

DIRECTIVES ON STANDARDS

SWOT ANALYSIS

As the first step in the legal analysis of the EU Directives on Standards for Equality Bodies which resulted in the publication of *Understanding the New EU Directives on Standards for Equality Bodies: Legal Digest*, the Equal Rights Trust research team undertook a **SWOT (Strengths, Weaknesses, Opportunities, Threats)** analysis of the Directives.

The SWOT analysis involved an initial comparative analysis of the Directives against the proposals made by Equinet in its 2016 Position Paper and the standards adopted in both the [ECRI General Policy Recommendation No. 2 \(revised\)](#) (ECRI GPR2r) in 2017 and European Commission Recommendation 2018/951 in 2018. The analysis aimed to identify where the Directives as adopted went beyond – or fell short – of the Equinet proposals or the existing standards.

The SWOT analysis also sought to identify areas of opportunity for Equality Bodies to push for enhanced independence, greater resources or new, increased or expanded powers. It also sought to identify areas where the text of the Directives lacks clarity, creates ambiguity, creates risks of narrow interpretation, regression or other threats to the functioning of Equality Bodies.

A draft of the SWOT analysis was shared with experts in the project advisory group, who interrogated, supplemented and validated the assessment. The analysis was then used as one of the sources for the development of the [Legal Digest](#) and the [Key Principles](#) derived from it.

While the SWOT analysis was used as a resource during the development of the *Legal Digest*, the findings were not incorporated directly. The *Digest* provides a strict legal analysis of the Directives: it is an assessment of what the Directive require, not a set of recommendations of what could or should be done. The approach to the 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, as set out in the *Digest*.

The SWOT analysis was not published alongside the other resources produced by the project, due to the risk that the identification of “weaknesses” or “threats” could create confusion or give rise to incorrect interpretation. The SWOT analysis is shared with participants in the Standards Lab to assist those involved in identifying potential risks or challenges which might be faced during the transposition process.

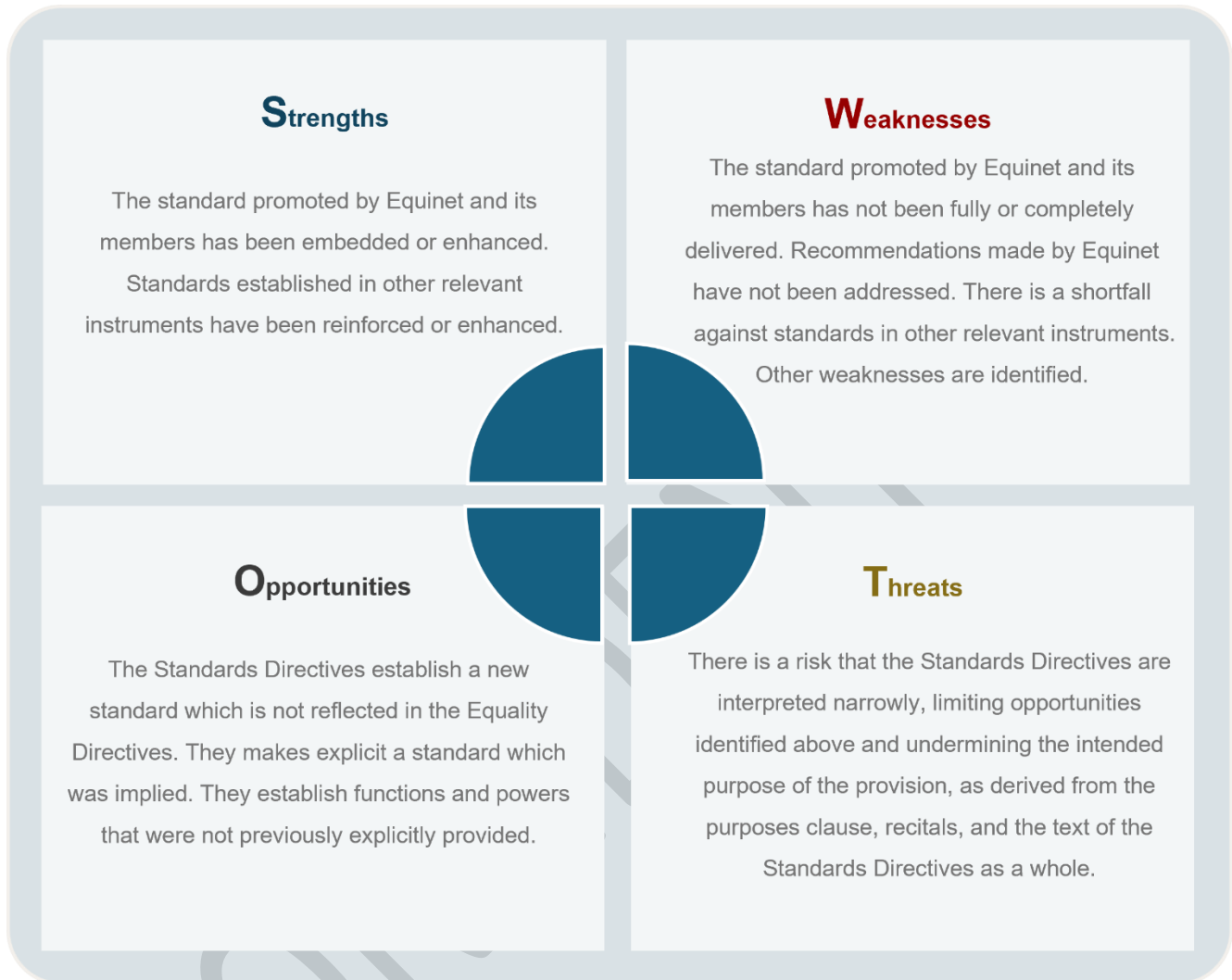
This document presents the **findings of the SWOT analysis in respect of the parts of the Purpose clause (Article 1) and the parts of the Directives dealing with Mandate, Independence, Resources, Powers and Accessibility**. The Articles dealing with transposition, implementation and monitoring are not considered in this document, given their more functional nature.

