

EQUALITY BODIES: NEW STANDARDS, NEW CHALLENGES

Organismos de igualdad: nuevos estándares,
nuevos retos

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Abstract

Equality Bodies are public and independent bodies established in all Member States of the European Union based on Equality Directives approved in the 2000s and 2010s. However, these Directives contain very basic information about their characteristics and powers. The practice of these bodies has demonstrated the importance for all Member States to have Equality Bodies prepared to ensure that citizens are protected from discrimination to the greatest extent possible. In recent years, various international organisations have issued recommendations on this matter, while Equinet (the European Network of Equality Bodies) has actively engaged with this fundamental issue. Building upon these initiatives and in response to the limited adherence to soft law and political recommendations, the European Commission has introduced two legislative proposals (Directives) to set standards for Equality Bodies currently under negotiation. This article will delve into the non-legislative recommendations, analyse the proposed Directives, and offer insights on the negotiation process and the Council's draft text, all from the Equality Bodies' perspective.

Keywords

Equality Bodies; equality; non-discrimination; ECRI; EU law.

Resumen

Los organismos de igualdad son organismos públicos e independientes establecidos en todos los Estados miembros de la Unión Europea basados en directivas de igualdad aprobadas en las décadas de 2000 y 2010. No obstante, estas directivas contienen información muy básica sobre sus características y competencias. La práctica de estos organismos ha demostrado la importancia de que todos los Estados miembros cuenten con organismos de igualdad que estén preparados para garantizar que los ciudadanos estén protegidos contra la discriminación en la mayor medida posible. Diferentes organismos internacionales han publicado recomendaciones en este sentido durante los últimos años. En este sentido, cabe destacar asimismo el trabajo de Equinet (la Red Europea de Organismos de Igualdad). Con base en estas iniciativas, y ante la falta de implementación de recomendaciones de carácter político, la Comisión Europea ha realizado dos propuestas de ley (directivas) sobre estándares para organismos de igualdad que se hayan en proceso de negociación. Este artículo trata de realizar un análisis de dicha propuesta, así como compartir pinceladas del proceso de negociación y los textos salientes del Consejo tras examinar brevemente las propuestas no legislativas anteriores desde el punto de vista de los propios organismos de igualdad.

Palabras clave

Organismos de igualdad; igualdad; no discriminación; ECRI; derecho de la Unión Europea.

SUMMARY

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I. INTRODUCTION

Equality bodies are independent national public institutions assisting victims of discrimination and promoting equality. Following the example of a few countries that had these bodies set up prior to the so-called 2000 Equality Directives,¹ different CSOs, notably Starting Line², advocated for the inclusion of these bodies, equality watchdogs, all over the European Union. It is, therefore, commonly accepted that Equality Bodies were overall set up based on European Union (EU) Equal Treatment Directives, in particular the Race Equality (2000), Gender Goods and Services (2004) and Gender Recast (2006) Directives.³

These Directives contain similar provisions regarding the obligation for all EU Member States to designate one or several equality bodies to cover

¹ Council Directive 2000/43/EC (also known as Race Equality Directive or RED) and 2000/78/EC (also known as Employment Equality Directive or EED).

² In this respect and for a more comprehensive view of what was proposed Bell (2001).

³ Council Directive 2004/113/EC and Directive 2006/54/EC.

some of the grounds of discrimination protected by EU law —specifically, gender and, race and ethnicity.⁴

While the EU treaties, more specifically the Treaty on the Functioning of the European Union in its article 19, establishes that the European Commission may also legislate on other grounds of discrimination such as age, disability, sexual orientation and religion of belief, and a Directive (Employment Equality Directive) was approved at the same time as the Race Equality Directive; no provision was included at the time regarding the obligation to designate an Equality Body on those grounds.⁵

The whole anti-discrimination and equality legislative package has been legislated in the form of Directives meant to establish minimum requirements while giving enough wiggle room for each member state to implement and adapt those into the national context. As a result, national legislation varies from one Member State to another. Given the very minimum requirements that the Directives established regarding Equality Bodies, though, this has had as a result, considerable differences between them, as it will be further developed in this article. Different supranational organisations, such as the Council of Europe (through ECRI) and the European Union (through the European Commission), have made recommendations to Member States to ensure that these bodies are empowered and efficient to protect citizens and victims of discrimination to the best of their abilities and avoid the asymmetrical configuration of the protection to rights-holders across Member States.

In the lines that follow, we will explore the nature, role, and heterogeneity among Equality Bodies. This exploration will underscore the necessity of establishing legally binding and enforceable standards for these bodies. We will outline the compelling need for robust and enforceable standards for Equality Bodies. Additionally, we will briefly touch upon various international policy documents and conclude by analysing the two draft proposals on Standards for Equality Bodies, concisely comparing the EC proposal and the Council general approach.

II. WHAT ARE EQUALITY BODIES? WHAT CAN EQUALITY BODIES DO?

As explained above, Equality Bodies were set up in many EU Member States based on the Anti-discrimination Directives. These established very

⁴ Before EU requirements were introduced, 20 Member States did not have Equality Bodies in place (Van Ballegooij and Moxom, 2018: 22).

⁵ Criticism in this respect in Kádár (2018); Benedi Lahuerta (2020).

minimum standards or powers for them, specifically in article 13 in RED, article 12 in Directive 113/2004, article 20 in Directive 2006/54 and article 11 in Directive 41/2010 (these last two containing, additionally, a reference to cooperation with the European Institute for Gender Equality):

Article 13 (Directive 2000/43)

1. Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
2. Member States shall ensure that the competences of these bodies include:
 - without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
 - conducting independent surveys concerning discrimination,
 - publishing independent reports and making recommendations on any issue relating to such discrimination.

While these are not very comprehensive requirements regarding the status of Equality Bodies, most member states have implemented such minimum requirements, referring to the ground, scope or powers extensively.⁶ Further, these are constantly being updated throughout the EU and the wider European region, together with the development of Equality and anti-discrimination laws. Nonetheless, this was done differently across the old continent, and the result is very heterogeneous. Further, some Member States implemented the Directives in a restricted way. That was the case in Spain, in which Directive 2000/43, the first one that required the designation of an Equality Body to protect victims of discrimination based on race or ethnic origin, was transposed. It was what some authors (Cachon, 2006: 59) called a concealed transposition of the law,⁷ done in a document that accompanied the General State Budget⁸, without open social dialogue, late and in such a minimalistic way that raised significant questions about whether it had been transposed correctly, especially regarding the interpretation of the required independence of the Equality Body when it was incorporated into

⁶ Benedi Lahuerta (2020).

⁷ The author uses the term “transposicion oculta”.

⁸ Ley 62/2003, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social.

the governmental structure.⁹ When transposing the Gender-related Directives, the mandate was given to the Instituto de la Mujer, which had already been created in 1983¹⁰. In 2022, the Parliament approved the Ley 15/2022, a new comprehensive Equality Law that foresees the creation of a new Equality Body: the Autoridad Independente para la Igualdad de Trato.¹¹ These Equality Bodies must be aligned with the new requirements set up by the binding legislation on Standards for Equality Bodies currently being discussed in the EU.

The heterogeneity of Equality Bodies mentioned above is significant in many areas. Equality Bodies are equality watchdogs in their Member States, and to do so, they may possess a particular set of skills and powers, serving to promote more equal societies and fight discrimination such as:

- Taking complaints from victims of discrimination;
- Providing legal assistance to victims of discrimination, in many cases, including taking cases to court or deciding them in their administrative procedure;
- Collecting data on equality;
- Conducting research on equality in society;
- Making recommendations to policymakers and legislators;
- raising awareness and communicating about equality and rights;
- working with employers, service providers, other public bodies, and civil society organisations to help them implement good equality plans and practices.

