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Equality bodies making a difference

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Equality bodies making a difference

Author
Niall Crowley

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The text of this report was drafted by Niall Crowley, coordinated by Catharina Germaine and Isabelle Chopin for the European network of legal experts in gender equality and non-discrimination.

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Members of the European network of legal experts in gender equality and non-discrimination

Management team

General coordinator	Marcel Zwamborn	Human European Consultancy
Specialist coordinator gender equality law	Susanne Burri	Utrecht University
Acting specialist coordinator gender equality law	Alexandra Timmer	Utrecht University
Specialist coordinator non-discrimination law	Isabelle Chopin	Migration Policy Group
Project management assistants	Ivette Groenendijk Yvonne van Leeuwen-Lohde	Human European Consultancy Human European Consultancy
Gender equality assistant and research editors	Franka van Hoof Raphaële Xenidis	Utrecht University
Non-discrimination assistant and research editor	Catharina Germaine ¹	Migration Policy Group

Senior experts

Senior expert on racial or ethnic origin	Lilla Farkas
Senior expert on age	Mark Freedland
Senior expert on EU and human rights law	Christopher McCrudden
Senior expert on social security	Frans Pennings
Senior expert on religion or belief	Isabelle Rorive
Senior expert on gender equality law	Linda Senden
Senior expert on sexual orientation	Krzysztof Smiszek
Senior expert on EU law, sex, gender identity and gender expression in relation to trans and intersex people	Christa Tobler
Senior expert on disability	Lisa Waddington

¹ While on maternity leave, Catharina Germaine was replaced by Carmine Conte assisted by Edith Chambrier.

National experts

	Non-discrimination	Gender
Austria	Dieter Schindlauer	Martina Thomasberger
Belgium	Emmanuelle Bribosia	Jean Jacqmain
Bulgaria	Margarita Ilieva	Genoveva Tisheva
Croatia	Ines Bojić	Nada Bodiroga-Vukobrat
Cyprus	Corina Demetriou	Evangelia Lia Efstratiou-Georgiades
Czech Republic	Jakub Tomšej	Kristina Koldinská
Denmark	Pia Justesen	Stine Jørgensen
Estonia	Vadim Poleshchuk	Anu Laas
Finland	Rainer Hiltunen	Kevät Nousiainen
FYR of Macedonia	Biljana Kotevska	Mirjana Najchevska
France	Sophie Latraverse	Hélène Masse-Dessen
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Hungary	András Kádár	Beáta Nacsá
Iceland	Gudrun D. Gudmundsdottir	Herdís Thorgeirsdóttir
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Latvia	Anhelita Kamenska	Kristīne Dupate
Liechtenstein	Wilfried Marxer	Nicole Mathé
Lithuania	Gediminas Andriukaitis	Tomas Davulis
Luxembourg	Tania Hoffmann	Nicole Kerschen
Malta	Tonio Ellul	Romina Bartolo
Montenegro	Nenad Koprivica	Ivana Jelić
Netherlands	Titia Loenen	Marlies Vegter
Norway	Else Leona McClimans	Helga Aune
Poland	Łukasz Bojarski	Eleonora Zielinska
Portugal	Ana Maria Guerra Martins	Maria do Rosário Palma Ramalho
Romania	Romanița Iordache	Iustina Ionescu
Serbia	Ivana Krstić Davinic	Ivana Krstić Davinic
Slovakia	Vanda Durbáková	Zuzana Magurová
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Spain	Lorenzo Cachón	María-Amparo Ballester-Pastor
Sweden	Per Norberg Paul Lappalainen	Jenny Julen Votinius
Turkey	Dilek Kurban	Nurhan Süral
United Kingdom	Lucy Vickers	Grace James

Executive summary

Equality bodies

Equality bodies are independent statutory bodies established to promote the principle of equal treatment on various grounds. Their core purpose is to implement equal treatment legislation. In practice, equality body mandates include both combating discrimination and promoting equality. They play roles in enforcement of rights including providing assistance to those experiencing discrimination, promotion of good practice, communication, research, and stakeholder engagement. A total of 43 equality bodies in 31 countries (EU Member States and EFTA countries) were examined for this report.

The institutional architecture of equality bodies across these 31 countries is diverse, in terms of their mandates, functions, and grounds covered. This report found 14 multi-mandate bodies in 14 countries.¹ In terms of their functions, 19 of the 43 equality bodies were identified as having competences combining all or part of the three equality body functions of promotion and prevention; support and litigation; and decision-making.² Sixteen equality bodies have the more traditional combination of all or part of the promotion and prevention function and the support and litigation function,³ while four equality bodies have only a decision-making function.⁴

Of the 43 equality bodies, 26 cover more grounds than those set out in Article 19 of the Treaty on the Functioning of the European Union and 10 of these equality bodies work to an open list of grounds.⁵ Six equality bodies have a mandate aligned with the six Article 19 grounds of gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation.⁶ There are 10 single-ground equality bodies, of which seven work on the ground of gender, two on the ground of racial and ethnic origin and one on the ground of disability.⁷

The context evident for equality bodies in eight countries is one of political hostility.⁸ However, the dominant context is one of political disinterest, which is found in 12 countries.⁹ Indifference leaves equality bodies under-resourced and without political traction for their advisory competences. They are rendered unable to be game-changers. There is, on the other hand, a supportive political context evident in seven countries, which enhances the potential and impact of equality bodies.¹⁰

1 In: Cyprus, Croatia (People's Ombudsman), the Czech Republic, Denmark (Danish Institute for Human Rights), Estonia, France, Greece, Ireland, Latvia, Liechtenstein, Netherlands, Poland Slovakia and the UK (Britain).

2 In: Bulgaria, Croatia (2 EBs), the Czech Republic, Estonia, Finland (2 EBs), France, Hungary, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal (Commission for Equality and Against Racial Discrimination), Romania, Slovakia, Slovenia and Sweden.

3 In: Austria (Ombud for Equal Treatment), Belgium (2 EBs), Denmark (Danish Institute for Human Rights), Germany, Iceland, Ireland, Italy (2 EBs), Liechtenstein (Association for Human Rights), Luxembourg, Portugal (CIG and CITE), Spain and the UK (Britain and Northern Ireland).

4 In: Austria, Denmark, Estonia and Norway.

5 In: Bulgaria, Estonia, Finland (Non-Discrimination Ombudsman), Hungary, Latvia, Liechtenstein, Poland, Romania, Slovakia and Slovenia.

6 In: Austria (2 EBs), Denmark (Board of Equal Treatment), Estonia (Commissioner for Gender Equality and Equal Treatment), Germany and Luxembourg.

7 Gender: Belgium, Croatia (includes grounds of gender identity and expression, sexual orientation, marital or family status), Finland, Iceland, Italy, and Portugal (CIG and CITE). Racial or ethnic origin: Portugal and Spain. Disability: Liechtenstein.

8 In: Bulgaria, Croatia, Cyprus, Italy, Poland, Romania, Sweden and the UK (Britain).

9 In: Austria, Belgium, Estonia, Finland, Greece, Hungary, Liechtenstein, Luxembourg, Lithuania, Slovakia, Slovenia and Spain.

10 In: France, Germany, Iceland, Ireland, Latvia, Netherlands and Portugal.

Standards

There has been significant recent evolution in standards for equality bodies. This reflects a valuable recognition of their potential, a concern to secure the necessary conditions to realise this potential, and an understanding of their diversity. EU equal treatment directives require Member States to designate a body for the promotion of equal treatment on the grounds of racial or ethnic origin and gender.¹¹ They set a minimum standard for these bodies. The European Commission recommendation on standards for equality bodies builds on these requirements with a focus on equality body mandates, their independence, effectiveness and accessibility, and coordination.¹²

Internationally, the UN Paris Principles¹³ for national human rights institutions have been used by some equality bodies, mainly multi-mandate bodies. The Opinion of the Commissioner for Human Rights of the Council of Europe is dedicated specifically to equality bodies and makes recommendations on equal treatment legislation, the independence and effectiveness of equality bodies, and their internal operations.¹⁴ The General Purpose Recommendation No. 2 (Revised) of ECRI of the Council of Europe is the most comprehensive standard specifically for equality bodies and addresses their establishment and mandate, the institutional architecture for equality bodies, their functions and competences, and their independence, effectiveness and accessibility.¹⁵

Through Equinet, the European network of equality bodies, equality bodies have played a central role in the emergence of these more recent standards. A further challenge is now to secure their full and effective implementation. The European Commission, the Council of Europe and equality bodies all have a role to play in disseminating the standards and in monitoring, supporting and securing their implementation.

Institutional architecture

The institutional architecture for equality bodies refers first to the wider external institutional involvement in equality and non-discrimination issues. It further refers, more internally, to the manner in which the mandate of the equality body is established, the functions accorded to it, and the grounds it covers.

Equality bodies operate in a wider infrastructure of statutory and civil society organisations working on equality and non-discrimination. In maximising their potential, equality bodies have demonstrated good practice in operating as a hub that connects these organisations, supports mutual learning and shared understanding and enables coherence of action. They have valuably served as accessible entry points for the pathways to access justice, provided supports to enable people to access these, and sought to inform the institutions along the pathway about equal treatment legislation.

This places demands on the leadership of equality bodies. They must maintain their authoritative voice on equality and non-discrimination, retain their capacity to enforce the equal treatment legislation, and

11 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; and Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006; on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

12 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

13 United Nations (UN), United Nations General Assembly (1993), Principles Relating to the Status of National Institutions (The Paris Principles).

14 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

15 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

operate as a partner with other organisations in pursuit of shared goals. When they have a decision-making function, they must combine being part of the pathways to access justice, supporting people to move through these pathways, and ensuring the different institutions that make up these pathways have the understanding, knowledge and capacity required to address cases of discrimination.

Multi-mandate bodies with an equality mandate have a potential to address issues of equality and discrimination more comprehensively and effectively than single-mandate equality bodies. However, each mandate draws from its own distinct tradition and realising this potential requires an integrated approach by multi-mandate equality bodies to their different mandates. This can be particularly difficult where the equality mandate is attributed to the body after other mandates. The equality mandate ends up being constrained in ambition and approach by the traditions associated with the other mandates that have already been well established over time in the body. At a more basic level, visibility of and investment in the equality mandate in these settings must be secured. These challenges require an active management by the body of its different mandates that also addresses their particular requirements and traditions.

No active management was found in seven of the 14 multi-mandate bodies.¹⁶ Issues of lack of visibility for the equality mandate and limited use of equality mandate competences are evident in six of those seven bodies.¹⁷ The dominant approach among the other seven equality bodies to managing their multiple mandates is silo-based, with a separate staff unit dealing with the equality mandate. This gives visibility to the equality mandate and ensures equality mandate competences are implemented. However, this approach falls short of the integrated approaches to diverse mandates that could realise their full potential. A deputy ombudsman with specific responsibility for the equality mandate is appointed in three multi-mandate bodies.¹⁸ This is valuable in enabling strategic direction for implementing the equality mandate and access to the specific expertise it requires.

Many equality bodies have functions and associated competences that go beyond the requirements of the EU equal treatment directives, which specifically require the bodies to provide support to individuals experiencing discrimination, conduct surveys, prepare reports and make recommendations on issues of discrimination. This wider range of functions and competences enables them to deploy the strategic mix of enforcement, promotion of good practice, communication, research and stakeholder engagement activities needed for them to make an impact and advance change for individuals, institutions and society.

However, there are tensions where the equality body is accorded a decision-making function along with the promotion and prevention function and the support and litigation function. The decision-making function requires an impartiality that runs counter to the approach required under the other two functions. This ends up limiting the nature and quality of the assistance provided to those who seek to take a case of discrimination. This is mitigated where a specialised unit in the equality body provides support to complainants. The best practice evident is to locate the decision-making function in another equality body. This combination of functions can also lead to competition for resources between the different functions with the exigencies of the decision-making function dominating budgetary and staffing decisions.

Multi-ground equality bodies are the norm. They have a valuable capacity to take a comprehensive and non-hierarchical approach to equality and non-discrimination, particularly where they cover an open list of grounds. However, they face challenges to secure visibility for and action relevant to each ground covered. The potential scale of coverage in an open list of grounds and the vagueness surrounding the definition of the grounds can also be a challenge. Most equality bodies were reported as giving adequate attention to the various grounds that they cover. Despite this, there is limited evidence of the active management required of multi-ground mandates to secure a visibility for and relevance to all grounds covered and to maximise the potential in such a mandate.

¹⁶ In: Cyprus, Estonia, Ireland, Latvia, Liechtenstein, Slovakia and the UK (Britain).

¹⁷ The UK (Britain) is the exception, a situation where the original bodies only held equality mandates.

¹⁸ In: Croatia, Greece and Poland.

There is limited evidence of active management of multi-ground mandates in terms of securing the mix and interplay of single-ground, multi-ground and intersectional activities required to realise the potential in such a mandate and ensure a relevance to all grounds covered. The dominant approach to managing multiple grounds is reactive in responding to complaints received. There are interesting examples of equality bodies that audit the work done to ensure a focus across the grounds they cover.

Some elements that form part of an active management of a multi-ground agenda are evident in the work of the equality bodies. There are examples of single-ground work by these bodies. However, this tends to be reactive, in responding to international stimuli of policy developments or funding sources. Significant levels of multi-ground initiatives are evident in casework and in supporting good practice by employers and service providers. There is limited evidence of intersectional work being pursued.

There have been debates, often heated, in Belgium, Croatia, Finland and Iceland about incorporating the single gender ground equality bodies into multi-ground equality bodies. The arguments made for single gender ground equality bodies include: visibility for gender issues, specific expertise to address these issues, capacity to bring issues of gender discrimination to the fore and the fact that women make up more than half of the population, alongside the scale of gender equality across all fields.

On the other hand, the arguments made for multi-ground equality bodies include: capacity to be comprehensive and without hierarchy in their work, the administrative simplicity for employers and service providers in responding to obligations, the focus on intersectionality and multiple discrimination, and one-stop access for complainants. As of yet, there is no evidence that single grounds are disadvantaged by being located within a multi-ground setting. They could actually gain from this setting, particularly with active management of the grounds in place.

Independence

Legal status, manner of appointment, forms of accountability, and operational practice can be identified as key factors for the independence of equality bodies. Functional independence is acknowledged across all the equality bodies reported on.

The situation in relation to legal status was largely positive with 31 out of 43 equality bodies having their own legal personality. This is understood as best practice for independence. However, 10 equality bodies formed part of Government ministries.¹⁹ Independence is curtailed in such situations. Strong leadership can counter this governmental influence by securing the independent functioning of such equality bodies and there is evidence of this. Two equality bodies were part of NGO associations.²⁰

Appointments to equality bodies presented a more mixed picture with the leadership in 20 out of 43 equality bodies appointed by the Government or Government ministers.²¹ This compromises independence. On the other hand, Parliament now appoints the leadership of 13 out of 43 equality bodies.²² This is the current standard for good practice. However, a transparent, competency-based and participatory process in appointments, even by Parliament, is absent in most instances, which is problematic.

19 In: Austria (2 EBs), Finland (2 EBs), Germany, Iceland, Italy (2 EBs), Portugal (CIG) and Spain.

20 In: Liechtenstein.

21 In: Austria (Ombud for Equal Treatment), Belgium (IEWM), Cyprus, Denmark (Board of Equal Treatment), Estonia (Commissioner for Gender Equality and Equal Treatment), Finland (2 EBs), France, Germany, Hungary, Iceland, Italy (UNAR), Malta, Norway (2EBs), Portugal (CEARD and CIG), Sweden and the UK (Britain and Northern Ireland).

22 In: Belgium (UNIA), Croatia (2EBs), the Czech Republic, Estonia (Chancellor of Justice), Greece, Ireland, Latvia, Lithuania, Luxembourg, Poland, Romania and Slovenia.

In the 10 other instances there were a variety of different arrangements. These include appointments being made by various organisations to the boards of eight equality bodies.²³ Where another entity with its own interests has representation on the board of the equality body it can diminish the body's independence. On a more negative note, there is evidence presented of political interference in appointments to six equality bodies, both in making appointments and in the removal from office of leadership personnel.²⁴

The accountability established for equality bodies also presents a mixed picture. Of the 43 equality bodies, 13 are accountable to Parliament.²⁵ This is largely by way of their annual report. This is currently considered to be good practice in terms of independence. Eighteen equality bodies were accountable to the Government, ministers or the President,²⁶ which raises independence issues. Two equality bodies were accountable to a mixture of the two.²⁷ In Liechtenstein, the Office for Equality of People with Disabilities is accountable to an NGO assembly. There were exemplars of an emerging best practice: five equality bodies have no named accountability;²⁸ two equality bodies are accountable to the statutory audit authorities;²⁹ and the equality body in the Netherlands is financially accountable to various ministries.

In terms of operational practice, leadership of equality bodies has been acknowledged as central to their independence. Inadequate attention has been paid to the quality and competence of leadership required by equality bodies and no assessment or critique of current leadership models has been conducted.

Effectiveness

Key external factors for effectiveness are the resources made available to equality bodies and the range of competences afforded to them. Internal factors for effectiveness include strategic planning and stakeholder engagement by equality bodies.

While there is great variety in the resource levels for equality bodies, few have a level of funding that is adequate to make a real impact. This is the most significant barrier to effectiveness. This means that the full potential of equality bodies can still only be imagined and has never been fully tested. There is, however, a slowly improving resource context with 16 equality bodies getting increased staffing and/or budget in recent years.³⁰ On the other hand, 11 equality bodies³¹ have experienced a decrease in staffing and/or budget in recent years, with three of these equality bodies³² having had disproportionate budget cuts.

Limitation of competences undermines the effectiveness of equality bodies in that they cannot deploy the strategic mix of interventions required to contribute to social change. The enforcement work of 19 out of 25 equality bodies with a decision-making function is diminished in that they cannot issue legally

23 In: Austria (Equal Treatment Commission), Denmark (Danish Institute for Human Rights), Italy (Equal Opportunities National Committee), Liechtenstein (2 EBs), Portugal (CITE), Slovakia and Spain.

24 In: Bulgaria, Cyprus, Italy (2 EBs), Romania and Sweden.

25 In: Austria (2 EBs), Belgium (IEWM), Cyprus, Finland (2 EBs), Germany, Italy (2 EBs), Malta, Norway (2 EBs), Portugal (3 EBs), Spain, Sweden, and the UK (Britain and Northern Ireland).

26 In: Belgium (UNIA), Bulgaria, Croatia (2 EBs), the Czech Republic, Denmark (Danish Institute for Human Rights), Hungary, Ireland, Latvia, Lithuania, Poland, Romania and Slovenia.

27 In: France and Luxembourg.

28 In: Austria (Equal Treatment Commission), Estonia (Commissioner for Gender Equality and Equal Treatment), Greece, Liechtenstein (Association for Human Rights) and Slovakia.

29 In: Estonia (Chancellor of Justice) and Iceland.

30 In: Austria (Ombud for Equal Treatment), Belgium (UNIA), Bulgaria, Croatia (People's Ombudsman), the Czech Republic, Finland (Non-Discrimination Ombudsman), Greece, Hungary, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Portugal (CEARD), Romania and Slovenia.

31 In: Belgium (IEWM), Cyprus, Estonia (Commissioner for Gender Equality and Equal Treatment), Italy (gender bodies), Netherlands, Norway (2 EBs), Poland, Spain and the UK (Britain and Northern Ireland).

32 In Poland and the UK (Britain and Northern Ireland).

binding decisions and/or impose sanctions.³³ Four of these 25 equality bodies cannot impose adequate sanctions.³⁴ Limited follow-up to their decisions is evident in the operations of eight equality bodies.³⁵ Further competence related limitations affect 17 equality bodies that do not have legal standing to take cases of discrimination or to act as *amicus curiae* before the courts.³⁶

Lack of resources or limitations in strategy can often be at the root of competence related limitations. Only 14 equality bodies are active in advancing good practice equality and diversity standards for policy-makers, service providers and employers due to the limited competences accorded to many other equality bodies.³⁷ Seventeen equality bodies do not or cannot deploy all their competences under each of their functions.³⁸ On a positive note, 10 equality bodies have been afforded competences to support and/or enforce positive equality duties under equal treatment legislation.³⁹ These statutory duties have served as an important lever for equality bodies to promote more proactive approaches to equality in the public and private sectors.

Equality bodies themselves have fallen short of the standards required for effectiveness. All equality bodies produce some form of annual report but their engagement in the full planning cycle is under-developed. Only 14 equality bodies have engaged in strategic planning with associated annual workplans.⁴⁰ Only 10 equality bodies have engaged in any form of evaluation.⁴¹

Stakeholder engagement by equality bodies tends to be informal. Although this has been useful in enabling consultation on issues, it cannot harness the full gains possible for effectiveness. Formal stakeholder engagement is evident in the work of 12 equality bodies.⁴² It takes a range of forms: joint initiatives with stakeholders; including stakeholders in the work and deliberations of equality bodies; and serving as a hub for stakeholders to interact.

Accessibility

Accessibility starts with the premises of the equality body. All but eight equality bodies have accessibly located premises.⁴³ Local and regional offices for equality bodies are important in reducing under-reporting in larger countries given the proximity they allow for people who wish to take cases. These are, however,

33 In: Austria, Croatia (2 EBs), the Czech Republic, Estonia (2 EBs), Finland (2 EBs), France, Greece, Latvia, Lithuania (can impose administrative fines), Malta, Netherlands, Norway (Equality and Anti-Discrimination Tribunal decisions not legally binding on public bodies), Poland, Slovakia, Slovenia (legally binding but cannot impose sanctions) and Sweden.

34 In: Bulgaria, Cyprus, Denmark and Lithuania.

35 In: Austria (Equal Treatment Commission), Bulgaria, Denmark (Board of Equal Treatment), Finland (Gender Equality Ombudsman), Hungary, Latvia, Norway (Equality and Anti-Discrimination Tribunal) and Poland.

36 In: Austria (Ombud for Equal Treatment can only take cases in limited circumstances), Croatia (Ombudsperson for Gender Equality), Cyprus, Czech Republic, Denmark (Danish Institute for Human Rights – limited to *amicus curiae*), Finland (Non-Discrimination Ombudsman, though courts can seek opinions from both bodies), France (limited to provision of observations to courts), Germany (limited to *amicus curiae*), Greece, Iceland, Italy (UNAR, limited to *amicus curiae*), Lithuania, Luxembourg, Norway (Equality and Anti-Discrimination Tribunal), Portugal (CITE and CIG, limited to *amicus curiae*) and Sweden (limited to taking cases).

37 In: Belgium (2 EBs), Denmark (Danish Institute for Human Rights), France, Germany, Italy, Iceland, Ireland, Liechtenstein, Portugal (CIG and CITE), the UK (Britain and Northern Ireland) and Sweden.

38 In: Austria (Equal Treatment Commission), Bulgaria, Cyprus, the Czech Republic, Estonia (Chancellor of Justice) Finland (2 EBs), Hungary, Ireland, Italy (UNAR), Latvia: Netherlands, Norway (Equality and Anti-Discrimination Ombud), Portugal (CEARD), Slovakia, Spain and Sweden.

39 In: Belgium (Institute for Equality between Women and Men), Croatia (Ombudsperson for Gender Equality), Finland (2 EBs), Ireland, Norway (2 EBs), Sweden and the UK (Britain and Northern Ireland).

40 In: Belgium (2 EBs), Croatia (2 EBs), Denmark (Danish Institute for Human Rights), Finland (Non-Discrimination Ombudsman), Ireland, Latvia, Lithuania, Netherlands, Norway (Equality and Non-Discrimination Ombud), Sweden and the UK (Britain and Northern Ireland).

41 In: Austria (2 EBs), Belgium (2 EBs), Croatia (Ombudsperson for Gender Equality), Denmark (Danish Institute for Human Rights), Lithuania, Netherlands, Sweden and the UK (Britain).

42 In: Belgium (2 EBs), Croatia (2 EBs), Denmark (Danish Institute for Human Rights), Finland (Non-Discrimination Ombudsman), France, Ireland, Lithuania, Norway (Equality and Non-Discrimination Ombud) and Poland.

43 In: Belgium (IEWM), Bulgaria, Iceland, Italy, Norway (Equality and Anti-Discrimination Tribunal), Romania, Spain and Sweden

the exception, with only 11 equality bodies in 10 countries having such offices.⁴⁴ Six equality bodies have developed a local presence by working through or supporting other entities to engage with complainants at local level.⁴⁵ Many equality bodies engage in outreach activities, although there are 10 that do not.⁴⁶ A specific complexity that presents barriers for access to pathways to justice is noted in federal settings such as Austria.

Equality bodies are clearly well disposed to taking action to accommodate the diversity of complainants in their services and activities. However, few have developed systematic approaches to accommodating diversity. Out of the 43 equality bodies, 28 appear to have some form of procedure to address the practical implications of diversity in engaging with and providing services to people from different groups.⁴⁷ There is no clear pattern to or template for these. There is an evident focus on the needs of people with disabilities and also on the needs of people with caring responsibilities, people with literacy issues, people for whom cost or associated costs might be a barrier, and people who are proficient in languages other than the first language of the country.

Impact

The positive impact of equality bodies has been established on a proxy basis of their outputs. Impact on individuals is identified on the basis of the scale of complaints addressed. Impact on institutions is identified on the basis of the scale and nature of recommendations issued in cases heard, support for good practice provided to employers and service providers and for implementation of positive equality duties, and provision of policy advice to Government. Impact on society is identified on the basis of the scale and nature of public education campaigns, media work, and awareness raising.

The actual impact of equality bodies is difficult to measure due to lack of data, lack of resources to conduct the necessary research to establish impact, and difficulties in tracking causality between social change and the specific action of equality bodies. This situation is exacerbated by the limited evaluation work done by equality bodies themselves. Limited resources provided to equality bodies, deficiencies in competences accorded to them, and lack of strategic planning by equality bodies mean that many equality bodies have still to achieve their full potential.

Further work is required to develop thinking on and a shared understanding of the theory of change that could shape the work of equality bodies. This challenges equality bodies to establish the social change they seek and to examine how such change might happen in their country. This is the starting point for strategy with potential to make an impact. A menu of indicators developed by Equinet provides a starting point for measuring and assessing the impact of equality bodies. The application of these indicators could engage equality bodies in a process of clarifying the change they seek and the most strategic and effective mix of actions and competences to be deployed in pursuit of that change.

44 In: Austria (Ombud for Equal Treatment), Belgium (UNIA), Bulgaria, Croatia (People's Ombudsman), Italy (Local Equality Advisors), Poland, Portugal (CEARD and CIG), Romania, Slovakia and the UK (Britain).

45 In: Croatia (People's Ombudsman), Finland (Non-Discrimination Ombudsman), France, Netherlands, Portugal (CITE) and Spain.

46 In: Belgium (Institute for Equality between Women and Men), Croatia (Gender Ombudsperson), Cyprus (Commissioner for Administration and Human Rights), Denmark (DIHR and Board of Equal Treatment), Finland (Gender Equality Ombudsman and Non-Discrimination Ombudsman), Italy (UNAR), Norway (Equality and Anti-Discrimination Tribunal) and the UK (ECNI).

47 In: Austria (2 EBs), Croatia (Ombudsperson for Gender Equality), Czech Republic, Estonia (Commissioner for Gender Equality and Equal Treatment), Finland (Gender Equality Ombudsman), France, Germany, Ireland, Italy (gender bodies), Latvia, Liechtenstein (2 EBs), Lithuania, Luxembourg, Malta, Netherlands, Norway (2 EBs), Poland, Portugal (3 EBs), Slovenia, Sweden and the UK (Britain and Northern Ireland).

Proposals

The following measures at European level could be beneficial:

1. The engagement of relevant civil servants from national governments in ongoing dialogue about the potential of equality bodies, the steps required to enable them to reach their potential, and the manner in which they might best engage with the equality body. This dialogue could be planned and pursued through the various arenas of peer learning at this level: the High Level Group on Non-Discrimination, Equality and Diversity; the High Level Group on Combating Racism, Xenophobia and other forms of Intolerance; and the Advisory Committee on Equal Opportunities for Women and Men.
2. Promotion of dialogue on and the building of a shared understanding across the Member States of the European Commission Recommendation on standards for equality bodies and exploration of systems of monitoring and support to ensure capacity for and commitment to their implementation among the relevant Member State authorities. This could usefully include a focus on the full range of international standards concerning equality bodies.
3. Development and monitoring of a template for establishing adequacy of funding for equality bodies that could take account of the size of the Member State; of its population; the level and nature of reported and unreported incidents of discrimination; the range, capacity and contribution of other bodies working in the field; the costs involved in implementing the competences of an equality body to a scale and quality necessary to make an impact; and the scale of the national budget.

The following measures at national level could be beneficial:

1. Formal review of the conditions that have been created for the equality body, against those set out in the European Commission Recommendation and the ECRI General Policy Recommendation, and improvements in these conditions if found to be necessary.
2. Introduction of provisions for multiple discrimination in equal treatment legislation that could enable cases to be taken on multiple grounds and address the complexities of comparator requirements for these instances. It could reflect the additional gravity of cases where more than one ground is involved.
3. A transparent, competency-based and participatory procedure for making appointments to equality bodies that could be implemented under the auspices of Parliament and avoid including representation of other bodies.
4. Restructuring of the accountability required of the equality body such that it keeps Parliament informed through its annual report but has a single accountability, limited to the relevant state audit authority.
5. Provision of adequate funding for equality bodies to implement all their functions and competences to a scale and standard necessary for impact.
6. Review of the competences afforded to equality bodies with steps to ensure they have the full range of competences required to give effect to their functions, in particular competences to make legally binding decisions and impose sanctions, to have legal standing before the courts, and to promote standards for good equality and diversity practice.
7. Introduction of provisions for positive equality duties in equal treatment legislation that empower equality bodies to set standards for their implementation and to monitor and enforce the meeting of these standards.
8. Establishment of a local presence for the equality body across the geographical area it covers, in particular through local office or intermediaries.

The following measures involving equality bodies, collectively or individually, could be beneficial:

1. Examination of the conditions that have been created for the equality body against the European Commission Recommendation and the ECRI General Policy Recommendation and communication of their conclusions to the relevant authorities with recommendations for any improvements found to be necessary.
2. Assessment of the internal operations of the equality body against these standards, in an open and participative manner, and evolution of these if found to be necessary.
3. Development of templates and guidance for:
 - a. active management of multiple mandates that ensures visibility for the equality mandate and underpins integrated approaches to the multiple mandates that secure positive synergies;
 - b. active management of multi-ground mandates that ensures visibility and relevance for the individual grounds covered, addresses the intersections between these, and maximises the potential of multi-ground activities;
 - c. devising the theories of change open to and relevant for equality bodies in fulfilling their potential;
 - d. stakeholder engagement that includes approaches to involve relevant stakeholders in:
 - deliberations of the equality body;
 - joint initiatives;
 - hubs created by the equality body to motivate and inform stakeholders;
 - e. data systems that enable a coherent tracking of common indicators across jurisdictions.
4. Development of models of leadership for equality bodies, creation of opportunities for capacity building in implementing such models and promotion of their implementation through processes of mutual support and peer review.
5. Review, and enhancement if found to be necessary, of the nature and quality of the assistance provided to complainants by equality bodies with a decision making function.
6. Steps to evolve the strategic planning and evaluation of equality bodies, including the development and application of common indicators.
7. Steps to develop, implement and promote procedures and processes to accommodate the diversity of complainants and to adjust for the practical implications of this diversity in their procedures, supports and services.

