirement that a person or body undertakes training; develops a code of practice; adopts an anti-discrimination policy or strategy; undertakes equality impact assessment; makes adjustments or modifications to existing policies, programmes, services or the environment; engages with civil society and labour organisations; refrains from a given activity; or removes harmful online content.³⁵⁷ Whilst States have some discretion in this area, to be effective, such measures must be institutionally and societally focused – aimed at addressed ingrained and structural inequalities, rather than individually centred ones.³⁵⁸ Under Article 9(3), Equality Bodies are required to publish “a summary of those of their opinions and decisions which they consider to be of particular relevance”. Amongst other objectives, this requirement serves to increase awareness of discrimination issues amongst the general population and is itself a key preventative measure.

C. Key Principles

-  **Remedy, sanction and prevent:** When deciding cases or issuing opinions, Equality Bodies should be empowered to specify remedial action, including sanctions that are effective, proportionate and dissuasive, alongside proactive and preventative measures, designed to prevent reoccurrence and address the structural determinants of inequality.
-  **Establish effective mechanisms:** States are required to establish specific mechanisms to promote the effective enforcement of decisions, and implementation of opinions. Where Equality Bodies have a binding decision-making function, they must be afforded the right to secure information on the implementation of those decisions. Where Equality Bodies issue non-binding opinions, clear feedback protocols must be established to encourage dialogue and promote effective implementation. In both cases, Equality Bodies must be provided with the resources they need to deliver on their mandate.
-  **Complementarity of Powers:** Equality Bodies retain the right to exercise all litigation competencies accorded to them by States pursuant to Article 10 of the Directives. Under Article 10(4) all competent bodies entrusted with binding decision-making powers have the right to act as a party in judicial proceedings on the enforcement or judicial review of their decisions.

³⁵⁵ See further, UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 75-84.

³⁵⁶ See further, Tudisco, V., and Lantschner, E., “Preventing and Reacting to Discrimination through Sanctions and Remedies”, *Equinet*, 2022, p. 67.

³⁵⁷ *Ibid.*, p. 67.

³⁵⁸ UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, pp. 81-84.



2.5. Litigation

One of the most significant contributions of the Standards Directives relates to the powers of Equality Bodies to act in court proceedings. Previous research published by the European Commission raised concern regarding the “limited competencies” of Equality Bodies to “take cases of discrimination or to act as *amicus curiae* before the courts” owing to a lack of legal standing.³⁵⁹ The Directives fill this gap, establishing specific litigation competencies for Equality Bodies, whilst asserting their right to act in court proceedings in their role as legal experts. Unlike some of the other competencies discussed in this Section, Equality Bodies’ litigation powers cannot be entrusted to another competent institution: they must be exercised by the Equality Body itself, in accordance with its own institutional priorities and decision-making processes.³⁶⁰ In this way, the Directives assert the important role of Equality Bodies in contributing towards the “proper interpretation and application of equal treatment legislation” and in combatting discrimination.³⁶¹

A. Standard Setting

A majority of the Equality Directives include a provision on the defence of rights and empower Equality Bodies to provide independent assistance to victims of discrimination.³⁶² While each of these provisions presupposes that Equality Bodies should be granted legal standing in discrimination cases,³⁶³ and the vast majority of Equality Bodies in Europe have been accorded either part or all of the support and litigation function,³⁶⁴ their powers vary significantly. A report of the European Commission in 2021 found that Equality Bodies in less than 10 countries were able to represent victims in legal proceedings, while a small number had no litigation powers at all.³⁶⁵ The limited legal standing of Equality Bodies to act before the courts can have a significant impact on access to justice, as it impedes their ability to support victims of discrimination through litigation free of charge and with expert support.³⁶⁶

³⁵⁹ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, pp. 12 and 105.

³⁶⁰ Directive 2024/1499, recital 31; Directive 2024/1500, recital 30.

³⁶¹ Directive 2024/1499, recital 31; Directive 2024/1500, recital 30.

³⁶² On the former, see the Race Equality Directive (2000/43/EC), Article 7(2); The Framework Employment Directive (2000/78/EC), Article 9(2); The Gender Goods and Services Directive (2004/113/EC), Article 9(3); the Gender Recast Directive (2006/54/EC), Article 17(2); and the Gender Self-Employment Directive (2010/41/EU), Article 9(2). This provision permits “associations, organisations or other legal entities” with a legitimate interest in ensuring compliance with rights established under the Directives, to participate in judicial and administrative proceedings “on behalf or in support of” a complainant.







³⁶³ El Morabet, I., Elizondo-Urrestarazu, J., Pirker, V., and Micovčinová, B., “Equality Bodies working on cases without an identifiable victim: *Actio popularis*”, *Equinet*, 2022, pp. 13-14.

³⁶⁴ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 71.

³⁶⁵ The report further highlights disparities in the use of Equality Bodies’ litigation powers, which were attributed primarily to issues of inadequate resourcing. See European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, pp. 8-9.

³⁶⁶ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 110.

In 2022, Equinet identified six categories of legal standing Equality Bodies across Europe may possess, including:

-  **Representing victims of discrimination before the courts;**
-  **Bringing proceedings in the Equality Body's own name;**
-  **Intervening in support of a party;**
-  **Filing an *amicus curiae* brief or similar;**
-  **Defending legally binding decisions before courts; and**
-  **Bringing an unconstitutionality claim in front of Constitutional Courts.³⁶⁷**

Equinet's report concluded that "only a complementary approach of different types of standing can adequately address the individual and societal harm caused by discrimination".³⁶⁸

The ECRI GPR No. 2r noted that Equality Bodies' litigation function may include the competences to intervene as *amicus curiae*, to bring cases of individual and structural discrimination in their own name, and to represent people exposed to discrimination before institutions, adjudicatory bodies, and the courts.³⁶⁹ The European Commission Recommendation includes a similar list, while calling on States to consider granting to Equality Bodies "the possibility to engage or assist in litigation (...) either in the body's own name or in the name of the victims or organisations representing the victims".³⁷⁰ In this regard, the Directives mark a significant step forward. As the Commission's original proposal notes, Article 10 aims to facilitate increased access to justice for victims of discrimination, whilst improving the interpretation of laws and promoting "social change via strategic litigation".³⁷¹

B. Essential Elements

A non-delegable power

Article 10 of the Directives is divided into four parts. Article 10(1) places States under a strict obligation to "ensure that equality bodies have the right to act in court proceedings in (...) matters relating to the implementation of the principle of equal treatment". There are two qualifications to this provision. First, Equality Bodies' litigation powers under the Directives only apply to cases governed by the civil and

³⁶⁷ El Morabet, I., Elizondo-Urrestarazu, J., Pirker, V., and Micovčinová, B., "Equality Bodies working on cases without an identifiable victim: Actio popularis", *Equinet*, 2022, pp. 13-14.