It is essential to note that the assessment of “opportunities” and “threats” in this document includes projections based on possible and potential interpretations or applications of the standards in the Directives – including interpretations which would be contrary to the purposes of the Directives. In contrast, the *Legal Digest* provides an interpretation of the Directives based on a detailed legal analysis.

This document is not intended for publication or for circulation beyond the Equinet membership.

Definitions: Strengths, Weaknesses, Opportunities and Threats

For the purposes of this SWOT analysis, we define Strengths, Weaknesses, Opportunities and Threats as follows:



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.

STRENGTHS

- Provision sets out a **clear statement of purpose and intent**.
- Sets out clearly that the Standards **focus on ensuring EBs have the (1) independence + (2) effectiveness needed to (3) ensure the application of the principle of equal treatment**.
- Establishes the **key interpretative principle** of the Directives, which should provide the lens through which other – unclear, ambiguous or potentially narrow – provisions are interpreted
- Clarifies that the **Directives establish a floor, not a ceiling** – “minimum requirements”
- Establishes a **requirement to interpret the Directives purposively and holistically**

WEAKNESSES

- **No significant weaknesses** – establishes a strong statement of purpose which can be used to neutralise or mitigate weaknesses or threats elsewhere

OPPORTUNITIES

- Creates an **immediate opportunity for Ebs to press for increased resources and powers in order to achieve the stated purposes**
- While not explicit, **creates an implied obligation of “meaningful consultation”** – that Equality Bodies must play a central role in evaluating whether they have the structure, independence, agency and autonomy, resources and powers they need

THREATS

- **No significant threats** – establishes a strong statement of purpose which can be used to neutralise or mitigate weaknesses or threats elsewhere

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.