Résumé

Organismes pour l'égalité de traitement

Les organismes pour l'égalité de traitement sont des organes légaux indépendants institués pour promouvoir le principe de l'égalité de traitement au regard de divers motifs. Leur but fondamental est la mise en œuvre de la législation relative à l'égalité de traitement et, dans la pratique, leur mandat couvre à la fois la lutte contre la discrimination et la promotion de l'égalité. Ils jouent un rôle dans l'exercice des droits au travers notamment d'une aide aux victimes de discrimination, de la promotion de bonnes pratiques, d'actions de communication, de la réalisation d'études et d'une implication des parties prenantes. Un total de 43 organismes pour la promotion de l'égalité représentant 31 (États membres de l'UE et pays de l'AELE) ont été examinés aux fins du présent rapport.

L'architecture institutionnelle des organismes pour l'égalité de traitement (OET) varie fortement entre ces 31 pays en termes de mandats, de fonctions et de motifs couverts. Le présent rapport a recensé 14 organismes à mandats multiples situés dans 14 pays.¹ Pour ce qui concerne les fonctions, il identifie 19 des 43 organismes de promotion de l'égalité comme ayant des compétences combinant tout ou partie des trois fonctions assignées à ce type d'organisme, à savoir: la promotion et la prévention; le soutien et le contentieux; et la prise de décision.² Seize offrent la combinaison assez traditionnelle de tout ou partie de la fonction de promotion et de prévention et de la fonction de soutien et de contentieux,³ tandis que quatre exercent uniquement une fonction décisionnelle.⁴

Parmi les 43 organismes pour l'égalité de traitement, 26 couvrent davantage de motifs que ceux visés à l'article 19 du traité sur le fonctionnement de l'Union européenne, et 10 d'entre eux opèrent sur la base d'une liste ouverte de motifs.⁵ Six organismes pour l'égalité de traitement ont un mandat aligné sur les six motifs visés à l'article 19: le sexe, la race ou l'origine ethnique, la religion ou les convictions, un handicap, l'âge et l'orientation sexuelle.⁶ Dix organismes à mandat unique ont été recensés, parmi lesquels sept se consacrent au motif du genre, deux au motif de la race et de l'origine ethnique, et un au motif du handicap.⁷

Les organismes pour l'égalité se heurtent clairement à une hostilité politique dans huit pays⁸ mais le climat prédominant est celui d'un désintérêt politique qui, observé dans 12 pays,⁹ se traduit par un sous-financement desdits organismes et une absence d'écho politique à leurs compétences consultatives – ce qui les empêche de faire changer les règles du jeu. On observe en revanche dans sept pays un soutien

1 Chypre, Croatie (Médiateur du peuple), Danemark (Institut danois des droits de l'homme), Estonie, France, Grèce, Irlande, Lettonie, Liechtenstein, Pays-Bas, Pologne, République tchèque, Royaume-Uni (Grande-Bretagne) et Slovaquie.

2 Bulgarie, Croatie (deux OET), Estonie, Finlande (deux OET), France, Hongrie, Lettonie, Lituanie, Malte, Pays-Bas, Pologne, Portugal (Commission pour l'égalité et contre la discrimination raciale), République tchèque, Roumanie, Slovaquie, Slovénie et Suède.

3 Allemagne, Autriche (Médiateur en charge de l'égalité de traitement), Belgique (deux OET), Danemark (Institut danois des droits de l'homme), Espagne, Irlande, Islande, Italie (deux OET), Liechtenstein (Association pour les droits de l'homme), Luxembourg, Portugal (CIG et CITE) et Royaume-Uni (Grande-Bretagne et Irlande du Nord).

4 Autriche, Danemark, Estonie et Norvège.

5 Bulgarie, Estonie, Finlande (Médiateur pour la non-discrimination), Hongrie, Lettonie, Liechtenstein, Pologne, Roumanie, Slovaquie et Slovénie.

6 Allemagne, Autriche (deux OET), Danemark (Conseil pour l'égalité de traitement), Estonie (Commissaire en charge de l'égalité des genres et de traitement) et Luxembourg.

7 Genre: Belgique, Croatie (y compris les motifs de l'identité et de l'expression de genre, de l'orientation sexuelle, et de l'état matrimonial ou familial), Finlande, Islande, Italie et Portugal (CIG et CITE); race ou origine ethnique: Portugal et Espagne; et handicap: Liechtenstein.

8 Bulgarie, Croatie, Chypre, Italie, Pologne, Roumanie, Royaume-Uni (Grande-Bretagne) et Suède.

9 Autriche, Belgique, Espagne, Estonie, Finlande, Grèce, Hongrie, Liechtenstein, Lituanie, Luxembourg, Slovaquie et Slovénie.

politique manifeste aux organismes pour l'égalité de traitement, ce qui augmente leur potentiel et leur impact.¹⁰

Normes

Une forte évolution est intervenue récemment au niveau des normes applicables aux organismes pour l'égalité de traitement. Elle reflète une précieuse reconnaissance de leur potentiel et une volonté d'instaurer les conditions nécessaires à la réalisation de celui-ci, ainsi qu'une réelle compréhension de leur diversité. Les directives de l'UE sur l'égalité de traitement exigent des États membres qu'ils désignent un organisme pour la promotion de l'égalité de traitement pour ce qui concerne la race ou l'origine ethnique et le genre,¹¹ et définissent les normes minimales auxquelles doit répondre cet organisme. La recommandation de la Commission européenne relative aux normes applicables aux organismes pour l'égalité de traitement s'appuie sur ces exigences en mettant l'accent sur les mandats, l'indépendance, l'efficacité et la coordination des organismes en question.¹²

Au plan international, les «Principes de Paris» définis par les Nations unies¹³ concernant les institutions nationales des droits de l'homme ont été appliqués par certains organismes pour l'égalité (à mandats multiples pour la plupart). Un avis du Commissaire aux droits de l'homme du Conseil de l'Europe est spécifiquement consacré aux organismes de promotion de l'égalité et formule des recommandations concernant la législation relative à l'égalité de traitement ainsi que sur l'indépendance et l'efficacité des structures nationales de promotion de l'égalité et leur fonctionnement.¹⁴ La recommandation de politique générale n° deux (révisée) de l'ECRI du Conseil de l'Europe constitue la norme la plus exhaustive spécifiquement axée sur les organismes pour l'égalité: elle porte sur leur établissement et leur mandat, leur architecture institutionnelle, leurs fonctions et compétences, leur indépendance, leur efficacité et leur accessibilité.¹⁵

Les organismes de promotion de l'égalité ont joué un rôle déterminant dans l'émergence de ces normes plus récentes au travers de leur réseau européen Equinet. Le défi consiste désormais à en assurer la mise en œuvre intégrale et effective. La Commission européenne, le Conseil de l'Europe et les organismes pour l'égalité ont tous un rôle à jouer dans la diffusion de ces normes et dans le suivi, le soutien et la garantie de leur application.

Architecture institutionnelle

L'architecture institutionnelle des organismes pour l'égalité désigne tout d'abord l'ensemble de l'implication institutionnelle externe dans les questions d'égalité et de non-discrimination. Elle désigne ensuite, sur un

10 Allemagne, France, Irlande, Islande, Lettonie, Pays-Bas et Portugal.

11 Directive 2000/43/CE du Conseil du 29 juin 2000 relative à la mise en œuvre du principe de l'égalité de traitement entre les personnes sans distinction de race ou d'origine ethnique et directive 2004/113/CE du Conseil du 13 décembre 2004 mettant en œuvre le principe de l'égalité de traitement entre les femmes et les hommes dans l'accès à des biens et services et la fourniture de biens et services; directive 2006/54/CE du Parlement européen et du Conseil du 5 juillet 2006 relative à la mise en œuvre du principe de l'égalité des chances et de traitement entre hommes et femmes en matière d'emploi et de travail (refonte); et directive 2010/41/UE du Parlement européen et du Conseil du 7 juillet 2010 concernant l'application du principe de l'égalité de traitement entre hommes et femmes exerçant une activité indépendante, et abrogeant la directive 86/613/CEE du Conseil.

12 Commission européenne (2018), recommandation (UE) 2018/951 de la Commission du 22 juin 2018 relative aux normes applicables aux organismes pour l'égalité de traitement.

13 Nations unies, Assemblée générale des Nations unies (1993, Principes concernant le statut et le fonctionnement des institutions nationales pour la protection et la promotion des droits de l'homme (Principes de Paris).

14 Conseil de l'Europe, Commissaire aux droits de l'homme (2011), avis du Commissaire aux droits de l'homme sur les structures nationales de promotion de l'égalité, Strasbourg, Conseil de l'Europe, 21 mars 2011.

15 Conseil de l'Europe, Commission européenne contre le racisme et l'intolérance (ECRI) (2017), Recommandation de politique générale n° 2 concernant les organismes de promotion de l'égalité chargés de lutter contre le racisme et l'intolérance au niveau national (révisée), Strasbourg, Conseil de l'Europe, 7 décembre 2017.

plan davantage interne, la manière dont le mandat de l'organisme pour l'égalité est institué, les fonctions qui lui sont conférées et les motifs qu'il couvre.

Les organismes pour l'égalité exercent leur activité au sein d'une infrastructure plus large formée d'organisations publiques et de la société civile œuvrant à l'égalité et à la non-discrimination. L'optimisation de leur potentiel a permis aux organismes pour l'égalité de faire preuve de bonnes pratiques en tant que pôles favorisant une mise en relation de ces différentes organisations, un apprentissage mutuel et une vision commune, et une cohérence d'action. Ils ont constitué de précieux points d'entrée vers l'accès à la justice et ont aidé les citoyens qui souhaitent s'engager sur cette voie; et ils ont veillé à ce que les institutions concernées soient mieux informées de la législation relative à l'égalité de traitement.

Cette mission crée des exigences pour le leadership des organismes pour l'égalité, lesquels doivent conserver leur autorité sur les questions d'égalité et de non-discrimination; maintenir leur capacité de faire appliquer la législation en matière d'égalité de traitement; et fonctionner en qualité de partenaires avec d'autres organisations pour réaliser des objectifs communs. Ceux qui assument une fonction décisionnelle doivent être à la fois l'une des voies donnant accès à la justice, un soutien pour les personnes qui les empruntent, et veiller à ce que les différentes institutions intervenant dans ce parcours aient la compréhension, les connaissances et les capacités nécessaires au traitement des cas de discrimination.

Les organismes à mandats multiples ayant notamment un mandat portant sur l'égalité sont mieux placés que ceux à mandat unique pour gérer de façon plus globale et plus efficace les problématiques d'égalité et de discrimination. Il n'en reste pas moins que chaque mandat puise dans sa propre tradition et que la concrétisation de ce potentiel demande des organismes à mandats multiples qu'ils optent pour une approche intégrée dans chacune de leurs missions – ce qui peut s'avérer particulièrement difficile lorsque le mandat relatif à l'égalité leur est conféré ultérieurement aux autres car il risque de se voir restreint dans son ambition et son approche par des traditions qui, associées aux mandats déjà en vigueur, se sont ancrées au fil du temps. Il convient, sur un plan plus fondamental, de veiller à ce que le mandat relatif à l'égalité bénéficie dans ce contexte de la visibilité et de l'investissement voulus. Un tel défi exige de la part de l'organisme concerné qu'il ait une gestion active de ses différents mandats afin d'en respecter également les exigences et traditions spécifiques.

Aucun gestion active n'a été constatée chez sept des 14 organismes à mandats multiples.¹⁶ On observe chez six d'entre eux un manque de visibilité du mandat relatif à l'égalité et un usage limité des compétences y afférentes.¹⁷ L'approche dominante adoptée par les sept autres en ce qui concerne la gestion de leurs mandats multiples se caractérise par un cloisonnement prévoyant un département distinct dont le personnel est chargé du mandat relatif à l'égalité. Cette approche confère une visibilité au dit mandat et garantit l'exercice des compétences qui en relèvent, mais elle ne permet pas l'intégration des approches appliquées aux différents mandats ni, partant, d'en réaliser pleinement le potentiel. Un médiateur adjoint ayant la responsabilité spécifique du mandat relatif à l'égalité est désigné dans trois organismes à mandats multiples,¹⁸ ce qui contribue fortement à une orientation stratégique porteuse de sa mise en œuvre et favorise l'accès à l'expertise particulière qu'il requiert.

Bon nombre d'organismes pour l'égalité sont dotés de fonctions et de compétences y afférentes qui vont au-delà des exigences des directives de l'UE relatives à l'égalité de traitement, lesquelles demandent spécifiquement à ces organismes de fournir une assistance aux victimes de discrimination, de réaliser des études, de préparer des rapports et de formuler des recommandations sur des questions de discrimination. Un éventail élargi de fonctions et de compétences leur permet de déployer une combinaison stratégique d'activités couvrant la mise en application des dispositions, la promotion de bonnes pratiques, la communication, la recherche et l'implication des parties prenantes – autant d'activités indispensables

16 Chypre, Estonie, Irlande, Lettonie, Liechtenstein, Royaume-Uni (Grande-Bretagne) et Slovaquie.

17 L'exception étant le Royaume-Uni (Grande-Bretagne) du fait que les organismes initiaux y détenaient uniquement un mandat portant sur l'égalité.

18 Croatie, Grèce et Pologne.

pour qu'ils puissent avoir un impact et promouvoir le changement en faveur des citoyens, des institutions et de la société.

Des tensions se manifestent toutefois lorsque l'organisme pour l'égalité remplit une fonction décisionnelle en sus de sa fonction de promotion et de prévention et de sa fonction de soutien et de contentieux car la fonction décisionnelle exige une impartialité allant à l'encontre de l'approche exigée dans les deux autres contextes. Cette situation conduit à une restriction de la nature et de la qualité de l'assistance fournie à ceux qui cherchent à engager une action pour discrimination – le problème étant moins préoccupant lorsqu'une unité spécialisée est mise en place au sein de l'organisme pour l'égalité afin d'aider les plaignants. Il semble que la meilleure pratique consiste à confier la fonction décisionnelle à un autre organisme pour l'égalité. La combinaison de fonctions peut également conduire à une concurrence entre fonctions pour l'obtention de ressources avec une prédominance des exigences liées au rôle décisionnel lors des décisions relatives au budget et aux effectifs.

Les organismes pour l'égalité couvrant plusieurs motifs de discrimination sont la norme. Ils ont la capacité appréciable de pouvoir opter pour une approche exhaustive et non hiérarchique de l'égalité et de la non-discrimination, en particulier lorsqu'ils couvrent une liste ouverte de motifs. Mais ils sont également confrontés à la difficulté d'assurer une visibilité et une action suffisantes de chacun des motifs couverts. Sans compter que l'ampleur éventuelle de la couverture dans le cadre d'une liste ouverte de motifs, de même que l'imprécision entourant la définition de ceux-ci, peuvent également poser problème. Bien qu'il ait été signalé que la plupart des organismes pour l'égalité accordent une attention suffisante aux divers motifs relevant de leur mission, les éléments attestant de la gestion active indispensable pour garantir visibilité et pertinence à tous les motifs couverts et pour optimiser le potentiel de ces mandats multiples restent peu abondants.

Peu d'éléments attestent également, dans le cas de mandats portant sur des motifs multiples, de la gestion active qui, assurant la combinaison et l'interaction d'activités respectivement axées sur un motif unique, axées sur des motifs multiples et intersectionnelles, permettrait de concrétiser le potentiel de ce type de mandats et d'assurer l'importance voulue à tous les motifs couverts. L'approche dominante en matière de gestion de motifs multiples est réactive dans la mesure où elle se construit en réponse aux plaintes reçues. Il existe des exemples intéressants d'organismes pour l'égalité effectuant un audit du travail accompli afin de garantir la couverture suffisante de l'ensemble des motifs relevant de leur mission.

Le travail des organismes pour l'égalité comporte certains éléments caractérisant la gestion active d'un programme portant sur des motifs multiples. On y trouve aussi des exemples de travail axé sur un motif unique, lesquels sont cependant de nature plutôt réactive, à savoir qu'il s'agit de réponses à des incitations extérieures liées à des stratégies ou des sources de financement internationales. Les initiatives portant sur des motifs multiples sont plus nombreuses et se fondent sur les dossiers traités et la promotion de bonnes pratiques au niveau des employeurs et des prestataires de services. Peu d'éléments probants font état d'une action intersectionnelle.

Des débats souvent très animés ont eu lieu en Belgique, en Croatie, en Finlande et en Islande à propos de l'inclusion des organismes pour l'égalité ayant un mandat unique basé sur le motif du genre au sein d'organismes pour l'égalité couvrant des motifs multiples. Les arguments en faveur de ces organismes à motif unique, en l'occurrence le genre, sont la visibilité des questions liées au genre, l'expertise spécifique que requiert leur traitement, la capacité de mettre en avant la problématique de la discrimination fondée sur le genre, et le fait que les femmes représentent plus de la moitié de la population – sans compter la présence de la dimension de l'égalité de genre dans tous les domaines.

Les arguments en faveur d'organismes à motifs multiples sont, de leur côté, les suivants: la capacité d'un travail global et non hiérarchisé, la simplicité administrative pour les employeurs et les prestataires de services de se conformer aux obligations, l'accent sur l'intersectionnalité et la discrimination multiple,

et un «guichet unique» pour les plaignants. Rien ne permet d'affirmer à ce jour que des motifs uniques soient défavorisés du fait d'être traités dans un cadre à motifs multiples: ils pourraient même y trouver avantage, en particulier lorsqu'une gestion active des motifs est en place.

Indépendance

Le statut juridique, le mode de nomination, les formes de responsabilisation et la pratique opérationnelle peuvent être considérés comme autant d'éléments clés de l'indépendance des organismes pour l'égalité. Une indépendance fonctionnelle est reconnue pour tous les organismes examinés dans le cadre du présent rapport.

La situation est largement positive en ce qui concerne le statut juridique puisque 31 des 43 organismes pour l'égalité ont leur propre personnalité juridique – ce qui est considéré comme une bonne pratique en termes d'indépendance. Dix organismes font en revanche partie de ministères,¹⁹ ce qui limite leur indépendance. Un puissant leadership peut contrer cette influence gouvernementale en assurant le fonctionnement indépendant des organismes en question, et il existe certains éléments probants dans ce sens. Deux organismes pour l'égalité font partie d'associations d'ONG.²⁰

Le tableau est davantage mitigé en ce qui concerne les nominations au sein des organismes pour l'égalité puisque la direction de 20 des 43 organismes est nommée par le gouvernement ou par des ministres,²¹ ce qui compromet l'indépendance de l'institution. Par ailleurs, le parlement désigne désormais la direction de 13 des 43 organismes pour l'égalité,²² ce qui constitue la norme actuelle de bonne pratique. Dans la plupart des cas toutefois, un processus de désignation parlementaire transparent, participatif et fondé sur les compétences fait défaut – ce qui pose problème.

Un éventail d'arrangements divers sont observés dans les 10 autres cas et notamment la nomination de membres des conseils de huit organismes pour l'égalité confiée à différentes organisations.²³ L'indépendance de l'organisme pour l'égalité risque de voir son indépendance restreinte lorsqu'une autre entité est représentée au conseil avec ses propres intérêts. Il est plus préoccupant encore de constater qu'une interférence politique est attestée dans le cas de six organismes pour l'égalité, tant en ce qui concerne la désignation que le renvoi des membres de la direction.²⁴

Le mécanisme de responsabilisation mis en place présente également un tableau mitigé: 13 des 43 organismes pour l'égalité considérés doivent rendre compte au Parlement,²⁵ ce dont ils s'acquittent le plus souvent au moyen de leur rapport annuel. Cette manière de procéder est actuellement considérée comme une bonne pratique en termes d'indépendance. Dix-huit organismes pour l'égalité doivent rendre compte au gouvernement, à des ministres ou au président,²⁶ ce qui pose question en termes de responsabilisation. Deux organismes pour l'égalité doivent rendre des comptes à la fois au parlement et au gouvernement.²⁷ Au Liechtenstein, le Bureau pour l'égalité des personnes handicapées est responsable devant une assemblée

19 Allemagne, Autriche (deux OET), Espagne, Finlande (deux OET), Islande, Italie (deux OET) et Portugal (CIG).

20 Liechtenstein.

21 Allemagne, Autriche (Médiateur en charge de l'égalité de traitement), Belgique (Institut pour l'égalité des femmes et des hommes (IEFH), Chypre, Danemark (Conseil pour l'égalité de traitement), Estonie (Commissaire en charge de l'égalité des genres et de traitement), Finlande (deux OET), France, Hongrie, Islande, Italie (UNAR), Malte, Norvège (deux OET), Portugal (CEARD et CIG), Royaume-Uni (Grande-Bretagne et Irlande du Nord) et Suède.

22 Belgique (UNIA), Croatie (deux OET), Estonie (Chancelier de justice), Grèce, Irlande, Lettonie, Lituanie, Luxembourg, Pologne, République tchèque, Roumanie et Slovénie.

23 Autriche (Commission pour l'égalité de traitement (GBK)), Danemark (Institut danois des droits de l'homme), Espagne, Italie (Commission nationale pour l'égalité des chances), Liechtenstein (deux OET), Portugal (CITE) et Slovaquie.

24 Bulgarie, Chypre, Italie (deux OET), Roumanie et Suède.

25 Allemagne, Autriche (deux OET), Belgique (IEFH), Chypre, Espagne, Finlande (deux OET), Italie (deux OET), Malte, Norvège (deux OET), Portugal (trois OET), Royaume-Uni (Grande-Bretagne et Irlande du Nord) et Suède.

26 Belgique (UNIA), Bulgarie, Croatie (deux OET), Danemark (Institut danois des droits de l'homme), Hongrie, Irlande, Lettonie, Lituanie, Pologne, République tchèque, Roumanie et Slovénie.

27 France et Luxembourg.

d'ONG. Des exemples de bonnes pratiques plus avancées se font jour: cinq organismes n'ont pas de mécanisme formel de responsabilisation;²⁸ deux sont responsables devant les autorités d'audit de l'État;²⁹ et l'organisme pour l'égalité des Pays-Bas est financièrement responsable devant divers ministères.

Il est reconnu que la direction des organismes pour l'égalité joue, dans la pratique opérationnelle, un rôle déterminant dans leur indépendance. La qualité et la compétence des membres de la direction ne font pas l'objet d'une attention suffisante et les modèles actuels de leadership n'ont été soumis à aucune évaluation ni aucun examen critique.

Efficacité

Les facteurs clés de l'efficacité des organismes pour l'égalité de traitement sont les ressources mises à leur disposition et l'éventail des compétences qui leur sont affectées. Les facteurs internes de cette efficacité sont pour leur part la programmation stratégique et l'implication des parties prenantes.

Si les niveaux de ressources varient fortement selon les organismes pour l'égalité, rares sont ceux qui disposent d'un niveau de financement suffisant pour avoir un réel impact. Cette principale entrave à leur efficacité a notamment pour effet qu'il faut se contenter d'imaginer ce que pourrait être le plein potentiel de ces organismes puisqu'il n'a jamais été totalement mis à l'épreuve. Une lente amélioration est néanmoins observée sur le plan des ressources dans la mesure où 16 organismes pour l'égalité bénéficient depuis quelques années d'une augmentation de leurs effectifs et/ou de leur budget.³⁰ À l'inverse, 11 organismes³¹ ont connu une diminution de leurs effectifs et/ou de leur budget ces dernières années avec des coupes budgétaires disproportionnées dans le cas de trois d'entre eux.³²

La limitation des compétences nuit à l'efficacité des organismes pour l'égalité parce qu'elle les empêche de déployer la stratégie d'interventions conjuguées qui leur permettrait de contribuer au changement social. L'action de mise en application menée par 19 organismes sur les 25 dotés d'une fonction décisionnelle se trouve freinée car ils ne peuvent rendre des décisions juridiquement contraignantes et/ou ne peuvent imposer de sanctions.³³ Quatre de ces 25 organismes ne peuvent imposer de sanctions adéquates.³⁴ Le suivi des décisions qu'ils prennent est limité dans le cas de huit organismes pour l'égalité.³⁵ D'autres restrictions en matière de compétences affectent 17 organismes pour l'égalité qui ne sont pas habilités à engager des poursuites pour discrimination ni à intervenir en justice en qualité d'*amicus curiae*.³⁶

28 Autriche (Commission pour l'égalité de traitement, Estonie (Commissaire en charge de l'égalité des genres et de traitement), Grèce, Liechtenstein (Association pour les droits de l'homme) et Slovaquie.

29 Estonie (Chancelier de justice) et Islande.

30 Autriche (Médiateur en charge de l'égalité de traitement), Belgique (UNIA), Bulgarie, Croatie (Médiateur du peuple), Finlande (Médiateur pour la non-discrimination), Grèce, Hongrie, Irlande, Islande, Lettonie, Lituanie, Luxembourg, Portugal (CEARD), République tchèque, Roumanie et Slovaquie.

31 Belgique (IEFH), Chypre, Estonie (Commissaire en charge de l'égalité des genres et de traitement), Espagne, Italie (organismes en charge des questions de genre), Norvège (deux OET), Pays-Bas, Pologne et Royaume-Uni (Grande-Bretagne et Irlande du Nord).

32 Pologne et Royaume-Uni (Grande-Bretagne et Irlande du Nord).

33 Autriche, Croatie (deux OET), Estonie (deux OET), Finlande (deux OET), France, Grèce, Lettonie, Lituanie (habilités à infliger des amendes administratives), Malte, Norvège (les décisions du Tribunal sur l'égalité et la lutte contre la discrimination ne sont pas juridiquement contraignantes pour les organismes publics), Pays-Bas, Pologne, République tchèque, Slovaquie, Slovaquie (décisions juridiquement contraignantes mais pas d'imposition de sanctions) et Suède.

34 Bulgarie, Chypre, Danemark et Lituanie.

35 Autriche (Commission pour l'égalité de traitement), Bulgarie, Danemark (Conseil pour l'égalité de traitement), Finlande (Médiateur pour l'égalité des genres), Hongrie, Lettonie, Norvège (Tribunal sur l'égalité et la lutte contre la discrimination) et Pologne.

36 Allemagne (habilitation limitée à une intervention en qualité d'*amicus curiae*), Autriche (le Médiateur en charge de l'égalité de traitement ne peut engager de poursuites que dans des circonstances limitées), Croatie (Médiateur pour l'égalité des genres), Chypre, Danemark (Institut danois des droits de l'homme – habilitation limitée à l'intervention au titre d'*amicus curiae*), Finlande (Médiateur en charge de la lutte contre la discrimination, même si les cours et tribunaux peuvent demander l'avis d'autres organismes), France (limitation à la communication d'observations aux cours et tribunaux), Grèce, Islande, Italie (UNAR, habilitation limitée à une intervention en qualité d'*amicus curiae*), Lituanie, Luxembourg, Norvège (Tribunal sur l'égalité et la lutte contre la discrimination), Portugal (CITE et CIG, habilitation limitée à une intervention en qualité d'*amicus curiae*), République tchèque et Suède (habilitation limitée à l'engagement d'actions).

Le manque de ressources ou les restrictions en termes de stratégie sont souvent à l'origine de limitations au niveau des compétences. Seuls 14 organismes pour l'égalité font activement progresser les normes de bonnes pratiques en matière d'égalité et de diversité auprès des responsables de l'élaboration des politiques, des prestataires de services et des employeurs – la plupart des autres étant entravés à cet égard par les compétences limitées qui leur sont allouées.³⁷ Dix-sept organismes ne déploient pas, ou ne sont pas en mesure de déployer, les compétences dont ils sont dotés pour chacune de leurs fonctions.³⁸ Il faut se réjouir en revanche que 10 organismes pour l'égalité ont été dotés de compétences pour le soutien et/ou la mise en application des obligations d'égalité positive prévues par la législation sur l'égalité de traitement³⁹ – lesquelles obligations ont été pour ces organismes un levier majeur pour la promotion d'approches davantage proactives de l'égalité tant dans le secteur public que dans le secteur privé.

Des organismes pour l'égalité eux-mêmes ne satisfont guère aux normes d'efficacité. Tous produisent un rapport annuel sous une forme ou une autre, mais leur engagement dans un cycle de planification complet reste insuffisant. Seuls 14 d'entre eux se sont lancés dans une planification stratégique accompagnée de plans de travail annuels.⁴⁰ Dix seulement ont entrepris une certaine forme d'évaluation.⁴¹

L'implication des parties prenantes par les organismes pour l'égalité tend à demeurer informelle. Si cette démarche s'est avérée utile pour permettre la consultation sur certaines questions, elle ne peut suffire à exploiter pleinement les gains d'efficacité qu'elle pourrait engendrer. Une implication formelle des parties prenantes apparaît clairement dans le fonctionnement de 12 organismes pour l'égalité.⁴² Elle peut prendre des formes diverses: des initiatives conjointes avec des parties prenantes, l'association des parties prenantes aux actions et aux réflexions des organismes pour l'égalité, et un rôle de plateforme rempli par les organismes pour l'égalité afin de permettre l'interaction entre parties prenantes.

Accessibilité

L'accessibilité concerne en premier lieu les locaux de l'organisme pour l'égalité lui-même. À huit exceptions près,⁴³ la localisation de tous les organismes pour l'égalité offre un accès suffisant. Les bureaux locaux et régionaux des organismes pour l'égalité peuvent contribuer à réduire le phénomène de sous-déclaration, en particulier dans les pays très étendus, en étant implantés à proximité des personnes qui souhaitent introduire un dossier. Il est important, en particulier lorsque le territoire national est étendu, que ces organismes disposent de bureaux locaux et régionaux situés à proximité des citoyens qui souhaitent y introduire un dossier. Telle n'est cependant pas la généralité puisque 11 organismes seulement, situés dans 10 pays, disposent de ce type d'antennes.⁴⁴ Six organismes pour l'égalité ont développé une présence locale en collaborant avec d'autres entités, ou en les soutenant, pour entrer en relation avec des

37 Allemagne, Belgique (deux OET), Danemark (Institut danois des droits de l'homme), France, Italie, Irlande, Islande, Liechtenstein, Portugal (CIG et CITE), Royaume-Uni (Grande-Bretagne et Irlande du Nord) et Suède.

38 Autriche (Commission pour l'égalité de traitement), Bulgarie, Chypre, Espagne, Estonie (Chancelier de justice), Finlande (deux OET), Hongrie, Irlande, Italie (UNAR), Lettonie, Norvège (Médiateur en charge de l'égalité et de la lutte contre la discrimination), Pays-Bas, Portugal (CEARD), République tchèque, Slovaquie et Suède.

39 Belgique (IEFH), Croatie (Médiateur pour l'égalité des genres), Finlande (deux OET), Irlande, Norvège (deux OET), Royaume-Uni (Grande-Bretagne et Irlande du Nord) et Suède.