All national Equality Bodies are represented in Equinet, the only network dedicated to Equality Bodies that works to strengthen and support Equality Bodies to achieve equality for all, that serves as a hub, builds their capacity in different areas and acts as the expert voice of Equality Bodies in Europe on equality and non-discrimination. Equinet has 47 members, covering some non-EU European members. As a network, it works towards an equal Europe, where equality is a reality for everyone, diversity is valued, and all forms of discrimination have been eliminated.

⁹ For a in depth comparison of the effects of the different conditions or Standards guaranteed to Equality Bodies through a comparison between the ULK EHRC and the Spanish race Equality Body please see Benedi Lahuerta 2021.

¹⁰ Ley 16/1983, de 24 de octubre, de creación del organismo autónomo Instituto de la Mujer.

¹¹ Ley 15/2022 de 12 de julio, Integral para la Igualdad de Trato y la no Discriminación.

As a network focused on building and strengthening the capacity of its members, through these activities and initiatives, the great diversity and heterogeneity among Equality Bodies has been made clear in terms of different issues. These include, for instance:

- **Mandate:** Equality Bodies may be very different in the mandate they hold. Since the Equality Directives asked Member States to designate a body but did not require to create a new one, often Equality body mandates have been included in or merged with other structures, such as Ombuds or NHRIs. In this sense, some members may be focused and only one mandate as the Federal Anti-Discrimination Agency, Germany (FADA). In contrast, others may have additional mandates such as NHRI (Danish Institute of Human Rights), Ombud (Commissioner for Human Rights, Poland) or independent mechanisms under UN CRPD article 33(2) (Commission for the Rights of Persons with Disability in Malta). For instance, the Office of the Ombudswoman of Croatia holds five mandates: Equality Body, ombuds, national human rights institution (NHRI), national preventive mechanism (NPM) and whistle-blower protection.
- **Size:** The size of the office and the number of staff, together with the institution's resources and independence, primarily relate to the number of issues and activities these bodies can tackle. For instance, the Center for Equal Treatment in Luxembourg has three staff members, while the Defender of Rights in France has more than 200.
- **Grounds:** Some Member States transposed the Directives *ad minimum*, therefore solely giving a gender or race/ethnic origin mandate to Equality Bodies like it was done in Spain (with the Council for the Elimination of Ethnic or Racial Discrimination and the Institute of Women). Most Member States went beyond what was required by the European legislation and gave the mandate to Equality Bodies to protect victims of discrimination based on all the grounds recognised at the national level. Further, some Equality Bodies have a mandate covering the intersections between grounds, either multiple or intersectional discrimination. Additionally, some Member States created Equality Bodies that work solely on the ground of Disability (such as the Austrian Disability Ombudsman).
- **Functions:** All Equality Bodies are vested with the mandate and functions described in the Directives, the extract of which was shared earlier in this text. Additionally, some Equality Bodies have been vested with powers to, for instance, represent victims in court (Irish Human Rights and Equality Commission). In contrast, others have a semi-judicial nature

and can make legally binding decisions (Commission for Protection Against Discrimination, Bulgaria).

- Accessibility: According to their geographical and internal administration systems, some Equality Bodies have regional or local offices (Unia, Belgium) while others focus on being easily accessible online through their website (Equality and Anti-discrimination Ombud, Norway)

As Farkas explains, “Variance among equality body mandates and powers has engendered tangible differences in the level of protection from discrimination and inequalities in practice”¹². Equinet believes, as a network, that it is crucial to protect that diversity by finding the best formula for each legal, societal, and geographical model while ensuring that all Equality Bodies are vested with minimum powers that have proven their efficiency in protecting rights-holders.

To that end, Equinet has been advocating and encouraging Member States to amplify the mandate of their Equality Bodies to ensure that the defence of rights is made in the most efficient way possible. These efforts have also been replicated and led by other organisations, be it institutions that have been able to publish non-binding recommendations (such as ECRI or the European Commission) or by social partners, such as networks and organisations of right holders that have recognised the value and potential of Equality Bodies that are vested with broad powers to better protect rights-holders.

III. STANDARDS FOR EQUALITY BODIES: A SHORT STANDARDS HISTORY

As mentioned above, Equality Bodies have demonstrated their usefulness in preventing, monitoring, and supporting victims of discrimination at the national level. Consequently, the European Union, the Council of Europe, and the United Nations have recognised their work at the international level.¹³

Nonetheless, all Equality Bodies must be given the tools, powers, and conditions to do so to the best of their abilities. Standards for Equality Bodies

¹² Farkas (2022: 5).

¹³ Indeed as Benedi Lahuerta explains “at international level, there is a relatively broad consensus over the minimum standards that should be observed in EBs’ design to ensure that they are responsive to most of the common discrimination challenges” (Benedi Lahuerta, 2020).

constitute a significant step towards better implementation and enforcement of equal treatment legislation. In this sense Farkas has stated,

On the same token, positive examples from the national level demonstrate that reinforcing the status, mandate, and powers of Equality Bodies is key to improving the protection of discriminated groups. The most salient differences in the level of protection stem from the scope of national anti-discrimination law - the grounds and fields covered - and the functions of Equality Bodies, which range from strictly promotional to agency type institutions, with most Equality Bodies taking on a hybrid character¹⁴.

Having binding standards would, therefore lead to Equality Bodies, among others, to have:

- Better guarantees for independence.
- More adequate resources to promote equality and fight discrimination, including assisting victims of discrimination.
- More adequate powers to achieve full equality.
- More comprehensive mandates to cover all manifestations of discrimination.
- Higher standards and resources to ensure full accessibility to all.

Different soft-law documents reflect the recognition of the work of Equality Bodies and the need for them to be vested with the necessary conditions to perform their job of protecting rights-holders to the best of their ability. The ECRI General Policy Recommendation No. 2 (revised) Establishment and Functioning of Equality Bodies in 2017 was the first explicitly focusing on Equality Bodies. In 2018, the European Commission also adopted a Recommendation on standards for Equality Bodies to ensure the independence and effectiveness of national Equality Bodies. The implementation of the Recommendation (not of binding nature) was to be monitored by the European Commission. It led to the Report on the application of the Racial Equality Directive and the Employment Equality Directive and its accompanying Staff Working Document on Equality Bodies (2021). This report showed that most issues addressed by the Recommendation remained unresolved.¹⁵

Most Strategies published under the “Union of Equality” seal by the Dalli team mentioned that the European Commission would study and

¹⁴ Farkas (2022: 5).

¹⁵ Reinforcing this need, see additionally for instance, Kádár (2018); RED, Recital 24; Recommendation at 30; Tyson (2001: 216); Holtmaat (2007); Ambrus (2012: 317); Crowley (2016).

eventually it would propose binding legislation on Standards for Equality Bodies in 2022. The Directive proposals, which will be the first binding document in this regard, were published in December 2022. In the lines that follow, each Recommendation will shortly be described, as well as Equinet's role and work to eventually, in the next section, talk more in-depth about the current legislative proposals.

1. ECRI GENERAL POLICY RECOMMENDATION NO. 2 (REVISED) ESTABLISHMENT AND FUNCTIONING OF EQUALITY BODIES (2017)

Back in 1997, ECRI already advocated for the establishment of Equality Bodies as part of its original General Policy Recommendation No. 2. Then, in December 2017, a revised version of this Recommendation, titled "General Policy Recommendation on Equality Bodies to combat racism and intolerance at the national level" was adopted during ECRI's 74th plenary meeting. This revised Recommendation delves into critical aspects such as the formation of Equality Bodies, their institutional structure, functions, and competences, as well as their autonomy, effectiveness, and accessibility. These established criteria serve as a foundational framework for ECRI's assessment of countries and the constructive discussions between ECRI and Council of Europe Member States. To this day, it remains one of the most ambitious and detailed documents in this regard, and it is mentioned in the European Commission's legislative proposals.