STRENGTHS

- Has the effect of **requiring the mandate of EBs be expanded** to cover religion or belief, age, disability and sexual orientation in employment and sex and gender in social security
- While not explicit in Art 1(2), clear requirement that in all functions EBs should **pay “particular attention to intersectional discrimination”**

WEAKNESSES

- **Goes no further than expanding EBs’ mandate to cover all areas in extant Equality Directives**, despite the repeated proposals by Equinet
- Equinet recommendation that EBs be mandated to give “due consideration to the range of grounds” in the Charter of Fundamental Rights not addressed (mitigated in part by Arts 5(3) and 12(1))
- **No general requirement to extend mandate of EBs to cover intersectional discrimination**, other than as a consideration in Art 5(2).

OPPORTUNITIES

- Creates an **immediate opportunity for EBs with limited mandates to cover the full range of grounds** and areas of life regulated by the Equality Directives
- Constructive interpretation of Art 1(2) could be that EBs should address discrimination in all areas of life covered by the Directives on all grounds covered by the Directives but this is difficult given the wording of Art 1(2) and the explicit language in the recitals
- Articles 5(2) and 5(3) provide **opportunities to expand the focus of promotional and preventative work to a wider range of grounds**, and to argue for an extension of their mandates more broadly.
- Article 12(1) imposes an obligation on States to “guarantee access to equality bodies’ services and publications on an equal basis for all” creating an opportunity to work on a wider range of grounds

THREATS

- **Risk that Directives are interpreted as to cover ONLY the grounds and fields listed in the Equality Directives** – possibility of regression for those with a mandate covering additional grounds. (Mitigated by Art 20 and the recitals on non-regression).

Article 2 concerns the delivery of the equality 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.

STRENGTHS

- Recognises states' discretion and the diverse range of institutional models for EBs, but **makes clear that the Directives' Standards must be adhered to irrespective of structure**
 - Obligation to ensure that the whole mandate can be and is in fact delivered effectively
 - Must be complete adherence to the minimum standards established in the Directives
- This Article provides an important guarantee that the equality mandate is "protected" in multi-mandate bodies, with the standard of "effective exercise" providing a basis to ensure that the equality mandate has the funding, resources and powers required to work effectively.
- Clear and important guarantee (in Arts 3.4) that **in multi-mandate institutions the equality mandate is protected** – "guarantee the effective exercise of the equality mandate"
- Clear requirement that the **independence and resources of the equality mandate must be safeguarded** to ensure effective delivery of the equality mandate
- Clear requirement (in Art 14) that **where multiple bodies exercise the equality mandate there must be coordination and cooperation** to ensure the mandate is delivered effectively.

WEAKNESSES

- Provisions regarding multi-mandate bodies and multiple bodies delivering the equality mandate are not explicit or detailed on issues such as "active management" and "effective and consistent delivery of the mandate", creating potential **for confusion or uncertainty**

OPPORTUNITIES

- **No significant opportunities** – relevant safeguards are established to ensure compliance with the Directives' Standards irrespective of the institutional structure.

THREATS

- Article 2(2) on the "competences of labour inspectorates or other enforcement bodies and to the rights and prerogatives of the social partners" creates a **risk that states limit EBs' exercise of the equality mandate**

Article 3 of the Standards 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.

STRENGTHS

- Sets out the **measures needed to ensure independence** as required by extant Equality Directives
- Requires both **functional** and *de facto* **operational** independence.
- Duty on states to ensure **freedom from external influence** – whether direct or indirect.
- Duty on states to “take measures” to ensure that the conditions of independence are fulfilled:
 - States must adopt the **measures needed to guarantee full independence** in law and practice.
 - Independence is a **minimum standard**.

WEAKNESSES

- Contrary to ECRI GPR2r, recitals state that an Equality Body **may be part of a ministry**
- **No explicit requirement that rules relating to the independence should be set out in law.**
- Recognising the diversity of national models, standards are relatively high-level, **without detail**
- **No explicit requirement for certain safeguards** identified as necessary by Equinet members, eg::
 - No explicit requirement that the Equality Body has a separate or earmarked budget
 - No explicit requirement on the diversity of Equality Body Staff
 - No explicit requirement that vacancy notices be published.
 - Safeguards against arbitrary dismissal or arbitrary non-renewal not elaborated.