³⁶⁸ *Ibid.*, p. 15.

³⁶⁹ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 14.

³⁷⁰ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2(1) and (2).

³⁷¹ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 9, p. 19.

administrative law. Second, these powers must be exercised “in accordance with national law and practice on the admissibility of actions, including any rules on requiring the approval of the victims”.

This requirement reflects both the importance of a victim-oriented approach, and the diversity that exists in Member States’ procedural law frameworks. However, the recitals clarify that such rules “cannot be applied in a way that is liable to undermine the effectiveness of the equality bodies’ right to act”.³⁷² Unlike other competencies, such as those listed under Article 7, Equality Bodies litigation powers need to be given to the Equality Body itself and cannot be delegated to any other person or body. They exist in addition (‘without prejudice’) to powers already exercised by other bodies, such as networks of civil society organisations, trade unions, and ombuds,³⁷³ thereby reinforcing the shared responsibility and collective element of the fight against discrimination.

Litigation competencies

Article 10(3) sets out the litigation powers of Equality Bodies. The first power is to “initiate court proceedings on behalf of one or several victims”. In such cases, the Equality Body serves as a direct representative of victims in legal proceedings.³⁷⁴ The second power is to “participate in court proceedings in support of one or several victims”. In these circumstances, the Body takes “part in court proceedings initiated by the victims, to support the claim”.³⁷⁵ As the recitals describe, vesting Equality Bodies with these types of powers can help overcome barriers to justice, allowing victims to benefit from its institutional knowledge and resources, whilst providing a degree of assurance against retaliation, which may otherwise deter a person from bringing a claim.³⁷⁶

The third power concerns the right of an Equality Body “to initiate court proceedings in its own name, in order to defend the public interest”. The recitals to the Directives emphasise the power of public interest litigation, which can be effective at combatting structural discrimination (for instance, in cases where it may be difficult to collect relevant data, or in the absence of any identifiable individual victim) and challenging particularly serious or widespread rights violations.³⁷⁷ Equality Bodies should be able to choose which cases to pursue through the use of their litigation powers.³⁷⁸ These powers are consistent, and should be read coextensively, with provisions of the existing Equality Directives on the defence of rights, and the practice of the Court of Justice of the European Union, which has supported findings of discrimination in the absence of an identifiable victim.³⁷⁹

One or more powers

The litigation powers afforded to Equality Bodies under Article 10 represent an essential tool in the fight against discrimination and are closely aligned with the recommendations of ECRI, with one notable exception.

³⁷² Directive 2024/1499, recital 31; Directive 2024/1500, recital 30.

³⁷³ Directive 2024/1499, Article 1(2) and recital 37; Directive 2024/1500, Article 1(2) and recital 36.

³⁷⁴ Directive 2024/1499, recital 34; Directive 2024/1500, recital 33.

³⁷⁵ *Ibid.*

³⁷⁶ *Ibid.*

³⁷⁷ Directive 2024/1499, recital 35; Directive 2024/1500, recital 34.

³⁷⁸ Directive 2024/1499, recital 33; Directive 2024/1500, recital 32.

³⁷⁹ Directive 2024/1499, recital 35; Directive 2024/1500, recital 34. For more information on the importance of Equality Bodies’ litigation powers, see Equinet, *Factsheet: Litigation Powers of Equality Bodies*, 2023, available at: <https://equineteurope.org/publications/litigation-powers-of-equality-bodies/>.

In the negotiation process, an amendment was made to the original text, specifying that Equality Bodies should have the right to exercise “one or more” of the competencies listed under Article 10(3). This deviates from the original proposal, which suggested that Equality Bodies should possess *each* power.

While the final version still marks a significant improvement on the text of the Equality Directives, this amendment points to the challenges of negotiating an instrument that is reflective of the diversity of models for combatting discrimination in Member States.³⁸⁰ The amendments also create a degree of inconsistency with the recent Pay Transparency Directive, which requires that Equality Bodies are enabled to engage in litigation “on behalf of, or in support of, a worker” whose rights under the Directive have been infringed.³⁸¹ This is a broader requirement than that of the Standards Directives, which only require Equality Bodies to possess (at least) one of these two competencies. Not applying a consistent approach in this regard could result in an Equality Body being able to bring a case to court under the Pay Transparency Directive but not being able to support victims the same way regarding other discrimination claims. This would be to the detriment of rights-holders and run contrary to the purposes of the Standards Directives enshrined in Article 1.³⁸²

Despite the amendment to the original proposal, States continue to be bound by the broader provisions of the Equality Directives, discussed above. Moreover, the Standards Directives contain an in-built mechanism to balance the margin of discretion afforded to Members, with the overarching objective of strengthening protections against discrimination. Under Article 15, Equality Bodies should be consulted on all legal and policy matters relating to the rights and obligations established under the Equality Directives. This would include any changes to their own competencies.³⁸³ As part of the consultation process, States should ensure that the recommendations of Equality Bodies are considered, and that they are provided with all the tools necessary to effectively deliver the equality mandate.³⁸⁴

Expert submissions

Having established the right of Equality Bodies to act in legal proceedings, Article 10(2) details the rights of Equality Bodies to “submit observations to the court” in accordance with procedures established at the national level. Whilst not strictly a litigation power, the ability of Equality Bodies to participate in court proceedings through making expert interventions (for instance, through an *amicus curiae* brief) is of benefit to both the court and litigants, whilst providing Equality Bodies with the opportunity to participate in

³⁸⁰ Following advocacy by Equinet, a provision which would have prevented Equality Bodies from submitting as evidence in court proceedings information obtained through the use of its investigatory powers was removed. In part, this decision appears to have been motivated by evidence that Equality Bodies in several Member States already possess such powers, which can help to address inherent power asymmetries between victims and those accused of discrimination. See Kádár, T., “Position Paper: Moving forward the European Commission’s proposals for Directives strengthening Equality Bodies”, *Equinet*, 2023, pp. 15-16.

³⁸¹ See the Pay Transparency Directive (2023/970), Article 15.

³⁸² Article 1(3) of Directive 2024/1500 clarifies that the Directive is “without prejudice to more specific provisions contained in Directive (EU) 2023/970”. This provision makes clear that Equality Bodies’ broader competencies under the Pay Transparency Directive are unaffected by the new provisions on Standards.

³⁸³ For reasons discussed in Chapter IV, the need to consult with Equality Bodies on matters concerning their own competencies is an essential safeguard to ensure that Equality Bodies remain independent and free from external influence, as required by Article 3.