2. EUROPEAN COMMISSION RECOMMENDATION ON STANDARDS FOR EQUALITY BODIES

The Recommendation, a legal act of the Commission (but not legally binding), set minimum standards concerning the mandate of Equality Bodies. It included provisions about grounds, scope, functions, independence, effectiveness, sufficient resourcing and appropriate powers, and their national institutional architecture.

Mentioned above, the 2021 report on the application of the Racial Equality Directive and the Employment Equality Directive and its accompanying Staff Working Document on Equality Bodies showed that most of the concerns addressed in the Recommendation still needed to be resolved.

Subsequent to the EU Anti-racism Action Plan, the LGBTIQ+ and Roma Equality Strategies, as well as the Strategy on Combating Antisemitism and Fostering Jewish Life, where the Commission explored the option of proposing EU-level legislation to reinforce the role and independence of Equality Bodies, a new initiative was launched by the Commission on the 24 of July 2021. This

initiative aimed to bolster Equality Bodies by setting minimum standards on how they operate in all grounds of discrimination and areas covered by the EU by establishing foundational standards for their operations across all discrimination grounds and fields governed by EU equality regulations.

From the 10 of December 2021 to the 18 of March 2022, the European Commission conducted a public consultation¹⁶ to guide its efforts in enhancing Equality Bodies. This consultation sought viewpoints on the current state of Equality Bodies and potential future enhancements. Moreover, it gathered individual respondents', national and international CSOs and other social partners' experiences to contribute to the analysis of their responses.

3. EQUINET: STANDARDS PROJECT

Equality Bodies themselves saw the need to establish a platform to work on Standards for Equality Bodies and created a multi-annual "Project on Standards for Equality Bodies" in 2015. This project has acted as a hub and exchange platform to discuss effective methods for enhancing the independence, effectiveness and functioning of Equality Bodies by Equality Bodies. This collaborative endeavour resulted in the formulation of a working paper on this subject in 2016¹⁷. This project has played a pivotal role in engaging with European Institutions concerning potential EU-level regulations aimed at fortifying the roles and independence of Equality Bodies.

As part of this undertaking, the project has focused on creating measurable indicators to assess different issues mentioned by the non-legislative initiatives and Equinet's research. Therefore, these indicators are based on their own experience, take into account the differences between the bodies and their political context, and serve as tools to assess adherence to the established standards. Their purpose is to facilitate monitoring of the situation by Equality Bodies themselves, thereby pinpointing any necessary enhancements to the status and operations of Equality Bodies.

The initial set of indicators was crafted to oversee Equality Bodies' mandates, while the subsequent set targeted the independence of these bodies.¹⁸ In 2023, Project members are focused on working on indicators to measure resources.

¹⁶ Equinet (2022).

¹⁷ Crowley (2016).

¹⁸ Equinet (2020, 2021). When these are approved, they will be uploaded to the Equinet Standards dedicated website: <https://tinyurl.com/5bey88kr>.

In 2021, five Equality Bodies from Austria, Belgium, the Czech Republic, Germany, and Romania tested these indicators for suitability and practicality. A comprehensive report was formulated to synthesise and evaluate the insights from piloting these indicators. Additionally, the report proposed how these indicators could contribute to the forthcoming legislation concerning standards for Equality Bodies.¹⁹

IV. WHERE ARE WE NOW? PROPOSALS FOR DIRECTIVES ON BINDING STANDARDS FOR EQUALITY BODIES.

Equality bodies are essential in assisting victims of discrimination and making sure that EU law on non-discrimination is implemented on the ground. This new legislation will ensure that equality bodies can achieve their full potential. It will better protect victims of discrimination and contribute to the prevention of discrimination²⁰.

On the 7 of December 2022, the Commission released two Directive proposals for Standards for Equality Bodies: one pertaining to Equality Bodies operating in the realm of gender equality within employment and occupation, and another regarding Equality Bodies addressing various aspects such as gender equality in goods and services, social security, religion or belief, disability, age, and sexual orientation in employment and occupation. Additionally, these proposals extend to issues concerning racial or ethnic origin in multiple fields. Remarkably, the provisions in both proposals are virtually identical.

The rationale for having two concurrent initiatives instead of one stems from the distinct legal bases in the Treaties that give powers to the EU institutions to legislate in different fields. The Directive concerning gender equality in employment draws from article 157(3) of the Treaty on the Functioning of the European Union, subsequently referred to as the “article 157 Directive”. In contrast, the other Directive derives from article 19(1) of the Treaty, hence referred to as the “article 19 Directive”. It is the first time in the EU legislative tradition that two twin Directives are proposed that, given their legal basis, would have a differentiated legal process. A dedicated section will discuss the implications of having different legal bases.

These Directives mark a groundbreaking milestone, establishing the first internationally binding standards for Equality Bodies. This represents a signif-

¹⁹ Farkas (2022).

²⁰ Press release “Equality Package: Commission proposes to strengthen equality bodies to fight discrimination” on the 7 of December 2022 Brussels.

icant stride towards implementing and enforcing EU's equal treatment regulations more effectively and fostering greater equality within European societies. They are designed to ensure a uniform baseline of protection against discrimination for all individuals across Member States. The key components encompassed within these standards include:

- Enhanced competences
- Independence
- Adequate resources
- Preventive measures, promotion, and awareness
- Accessibility for all victims
- Consultation on law- and policy-making process
- Enhanced powers in discrimination cases
- Investigation powers
- Alternative Dispute Resolution (ADR)/ mediation
- Legal standing
- Awareness raising
- Sharing expertise
- Equality data collection
- Indicators to assess the effects of the proposed measures and ensure comparability of data collected at the national level

These standards will empower Equality Bodies to fulfil their pivotal function as the foundational elements of national equality frameworks with even greater efficiency. In a unified voice for Equality Bodies, Equinet welcomed the EC's original proposal and published both an ambitions document (Kádár, 2022) regarding the hopes of the membership regarding the future legislation and a document afterwards analysing the Directives (Equinet, 2023c). The process has been closely monitored, and the network has advised and advocated for strong, efficient standards. Equinet has additionally published amendment proposals (Equinet, 2023d, and Equinet, 2023e) to the original European Commission proposal and has engaged with a wide array of stakeholders, including, for instance, the institutions, EU presidencies, rights-holders, CSOS and trade unions by providing targeted information on relevant topics (for instance Equinet, 2023b).

1. THE COMPLEXITY OF THE LEGAL BASES OF THE DIRECTIVES AND PROCESS

The Directive proposals raise essential considerations, particularly concerning the legal basis on which they are established. The choice of legal basis has significant implications for the scope, authority, and enforceability

of these directives but also regarding the adoption and negotiation process. In the context of the European Union, directives are legal acts that set out goals to be achieved by Member States, leaving them the flexibility to determine the appropriate form and means of achieving those goals.

While the current content of both Directives is essentially the same, this might change during the legislative process. This prospect arises primarily because the European Parliament holds co-decision powers over the article 157 Directive. In contrast, it can only agree or disagree with the Council's general approach regarding the article 19 Directive. It becomes relevant to assess the potential consequences if the texts diverge significantly and explore strategies to avert such divergence. While it would be ideal to have two identical Directives when adopted in order to ensure coherence and facilitate the transposition process, this may not happen. This is the case because, on Equality and non-discrimination matters, the Council has tended to be much more conservative, even blocking legal initiatives (as the so called Horizontal Directive) for years, while the European Parliament tends to have a much more progressive and extensive approach. In any case, it would be up to Member States when transposing such Directives to decide to implement the more ambitious provisions for the entire scope of both Directives. In fact, these Directives are *ad minimum* Directives and implicitly state in article 17 that Member States may introduce or maintain more favourable provisions. It is vital in this sense, to ensure that the Directives cannot be used to reduce the current (more favourable) conditions of Equality Bodies and consequently the protection afforded to rights-holders.