OPPORTUNITIES

- Lack of detailed guidance offers **potential for EBs to advocate for changes that they feel are required** to safeguard their independence.
- States are required to “take measures” =- a **range of resources that elaborate specific measures can be relied upon**, including Equinet indicators, ECRI GPR2r and EC Recommendation

THREATS

- Without concrete guidance, **States may take a *de minimis* approach**
- States may argue that the Directives **permit EBs to be established within ministries or without specific legislation**
- Equality Bodies that do not already enjoy a high degree of institutional independence, may be less able to argue for reform.

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.

STRENGTHS

- Establishes a **clear and binding requirement to provide necessary resources** for the first time
- Provides a clear benchmark for resource requirements – “resources **necessary** to perform all tasks and exercise all competences **effectively**”.
- Standard established– **necessary for effectiveness** – is higher than in the Equinet working paper (“adequate to enable”) and ECRI GPR2r (“sufficient to implement”)
- Clear **link between “necessary” resources and purpose** of strengthening equal treatment
- Not explicit but **necessitates engagement** with the Equality Body in the determination of what resources are required: Equality Bodies are best placed to determine what is needed.
- Explicit reference to ensuring that **multi-mandate bodies must have resources necessary for exercise of the equality mandate**

WEAKNESSES

- **No guarantee against “arbitrary or disproportionate reduction”** in budget as in ECRI GPR2r
- **No requirement that EBs should be enabled to make a resource proposal** as in Equinet Working Paper (though this is implied by the “necessary for effectiveness” standard)
- Omits some of the detail in the Equinet proposal and in the Commission recommendation: **no reference to staffing** which is “sufficiently numerous and adequately qualified” and **no reference to premises or infrastructure** (though these are addressed in the recitals)

OPPORTUNITIES

- The requirement that EBs have the resources “necessary for effectiveness” standard presents an **opportunity to advocate for additional resources, based on evidence of need**
- The “necessary for effectiveness” requires that resource allocation must be done with the involvement of the EB, creating an **opportunity for participation in budget-setting**
- The absence of indicators, metrics, limits etc in the text means that resource allocation should be based on need, rather than sufficiency or on minimum requirements.
- The inclusion of “human, technical and financial resources” without more detail **allows for elaboration of minimum requirements through development of indicators**

THREATS

- The phrase “**in accordance with national budgetary processes**” creates risks:
 - Governments can argue that budget requirements cannot be met in light of other priorities
 - Governments can argue that EBs cannot be involved due to constraints of the process
- The “necessary for effectiveness” standard limits states’ discretion in both respects

POWERS – Promotion and Prevention

Awareness-raising

Article 5 (1) and 5(3)

Article 5(1) of the Directives requires states to proactively raise awareness of the rights to equality and non-discrimination and of the existence of Equality Bodies and their services.

STRENGTHS

- Distinct from the other provisions relating to powers: it **imposes obligations directly on the State**, rather than requiring the State to empower the Equality Body.
- Establishes an **obligation focused on outcome: the raising of public awareness**
- **Broader and stronger than extant Equality Directives**, which refer to action – the “promotion of equal treatment” – and require EBs to produce reports
- **Goes beyond the standard initially advocated by Equinet** – focused on equipping Equality Bodies with powers to act (promote, communicate and engage)
- Encompasses, but is **broader than, the relevant standard in the ECRI GPR2r**, which focuses on equipping EBs with competencies to build awareness

WEAKNESSES

- **No real weaknesses** – a new standard is established which goes beyond what existed and what was advocated for

OPPORTUNITIES

- Establishes a new duty on the state – **opportunity for EBs (and CSOs etc) to press for action by state to raise awareness**
- The duty is one of result, outcome and impact, not performance of specific activities – **opportunity to track impact and hold state to account**
- While duty is on State, read together with Article 5(2) and Article 15 on consultation **requires consultation and involvement of the Equality Body**
- Creates a **key opportunity for EBs build upon, expand and strengthen their existing work** on public communication and education.
- Requirement to take “appropriate measures” should be understood as **requiring States to take any and all measures necessary to raise awareness among the public**
- Art 5(3) requires awareness raising measures to “focus in particular” on groups whose access to information is hindered, introducing **grounds of discrimination which are not included in the existing Equality Directives, including economic status, or place of residence.**

THREATS

- **Risk that states interpret provision as not requiring consultation and engagement** with EB on awareness-raising activities (mitigated by Art 15 and holistic reading of Directives in light of Art 1)

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.