³⁸⁴ On consultation, see the discussion in Chapter VI.1.

proceedings in cases where they could otherwise be prevented from acting (depending on their litigation powers), thereby facilitating the improved implementation of the right to equal treatment.³⁸⁵

C. Key Principles

The right to act in court proceedings: Equality Bodies must be provided with the power to make expert submissions to the court in discrimination cases, in recognition of their role as legal experts. Equality Bodies must also possess at least one of the following litigation competencies: to initiate court action in their own name as a direct representative of victims; to participate in court proceedings initiated by victims in support of their claim; and to litigate in their own name to defend the public interest. Equality Bodies that have a binding decision-making function have the right to act in support of the enforcement or judicial review of its decisions.

Non-transferrable and complementary: The litigation powers afforded to Equality Bodies under the Directives are non-delegable and exist in addition to powers already exercised by other institutions or bodies, such as Ombuds, trade unions, or networks of civil society organisations.

Prioritisation: Equality Bodies must exercise agency and autonomy in the use of their litigation powers and be enabled to choose which cases to pursue in accordance with their own established priorities.

Responsive to the needs of Equality Bodies: To ensure that Equality Bodies are able to effectively conduct their mandate, they must be meaningfully consulted in respect of any decisions concerning the creation of new, or extension of existing, litigation competencies. States must ensure that resource considerations do not preclude Equality Bodies from assuming any of the competencies listed under Article 10(3), where they are considered necessary to promote justice for victims.

2.6. Procedural Safeguards



Across each of the areas discussed in this Chapter, the Standards Directives significantly enhance the powers of Equality Bodies, thereby enabling them to fulfil their essential function of upholding and enforcing the equality and non-discrimination framework, whilst improving access to justice. Article 11 establishes procedural safeguards, which are designed to complement and reinforce rules contained in the Equality Directives on issues such as evidence and proof, whilst clarifying their application to Equality Bodies when exercising their newly acquired and existing functions. The expansion of Equality Bodies competences may present certain risks, particularly in cases where an Equality Body is responsible for delivering different aspects of the equality mandate. Article 3(3) of the Directives foresees this possibility, requiring Member States to ensure that their Equality Bodies “establish an internal structure that guarantees the independent, and where appropriate impartial, exercise of their competences”.

³⁸⁵ 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, COM/2022/688 final, 2022/0400 (COD), explanation of Article 9, p. 19.

A. Standard Setting

Across Europe, a diversity of models of Equality Bodies exists, with many assuming a combination of promotion and prevention, support and litigation, and decision-making functions.³⁸⁶ While each of these functions is centrally concerned with eliminating discrimination and promoting implementation of the right to equal treatment, they may require Equality Bodies to act in different ways. In turn, specific measures are needed to protect the equality mandate and the rights and interests of those involved in a discrimination complaint. The European Commission Recommendation notes that the “exercise of the powers conferred on Equality Bodies should be subject to appropriate safeguards, including, where relevant, effective judicial remedy and due process”.³⁸⁷ Where Equality Bodies have a binding decision-making function, there should be a “right to appeal before the courts”, which should “be explicitly spelled out in national law”.³⁸⁸

As described at the beginning of this Chapter, the exercise of different functions by Equality Bodies can raise particular challenges, particularly in respect of impartiality and resource management.³⁸⁹ On the latter, the European Commission Recommendation stresses the importance of ensuring that Equality Bodies do not “concentrate to a disproportionate extent on some tasks to the detriment” of others. This requires active case management.³⁹⁰ Recent self-assessment indicators developed by Equinet provide different metrics against which national practice can be evaluated, concentrating on the internal structure of Equality Bodies, their focus on the different aspects of the mandate, grounds covered and the areas of life concerned.³⁹¹

Some Equality Body functions – in particular the conducting of inquiries and the substantive review of complaints (resulting in a binding decision or non-binding opinion) – require an Equality Body to act impartially. Others require Equality Bodies to provide direct support and assistance to victims. Balancing these competing tasks can be difficult. The ECRI GPR No. 2r provides some guidance in this area, although much will depend on the national context, and the Directives accord considerable leeway to States (and by extension Equality Bodies themselves) to determine how the balancing exercise should best be achieved.³⁹² In establishing appropriate structures, States must have regard to the overarching objectives of the Directives and interpret the standards established holistically.

B. Essential Elements

Procedural safeguards

Article 11 provides that when Equality Bodies implement their powers pursuant to Articles 6-10 of the Directives, Member States are required to ensure that “the rights of defence of natural and legal persons

³⁸⁶ European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, *Strengthening the Role and Independence of Equality Bodies*, 2023, p. 29.

³⁸⁷ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.1.2(6).

³⁸⁸ *Ibid.*, para. 1.1.2(6).

³⁸⁹ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 9.

³⁹⁰ Crowley, N., “Taking Stock, A Perspective from the Work of Equality Bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies”, *Equinet*, 2020, p. 24.

³⁹¹ Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, p. 7.

³⁹² See in particular, European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, paras. 44-48; Directives 2024/1499 and 2024/1500, Article 3(3).

involved are protected”.³⁹³ Specific measures, designed to promote consistency with these principles, are elaborated at several points. Evidence in discrimination cases can be difficult to establish. Unique procedural rules have been developed to overcome barriers to justice, providing for a shift in the burden of proof from a complainant to a respondent once “facts from which it may be presumed that there has been” discrimination (a *prima facie* case) have been established.³⁹⁴ The recitals to the Directives clarify that the “powers to conduct inquiries and to take decisions, and the right to act in court proceedings” established through Articles 7-10 are “expected to facilitate the practical implementation” of these rules.³⁹⁵ Binding decisions “shall be subject to judicial review in accordance with national law”.³⁹⁶ Equality Bodies must be enabled to “act as a party in proceedings on the enforcement or judicial review” of such decisions.³⁹⁷ Article 8(4) includes a specific condition, which permits Member States to provide for the prevention or discontinuation of inquiries “while court proceedings in the same case are pending”.³⁹⁸ Consistent with the overarching objectives of the Directives, where such rules are introduced, States must adopt effective safeguards against abuse of process.³⁹⁹

Protect the equality mandate

Within and between States, Equality Bodies can play different roles in upholding the non-discrimination framework and promoting access to justice. While all Equality Bodies are required by the Directives to provide a minimum level of information and support to victims, once a complaint is lodged, different avenues are established through which a case can proceed. These different functions can pull in different directions. For example, when exercising the inquiry or alternative dispute resolution function, an Equality Body is expected to act impartially, while when representing a victim in court they are expected to act in the best interest of the victims they are supporting.⁴⁰⁰

Article 3 of the Standards Directives requires States to ensure that Equality Bodies “establish an internal structure that guarantees the independent, and where appropriate impartial, exercise of their competences”.⁴⁰¹ This could include, for example, creating separate units within the Equality Body to exercise different elements of the equality mandate, dividing these functions between different staff members, or establishing a separate Body in the form of an Equality Tribunal with binding decision making powers. While States possess a margin of discretion in this area, the whole of the equality mandate must be delivered. The recitals to the Standards Directives clarify States’ obligations to ensure that “appropriate safeguards” are

³⁹³ Directives 2024/1499 and 2024/1500, Article 11.