40 Belgique (deux OET), Croatie (deux OET), Danemark (Institut danois des droits de l'homme), Finlande (Médiateur pour la non-discrimination), Irlande, Lettonie, Lituanie, Norvège (Médiateur en charge de l'égalité et de la lutte contre la discrimination), Pays-Bas, Royaume-Uni (Grande-Bretagne et Irlande du Nord) et Suède.

41 Autriche (deux OET), Belgique (deux OET), Croatie (Médiateur pour l'égalité des genres), Danemark (Institut danois des droits de l'homme), Lituanie, Pays-Bas, Royaume-Uni (Grande-Bretagne) et Suède.

42 Belgique (deux OET), Croatie (deux OET), Danemark (Institut danois des droits de l'homme), Finlande (Médiateur pour la non-discrimination), France, Irlande, Lituanie, Norvège (Médiateur en charge de l'égalité et de la lutte contre la discrimination) et Pologne.

43 Belgique (IEFH), Bulgarie, Espagne, Islande, Italie, Norvège (Tribunal sur l'égalité et la lutte contre la discrimination), Roumanie et Suède.

44 Autriche (Médiateur en charge de l'égalité de traitement), Belgique (UNIA), Bulgarie, Croatie (Médiateur du peuple), Italie (Conseillers locaux en matière d'égalité), Pologne, Portugal (CEARD et CIG), Roumanie, Royaume-Uni (Grande-Bretagne) et Slovaquie.

plaignants à l'échelon local.⁴⁵ De nombreux organismes pour l'égalité ont des activités de sensibilisation, mais tel n'est pas le cas de 10 d'entre eux.⁴⁶ On observe une complexité particulière susceptible d'entraver l'accès à la justice dans des structures fédérales telles que l'Autriche.

Les organismes pour l'égalité de traitement sont manifestement disposés à prendre des mesures dans le cadre de leurs services et activités pour prendre en compte la diversité des parties plaignantes. Ils restent cependant peu nombreux à avoir développé des approches systématiques dans ce sens. Vingt-huit sur 43 semblent avoir une certaine forme de procédure pour gérer les implications pratiques de la diversité lorsqu'ils entrent en relation ou qu'ils fournissent des services à des personnes issues de différents groupes.⁴⁷ On n'observe à cet égard aucun schéma ni modèle clairement défini. Une attention particulière est manifestement accordée aux besoins des personnes handicapées ainsi qu'aux personnes assumant des charges familiales, des personnes aux prises avec des difficultés d'alphabétisation, des personnes pour lesquelles le coût de la procédure ou les frais associés peuvent constituer un obstacle, et les personnes parlant d'autres langues que la première langue nationale.

Impact

L'impact positif des organismes pour l'égalité a été évalué en s'appuyant sur leurs résultats. L'impact sur les particuliers est établi sur la base du nombre de plaintes traitées. L'impact sur les institutions est établi sur la base du nombre et de la nature des recommandations formulées dans les affaires dont les organismes sont saisis; du soutien en faveur de bonnes pratiques apporté à des employeurs et des prestataires de services et en faveur de la mise en œuvre des obligations d'égalité positive; et de l'apport de conseils stratégiques au gouvernement. L'impact sur la société est établi sur la base de l'ampleur et de la nature des campagnes d'éducation destinées au grand public, du travail médiatique et des actions de sensibilisation.

L'impact réel des organismes pour l'égalité de traitement est difficile à mesurer faute de données et de ressources suffisantes pour procéder aux analyses requises et parce qu'il est compliqué d'établir un lien de causalité entre le changement social et l'action spécifique de ces organismes. Cette situation se trouve exacerbée par le travail d'évaluation très limité effectué par ces derniers. La limitation des ressources qui leur sont allouées, les lacunes au niveau des compétences qui leur sont attribuées et l'absence de planification stratégique de leur part font que bon nombre d'organismes pour l'égalité de traitement n'ont toujours pas pleinement atteint leur potentiel.

Des efforts supplémentaires s'imposent pour approfondir la réflexion et parvenir à une vision commune de la théorie du changement capable de façonner le travail des organismes pour l'égalité – une démarche qui les obligerait à définir le changement social qu'ils recherchent et à examiner la manière dont il pourrait se concrétiser dans leur pays. Il s'agit ici du point de départ d'une stratégie susceptible d'avoir un impact. La série d'indicateurs élaborés par Equinet offre une base de départ pour la mesure et l'évaluation de l'impact des organismes pour l'égalité de traitement. Ces derniers pourraient, en appliquant ces indicateurs, entamer un processus visant à préciser le changement qu'ils ambitionnent et à définir la combinaison optimale d'actions et de compétences qu'il conviendrait de déployer pour le concrétiser.

45 Croatie (Médiateur du peuple), Finlande (Médiateur pour la non-discrimination), Espagne, France, Pays-Bas et Portugal (CITE).

46 Belgique (IEFH); Croatie (Médiateur pour l'égalité des genres); Chypre (Commissaire à l'administration et aux droits de l'homme); Danemark (Institut danois des droits de l'homme et Conseil pour l'égalité de traitement); Finlande (Médiateur pour l'égalité des genres et Médiateur pour la non-discrimination); Italie (UNAR), Norvège (Tribunal sur l'égalité et la lutte contre la discrimination) et Royaume-Uni (ECNI).

47 Allemagne, Autriche (deux OET), Croatie (Médiateur pour l'égalité des genres), Estonie (Commissaire en charge de l'égalité des genres et de traitement), Finlande (Médiateur pour l'égalité des genres), France, Irlande, Italie (organismes en charge des questions de genre), Lettonie, Liechtenstein (deux OET), Lituanie, Luxembourg, Malte, Norvège (deux OET), Pays-Bas, Pologne, Portugal (trois OET), République tchèque, Royaume-Uni (Grande-Bretagne et Irlande du Nord), Slovaquie et Suède.

Propositions

Les mesures ci-après, prises à l'échelon européen, pourraient s'avérer bénéfiques:

1. La participation des fonctionnaires concernés des administrations nationales à un dialogue permanent concernant le potentiel des organismes pour l'égalité de traitement, les dispositions à prendre pour leur permettre de le réaliser et la manière d'optimiser la collaboration avec eux. Ce dialogue pourrait être programmé et organisé dans le cadre des différents espaces d'apprentissage mutuels en place à cet échelon: le groupe de haut niveau sur la non-discrimination, l'égalité et la diversité; le groupe de haut niveau sur la lutte contre le racisme, la xénophobie et d'autres formes d'intolérance; et le comité consultatif de l'égalité des chances entre les femmes et les hommes.
2. La promotion du dialogue et l'édification d'une vision commune entre les États membres concernant la recommandation de la Commission européenne relative aux normes applicables aux organismes pour l'égalité de traitement, et l'étude de systèmes de suivi et de soutien visant à garantir la capacité et l'engagement des autorités concernées des États membres en vue de leur mise en œuvre. Ce processus pourrait utilement prévoir une analyse approfondie de la gamme complète des normes internationales relatives aux organismes pour l'égalité de traitement.
3. L'élaboration et la supervision d'un modèle permettant de déterminer la suffisance des fonds alloués aux organismes pour l'égalité de traitement. Il pourrait prendre en compte la taille de l'État membre et de sa population; le nombre et la nature des incidents de discrimination signalés et non signalés; l'éventail, les capacités et les contributions d'autres organismes opérant dans ce domaine; le coût que représente la mise en œuvre des compétences d'un organisme pour l'égalité de traitement pour atteindre l'échelle et la qualité indispensables pour avoir un réel impact; et l'envergure du budget national.

Les mesures ci-après, prises à l'échelon national, pourraient s'avérer bénéfiques:

1. Un réexamen formel des conditions instaurées pour l'organisme pour l'égalité de traitement par rapport à celles définies dans la recommandation de la Commission européenne et la recommandation de politique générale de l'ECRI; et l'amélioration desdites conditions si elle est jugée nécessaire.
2. L'introduction dans la législation relative à l'égalité de traitement de dispositions concernant la discrimination multiple afin de pouvoir engager des poursuites en invoquant plusieurs motifs, et de répondre à la complexité liée aux exigences en matière de comparateur dans ce type d'affaires. Cette approche pourrait refléter la gravité supplémentaire des cas impliquant plus d'un seul motif.
3. Une procédure transparente, participative et fondée sur les compétences pour les nominations au sein des organismes pour l'égalité de traitement, qui pourrait s'effectuer sous l'égide du parlement et éviter l'inclusion d'une représentation d'autres instances.
4. Le réaménagement de la responsabilisation exigée de la part des organismes pour l'égalité de traitement afin qu'ils tiennent le parlement informé au moyen de leur rapport annuel tout en étant uniquement responsables devant les autorités d'audit de l'État concernées.
5. L'attribution aux organismes pour l'égalité de traitement de fonds suffisants pour exercer toutes leurs fonctions et compétences à une échelle et selon les normes requises pour exercer un véritable impact.
6. Un réexamen des compétences conférées aux organismes pour l'égalité de traitement s'accompagnant de mesures destinées à s'assurer qu'ils disposent de toutes les compétences voulues pour l'exercice effectif de leurs fonctions, et notamment des compétences qui leur permettent de rendre des décisions juridiquement contraignantes et d'imposer des sanctions, d'être habilités à ester en justice et de promouvoir des normes de bonnes pratiques en matière d'égalité et de diversité.
7. L'introduction dans la législation relative à l'égalité de dispositions en matière d'obligations d'égalité positive qui habilitent les organismes pour l'égalité à fixer des normes en vue de leur mise en œuvre et à contrôler le respect de celles-ci.

8. L'établissement d'une présence locale de l'organisme pour l'égalité sur l'ensemble du territoire géographique qu'il couvre, en mettant notamment en place des bureaux ou des intermédiaires locaux.

Les mesures ci-après, impliquant collectivement ou individuellement des organismes pour l'égalité de traitement, pourraient s'avérer bénéfiques:

1. L'examen des conditions instaurées pour l'organisme pour l'égalité de traitement par rapport à celles définies dans la recommandation de la Commission européenne et la recommandation de politique générale de l'ECRI, et communication des conclusions aux autorités concernées avec des recommandations concernant toute amélioration jugée nécessaire.
2. L'évaluation ouverte et participative des opérations internes de l'organisme par rapport à ces normes, et le développement de celles-ci si jugé nécessaire.
3. L'élaboration de modèles et d'orientations pour:
 - a. une gestion active des mandats multiples qui garantisse la visibilité du mandat relatif à l'égalité et conforte des approches intégrées des mandats multiples assurant des synergies positives;
 - b. une gestion active des mandats à motifs multiples qui garantisse la visibilité et la pertinence de chacun des motifs couverts, qui gère leur intersectionnalité et qui optimise le potentiel d'activités axées sur plusieurs motifs;
 - c. l'élaboration de théories du changement à la fois ouvertes et pertinentes dans une perspective de réalisation du potentiel des organismes pour l'égalité;
 - d. une participation des parties prenantes pertinentes selon des approches prévoyant de les associer:
 - aux réflexions de l'organisme pour l'égalité;
 - à des initiatives conjointes;
 - aux plateformes créées par l'organisme pour l'égalité dans le but de motiver et d'informer les parties prenantes;
 - e. des systèmes de données qui permettent un suivi cohérent d'indicateurs communs dans différentes juridictions.
4. L'élaboration de modèles de leadership pour les organismes pour l'égalité de traitement, la création de possibilités de renforcement des capacités pour l'application de ces modèles et la promotion de leur mise en œuvre via des processus de soutien mutuel et d'examen par les pairs.
5. L'examen, et l'amélioration au besoin, de la nature et de la qualité de l'assistance fournie aux plaignants par les organismes pour l'égalité dotés d'une fonction décisionnelle.
6. Des mesures destinées à faire évoluer la planification stratégique et l'évaluation des organismes pour l'égalité de traitement, y compris le développement et l'application d'indicateurs communs.
7. Des mesures destinées à élaborer, mettre en œuvre et promouvoir des procédures et processus prenant en compte la diversité des plaignants, et à adapter les procédures, soutiens et services des organismes pour l'égalité de traitement afin de tenir compte des implications pratiques de cette diversité.

Zusammenfassung

Gleichstellungsstellen

Gleichstellungsstellen sind unabhängige staatliche Einrichtungen, die geschaffen wurden, um den Grundsatz der Gleichbehandlung angesichts unterschiedlicher Diskriminierungsgründe zu fördern. Ihr Hauptzweck ist es, die Gleichbehandlungsvorschriften umzusetzen. In der Praxis umfassen die Mandate der Gleichstellungsstellen sowohl die Bekämpfung von Diskriminierung als auch die Förderung von Gleichstellung. Sie spielen eine Rolle bei der Durchsetzung von Rechten, unter anderem durch Unterstützung von Diskriminierungsopfern, Förderung guter Praxis, Kommunikation, Durchführung von Untersuchungen und Einbeziehung von Interessenträgern. Für diesen Bericht wurden insgesamt 43 Gleichstellungsstellen in 31 Ländern (EU-Mitgliedstaaten und EFTA-Länder) untersucht.

Die institutionelle Architektur der Gleichstellungsstellen ist, was ihre Mandate, Funktionen und die von ihnen abgedeckten Diskriminierungsgründe betrifft, in diesen 31 Ländern unterschiedlich. Dem Bericht zufolge gibt es 14 mit Mehrfachmandat ausgestattete Gleichstellungsstellen in 14 Ländern.¹ In Bezug auf ihre Funktionen zeigte sich, dass 19 der 43 Gleichstellungsstellen Zuständigkeiten haben, die alle oder einen Teil der drei Funktionen von Gleichstellungsstellen in sich vereinen: Förderung und Prävention, Unterstützung und Rechtsstreite sowie Entscheidungsfindung.² Sechzehn Gleichstellungsstellen weisen die eher traditionelle Kombination der gesamten oder eines Teils der Förder- und Präventionsfunktion und der Unterstützungs- und Rechtsstreitfunktion auf,³ wohingegen vier Gleichstellungsstellen nur eine Entscheidungsfunktion haben.⁴

Von den 43 Gleichstellungsstellen decken 26 mehr Diskriminierungsgründe ab als die in Artikel 19 des Vertrags über die Arbeitsweise der Europäischen Union aufgeführten, und 10 von diesen arbeiten mit einer offenen Liste von Diskriminierungsgründen.⁵ Sechs Gleichstellungsstellen haben ein Mandat, das mit den sechs in Artikel 19 genannten Diskriminierungsgründen Geschlecht, „Rasse“ oder ethnische Herkunft, Religion oder Weltanschauung, Behinderung, Alter und sexuelle Orientierung in Einklang steht.⁶ Zehn Gleichstellungsstellen haben ein Mandat, das sich auf einen einzigen Diskriminierungsgrund erstreckt: Sieben widmen sich dem Diskriminierungsgrund Geschlecht, zwei dem Diskriminierungsgrund „Rasse“ und ethnische Herkunft und eine dem Diskriminierungsgrund Behinderung.⁷

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- 1 Dänemark (Dänisches Institut für Menschenrechte), Estland, Frankreich, Griechenland, Irland, Kroatien (Bürger-Ombudsperson), Lettland, Liechtenstein, Niederlande, Polen, Slowakei, Tschechische Republik, Vereinigtes Königreich (Großbritannien) und Zypern.
 - 2 Bulgarien, Estland, Finnland, Frankreich, Kroatien (zwei Gleichstellungsstellen, im Folgenden abgekürzt: GSt), Lettland, Litauen, Malta, Niederlande, Polen, Portugal (Kommission für Gleichstellung und gegen Rassendiskriminierung), Rumänien, Schweden, Slowakei, Slowenien, Tschechische Republik und Ungarn.
 - 3 Belgien (zwei GSt), Dänemark (Dänisches Institut für Menschenrechte), Deutschland, Island, Irland, Italien (zwei GSt), Liechtenstein (Verein für Menschenrechte), Luxemburg, Österreich (Gleichbehandlungsanwaltschaft), Portugal (CIG und CITE), Spanien und Vereinigtes Königreich (Großbritannien und Nordirland).
 - 4 Dänemark, Estland, Norwegen und Österreich.
 - 5 Bulgarien, Estland, Finnland (Ombudsperson für Nichtdiskriminierung), Lettland, Liechtenstein, Polen, Rumänien, Slowakei, Slowenien und Ungarn.
 - 6 Dänemark (Gleichbehandlungsausschuss), Deutschland, Estland (Beauftragte/r für Geschlechtergleichstellung und Gleichbehandlung), Luxemburg und Österreich (zwei GSt).
 - 7 Geschlecht: Belgien, Finnland, Island, Italien, Kroatien (unter Einbeziehung von Geschlechtsidentität und ausdrücklicher sexueller Ausrichtung, Ehe- und Familienstand), Portugal (CIG und CITE); „Rasse“ oder ethnische Herkunft: Portugal und Spanien; Behinderung: Liechtenstein.

In acht Ländern sind Gleichstellungsstellen mit einem Klima politischer Feindseligkeit konfrontiert.⁸ Vorherrschendes Klima ist jedoch das politischen Desinteresses; dieses ist in 12 Ländern anzutreffen.⁹ Mangelndes Interesse führt dazu, dass Gleichstellungsstellen unzureichend ausgestattet sind und keine politische Unterstützung für ihre beratenden Funktionen erfahren. Sie werden dadurch unfähig, eine verändernde Kraft zu sein. In sieben Ländern wurden jedoch günstige politische Rahmenbedingungen festgestellt, die das Potenzial und die Wirkung von Gleichstellungsstellen stärken.¹⁰

Standards

Bei den Standards für Gleichstellungsstellen hat es in letzter Zeit wichtige Entwicklungen gegeben. Daran zeigt sich eine wertvolle Anerkennung ihres Potenzials, das Bestreben, die notwendigen Voraussetzungen für die Realisierung dieses Potenzials zu schaffen, und ein Verständnis für ihre Vielfalt. Die EU-Gleichbehandlungsrichtlinien verpflichten die Mitgliedstaaten dazu, eine Stelle zur Förderung der Gleichbehandlung aufgrund der „Rasse“ oder der ethnischen Herkunft und aufgrund des Geschlechts zu bezeichnen,¹¹ und geben einen Mindeststandard für diese Einrichtungen vor. Die Empfehlung der Europäischen Kommission zu Standards für Gleichstellungsstellen stützt sich auf diese Anforderungen, wobei sie den Schwerpunkt auf die Mandate der Gleichstellungsstellen, ihre Unabhängigkeit, Wirksamkeit Zugänglichkeit und Koordinierung legt.¹²

Im internationalen Rahmen haben einige Gleichstellungsstellen, vor allem solche mit Mehrfachmandat, die von den Vereinten Nationen definierten „Pariser Grundsätze“¹³ für nationale Menschenrechtsinstitutionen angewandt. Die Stellungnahme des Kommissars für Menschenrechte des Europarats widmet sich speziell den Gleichstellungsstellen und enthält Empfehlungen zur Gleichbehandlungsgesetzgebung, zur Unabhängigkeit und Wirksamkeit von Gleichstellungsstellen und zu ihren internen Abläufen.¹⁴ Die überarbeitete Allgemeine politische Empfehlung Nr. 2 der Europäischen Kommission gegen Rassismus und Intoleranz (ECRI) des Europarates ist der umfassendste Standard speziell für Gleichstellungsstellen: Sie befasst sich mit ihrer Einrichtung und ihrem Mandat, ihrer institutionellen Architektur, ihren Funktionen und Befugnissen sowie mit ihrer Unabhängigkeit, Wirksamkeit und Zugänglichkeit.¹⁵

Über Equinet, das Netzwerk der europäischen Gleichstellungsstellen, haben letztere eine zentrale Rolle bei der Entwicklung dieser relativ neuen Standards gespielt. Die Herausforderung besteht nun darin, die vollständige und wirksame Umsetzung dieser Standards sicherzustellen. Alle – die Europäische Kommission, der Europarat und die Gleichstellungsstellen – müssen dazu beitragen, die Standards zu verbreiten und ihre Umsetzung zu überwachen, zu fördern und sicherzustellen.

8 Bulgarien, Italien, Kroatien, Polen, Rumänien, Schweden, Vereinigtes Königreich (Großbritannien) und Zypern.

9 Belgien, Estland, Finnland, Griechenland, Liechtenstein, Litauen, Luxemburg, Österreich, Slowakei, Slowenien, Spanien und Ungarn.

10 Deutschland, Frankreich, Irland, Island, Lettland, Niederlande und Portugal.

11 Richtlinie 2000/43/EG des Rates vom 29. Juni 2000 zur Anwendung des Gleichbehandlungsgrundsatzes ohne Unterschied der Rasse oder der ethnischen Herkunft; Richtlinie 2004/113/EG des Rates vom 13. Dezember 2004 zur Verwirklichung des Grundsatzes der Gleichbehandlung von Männern und Frauen beim Zugang zu und bei der Versorgung mit Gütern und Dienstleistungen; Richtlinie 2006/54/EG des Europäischen Parlaments und des Rates vom 5. Juli 2006 zur Verwirklichung des Grundsatzes der Chancengleichheit und Gleichbehandlung von Männern und Frauen in Arbeits- und Beschäftigungsfragen (Neufassung); Richtlinie 2010/41/EU des Europäischen Parlaments und des Rates vom 7. Juli 2010 zur Verwirklichung des Grundsatzes der Gleichbehandlung von Männern und Frauen, die eine selbständige Erwerbstätigkeit ausüben, und zur Aufhebung der Richtlinie 86/613/EWG des Rates.

12 Europäische Kommission (2018), Empfehlung (EU) 2018/951 der Kommission vom 22. Juni 2018 zu Standards für Gleichstellungsstellen.

13 Vereinte Nationen, Generalversammlung der Vereinten Nationen (1993), Grundsätze betreffend die Stellung nationaler Institutionen (Pariser Grundsätze).

14 Europarat, Kommissar für Menschenrechte (2011), *Stellungnahme des Kommissars für Menschenrechte über nationale Strukturen zur Förderung der Gleichstellung*, Straßburg, 21. März 2011.

15 Europarat, Europäische Kommission gegen Rassismus und Intoleranz (ECRI) (2017), *Allgemeine politische Empfehlung Nr. 2, „Equality Bodies to Combat Racism and Intolerance at National Level“* (Gleichstellungsstellen zur Bekämpfung von Rassismus und Intoleranz auf nationaler Ebene) (überarbeitet), Straßburg, 7. Dezember 2017.

Institutionelle Architektur

Die institutionelle Architektur der Gleichstellungsstellen bezieht sich zunächst auf den breiteren Rahmen externer institutioneller Beteiligung an Fragen der Gleichstellung und Nichtdiskriminierung. Auf interner Ebene bezieht sie sich darüber hinaus auf die Art und Weise, in der das Mandat der Gleichstellungsstelle festgelegt wird, auf die der Gleichstellungsstelle übertragenen Funktionen und die von ihr abgedeckten Diskriminierungsgründe.

Gleichstellungsstellen arbeiten innerhalb einer breiteren Infrastruktur staatlicher und zivilgesellschaftlicher Organisationen, die sich für Gleichstellung und Nichtdiskriminierung einsetzen. Durch Maximierung ihres Potenzials haben die Gleichstellungsstellen gute Praxis demonstriert, indem sie als Plattform agiert haben, die diese Organisationen verbindet, gegenseitiges Lernen und eine gemeinsame Sichtweise fördert und kohärentes Handeln ermöglicht. Sie haben wertvolle Dienste als leicht zugänglicher Einstieg in den Zugang zur Justiz geleistet, Menschen darin unterstützt, diesen Weg zu beschreiten, und sich dafür eingesetzt, die Institutionen entlang dieses Weges über die gesetzlichen Gleichbehandlungsvorschriften zu informieren.

All dies stellt Anforderungen an die Führung von Gleichstellungsstellen. Sie müssen ihre Autorität in Fragen der Gleichstellung und Nichtdiskriminierung aufrechterhalten, ihre Fähigkeit zur Durchsetzung der Gleichbehandlungsvorschriften bewahren und mit anderen Organisationen bei der Verfolgung gemeinsamer Ziele partnerschaftlich zusammenarbeiten. Wenn sie eine Entscheidungsfunktion haben, müssen sie sowohl Teil des Weges sein, der Zugang zur Justiz verschafft, als auch Menschen darin unterstützen, diesen Weg zu beschreiten, und sicherstellen, dass die verschiedenen Institutionen, die auf diesem Weg liegen, über das erforderliche Verständnis, Wissen und die Fähigkeit verfügen, mit Diskriminierungsfällen umzugehen.

Gleichstellungsstellen mit mehreren Mandaten, darunter einem Gleichstellungsmandat, sind potenziell in der Lage, Gleichstellungs- und Diskriminierungsfragen umfassender und effektiver anzugehen als Gleichstellungsstellen mit nur einem Mandat. Indes nährt sich jedes Mandat aus seiner speziellen, eigenen Tradition und ist es für die Verwirklichung dieses Potenzials erforderlich, dass Gleichstellungsstellen mit Mehrfachmandat einem integrierten Ansatz bei ihren verschiedenen Mandaten folgen. Besonders schwierig kann dies dann sein, wenn das Gleichstellungsmandat der Stelle erst später, nach anderen Mandaten erteilt wird: Letzten Endes wird das Gleichstellungsmandat durch die Traditionen, die mit den anderen Mandaten verbunden sind und sich im Laufe der Zeit in der jeweiligen Gleichstellungsstelle bereits gefestigt haben, in seinem Anspruch und seinem Ansatz eingeengt. Grundsätzlich müssen in einer solchen Situation die Sichtbarkeit des Gleichstellungsmandats und Investitionen in dieses Mandat sichergestellt werden. Derartige Herausforderungen verlangen von der jeweiligen Gleichstellungsstelle ein aktives Management der verschiedenen Mandate, das deren spezielle Anforderungen und Traditionen berücksichtigt.

In sieben der 14 Gleichstellungsstellen mit Mehrfachmandat wurde kein aktives Management vorgefunden.¹⁶ In sechs dieser sieben Einrichtungen wurde eine mangelnde Sichtbarkeit des Gleichstellungsmandats und eine eingeschränkte Nutzung der mit dem Gleichstellungsmandat verbundenen Befugnisse festgestellt.¹⁷ Der dominierende Ansatz bei den anderen sieben Gleichstellungsstellen im Umgang mit ihren Mehrfachmandaten ist silobasiert, das heißt, es gibt eine separate Stabsstelle, die mit dem Gleichstellungsmandat befasst ist. Dadurch wird das Gleichstellungsmandat sichtbar und es wird sichergestellt, dass die mit diesem Mandat verbundenen Zuständigkeiten umgesetzt werden. Dieser Ansatz bleibt jedoch hinter den integrierten Ansätzen für Mehrfachmandate, die ihr volles Potenzial ausschöpfen können, zurück. In drei Gleichstellungsstellen mit Mehrfachmandat gibt es eine stellvertretende

16 Estland, Irland, Lettland, Liechtenstein, Slowakei, Vereinigtes Königreich (Großbritannien) und Zypern.

17 Das Vereinigte Königreich (Großbritannien) bildet die Ausnahme: hier hatten die entsprechenden Stellen ursprünglich nur ein Gleichstellungsmandat.

Ombudsperson mit spezieller Zuständigkeit für das Gleichstellungsmandat.¹⁸ Dies ist insofern wichtig, als es eine strategische Ausrichtung der Umsetzung des Gleichstellungsmandats und Zugang zu dem dafür erforderlichen spezifischen Fachwissen ermöglicht.

Viele Gleichstellungsstellen haben Funktionen und entsprechende Zuständigkeiten, die über die Anforderungen der EU-Gleichbehandlungsrichtlinien hinausgehen, die speziell verlangen, dass die Stellen Personen, die von Diskriminierung betroffen sind, unterstützen, Untersuchungen durchführen, Berichte erstellen und Empfehlungen zu Diskriminierungsfragen vorlegen. Dieses erweiterte Spektrum an Funktionen und Zuständigkeiten ermöglicht es ihnen, den strategischen Mix aus Durchsetzung, Förderung guter Praxis, Kommunikation, Forschung und Aktivitäten zur Einbeziehung von Interessenträgern anzuwenden, der erforderlich ist, damit sie Wirkung erzielen und Veränderungen für Einzelpersonen, Institutionen und die Gesellschaft als Ganzes vorantreiben können.

Spannungen ergeben sich jedoch, wenn der Gleichstellungsstelle neben der Förder- und Präventionsfunktion sowie der Unterstützungs- und Rechtsstreitfunktion eine Entscheidungsfunktion zugewiesen wird. Die Entscheidungsfunktion erfordert eine Unparteilichkeit, die dem für die beiden anderen Funktionen erforderlichen Ansatz zuwiderläuft. Dies führt letzten Endes dazu, dass Art und Qualität der Unterstützung für diejenigen, die einen Fall von Diskriminierung vor Gericht bringen wollen, eingeschränkt werden. Das Problem wird abgemildert, wenn eine spezielle Abteilung innerhalb der Gleichstellungsstelle beschwerdeführende Personen unterstützt. Das offenkundig beste Verfahren besteht darin, die Entscheidungsfunktion in einer anderen Gleichstellungsstelle anzusiedeln. Die Kombination von Funktionen kann auch zu einem Wettstreit um Ressourcen zwischen den verschiedenen Funktionen führen, wobei die Erfordernisse der Entscheidungsfunktion die Haushalts- und Personalentscheidungen dominieren.

Gleichstellungsstellen, die mehrere Diskriminierungsgründe abdecken, sind die Regel. Sie haben die wertvolle Fähigkeit, einen übergreifenden, nicht-hierarchischen Ansatz in Bezug auf Gleichstellung und Nichtdiskriminierung zu verfolgen, insbesondere wenn sie mit einer offenen Liste von Diskriminierungsgründen arbeiten. Gleichzeitig stehen sie jedoch vor der Herausforderung, für jeden der von ihnen abgedeckten Gründe Sichtbarkeit und wirksame Maßnahmen zu gewährleisten. Auch der mögliche Umfang der in einer offenen Liste erfassten Diskriminierungsgründe und die Vagheit in deren Definition können eine Herausforderung darstellen. Von den meisten Gleichstellungsstellen wurde berichtet, dass sie den verschiedenen Diskriminierungsgründen, auf die sich ihr Mandat erstreckt, angemessene Aufmerksamkeit widmen. Es gibt jedoch nur wenige Belege für das aktive Management, das bei Mandaten, die sich auf mehrere Diskriminierungsgründe erstrecken, notwendig ist, um Sichtbarkeit und Relevanz aller abgedeckten Gründe zu gewährleisten und das Potenzial eines solchen Mandats zu maximieren.

Wenige Belege gibt es auch für ein aktives Management von Mandaten, die sich auf mehrere Diskriminierungsgründe erstrecken, wenn es darum geht, die Mischung und das Zusammenspiel von Aktivitäten bezüglich einzelner, mehrerer oder sich überschneidender Diskriminierungsgründe sicherzustellen, die erforderlich sind, um das Potenzial eines solchen Mandats auszuschöpfen und die Relevanz aller abgedeckten Gründe zu gewährleisten. Der dominierende Ansatz für das Management mehrerer Diskriminierungsgründe ist insofern reaktiv, als er auf eingehende Beschwerden reagiert. Es gibt interessante Beispiele von Gleichstellungsstellen, die ihre Arbeit einer Überprüfung unterziehen, um eine übergreifende Ausrichtung auf alle abgedeckten Diskriminierungsgründe zu gewährleisten.