STRENGTHS

- Establishes a requirement on states to **empower EBs to take proactive preventative measures – a new power** going beyond anything in the existing Equality Directives
- **Goes beyond the original recommendations by Equinet** (“promote and support good practice”) and the EC Recommendation
- Establishes a power broadly similar to that in ECRI GPR2r (para 13(a)), but establishes it as a **binding requirement**
- **Sets out an expansive, but non-exhaustive, list of measures** which EBs can take to exercise their preventative role.

WEAKNESSES

- **No real weaknesses** – a new standard is established requiring EBs to be equipped with a new kind of power

OPPORTUNITIES

- Has the **potential to be the most impactful of the powers in the Directives** – establishing a clear proactive and preventative power
- Non-exhaustive list of measures provides the **opportunity for EBs to innovate, develop new practice and adopt best practices** from others

THREATS

- **Risk that of incorrect interpretation**; that States discharge their overarching obligations in respect of prevention and promotion by delegating it to EBs – this would be inconsistent with IHRL
- The ability of EBs to discharge their obligations and to seize relevant opportunities here will be **dependent on the resources made available under Art 4.**

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.

STRENGTHS

- Establishes an important **new obligation on states to proactively consult EBs** in the process of developing law, policy and practice
- **Goes further than the standard in the extant Equality Directives** and the original Equinet working paper – that EBs should have a power to make recommendations
- Doesn't only empower EBs to make recommendations but **requires law and policy makers to consult EBs** – a standard with much greater potential.

WEAKNESSES

- **No obligation on public bodies to inform EBs of how their recommendations have been addressed** – a duty which is included in the European Commission 2018 Recommendation (this can be inferred from the right to request follow up)
- Whereas other standards (such as the Paris Principles) provide that the consultation obligation applies retrospectively – i.e. to existing law, as well as to proposed laws – **Art 15 is not explicit on retrospective review of law and policies**

OPPORTUNITIES

- Necessitates the adoption of a systematic approach, through which consultation with EBs becomes an integral part of the decision-making process – **opportunity for EBs to shape law and policy**
- The **consultation procedure adopted must both require and enable** 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**
 - Enabling consultation means that the procedure which is adopted should **provide EBs with the information, time and resources which they require.**
- The **consultation procedure adopted by the State must not impose an obligation on EBs to engage in consultation** – EBs' independence means that they must be free to determine how to engage
- The consultation obligation **must be interpreted as one of meaningful consultation** – i.e. that the recommendations made by EBs can and do result in changes (a point reinforced by the recitals)

THREATS

- Risk of **narrow interpretation of “consult”** and how meaningful this is – i.e. the extent to which EBs' recommendations result in change; and
- Risk of **narrow interpretation of “related to the rights and obligations** derived from the Directives” – i.e. that the obligation is restricted to equality law and policy, rather than being focused on equality mainstreaming throughout the law and policy making process

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.

STRENGTHS

- **Goes significantly beyond the power to undertake independent surveys** in the existing Equality Directives
- Establishes **important powers of data collection and use**, in particular when considered in connection with Art 17 which requires EBs to produce public reports on the situation of discrimination
- Arts 16(1) and (2), require states to “ensure that Equality Bodies” both collect data and undertake surveys – this creates an **obligation not only to permit but also empower**
- Arts 16(3) and (4) provide **new powers to both requisition existing data and recommend the collection of data**.
- The recitals provide a strong indication as to intent, which reinforce the principle that **EBs themselves should determine what data is needed**, how it should be gathered and presented:

WEAKNESSES

- Provision **does not provide detailed guidance on some aspects of data collection** and does not reference existing resources. Notably:
 - **Does not reference resources developed by the Subgroup on Equality Data** of the EU High Level Group on Non-discrimination, Equality and Diversity.
 - **Does not state that data provided to EBs is in accessible formats for use**
 - **Does not provide that EBs can follow up on recommendations** made for data collection
 - Does not state explicitly that EBs have the **power to both undertake and commission research and reports** as well as to undertake surveys
- Many of these **weaknesses can be mitigated through a purposive interpretation of the Article**, viewed in light of the requirements that EBs need data necessary to “assess and report on the situation of discrimination” Art 17 and inform policy (Art 15)

OPPORTUNITIES

- The requirement to “ensure that Equality Bodies” collect data requires empowerment to do so, creating **opportunities for EBs to argue for additional resources for data collection**
- Powers to requisition data and recommend data collection create **opportunities for EBs to advocate for access to more data** – these powers which should be interpreted expansively

THREATS

- Risk of **narrow interpretation is largely mitigated** by the explicit language in the Article and the relevant recitals

Public reporting

Article 17(c)

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. Paragraph 17(c) establishes an entirely different requirement to that in the other two parts of Article 17: that Equality Bodies produce a “state of the nation” style report on discrimination and inequality in their country.

STRENGTHS

- **Elaborates on the power in the existing Equality Directives** to publish “independent reports and [make] recommendations
- Establishes a **specific power which is central to the delivery of the general power of promotion and prevention**, in particular as set out in Art 5(1)
- Requires states to “ensure that Equality Bodies” publish reports creating an **obligation not only to permit but also empower**
 - EBs must have the information and the resources they require – Art 17the must be read together with Art 16 (data) and Art 4 (resources)
- Establishes an **expansive scope for reporting**: an “overall assessment of the situation regarding discrimination”

WEAKNESSES

- **No real weaknesses**

OPPORTUNITIES

- Creates **significant opportunities for EBs to influence public perceptions**, and to play a role in combating stigma, prejudice and stereotype

THREATS

- **Risk that the obligation to produce public reports becomes a resource burden**, given the expansive nature of such reports

POWERS – Access to justice & remedy

Assistance to victims

Article 6

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. Article 6(2) of the Directives on Standards provides that Equality Bodies “shall be able to receive complaints of discrimination”

STRENGTHS

- **Elaborates on the provision in the Equality Directives** that EBs should be empowered with “providing independent assistance to victims of discrimination in pursuing their complaints about discrimination”.
- Article 6 covers the first component of access to justice – the receipt of complaints, the provision of information and the completion of a preliminary assessment – and **must be read together with Arts 7, 8, 9 and 10**
- Provides the **general framework for receiving and handling complaints**
- **Mandates EBs to provide information to complainants** on the legal framework, including on rights and duties, remedies, procedure etc – essential for effective access to justice
- Provides a **good definition of “victim”**, ensuring coverage for “all persons who consider that they have experienced discrimination” – complainants, rather than victims *per se*
- Establishes a **basis for EBs to play a role in identifying and removing barriers to assistance**

WEAKNESSES

- **Omits language making it explicit that the procedure in Art 6 will often be a first step, followed by one or more of the steps in the following Articles** – i.e. amicable settlement; a procedure to provide an opinion or decision; inquiry; or litigation.
 - This language was in the original Commission Proposal and it is not clear why it was omitted in the final version, but it will be **important in transposition that this link is made clear**
- **Inconsistency between the two Directives**: clause in Directive 2024/1500 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” is not included in Directive 2024/1499

OPPORTUNITIES

- **No significant opportunities** – Art 6 clarifies the role of EBs in providing assistance and receiving complaints

THREATS

- **Risk that states interpret assistance function narrowly**, as extending only to the provision of information, though this would be clearly inconsistent with the wider Directive

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.