³⁹⁴ See for example, the Gender Recast Directive (2006/54/EC), Article 19.

³⁹⁵ Directive 2024/1499, recital 31; Directive 2024/1500, recital 30.

³⁹⁶ *Ibid.*, Article 11.

³⁹⁷ *Ibid.*, Article 10(4).

³⁹⁸ In the original proposal, more proscriptive language was used. However, evidence collected by Equinet showed that in several Member States, investigations by Equality Bodies may continue despite ongoing court proceedings. See Kádár, T., “Position Paper: Moving forward the European Commission’s proposals for Directives strengthening Equality Bodies”, *Equinet*, 2023, pp. 15-16.

³⁹⁹ This need is captured in Directive 2024/1499, recital 24 and Directive 2024/1500, recital 23.

⁴⁰⁰ Directive 2024/1499, recitals 19 and 26; Directive 2024/1500, recitals 18 and 25.

⁴⁰¹ *Ibid.*, See also Article 3(3).


established to protect the exercise of Equality Body competences.⁴⁰² This may require the adoption of legislation or regulations.⁴⁰³


Effective resourcing and non-diminution

Each body that is made responsible for delivering parts of the equality mandate must meet the minimum standards of effectiveness, independence, resourcing, and accessibility established through the Standards Directives.⁴⁰⁴ Where Equality Bodies are provided with new powers and responsibilities, there can be no reduction in the level of protection against discrimination.⁴⁰⁵ This requirement applies equally where powers or functions that are currently exercised by other entities are subsequently afforded to Equality Bodies.⁴⁰⁶ In this situation, collaboration and coordination between institutions is required in order to avoid a duplication of functions.⁴⁰⁷

The assumption of new powers may raise prioritisation concerns, particularly where Equality Bodies that have traditionally been made responsible for promotion and prevention are charged with a decision-making or assistance and litigation function.⁴⁰⁸ In this connection, Article 4 of the Standards Directives make clear that each designated institution must be provided with the necessary human, financial and technical resources to deliver each component of the mandate. This requires forward planning for both expected and unanticipated costs, for instance, in the event of an increase in complaints or litigation expenses.⁴⁰⁹

C. Key Principles

 **Establish procedural safeguards:** States must ensure that the powers of Equality Bodies complement, and do not prevent, the achievement of justice through judicial mechanisms. Bodies responsible for conducting inquiries should comply with rules contained in the Equality Directives relating to the burden of proof and act with due impartiality. Where designated institutions have the power to make binding decisions, states must ensure that an avenue of appeal to the courts exists.

 **Establish transparent internal structures and protect the equality mandate:** States and Equality Bodies must cooperate to ensure that each aspect of the equality mandate is delivered on all grounds and in all areas of life covered by the Equality Directives. Where Equality Bodies exercise a decision-making function, in addition to promotion, prevention, assistance and litigation competencies, States must ensure that their internal structure allows for the effective and (where appropriate) impartial exercise of their powers.

⁴⁰² Directive 2024/1499, recital 19 and Directive 2024/1500, recital 18.

⁴⁰³ Directives 2024/1499 and 2024/1500, Article 24. Under this Article Member States are required to “bring into force the laws, regulations and administrative provisions necessary to comply with” the current Directives.

⁴⁰⁴ See the discussion in Chapters III, IV and VI.


⁴⁰⁵ Directives 2024/1499 and 2024/1500, Article 20(2).

⁴⁰⁶ This is made explicit in Article 2(2) in respect of the existing competencies of “labour inspectorates or other enforcement bodies and to the rights and prerogatives of the social partners”. See also, Directive 2024/1499, recital 17; and Directive 2024/1500, recital 16.

⁴⁰⁷ See, for example, Directive 2024/1499, Articles 8(2) and 14 and recitals 28 and 41 and Directive 2024/1500, Articles 8(2) and 14, and recitals 27 and 40.

⁴⁰⁸ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, p. 10.

⁴⁰⁹ Directive 2024/1499, recital 22 and Directive 2024/1500, recital 21.

 **Deliver the whole mandate:** Safeguards should be put in place to ensure that entrusted institutions have the necessary resources to effectively deliver those parts of the equality mandate for which they are made responsible. All aspects of the equality mandate must be fulfilled and given appropriate attention. Where powers afforded to an Equality Body are delegated to another institution (ADR and inquiries), that institution must meet the same standards established by the Directives, including as regards impartiality, independence, resources and accessibility. Such bodies must also comply with the broader requirements of the EU equal treatment framework on issues such as legal procedure, evidence and proof, discussed above.



VI. Accessibility



Articles 12 and 13 of the Standards Directives concern the accessibility of Equality Bodies and the services which they provide. Article 12 establishes an overarching principle of equal access and sets general standards in respect of access for all to the services and publications provided by Equality Bodies. In addition to setting a general standard, it sets specific requirements of equal access in respect of procedures for submission of complaints. Article 13 concerns specific obligations of reasonable accommodation and accessibility for persons with disabilities, confirming that obligations under the UN Convention on the Rights of Persons with Disabilities and the EU Accessibility Act apply to Equality Bodies.

These Articles serve to ensure that Equality Bodies - as institutions established to promote and protect the rights to equality and non-discrimination - are accessible, on an equal basis by all. As ECRI has noted, accessibility is an essential minimum standard both for the effectiveness of Equality Bodies and for their legitimacy:

As members of groups exposed to discrimination and intolerance often face multiple problems and obstacles equality bodies should pay particular attention to ensuring that they are easily accessible for them.⁴¹⁰

Articles 12 and 13 ensure that the Standards Directives on Standards are - and that Equality Bodies will be - aligned with existing international standards (including but not limited to the Convention on the Rights of Persons with Disabilities) and the recommendations of expert bodies.⁴¹¹ Crucially, the standards set in these Articles also serve to ensure that Equality Bodies do not indirectly discriminate in the delivery of their services, through failure to remove barriers, adapt premises and procedures, and ensure access to all.

While Articles 12 and 13 deal with different dimensions of equality of access, in this Digest, the two provisions are examined together, reflecting their common objective.

A. Standard-setting

The four existing Directives that provide for the designation of Equality Bodies made no reference to the accessibility of such Bodies. As such, while international standards on equal access have developed

⁴¹⁰ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 119.