Die Arbeit der Gleichstellungsstellen weist Elemente auf, die charakteristisch sind für das aktive Management einer Agenda, die mehrere Diskriminierungsgründe abdeckt. Es gibt auch Beispiele für Arbeit von Gleichstellungsstellen, die sich auf einen einzigen Diskriminierungsgrund erstreckt. Diese ist in der Regel jedoch insofern reaktiv, als sie auf internationale Impulse aufgrund politischer Entwicklungen oder Finanzierungsquellen reagiert. Eine große Zahl von Initiativen, die mehrere Diskriminierungsgründe

¹⁸ Griechenland, Kroatien und Polen.

umfassen, findet sich in der Fallbearbeitung und wenn es darum geht, gute Praxis von Arbeitgebern und Dienstleistern zu unterstützen. Belege für intersektionelle Arbeit gibt es kaum.

In Belgien, Kroatien, Finnland und Island hat es – oft hitzige – Debatten darüber gegeben, ob Gleichstellungsstellen, deren Mandat sich auf den Diskriminierungsgrund „Geschlecht“ beschränkt, in Gleichstellungsstellen eingegliedert werden sollten, die mehrere Diskriminierungsgründe abdecken. Zugunsten von Gleichstellungsstellen, die nur den Diskriminierungsgrund „Geschlecht“ abdecken, wurden unter anderem folgende Argumente vorgebracht: Sichtbarkeit für Genderfragen; spezifisches Fachwissen, um mit diesen Fragen umzugehen; Fähigkeit, geschlechtsspezifische Diskriminierung in den Vordergrund zu stellen; die Tatsache, dass Frauen mehr als die Hälfte der Bevölkerung ausmachen und die Bedeutung der Geschlechtergleichstellung in allen Bereichen.

Zugunsten von Gleichstellungsstellen, die mehrere Diskriminierungsgründe abdecken, wurden andererseits folgende Argumente angeführt: Fähigkeit, übergreifend und nicht-hierarchisch zu arbeiten; Einfachheit der Verwaltungsabläufe für Arbeitgeber und Dienstleister bei der Erfüllung ihrer Pflichten; Schwerpunkt auf Intersektionalität und Mehrfachdiskriminierung; zentrale Anlaufstelle für beschwerdeführende Personen. Bislang gibt es keine Hinweise darauf, dass es für einzelne Diskriminierungsgründe nachteilig ist, wenn sie in einem Rahmen angesiedelt sind, der mehrere Diskriminierungsgründe umfasst. Tatsächlich könnten sie von einem solchen Umfeld sogar profitieren, insbesondere wenn ein aktives Management der Gründe vorhanden ist.

Unabhängigkeit

Rechtsstatus, Art und Weise der Berufungen, Formen der Rechenschaftslegung und operative Praxis sind Schlüsselfaktoren für die Unabhängigkeit von Gleichstellungsstellen. Allen untersuchten Gleichstellungsstellen wird eine funktionale Unabhängigkeit bestätigt.

Die Situation, was den Rechtsstatus betrifft, ist überwiegend positiv, da 31 von 43 Gleichstellungsstellen über eine eigene Rechtspersönlichkeit verfügen – im Bezug auf Unabhängigkeit gilt dies als optimale Lösung. Zehn Gleichstellungsstellen waren jedoch Teil von Ministerien,¹⁹ was ihre Unabhängigkeit einschränkt. Eine starke Führung kann diesem staatlichen Einfluss entgegenwirken, indem sie die unabhängige Arbeitsweise der betreffenden Gleichstellungsstellen gewährleistet, und es gibt entsprechende Belege. Zwei Gleichstellungsstellen gehören NGO-Verbänden an.²⁰

Was die Berufungen in Gleichstellungsstellen betrifft, so ist das Bild weniger einheitlich: in 20 von 43 Gleichstellungsstellen wurden die Führungskräfte von der Regierung oder von Ministern bestellt.²¹ Dies gefährdet die Unabhängigkeit. Andererseits werden bei 13 von 43 Gleichstellungsstellen die Führungskräfte derzeit vom Parlament bestellt²² – aktueller Standard für gute Praxis. Ein transparentes, kompetenzbasiertes und partizipatives Verfahren für Berufungen – auch durch das Parlament – fehlt jedoch in den meisten Fällen, was problematisch ist.

In den übrigen 10 Fällen wurden unterschiedliche Regelungen angetroffen. In acht Gleichstellungsstellen werden die Mitglieder des Vorstands zum Beispiel von verschiedenen Organisationen bestellt.²³ Ist eine

19 Deutschland, Finnland (zwei GSt), Island, Italien (zwei GSt), Österreich (zwei GSt), Portugal (CIG) und Spanien.

20 Liechtenstein.

21 Belgien (IEWM), Dänemark (Gleichbehandlungsausschuss), Deutschland, Estland (Beauftragte/r für Geschlechtergleichstellung und Gleichbehandlung), Finnland (zwei GSt), Frankreich, Island, Italien (UNAR), Malta, Norwegen (zwei GSt), Österreich (Gleichbehandlungsanwaltschaft), Portugal (CEARD und CIG), Schweden, Ungarn, Vereinigtes Königreich (Großbritannien und Nordirland) und Zypern.

22 Belgien (UNIA), Estland (Justizkanzler), Griechenland, Irland, Kroatien (zwei GSt), Lettland, Litauen, Luxemburg, Polen, Rumänien, Slowenien und Tschechische Republik.

23 Dänemark (Dänisches Institut für Menschenrechte), Italien (Nationaler Gleichstellungsausschuss), Liechtenstein (zwei GSt), Österreich (Gleichbehandlungskommission), Portugal (CITE), Slowakei und Spanien.

andere Einrichtung mit eigenen Interessen im Vorstand der Gleichstellungsstelle vertreten, so kann dies deren Unabhängigkeit beeinträchtigen. Negativ zu vermerken ist, dass es bei sechs Gleichstellungsstellen Hinweise auf politische Einflussnahme, sowohl bei der Berufung als auch bei der Abberufung von Führungskräften, gibt.²⁴

Auch bei der Rechenschaftspflicht von Gleichstellungsstellen ergibt sich ein gemischtes Bild. Dreizehn der 43 Gleichstellungsstellen sind dem Parlament gegenüber rechenschaftspflichtig,²⁵ meist durch Vorlage ihres Jahresberichts. In Bezug auf Unabhängigkeit gilt dies derzeit als gute Praxis. Achtzehn Gleichstellungsstellen sind der Regierung, Ministern oder dem Präsidenten bzw. der Präsidentin gegenüber rechenschaftspflichtig,²⁶ was Fragen bezüglich der Unabhängigkeit aufwirft. Zwei Gleichstellungsstellen sind einer Mischung aus beidem gegenüber rechenschaftspflichtig.²⁷ In Liechtenstein ist das Büro für die Gleichstellung von Menschen mit Behinderungen einer Vereinigung von NGOs gegenüber rechenschaftspflichtig. Es gibt Beispiele für neue bewährte Verfahren: Fünf Gleichstellungsstellen haben keine namentlich bezeichnete Rechenschaftspflicht,²⁸ zwei Gleichstellungsstellen sind den gesetzlichen Prüfbehörden gegenüber rechenschaftspflichtig,²⁹ und in den Niederlanden ist die Gleichstellungsstelle mehreren Ministerien gegenüber finanziell rechenschaftspflichtig.

Was die operative Praxis betrifft, so wird anerkannt, dass die Führung von Gleichstellungsstellen für deren Unabhängigkeit von zentraler Bedeutung ist. Den für Gleichstellungsstellen erforderlichen Führungsqualitäten und kompetenzen wird zu wenig Aufmerksamkeit geschenkt, und die bestehenden Führungsmodelle werden keiner Bewertung oder Kritik unterzogen.

Wirksamkeit

Wesentliche externe Faktoren für die Wirksamkeit von Gleichstellungsstellen sind die ihnen bereitgestellten Ressourcen und das Spektrum der ihnen übertragenen Zuständigkeiten. Interne Faktoren für Wirksamkeit sind unter anderem strategische Planung und Einbeziehung von Interessenträgern seitens der Gleichstellungsstellen.

Der Umfang der den Gleichstellungsstellen zur Verfügung stehenden Ressourcen ist sehr unterschiedlich, nur wenige verfügen jedoch über finanzielle Mittel in einer Höhe, die ausreicht, um echte Wirkung zu erzielen. Darin besteht das größte Hindernis für Wirksamkeit. Dies bedeutet, dass das volle Potenzial von Gleichstellungsstellen nach wie vor nur erahnt werden kann und noch nie ausgetestet wurde. Es ist jedoch eine langsame Verbesserung der Ressourcenlage festzustellen: Bei 16 Gleichstellungsstellen wurden in den letzten Jahren der Personalbestand und/oder das Budget aufgestockt.³⁰ Andererseits haben elf Gleichstellungsstellen³¹ in den letzten Jahren einen Rückgang ihres Personalbestands und/oder ihres Budgets verzeichnet, wobei die Budgetkürzungen bei drei dieser Gleichstellungsstellen³² unverhältnismäßig waren.

24 Bulgarien, Italien (zwei GSt), Rumänien, Schweden und Zypern.

25 Belgien (IEWM), Deutschland, Finnland (zwei GSt), Italien (zwei GSt), Malta, Norwegen (zwei GSt), Österreich (zwei GSt), Portugal (3 GSt), Schweden, Spanien, Vereinigtes Königreich (Großbritannien und Nordirland) und Zypern.

26 Belgien (UNIA), Bulgarien, Dänemark (Dänisches Institut für Menschenrechte), Irland, Kroatien (zwei GSt), Lettland, Litauen, Polen, Rumänien, Slowenien, Tschechische Republik und Ungarn.

27 Frankreich und Luxemburg.

28 Estland (Beauftragte/r für Geschlechtergleichstellung und Gleichbehandlung), Griechenland, Liechtenstein (Vereinigung für Menschenrechte), Österreich (Gleichbehandlungskommission) und Slowakei.

29 Estland (Justizkanzler) und Island.

30 Belgien (UNIA), Bulgarien, Finnland (Ombudsperson für Nichtdiskriminierung), Griechenland, Irland, Island, Kroatien (Bürger-Ombudsperson), Lettland, Litauen, Luxemburg, Österreich (Gleichbehandlungsanwaltschaft), Portugal (CEARD), Rumänien, Slowenien, Tschechische Republik und Ungarn.

31 Belgien (IEWM), Estland (Beauftragte/r für Geschlechtergleichstellung und Gleichbehandlung), Italien (Gender-Einrichtungen), Niederlande, Norwegen (zwei GSt), Polen, Spanien, Vereinigtes Königreich (Großbritannien und Nordirland) und Zypern.

32 Polen und Vereinigtes Königreich (Großbritannien und Nordirland).

Eingeschränkte Zuständigkeiten untergraben die Wirksamkeit von Gleichstellungsstellen insofern, als diese dann nicht in der Lage sind, den strategischen Maßnahmenmix umzusetzen, der erforderlich ist, um zum sozialen Wandel beizutragen. Die Durchsetzungsanstrengungen von 19 der 25 Gleichstellungsstellen mit Entscheidungsfunktion werden dadurch beeinträchtigt, dass sie keine rechtsverbindlichen Entscheidungen fällen und/oder Sanktionen verhängen können.³³ Vier dieser 25 Gleichstellungsstellen können keine angemessenen Sanktionen verhängen.³⁴ Bei acht Gleichstellungsstellen findet nur ein begrenztes Follow-up ihrer Entscheidungen statt.³⁵ Von weiteren Einschränkungen ihrer Zuständigkeit sind 17 Gleichstellungsstellen betroffen, die nicht befugt sind, Diskriminierungsfälle vor Gericht zu bringen oder vor Gericht als Amicus Curiae aufzutreten.³⁶

Mangelnde Ressourcen oder beschränkte Strategien können häufig zu einer Einschränkung von Zuständigkeiten führen. Da viele Gleichstellungsstellen über eingeschränkte Zuständigkeiten verfügen, arbeiten nur 14 Gleichstellungsstellen aktiv daran, Standards für gute Praxis in Bezug auf Gleichstellung und Vielfalt für Entscheidungsträger, Dienstleister und Arbeitgeber zu fördern.³⁷ Siebzehn Gleichstellungsstellen setzen nicht alle ihre Zuständigkeiten in jeder ihrer Funktionen ein oder sind nicht in der Lage, dies zu tun.³⁸ Positiv zu vermerken ist andererseits, dass 10 Gleichstellungsstellen die Befugnis erhalten haben, positive Gleichbehandlungspflichten im Sinne der Gleichbehandlungsvorschriften zu unterstützen und/oder durchzusetzen.³⁹ Diese gesetzlichen Pflichten waren für die Gleichstellungsstellen ein wichtiger Hebel, um proaktivere Gleichstellungsansätze im öffentlichen und privaten Sektor zu fördern.

Die Gleichstellungsstellen selbst haben die Wirksamkeitsstandards nicht erfüllt. Alle Gleichstellungsstellen produzieren irgendeine Form von Jahresbericht, ihr Engagement im gesamten Planungszyklus ist jedoch unterentwickelt. Nur 14 Gleichstellungsstellen haben eine strategische Planung mit entsprechenden jährlichen Arbeitsprogrammen entwickelt.⁴⁰ Nur 10 Gleichstellungsstellen haben irgendeine Form von Evaluierung durchgeführt.⁴¹

Die Einbeziehung von Interessenträgern durch Gleichstellungsstellen ist in der Regel informell. Dies ist zwar hilfreich, um Konsultationen zu bestimmten Fragen zu führen, kann aber den vollen potenziellen Gewinn an Wirksamkeit nicht ausschöpfen. Eine formelle Einbindung von Interessenträgern ist in der Arbeit

33 Estland (zwei GSt), Finnland (zwei GSt), Frankreich, Griechenland, Kroatien (zwei GSt), Lettland, Litauen (kann Geldbußen verhängen), Malta, Niederlande, Norwegen (Entscheidungen des Schiedsgerichts für Gleichbehandlung und Antidiskriminierung für staatliche Stellen rechtlich nicht bindend), Österreich, Polen, Schweden, Slowakei, Slowenien (rechtlich bindend, kann aber keine Sanktionen verhängen) und Tschechische Republik.

34 Bulgarien, Dänemark, Litauen und Zypern.

35 Bulgarien, Dänemark (Gleichbehandlungsausschuss), Finnland (Ombudsperson für Geschlechtergleichstellung), Lettland, Norwegen (Schiedsgericht für Gleichbehandlung und Antidiskriminierung), Österreich (Gleichbehandlungskommission), Polen und Ungarn.

36 Dänemark (Dänisches Institut für Menschenrechte – beschränkt auf Amicus Curiae), Deutschland (beschränkt auf Amicus Curiae), Finnland (Ombudsperson für Nichtdiskriminierung, Gerichte können jedoch Stellungnahmen von anderen Stellen einholen), Frankreich (beschränkt auf Abgabe von Stellungnahmen vor Gerichten), Griechenland, Island, Italien (UNAR, beschränkt auf Amicus Curiae), Kroatien (Ombudsperson für Geschlechtergleichstellung), Litauen, Luxemburg, Norwegen (Schiedsgericht für Gleichbehandlung und Antidiskriminierung), Österreich (Gleichbehandlungsanwaltschaft kann Fälle nur unter bestimmten Umständen vor Gericht bringen), Portugal (CITE und CIG, beschränkt auf Amicus Curiae), Schweden (eingeschränkte Klagebefugnis), Tschechische Republik und Zypern.

37 Belgien (zwei GSt), Dänemark (Dänisches Institut für Menschenrechte), Deutschland, Frankreich, Irland, Island, Italien, Liechtenstein, Portugal (CIG und CITE), Schweden und Vereinigtes Königreich (Großbritannien und Nordirland).

38 Bulgarien, Estland (Justizkanzler), Finnland (zwei GSt), Irland, Italien (UNAR), Lettland, Niederlande, Norwegen (Ombudsperson für Gleichbehandlung und Antidiskriminierung), Österreich (Gleichbehandlungskommission), Portugal (CEARD), Schweden, Slowakei, Spanien, Tschechische Republik, Ungarn und Zypern.

39 Belgien (Institut für die Gleichstellung von Frauen und Männern), Finnland (zwei GSt), Irland, Kroatien (Ombudsperson für Geschlechtergleichstellung), Norwegen (zwei GSt), Schweden und Vereinigtes Königreich (Großbritannien und Nordirland).

40 Belgien (zwei GSt), Dänemark (Dänisches Institut für Menschenrechte), Finnland (Ombudsperson für Nichtdiskriminierung), Irland, Kroatien (zwei GSt), Lettland, Litauen, Niederlande, Norwegen (Ombudsperson für Gleichstellung und Nichtdiskriminierung), Schweden und Vereinigtes Königreich (Großbritannien und Nordirland).

41 Belgien (zwei GSt), Dänemark (Dänisches Institut für Menschenrechte), Kroatien (Ombudsperson für Geschlechtergleichstellung), Litauen, Niederlande, Österreich (zwei GSt), Schweden und Vereinigtes Königreich (Großbritannien).

von 12 Gleichstellungsstellen festzustellen.⁴² Sie kann unterschiedliche Formen annehmen: gemeinsame Initiativen mit Interessenträgern, Einbeziehung von Interessenträgern in die Arbeit und die Beratungen von Gleichstellungsstellen oder Anbieten einer Plattform für die Interaktion von Interessenträgern.

Zugänglichkeit

Die Zugänglichkeit von Gleichstellungsstelle beginnt mit deren Räumlichkeiten. Bis auf acht haben alle Gleichstellungsstellen gut erreichbare Geschäftsräume.⁴³ Lokale und regionale Büros sind wichtig für Gleichstellungsstellen, um für Personen, die Beschwerde einreichen wollen, erreichbar zu sein und so der Tatsache entgegenzuwirken, dass in größeren Ländern Fälle häufig nicht gemeldet werden. Sie sind jedoch die Ausnahme: Nur 11 Gleichstellungsstellen in 10 Ländern verfügen über solche Büros.⁴⁴ Sechs Gleichstellungsstellen haben eine lokale Präsenz aufgebaut, indem sie mit anderen Einrichtungen zusammenarbeiten oder diese dabei unterstützen, mit Betroffenen auf lokaler Ebene in Kontakt zu kommen.⁴⁵ Viele Gleichstellungsstellen machen Öffentlichkeitsarbeit, 10 tun dies jedoch nicht.⁴⁶ In föderalen Strukturen wie z. B. Österreich ist eine spezielle Komplexität festzustellen, die den Zugang zur Justiz behindert.

Die Gleichstellungsstellen sind zweifellos gewillt, Maßnahmen zu ergreifen, um der Vielfalt der beschwerdeführenden Personen in ihren Dienstleistungen und Aktivitäten Rechnung zu tragen. Nur wenige haben jedoch systematische Ansätze entwickelt, um dieser Vielfalt gerecht zu werden. Von den 43 Gleichstellungsstellen verfügen 28 über irgendeine Art von Verfahren, um mit den praktischen Auswirkungen von Vielfalt umzugehen, die entstehen, wenn sie mit Menschen aus unterschiedlichen Gruppen Kontakt aufnehmen und diesen Dienstleistungen erbringen.⁴⁷ Ein klar definiertes Muster oder Modell ist dabei nicht zu erkennen. Ein deutlicher Schwerpunkt liegt auf den Bedürfnissen von Menschen mit Behinderungen, Menschen mit Betreuungsaufgaben, Menschen mit Lese- und Schreibproblemen, Menschen, für die die Verfahrenskosten oder Nebenkosten gegebenenfalls ein Hindernis darstellen, und Menschen, die eine andere Sprachen als die Landessprache sprechen.

Auswirkungen

Die positiven Auswirkungen der Gleichstellungsstellen wurden auf der Grundlage ihrer Leistungen ermittelt. Die Auswirkungen auf Personen wurden anhand der Zahl der behandelten Beschwerden bestimmt. Die Auswirkungen auf Institutionen wurden anhand folgender Kriterien ermittelt: Umfang und Art von Empfehlungen, die in den bearbeiteten Fällen ausgesprochenen wurden; Umfang und Art der Arbeitgebern und Dienstleistungserbringern gewährten Unterstützung für gute Praxis und die Umsetzung positiver Gleichstellungspflichten; Umfang und Art der strategischen Beratung der Regierung. Die Auswirkungen

42 Belgien (zwei GSt), Dänemark (Dänisches Institut für Menschenrechte), Finnland (Ombudsperson für Nichtdiskriminierung), Frankreich, Irland, Kroatien (zwei GSt), Litauen, Norwegen (Ombudsperson für Gleichstellung und Nichtdiskriminierung) und Polen.

43 Belgien (IEWM), Bulgarien, Island, Italien, Norwegen (Schiedsgericht für Gleichbehandlung und Antidiskriminierung), Rumänien, Schweden und Spanien.

44 Belgien (UNIA), Bulgarien, Italien (kommunale Gleichstellungsbeauftragte), Kroatien (Bürger-Ombudsperson), Österreich (Gleichbehandlungsanwaltschaft), Polen, Portugal (CEARD und CIG), Rumänien, Slowakei und Vereinigtes Königreich (Großbritannien).

45 Finnland (Ombudsperson für Nichtdiskriminierung), Frankreich, Kroatien (Bürger-Ombudsperson), Niederlande, Portugal (CITE) und Spanien.

46 Belgien (Institut für die Gleichstellung von Frauen und Männern), Dänemark (DIMR und Gleichbehandlungsausschuss), Finnland (Ombudsperson für Geschlechtergleichstellung und Ombudsperson für Nichtdiskriminierung), Italien (UNAR), Kroatien (Ombudsperson für Genderfragen), Norwegen (Schiedsgericht für Gleichbehandlung und Antidiskriminierung), Vereinigtes Königreich (ECNI) und Zypern (Kommissar für Verwaltung und Menschenrechte).

47 Deutschland, Estland (Beauftragte/r für Geschlechtergleichstellung und Gleichbehandlung), Finnland (Ombudsperson für Geschlechtergleichstellung), Frankreich, Irland, Italien (Gender-Einrichtungen), Kroatien (Ombudsperson für Geschlechtergleichstellung), Lettland, Liechtenstein (zwei GSt), Litauen, Luxemburg, Malta, Niederlande, Norwegen (zwei GSt), Österreich (zwei GSt), Polen, Portugal (drei GSt), Schweden, Slowenien, Tschechische Republik und Vereinigtes Königreich (Großbritannien und Nordirland).

auf die Gesellschaft wurden anhand des Umfangs und der Art von öffentlichen Aufklärungskampagnen, Medienarbeit und Sensibilisierungsmaßnahmen ermittelt.

Die realen Auswirkungen von Gleichstellungsstellen sind schwer zu bemessen, da es an Daten und Mitteln zur Durchführung der dafür erforderlichen Untersuchungen mangelt und weil es schwierig ist, einen kausalen Zusammenhang zwischen sozialen Veränderungen und den konkreten Aktivitäten der Gleichstellungsstellen herzustellen. Verschärft wird dies durch die beschränkte Evaluierungsarbeit seitens der Gleichstellungsstellen selbst. Die Beschränktheit der den Gleichstellungsstellen bereitgestellten Ressourcen, Defizite in den ihnen übertragenen Zuständigkeiten und fehlende strategische Planung seitens der Gleichstellungsstellen führen dazu, dass viele von ihnen ihr Potenzial derzeit noch nicht voll ausschöpfen.

Weitere Anstrengungen sind erforderlich, um eine Denkweise und eine gemeinsame Vision der Theorie des Wandels zu entwickeln, die der Arbeit der Gleichstellungsstellen Form geben könnte. Die Gleichstellungsstellen stehen vor der Herausforderung, den von ihnen angestrebten sozialen Wandel zu definieren und zu untersuchen, wie dieser Wandel in ihrem jeweiligen Land vonstattengehen könnte. Dies ist der Ausgangspunkt einer Strategie, die das Potenzial hat, Wirkung zu erzielen. Eine von Equinet entwickelte Reihe von Indikatoren liefert eine Grundlage für die Messung und Bewertung der Auswirkungen von Gleichstellungsstellen. Die Anwendung dieser Indikatoren könnte einen Prozess anstoßen, in dem die Gleichstellungsstellen den von ihnen angestrebten Wandel präzisieren und den strategisch wirksamsten Mix aus Maßnahmen und Zuständigkeiten definieren, der zur Herbeiführung dieses Wandels eingesetzt werden sollte.

Vorschläge

Folgende, auf europäischer Ebene zu ergreifende Maßnahmen könnten von Nutzen sein:

1. Beteiligung zuständiger Vertreter der nationalen Regierungen an einem ständigen Dialog über das Potenzial von Gleichstellungsstellen, die Maßnahmen, die erforderlich sind, um diesen die Ausschöpfung ihres Potenzial zu ermöglichen, und darüber, wie die Zusammenarbeit mit den Gleichstellungsstellen optimal gestaltet werden kann. Dieser Dialog könnte im Rahmen der verschiedenen auf dieser Ebene bestehenden Foren des Peer-Learning – Hochrangige Gruppe für Nichtdiskriminierung, Gleichstellung und Vielfalt, Hochrangige Gruppe zur Bekämpfung von Rassismus, Fremdenfeindlichkeit und anderen Formen der Intoleranz und Beratender Ausschuss für die Chancengleichheit von Frauen und Männern – geplant und organisiert werden.
2. Förderung des Dialogs über die Empfehlung der Europäischen Kommission zu Standards für Gleichstellungsstellen und Entwicklung eines gemeinsamen Verständnisses derselben unter den Mitgliedstaaten; Erforschung von Monitoring und Unterstützungssystemen mit dem Ziel, Fähigkeit und Engagement der zuständigen Behörden der Mitgliedstaaten im Hinblick auf ihre Umsetzung zu gewährleisten. Im Rahmen dieses Prozesses könnte es sinnvoll sein, die gesamte Bandbreite internationaler Standards für Gleichstellungsstellen in den Blick zu nehmen.
3. Entwicklung und Monitoring eines Modells zur Bestimmung der angemessenen Finanzierung von Gleichstellungsstellen, das folgende Faktoren berücksichtigen könnte: Größe des Mitgliedstaats und seiner Bevölkerung; Zahl und Art der gemeldeten und nicht gemeldeten Diskriminierungsfälle; andere in diesem Bereich tätige Stellen sowie deren Kapazität und Beitrag; Kosten, die damit verbunden sind, die Zuständigkeiten einer Gleichstellungsstelle in dem erforderlichen Ausmaß und mit der erforderlichen Qualität wahrzunehmen, um Wirkung zu erzielen; und schließlich Umfang des nationalen Haushalts.

Folgende, auf nationaler Ebene zu ergreifende Maßnahmen könnten von Nutzen sein:

1. Formelle Überprüfung der für die Gleichstellungsstelle geschaffenen Bedingungen anhand derjenigen, die in der Empfehlung der Europäischen Kommission und der Allgemeinen politischen Empfehlung der ECRI formuliert wurden, und Verbesserung dieser Bedingungen, falls erforderlich.
2. Einführung von Vorschriften über Mehrfachdiskriminierung in das Gleichbehandlungsrecht, die es ermöglichen, dass Fälle aus mehreren Gründen vor Gericht gebracht werden, und sich mit den komplexen Anforderungen in Bezug auf Vergleichspersonen in solchen Fällen befassen. Damit könnte der zusätzlichen Schwere von Fällen Rechnung getragen werden, in denen mehr als ein Diskriminierungsgrund betroffen ist.
3. Ein transparentes, kompetenzbasiertes und partizipatives Verfahren für Berufungen in Gleichstellungsstellen, das unter Federführung des Parlaments stattfinden und die Einbeziehung einer Vertretung anderer Einrichtungen vermeiden könnte.
4. Umstrukturierung der den Gleichstellungsstellen auferlegten Rechenschaftspflicht dahingehend, dass diese das Parlament mithilfe ihres Jahresberichts auf dem Laufenden halten, jedoch allein der zuständigen staatlichen Prüfbehörde gegenüber rechenschaftspflichtig sind.
5. Bereitstellung ausreichender Mittel für Gleichstellungsstellen, damit diese alle ihre Funktionen und Zuständigkeiten im dem Umfang und mit den Standards wahrnehmen können, die erforderlich sind, um Wirkung zu erzielen.
6. Überprüfung der den Gleichstellungsstellen übertragenen Zuständigkeiten und entsprechende Maßnahmen, um sicherzustellen, dass sie über sämtliche Befugnisse verfügen, die zur Erfüllung ihrer Aufgaben erforderlich sind, insbesondere die Befugnis, rechtsverbindliche Entscheidungen zu treffen und Sanktionen zu verhängen, vor Gericht zu ziehen und Standards für bewährte Verfahren im Bereich Gleichstellung und Vielfalt zu fördern.
7. Einführung von Vorschriften über positive Gleichstellungspflichten in das Gleichstellungsrecht, die es den Gleichstellungsstellen ermöglichen, Regeln für deren Umsetzung festzulegen und die Einhaltung dieser Regeln zu überwachen und durchzusetzen.
8. Aufbau einer lokalen Präsenz der Gleichstellungsstelle in dem von ihr abgedeckten geografischen Gebiet, insbesondere durch lokale Büros oder Mittler.

Folgende Maßnahmen, an denen Gleichstellungsstellen – kollektiv oder einzeln – beteiligt sind, könnten von Nutzen sein:

1. Überprüfung der für die Gleichstellungsstelle geschaffenen Bedingungen anhand der Empfehlung der Europäischen Kommission und der Allgemeinen politischen Empfehlung der ECRI sowie Übermittlung der Ergebnisse an die zuständigen Behörden mit Empfehlungen für eventuell notwendige Verbesserungen.
2. Bewertung der internen Abläufe der Gleichstellungsstelle anhand dieser Normen in einem offenen und partizipativen Prozess sowie Weiterentwicklung derselben, falls erforderlich.
3. Entwicklung von Vorlagen und Anleitungen für:
 - a. ein aktives Management von Mehrfachmandaten, das die Sichtbarkeit des Gleichstellungsmandats gewährleistet und integrierte Ansätze für die Mehrfachmandate unterstützt, die positive Synergien nutzen;
 - b. ein aktives Management von Mandaten, die sich auf mehrere Diskriminierungsgründe erstrecken, mit dem Ziel, die Sichtbarkeit und Relevanz der einzelnen Diskriminierungsgründe zu gewährleisten, die Schnittstellen zwischen diesen zu berücksichtigen und das Potenzial von Aktivitäten, die sich auf mehrere Diskriminierungsgründe beziehen, zu maximieren;
 - c. die Entwicklung von Theorien des Wandels, die für Gleichstellungsstellen im Hinblick auf die Entfaltung ihres Potenzials sowohl offen als auch relevant sind;

- d. eine Zusammenarbeit mit Interessenträgern, unter anderem durch Einbeziehung relevanter Interessenträger in:
 - Beratungen der Gleichstellungsstelle;
 - gemeinsame Initiativen;
 - von der Gleichstellungsstelle geschaffene Plattformen zur Motivation und Information von Interessenträgern.
- e. Datensysteme, die eine kohärente Nachverfolgung gemeinsamer Indikatoren in den verschiedenen Ländern ermöglichen.
4. Entwicklung von Führungsmodellen für Gleichstellungsstellen, Schaffung von Möglichkeiten für den Aufbau von Kapazitäten zur Anwendung dieser Modelle und Förderung ihrer Anwendung durch Prozesse gegenseitiger Unterstützung und Peer Reviews.
5. Überprüfung, und gegebenenfalls Verbesserung, der Art und Qualität der Unterstützung beschwerdeführender Personen durch Gleichstellungsstellen mit Entscheidungsfunktion.
6. Maßnahmen zur Weiterentwicklung der strategischen Planung und Evaluierung von Gleichstellungsstellen, einschließlich der Entwicklung und Anwendung gemeinsamer Indikatoren.
7. Maßnahmen zur Entwicklung, Umsetzung und Förderung von Verfahren und Prozessen, die der Vielfalt der beschwerdeführenden Personen Rechnung tragen, und zur Anpassung der Verfahren, Unterstützungs und Dienstleistungen der Gleichstellungsstellen an die praktischen Auswirkungen dieser Vielfalt.

