



**Legal Seminar 9 November 2010
Making Equality Rights Work in Practice**

DISCUSSION PAPER WORKSHOP 4

Equality Bodies

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The present discussion paper is based on findings and recommendations of the synthesis report of the Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC.

Discussion item 1 - Structure and functions of Equality Bodies

Article 13 of the Racial Equality Directive obliges Member States to establish an equality body that¹:

- Provides independent assistance to victims of discrimination in pursuing their complaints of discrimination;
- Conducts independent surveys concerning discrimination; and
- Publishes independent reports and makes recommendations on any issue relating to such discrimination.

Subsequent directives in the field of equal treatment and non-discrimination included the same provision on the establishment of a body or bodies promoting equal treatment and combating discrimination.²

With regard to the structure of Equality Bodies, the directives provide that the Member States must designate a body that "...may be part of agencies charged at national level with the defence of human rights or safeguarding individuals' rights". The EU directives only provide these minimal requirements for the institutional arrangements of the Equality Bodies that will be entrusted with the promotion and protection of equal treatment and non-discrimination by the Member States. The EU directives do not specify how the specialised body should execute its functions, how it should operate, what procedures should be used or who it should be composed of.

The Council of Europe's European Commission against Racism and Intolerance (ECRI) general policy recommendations 2 and 7³ pose many more requirements to the institutional structure and functioning of Equality Bodies.

¹ 2000/43/EC (Racial Equality Directive), Article 13.

² Directive 2004/113/EC of 13 December 2004 implementing the principles of equal treatment between men and women in the access to and supply of goods and services (Article 12) and Directive 2006/54/EC/ 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (Article 20).

So do the UN Principles relating to the Status of National Institutions (The Paris Principles), after which the ECRI recommendation no. 2 was modeled.⁴

Equality Bodies can be classified as predominantly **tribunal-type** (with a focus on hearing and investigating cases) and **promotion-type** bodies (with a more diverse portfolio of activities). Both types fulfil the requirements of article 13 of the Racial Equality Directive. The ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination makes a useful distinction between the 'national specialised body' to combat racism and another body 'entrusted with the adjudication of complaints through legally binding decisions'.

Questions:

1. Should the European Union encourage development of standards for the structures, powers and operation of Equality Bodies? What are the advantages and disadvantages of doing so?
2. If so, should these standards be largely based on the ECRI Recommendations 2 and 7 and the Paris Principles? If not, why not? If yes, would this be sufficient or are there important elements missing?
3. Should such standards include administrative and budgetary requirements, such as minimum levels of staffing and budgets?
4. Should such standards prescribe making a clear distinction between tribunal type of bodies and promotional type of bodies and not allow merging these two functions in one body?

Discussion item 2 - Independence

The ECRI Recommendation no. 2 and the Paris Principles provide standards for the independence of national Equality Bodies. The current EU Equal Treatment Directives are not so explicit about standards of independence and only require independent assistance to victims, independent surveys and independent reports and recommendations.

The ECRI Recommendation and the Paris Principle put emphasis on *de jure* independence whereas the focus of the EU Directives is on *de facto* independence. One can argue that without *de jure* independence, *de facto* independence in carrying out tasks is a lot harder to achieve and keep. Parameters for *de facto* independence include strong leadership, stakeholder involvement, plurality within the body's board and staff and a commitment to and interest in being independent. A high level of *de facto* independence has shown to be an important basis for effectively carrying out the tasks assigned to Equality Bodies.

³ ECRI General Policy [Recommendation N° 2](#): Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level, CRI (97) 36 of 13 June 1997 and [Recommendation N° 7](#): National legislation to combat racism and racial discrimination, CRI (2003) 8 of 13 December 2002

⁴ <http://www2.ohchr.org/english/law/parisprinciples.htm>.

Questions:

1. Should the European Union require *de jure* independence? If so, what are the key elements?
2. Can the European Union require *de facto* independence? How to achieve that? How to monitor that?

Discussion item 3 - Effectiveness

In order to be effective and have impact Equality Bodies need to become strategic players bringing about social change by developing a strategic mix of activities complying with the Equal Treatment Directives enabling them to have an impact on victims, discriminators, stakeholders, policies and public attitudes and to allocate adequate resources to their activities to ensure their optimal effectiveness in four fields of activities:

- Enforcing equality legislation;
- Increasing knowledge of equality and discrimination;
- Building awareness of equality and equality legislation;
- Promoting equality.

Across these fields of activities Equality Bodies need to develop a vision of their role within the society and the administrative culture it wants to influence. Based on this vision they can plan and operate strategically.

Most Equality Bodies do have a vision, but very few translate this vision into a multi-annual strategic plan. Such a plan should enable them to undertake a strategic mix of activities aiming at enforcing equal treatment legislation, raising awareness of rights and obligations, building a knowledge base of discrimination and inequality, and promoting and supporting good practice by employers and service providers.

Questions:

1. Can indicators of effectiveness be established for the operation of Equality Bodies?
2. Would these indicators relate only to targets for the key functions (victim, surveys, reports/ recommendations) or to targets for strategic planning, stakeholder networking, data collection and other operational issues as well?
3. Which would be key indicators to assess the effectiveness of Equality Bodies in the four fields of activities mentioned above?