⁴¹¹ See, for example, 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, COM/2022/688 final, 2022/0400 (COD), p. 5.

substantially in recent decades,⁴¹² European legal frameworks governing Equality Bodies did not clarify that these requirements extended to these institutions.

Absent specific provisions for equal access to Equality Bodies, accessibility has proved a practical challenge for Equality Bodies and their users, with issues ranging from geographical inaccessibility of offices and a lack of data on the cost and complexity of complaints procedures.⁴¹³ In 2018, the European Equality Law Network noted that while local offices are “a starting point for accessibility (...) local and regional offices still tend to be the exception”.⁴¹⁴ One notable result of these accessibility issues has been the under-reporting of discrimination due to barriers to the effective access of justice.⁴¹⁵ In 2022, almost 4 out of 5 respondents to the public consultation undertaken by the European Commission “considered it necessary to make additional rules” on accessibility.⁴¹⁶

In its 2016 Working Paper, Equinet proposed a standard on the need for pathways to access to justice to be “accessible and coherent”, with Equality Bodies equipped with “the powers and resources to enable claimants to navigate and be supported along the full pathway for access to justice”.⁴¹⁷ The ECRI GPR No. 2r established a broader accessibility standard, applicable to the full range of Equality Bodies’ services. It provided that Equality Bodies “should be accessible to those whose rights they are established to protect” and set down specific standards providing, among other things, that the services of Equality Bodies should be “free of charge” and that persons exposed to discrimination should be able to engage with Equality Bodies in multiple forms and confidentially.⁴¹⁸

In its 2018 Recommendation, the European Commission stated that Member States should:

[E]nsure that it is easy for all persons to access the equality bodies' physical premises, their information and communication including information technologies, and services and products such as documents and audio-visual material or meetings and events open or provided to the public. They should in particular be accessible for persons with disabilities, for whom in addition reasonable accommodation as defined in the United Nations Convention on the Rights of Persons with Disabilities should be provided, to ensure to persons with disabilities access to equality bodies on an equal basis with others.⁴¹⁹

⁴¹² For further discussion, see: UN Human Rights Office, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation*, 2023, part 2.I.C.1.

⁴¹³ European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs, *Strengthening the Role and Independence of Equality Bodies*, 2023, p. 41.

⁴¹⁴ European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 117.

⁴¹⁵ European Commission, *Commission Staff Working Document: Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD (2021) 63 final, section 3.3, p. 24.

⁴¹⁶ European Commission Directorate-General Justice and Consumers, *Binding standards for Equality Bodies: Factual summary report - Open Public Consultation*, 2022, Part III.

⁴¹⁷ Equinet, *Developing Standards for Equality Bodies: An Equinet Working Paper*, 2016, p. 8.

⁴¹⁸ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 40.

⁴¹⁹ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.2.3(4).

It also specifically provided that Equality Bodies should be able to establish local and/or regional offices or outreach initiatives, where necessary.⁴²⁰

As the European Commission recognised and acknowledged, irrespective of the absence of any specific provisions for accessibility and reasonable accommodation for persons with disabilities in the Equality Directives, Equality Bodies (and States) were bound by international obligations to provide reasonable accommodation to ensure accessibility for persons with disabilities. The Convention on the Rights of Persons with Disabilities has been ratified by all European Union Member States and by the European Union itself. The Convention requires States to “take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas”.⁴²¹ This obligation entails a duty to ensure that Equality Bodies are accessible.

Despite this, one issue highlighted by the European Equality Law Network in 2018 was that the internal approaches taken by Equality Bodies to make adjustments and reasonable accommodation were informal; it recommended that operational systems for reasonable accommodation should instead be implemented.⁴²² The establishment of such systems was proposed in order to ensure that people accessing Equality Bodies would know accommodations are available and that they would not vary over time.⁴²³

Both the ECRI and the European Commission Recommendation specifically highlighted that Equality Bodies must ensure accessibility for persons with disabilities, including through reasonable accommodation.⁴²⁴

B. Essential Elements

Member States shall guarantee

Article 12 provides that “Member States shall guarantee” equal access to Equality Bodies’ services and publications, while Article 13 provides that States shall “ensure accessibility and provide reasonable accommodations” in order to “guarantee” equal access for persons with disabilities. It is clear that the requirement here is one of outcome rather than of means. Equal access is the minimum standard. It is also clear from the phrasing that the responsibility is placed on the State to ensure that Equality Bodies are accessible, on an equal basis, to all. Member States – not Equality Bodies themselves – are required to guarantee equal access. However, for Member States to “guarantee” equal access, they must both require and enable Equality Bodies to ensure access for all.

Requiring equal access means that States must ensure that Equality Bodies take a proactive approach to ensuring access for all. This approach must involve both a “negative” element, focused on identifying and removing barriers which may prevent equal access for certain groups and a “positive” element, focused on active measures of outreach and engagement to communities which are marginalised or under-represented.

⁴²⁰ *Ibid.*, para. 1.2.3(5).

⁴²¹ Convention on the Rights of Persons with Disabilities, Article 9.

⁴²² European Commission: Directorate-General for Justice and Consumers and Crowley, N., *Equality bodies making a difference*, Publications Office, 2018, p. 119.

⁴²³ *Ibid.*

⁴²⁴ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 40(e); Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, para. 1.2.3(5).

In turn, Equality Bodies must be subject to a duty to both identify and remove barriers which may impede access and to actively engage with marginalised groups.

However, States will not comply with the requirement in the Standards Directives to “guarantee” equal access simply by passing the duty on to Equality Bodies. They must equip and enable these Bodies to ensure equal access. Ensuring equal access for all requires the removal of barriers – physical, social, linguistic, financial, geographical – which may prevent certain groups from accessing services on an equal basis. This in turn has resource implications. In developing indicators for self-assessment for Equality Bodies, Equinet and its members emphasised this dimension, requesting whether “[t]he budget allocated for the Equality Body includes resources to ensure the accessibility of their offices and services (...) to everyone, especially persons with disabilities”.⁴²⁵ For States to guarantee equal access, they must ensure that Equality Bodies have the resources which they need to identify and to remove barriers and to proactively engage underrepresented groups.

Enabling Equality Bodies to ensure equal access also involves elements of public awareness-raising. As the recitals make clear a “key step to support (...) access is for Member States to ensure that people know their rights and are aware of the existence of and services offered by equality bodies”.⁴²⁶ As set out above, Article 5(1) of the Standards Directives imposes a duty on States to raise awareness of the existence of Equality Bodies and their services: this is the second necessary element – alongside resourcing – of States enabling Equality Bodies to ensure equal access.

Access to services and publications

Article 12(1) sets out plainly that the services and publications of Equality Bodies must be available “on an equal basis for all”.