STRENGTHS

- **Establishes a requirement to equip EBs with new powers** not envisaged in the Equality Directives
- **Reflects a recommendation by Equinet in its 2016 Working Paper** and standards in both the ECRI GPR2r and the European Commission Recommendation
- Permits state **discretion as to the role of EBs in alternative dispute resolution** – either leading the process or facilitating it
- **Encompasses a range of different forms of alternative dispute resolution**
- **Guarantees the possibility to bring court proceedings** in the event of no resolution

WEAKNESSES

- **No significant weaknesses** – the power provided is as advocated for by Equinet

OPPORTUNITIES

- Opportunities for EBs which don't already have the function to **develop alternative dispute resolution** as a means to assist victims

THREATS

- **Alternative dispute resolution carries inherent risks in discrimination cases**, due to inequality of arms between parties and the limitations on remedy and sanction in cases which are subject to mediation.
 - **Risk that victims will not receive effective remedy**
 - **Risk that mediation will be initiated through intimidation** or coercion of the claimant.
- Mitigated in part by the provision that cases may proceed to court in the absence of a resolution, but this does not fully mitigate the risk – essential that the provision is interpreted in light of Art 6(1) – that EBs should provide assistance to victims
- Risk that application of “or by another competent body” results in **mediation functions being given to a body which lacks the resources or expertise** to discharge the function
- Mitigated by Art 6(1) requirement that “Equality Bodies are able to provide assistance to victims”

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.. 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. Second, inquiries may be conducted on an Equality Bodies own motion, to investigate potential violations of the right to equal treatment.

STRENGTHS

- Establishes a **power to conduct investigations both in response to complaints and proactively**, at the initiative of the EB itself
- **More open-ended than the original European Commission proposal** that investigation could be initiated where EB considered that the principle of equal treatment “may have been breached”
- **Gives discretion to EBs to initiate investigation or inquiry on their own initiative**
- Art 8(2) provides **broad scope for EBs to gather information as they see fit** through fact-finding. The phrase “in particular” means the listed means are merely illustrative
- **Fact-finding power should be interpreted expansively**, with reference to the needs and demands articulated by the EB itself.

WEAKNESSES

- **No significant weaknesses** – the power provided is as advocated for by Equinet

OPPORTUNITIES

- **Opportunities for EBs which don't already have investigatory powers** to undertake inquiries
- **Power to proactively initiate investigations has significant potential** as a proactive, preventative and promotional measure – allowing for public inquiries into systemic issues, etc

THREATS

- Art 8(3) provides that **states may entrust another competent body with inquiry powers** – potential to undermine or even to exclude EBs powers or to give investigation powers to bodies which may lack the expertise, independence or resources to do so effectively.
 - The risk posed in Art 8(3) is mitigated through interpretation – the powers must be exercised either by an EB or by a body which has the same independence, expertise, resources and powers as an EB, as to do otherwise would contradict Art 1.
- Art 8(4) (**no investigation while court proceedings are pending**) creates the possibility for regression in jurisdictions, where EBs have the power to “conduct investigations even when court proceedings on the same case are pending, for instance with a view to render a non-binding opinion”
 - Art 20(2) mitigates the risk in Art 8(4), through its explicit language around non-regression.

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.

STRENGTHS

- Significant step forward in many jurisdictions, in that it **requires all states to ensure that EBs have the power to consider and assess cases**, either in the form of a decision or an opinion.
- **Brings welcome clarity to the different functions which EBs play in decision-making:** “recommendations” on law and policy, binding “decisions” and non-binding “opinions”
- Art 9(2) includes **important minimum standard on remedy and prevention** – that both binding decisions and non-binding opinions “shall; include specific measures to remedy a breach of the principle of equal treatment and to prevent further occurrences”
- Art 9(2) includes a **specific reference to non-recurrence**, which should be interpreted in light of international standards on remedy.

WEAKNESSES

- Falls short of Equinet’s recommendations in several ways, in particular through **not creating an explicit requirement that EBs can deploy sanctions, award compensation and make legally binding decisions.**
- Important to underline the fact that **states have an obligation to ensure the right to effective remedy and to provide sanctions which are effective, proportionate and dissuasive.** If the EB is unable to provide remedy or sanction itself, then it must be part of a whole enforcement system through which remedy and sanction can be secured – including through litigation.