The Swedish presidency of the Council (January 2023-June 2023) prioritised reaching a general approach to these Directives within the Council. Following this, they planned several meetings in the Social and Working Party on Social Questions²¹ and finally in COREPER on the 7 of June. EPSCO adopted the Council position on the 12 of June.

The European Parliament had long discussions between Committees to decide how to proceed with the Directives and which Committees would be responsible. The European Parliament's Committee on Women's Rights and Gender Equality (FEMM) and the European Parliament's Committee on Employment and Social Affairs (EMPL) were chosen as the competent ones. At the same time, the European Parliament's Committee on Civil Liberties, Justice, and Home Affairs (LIBE) has been requested to submit an opinion.

²¹ Meetings were held on 10 and 20 January, the 7 of February, the 2 of March, 20-21 March, 18-19 April, and 15 and 25 May 2023.

The European Data Protection Supervisor and the European Social and Economic Committee issued non-binding opinions regarding the Directives on the 25 of May, 2023.

During the second trimester of 2023, the Committees named the rapporteurs and shadow rapporteurs for the Directives, who would be responsible for analysing and making recommendations to amend such proposals, together with the shadow rapporteurs.

Table XX. *Overview of the MEPs involved in the European Parliament as shadow rapporteurs or rapporteurs in the European Parliament*

GROUP	MEP	
Group of the European People's Party (Christian Democrats) (EPP)	EMPL	Rosa Estaràs Ferragut
	FEMM	Sirpa Pietikäinen (co-rapporteur)
Group of the Progressive Alliance of Socialists and Democrats in the European Parliament (S&D)	EMPL	Marc Angel (co-rapporteur)
	FEMM	Carina Ohlsson
Renew Europe Group (Renew)	EMPL	Max Orville
	FEMM	Irène Tolleret
Group of the Greens/European Free Alliance (Greens/EFA)	EMPL	Romeo Franz
	FEMM	Kira Marie Peter-Hansen
	LIBE	Alice Bah Kuhnke
European Conservatives and Reformists Group (ECR)	EMPL	Margarita De La Pisa Carrion
Identity and Democracy Group (ID)	EMPL	Guido Reil
The Left group in the European Parliament (GUE/NGL)	EMPL	José Gusmão
	FEMM	Maria-Eugenia Palop Rodriguez

Fuente: elaboracion propia de la autora.

The Co-rapporteurs of the FEMM and EMPL committee are MEP Sirpa Pietikäinen and MEP Marc Angel, who have presented a draft report.²² In addition, MEP Alice Bah Kuhnke has also submitted her opinion on behalf of the LIBE committee.²³

²² European Parliament 2019-2024 Committee on Employment and Social Affairs Committee on Women's Rights and Gender Equality 2022/0400(COD) 6.7.2023 I DRAFT REPORT Co-Rapporteurs: Marc Angel, Sirpa Pietikäinen.

²³ European Parliament 2019-2024 Committee on Civil Liberties, Justice and Home Affairs 2022/0400(COD) 20.7.2023 DRAFT OPINION Rapporteur for opinion: Alice Kuhnke.

These will be presented to the relevant FEMM and EMPL Committees on the 30 of August in Brussels. By the 5 of September, MEPs will be able to submit amendments to the proposed Draft opinion. The final European Parliament position is planned to be voted on the plenary in November. Given that the current texts might suffer considerable changes in the adoption process, this article does not include quotes or analysis of the text negotiated in the European Parliament.

Once the Council and the European Parliament positions are adopted, the trialogues will start between the European Commission, the European Parliament (represented by the rapporteurs and shadow rapporteurs) and the Council (represented by the rotating presidency) who will negotiate and agree on the final text of the Directives.

The country that holds the presidency of the Council will, therefore, hold considerable power, as it will set up the agenda and priorities of the files, and mentioned above, will have the responsibility to lead the position of the Council, an institution that has shown to be especially difficult when it comes to approving Equality Legislation and the need to avoid another blockage like the one suffered by the so-called Horizontal Directive²⁴, proposed in 2008 and still needs to be adopted.

Should the timeline of the European Parliament be kept, the Spanish presidency will likely be responsible for preparing the ground for negotiations and kicking off the trialogues (presidency to be held July 2023 and December 2023). Given the upcoming European Elections in June 2024, the deadline to approve the Directives before the new European Parliament, European Commissions, and the Upcoming presidencies might very well be quarter 1 of 2024.

2. ENHANCED COMPETENCES

The Directives expand the role of Equality Bodies and the responsibilities of Member States. They mandate the designation of Equality Bodies to address age, disability, religion or belief, and sexual orientation discrimination in employment, and sex discrimination in social security. However, this does not widen the coverage of existing EU equal treatment laws, which already address these areas. The main change is to empower Equality Bodies to address discrimination comprehensively across all grounds and fields

²⁴ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age, or sexual orientation COM/2008/0426 final.

covered by EU law. The initiative does not create new legislation but enhances existing laws.

What the application of the EU Charter of Fundamental Rights could imply is something to consider. The Charter contains an open list of grounds and is a binding source of primary law for the EU and its Member States when applying EU law.

The proposals solely include other grounds when talking about promotional work on article 5, establishing that Equality Bodies would need to take additional grounds like economic status, literacy, nationality, residence status, and lack of access to online tools in the context of promotional work. This could be understood as a covered reference to multiple and intersectional realities (such as recital 16). Nonetheless, these are not expressly used in the text of the Directives, even when the Pay Transparency Directive²⁵ the EU first recognised such a reality in a legal text.

Mentioning multiple and intersectional discrimination would be essential to acknowledge the reality of inequalities and discrimination often affecting persons on more than one ground, creating new forms of disadvantage. Another covered reference is that Recital 15 in the article 157 Directive provides that: 'In promoting equal treatment, preventing discrimination and assisting victims of discrimination, equality bodies should pay particular attention to discrimination based on several of the grounds protected by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC, 2004/113/EC, 2006/54/EC and 2010/41/EU.' Interestingly, the otherwise identically worded Recital 16 in the article 19 Directive differs slightly as it does not mention Directives 2006/54/EC and 2010/41/EU. The practical relevance of this is limited, as Directives 2006/54/EC and 2010/41/EU concern the ground of sex, which is anyway covered in Recital 16 through Directives 79/7/EEC and 2004/113/EC. These Recitals could arguably open the door for courts to address multiple and intersectional discrimination issues.

3. INDEPENDENCE

The original EC Directive proposals emphasise strong independence for Equality Bodies, surpassing the 2018 Commission Recommendation. Article 3(1) mandates Member States to ensure independence, freedom from external influence, and autonomy for Equality Bodies in their tasks

²⁵ Intersectional discrimination is acknowledged in recital 25, 32, 50, articles 3, 16, 23 and 29 of Directive (EU) 2023/970.

and competences, in line of the language used in CJEU decisions about Data Protection Authorities. Article 3(2) addresses staff selection, appointment, and conflict of interest, focusing on competence and independence for managerial roles. Article 3(3) safeguards Equality Bodies' internal structure, requiring separation between impartiality and victim support roles. Article 3(4) concerns multi-mandate bodies, demanding autonomous exercise of the equality mandate including structural safeguards to prevent conflicts between mandates regarding resources and powers. Nonetheless, Recital 17's clarifications could have been included in the regulatory text in article 3, which specifies that Equality Bodies should not be established within government-controlled ministries or bodies. Additionally, while Recitals already highlight that managerial positions encompass board members of Equality Bodies, it would be beneficial to state this in article 3(2) explicitly.