1 Introduction

1.1 Purpose, methodology and structure for the report

Purpose

This report explores the current context, institutional mandate and structure, operation, and impact of equality bodies across the 28 EU Member States and the EFTA countries. It aims to establish, assess, draw conclusions and make recommendations on:

- The nature and quality of the conditions created by the State for equality bodies to implement their mandate independently and effectively; and
- The nature and quality of the conditions created internally by the equality bodies themselves to maximise their potential.

Methodology

The preparation of this report involved a review of literature on equality bodies. It draws on a survey on the equality bodies in each country completed by members of the European Network of Legal Experts in Gender Equality and Non-Discrimination and included a workshop with the members of this network at their 2017 annual meeting.

Independence, effectiveness, and accessibility are the core indicators through which this assessment is conducted. These indicators are drawn from international standards for equality bodies and from previous research work done on equality bodies.

The report takes cognisance of the key international standards for equality bodies.

- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006; on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, (hereinafter the European Union equal treatment directives).
- Commission Recommendation of 22 June 2018 on standards for equality bodies.¹
- Opinion on equality bodies of 2011 of the Human Rights Commissioner of the Council of Europe.²
- Revised General Policy Recommendation No. 2 of 2017 on equality bodies of ECRI of the Council of Europe.³
- The Paris Principles of 1993, developed for national human rights institutions.⁴

1 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies. Unlike the European Union equal treatment directives, the Recommendation is not binding on the Member States.

2 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

3 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

4 United Nations (UN), United Nations General Assembly (1993), Principles Relating to the Status of National Institutions (The Paris Principles).

This report takes account of the work of Equinet in promoting European standards for equality bodies⁵ and builds on European-level research on equality bodies. In particular:

- report on equality bodies by Rikki Holtmaat for the European Network of Legal Experts in the Field of Non-Discrimination, published by the European Commission in 2007;⁶
- study of equality bodies by Ammer et al. that was commissioned by the European Commission and published by Human European Consultancy and the Ludwig Boltzmann Institute in 2010.⁷

Structure

The report first sets out a range of foundations for the subsequent analysis developed. It thus defines equality bodies, establishes their diversity, sets out their potential and sets out some elements of the context they work in. The report then proceeds to briefly describe the various international standards established for equality bodies. These provide a template against which to assess the conditions created for and by equality bodies to realise their potential.

The report explores and assesses the institutional architecture of equality bodies in the EU and the EFTA countries in terms of mandate, function and grounds. It examines the conditions created, externally and internally, for their independence, effectiveness, and accessibility. It explores their contribution to change and the impact they have made.

Finally, the report draws conclusions on the conditions created for and by equality bodies to realise their full potential and makes recommendations in this regard.

1.2 Equality bodies

What equality bodies are

Equality bodies, at their most basic, are independent statutory bodies established at national level to promote the principle of equal treatment on various grounds. Their core purpose is to implement the equal treatment legislation enacted.

EU Member States, EFTA States, and accession countries are required to establish or designate equality bodies under the EU equal treatment directives that relate to the grounds of race and gender. The EU equal treatment directives have been influential in the widespread establishment of equality bodies across Europe.

In practice, most equality bodies go well beyond this basic description and the more specific requirements in the EU equal treatment directives. Their mandate to combat discrimination, including providing assistance to those experiencing discrimination, and to promote equality tends to be developed in more detail, particularly in relation to promoting equality. Their mandates can also encompass a wider range of grounds.

5 In particular: Equinet (2016), *Developing Standards for Equality Bodies – an Equinet working paper*, Brussels.

6 Holtmaat, R. (2007), *Catalysts for Change? Equality bodies according to Directive 2000/43/EC*, European Network of Legal Experts in the Field of Non-Discrimination, European Commission, Brussels, 2007.

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

What equality bodies do

Equality bodies are, in effect, champions and guardians at Member State level for the values and principles established in the European treaties including:

- the values of the EU as being human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities;⁸
- the equality mainstreaming principle committing that, in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.⁹

Equality bodies provide the infrastructure that enables equal treatment legislation to achieve its purpose and potential within the Member States.

The Commissioner for Human Rights of the Council of Europe identified a useful framework from which to establish and explore the broad range of roles played by equality bodies.¹⁰

- Enforcement: equality bodies enable people to exercise their rights under equal treatment legislation including through provision of assistance to those experiencing discrimination;
- Promotion: equality bodies stimulate and inform a culture of compliance with the legislation among employers, service providers and policy makers, and support their capacity to put in place and implement equality and diversity policies, procedures and practices;
- Communication: equality bodies contribute to and inform a culture of rights within society;
- Research: equality bodies develop a knowledge base on issues of discrimination and inequality by conducting and commissioning research and surveys;
- Multiplier effect: equality bodies encourage and enable a wide range of stakeholder organisations to take action on equality and discrimination.

Equality bodies established

Holtmaat, in 2007, identified 30 equality bodies established in the then 25 EU Member States.¹¹ Of those equality bodies, 27 operated at national level, two at provincial level and one at regional level (Northern Ireland). Two of those equality bodies had just been appointed, but had yet to initiate their activities. She noted that, at that time, there were no equality bodies in the Czech Republic, Germany, Luxembourg, Malta, and Poland. She found more than one equality body in eight countries. She concluded that the 'spread of equality bodies throughout the European Union has been rapid, like a field of mushrooms appearing out of the ground overnight.'¹²

Ammer et al., in 2010, identified 48 equality bodies in 29 countries, however, only 40 submitted reports for their study. They found more than one equality body in 14 countries: Austria, Belgium, Denmark, Estonia, Finland, Greece, Iceland, Ireland, Italy, Norway, Portugal, Spain and the UK. There was only one country identified with no equality body (Poland). Currently, Equinet, the European network of equality bodies, brings together 46 equality bodies from 34 countries.

For this report, 43 equality bodies in 31 countries, encompassing all EU Member States and the EFTA countries, were identified and examined in the surveys (see table 1, page 42). The geographical remit of this report is slightly more bounded than the spread of Equinet members. There was more than one

8 Article 2 of the Treaty on European Union.

9 Article 8 of the Treaty on the Functioning of the European Union.

10 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

11 At the time of drafting in 2006, the EU comprised of 25 member states as Bulgaria and Romania joined in 2007

12 Holtmaat, R. (2007), *Catalysts for Change? Equality bodies according to Directive 2000/43/EC*, European Network of Legal Experts in the Field of Non-Discrimination, European Commission, Brussels.

equality body identified in 11 countries in the surveys for this present report: Austria, Belgium, Croatia, Denmark, Estonia, Finland, Italy, Liechtenstein, Norway, Portugal, and UK.

Equality bodies diverse histories

There is a diversity of histories among these equality bodies. This can be important for the diversity of traditions that have been built up around taking action on equality and discrimination across the Member States and for the diversity of rationales that underpin the development of these traditions in the first place.

Some date back as far as 1976 (UK-Commission for Racial Equality), 1978 (Norway) and 1979 (Austria) and others are as recent as 2016 (Slovenia) and 2017 (Liechtenstein). Only 13 of the 31 countries surveyed can point to equality bodies that pre-date the EU equal treatment directives (Austria, Belgium, Croatia, Finland, Iceland, Ireland, Italy, Lithuania, Netherlands, Norway, Portugal, Sweden and the UK (Britain and Northern Ireland)). The decisive influence of the EU equal treatment directives, first on the ground of racial or ethnic origin in 2000 and then on the ground of gender in 2004 and 2006, in the establishment and designation of equality bodies is evident in the ‘mushrooming’ of equality bodies since their introduction.¹³

New equality bodies were formed in 17 countries after their introduction:

- Multi-ground equality bodies in Bulgaria (2004), Denmark (2009), Estonia (2004), Finland (2004), France (2005), Germany (2006), Hungary (2005), Italy (2004), Liechtenstein (2017), Luxembourg (2008), Malta (2004,) Norway (2006), Romania (2002), and Slovenia (2004 – initial body).
- Racial or ethnic origin ground equality body in Spain (2009).
- Gender ground equality bodies in Belgium (2003) and in Croatia (2003), which was shortly before the relevant directive was enacted.

This can have a particular impact on the tradition that builds up around equality and discrimination given the centrality of an external influence on the rationale for its development. Existing rights bodies were designated with a new equality mandate in nine countries after the introduction of the EU equal treatment directives: Croatia (2009), Cyprus (2004), the Czech Republic (2009), Denmark (2003), Estonia (2004), Greece (2005), Latvia (2007), Poland (2011), and Slovakia (2004). Six of the existing rights bodies were originally ombudsperson offices:¹⁴ Croatia, Cyprus, the Czech Republic, Greece, Estonia, and Poland. Three of the existing rights bodies were originally national human rights institutions:¹⁵ Denmark, Latvia, and Slovakia.

The grounds covered by already existing equality bodies were extended in eight countries after the introduction of the EU equal treatment directives: Austria (2005), Denmark (2011), Estonia (2009), Finland (2004), Italy (2010), Lithuania (2005), Malta (2007), and Norway (2006). In five instances this was for an equality body with an existing single gender ground mandate (Austria, Estonia, Lithuania, Malta and Norway) and in three instances this was for an equality body with an existing single racial or ethnic origin ground mandate (Denmark, Finland, and Italy).

13 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; and Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006; on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

14 There are different types of ombudsperson offices across Europe. In using this term, this report refers to the traditional ombudsperson office, usually established through the Constitution, that addresses issues of maladministration by public sector bodies to ensure they are just, accessible and effective in implementing their functions.

15 National human rights institutions have broad mandates to promote, monitor and protect at national level the body of human rights established in international human rights standards.

Equality bodies evolving

There have been high levels of institutional change experienced by equality bodies over recent years. It is important to acknowledge this in any examination of their potential and capacity to realise this potential. It is a potential that is still evolving and it is challenging for any institution subject to ongoing change to gear up to realising its potential while in such a situation.

The developments set out above, with their origins in the EU equal treatment directives, are part of this and many equality bodies are still of relatively recent origin. Beyond these changes, there is a trend of merging institutions and mandates:

- Multi-mandate bodies were established by merger in France (2011), Ireland (2014), Netherlands (2011), and the UK (Britain 2006 including a merger of three single ground bodies to form a multi-ground body).
- Single ground bodies were merged to form multi-ground bodies in Sweden (2009) and in the UK (Northern Ireland 1999).

In Belgium, UNIA is now a multi-ground body but had been established to work on the ground of racial or ethnic origin in 1993. In Greece, the fields covered by the equality body were extended to include the private sector in 2016. In Norway, there was a re-distribution of functions between the two equality bodies in 2018.

In 2014, the EU adopted Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. The directive applies to workers who are EU citizens and requires the designation of a body to support equal treatment for these workers. This body is to provide legal or other assistance, conduct surveys on the right to free movement and discrimination on the ground of nationality, publish reports and make recommendations on such issues and act as a contact point linked to similar contact points in other Member States.

The equality bodies already established in 17 Member States have had their mandates extended in being designated to play various roles under this directive: Austria (Ombud for Equal Treatment), Belgium (UNIA), the Czech Republic, Estonia (Gender Equality and Equal Treatment Commissioner), Finland (Non-Discrimination Ombudsman), France, Greece, Ireland, Italy (UNAR), Lithuania, Luxembourg, Malta, the Netherlands, Portugal (High Commission for Migration (CEARD)), Romania, Slovakia and the UK (Equality and Human Rights Commission). Other bodies have been designated in the other Member States.

Other bodies

Three further statutory bodies, similar to equality bodies, dealing with the disability ground were identified in three countries (Austria, Croatia, and Malta), although these are not part of this study. Four further tribunal-type bodies¹⁶ dealing with discrimination complaints were also identified (Finland, Iceland, Ireland (the former Equality Tribunal was merged into the Workplace Relations Commission) and Sweden), although these, too, are not part of this study.

¹⁶ Impartial institutions that predominantly hear, investigate and decide on individual instances of discrimination brought before them.

Table 1: Establishment or Designation of Equality Bodies

Country	Equality Body	Year	Key Developments	Notes
Austria	Ombud for Equal Treatment	1979	Grounds extended beyond gender in 2005	Federal context with diversity of provincial bodies. Ombud for People with Disabilities (2006) identified.
	Equal Treatment Commission	1979	Grounds extended beyond gender in 2005	
Belgium	Institute for Equality of Women and Men	2003		Federal context with IEWM remaining as a federal body.
	Inter-federal Centre for Equal Opportunities (UNIA)	1993	Grounds expanded from original ground of racial or ethnic origin. Became inter-federal body in 2014.	
Bulgaria	Protection Against Discrimination Commission	2004		
Croatia	Ombudsperson for Gender Equality	2003		Disability Ombudsman (2008) identified.
	People's Ombudsman	2009	Originally established as Commissioner of the Parliament for the protection of human rights and freedoms in 1992	
Cyprus	Commissioner for Administration and Human Rights	2004	Originally established as Ombudsman in 1972	
Czech Republic	Public Defender of Rights	2009	Originally established as Ombudsman in 2000	
Denmark	Danish Institute for Human Rights	2003	Originally established as national human rights institution in 1987	
	Board of Equal Treatment	2009		
Estonia	Commissioner for Gender Equality and Equal Treatment	2004	Grounds extended beyond gender in 2009	
	Chancellor of Justice	2004	Originally established as Ombudsman in 1992	
Finland	Equality Ombudsman	1987		Infringement procedure pursued by European Commission on competency of equality body under Directive 2000/43/EC in 2013. Non-Discrimination and Equality Tribunal (2015) decides on complaints.
	Non-Discrimination Ombudsman	2015	Grounds extended beyond ethnic origin and replaced Ombudsman for Minorities, established in 2004	
France	Defender of Rights	2011	Merger that included the HALDE, established in 2005	

Country	Equality Body	Year	Key Developments	Notes
Germany	Federal Anti-Discrimination Agency	2006		
Greece	Office of Greek Ombudsman	2005	Originally established as Ombudsman in 1997	Mandate extended to private sector in 2016
Hungary	Equal Treatment Authority	2005		
Iceland	Centre for Gender Equality	2000		A Gender Equality Complaints Committee that decides on complaints also identified.
Ireland	Irish Human Rights and Equality Commission	2014	Merger that included the Equality Authority, established in 1999	Workplace Relations Commission incorporates former Equality Tribunal (1999) that decides on complaints also identified.
Italy	National Office for Racial Anti-Discrimination (UNAR)	2004	Grounds extended beyond racial or ethnic origin in 2010	
	National Equality Advisory, Local Equality Advisors, Equal Opportunities National Committee	1991		
Latvia	Ombudsman	2006	Replaced National Human Rights Office, established in 1995	
Liechtenstein	Association for Human Rights	2017		
	Office for Equality of People with Disabilities	2007		
Lithuania	Equal Opportunities Ombudsperson	2005	Replaced Ombudsperson for Equal Opportunities for Men and Women, established 1999, with grounds extended	
Luxembourg	Centre for Equal Treatment	2008		
Malta	National Commission for the Promotion of Equality	2004	Grounds extended beyond gender in 2007, 2012 and 2015. Current process to develop a Human Rights and Equality Commission.	Commission for the Rights of People with Disabilities (2000) also identified.
Netherlands	Netherlands Institute for Human Rights	2012	Replaced the Equal Treatment Commission, established in 1994	
Norway	Equality and Anti-Discrimination Ombud	2006	Replaced the Gender Equality Ombud, established in 1978. Grounds extended and functions changed in 2018.	
	Equality and Anti-Discrimination Tribunal	2006	Grounds extended in 2018	
Poland	Commissioner for Human Rights	2011	Originally established as Ombudsman Office in 1988	

Country	Equality Body	Year	Key Developments	Notes
Portugal	Commission for Equality and Against Racial Discrimination (CEARD)	2004	CEARD was established in 1999 and, in 2002, was integrated into the High Commissioner for Immigration and Intercultural Dialogue, now the High Commission for Migration since 2014. CEARD was restructured in 2017.	
	Commission for Citizenship and Gender Equality (CIG)	2006	Replaced Commission for Equality and Rights of Women, established 1991	
	Commission for Equality in Labour and Employment (CITE)	1979	New governing regulation set in 2012	
Romania	National Council for Combating Discrimination	2002		
Slovakia	Slovak National Centre for Human Rights	2004	Originally established in 1994 as national human rights institution. Current process to re-establish body with single equality mandate.	
Slovenia	Advocate of the Principle of Equality	2016	Replaced previous body composed of one civil servant, established 2004	Infringement procedure pursued by European Commission relating to the adequacy of the equality body in 2013.
Spain	Council for the Elimination of Racial and Ethnic Discrimination	2009		
Sweden	Equality Ombudsman	2009	Merger of four separate ombudsman offices dealing with gender, ethnicity, disability and sexual orientation	Board Against Discrimination that decides on complaints also identified
United Kingdom	Equality and Human Rights Commission	2007	Merger of three equality bodies dealing with gender (1975), racial or ethnic origin (1976), and disability (1999) and human rights mandate added	
	Equality Commission for Northern Ireland	1999	Merger of four equality bodies for gender, racial or ethnic origin, disability and fair employment	

1.3 Diversity of equality bodies

The institutional architecture of equality bodies is diverse in terms of their mandates, functions and the grounds they cover. The current situation in relation to each of these three key elements of diversity is examined in turn. Each of these elements will be seen to present particular challenges to, as well as offering specific opportunities for, equality bodies in reaching their full potential.

Multi-Mandate Bodies

This first key element of diversity is concerned with the range of mandates held by the body designated as the equality body. Equality bodies can be multi-mandate bodies or single-mandate equality bodies. This element in the diversity of equality bodies is important because of the challenge it presents to ensure visibility for the equality mandate and the adequate implementation of all the powers associated with it.

Multi-mandate bodies encompass a combination of mandates, specifically the equality mandate combined with the mandate of a national human rights institution and/or of an ombudsperson office. These combinations happened initially where an existing body was designated to hold the equality mandate. More recently, they are a result of mergers between two or more existing bodies or a product of a single-mandate equality body being accorded a new additional mandate. This element in the diversity of equality bodies is important because of the challenge it presents in how best to secure visibility for the equality mandate and how to implement the equality mandate within a multi-mandate setting most effectively.

Equinet documented this development as ‘an area of ongoing change’ in 2011, examining the experience of multi-mandate bodies that combined an equality mandate and a human rights mandate.¹⁷ Ten equality bodies identified themselves as such multi-mandate bodies. In two cases, a human rights mandate was accorded to an existing equality body, in seven cases an equality mandate was accorded to a national human rights institution, and in one case the body was originally established as a multi-mandate body. The multi-mandate bodies considered in the report are not identified.

In 2013, Crowther and O’Cinneide examined the steps taken or being taken to establish multi-mandate bodies with an equality mandate and a human rights mandate in six countries: Belgium, Britain, Denmark, France, Ireland, and the Netherlands.¹⁸ They noted that ‘this new hybrid model of institution is a relatively new development in the EU’ and that it has received surprisingly little attention in academic literature or official reports. They pose this development as ‘an attempt to “bridge the divide” that currently exists in many EU states between the spheres of equality and human rights’ and noted that effective links and synergies can be ‘hard to achieve’.

In 2017, Equinet examined the experience of multi-mandate bodies that combined an equality mandate with an ombudsperson office mandate¹⁹ and identified 10 such bodies. In nine cases this involved according the equality mandate to an existing ombudsperson office: Bosnia and Herzegovina, Croatia (Office of the Ombudsperson and Ombudsperson for Persons with Disabilities), Cyprus, the Czech Republic, Greece, Hungary (Commissioner for Fundamental Rights), Latvia and Poland. In one case (France) it involved the merger of an ombudsperson office and the equality body. These multi-mandate bodies tended to have a human rights mandate as well. It was noted that, except for France, these multi-mandate bodies were in ‘Southern or Eastern European countries, countries where the ombudsperson office has traditionally served as the foundation in building rights-based protections’.

17 Crowley, N., Equinet (2011), *Equality Bodies and National Human Rights Institutions: Making links to maximise impact*, Brussels.

18 Crowther, N. and O’Cinneide, C. (2013), *Bridging the Divide? Integrating the functions of national equality bodies and national human rights institutions in the EU*, London, UCL Faculty of Laws.

19 Crowley, N., Equinet (2017), *Enhancing the Impact of Equality Bodies and Ombudspersons Offices: Making links*, Brussels.

This report found 14 multi-mandate bodies in 14 countries. These include four bodies with an equality mandate, a human rights mandate, and an ombudsperson mandate (Cyprus, France, Latvia, and Poland). There were six bodies with an equality mandate and a human rights mandate (Denmark (Danish Institute for Human Rights), Ireland, Liechtenstein, the Netherlands, Slovakia and the UK (Britain)). There were four bodies with an equality mandate and an ombudsperson mandate (Croatia (People's Ombudsman), the Czech Republic, Estonia and Greece).

There were two instances where the establishment of these bodies involved a merger of existing bodies (France and Ireland). There was one instance where the body was originally formed as a multi-mandate body (Liechtenstein). In eight instances, where an existing body was designated with additional mandates, the equality mandate was the last mandate to be designated (Croatia, the Czech Republic, Denmark, Estonia, Greece, Latvia, Poland and Slovakia). In one instance (Cyprus) the equality mandate was the second mandate to be designated of the three mandates held.

This timing in the attribution of mandates to multi-mandate bodies has potential implications for the standing of the equality mandate within the body. It has the further potential to limit the articulation of the particular tradition that underpins the equality mandate to full effect, given that the office has been long operating to a different tradition. The Netherlands and the UK (Britain) stand out for the equality mandate being the foundational mandate for the multi-mandate body.

Multi-mandate bodies do emerge as an 'area of ongoing change' for equality bodies. Seven of the 14 multi-mandate bodies either received their equality mandate or were established during the last decade (Croatia (2009), the Czech Republic (2009), France (2011), Ireland (2014), Liechtenstein (2017), the Netherlands (2012) and Poland (2011)). There is ongoing debate in Belgium about the establishment of a national human rights institution and its relationship with the equality body. Draft legislation has been published in Malta to form a Human Rights and Equality Commission that would incorporate the existing equality body.

Functions

The second key element of diversity is concerned with the range of functions accorded to the equality body. Different frameworks have been applied over time to better understand and analyse this diversity among equality bodies. This element in the diversity of equality bodies is important because of the challenge it presents to ensure the combination of functions accorded allows for each function to be adequately implemented.

Ammer et al made a core distinction between predominantly tribunal-type bodies and predominantly promotion-type bodies. Their research identified 24 equality bodies that were predominantly tribunal-type equality bodies and 24 equality bodies that were predominantly promotion-type equality bodies. They defined:

- predominantly tribunal-type equality bodies as 'impartial institutions which spend the bulk of their time and resources hearing, investigating and deciding on individual instances of discrimination brought before them; and
- predominantly promotion-type equality bodies as institutions that 'spend the bulk of their time and resources on a broader mix of activities that include supporting good practice in organisations, raising awareness of rights, developing a knowledge base on equality and non- discrimination, and providing legal advice and assistance to individual victims of discrimination.'²⁰

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

This framework did not stand the test of time. A number of equality bodies sit between these two types of equality bodies. In particular, this was evident where only one equality body operated in a country, in particular when it had been established as part of an existing body already involved in hearing, investigating and deciding cases on individual rights. Equinet thus added a third type to the framework:

- combined tribunal/promotion type equality body are institutions that ‘hear, investigate and decide on cases of discrimination, but also implement a range of activities to raise awareness, support good practice and conduct research.’²¹

The ECRI General Policy Recommendation No. 2 on equality bodies provides another framework for this diversity of function of equality bodies.²² This establishes three core functions that equality bodies can hold part, all or any combination of.

- Promotion and prevention: ‘The function to promote equality and prevent discrimination’.
- Support and litigation: ‘The function to support people exposed to discrimination and intolerance and to pursue litigation on their behalf’.
- Decision-making: ‘The function to take decisions on complaints’.²³

This framework can be understood as currently being the most effective for understanding and analysing the diversity of functions given its focus on specific functions and combination of these specific functions, rather than any attempt to define the equality body according to some typology based on the functions held.

This element in the diversity of equality bodies is important because of the challenge it presents to address tensions that can arise between functions accorded and to ensure adequate implementation of all three functions when accorded, given that resources can be limited. The predominant model among the equality bodies surveyed for this present report is a combination of all three of these core functions.

Nineteen equality bodies were identified as having competences under the three functions: Bulgaria, Croatia (two equality bodies), the Czech Republic, Estonia, Finland (two equality bodies), France, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal (Commission for Equality and Against Racial Discrimination), Romania, Slovakia, Slovenia and Sweden. Twelve of these bodies are single-mandate equality bodies, so this combination of functions cannot be explained as a product of multiple mandates. The ECRI General Policy Recommendation No. 2 expresses some reservations about this combination given the impartiality required by the decision-making function, which is not a feature of the other two functions. This can be a source of tension within the equality body, limiting its interventions under these other two functions.

Good Practice

Austria, Denmark, and Norway have distinct equality bodies with a decision-making function alongside another equality body that has a promotion and prevention function and a support and litigation function.

This approach ensures the presence of a distinct body with an accumulating expertise in deciding cases of discrimination and offering an accessible venue for complainants and respondents. At the same time, it underpins the impartiality of equality bodies implementing a decision-making function. By

21 Crowley, N., Equinet (2014), *The Bigger Picture: Equality bodies as part of the national institutional architecture for equality*, Brussels.

22 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

23 This function is understood broadly by ECRI as encompassing decisions that are legally binding and those that are not, taking the form of non-binding recommendations as well as decisions that are accompanied by sanctions and those that are not.

having separate equality bodies for other functions, it underpins this impartiality without diminishing the authoritative positions equality bodies must take for equality in implementing their promotion and prevention function and without undermining the role they must take on the side of the complainant in litigating discrimination cases and providing legal support and advice to complainants.

The Commissioner for Human Rights of the Council of Europe recommended that member states should 'ensure that the architecture of national structures for promoting equality enables both a distinct quasi-judicial function in hearing or mediating cases under the legislation as well as a distinct promotional function. It is good practice to locate these distinct functions in different bodies.'²⁴

Sixteen equality bodies are provided with the more traditional combination of promotion and prevention function and support and litigation function (Austria (Ombud for Equal Treatment), Belgium (two equality bodies), Denmark (Danish Institute for Human Rights), Germany, Iceland, Ireland, Italy (two equality bodies), Liechtenstein (Association for Human Rights), Luxembourg, Portugal (CIG and CITE), Spain and the UK (Britain and Northern Ireland)). These are identified as the basic required functions for equality bodies in the ECRI General Policy Recommendation No. 2.

Two equality bodies, Cyprus and Greece, have a decision-making function with a promotion and prevention function. One equality body (Liechtenstein, Office for Equality of People with Disabilities) has a promotion and prevention function only. Four equality bodies only have a decision-making function: Austria, Denmark, Estonia and Norway.

Grounds

The third key element of diversity is concerned with the grounds covered by the equality bodies. Equality bodies can be single-ground bodies or multi-ground bodies. This element in the diversity of equality bodies is important because of the challenge it presents to ensure comprehensive coverage of discrimination and to achieve visibility for all grounds covered.

Ammer et al. identified 14 equality bodies in 2010 with single-ground mandates in eight countries. Seven of these equality bodies had a mandate on the ground of gender, six on the ground of racial or ethnic origin, and one on the ground of disability. The study found that several countries had started with a single-ground equality body, usually the gender ground, and noted a trend towards forming multi-ground bodies. This involved the mandate of existing single-ground equality bodies being extended or new multi-ground bodies being established with the dissolution of the single-ground bodies.

This present report found that equality bodies tended to be multi-ground equality bodies. Of the 43 equality bodies reported, 33 cover multiple grounds. Most of the multi-ground equality bodies go beyond the requirements of the EU equal treatment directives in that they often cover the six grounds set out in Article 19 of the Treaty on the Functioning of the European Union of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation.

Many multi-ground equality bodies have a mandate that goes beyond these six grounds. Ten equality bodies work to an open list or unspecified and unbounded grounds (Bulgaria, Estonia, Finland (Non-Discrimination Ombudsman), Hungary, Latvia, Liechtenstein, Poland, Romania, Slovakia and Slovenia). Equality bodies working to an open or unspecified and unbounded list of grounds have an advantage in being able to take a comprehensive approach to equality and non-discrimination. However, their work can be impeded by the potential scale of coverage and by a vagueness surrounding the definition and understanding of the protected characteristics. The naming of at least some additional grounds offers an important public statement in relation to the situation and experience of the groups named and enables some drive to secure a reporting of discrimination by members of these groups.

24 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

Ten equality bodies were identified as single ground:

- Seven cover a gender ground: Belgium (Institute for Equality of Women and Men), Croatia (Ombudsperson for Gender Equality also includes grounds of gender identity and expression, sexual orientation, marital or family status), Finland (Equality Ombudsman), Iceland (Centre for Gender Equality), Italy (National Equality Advisory, Local Equality Advisors, Equal Opportunities National Committee), and Portugal (CIG and CITE)).
- Two work on the racial or ethnic origin ground: Portugal (CEARD) and Spain (Council for the Elimination of Racial and Ethnic Discrimination).
- One works on the ground of disability: Liechtenstein (Office for Equality of People with Disabilities).

Three further single-ground bodies working on the disability ground were identified but do not form part of this study (Austria, Croatia and Malta). In the countries with these single-ground equality bodies, there are other equality bodies that cover a wider spectrum of grounds, except in Iceland, Portugal and Spain.

Good Practice

Thirteen equality bodies have a mandate that names the socio-economic status ground or a part of it (Belgium (UNIA), Bulgaria, Croatia, Estonia, France, Greece, Hungary, Ireland, Latvia, Lithuania, Romania, Slovakia and Slovenia). This is done in a variety of ways under the terms: property, social origin, social status, fortune, disadvantaged group, economic vulnerability, economic situation, education, financial status, and in receipt of housing benefit.