Equal access must be read as requiring full access to the full range of services. As confirmed in the recitals, “[t]he effectiveness of equality bodies’ work (...) depends on giving groups at risk of discrimination full access to their services”.⁴²⁷ While Article 12(2) and (3) set out specific requirements to remove barriers in three areas, Article 12(1), is clearly open-ended, applicable to the full range of Equality Bodies’ services. Ensuring equal access for all requires that “potential barriers to access to equality bodies’ services should be identified and addressed”.⁴²⁸ Article 12(1) establishes an obligation to remove any barrier preventing equal access to any of the services provided by Equality Bodies for any person or group. As noted, this necessitates that Equality Bodies are subject to a positive duty to identify and remove barriers to access, and that they have the resources which they need to fulfil this duty.

While Article 12(1) establishes a general obligation to ensure full and equal access to all services, in practice, accessibility entails certain minimum requirements. The ECRI GPR No. 2r provides useful guidance as to the essential elements for accessibility. As it sets out, at a minimum:

⁴²⁵ Equinet, *Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, Mandate, Indicator 6.1.









⁴²⁶ Directive 2024/1499, recital 38; Directive 2024/1500, recital 37.

⁴²⁷ *Ibid.*

⁴²⁸ Directive 2024/1499, recital 39; Directive 2024/1500, recital 38.



Accessibility requires:

-  Easily accessible premises, online, email and telephone services, and flexibility in meeting the time constraints of those seeking access to the services of the body.
-  Local outreach initiatives and local and regional offices for conducting the work of the body.
-  Being present with groups experiencing discrimination and intolerance at key moments and building sustained links with them (...)
-  The possibility for people exposed to discrimination or intolerance to contact and engage with the equality body in a confidential way and in a language in which they are proficient, to have face-to-face contact, and to submit complaints orally, online or in written form, with a minimum of admissibility conditions.
-  Adjustments in their premises, services, procedures and practices to take account of all forms of disability.
-  The use of easy-to-read language in publications, in particular those providing information on rights and remedies, and translation of selected publications into all languages commonly used in the country.
-  The functions and services of the equality body to be free of charge to complainants and respondents.
-  Taking steps to publicise these provisions for accessibility and to make them available.⁴²⁹

Access on an equal basis for all

Article 12(1) makes clear that Equality Bodies' services and publications must be accessible for all. This necessitates a focus not only on those grounds covered by the existing Equality Directives, but also on factors connected to other characteristics and statuses. Indeed, the recitals to the Standards Directives makes clear that the ensuring equal access for all requires States and Equality Bodies to consider factors such as "economic status, age, disability, level of literacy, nationality or residence status or (...) access to online tools".⁴³⁰ Accordingly, while the Standards Directives only require Equality Bodies to strengthen the application of the principle of equal treatment in respect of the grounds listed in the existing Directives, these Bodies must consider other characteristics when taking measures to ensure their accessibility.

⁴²⁹ European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, para. 40.

⁴³⁰ Directive 2024/1499, recital 38; Directive 2024/1500, recital 37.

No barriers to the submission of complaints

Article 12(2) establishes a specific obligation on Equality Bodies to guarantee that there are “no barriers to the submission of complaints”. This is a clear and absolute requirement, imposed directly on Equality Bodies themselves.

The provision in Article 12(2) is a necessary complement to the requirement in Article 6(2) that Equality Bodies “shall be able to receive complaints of discrimination”. Complaints-handling is a key responsibility of Equality Bodies in many countries, and the Standards Directives place States under an obligation to ensure that bodies are enabled and empowered to fulfil this function.⁴³¹ Ensuring that the complaints-handling service is provided without barriers is essential to ensuring that complainants have equal and effective access to justice.

As with other aspects of the requirement established by Article 12, **Equality Bodies must work proactively to identify and remove barriers which may prevent the submission of complaints**. This will include, for instance, ensuring that submissions can be made using different complaint avenues (in person and online), in different formats (oral or written) and in a language of “the complainants choosing”.⁴³² Ensuring effective access requires a differentiated approach that recognises the different needs of individuals.⁴³³ Accordingly, while Article 12(2) lists certain specific measures which Equality Bodies should take to ensure barrier-free access, these measures should be seen as illustrative, minimum requirements for equal access to complaints submission.

Provide services at no cost to complainants

Article 12(3) provides that Equality Bodies should provide their services at no cost to complainants. As discussed, cost is a significant barrier which can and does prevent equal access. Nevertheless, the language in this provision is specific and is narrower than elsewhere in Articles 12 and 13: services must be provided “at no cost to complainants”.

Equality Bodies are under no obligation to provide services to duty-bearers or to non-complainants – though they may choose to do so, if this serves their purposes. For example, Equality Bodies may choose to provide training or sensitisation services at no cost, in order to maximise the reach and impact of their preventative and promotional work. Conversely, Equality Bodies should be free to charge for the provision of advice to duty-bearers on the fulfilment of their legal obligations, should they consider this necessary and appropriate.

Provide services throughout the territory

Article 12(3) requires Member States to ensure that Equality Bodies provide their services throughout the territory “including in rural and remote areas”. Geographical inaccessibility is a major practical barrier which can prevent equal access for ethnic, religious and other groups who may live in particular regions, and for members of any group exposed to discrimination for whom travel time and cost can present an obstacle to

⁴³¹ Directives 2024/1499 and 2024/1500, Articles 6(1) and 6(2). See also European Commission against Racism and Intolerance, *ECRI General Policy Recommendation No. 2 (revised): Equality Bodies to Combat Racism and Intolerance at National Level*, 2017, explanatory memorandum, para. 84.

⁴³² Directive 2024/1499, Article 12(2) and recital 25; Directive 2024/1500, Article 12(2) and recital 24.

⁴³³ Under Article 12, access to equality bodies must be made available “to all”. See also, Directive 2024/1499, recitals 16 and 38; Directive 2024/1500, Article 6(1) and recitals 15, 23 and 37.

engaging with Equality Bodies. Accordingly, as provided in the recitals, States should: “without prejudice to the autonomy of regional and local authorities, make sure that the services of equality bodies are available to all potential victims throughout their territory, for example through the establishment of local offices, including mobile ones, the use of communication tools, the organisation of local campaigns, cooperation with local delegates or civil society organisations or through contracted service providers”.

Accessibility and reasonable accommodation

While Article 12 sets out general requirements of equal access for all, Article 13 makes specific provision in respect of equal access for persons with disability.

Unlike most of the other provisions of the Standards Directives, Article 13 imposes no new obligation on the State. Rather, the provision serves to confirm that Equality Bodies – as public bodies – are subject to the requirements imposed by existing international legal instruments in the delivery of their services. As the recitals note,⁴³⁴ Article 13 requires States to ensure that Equality Bodies operate in line with existing legal standards on accessibility and reasonable accommodation, as contained in the European Accessibility Act (2019/882) and the Convention on the Rights of Persons with Disabilities.