Further elaboration and interpretation of the provisions in article 3(3) are needed to prevent an overly rigid separation between different competencies.

Including provisions for multi-mandate bodies in the Directives is positive as it ensures adequate resources and visibility for the equality function. However, the meaning of 'autonomous exercise of the equality mandate' in article 3(4) requires additional clarification and interpretation. This clarification should also ensure that it does not demand an overly strict division between different mandates when they can complement each other effectively. This flexibility is especially advantageous for individuals seeking assistance from the institution and for efficiently using public funds.

The Council text has seen the provisions for independence considerably watered down. The Council text includes a recital (recital 17) that established explicitly that Equality Bodies may be included in Ministries and, therefore, goes against the EC proposal, the 2018 recommendation and the ECRI GRPD 2 (revised)²⁶.

4. RESOURCES

The provisions related to resources within the EC's original Directive proposals are robust. Ensuring enough resources and funding is a problematic issue when regulating such matters in a Directive that should be applied across Member States and to the different geographical, societal, and cultural contexts. Article 4 of the Directives stipulates that "Member States shall

²⁶ In this regard also, Benedi Lahuerta (2021).

ensure that each equality body is provided with the human, technical and financial resources necessary to perform all its tasks and to exercise all its competences effectively, on all the grounds and in all fields covered by Directives [...] including in the event of increases in competences, increases in complaints, litigation costs and the use of automated systems”.

Recital 18 of the article 157 Directive and Recital 19 of the article 19 Directive provided valuable elaboration on this provision, aligning the text even more closely with the recommendations put forth by Equinet:

The lack of appropriate resources is a key issue hampering the ability of equality bodies to adequately fulfil their tasks. Therefore, Member States should ensure that equality bodies receive sufficient funding, can hire qualified staff, and have appropriate premises and infrastructure to carry out each of their tasks effectively, within reasonable time and within the deadlines established by national law. Their budgetary allocation should be stable, except in case of increase in competences, planned on a multiannual basis, and allow them to cover costs that may be difficult to anticipate such as costs linked to litigation. To ensure that equality bodies are provided with sufficient resources, their budget should for instance not suffer cuts that are significantly higher than the average cuts to other public entities; similarly, their annual growth should at least be pegged to the average growth in funding to other entities. Resources should increase proportionally if equality bodies’ tasks and mandate are expanded.

The proposals include a distinct Recital (Recital 18 of the article 157 Directive and Recital 19 of the article 19 Directive) specifically mentioning automated systems, therefore recognising the technical difficulties Equality Bodies may face when addressing AI-based discrimination:

Automated systems, including artificial intelligence, represent a useful tool to identify discrimination patterns, but algorithmic discrimination is also a risk. Equality bodies should therefore have access to qualified staff or services, able to use automated systems for their work on the one hand and to assess them as regards their compliance with non-discrimination rules on the other hand. Particular attention should be devoted to equipping equality bodies with appropriate digital resources, be it directly or by way of subcontracting.

The Council text has erased the references to multi-annual planning, including a reference to their national budgetary processes and the reference to increases in competences, increases in complaints, litigation costs and the use of automated systems in article 4 (while keeping them in the recitals).

5. PREVENTIVE ACTIONS, PROMOTION, AND AWARENESS

Article 5 of the EC proposals assigns Member States responsibility for creating an awareness-raising strategy focusing on individuals vulnerable to discrimination. This strategy aims to educate them about their rights, the existence of Equality Bodies, and the services they provide. Additionally, Member States are obligated to ensure that Equality Bodies develop a comprehensive strategy for their prevention, promotion, and awareness-raising initiatives. This encompasses active engagement in public discussions, advocacy for equality commitments, integration of equality principles into mainstream practices, and implementation of affirmative action measures.

Notably, as mentioned earlier, in the context of promotional work, the proposals mention other grounds such as economic status, literacy, nationality, residence status and lack of access to online tools (article 5, last sentence: “They shall focus in particular on disadvantaged groups whose access to information can be hindered, for example by their economic status, age, disability, literacy, nationality, residence status or their lack of access to online tools”).

This article reflects a commendable emphasis on the roles and responsibilities of Equality Bodies that extend beyond assisting victims. It pertains to the proactive prevention of discrimination, promotion of equality, and augmentation of awareness. To ensure the effective implementation of these roles, Equality Bodies must possess adequate resources, as outlined in article 4.

6. ASSISTANCE TO VICTIMS AND AMICABLE SETTLEMENTS

Article 6 of the original EC proposals outlines a comprehensive structure for aiding individuals facing discrimination. All Equality Bodies are required not only to provide detailed information about the applicable legal framework (including procedural aspects, remedies, and litigation options) specific to the case, as well as about their services, but also rules of confidentiality, data protection, and potential access to psychological or relevant support from other organisations. This is a one-stop-shop approach for victims that would undoubtedly help victims of discrimination seeking redress and support as they would not be required to search for the information themselves or report to different organisations, therefore bettering the access to justice victims of discrimination currently have overall. This should nonetheless require working with other organisations and additional funds.

After providing information, Equality Bodies are tasked with conducting a preliminary evaluation of a complaint based on information voluntarily supplied by the involved parties. While the goal of offering substantial information and a tangible resolution for complainants is appreciated, a “preliminary

evaluation” of the complaint is not defined, therefore leaving the door open to any possibility. This risk imposes excessive demands upon the Equality Body and potentially misleading complainants since their complaints may evolve differently than the preliminary assessment. Further, given the discussions regarding whether Equality Bodies are restricted to relying solely on voluntarily submitted information, this preliminary assessment may be based on very basic information. It is, therefore, imperative that Equality Bodies possess legal authority to both request and compel the disclosure of information. The Council text has helpfully substituted the preliminary assessment requirement with a requirement to inform complainants, within reasonable time, on whether the complaint will be closed or if there are grounds to pursue it further.

Article 7 delves into the potential for reaching an amicable resolution for the dispute, contingent upon the parties’ agreement and supervised by the Equality Body or another dedicated entity. This method is already frequently employed by many Equality Bodies in suitable cases, either in a formal or informal capacity. Consequently, its inclusion and formal establishment within the proposals are positively received as long as they are kept open and encompassing and not at the expense of the already depleted legal standing and litigation powers.

7. ENHANCED POWERS IN DISCRIMINATION CASES

Opinions and decisions

The original EC proposal article 8(1) stipulated that, after the preliminary evaluation outlined in article 6, Equality Bodies should be granted authority to conduct further investigation of the matter. Article 8(2) empowered Equality Bodies to carry out fact-finding efforts. It also mandated that Equality Bodies have effective access rights to essential information needed to determine whether discrimination has transpired. If necessary, this access may entail collaboration with pertinent governmental entities (the recitals specifically reference labour inspectorates and education inspectorates). Article 8(3) permitted Member States to introduce measures where both the accused party and any third party are legally obligated to provide any requested information and documents to Equality Bodies.

Article 8(4) mandated Equality Bodies to document their evaluation of the case, either through a non-binding opinion (designated as such to distinguish it from policy and legislative recommendations) or through a binding and enforceable decision. These opinions and decisions should be summarised and made public, with personal data being withheld. Article 8(4) also

required that these opinions and decisions encompass measures to rectify the violation and to forestall any future breaches. It is commendable that these measures are anticipated not solely to address the specific instance of discrimination but to adopt a proactive stance in preventing future incidents. Opinions must be followed through, and decisions must be executed.

Article 8(5) specified that no inquiry can be initiated or sustained while court proceedings for the same case are ongoing. Although not elaborated upon in recitals or the Explanatory Memorandum, this provision contradicts procedural norms in certain jurisdictions. Equality Bodies might undertake investigations in these regions even when there are ongoing court proceedings, mainly to provide a non-binding opinion. For this reason, it should be removed. The Council's general approach has erased the article.