Europe is increasingly divided along the lines of identity-based disadvantage and economic-based disadvantage. In reality these issues overlap but they have been used and abused to divide. A comprehensive approach to non-discrimination would assist in breaking this false divide, specifically by naming a socio-economic status ground.²⁵

Good Practice:

Thirteen equality bodies have a mandate that names the political opinion ground (Belgium (UNIA), Bulgaria, Croatia (People's Ombudsman), Cyprus, Estonia, Finland (Non-Discrimination Ombudsperson), France, Hungary, Latvia, the Netherlands, Poland, Slovakia and the UK (Northern Ireland)). This is done in a variety of ways under the terms: political opinion, political belief, political affiliation, and political activities.

The Charter of Fundamental Rights of the European Union includes political opinion as a prohibited ground of discrimination (Article 21). This ground has been found by equality bodies to be of particular relevance in post-conflict settings. In a Europe increasingly characterised by a political polarisation, this ground could well grow in importance.

Good Practice:

Nine equality bodies have a mandate that names a trans ground (France, Greece, Malta, Norway (two equality bodies), Slovenia, Sweden and the UK (Britain and Northern Ireland)). This is done under the terms of: gender identity, gender identity and gender expression, transgender identity of expression, sex characteristics, and gender reassignment.

Trans people have been able to challenge the discrimination they experience under the gender ground. However, making this a named ground renders this protection somewhat more visible, contributes to addressing under-reporting, and strengthens the protection afforded.²⁶

²⁵ Crowley, N., Equinet (2010), *Addressing Poverty and Discrimination: two sides of the one coin*, Brussels.

²⁶ Crowley, N., Equinet (2011), *Making Equality Legislation Work for Trans People*, Brussels.

Table 2: Diversity of Equality Bodies

Country	Equality Body	Mandates	Functions ²⁷	Grounds ²⁸
Austria	Ombud for Equal Treatment	Equality (1979)	Promotion and prevention Support and litigation	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, age</i>
	Equal Treatment Commission	Equality (1979)	Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, age</i>
Belgium	Institute for Equality of Women and men	Equality (2003)	Promotion and prevention Support and litigation	<i>Gender</i>
	Inter-federal Centre for Equal Opportunities (UNIA)	Equality (1993)	Promotion and prevention Support and litigation	<i>Racial or ethnic origin, religion or belief, sexual orientation, disability, age and colour, origin, national origin, nationality, civil status, birth, property, actual or future state of health, physical characteristic, political opinion, trade union opinion, genetic characteristics, social origin</i>
Bulgaria	Protection Against Discrimination Commission	Equality (2004)	Promotion and prevention Support and litigation Decision-making	Open List <i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and national origin, human genome, nationality, origin, education, political affiliation, personal or social status, property status</i>
Croatia	Ombudsperson for Gender Equality	Equality (2003)	Promotion and prevention Support and litigation Decision-making	<i>Gender</i> Gender identity and expression, sexual orientation, marital or family status
	People's Ombudsman	Equality (2009) Ombudsperson (1992)	Promotion and prevention Support and litigation Decision-making	<i>Racial or ethnic origin, religion or belief, age and colour, political or other belief, national or social origin, property, trade union membership, education, social status, health condition, genetic heritage</i>
Cyprus	Commissioner for Administration and Human Rights	Equality (2004) Human Rights (2016) Ombudsperson (1972)	Promotion and prevention Decision-making	<i>Racial or ethnic origin, religion or belief, sexual orientation, disability, age and community, language, colour, political or other beliefs, national origin, special needs and, in practice rather than under legislation, gender, gender identity, community</i>
Czech Republic	Public Defender of Rights	Equality (2009) Ombudsperson (2000)	Promotion and prevention Support and litigation Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and nationality</i>

27 The functions identified use the terminology from the ECRI General Policy Recommendation No. 2 as set out above. Equality bodies hold all or part of the functions identified.

28 Grounds set out in Article 19 of the Treaty on the Functioning of the European Union are in italics.

Country	Equality Body	Mandates	Functions ²⁷	Grounds ²⁸
Denmark	Danish Institute for Human Rights	Equality (2003) Human Rights (1987)	Promotion and prevention Support and litigation	<i>Gender, racial or ethnic origin, disability</i>
	Board of Equal Treatment	Equality (2009)	Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age</i>
Estonia	Commissioner for Gender Equality and Equal Treatment	Equality (2004)	Promotion and prevention Support and litigation Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and colour</i>
	Chancellor of Justice	Equality (2004) Ombudsperson (1992)	Decision-making	Open List <i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and colour, language, origin, political or other belief, property or social status.</i>
Finland	Equality Ombudsman	Equality (1987)	Promotion and prevention Support and litigation Decision-making	<i>Gender</i>
	Non-Discrimination Ombudsman	Equality (2015)	Promotion and prevention Support and litigation Decision-making	Open List <i>Religion or belief, sexual orientation, disability, age and origin, nationality, language, opinion, political activity, trade union activity, family relationships, state of health.</i>
France	Defender of Rights	Equality (2011 with former body dating back to 2005) Human Rights (2011 with one former body dating back to 2000) Ombudsperson (2011 with former body dating back to 1973)	Promotion and prevention Support and litigation Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and mores, pregnancy, gender identity, nationality, physical appearance, last name, family situation, union activities, political opinions, health, genetic characteristics, place of residence, ability to express in French language, economic vulnerability, philosophical opinions and ground recognised in international law such as birth, property, language</i>
Germany	Federal Anti-Discrimination Agency	Equality (2006)	Promotion and prevention Support and litigation	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age</i>
Greece	Office of Greek Ombudsman	Ombudsperson (1997) Equality (from 2005)	Promotion and prevention Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and descent, colour, language, chronic illness, family or social status, gender identity or characteristics</i>

Country	Equality Body	Mandates	Functions ²⁷	Grounds ²⁸
Hungary	Equal Treatment Authority	Equality (2005)	Promotion and prevention Support and litigation Decision-making	Open List <i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age</i> and colour, national minority, mother tongue, health condition, political or other opinion, family status, maternity or paternity, sexual identity, social origin, financial status, part-time employment or other labour relation, belonging to an interest representation organisation
Iceland	Centre for Gender Equality	Equality (2000)	Promotion and prevention Support and litigation	<i>Gender</i>
Ireland	Irish Human Rights and Equality Commission	Equality (2014 with former body dating back to 1999) Human Rights (2014)	Promotion and prevention Support and litigation	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age</i> and civil status, family status, membership of the Traveller community, being in receipt of housing assistance
Italy	National Office for Racial Anti-Discrimination (UNAR)	Equality (2004)	Promotion and prevention Support and litigation	<i>Racial or ethnic origin, religion, sexual orientation, disability, age</i> and nationality
	National Equality Advisory, Local Equality Advisors, Equal Opportunities National Committee	Equality (1991)	Promotion and prevention Support and litigation	<i>Gender</i>
Latvia	Ombudsman	Equality (2006) Human Rights (1995) Ombudsperson (1995)	Promotion and prevention Support and litigation Decision-making	No grounds specified under the equality body mandate, open In practice, <i>gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age</i> and language, family status, political belief and property status are addressed
Liechtenstein	Association for Human Rights	Equality (2017) Human Rights (2017)	Promotion and prevention Support and litigation	No grounds specified under the equality body mandate, open
	Office for Equality of People with Disabilities	Equality (2007)	Promotion and prevention	<i>Disability</i>
Lithuania	Office of the Equal Opportunities Ombudsperson	Equality (2005)	Promotion and prevention Support and litigation Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age</i> and language, convictions and social status, nationality
Luxembourg	Centre for Equal Treatment	Equality (2008)	Promotion and prevention Support and litigation	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age</i>

Country	Equality Body	Mandates	Functions ²⁷	Grounds ²⁸
Malta	National Commission for the Promotion of Equality	Equality (2004)	Promotion and prevention Support and litigation Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and family responsibilities, gender identity, gender expression, sex characteristics, pregnancy, childbirth</i>
Netherlands	Netherlands Institute for Human Rights	Equality (2011 with former body 1994) Human Rights (2012)	Promotion and prevention Support and litigation Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and political opinion, nationality, civil status, working time, labour contract</i>
Norway	Equality and Anti-Discrimination Ombud	Equality (2006)	Promotion and prevention Support and litigation	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and gender identity, gender expression, life-stance</i>
	Equality and Anti-Discrimination Tribunal	Equality (2006)	Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and gender identity, gender expression, life-stance</i>
Poland	Commissioner for Human Rights	Equality (2011) Human Rights (1988) Ombudsperson (1988)	Promotion and prevention Support and litigation Decision-making	No grounds specified under the equality body mandate, open In legislation, <i>gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and nationality, citizenship, political opinion</i> are named.
Portugal	Commission for Equality and Against Racial Discrimination	Equality (2004)	Promotion and prevention Support and litigation Decision-making	<i>Racial or ethnic origin and nationality, ancestry and territory of origin</i>
	Commission for Citizenship and Gender Equality (CIG)	Equality (2006)	Promotion and prevention Support and litigation	<i>Gender</i>
	Commission for Equality in Labour and Employment (CITE)	Equality (1979)	Promotion and prevention Support and litigation	<i>Gender</i>
Romania	National Council for Combating Discrimination	Equality (2002)	Promotion and prevention Support and litigation Decision-making	Open List <i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and nationality, language, social status, non-contagious chronic disease, HIV-positive status, belonging to a disadvantaged group</i>

Country	Equality Body	Mandates	Functions ²⁷	Grounds ²⁸
Slovakia	Slovak National Centre for Human Rights	Equality (2004) Human Rights (1994)	Promotion and prevention Support and litigation Decision-making	Open List <i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and nationality, marital status, family status, colour, language, political or other opinion, national or social origin, property, lineage</i>
Slovenia	Advocate of the Principle of Equality	Equality (2016)	Promotion and prevention Support and litigation Decision-making	Open List <i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and language, gender identity, gender expression, social standing, economic situation, education</i>
Spain	Council for the Elimination of Racial and Ethnic Discrimination	Equality (2009)	Promotion and prevention Support and litigation	<i>Racial or ethnic origin</i>
Sweden	Equality Ombudsman	Equality (2009 with former bodies pre-dating)	Promotion and prevention Support and litigation Decision-making	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and transgender identity or expression</i>
United Kingdom	Equality and Human Rights Commission	Equality (2007 with former bodies dating back to 1975) Human Rights (2007)	Promotion and prevention Support and litigation	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and nationality, pregnancy, gender reassignment, marriage and civil partnership</i>
	Equality Commission for Northern Ireland	Equality (1999)	Promotion and prevention Support and litigation	<i>Gender, racial or ethnic origin, religion or belief, sexual orientation, disability, age and political opinion, gender reassignment</i>

1.4 Potential of equality bodies

Potential

In examining equality bodies and assessing the diversity of equality bodies it is important to have some framework through which to understand their potential. This provides a benchmark, if at times intangible, against which to assess their impact and, ultimately, the conditions that have been created to enable this impact.

Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality, in launching the European Commission Recommendation on standards for equality bodies, stated:

‘Discrimination has no place in the EU. Victims or witnesses of discrimination should know where to turn and equality bodies are there to help them in these situations. We must ensure that national equality bodies are independent, with sufficient resources to carry out their task. They play a key role in ensuring all citizens are given equal rights and equal opportunities.’²⁹

29 European Commission (2018), *A Europe that protects: Commission calls for stronger national equality bodies to fight discrimination*, Press release, IP/18/4000, 22 June 2018.

This focus on victims of discrimination, the independence and resources of the body, and citizen access to rights, provides a useful foundation stone for a framework that enables an assessment and understanding of the potential of equality bodies.

A number of frameworks, similar in nature, from which to examine the potential and impact of equality bodies are provided in the literature. Ammer et al. concluded in their 2010 study that equality bodies emerge ‘as necessary and valuable institutions for social change’.³⁰ The framework of potential equality body impacts they offered for analysing this potential was for equality bodies to:

- empower and assist individual people who experience discrimination;
- enhance organisational performance in the public and private sectors;
- enhance policy and legislation;
- stimulate a wider framework of institutions to engage in promoting equality and combating discrimination; and
- influence public attitudes towards a greater commitment to equality and non-discrimination.

In 2011, the Commissioner for Human Rights of the Council of Europe, endorsing their capacity to contribute to social change, set out the potential of equality bodies to:

- empower communities experiencing discrimination and inequality;
- enhance the reach and effectiveness of public policy;
- achieve a multiplier effect by enabling other organisations to play roles in this field;
- stimulate social change such that equality and the promotion of equality is valued, an acceptance that people have rights and these rights should be exercised, and a broad commitment to compliance with equal treatment legislation.³¹

Equinet, in 2013, established a framework for understanding the potential for equality bodies to make an impact and contribute to social change. Equality bodies were seen as contributing to change at three interlinked levels of ‘widening circles of influence from the equality body. Change in one of the levels can influence and stimulate change at other levels’.³² This framework involves contributing to change at:

- the individual level – in the situation and experience of people who experience discrimination;
- the institutional level – in organisational policies procedures and practices, in policy making, and in mobilising institutions to champion equality and diversity;
- the societal level – in the attitudes of the general public, of employers and service providers, and of people who experience discrimination.

A menu of impact indicators for equality bodies was developed from this. This more explicit link with impact suggests this framework as the most useful for this present report.

Realising potential

Independence, effectiveness and accessibility have been identified as the core factors for equality bodies to realise their potential. The Commissioner for Human Rights of the Council of Europe observed that ‘independence and effectiveness are the two core indicators against which to assess national structures for promoting equality’.

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

31 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

32 Crowley, N., Equinet (2013) *Processes and Indicators for Measuring the Impact of Equality Bodies*, Brussels.

The ECRI General Policy Recommendation No. 2 recommends that the equality body is established in the law 'in a manner that ensures both their independence and effectiveness.'³³ It further recommends that equality bodies be 'accessible to those whose rights they are established to protect.'

1.5 Contexts for equality bodies

The political and popular contexts that are current at any particular time will have an impact on equality bodies in terms of their ability to fulfil their potential. The political context can directly determine this given the possibilities to undermine the independence and effectiveness of an equality body in a context of political hostility. The popular context has a more indirect influence in shaping the space within which equality bodies seek to make their contribution to social change and determining what might be possible at any particular moment in this regard.

Equality bodies have a role and potential to influence both contexts. Their advisory function is directed at the political context and their communication function is directed at the popular context.

Political context

The political context is a constant concern for equality bodies given its direct influence on their work. Equinet, in 2012, explored the challenges being faced by equality bodies.³⁴ Equinet was concerned about the impact of the economic and financial crisis with significant reductions in public expenditure, diminished political and public attention to equality and non-discrimination, and growing disadvantage serving as a fertile breeding ground for discrimination. At the same time, Equinet identified a potential to advance equality issues given the wide interest in political and economic reform across Europe.

A mix of experiences were identified by Equinet without naming the specific bodies concerned. This valuably demonstrated that diminishing the conditions for equality bodies was a matter of political decision rather than economic imperative. Eight equality bodies in seven countries reported an improvement in their circumstances through: broadened mandates (four equality bodies); additional resources (three equality bodies); additional powers (one equality body); and enhanced independence (two equality bodies). Ten equality bodies reported no significant change in their budgets. However, seven equality bodies reported significant cuts to their budget (from 8 % to 25 %) and five equality bodies reported disproportionate cuts to their budget (37 % to 64 %). Two equality bodies reported reduced functions and powers.

Equinet found that five equality bodies had had their legal structure altered. In one case the equality body was merged into a Government ministry, having previously been an expert body of the Government. Three equality bodies were being merged with national human rights institutions or bodies responsible for human rights issues. The final case involved the merger of four equality bodies responsible for different grounds.

The current report has found significant levels of political disinterest in equality bodies. This was noted as the predominant perspective in 12 countries: Austria, Belgium, Estonia, Finland, Greece, Hungary, Liechtenstein, Lithuania, Luxembourg, Slovakia, Slovenia and Spain. The equality body in Greece experienced a 40 % budget cut between 2009 and 2015. However, this was viewed as proportionate to cuts across the public sector in Greece and there was a small budget increase in 2017. Limited hostility, usually from political sources at the populist end of the spectrum, are evident in two of these countries: Belgium and Finland.

33 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

34 Crowley, N., Equinet (2012), *Equality Bodies: Current Challenges*, Brussels.

Indifference leaves equality bodies under-funded and under-resourced. Particular instances of this indifference were found where new competences are afforded to equality bodies with no additional resources, there is a failure to make appointments to equality bodies in a timely manner, there is a lack of political attention to proposed amendments in equal treatment legislation, and the equality body is afforded persistently inadequate resources and has to depend on funding sources from outside the country. Indifference is closely related to hostility given that the end result is that the equality bodies cannot be game-changers when it comes to social change in favour of equality and non-discrimination.

Political hostility to equality bodies was found in eight countries. Political interference in relation to appointments and removals from office in recent times is suggested for six equality bodies in five countries: Bulgaria, Cyprus, Italy (two equality bodies), Romania and Sweden (this experience is addressed below in the chapter on independence). Political hostility in the form of budget cuts is evident in Poland and the UK (this experience is addressed below in the chapter on effectiveness). Political hostility is also evident in recent times in Croatia with the rejection of the 2015 annual report of the equality body by Parliament.

A supportive political context is evident in seven countries: France, Germany, Iceland, Ireland, Latvia, Netherlands and Portugal. Equality bodies have had increases in their budgets, after severe cutbacks during the economic crisis, in Iceland, Ireland and Latvia. A more positive post-economic crisis political context is also noted in Portugal.

In France, the equality body has been able to take firm stands on issues with political parties remaining open to working positively with the body. The equality body in Germany is seen to have secured political acceptance. In the Netherlands, the equality body enjoys political support, despite critique from some parties of a populist nature. There is concern, in some other instances, that equality bodies in potentially hostile contexts might compromise to avoid becoming a target in such contexts or could avoid potential political hostility by remaining invisible.

Public debate

The popular context is more of an emerging concern for equality bodies, given the growth of a public discourse hostile to diversity in many countries. However, the Equinet 2012 report identified improvements in public discourse being noted by 12 equality bodies in 11 countries at that time.³⁵ Significant deterioration in public discourse was noted by seven equality bodies in seven countries

This present report found public debate to be generating a hostile context for equality bodies in six countries: Austria, Croatia, Denmark, Finland, Hungary, Italy and Poland. This hostility is particularly focused around migrants and asylum seekers. Hostile public debate is also reported around gender, the Istanbul Convention and resistance to a so-called gender ideology. In Poland, hostility has been directly focused on the equality body with 35,000 people signing a petition to revoke the mandate of the Ombudsman. However, this hostility has also generated public support for the equality body through civil society. A lack of public debate on equality and non-discrimination issues is noted in a further six countries (Estonia, Greece, Latvia, Liechtenstein, Luxembourg and Spain).

A generally supportive public debate on issues of equality and non-discrimination is, however, noted in nine countries (the Czech Republic, Finland, France, Germany, Iceland, Ireland, Norway, Portugal and Slovenia). In Ireland and Germany this positive public debate has focused on LGB people and same-sex marriage. In Finland, equality is repeatedly emphasised as a public value.

The visibility of some equality bodies has promoted different public reactions. In some countries, such as Romania, the positions taken by the equality body can lead to public hostility. In other countries, such as the Czech Republic, the outspoken nature of the equality body has led to public support for its work. In

35 Crowley, N., Equinet (2012), *Equality Bodies: Current Challenges*, Brussels.

other countries, such as Slovakia, public debate has been critical of the functioning and independence of the equality body.

1.6 Key Learning

Equality bodies have the potential to contribute to social change for individuals, institutions and society. This involves them in action to empower people experiencing discrimination, enable institutions to introduce equality and diversity systems and promote awareness and engage equality values in society.

There is complexity to and a diversity of equality bodies. They include multi-mandate and single-mandate equality bodies, equality bodies that combine different arrangements of functions and equality bodies that cover a varied range of grounds. The diversity presents challenges in understanding what forms equality bodies can take to best realise their potential. It raises questions about how to make different types of equality body operate in such a way to realise that potential. Although this diversity is now recognised, there is a need to learn from it and to establish how best to realise the potential of equality bodies through that diversity.

Beneficial Measure at European Level

Engagement of relevant civil servants from national governments in ongoing dialogue about the potential of equality bodies, the steps required to enable them to reach their potential, and the manner in which they might best engage with the equality body. This dialogue could be planned and pursued through arenas of peer learning at this level: the High Level Group on Non-Discrimination, Equality and Diversity; the High Level Group on Combating Racism, Xenophobia and other forms of Intolerance; and the Advisory Committee on Equal Opportunities for Women and Men.

2 Standards

International standards are important in protecting equality bodies from external interference and in enabling them to reach their potential. They are important for the purposes of this study in providing a benchmark against which to assess the current situation and experience of equality bodies. The key standards with a specific focus on equality bodies are of recent origin. European Union standards and international standards are examined in this chapter.

2.1 EU Equal Treatment Directives

The EU equal treatment directives establish a minimum standard for equality bodies. Four EU equal treatment directives require Member States to designate a body for the promotion of equal treatment. Three of these directives address the ground of gender and one addresses the ground of racial or ethnic origin.³⁶ The directives allow that the body can form part of ‘agencies charged at national level with the defence of human rights or the safeguard of individuals’ rights’.

The directives require that the equality bodies have particular competences in relation to the grounds of gender and racial or ethnic origin. These competences are to independently assist victims of discrimination, conduct surveys about discrimination and issue reports and make recommendations on issues relating to discrimination for both grounds. A further competence to exchange available information with the corresponding European bodies, such as the European Institute for Gender Equality, is required on the gender ground. The directives emphasise independence, specifically the independent exercise of these competences by equality bodies.

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin requires equality bodies to implement their competences across a wide range of fields. These include matters related to: employment, self-employment, and occupation; membership of and involvement in workers’, employers’ or professional organisations; social protection, including social security and healthcare; social advantages; education; and access to and supply of goods and services which are available to the public, including housing.

Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services requires equality bodies to implement their competences in relation to the provision of goods and services, though not including the content of media and advertising or education.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) requires equality bodies to implement their competences in relation to employment, working conditions including pay, and occupational social security schemes.

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC requires equality bodies to implement their competences in relation to self-employed workers and spouses of self-employed workers.

36 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.

The directives have been a key stimulus for the establishment or designation of equality bodies across the Member States and the EFTA countries. Many countries have gone well beyond these minimum standards in the manner in which they have established or designated equality bodies. Though minimal by design, these standards have been deployed to good effect by the European Commission in launching infringement proceedings against Member States that have failed to implement them, specifically Finland and Slovenia in 2013.

However, the standards set by the EU equal treatment directives have not sufficed to address the diminution of equality bodies by political interference in appointments or through significant or disproportionate budget cuts. Equinet has noted that ‘the Directives only provide minimum standards for the competences and limited functional independence of equality bodies and do not guarantee complete independence, effectiveness, sufficient powers and adequate resources for equality bodies.’³⁷

2.2 Standards set by the European Commission

The European Commission has recently published a Recommendation on standards for equality bodies.³⁸ It establishes that equality bodies ‘play an essential role in implementing Union legislation effectively and enforcing it comprehensively and consistently.’ It goes further to identify equality bodies as ‘valuable institutions for the sustained development of equal and inclusive democratic societies.’ The Recommendation responds to the ‘wide margin of discretion’ left by the EU equal treatment directives to Member States on the structure and funding of equality bodies, which can sometimes lead to ‘inadequate access to protection for citizens’. The stated purpose of the Recommendation is to ‘contribute to closing the gap in standards between equality bodies across Europe’ and to ‘ensure that equality bodies function properly and in an equivalent way across the Union’.

The Recommendation addresses the mandate, independence and effectiveness, and coordination of equality bodies. It encourages the Member States to extend the equality body’s mandate so that it covers the areas of employment and occupation, access to and supply of goods and services, and the issue of hate speech for all prohibited grounds of discrimination. It states that multi-mandate bodies should have a structure that ensures a focus on each part of the mandate. It includes promotion of equality among the functions to be accorded to equality bodies, recommending that they are enabled to provide training, information, guidance and support to duty bearers and to raise awareness within the general public. This is alongside the functions of providing independent assistance, conducting surveys, publishing reports and making recommendations.

In addressing independence and effectiveness, the Recommendation includes, among other elements, a focus on resources in that Member States should ensure that equality bodies are provided with the human, technical and financial resources necessary to perform their tasks and exercise their powers effectively. In addressing cooperation and coordination, it recommends that Member States ensure that equality bodies are consulted in good time and transparently on policy and legislative proposals. It further recommends that equality bodies should not concentrate to a disproportionate extent on some tasks to the detriment of other tasks.

Member States are invited to include information on implementation of the Recommendation in their communication of information on their application of the Directives 2000/43/EC, 2000/78/EC, 2004/113/EC, and 2006/54/EC that is required every four years under those directives.

37 Equinet (2016), *Developing Standards for Equality Bodies – an Equinet working paper*, Brussels.

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

2.3 International standards

The United Nations established a standard in relation to national human rights institutions in 1993. This is referred to as the 'Paris Principles' and has been used by some equality bodies. The Commissioner for Human Rights of the Council of Europe established a standard specifically for equality bodies, termed national structures for promoting equality, in 2011. The European Committee against Racism and Intolerance of the Council of Europe first established a standard for equality bodies, then termed national specialised bodies, working on issues of racism and intolerance in 1997. This was revised in 2017. These three standards are examined separately in this section.

UN Paris Principles

The UN Paris Principles relate specifically to national human rights institutions.³⁹ They offer a valuable starting point for standards, but would need to be tailored to and address the specificities of equality bodies for such wider use. The Paris Principles have been made use of by multi-mandate equality bodies that include an equality mandate to protect the necessary conditions for their potential to be realised. In some jurisdictions, single-mandate equality bodies have sought coverage by this standard in the absence of a dedicated national human rights institution: the Protection Against Discrimination Commission in Bulgaria has been accorded 'B' Status, and the Equality Ombudsman in Sweden has been accorded 'B' Status under the Paris Principles ('B' status means the body is partially compliant with the standard). It is difficult for a single-mandate equality body to be fully compliant given their specific, and therefore narrow, mandate on equality and non-discrimination.

Multi-mandate bodies that include a human rights mandate have secured 'A' status under the Paris Principles in: Croatia (People's Ombudsman), Denmark (Danish Institute for Human Rights), Ireland (Irish Human Rights and Equality Commission), Latvia (Ombudsman), Netherlands (Netherlands Institute for Human Rights) and Poland (Commissioner for Human Rights). 'A' status means the body is fully compliant with the standard. The multi-mandate bodies in Cyprus (Commissioner for Administration and Human Rights) and Slovakia (Slovak National Centre for Human Rights) have secured 'B' Status.

The Paris Principles address the competence and responsibilities, composition and guarantees of independence and pluralism and methods of operation of national human rights institutions. They include further principles for those bodies with quasi-judicial competence. They emphasise independence and that this should be guaranteed in the Constitution or in legislation. Specifically, they address independence in terms of autonomy from Government, pluralist composition of the body, a broad mandate, adequate powers of investigation, and sufficient resources.

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) applies the Paris Principles in assessing the accreditation of national human rights institutions.

Commissioner for Human Rights, Council of Europe

The Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality addresses and makes recommendations in relation to the equality legislation being implemented by equality bodies, the independence and effectiveness of equality bodies, and the operations of equality bodies.⁴⁰ This standard is concerned both with the conditions created by the national Government for

39 United Nations (UN), United Nations General Assembly (1993), Principles Relating to the Status of National Institutions (The Paris Principles).

40 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

equality bodies to be independent and effective and with the conditions created by equality bodies themselves for their independence and effectiveness.

The legal structure of the body, the processes of accountability of the body and the process of appointment of board members and of senior staff are identified as key external factors for independence. Leadership within the organisation is identified as a key internal factor for independence. The level of resources of the bodies and the functions accorded to them are identified as key external factors for effectiveness. Being strategic, the accessibility of services, stakeholder engagement and networking are identified as key internal factors for effectiveness.

There is no mechanism for the application of this standard.

ECRI, Council of Europe

General Policy Recommendation No. 2 (Revised) of ECRI⁴¹ of the Council of Europe addresses the establishment of equality bodies, the institutional architecture for equality bodies, their functions and competences, and their independence, effectiveness and accessibility. This standard recommends a mandate for equality bodies to promote and achieve equality, prevent and eliminate discrimination and intolerance, including structural discrimination and hate speech, and promote diversity and good relations between persons belonging to all the different groups in society.

It recommends visibility for the equality mandate in multi-mandate bodies, adequate attention to all grounds of discrimination, and coordination and cooperation where there is more than one equality body in a country. It recommends that equality bodies should have a promotion and prevention function and a support and litigation function. It indicates a preference for the decision-making function and the support and litigation function to be allocated to different bodies.

Independence, effectiveness and accessibility of equality bodies are addressed. The focus on independence is concerned with ensuring that there is no interference in or instruction to equality bodies, and with provisions in relation to appointments, safeguards for members of the equality body, accountability and management of staff and resources. The focus on effectiveness is concerned with the resources, competences, strategic planning, communication strategy and stakeholder engagement of the equality body. The focus on accessibility is concerned with its location and premises, outreach work, and the accommodation of diversity in its procedures and the provision of its services.

This standard will be implemented as part of the country monitoring by ECRI and of the constructive dialogue between ECRI and the Council of Europe member states.

2.4 Equinet

Equinet has led the debate on the need for international standards for equality bodies. It has set out the parameters for standards in a working paper on 'Developing Standards for Equality Bodies'.⁴² These parameters are a broad mandate, complete independence, effectiveness and institutional architecture.

- Mandate – addresses the scope of the field of action of and the grounds covered by the equality body.
- Independence – addresses the legal structure, appointments, accountability and management of the equality body.

41 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

42 Equinet (2016), *Developing Standards for Equality Bodies – an Equinet working paper*, Brussels.

- Effectiveness – addresses the human and financial resources of and the powers accorded to the equality body.
- Institutional architecture – addresses issues of multi-mandate bodies, the place of the equality body on the access to justice pathway, and the standing and role of the equality body in the wider infrastructure for equality.

Equinet is currently producing a strategic plan for 2019-2022. It remains to be seen how it will build on this work and, most importantly, what role it will chose to play in promoting, monitoring and reporting on the new standards that are now in place.

2.5 Key Learning

There has been a remarkable and recent development in European standards for equality bodies. The 2018 Recommendation of the European Commission and the 2017 revised General Policy Recommendation No. 2 on Equality Bodies of ECRI of the Council of Europe have created a new context full of potential for equality bodies. These new standards acknowledge and respond, for the first time, to the full diversity and complexity of the equality bodies that have been established across Europe. For the first time, their diverse types of mandates, sets of functions and competences and range of grounds covered have been addressed.

The introduction of these standards represents an important recognition of the contribution being made and to be made by equality bodies. They valuably address equality bodies as institutions with a necessary role to play in the creation of more equal, inclusive, cohesive, and democratic societies.

New standards present new challenges if their promise is to be realised. There needs to be ongoing monitoring of both the conditions created for equality bodies and their internal operations to ensure that standards are met. An accompanying dialogue between the relevant actors and shared learning as how best to meet the standards set is needed. Reporting on the implementation of the standards and any failure in this regard has to be pursued in a manner that secures necessary change and improvement as required.