Article 13 requires both proactive and responsive measures by Equality Bodies. As the Committee on the Rights of Persons with Disabilities has noted, accessibility is a proactive systemic obligation, while reasonable accommodation requires duty bearers to respond to requests to make specific adjustments. As the Committee has set out:

[A]ccessibility must be built into systems and processes without regard to the need of a particular person with a disability, for example, to have access to a building, a service or a product, on an equal basis with others (...)

[R]easonable accommodation must be provided from the moment that a person with a disability requires access to non-accessible situations or environments, or wants to exercise his or her rights. Reasonable accommodation is often but not necessarily requested by the person who requires access, or by relevant representatives of a person or a group of people. Reasonable accommodation must be negotiated with the applicant(s).⁴³⁵

Accordingly, Article 13 requires States to enable Equality Bodies to proactively and systematically ensure that their premises, communications and services are accessible, while also ensuring that they are able to respond to requests for specific adjustments, where these are received.

C. Key Principles

 A mandatory requirement: Articles 12 and 13 establish an absolute and immediate requirement of outcome. States and Equality Bodies are required to guarantee equality of access in respect of Equality Bodies’ services, publications and specified activities.

⁴³⁴ Directive 2024/1499, recital 40; Directive 2024/1500, recital 39.

⁴³⁵ Committee on the Rights of Persons with Disabilities, *General Comment No. 6*, UN Doc. CRPD/C/GC/6, 2018, para 24.

Equal access: Ensuring equal access has both negative and positive dimensions. The former requires the identification and removal of barriers that may prevent equality of access. The latter requires proactive measures, including outreach and the engagement of marginalised, under-represented and other disadvantaged communities who may encounter barriers – physical, social, linguistic, communicative, financial, geographical – that impede their equal access. Whilst the primary obligation rests on States, States must also ensure that Equality Bodies are empowered to ensure equal access to all.

Individual and collective measures: Article 13 draws a distinction between reasonable accommodations and accessibility measures. Whilst the former is an individualised duty, engaged from the moment a person requires access to an inaccessible environment, the latter is an ongoing, proactive obligation to ensure accessibility.

Access for all: While the Directives do not expand the personal or material scope of protection of the original Equality Directives, States must ensure that Equality Body services are available to “all” irrespective of their personal characteristics. Both the state and Equality Bodies (as public duty-bearers) are bound by these requirements. If Equality Bodies are to ensure equal access, they must have the necessary skills, knowledge and resources to be able to identify and overcome barriers to participation on a wider range of grounds.





VII. Transposition, implementation and

Articles 17 to 25 of the Standards Directives are focused on the transposition, implementation and monitoring of the standards set down in the preceding Articles. For the most part, these Articles provide clear direction to Equality Bodies, to States and to the European Union institutions on the measures necessary to give effect to the Standards Directives.

In most cases, these Articles do not establish key principles, but simply provide instruction on the steps necessary for the operationalisation of the Standards Directives. Given the more direct requirements set down in these provisions, this Chapter simply provides a guide to the relevant Articles, rather than considering the process of standard development and analysing the essential elements of these provisions.

1 Transposition

Article 24 requires States to pass new laws, together with necessary regulations, to give effect to the Directive.⁴³⁶ States are given a deadline of 19 June 2026. They are required to inform the Commission once the relevant laws, regulations and provisions are adopted and to communicate to the Commission the “text of the main provisions of national law” which they enact for this purpose. States are required to include a reference to the relevant Directive either in any new legal provisions, or in the official publication of the provisions. In line with the principle of meaningful consultation, States should engage with Equality Bodies and agree on measures for transposition.

Article 20 provides an essential safeguard to govern the transposition process. Article 20(2) establishes an absolute prohibition on regressive implementation: “the implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States”. Article 20(1) establishes the corresponding principle – that States may “introduce or maintain” provisions which are more favourable than those in the Standards Directives. As discussed in Chapter I, this Article reinforces the purpose of the Standards Directives in establishing minimum standards and clarifies that the Standards Directives provide a floor but not a ceiling.

⁴³⁶ Directives 2024/1499 and 2024/1500, Article 24: “Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive”.



Article 21 establishes another important safeguard, in respect of the collection and processing of personal data. It requires States to ensure that Equality Bodies collect and process such data “only where necessary” for the implementation of the Standards Directives. Importantly, this Article clarifies that it is legitimate for Equality Bodies to process personal data “revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership (...) genetic data, biometric data (...) [and] data concerning a natural person's sex life or sexual orientation”.⁴³⁷ The Article establishes an exception to the restrictions of the processing of such data established in Article 9(1) of the General Data Protection Regulation. In so doing, it “usefully clarify[ies] that processing by Equality Bodies is lawful as seen as performance of a task carried out in the public interest or in the exercise of official authority”.⁴³⁸ The Article permits Equality Bodies to process such data but requires that States establish “suitable and specific measures” to safeguard the rights of data subjects.

2 Implementation

While it is for States to transpose the Standards Directives into law, it is for Equality Bodies to implement the provisions in practice, through the fulfilment of their mandate and the implementation of their functions. Article 17 sets down essential minimum standards in this respect, requiring Member States to ensure that Equality Bodies both plan and report on their work. As the Commission noted in its original proposal for the Standards Directives “[t]he goal of this provision is to ensure that equality bodies regularly plan and publicly report on their work and on the state of equal treatment and non-discrimination”.⁴³⁹

Article 17(a) requires that Equality Bodies “adopt a work programme” setting out both priorities and proposed activities. Article 17(b) requires that Equality Bodies publish an annual activity report, including a financial report. These are important measures to ensure both the effectiveness of Equality Bodies and their accountability. Nevertheless, in line with the stated purpose of the Standards Directives, these provisions must be read in light of the standards on independence set down in Article 3, in particular as regards freedom from external influence and the requirement that Equality Bodies “do not seek or take instructions from the government”. Accordingly, while States must ensure that Equality Bodies both plan and report, neither plans nor reports should be subject to approval by any State authority.⁴⁴⁰ Article 17(c) requires Equality Bodies to produce reports on “the state of equal treatment” within their jurisdiction. This aspect of Article 17 is discussed discretely in Chapter V.1.5 of the present Digest.

3 Monitoring

The Standards Directives set down clear rules concerning the monitoring of the Standards and their implementation. Article 18 provides that the European Commission shall “establish a list of common

⁴³⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Article 9(1).

⁴³⁸ Kádár, T., “Position Paper: Moving forward the European Commission’s proposals for Directives strengthening Equality Bodies”, *Equinet*, 2023, p. 22.