The Council general approach also separated the article in two, improving clarity in the text in this regard and dividing article 8 into two articles, one devoted to "Inquiries" (article 8) and the other devoted to "Opinions and decisions" (article 8a). Regarding investigations, same as with litigation powers, the text, either in the regulatory part or in a recital, should include that these powers are bestowed upon Equality Bodies even if other administrative or independent bodies may have similar ones, as opposed to the possibility of not bestowing any investigation powers to them given similar powers have already been given to trade unions or inspectorates (that is to say, keeping the status quo that has already proven insufficient). As it is already the practice, understanding memorandums can be signed in between them (for instance, by labour inspectorates and Equality Bodies) to ensure each other's expertise is enhanced and create synergies to better protect victims of discrimination.

Litigation powers

Article 9(1) grants legal standing to Equality Bodies concerning issues within administrative and civil law domains. Notably, the recitals explain that although these legal proceedings should adhere to national procedural laws, including local regulations regarding the acceptability of legal actions, these regulations—especially conditions like legitimate interest—must not be employed in a manner that weakens the ability of Equality Bodies to act effectively.

Significantly, Recital 35 within the article 19 Directive and Recital 34 within the article 157 Directive elucidate that the provisions pertaining to the authority of Equality Bodies to engage in legal proceedings do not modify the rights of victims, associations, organisations, or other lawful entities that uphold victims' rights. As defined by their respective national laws, these

entities possess a legitimate interest in ensuring compliance with the applicable EU equal treatment Directives as outlined in those Directives. This clarification bears relevance to the rights of Civil Society Organizations (CSOs), labour unions, and other public entities, exemplifying their roles in upholding victims' rights.

Article 9(2) and (3) clarified that the powers of Equality Bodies include:

- Acting as defendant in case of a judicial review of a decision of the Equality Body,
- Amicus curiae briefs,
- Initiating or participating in proceedings on behalf or in support of one or several victims, with the approval of the victim(s),
- Initiating proceedings in its own name, in particular in order to address structural and systematic discrimination (the recitals acknowledge that this can also be done in cases where there is no complainant).²⁷

Nonetheless, the Council text establishes that these legal powers shall be a choice of Member States. In this sense, it proposes that all Equality Bodies have amicus curiae or similar and then choose between (1) Initiating or participating in proceedings on behalf or in support of one or several victims, with the approval of the victim(s) and/or (2) Initiating proceedings in its own name. This resulted from the negotiation between Member States' interests and current practices.

The recitals clarify that the above powers will also allow Equality Bodies to 'strategically select the cases they decide to pursue in front of national courts, and to contribute to the proper interpretation and application of equal treatment legislation'. Article 9(4) stipulated that the Equality Body may not submit in court proceedings evidence that it has obtained through the exercise of powers under article 8(3) — i.e., where the alleged perpetrator and any third party are legally bound to provide any information and documents. The recitals clarify that the reason for this limitation is that Equality Bodies' rights to act in court must respect the principles of fair trial and equality of arms. Litigation where Equality Bodies act as a party in proceedings on the enforcement or judicial review of their own decision or act as amicus curiae are exempted from this provision.

The recitals make it clear that the aforementioned powers will also grant Equality Bodies the ability to 'strategically select the cases they decide to

²⁷ Benedi Lahuerta (2018) and Equinet(2023a) shed light regarding why should collective redress and specially actio popularis mechanisms be enabled for Equality Bodies.

pursue in front of national courts and to contribute to the proper interpretation and application of equal treatment legislation'. The Council position has seen these provisions restructured and has proposed options to Member States. According to the text, Member States should choose at least one in between:

- (a) the right to initiate proceedings on behalf of one or several victims;
- (b) the right to participate in proceedings in support of one or several victims; or,
- (c) the right to initiate proceedings in its own name in order to defend the public interest.

While this would be a step forward for several Equality Bodies since some of them do not currently have any legal standing (Equinet, 2023a:11), ideally, all three powers would be granted to Equality Bodies, therefore reinforcing the importance of legal enforcement of rights and the needed support to victims of discrimination, enhancing access to justice for victims. Further, it would be in line and compliance with the objectives of the Directives, national constitutional practices, and international guidance, such as ECRI's GPR No.2. The Council has also introduced several "in accordance with national law and practice" clauses in this article, therefore making conditional, that Equality Bodies only receive these powers only if it is acceptable under national law.

Article 9(4) dictates that the Equality Body cannot present evidence in court proceedings that it has acquired through the utilisation of powers outlined in article 8(3)—where both the alleged wrongdoer and any third party are obligated by law to supply information and records. The recitals expound that the rationale for this restriction is rooted in the necessity for Equality Bodies' litigation rights to uphold the principles of a just trial and equality of arms. Instances of litigation where Equality Bodies function as litigants in cases pertaining to the implementation or legal scrutiny of their own decisions or where they act as *amicus curiae* are exceptions to this regulation. This last provision is highly problematic for Equality Bodies (Equinet, 2023c: 16):

- There are Equality Bodies that currently already have similar effective investigation powers (e.g., in Finland, Latvia, Sweden). For them, and the rights-holders they support, this provision would represent a regression, standing in contrast with the non-regression clause in article 17(2), prohibiting a reduction in the level of protection against discrimination already afforded by Member States.

- This provision also stands in contrast with other fields of law, where such investigation powers are granted to a public authority, for instance to Data Protection Authorities (see article 57(1)f) and h), article 58(1) and article 58(5) of the GDPR) and Competition Authorities (see article 5(2) and article 30 of Directive (EU) 2019/1).
- These provisions are also contrary to the principle of subsidiarity, regulating in a manner and at a depth that undermines the national procedural autonomy of Member States. It is also to be noted that article 10 stipulates general procedural safeguards and in particular that the rights of defence of natural and legal persons involved are duly protected.
- Furthermore, the ‘equality of arms’ justification is questionable in light of one of the most important and basic objectives of equal treatment law: to counterbalance the typically stronger position of perpetrators of discrimination. This provision also has the potential to undermine the effects of shifting the burden of proof, an important procedural guarantee for victims of discrimination, introduced by EU law.
- The practical viability of this provision is also questionable: For instance, it remains to be seen what happens if, for instance, the Equality Body obtains evidence using its power under article 8(3), bases its article 8(4) opinion or decision on such evidence, but then it is the victim or an NGO that litigates. In such a case, arguably, the evidence so obtained could effectively be used in court proceedings, as article 9(4) only limits the Equality Body, but not others, in using it.
- Finally, these provisions run the risk of creating a perverse effect in that all perpetrators (and possibly third parties) may refuse to cooperate with Equality Bodies, until they are legally bound to do so under article 8(3). Once that happens, they can be sure that in court proceedings, the Equality Body will not be able to use any of the documents and information so obtained. Conversely, Equality Bodies that plan to litigate will have an incentive not to use their investigation powers under article 8(3), if possible. This has the strong potential of undermining the effectiveness of the Directives and EU equal treatment law in general.

The Council proposal has noted this and erased this provision from their final text.

8. ACCESSIBILITY FOR ALL VICTIMS

Article 11 emphasises that there shall be no barriers to accessing Equality Bodies’ services, including complaint submission. Further, it mandates that

the services be cost-free for complainants, thus enhancing access to justice for rights-holders.

These services must be available to all, therefore, the establishment of local offices, including mobile ones (among others), is mentioned in the recitals as a way to achieve this. Article 11(3) focuses on guaranteeing access and reasonable accommodation for individuals with disabilities in all activities and services provided by Equality Bodies. The Council text has divided this article into articles 11 (Equal access) and 11a (Accessibility and reasonable accommodation for persons with disabilities), enhancing the specific needs of persons with disabilities.