Beneficial Measure at European Level

Promotion of dialogue on and the building of a shared understanding of the European Commission Recommendation on standards for equality bodies and exploration of systems of monitoring and support to ensure capacity for and commitment to their implementation among the relevant Member State authorities. This could usefully include a focus on the full range of international standards concerning equality bodies.

Beneficial Measure at National Level

Formal review of the conditions created for the equality body, against those set out in the European Commission Recommendation and the ECRI General Policy Recommendation, and improvement of these conditions if found to be necessary.

Beneficial Measures Involving Equality Bodies

Examination of the conditions that have been created for the work of the equality body against the European Commission Recommendation and the ECRI General Policy Recommendation and communication of conclusions to the relevant authorities with recommendations for any improvements found to be necessary.

Assessment of the internal operations of the equality body against these standards, in an open and participative manner, and evolution of these if found to be necessary.

3 Institutional architecture

3.1 Introduction

Equality bodies operate within institutional surroundings that include a wide range of statutory and non-statutory organisations working on equality and non-discrimination issues. Equality bodies do not pursue their mandates in isolation. Equinet has reported on the role played by equality bodies within the pathways for access to justice, and collectively with those organisations working on policy, programmes and practice for the achievement of equality.⁴³ The European Union Agency for Fundamental Rights has researched the positioning of equality bodies on pathways for access to justice.⁴⁴

Consideration of the institutional architecture for equality bodies must first be concerned with the place afforded to and taken up by equality bodies within this broader institutional infrastructure for equality and non-discrimination. This is considered in this chapter.

Secondly, issues of institutional architecture encompass the architecture for the equality bodies themselves. Three core areas for debate can be identified in this regard:

- the choices made to have a single-mandate equality body or to include the equality mandate in a multi-mandate body and the manner in which the equality mandate is managed within a multi-mandate setting by the equality body;
- the diversity of functions afforded to equality bodies and the manner in which these are deployed by equality bodies;
- the grounds covered by multi-ground equality bodies and the manner in which the equality bodies engage with this range of grounds in their work.

Each of these issues is subsequently examined in this chapter.

3.2 Equality and non-discrimination infrastructure

The first element for attention, in examining the institutional architecture for equality bodies, is their positioning within the wider equality and non-discrimination institutional infrastructure in the country. This infrastructure encompasses those institutions that are working for the achievement of equality and those institutions that are playing a role as part of the pathways in place for access to justice.

Situation

That part of the wider equality and non-discrimination infrastructure working towards the achievement of equality is broad. It can include Government ministries, state agencies, local authorities, academia, civil society organisations, community organisations, business associations and trade unions. Equinet, in 2014, identified positions being taken and roles being played by equality bodies in relation to this part of the equality and non-discrimination infrastructure by:⁴⁵

- offering collective leadership to a variety of organisations from this equality and non-discrimination infrastructure;

43 Crowley, N., Equinet (2014), *The Bigger Picture: Equality bodies as part of the national institutional architecture for equality*, Brussels.

44 FRA (European Union Agency for Fundamental Rights) (2012), *Access to justice in cases of discrimination in the EU – steps to further equality*, Vienna.

45 Crowley, N., Equinet (2014), *The Bigger Picture: Equality bodies as part of the national institutional architecture for equality*, Brussels.

- developing structures for mutual learning and building shared vision and understanding between these organisations;
- enabling coherence of effort and coordination between the organisations involved.

That part of the equality and non-discrimination infrastructure engaged within the pathways for access to justice is more confined. It includes courts, tribunals and inspectorates as well as prosecution services and litigation organisations. Equinet identified positions taken up and roles played by equality bodies along these pathways for access to justice in:

- serving as the accessible point of entry point for these pathways;
- providing legal and personal assistance to people to support them to access and work along these pathways.

The European Union Agency for Fundamental Rights, in their 2012 research, emphasised the need for Member States to review their national systems for accessing justice with a view to minimising complexity.⁴⁶ A range of structural obstacles to access to justice in cases of discrimination were identified including: difficulties for complainants in establishing which paths to follow and which institutions should be addressed; complexity caused by differing provision at federal and provincial levels; and geographical distance to the relevant body.

Issues

Equality bodies face challenges to find and occupy their appropriate place within this wider equality and non-discrimination infrastructure to best effect. These include challenges as to how they interpret their independence, lack of human resources to pursue an effective engagement and limited interest from the other relevant institutions in engaging with the equality body

Equality bodies are required to operate independently. While retaining and guarding their independence, they must engage collectively with a wider equality and non-discrimination infrastructure if they are to make their full contribution to the social change required for the elimination of discrimination and the achievement of equality. This engagement is important if they are to enable this infrastructure to maximise its impact in this regard.

The Commissioner for Human Rights of the Council of Europe pointed out that equality bodies are ‘well placed to act as a hub for these different stakeholder organisations and thus to contribute coherence and shared ambition’ to the work of organisations from this wider institutional framework for equality.⁴⁷ The ECRI General Policy Recommendation No. 2 recommends that equality bodies should have the competence to ‘cooperate with and support organisations with similar objectives’ and ‘develop shared understanding on key issues in relation to equality and conclude cooperation agreements with these organisations.’⁴⁸

Public authorities are not always committed to engaging with equality bodies. This can reflect the political hostility or indifference highlighted above. It can involve a limited understanding of the role of equality bodies beyond enforcing equal treatment legislation. In this regard, the European Commission Recommendation states that Member States should enable equality bodies to ‘engage in dialogue and cooperate effectively with relevant national authorities and bodies’.⁴⁹

46 FRA (European Union Agency for Fundamental Rights) (2012), *Access to justice in cases of discrimination in the EU – steps to further equality*, Vienna.

47 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

48 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, Strasbourg, Council of Europe, 7 December 2017.

49 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

The European Union Agency for Fundamental Rights in their research on access to justice recommended that ‘to reduce complexity, equality bodies should take the lead in forging networks and promoting collaboration and cross-referral between relevant justice system organisations and institutions.’ Equinet noted the importance of equality bodies having legal standing in the courts and having a competence to issue legally binding decisions where they have a decision-making function if they are to play their roles along the pathway to access to justice to best effect.

3.3 Mandates

The examination of the institutional architecture must also look to the internal structures created for equality bodies. This is first concerned with the mandates held by the body that is designated to play the role of equality body.

Opportunities and Challenges

The management of different mandates within multi-mandate bodies is challenging if the equality mandate is to secure an adequate prominence and have an appropriate impact. There are tensions between the traditions associated with each mandate and the strategies pursued and priorities established by the body as a result. There can be competition for resources between the different mandates. The manner in which these tensions are resolved is key to ensuring the potential of the equality mandate is realised. These are not issues faced by single-mandate equality bodies.

Equinet has identified a particular potential in multi-mandate bodies that combine equality and human rights mandates.⁵⁰ This combination can enhance the standing of both mandates, strengthen their legal interventions particularly in complex cases, broaden the scope of equality body interventions on issues, and provide greater accessibility to those alleging discrimination or human rights violations through a one-stop shop. However, potential tensions and challenges are identified by Equinet for these bodies that require active management.

Tensions are identified due to the ‘different traditions’ associated with each mandate. The equality mandate tradition is seen as focused on societal groups, building solidarity between groups and a proactive pursuit of change. The human rights tradition is seen as focused on the individual and individual freedoms and a reactive approach to the breach of the minimum standards agreed. Different strategies and methodologies have evolved under each tradition. Tensions are exacerbated where the body must manage different legal bases for each mandate. Equinet noted that these tensions translate into practical issues in decision-making within the body on the allocation of resources between equality-related and human rights-related work and on how such bodies present themselves to the public. It emphasised the need for parity in the resourcing of work under each mandate to ensure the success of the work of the body.

Crowther and O’Cinneide identify the potential of multi-mandate bodies with an equality and a human rights mandate in the synergy that can be achieved between their equality and human rights functions alongside a set of practical operational gains.⁵¹ They emphasise that multi-mandate bodies must proactively engage with the challenges of integrating the two mandates and note challenges in doing so of:

- ensuring that one area of the organisation’s mandate does not consume a disproportionate share of its energy and resources;
- finding a balance between functioning as an active and engaged agent of social transformation and as an enforcement and regulatory agency charged with securing compliance;

50 Crowley, N., Equinet (2011), *Equality Bodies and National Human Rights Institutions: Making links to maximise impact*, Brussels.

51 Crowther, N. and O’Cinneide, C. (2013), *Bridging the Divide? Integrating the functions of national equality bodies and national human rights institutions in the EU*, London, UCL Faculty of Laws.

- managing situations where equality and human rights issues can be regulated by two separate if interconnected legal regimes and where public bodies and civil society can treat equality and human rights as largely separate and distinct spheres of concern.

Equinet has identified a potential in multi-mandate bodies that combine an equality mandate and an ombudsperson office mandate.⁵² This combination can strengthen the independence of the equality mandate where the ombudsperson office has a constitutional status, enable staff access to a wider range of expertise, allow the implementation of each mandate to learn from the traditions of the other mandate and offer cost savings. However, the two traditions represented by the two mandates are again identified as a source of potential tension.

The ombudsperson office mandate is focused on mal-administration, whereas the equality mandate is focused on broader social change. The ombudsperson mandate draws from an individual-focused complaints-based tradition. The equality mandate draws from a more proactive approach that combines enforcement with the promotion of good practice and communication strategies and is focused on societal groups. Competition for resources between the mandates is noted. There is a challenge to 'ensure a visibility for the equality mandate and public awareness about the full extent of the role of the body'.

The ECRI General Policy Recommendation No. 2 allows for multi-mandate bodies, acknowledging their potential to address issues of equality and discrimination more comprehensively and effectively. However, it points to the need for strong and innovative leadership to realise this potential.⁵³ It takes a silo-based approach in recommending that: appropriate human and financial resources should be allocated to each mandate to ensure an appropriate focus on the equality mandate; governing, advisory, and management structures should be organised in a manner that provides for clear leadership, promotion and visibility of the equality mandate; and reporting arrangements should give adequate prominence to the concerns arising and work carried out under the equality mandate.

The European Commission Recommendation reflects a concern to protect the equality mandate within multi-mandate bodies. It recommends that 'equality bodies' internal structure should ensure a focus on each part of the mandate'.⁵⁴ This, too, takes a silo-based perspective and, while valuable, does not address the potential in integrated approaches to the different mandates in multi-mandate bodies.

Situation

Equality bodies are most commonly established as single-mandate equality bodies. In such a context, mandate does not emerge as an issue in relation to the institutional architecture for the equality body. However, this report found 14 multi-mandate bodies in 14 countries.⁵⁵ Where a body holds other mandates alongside the equality mandate, issues and challenges do emerge for the effective implementation of the equality mandate. Equality bodies need to engage in active management of their different mandates, seeking an integration of different traditions to maximise impact.

However, no active management by the equality bodies of the different mandates in order to address their particular requirements and to meet the need for visibility of their equality mandate is evident from multi-mandate bodies in seven countries (Cyprus, Estonia, Ireland, Latvia, Liechtenstein, Slovakia and the UK (Equality and Human Rights Commission)). This lack of active management can limit the effectiveness

52 Crowley, N., Equinet (2017), *Enhancing the Impact of Equality Bodies and Ombudspersons Offices: Making links*, Brussels.

53 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

54 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

55 Croatia, the Czech Republic, Cyprus, Denmark, Estonia, France, Greece, Ireland, Latvia, Liechtenstein, the Netherlands, Poland, Slovakia and the UK.

and impact of the equality mandate for lack of focus. Issues of lack of visibility or limited use of equality mandate competences are noted in six of these cases. The UK is seen to have maintained high visibility for its original equality mandate.

There can be a fragility to the equality mandate in the absence of this active management of different mandates, particularly in contexts of scarce resources. In Cyprus, steps that had been taken to ensure a focus on the equality mandate were reported as being reversed on appointment of the new ombudsman in 2017. In Latvia, steps that had been taken to ensure a focus on the equality mandate were reversed in response to budget cutbacks experienced during the economic crisis. In both instances the equality mandate lost visibility and was subsumed under the traditions and associated approaches of its ombudsman identity.

The dominant approach where there is active management of the different mandates by multi-mandate bodies is silo-based with a separate staff unit established to deal with the equality mandate. This is the approach in six equality bodies: Croatia, the Czech Republic, Denmark, Greece, the Netherlands and Poland. In some instances this approach is strengthened by having staff units with other responsibilities in areas, such as research or communication, taking a more integrated approach that encompasses all mandates. This approach is identified as effective in giving visibility to the equality mandate and ensuring equality mandate competences are implemented.

Good Practice

The People's Ombudsman in Croatia, the Office of the Greek Ombudsman, and the Commissioner for Human Rights in Poland demonstrate good practice in the active management of their various mandates. Each has taken specific steps to ensure the equality mandate is underpinned and rendered visible and effective by various means.

- Leadership: with a specific deputy appointed to give strategic direction to implementing the equality mandate.
- Action: with a specific staff unit expert in and dedicated to implementing the equality mandate.
- Visibility: with a specific annual report on the equality mandate.

Leadership enables visibility and strategic direction for the equality mandate, a strong drive to implement the equality mandate and access to specific expertise to assist in its effective implementation.

Dedicated leadership for the equality mandate is valuable in ensuring its effectiveness and impact. Such leadership is explicitly engaged in the multi-mandate bodies in Croatia, France, Greece and Poland where a deputy ombudsman is appointed with specific responsibility for the equality mandate. The body builds on this leadership in Croatia, Greece and Poland with a specific staff unit dedicated to the equality mandate. This strengthens the equality mandate.

Even without the appointment of specific leadership, leadership of the multi-mandate body is important in securing visibility for the equality mandate. The Czech Republic is an example of a country where the ombudsman in the Public Defender of Rights has demonstrated public interest in the equality mandate and secured media attention for it.

Overall the nature of active management of different mandates, where it is in place in multi-mandate bodies, serves to meet challenges of visibility and implementation of competences. However, it remains inadequate to realising the opportunities that could arise from devising an integrated approach to these mandates. The absence of active management however presents clear threats for the equality mandate and its effective implementation.

Table 3: Equality Bodies as Multi-Mandate Bodies

Country	Equality Body	Equality Mandate	Ombud Mandate	NHRI Mandate	Active Management of Multiple Mandates
Croatia	People's Ombudsman	Yes	Yes		A deputy ombudsman is appointed specifically for the equality mandate. A separate office works on the equality mandate.
Cyprus	Commissioner for Administration and Human Rights	Yes	Yes	Yes	No active management evident. Prior to 2017, two departments, the Equality Authority and the Anti-Discrimination Authority, worked on the equality mandate.
Czech Republic	Public Defender of Rights	Yes	Yes		A separate department works on the equality mandate.
Denmark	Danish Institute for Human Rights	Yes		Yes	A separate department works on the equality mandate.
Estonia	Chancellor of Justice	Yes	Yes		No active management evident.
France	Defender of Rights	Yes	Yes	Yes	A deputy defender of rights is appointed for the equality mandate.
Greece	Office of the Greek Ombudsman	Yes	Yes		A deputy ombudsman on equal treatment is appointed. A specific section, the Equal Treatment Cycle, works on the equality mandate. There is a specific focus on the equality mandate in the annual report and on the website.
Ireland	Irish Human Rights and Equality Commission	Yes		Yes	No active management evident.
Latvia	Ombudsman	Yes	Yes	Yes	No active management evident. Prior to 2015, a legal equality unit worked on the equality mandate.
Liechtenstein	Association for Human Rights	Yes		Yes	No active management evident.
Netherlands	Netherlands Institute for Human Rights	Yes		Yes	A separate department deals with discrimination cases under the responsibility of a vice-president. Specific annual report prepared on equality mandate since 2016.
Poland	Commissioner for Human Rights	Yes	Yes	Yes	A deputy ombud is appointed for the equality mandate. A separate equal treatment department with a discrimination law unit and a migrants and national minorities rights unit was created with the appointment of new Ombudsman in 2015. An additional annual report on the equality mandate is prepared.
Slovakia	Slovak National Centre for Human Rights	Yes		Yes	No active management evident.
United Kingdom	Equality and Human Rights Commission	Yes		Yes	No active management evident.

3.4 Functions

The functions accorded to the equality bodies are another element of the internal structures for equality bodies that need to be a focus in the examination of the institutional architecture created for them.

Three core functions that can be accorded to equality bodies have been identified:

- promotion and prevention;
- support and litigation; and
- decision-making.

Equality bodies can be accorded all of or some of these functions. They can be accorded all or part of each individual function. They are then provided with a range of competences to implement these different functions.

Opportunities and Challenges

The Commissioner for Human Rights of the Council of Europe emphasises the importance of equality bodies being accorded the

‘full range of functions required to enable them to implement a strategic mix of work in enforcing the legislation, building a knowledge base about discrimination and inequality, raising awareness about rights and the case for a more equal society and providing support for good practice to policy makers, employers and service providers.’⁵⁶

The EU equal treatment directives require a limited range of competences for equality bodies that rest in the promotion and prevention function (conducting independent surveys, publishing independent reports and making recommendations) and the support and litigation function (provision of independent assistance to those experiencing discrimination). The European Commission Recommendation specifies the promotion of equality among the competences of equality bodies, encompassing support to duty bearers, awareness raising among the general public, and dialogue with stakeholders.⁵⁷

The European Commission Recommendation sets out that independent assistance to those experiencing discrimination, can include: ‘receiving and handling individual or collective complaints; providing legal advice to victims, including in pursuing their complaints; engaging in activities of mediation and conciliation; representing complainants in court; and acting as *amicus curiae*’. It adds that this can include litigating on structural and systemic discrimination on their own initiative.

Unfortunately, the Recommendation goes further to include issuing recommendations or legally binding decisions and follow-up to these as a form of assistance to victims. Hearing and mediating cases cannot be considered a form of assistance where those experiencing discrimination need assistance to access such a hearing or mediation effectively. It fails to address the difficulty for equality bodies with decision-making functions that require impartiality to ensure adequate support to complainants, which would require taking a side in the case.

The ECRI General Policy Recommendation No.2 identifies this potential tension and recommends that ‘each function is provided by a different unit or by different staff’ where the equality body has a decision-

56 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

57 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

making function alongside a support and litigation function.⁵⁸ This addresses the particular potential for the support and litigation function to be compromised in such a situation. It valuably goes further in recommending that ‘appropriate human and financial resources should be allocated to all functions and the equality body should ensure that comprehensive legal and personal support is provided’ to complainants. This addresses situations where lack of resources combined with the imperative to hear cases within time limits means that resources are not made available to implement the support and litigation function.

Situation

Equality bodies can be accorded all of or some of the three functions of promotion and prevention, support and litigation, and decision-making. They are then provided with a range of competences to implement these different functions. A range of different situations are evident for equality bodies.

- This report found that all equality bodies had been accorded part of or all of the promotion and prevention function, except the four equality bodies in Austria (Equal Treatment Commission), Denmark (Equal Treatment Board), Estonia (Chancellor of Justice) and Norway (Equality and Anti-Discrimination Tribunal) that had only a decision-making function. In all these instances, other equality bodies performed the other two core functions of promotion and prevention and support and litigation. The promotion and prevention function involves equality bodies in a wide range of good practice, research and communication activities both to promote and advance equality and to prevent and eliminate discrimination, including conducting surveys, preparing reports and making recommendations as required by the EU equal treatment directives.
- This report found that all equality bodies had been accorded part of or all of the support and litigation function, except the four above-mentioned equality bodies that only had a decision-making function, three equality bodies with a decision-making function alongside other functions in Cyprus, Greece and the Netherlands (function accorded in the Netherlands but not used), and the Office for Equality of People with Disabilities in Liechtenstein. The support and litigation function involves equality bodies in enforcement of the legislation through support to complainants (as required by the EU equal treatment directives), representing complaints in cases, taking cases in their own name and acting as *amicus curiae*.
- This report found 25 equality bodies accorded this function, including the above-mentioned four equality bodies accorded just the decision-making function. This function involves equality bodies in receiving, examining, hearing and making decisions on cases of discrimination.

This report found that there can be tensions for equality bodies holding a mix of functions. The decision-making function requires impartiality on the part of the equality body in implementing the function and in the image that it presents to the public. The promotion and prevention function and the support and litigation function involve the equality body in taking the side of those experiencing or alleging discrimination.

In Cyprus and Greece, the equality bodies do not have a competence to provide assistance to complainants in order to avoid this tension. In other instances, assistance provided to complainants by equality bodies with decision-making functions can be limited to:

- support in filing a complaint, usually with the equality body, as in Bulgaria, Croatia (two equality bodies), Lithuania, Norway, Romania and Slovakia;
- the mediation or hearing of a case, as in the Czech Republic, Finland, France, Latvia, Greece, Poland and Portugal (CEARD).

⁵⁸ Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

Good Practice

The Netherlands Institute for Human Rights has a decision-making function alongside promotion and prevention and support and litigation functions. It chooses not to diminish its necessary impartiality by engaging in implementing its support and litigation function (this function is therefore not included in table 4 on page 73). In part, the local anti-discrimination bureaux that are required in each municipality fill in for this function with the support they provide to complainants. The equality body supports the network of anti-discrimination bureaux in their work.

Equality bodies combining these functions have developed useful strategies to manage this tension between decision-making and provision of support to complainants.

- In Romania, the equality body has a specialised unit to interact with and support people planning to file a complaint.
- In Hungary, the equality body provides assistance to complainants through an equal treatment referee network of 20 referees located throughout the country.
- In France, the Defender of Rights has 475 delegates throughout the country that receive and assist complaints with mediation.

Good Practice

Norway, in 2018, implemented a clear distinction between the decision-making function and the promotion and prevention and support and litigation functions for its two equality bodies. The restructuring of these functions across two bodies eliminated the tensions that emerge where they are exercised by the one body. It confined the decision-making function to one equality body as its sole responsibility: the Equality and Anti-Discrimination Tribunal, improving its competences in the process. The other body, the Equality and Anti-Discrimination Ombud, retained only the promotion and prevention and the support and litigation functions. It is noted that the predecessor equality body had not used its competence to support claimants in forwarding claims to the court and was viewed as an impartial body primarily concerned with its decision-making function.

There is a further tension evident where equality bodies have all three functions. This can result, in particular, in limitations in the nature and level of assistance provided by the equality body to those who have experienced discrimination. The more immediate and reactive demands of the decision-making function tend to take up available staff time to the detriment of the exercise of other functions.

Table 4: Functions of Equality Bodies

Country	Equality Body	Promote & Prevent Function ⁵⁹	Support & Litigate Function	Decision-making Function	Competences ⁶⁰
Austria	Ombud for Equal Treatment	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, conduct inquiries, assess draft legislation, and promote good practice.
	Equal Treatment Commission			Yes	Investigate complaints and make recommendations.
Belgium	Institute for Equality of Women and men	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, legal standing to take cases to court, support implementation of requirements on gender mainstreaming. The IEWM has the further role to implement the Federal Government's gender equality policy.
	Inter-federal Centre for Equal Opportunities (UNIA)	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, legal standing to take cases and as amicus curiae and mediate settlements.
Bulgaria	Protection Against Discrimination Commission	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Decide cases and impose sanctions, legal standing to take cases and as amicus curiae and mediate settlements.
Croatia	Ombudsperson for Gender Equality	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate complaints and make recommendations, seek judicial review on constitutionality of a law, raise awareness, assess draft legislation, mediate settlements, follow-up decisions, and monitor implementation of positive duties for gender equality.
	People's Ombudsman	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate complaints and make recommendations, raise awareness, legal standing to take cases and as amicus curiae, mediate settlements and follow-up decisions.
Cyprus	Commissioner for Administration and Human Rights	Yes		Yes	<i>Surveys, reports, and recommendations.</i> Decide cases and impose sanctions, carry out ex-officio investigations, follow-up decisions, raise awareness and promote good practice (codes of good practice).

59 The functions identified use the terminology from the ECRI General Policy Recommendation No. 2 as set out above. Equality bodies hold all or part of the functions identified.

60 Competences required by the equal treatment directives in italics.

Country	Equality Body	Promote & Prevent Function ⁵⁹	Support & Litigate Function	Decision-making Function	Competences ⁶⁰
Czech Republic	Public Defender of Rights	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate complaints, make recommendations, and raise awareness.
Denmark	Danish Institute for Human Rights	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Promote good practice, raise awareness, legal standing as amicus curiae.
	Board of Equal Treatment			Yes	Decide cases and impose sanctions, follow-up on request by bringing case to court.
Estonia	Commissioner for Gender Equality and Equal Treatment	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate complaints and issue opinions, raise awareness and propose amendments to legislation,
	Chancellor of Justice			Yes	Make recommendations, and assistance to victims. Investigate complaints, make recommendations, mediate settlements, raise awareness and propose amendments to legislation.
Finland	Equality Ombudsman	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate cases and make recommendations, and assist and monitor equality duties. Courts can seek opinions.
	Non-Discrimination Ombudsman	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate cases and make recommendations, bring cases to Tribunal, mediate settlements, and assist and monitor positive duties for equality plans. Courts can seek opinions.
France	Defender of Rights	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, investigate complaints, issue sworn statements and adopt decisions with general and individual recommendations, request sanctions, mediate settlement, follow-up cases and legal standing to provide observations to courts.
Germany	Federal Anti-Discrimination Agency	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, legal standing as amicus curiae and mediate settlement.

Country	Equality Body	Promote & Prevent Function ⁵⁹	Support & Litigate Function	Decision-making Function	Competences ⁶⁰
Greece	Office of the Greek Ombudsman	Yes		Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate cases and make recommendations, mediate settlement, raise awareness, promote good practice and provide policy advice.
Hungary	Equal Treatment Authority	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Decide cases and impose sanctions, raise awareness, legal standing to take cases.
Iceland	Centre for Gender Equality	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, secure enforcement of Gender Equality Committee decisions and monitor required gender equality programmes.
Ireland	Irish Human Rights and Equality Commission	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, assist and monitor public sector duty, legal standing to take cases and amicus curiae.
Italy	National Office for Racial Anti-Discrimination (UNAR)	Yes	Yes		Surveys, reports, recommendations, and assistance to victims. Conduct inquiries, mediate settlement, legal standing as amicus curiae.
	National Equality Advisory, Local Equality Advisors, Equal Opportunities National Committee	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, mediate settlement, and legal standing to take cases and as amicus curiae.
Latvia	Ombudsman	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, investigate case and make recommendation, mediate settlement, and legal standing to take case to court and as amicus curiae.
Liechtenstein	Association for Human Rights	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, review laws and regulations, carry out investigations, and legal standing to take cases.
	Office for Equality of People with Disabilities	Yes			<i>Make recommendations.</i> Raise awareness and promote good practice.
Lithuania	Office of the Equal Opportunities Ombudsperson	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, provide training, investigate complaints, make recommendations, impose administrative sanctions and follow-up.

Country	Equality Body	Promote & Prevent Function ⁵⁹	Support & Litigate Function	Decision-making Function	Competences ⁶⁰
Luxembourg	Centre for Equal Treatment	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i>
Malta	National Commission for the Promotion of Equality	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate complaints and make recommendations, raise awareness, conduct investigations, legal standing to take cases and as amicus curiae.
Netherlands	Netherlands Institute for Human Rights	Yes		Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness and investigate complaints, make non-binding decisions and follow-up.
Norway	Equality and Anti-Discrimination Ombud	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice and enforce positive duties.
	Equality and Anti-Discrimination Tribunal			Yes	Decide case and award sanctions, follow-up and enforce positive duties.
Poland	Commissioner for Human Rights	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate cases and issue general statements, raise awareness, appoint expert committees on issues and legal standing to take cases and as amicus curiae.
Portugal	Commission for Equality and Against Racial Discrimination	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Decide case and impose sanctions.
	Commission for Citizenship and Gender Equality (CIG)	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, advise on policy and legal standing as amicus curiae.
	Commission for Equality in Labour and Employment (CITE)	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, give opinions including binding guidance to employers, monitor collective agreements, and legal standing as amicus curiae.
Romania	National Council for Combating Discrimination	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Decide cases and impose sanctions, mediate settlement, legal standing as amicus curiae, raise awareness and develop national plans on anti-discrimination.

Country	Equality Body	Promote & Prevent Function ⁵⁹	Support & Litigate Function	Decision-making Function	Competences ⁶⁰
Slovakia	Slovak National Centre for Human Rights	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate cases and make recommendations, legal standing to take cases and as amicus curiae, provide expert opinions and raise awareness.
Slovenia	Advocate of the Principle of Equality	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Decide on cases and issue orders, legal standing to take cases and as amicus curiae.
Spain	Council for the Elimination of Racial and Ethnic Discrimination	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness and promote good practice.
Sweden	Equality Ombudsman	Yes	Yes	Yes	<i>Surveys, reports, recommendations, and assistance to victims.</i> Investigate and settle complaints, legal standing to take cases, raise awareness and supervise compliance with positive duties.
United Kingdom	Equality and Human Rights Commission	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, conduct investigations, intervene in cases, support and enforce public sector duty.
	Equality Commission for Northern Ireland	Yes	Yes		<i>Surveys, reports, recommendations, and assistance to victims.</i> Raise awareness, promote good practice, conduct investigations, intervene in cases, and support and enforce public sector duty.

3.5 Grounds

The grounds covered by the equality bodies are a final element of the internal structures for equality bodies that need to be a focus in the examination of the institutional architecture created for them. There are both multi-ground and single-ground equality bodies. Multi-ground bodies that cover a variety of different grounds are found. Multi-ground settings present challenges and offers opportunities for equality bodies that demand active management of the multiple grounds.

Opportunities and challenges

The predominant situation is where equality bodies cover multiple grounds in their work. This presents challenges for equality bodies, while it offers opportunities that require active management of the multiple grounds if they are to be realised.

The arguments made for multi-ground equality bodies include their capacity to be comprehensive and without hierarchy in their approach to equality and non-discrimination.⁶¹ The multi-ground approach offers an administrative simplicity to employers and service providers in responding to their obligations under equal treatment legislation. It enables a focus on intersectionality and multiple discrimination by equality bodies. Multi-ground equality bodies are seen as enabling access for complainants by simplifying the pathway for access to justice as a one-stop entry point. However, multi-ground bodies are challenged to actively manage their work not only to realise the opportunities attendant on working to a multi-ground agenda but also to ensure visibility for and relevance to each of the grounds covered.

The ECRI General Policy Recommendation No. 2 establishes the necessity for multi-ground bodies 'to ensure a clear and appropriate focus on each of the grounds covered and on the intersections between them.'⁶² Likewise, the European Commission Recommendation states that the internal structure of equality bodies should ensure 'a focus on each ground. This should be proportionate to the impact of the related ground of discrimination, and resources should be balanced appropriately.'⁶³

The Commissioner for Human Rights of the Council of Europe focuses on the specific expertise required under different grounds and states that it is 'important that multi-ground bodies are enabled to recruit or develop in-depth expertise in relation to all the grounds they cover and that they ensure that all the grounds they cover have a visibility in their work.'⁶⁴

There have been debates, often heated, in Belgium, Croatia, Finland and Iceland about incorporating the single gender ground equality bodies into multi-ground equality bodies. The arguments made for retaining single-ground equality bodies working on the gender ground have included, in particular, visibility for gender issues and the capacity of such a body to secure a focus on gender equality and to bring issues of gender discrimination to the forefront. Other arguments are made on the basis that women make up more than half of the population, the scale of gender equality across all fields in the economic, political, cultural and social domains and the need to secure specific expertise to effectively address issues of gender equality.