⁴³⁹ 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, COM/2022/688 final, 2022/0400 (COD), p. 20.

⁴⁴⁰ *Equinet, Measuring Standards for Equality Bodies: Indicators for Self-Assessment*, 2023, Independence – Indicator 1.10.

indicators for the functioning of equality bodies designated under this Directive” by 19 June 2026. Article 18 sets out specific requirements for the indicators to be developed: they should cover all dimensions of resources, independence, accessibility and effectiveness, as well as “developments in their [Equality Bodies] mandate, powers or structure; and they should ensure “the comparability, objectivity and reliability of the data collected”. They should be adopted with an implementing act, following a committee procedure as foreseen in Article 22. The Article makes clear that the indicators shall not be used for ranking Equality Bodies or issuing recommendations to individual Member States.

While it is for States to transpose the Standards Directives and to empower Equality Bodies, and for Equality Bodies to implement the standards, in practice, it is for the Commission to establish the indicators required to monitor their implementation. Critically, however, Article 18(1) requires the Commission to develop the indicators for monitoring in collaboration with other relevant stakeholders, providing that it should “seek advice” from the European Union Agency for Fundamental Rights, the European Institute for Gender Equality and “networks of equality bodies at Union level”. This last phrase clearly refers to Equinet, the European Network of Equality Bodies. As noted elsewhere in this Digest, Equinet and its members have already made extensive progress in this area, with its 2023 *Measuring standards for Equality Bodies* publication providing proposed indicators in the areas of mandate, independence and resources developed by its member Equality Bodies. The Standards Directives clearly envisage the Commission drawing from this resource and the expertise of Equinet and its members to develop indicators for monitoring the implementation of the Directives.⁴⁴¹

Article 18(2) elaborates the role of Member States in supporting the monitoring of the implementation of the Directives Standards. By 19 June 2031 (five years after the establishment of the common indicator set) and every five years thereafter, States must provide the Commission with “all relevant information regarding the application” of the Standards Directives. At a minimum, this must include data on the functioning of Equality Bodies and the findings of the reports produced by the Bodies, both in their annual reports and the public reports on the state of equal treatment developed in accordance with Article 17(c).

Finally, Article 18(3) requires the Commission to produce a report on the “application and practical effects” of the Directive, based on the information submitted by States and “other relevant data”. This phrase is expanded by reference to an illustrative list of sources for such data which includes Equality Bodies, Equinet and civil society organisations, as well as European Union rights institutions. The Commission report should cover both independence and effectiveness and should be based on the common indicators established by the Commission under Article 18(1).

Article 19 complements and expands on the requirements set down in Article 18(3), by providing that “the European Parliament may invite the Commission annually to discuss” the monitoring and reporting undertaken in line with Article 18. The Parliament is empowered to “express its views in resolutions on the matters referred to in Article 18” and the Commission is required to “take into account, as appropriate, any elements arising from the views expressed” through its dialogue with the Parliament, or in any resolutions passed by the Parliament.

4 Transposition and implementation at the European Union level

⁴⁴¹ For more information on these indicators, see the description in the Introduction to this Digest.

While the Standards Directives' focus is on establishing standards applicable to States and to Equality Bodies, they also contain provisions concerning transposition and implementation at the European level. Notably, [Article 23](#) amends the relevant provisions of the four Equality Directives which provided for the establishment of Equality Bodies, deleting the requisite Chapters of these Directives, and providing that "References to the bodies for the promotion of equal treatment referred to in those Chapters shall be construed as references to the equality bodies referred to in Article 2(1) of this Directive". Whereas a majority of the Directives provisions are already in force, this Article shall apply from [19 June 2026](#).



VIII. Bibliography



1 Treaty Law and Practice

1.1. Directives on Standards



Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters 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 amending Directives 2000/43/EC and 2004/113/EC.

Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 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 amending Directives 2006/54/EC and 2010/41/EU.

1.2. Equality Directives



Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

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

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.



1.3. Other Relevant European Legislation

Treaty on European Union.

Charter of Fundamental Rights of the European Union.

Convention for the Protection of Human Rights and Fundamental Freedoms, C.E.T.S. No. 005, 1950.

Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.

Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence.

Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

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Equinet Member Equality Bodies

ALBANIA

Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA

Austrian Disability Ombudsperson
www.behindertenanwalt.gv.at

AUSTRIA

Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.gv.at

BELGIUM

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

BELGIUM

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

BOSNIA AND HERZEGOVINA

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

BULGARIA

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

CROATIA

Ombudswoman of the Republic of Croatia
www.ombudsman.hr

CROATIA

Gender Equality Ombudsperson
www.prs.hr

CROATIA

Ombudsman for Persons with Disabilities
www.posi.hr

CYPRUS

Office of the Commissioner for Administration and the Protection of Human Rights
www.ombudsman.gov.cy

CZECH REPUBLIC

Public Defender of Rights
www.ochrance.cz

DENMARK

Danish Institute for Human Rights
www.humanrights.dk

ESTONIA

Gender Equality and Equal Treatment Commissioner
www.volinik.ee

FINLAND

Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND

Ombudsman for Equality
www.tasa-arvo.fi

FRANCE

Defender of Rights
www.defenseurdesdroits.fr

GEORGIA

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

GERMANY

Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE

Greek Ombudsman
www.synigoros.gr

HUNGARY

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

IRELAND

Irish Human Rights and Equality Commission
www.ihrec.ie

ITALY

National Office against Racial Discrimination
www.unar.it

KOSOVO*

Ombudsperson Institution
<https://oik-rks.org/>

LATVIA

Ombudsman's Office of the Republic of Latvia
www.tiesibsargs.lv

LITHUANIA

Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG

Centre for Equal Treatment
www.cet.lu

MALTA

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

MALTA

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

MOLDOVA

Equality Council
www.egalitate.md

MONTENEGRO

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

NETHERLANDS

Netherlands Institute for Human Rights
www.mensenrechten.nl

NORTH MACEDONIA

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

NORWAY

Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND

Commissioner for Human Rights of the Republic of Poland
bip.brpo.gov.pl

PORTUGAL

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

PORTUGAL

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

ROMANIA

National Council for Combating Discrimination
www.cncd.ro

SERBIA

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

SLOVAKIA

Slovak National Centre for Human Rights
www.snsnlp.sk

SLOVENIA

Advocate of the Principle of Equality
www.zagovornik.si

SPAIN

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

SPAIN

Institute of Women
www.inmujeres.gob.es

SWEDEN

Equality Ombudsman
www.do.se

UKRAINE

Ukrainian Parliament Commissioner for Human Rights
www.ombudsman.gov.ua

UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland
www.equalityni.org

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