9. COOPERATION

Article 12 mandates Equality Bodies to collaborate with other Equality Bodies within the same EU Member State and relevant public and private entities. This cooperation aims for shared learning, consistency, coherence, and expanding the influence of their efforts. The recitals specifically highlight cooperation within the European Network of Equality Bodies (Equinet). It would be welcomed if Equinet is named in the regulatory part in article 12 and article 16 when dealing with monitoring and reporting.

While the article initially refers to relevant public and private entities, including civil society organisations, the recitals broaden this to encompass data protection authorities, trade unions, labour and education inspectorates, law enforcement agencies, entities responsible for national-level human rights defence, agencies managing Union funds, National Roma Contact Points, consumer organisations, and national independent mechanisms for promoting, protecting, and monitoring the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

10. DATA COLLECTION AND ACCESSIBILITY OF EQUALITY DATA

Equality data collection is a field in which Equality Bodies have long worked. Further, the European Commission has also issued guidelines to guide this through the work of the Subgroup on Equality Data of the EU High-Level Group on Non-discrimination, Equality and Diversity.

Article 14 of the EC Directive proposals outlined the procedures related to data collection and the availability of equality-related information. Article 14(1) stipulated that Equality Bodies are tasked with gathering anonymised or, at a minimum, pseudonymised data concerning their operations. This data should be categorised based on different discrimination grounds and fields.

These collected data points will contribute to the European Commission's monitoring of the Directives' implementation.

Article 14(2) granted Equality Bodies the authority to access statistics collected by both public and private entities, including public institutions, trade unions, corporations, and civil society organisations. This access is granted when such statistics are deemed necessary to comprehensively evaluate the prevailing discrimination situation within the Member State—a responsibility outlined in article 15, point c). Equinet (2023c: 19) proposed that this article should include a reference to how the data should be provided to ensure that they can use it.

Article 14(3) empowered Equality Bodies to provide recommendations regarding the types of data that should be compiled. Furthermore, they can play a coordinating role in gathering equality-related data. Nonetheless, no reference was made to the potential follow up on the implementation of such recommendations.

Article 14(4) mandated Member States to ensure that Equality Bodies have the autonomy to conduct independent surveys focused on discrimination matters. While this is an *ad minimum* Directive, adding reference to independent reports and research would be helpful. Furthermore, it should also allow for Equality Bodies commissioning, not directly conducting these.

11. CONSULTATION ON LAW- AND POLICY-MAKING PROCESS

Article 13 outlines the obligation for Member States to establish clear and open processes that guarantee the involvement of Equality Bodies in matters of legislation, policies, procedures, programs, and practices linked to equality. This involvement should be prompt and well-timed. Equality Bodies will have the right to make recommendations on those matters, publish them and require feedback from the concerned authorities.

12. REPORTS AND STRATEGIC PLANNING

Article 15 outlined requirements for reporting and strategic planning for Equality Bodies. Article 15, point a) mandated Equality Bodies to develop a multi-year strategic plan, encompassing their strategy for addressing prevention, promotion, and awareness-raising, as stipulated in article 5, point b). Article 15, point b) requires that Equality Bodies create and share an annual activity report with the public. This report should include information about their personnel, budget, and financial matters. This kind of report has proven to be a sticking point in the Council negotiation process, and the reference to a multi-annual plan has been erased.

Article 15, point c) obliges Equality Bodies to release a report and recommendations at least every four years. This report will assess the state of equal treatment and discrimination within their Member State, highlighting possible underlying structural concerns.

13. MONITORING

Article 16 of the original EC proposal outlined the monitoring process for implementing the Directives, and states that the European Commission will be responsible for overseeing their implementation. This will involve using a set of indicators, defined in a ‘list of common indicators,’ which will be determined through an implementing act. The Commission may consult the European Union Agency for Fundamental Rights (FRA) and the European Institute for Gender Equality (EIGE) during the development of these indicators. It is important to note that the EC proposal established that indicators created by Equinet, who has worked on setting indicators by and for Equality Bodies in this regard previously, will also be considered. As mentioned previously, the Equinet Project on Standards has published indicators to assess the mandate (Equinet, 2020) and independence (Equinet, 2021) of Equality Bodies and, in 2023, plans to finalise indicators referring to resources. It is essential that Equality Bodies, through Equinet, are represented in the process of creating, assessing, and implementing such indicators. Equinet should be recognised as the unified voice of Equality Bodies and, therefore, as a preferred interlocutor and partner throughout the Directives. Surprisingly, the Council General approach references “Networks of equality bodies at EU level” in general.

Article 16(2) and (3) from the original EC proposals clarify that the Commission will compile a report assessing the application and practical outcomes of the Directives. This assessment will rely on information supplied by Member States. Member States’ reports will also consider the input provided by Equality Bodies concerning their activities and the state of equal treatment and discrimination. The first report is due five years after the transposition date, followed by subsequent reports every five years. Additionally, the Commission will incorporate data gathered by the FRA and EIGE from other stakeholders as part of the evaluation process.

14. PROCESSING OF PERSONAL DATA

The processing of personal data is addressed in article 18(1), which pertains to data protection. It specifies that Equality Bodies are only permitted to collect personal data when it is necessary to carry out a task mandated by

the Directives. The Recitals also refer to the GDPR —article 6(1)e— to clarify that the processing of data by Equality Bodies is considered lawful because it is performed in the public interest or as part of the official authority granted to the controller.

Article 18(2) imposes additional requirements, mandating the implementation of “appropriate and specific measures” when Equality Bodies handle special categories of personal data, such as information related to racial or ethnic origin, religion or belief, disability, or sexual orientation.

15. OTHER ISSUES

Regarding the final provisions, article 19 outlines the removal of articles related to Equality Bodies from the existing equal treatment directives. Article 20 establishes a deadline of 18 months (the Council proposal establishes a deadline of 36 months, which seems excessive for bodies that already exist) for Member States to transpose the Directive into their national laws. Article 21 states that the Directive will come into effect on the twentieth day after its publication in the Official Journal of the European Union. Finally, article 22 specifies that the Directives are directed at the Member States.

The Council proposal has added article 18a establishing a Committee procedure within the meaning of Regulation (EU) No 182/2011²⁸ to aid the EC in evaluating and monitoring the implementation of the Directive.

V. CONCLUSION

The Directive proposals represent a highly anticipated development, particularly considering the limited impact of non-legislative initiatives. These Directives are primarily focused on establishing the conditions necessary for the effective enforcement of existing equality legislation. These conditions have proven to be conducive to the success of Equality Bodies and the improved protection of rights-holders. It remains crucial to maintain the momentum in this area and strive for overall legal and policy coherence.

While it is understandable that a legal document may not be as comprehensive as a policy document, it is essential to maintain coherence at the very least. This aspect has implications, especially in how the independence of Equality Bodies is interpreted.

²⁸ Regulation (EU) No 182/2011

The procedural challenges these twin Directives pose, each with its unique procedures, are yet to be fully understood. However, there is will amongst stakeholders to have a comprehensive understanding and work collaboratively to ensure an efficient document that upholds the standards of Equality Bodies that already possess a high level of protection while also assisting those Equality Bodies with lower standards in improving their position within the framework of equality legislation enforcement. Ultimately, this will contribute to better safeguarding the rights of individuals.