OPPORTUNITIES

- Despite weaknesses, and while it remains possible to limit EBs’ role to the issuance of non-binding opinions, this is a **step forward and opportunity for EBs which did not have these functions before**

THREATS

- **The words “where appropriate” in respect of remedy are open to narrow interpretation** – this will need be read in light of international standards on effective remedy
- **The language in Art 9(2) on “appropriate mechanisms for the follow up of non-binding obligations” is open to narrow interpretation** will need to be interpreted in light of the international standards on effective remedy and sanction, and in light of the stated purposes of the Directive.
- **Risk of tensions between the assistance and support function and the decision-making function, and ensuring impartiality** - Art 3(4) on the role and responsibility of EBs to establish “an internal structure that guarantees the independent, and where appropriate impartial, exercise of their competences” is key in this respect

One of the most significant contributions of the Directives relates to the powers of Equality Bodies to act in court proceedings, which are detailed under Article 10. The new Directives establish specific litigation competencies for Equality Bodies, whilst asserting their right to participate in legal proceedings in their role as legal experts. As the recitals make clear, in this area the Directives seek to recognise and reinforce the important role of Equality Bodies in contributing towards the “proper interpretation and application of equal treatment legislation” and in combatting discrimination.

STRENGTHS

- Establishes a **requirement that EBs be given powers engage in litigation**
- Requires all states to empower EBs to engage in litigation – a **new power in many cases**
- **Reflects – albeit not completely – the recommendations made by Equinet** in its initial Working Paper

WEAKNESSES

- Art 10(3) gives states a significant margin of appreciation and **permits states to give EBs only one of the litigation powers** (“shall include at least one of the following”)
 - Commission’s original proposal provided that EBs should be able to engage in litigation “in their own name, in the public interest, in the absence of an identified victim and in support or on behalf of several victims”
 - Equinet advocated for EBs to have all three litigation powers, and this reflects the approach in the ECRI Recommendation

OPPORTUNITIES

- Significant **opportunity for EBs which have not had powers to engage in court proceedings** to do so, notwithstanding the limitations

THREATS

- **Principal risk that states will interpret Art 10 narrowly, restricting the powers of EBs to engage in litigation** to only one of the three modes set out in Art 10(3)
- **Risk of tensions between the assistance and support function and the decision-making function, and ensuring impartiality** - Art 3(4) on the role and responsibility of EBs to establish “an internal structure that guarantees the independent, and where appropriate impartial, exercise of their competences” is key in this respect

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, 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.

STRENGTHS

- **Reflect ECRI GPR2r and European Commission Recommendation standards** on equal access and accessibility and accommodation for persons with disabilities in the, albeit with less detail
- **Require states to ensure that EBs are accessible, on an equal basis by all** – essential for bodies established to serve groups exposed to discrimination
- **Establish a safeguard against indirect discriminate in the delivery of services by EBs** through failure to remove barriers, adapt premises and procedures, and ensure access,
- **Guarantee that EB services must be free and available throughout territory**
- **Establish a standard which is essential for both effectiveness and legitimacy** of EBs
- **Ensure alignment with existing international standards** (including but not limited to the CRPD and EU Accessibility Act) and recommendations (such as CEDAW General Comment 28).

WEAKNESSES

- Art 12 provides **limited detail on what must be done to ensure equal access**, as provided in ECRI GPR2r para 40, for example
- Art 13 fails to impose an obligation of **reasonable accommodation for grounds other than disability** (though this could be addressed through equal access requirements in Art 12(1))

OPPORTUNITIES

- The broad requirement to guarantee equal access holds **potential for EBs to advocate for greater resources, better premises and communications, establishment of regional offices and other mechanisms to enable participation**
- **Potential to link access guarantees to requirements of effectiveness and the importance of meaningful participation** by groups exposed to discrimination in strategy, policy etc to ensure equal access

THREATS

- **No significant threats** – the standards established are aligned with existing European and international law