Bibliography

- Ambrus, M. (2012). *Enforcement Mechanisms of the Racial Equality Directive and Minority Protection*. The Hague: Eleven.
- Bell, M. (2001). Meeting the challenge? A comparison between the EU racial equality directive and the starting line. In I. Chopin and J. Niessen (eds). *The Starting Line and the Incorporation of the Racial Equality Directive into National Laws of the EU Member States and Accession States* (pp. 22-54). Brussels: MPG.
- Benedí Lahuerta, S. (2018). *Enforcing EU Equality Law through Collective Redress: Lagging Behind?*, *Common Market Law Review* 55, 783-818. Available at: <https://doi.org/10.54648/COLA2018070>.
- (2020) Has the EU taken comprehensive and coherent action to combat discrimination?. In T. Giegerich (ed). *The European Union as Protector and Promoter of Equality* (pp. 165-184). Cham: Springer. Available at: https://doi.org/10.1007/978-3-030-43764-0_8.
- (2021). Equality Bodies: Advancing towards more responsive designs? *International Journal of Law in Context*, 17 (3), 390-412. Available at: <https://doi.org/10.1017/S1744552321000240>.
- Cachón Rodríguez, L. (2006). *De suecas a ecuatorianas y el retorno de la política. Inmigración y derechos de ciudadanía*. Madrid: Fundación CIDOB.
- Crowley, N. (2016). Merging mandates of equality bodies and national human rights institutions. A growing trend. *European Equality Law Review*, 2, 34-45.
- Equinet. (2020). *Equinet project on standards for equality bodies independence indicators*. Bruselas: European Network of Equality Bodies.
- (2021). *Equinet project on standards for equality bodies mandate indicators*. Bruselas: European Network of Equality Bodies. Disponible en: <https://doi.org/10.1017/S1744552321000240>.
- (2022). *The European Commission Launches a New Initiative on Binding Standards for Equality Bodies*, Bruselas: European Network of Equality Bodies.
- (2023a). *Equality Bodies working on cases without an identifiable victim: Actio popularis*. Bruselas: European Network of Equality Bodies.
- (2023b). *Litigation powers of Equality Bodies*. Bruselas: European Network of Equality Bodies.

- (2023c). *Moving forward the European Commission's proposals for Directives strengthening Equality Bodies*. Bruselas: European Network of Equality Bodies.
- (2023d). *Proposal for a Council Directive On Standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting article 13 of Directive 2000/43/EC and article 12 of Directive 2004/113/EC (2022/0401 (APP)): Suggested amendments by Equinet, European Network of Equality Bodies*. Bruselas: European Network of Equality Bodies.
- (2023e). *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 (2022/0400 (COD)) Suggested amendments by Equinet, European Network of Equality Bodies*. Bruselas: European Network of Equality Bodies.
- Farkas, L. (2022). *Learnings from the piloting of indicators for the mandate and independence of equality bodies*. Bruselas: European Network of Equality Bodies.
- Fundamental Rights Agency (2021). *Equality in the EU 20 years on from the initial implementation of the equality directives*. Viena: Fundamental Rights Agency.
- Holtmaat, R. (2007). *Catalysts for change? Equality bodies according to directive 2000/43/EC; existence, independence and effectiveness*. Luxembourg: POEU
- Kádár, T. (2018). Equality bodies. A European phenomenon. *International Journal of Discrimination and the Law*, 18, 144-162. Available at: <https://doi.org/10.1177/1358229118799231>.
- (2022). *Legislating for stronger, more effective equality bodies: Key elements for and expectations from future EU legislation on equality bodies*. Brussels: European Network of Equality Bodies.
- Tyson, A. (2001). The negotiation of the European community directive on racial discrimination. *European Journal on Migration and Law*, 3, 199-229. Available at: <https://doi.org/10.1163/15718160120959177>.
- Van Ballegooij, W. and Moxom, J. (2018). *Equality and the Fight against Racism and Xenophobia. Cost of Non-Europe Report*. Brussels: European Parliamentary Research Service.

Legislación

- Commission Recommendation (EU) 2018/951 of the 22 of June 2018 on standards for equality bodies C/2018/3850, OJ L 167, 4.7.2018, p. 28-35.
- Commission Staff Working Document Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies Accompa-

- nying the document Report from the Commission to the European Parliament and Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (“the Racial Equality Directive”) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (“the Employment Equality Directive”) SWD/2021/63 final Brussels, 19.3.2021.
- Communication From the Commission to The European Parliament and The Council A Union of Equality: EU Roma strategic framework for equality, inclusion, and participation, COM/2020/620 final, 07/10/2020.
- Communication From the Commission to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions A Union of equality: EU anti-racism action plan 2020-2025, COM/2020/565 final, Brussels, 18.9.2020.
- Communication From the Commission to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions Union of Equality: LGBTIQ Equality Strategy 2020-2025, COM/2020/698 final, Brussels, 12.11.2020.
- Communication From the Commission to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions EU Strategy on Combating Antisemitism and Fostering Jewish Life (2021-2030), COM/2021/615 final, Strasbourg, 5.10.2021.
- Council Directive 2000/43/EC of the 29 of June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin OJ L 180, 19.7.2000, p. 22-26.
- Council Directive 2004/113/EC of the 13 of December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004, p. 37-43.
- Directive 2006/54/EC of the European Parliament and of the Council of the 5 of 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) OJ L 204, 26.7.2006, p. 23-36.
- Directive 2010/41/EU of the European Parliament and of the Council of the 7 of 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, OJ L 180, 15.7.2010, pp. 1-6.
- ECRI General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level-adopted on the 13 of June 1997 and revised on the 7 of December 2017.
- European Parliament 2019-2024 Committee on Civil Liberties, Justice and Home Affairs 2022/0400(COD) 20.7.2023 Draft Opinion of the Committee on Civil Liberties, Justice and Home Affairs for the Committee on Employment and Social Affairs and the Committee on Women’s Rights and Gender Equality on the proposal for a directive of the European Parliament and of the Council

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)) Rapporteur for opinion: Alice Kuhnke.

European Parliament 2019-2024 Committee on Employment and Social Affairs Committee on Women's Rights and Gender Equality 2022/0400(COD) 6.7.2023 ***I 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)) Committee on Employment and Social Affairs Committee on Women's Rights and Gender Equality Co-Rapporteurs: Marc Angel, Sirpa Pietikäinen.

Interinstitutional File 2022/0400(COD), Permanent Representatives Committee (Part 1) to the Council, 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- General approach, Brussels, the 7 of June 2023.

Interinstitutional File 2022/0401(APP), Permanent Representatives Committee (Part 1) to the Council, Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC- General approach, Brussels, the 7 of June 2023.

Ley 15/2022 de 12 de julio, Integral para la Igualdad de Trato y la no Discriminación.

Ley 16/1983, de 24 de octubre, de creación del Organismo Autónomo Instituto de la Mujer.

Ley 62/2003, de 30 de diciembre, de Medidas Fiscales, Administrativas y del Orden Social.

Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and 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 (COM(2022) 688 final-2022/0400 (COD)) and on the Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and

- occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting article 13 of Directive 2000/43/EC and article 12 of Directive 2004/113/EC (COM(2022) 689 final-2022/0401 (APP)), EESC 2022/05875, OJ C 184, 25.5.2023, p. 71-77.
- Press release “Equality Package: Commission proposes to strengthen equality bodies to fight discrimination” the 7 of December 2022 Brussels.
- Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age, or sexual orientation COM/2008/0426 final.
- Proposal for a Council Directive On Standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting article 13 of Directive 2000/43/EC and article 12 of Directive 2004/113/EC (2022/0401 (APP)).
- 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 (2022/0400 (COD)).
- Regulation (EU) No 182/2011 of the European Parliament and of the Council of the 16 of February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers, OJ L 55, 28.2.2011, p. 13-18.
- Report From The Commission To The European Parliament And The Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (“the Racial Equality Directive”) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (“the Employment Equality Directive”) {SWD (2021) 63 final COM (2021) 139 final. Brussels, 19.3.2021.
- Summary of the Opinion of the European Data Protection Supervisor on the Proposals for Directives on standards for equality bodies in the field of equal treatment 2023/C 64/13, OJ C 64, 21.2.2023, p. 46-48.