Ammer et al. found, in 2010, that, where a single gender ground equality body had been incorporated into a multi-ground setting, 'no downgrading or de-prioritisation of gender issues in budgetary terms' was evident.⁶⁵ They stated that 'the fear that gender may lose ground in the absence of a specific gender equality body may be contrasted, however, with the hope that the gender ground might in fact gain from an integrated approach' as multi-ground bodies could be better placed to address intersectional issues. They concluded that 'it remains open to discussion how gender is seen to fare in terms of budget and status when there is no separate body responsible for gender issues.'

Multi-ground bodies open up an important opportunity to address intersectionality. They can more effectively respond to the reality that people are not confined to a single ground but live out and experience their lives at the intersections between grounds.

In a 2016 Equinet study, equality bodies in six countries reported some provisions in their legislation concerning multiple discrimination (Austria, Bulgaria, Croatia, Germany and Serbia) with proposals for

61 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

62 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

63 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

64 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

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

this in draft legislation in a seventh country (Malta) and reference in the preparatory works for legislation in two countries (Finland and Sweden).⁶⁶ Despite limited legislative provisions, 18 equality bodies in 17 countries identified that they had worked on issues of intersectionality.

Enforcement was found by Equinet to be a prominent focus in this work by equality bodies on intersectional issues involving casework on multiple discrimination or covering more than one ground. The dominant area of work by equality bodies on intersectionality was found to be in research, building a knowledge base for work on intersectionality and bringing this into public and political debate.

Equality bodies reported limited work in supporting good practice by policy makers, employers and service providers on intersectionality. The issue of intersecting grounds was seen as holding 'a potential to challenge norms and stimulate innovation in the field of equality. It is still under-developed in theory, policy and practice.'⁶⁷

Ammer et al. also noted, in 2010, that 'multiple discrimination is a slowly evolving field and will need more attention to enable equality bodies to treat queries and cases in an adequate fashion' and that any 'legal or other hierarchy between the grounds of discrimination' must be removed for this to happen.

Situation

This report found that multi-ground bodies are increasingly the norm, accounting for 33 of the 43 equality bodies identified. They are challenged to secure visibility for and action relevant to each ground covered, often in a lengthy or even open list. Ten equality bodies work to an open list or unspecified and unbounded grounds (Bulgaria, Estonia, Finland (Non-Discrimination Ombudsman), Hungary, Latvia, Liechtenstein, Poland, Romania, Slovakia and Slovenia).

Ten single-ground equality bodies were identified, with seven focused on the ground of gender (Belgium, Croatia (including other grounds),⁶⁸ Finland, Iceland, Italy and Portugal (two equality bodies), two on the ground of racial or ethnic origin (Portugal and Spain) and one on the ground of disability (Liechtenstein).

Good Practice

The equal treatment legislation in the Czech Republic requires that there is an adequate focus in the work of the equality body on each of the grounds covered. This provision usefully establishes a standard and a driver for the active management of multi-ground mandates and endorses a concern for such an active approach.

Most equality bodies are viewed as giving adequate attention to the various grounds that they cover. In some instances, for single-ground bodies that had evolved into multi-ground bodies, it was suggested that the original single ground, often gender, retained some prominence. There is, however, limited evidence of the active management of multi-ground mandates required to ensure visibility for and relevance to all grounds in the work of equality bodies and to achieve the potential in a multi-ground agenda. The limited resources available to equality bodies are seen as one cause of this.

⁶⁶ Crowley, N., Equinet (2016), *Innovating at the Intersections: Equality bodies tackling intersectional discrimination*, Brussels.

⁶⁷ Crowley, N., Equinet (2016), *Innovating at the Intersections: Equality bodies tackling intersectional discrimination*, Brussels.

⁶⁸ The Ombudsperson for Gender Equality has its mandate defined by the Gender Equality Act which defines gender discrimination broadly to include discrimination based on sex, marital and family status, pregnancy and maternity as well as sexual orientation. It is accorded the further ground of gender identity and expression in the Anti-Discrimination Act.

Good Practice

When they were established in 1999, the equality bodies in Ireland (at that time, the Equality Authority) and Northern Ireland (Equality Commission for Northern Ireland) developed a framework for organising the work of the equality bodies across multiple grounds.⁶⁹ This was developed to ensure adequate attention to each ground in the work of the equality bodies, while realising the added potential held by a multi-ground mandate.

This framework identified the need for active management by the equality bodies of the multiple grounds. This involved engaging in work simultaneously at three levels:

- multi-ground level where activities are joined-up in seeking progress of relevance to all grounds covered;
- single-ground level where activities ensure visibility and address issues specific to particular grounds covered;
- cross-ground level where activities are developed to respond to the particular identity, experience and situation of groups at the intersections between the grounds covered.

Four equality bodies (in Hungary, Ireland, Luxembourg and Poland) evidenced no active management of the grounds covered. Twenty bodies, all with a decision-making function, were predominantly reactive in managing the multi-ground agenda by responding to cases filed for examination: Austria (Equal Treatment Commission), Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia (two equality bodies), Finland, France, Greece, Latvia, Lithuania, Malta, the Netherlands, Norway (two equality bodies), Romania, Slovakia and Slovenia.

This reactive approach is deemed important in ensuring equal treatment for all cases, whatever the ground involved. However, it can fail to secure adequate visibility for grounds subject to high levels of under-reporting of discrimination and to ensure a relevance of the work of the equality body to the particular needs of different grounds. Further, it cannot achieve the potential inherent in a multi-ground agenda.

Auditing the focus on the grounds in their work has emerged as a good practice by equality bodies in the UK and France in ensuring visibility for and relevance to all grounds. Two equality bodies structure themselves along ground-based lines in Austria (Ombud for Equal Treatment) and Denmark (Danish Institute for Human Rights). This, too, is identified as enabling visibility for and relevance to each of the grounds covered by these equality bodies in their work.

Good Practice

Investigations by the Defender of Rights in France are subject to regular audit of approach and practice that include a ground-based perspective. This should enable under-reporting in relation to different grounds to be tracked. Any such monitoring could trigger further investigation to establish any reasons specific to a particular ground for such under-reporting and action to address any reasons identified.

Three equality bodies have allocated specific staff to deal with cases on particular grounds that present with greater frequency (Austria (Equal Treatment Commission), Bulgaria and Cyprus). This, while remaining reactive to complaints submitted, is seen as enabling specialised expertise and experience to be deployed for those grounds.

The Non-Discrimination Ombudsman in Finland and the Equality and Anti-Discrimination Ombud in Norway seek to recruit staff with previous experience of working with specific groups that are subject to discrimination.

69 Crowley, N. (2006), *An Ambition for Equality*, Irish Academic Press, Dublin.

Good Practice

The Equality and Human Rights Commission in the UK and the Equality Commission for Northern Ireland demonstrate strategic and systemic good practice in their approach to their multi-ground mandates. They conduct an annual review of their work to assess the adequacy of the attention given to each of the grounds that make up their mandate in their work. This is described as applying a ‘protected characteristic lens’ to the body’s work.

This approach should ensure attention is given to each of the grounds in the work of the equality body and, where this is not the case and there is no justification, action is taken to ensure a balance. It should allow equality body activity to be tailored and made relevant to the specific situations, experiences and identities of members of particular groups covered by the different grounds.

Specific action to prioritise particular grounds has been taken by 15 equality bodies. The availability of external funding, particularly from the EU in relation to projects on the gender ground and in relation to Roma and Travellers, influences ground-specific work by equality bodies. International developments influence the prioritising of specific grounds by equality bodies. The UN Convention on the Rights of Persons with Disabilities has had a significant influence in this regard.

UNCRPD requires signatory state parties to establish a framework to promote, protect and monitor implementation of the Convention (Article 33(2)). Equality bodies in 10 countries have been accorded roles in relation to this framework: Belgium (UNIA), the Czech Republic, Denmark (Danish Institute for Human Rights), France, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands and the UK (Northern Ireland and Britain).

There are further examples where equality bodies have proactively focused on individual grounds in their work. UNIA in Belgium included action on priority grounds in its strategic plan. In Germany, a specific ground has been chosen each year to be a priority focus for the work of the equality body. The Public Defender of Rights in the Czech Republic has taken initiatives to generate public debate on specific grounds. The equality body in Liechtenstein (Association for Human Rights) has conducted ground-specific situational analyses in preparing the ground for its future endeavours. The equality body in Finland (Non-Discrimination Ombudsman) produces reports on the rights of specific groups. In Italy, the equality body (UNAR) includes ground-specific sections in its annual report.

Good Practice

The Federal Anti-Discrimination Agency in Germany accorded priority to developing a shared understanding of multiple discrimination over a single year in 2010. This raised the issue of intersectionality and gave it public and political visibility in a context where there was limited understanding of the concept’s importance. It formed part of a programmatic approach that brings a particular focus to individual grounds each year on a rolling basis, with a single ground chosen annually for priority attention.

Intersectional work recognises that people hold more than one of the personal characteristics used in defining the different discrimination grounds. Intersectional work has been recognised as including a focus on multiple discrimination, multiple identity groups, and intersectionality ‘where the different grounds interact in a manner that makes them inseparable.’⁷⁰ There is limited focus on intersectional work evident by equality bodies.

Eleven equality bodies evidenced some action on intersectional issues: Bulgaria, Croatia (Ombudsperson for Gender Equality), Cyprus, Denmark (Danish Institute for Human Rights), Finland (Non-Discrimination Ombudsman), Germany, Ireland, Norway (Equality and Anti-Discrimination Ombud), Portugal (CITE and CIG) and Sweden. This intersectional action was principally based on the inclusion of a focus on

⁷⁰ Crowley, N., Equinet (2016), *Innovating at the Intersections: Equality bodies tackling intersectional discrimination*, Brussels.

intersectional groups in reports and policy submissions. It has, in a number of instances, included some casework or investigations on multiple discrimination.

Good Practice

The Equality Ombudsman in Sweden demonstrates good practice in addressing intersectional issues with the preliminary analysis of cases filed including an assessment of intersectional issues. This reflects the need for particular support for complainants to identify their experience of discrimination in terms of the intersectional identities they hold.

In Germany, action by the equality body on intersectional issues included research work to develop a knowledge base on multiple discrimination. In Bulgaria, a specific panel of the equality body hears multiple discrimination cases. In Ireland, the equality body sought provisions on multiple discrimination in the equal treatment legislation.

Table 5: Grounds Covered by Equality Bodies

Country	Equality Body	Multi-Ground/ Single Ground	Active Management of Multi-Grounds	Intersectionality
Austria	Ombud for Equal Treatment	Multi-ground	Reactive to complaints. Three ombuds: gender in the workplace, other grounds in the workplace, and gender and ethnicity beyond the workplace.	
	Equal Treatment Commission	Multi-ground	Reactive to complaints. Three senates: gender in the workplace, other grounds in the workplace, and gender and ethnicity beyond the workplace.	
Belgium	Institute for Equality of Women and men	Gender	N/A	
	Inter-federal Centre for Equal Opportunities (UNIA)	Multi-ground	Transversal approach, while priorities in terms of the grounds of national or ethnic origin, religion or philosophical belief, and disability are identified in a strategic plan on basis of the frequency they are invoked in complaints.	
Bulgaria	Protection Against Discrimination Commission	Open List Multi-ground	Reactive to complaints filed. Five PADC panels that hear cases are organised to each cover a specific set of grounds.	An additional PADC panel hears cases of multiple discrimination.
Croatia	Ombudsperson for Gender Equality	Gender <i>plus gender identity and expression, sexual orientation, marital or family status</i>	N/A	Some cases of intersectional nature and multiple discrimination addressed in reports.
	People's Ombudsman	Multi-ground	Reactive to complaints filed.	

Country	Equality Body	Multi-Ground/ Single Ground	Active Management of Multi-Grounds	Intersectionality
Cyprus	Commissioner for Administration and Human Rights	Multi-ground	Reactive to complaints filed. Specific officers handle cases on grounds of disability, gender, racial or ethnic origin with specific experience and based on number of complaints presenting on these grounds.	Intersectional discrimination is addressed in reports and in self-initiated investigations.
Czech Republic	Public Defender of Rights	Multi-ground	Reactive to complaints filed. Initiatives have been taken to generate public debate about specific grounds (in 2018, age discrimination was a focus). Law requires adequate attention to all grounds.	
Denmark	Danish Institute for Human Rights	Multi-ground	Three ground-based teams: gender, racial or ethnic origin, disability	Ground specific teams include a focus on intersectional issues with specific projects.
	Board of Equal Treatment	Multi-ground	Reactive to complaints filed.	
Estonia	Commissioner for Gender Equality and Equal Treatment	Multi-ground	Reactive to complaints filed.	
	Chancellor of Justice	Multi-ground	Reactive to complaints filed.	
Finland	Equality Ombudsman	Gender	N/A	
	Non-Discrimination Ombudsman	Multi-ground	Reactive to complaints filed. Reports on rights of specific groups. Annual report outlines co-operation with groups such as religious minorities, sexual minorities, people with disabilities and migrant organisations. Seeks staff with expertise on specific groups (minority ethnic groups, people with disabilities, sexual minorities).	Intersectionality recognised in casework.
France	Defender of Rights	Open list Multi-ground	Reactive to complaints filed. Investigation practices and approaches regularly audited by grounds and issues.	
Germany	Federal Anti-Discrimination Agency	Multi-ground	Ground selected each year to be a priority focus for attention.	Multiple discrimination priority focus in 2010 with reports prepared.
Greece	Office of the Greek Ombudsman	Multi-ground	Reactive to complaints filed. Special report on gender and employment.	
Hungary	Equal Treatment Authority	Open list Multi-ground	Reactive to complaints filed.	
Iceland	Centre for Gender Equality	Gender	N/A	

Country	Equality Body	Multi-Ground/ Single Ground	Active Management of Multi-Grounds	Intersectionality
Ireland	Irish Human Rights and Equality Commission	Multi-ground		Intersectional issues addressed in policy submissions. Legal provisions on multiple discrimination sought.
Italy	National Office for Racial Anti-Discrimination (UNAR)	Multi-ground	Different sections in annual report focused on each of the specific grounds covered.	
	National Equality Advisory, Local Equality Advisors, Equal Opportunities National Committee	Gender	N/A	
Latvia	Ombudsman	No grounds specified. Multi-ground	Reactive to complaints.	
Liechtenstein	Association for Human Rights	No grounds specified. Multi-ground	Situational analysis done on some grounds.	
	Office for Equality of People with Disabilities	Disability	N/A	
Lithuania	Office of the Equal Opportunities Ombudsperson	Multi-ground	Reactive to complaints.	
Luxembourg	Centre for Equal Treatment	Multi-ground		
Malta	National Commission for the Promotion of Equality	Multi-ground	Reactive to complaints.	
Netherlands	Netherlands Institute for Human Rights	Multi-ground	Reactive to complaints.	
Norway	Equality and Anti-Discrimination Ombud	Multi-ground	Reactive to complaints. Seeks staff with expertise on all specific grounds, within a concern that all staff should have knowledge of all grounds.	Concern to uncover multiple discrimination in complaints
	Equality and Anti-Discrimination Tribunal	Multi-ground	Reactive to complaints.	
Poland	Commissioner for Human Rights	Multi-ground	Reactive to complaints.	

Country	Equality Body	Multi-Ground/ Single Ground	Active Management of Multi-Grounds	Intersectionality
Portugal	Commission for Equality and Against Racial Discrimination	Racial or ethnic origin	N/A	
	Commission for Citizenship and Gender Equality (CIG)	Gender	N/A	Intersectional focus on LGBT and racial or ethnic origin grounds
	Commission for Equality in Labour and Employment (CITE)	Gender	N/A	Intersectional focus on LGBT and racial or ethnic origin grounds
Romania	National Council for Combating Discrimination	Open list Multi-ground	Reactive to complaints.	
Slovakia	Slovak National Centre for Human Rights	Open list Multi-ground	Reactive to complaints.	
Slovenia	Advocate of the Principle of Equality	Open list Multi-ground	Reactive to complaints.	
Spain	Council for the Elimination of Racial and Ethnic Discrimination	Racial or ethnic origin	N/A	
Sweden	Equality Ombudsman	Multi-ground		Focus on intersectional grounds in analysis of complaints filed.
United Kingdom	Equality and Human Rights Commission	Multi-ground	Review conducted to ensure appropriate level of attention to each ground	
	Equality Commission for Northern Ireland	Multi-ground	Review conducted to ensure appropriate level of attention to each ground	

3.6 Key Learning

Wider equality and non-discrimination infrastructure

Some equality bodies have demonstrated a capacity to mobilise, engage with and support a wider institutional infrastructure for equality and non-discrimination. This is important if they are to realise their potential and maximise their impact. Equality bodies should be wary of standing aloof from these other institutions for reasons of independence. They lose relevance and standing in such contexts. They fail to advance their goals and mandate to best effect in missing the opportunities that arise from effective engagement.

Government, social partners, and civil society organisations, for their part, need to give space to equality bodies so that they can make their contribution to this wider equality and non-discrimination infrastructure. It is important that they accord a status to the equality body that enables it to give leadership and

make its expertise available within this wider infrastructure. Commitment and engagement from these organisations is a necessary ingredient for the equality body to play its role as a hub around which shared understanding and goals can emerge and be pursued.

Leadership within equality bodies is central to their capacity to maintain their independence while engaging fully with these statutory and non-statutory organisations. This leadership is challenged to negotiate a path whereby the equality body maintains its position as an authoritative voice on matters of equality and non-discrimination, retains its full capacity to enforce the equal treatment legislation in cases of discrimination and operates as a partner with a broad diversity of other organisations in pursuit of shared goals.

The place of equality bodies on the pathways to access justice is key to the accessibility of these pathways. Equality bodies face a difficult challenge in combining their roles in providing an entry point as part of these pathways, supporting people to move through these pathways, and ensuring that the different institutions that make up these pathways have the understanding, knowledge and capacity required to adequately address cases of discrimination. An astute leadership is required to navigate being able to critique or train a justice system that they must also appear before as litigants, and in being able to form part of the pathway while still supporting people to effectively vindicate their rights through the pathway.

Mandate

Mandate forms an important element in the institutional architecture for equality bodies when an already existing body with other mandates is designated to hold the equality mandate or where bodies with different mandates are merged. The equality mandate is subject to a vulnerability in such multi-mandate bodies. This is exacerbated where the equality mandate is accorded to an existing body that has already developed a long track record in implementing other mandates.

Clear and worrying issues for equality and non-discrimination where there is no active management of multiple mandates are evident in multi-mandate bodies. The equality mandate, in such settings:

- suffers a lack of visibility and, in some instances, a lack of investment;
- is limited in its overall ambition to a concern for equal treatment for individuals over the achievement of full equality in practice for groups;
- is confined in its tactics to reactive approaches to incidents of discrimination or to a monitoring and reporting response to discrimination over a broader mix of proactive and reactive interventions to prevent and combat discrimination and to celebrate and accommodate diversity and promote and achieve equality.

The silo-based approach developed by a number of multi-mandate bodies usefully addresses some of these issues. This approach can secure visibility for the equality mandate and ensure the implementation of the full range of competences under the equality mandate, especially where there is distinct leadership for the equality mandate. This is the approach largely endorsed by current standards. However, this approach can only be understood as defensive, protecting the position of the equality mandate in multi-mandate settings. This raises questions as to the purpose of creating such bodies and suggesting that cost-saving rather than enhancing the potential of the equality mandate is the actual rationale. This is a poor rationale given the risks for the equality mandate in such settings.

If there is added potential for the equality mandate in these multi-mandate bodies it lies in the integration of the mandates. Integrated approaches, if effectively devised and implemented, would enable each mandate to be reinforced and reinvented by the other. The result would be innovation that benefits each mandate. Finding an approach based on an integration of mandates that extracts the best from each mandate has been difficult to develop and the challenge of pursuing integrated approaches to the

mandates has yet to be addressed by any equality body. The innovation and learning that would ensue is thus currently not secured.

Beneficial Measure Involving Equality Bodies

Development of templates and guidance for the active management of multiple mandates that ensures visibility for the equality mandate and underpins integrated approaches to the multiple mandates that secure positive synergies.

Functions

The functions and associated competences accorded to equality bodies across most countries go beyond the requirements in the EU equal treatment directives. The directives require equality bodies to have competences to support those who experience discrimination, to conduct surveys and prepare reports in relation to discrimination and to make recommendations. Equality bodies go beyond these competences with the broad functions of promotion and prevention, support and litigation, and decision-making that are accorded in a diversity of mixes to equality bodies. This has emerged as another important element in the institutional architecture for equality bodies, which, again, presents both opportunities and challenges.

This breadth of function enables them to deploy the strategic mix of enforcement, promotion of good practice, communication, research and stakeholder engagement activities needed for making an impact and contributing to change for individuals, institutions and society.

However, the nature and quality of assistance to victims is compromised when equality bodies combine functions of support and litigation and of decision-making. There is a clear challenge, especially in a context of limited resources, to find systems capable of ensuring an adequate response to those experiencing discrimination with an effective implementation of the decision-making function. The ultimate solution is for the decision-making function to be located in a separate equality body. There is a further challenge, in a context of limited resources, to secure appropriate levels of investment in each function to ensure that it is effectively implemented.

Beneficial Measure Involving Equality Bodies

Review, and enhancement if found to be necessary, of the nature and quality of the assistance provided to complainants by equality bodies with a decision-making function

Grounds

Most equality bodies now cover multiple grounds. This, too, forms an important but challenging element in the institutional architecture for equality bodies that demands active management.

There is limited evidence of active management of multi-ground mandates by equality bodies. The different elements that make up such an approach are evident in the work of some equality bodies, but there is limited evidence of strategy in establishing the most effective mix and interplay of single-ground, multi-ground and cross-ground activities.

The dominant approach to their multi-ground mandate by equality bodies is reactive to cases presenting. Single-ground work done by equality bodies seems to be rooted in casework brought on single grounds, or to be reactive to external prompting, whether by international policy or funding opportunities. Multi-ground initiatives of equality bodies are more widespread and proactive, in particular being pursued with duty-bearers in promoting good practice given the administrative simplicity this allows for employers and service providers. Cross-ground activities appear to be limited and intersectionality has not yet found significant traction in the work of equality bodies.

A reactive approach by equality bodies will ensure equal treatment for all cases, whatever the ground. However, it takes no account of the issue of under-reporting and the different levels of and reasons for under-reporting across the various groups covered by the grounds. There is little evidence of specific targeted action by equality bodies on the issue of under-reporting. Reactive approaches cannot respond to the particular needs and issues for specific grounds or particular opportunities that arise at different moments to advance their specific agendas.

There are risks in this lack of active management by equality bodies. Specific grounds might not get the attention that they require or be approached with the necessary expertise. The work programmes of equality bodies might not be relevant to all the grounds that they cover. The potential for innovation in exploring intersectional issues and approaches will be lost.

Work at the level of intersectionality is still limited. There are barriers to this work where multiple discrimination is not provided for in the equal treatment legislation. There is a wider challenge to explore the full complexity of the reality that people are not members of a single ground and their real lives are at the intersections between the grounds. This offers the potential of bringing new thinking to the work of promoting equality, accommodating diversity and combating discrimination. It poses a challenge to develop an understanding of the underpinning concepts and the lived realities for people and to bring this understanding into the different functions of equality bodies.

Beneficial Measure at National Level

Introduction of provisions for multiple discrimination in equal treatment legislation that could enable cases to be taken on multiple grounds, address the complexities of comparator requirements for these instances and reflect the additional gravity of cases where more than one ground is involved.

Beneficial Measure Involving Equality Bodies

Development of templates and guidance for the active management of multi-ground mandates that ensures visibility and relevance for the individual grounds covered, addresses the intersections between these and maximises the potential of multi-ground activities.

4 Independence

4.1 Introduction

The EU equal treatment directives emphasise the importance of independence. This is done in the limited terms of requiring the independent functioning of equality bodies in implementing their competences rather than independence per se. The European Commission Recommendation states that, to guarantee the independence of equality bodies, Member States should consider

‘the organisation of those bodies, their place in the overall administrative structure, the allocation of their budget, their procedures for handling resources, with particular focus on the procedures for appointing and dismissing staff, including persons holding leadership positions.’⁷¹

The Commissioner for Human Rights of the Council of Europe takes a more comprehensive and detailed approach. It emphasises that independence requires: equality bodies to be stand-alone bodies with their own legal status; an open and transparent process of recruitment to the board of equality bodies that ensures the necessary mix of skills and competences; and an accountability to Parliament that is defined in terms of questioning and debate of the strategic plans and annual reports of the bodies, and to the relevant financial authorities to ensure the bodies have spent and managed public money appropriately. It notes that, internally, equality bodies should exercise independent leadership and develop a culture of independence within the organisation.⁷²

The ECRI General Policy Recommendation No. 2 goes into further detail and states that equality bodies should ‘function without any interference from the State, political parties or other actors and should not be given any instructions by them’.⁷³ It addresses independence in a series of recommendations that emphasise the need for equality bodies to be ‘separate legal entities’ and have a leadership that is appointed by ‘transparent, competency-based and participatory procedures’, benefits from functional immunity and protection from threats or arbitrary dismissal or non-renewal of mandate, and appointment for an appropriate time period.

It further recommends an accountability that is limited to public service law requirements and financial accountability, including where equality bodies should have their annual reports discussed by Parliament but not have these reports subject to their approval. It recommends independence for equality bodies in deciding on and managing their own internal structures and in having a capacity to voice perspectives and opinions without permission or approval from any external party.

Holtmaat, in 2007, identified a range of factors required for independence including: a firm legal basis for the existence of the equality body, its mandate, objectives and competences, and its budgetary independence; security of position for members of the board of the equality body, members of the equality body, and the head or director of the equality body; the holding of autonomous decision-making power by the body’s board and/or its head/director in the appointment and dismissal of staff; security of the position of members of staff in employment conditions and dismissal; freedom of the equality body from interference by other (non-governmental) organisations; and accountability of the (board of the) equality body to external parties (audit, Parliament, the press, the general public).⁷⁴

71 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

72 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

73 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

74 Holtmaat, R. (2007), *Catalysts for Change? Equality bodies according to Directive 2000/43/EC*, European Network of Legal Experts in the Field of Non-Discrimination, European Commission, Brussels.

Ammer et al., in 2010, established that the conditions necessary for equality bodies to be independent included: guarantee of formal *de jure* independence and creation of a political environment favourable and supportive to issues of non-discrimination and equality. They noted the importance for independence of ensuring *de facto* independence and that this requires strong leadership, stakeholder involvement, plurality of the body's board and staff and a commitment to and interest in being independent.⁷⁵

This body of work suggests a useful framework for an examination of the independence of equality bodies. This starts with the conditions externally created for independence: the legal structure of the equality body, the making of appointments to the equality body and the accountability required of the equality body. It continues with the internal conditions for independence: the practice of independence by the equality body in implementing its functions. This framework is followed for the rest of this chapter.

4.2 Legal structure

Legal structure is at the heart of independence in governing the institutional positioning of the equality body. Independence is immediately compromised where this positioning is of a structurally dependant nature.

Ammer et al., in 2010, found that 28 out of 40 equality bodies reported having their own legal structure and constituting a body that is not part of a ministry or another organ of central government. In their study, 12 equality bodies reported that they did not have a separate legal status. However, nine of these reported that they enjoyed some independence within the ministry or central government organ of which they were part.

This current report found some improvement with 31 out of 43 equality bodies surveyed having their own legal personality. Ten equality bodies formed part of Government ministries: in Austria (two equality bodies), Finland (two equality bodies), Germany, Iceland, Italy (two equality bodies), Portugal (CIG) and Spain. Experience suggests that strong leadership of the equality body can develop an approach to and a style for its work that can somewhat counter this and secure an independent functioning in such situations. However, independence has to be curtailed in such situations. Two equality bodies in Liechtenstein formed part of NGO associations.

4.3 Appointments

The appointments of boards and of individual heads of equality bodies is another key factor for independence, given the centrality of leadership to the capacity of a body to be independent. Independence requires attention both to who appoints this leadership and the process of appointment involved.

Ammer et al., in 2010, found that more than half of the equality bodies that reported were governed by a single head (23), with the remaining ones governed by a board or a commission (17). The leadership of most equality bodies (30), however governed, were appointed by Government: 13 of those governed by a board, and 17 of those governed by a single head.

They noted that, as a general rule in public administration, 'collegiate boards function as a shield for the organisation' from political interference and their *de facto* independence can be substantial. They focused particularly on financial independence and found that 'equality bodies governed by a collegiate board have significantly more independence in reallocating their budgets between personnel and running costs'

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

than equality bodies run by a single head, but they found no significant difference in other dimensions of financial independence.⁷⁶

This present report found 20 equality bodies governed by a single head and 17 of these equality bodies had decision-making functions that suggests some influence on the form of leadership resulting from the nature of the body. The heads of 11 of these equality bodies are appointed by a minister or the Government and nine are appointed by Parliament, which reflects some improvement on 2010.

This report found 23 equality bodies governed by a board or commission. Only nine of these equality bodies had decision-making functions. There was increased diversity of approach evident in these appointments: nine boards or commissions were appointed by a King, President, minister or the Government, and four were appointed by Parliament.

In the 10 other instances there were a variety of different arrangements.

- Appointments include emissaries of the social partners in Austria (Equal Treatment Commission).
- Five members are appointed by Parliament and four by Government in Bulgaria.
- Members are appointed by various named institutions in Denmark (Danish Institute for Human Rights).
- Members are appointed by Government, social partners and women's associations in Italy (Equal Opportunities National Committee)
- Members are appointed by NGO associations in Liechtenstein (two equality bodies).
- Members are initially proposed by an Advisory Council to the equality body before appointment through the Ministry by Royal Decree in the Netherlands.
- Appointments include emissaries of the social partners and women's associations in Portugal (CITE).
- Government ministers appoint five members and university law faculties appoint four members in Slovakia.
- Government, public administration and stakeholders appoint members in Spain.

Good Practice

In the Netherlands, board vacancies are publicly advertised. An Advisory Council to the Netherlands Institute for Human Rights considers applications and makes suggestions to the Minister of Security and Justice who recommends candidates for appointment by Royal Decree. The Advisory Council is made up of the National Ombudsman, the chair of the Data Protection Agency, the chair of Council of Judiciary and between four and eight representatives from civil society organisations working on human rights, employer and employee organisations and academia. The Advisory Council is appointed by the Minister for Security and Justice after consultation with the Minister of the Interior and Kingdom Relations, the NIHR, the National Ombudsman, the chair of the Data Protection Agency, and the chair of the Council of the Judiciary. While this does not mobilise an engagement by Parliament, it does offer an exemplary procedure that is transparent, participatory and competency based.

The leadership in 20 out of 43 equality bodies continues to be appointed by Government or Government ministers in: Austria (Ombud for Equal Treatment), Belgium (IEWM), Cyprus, Denmark (Board of Equal Treatment), Estonia (Commissioner for Gender Equality and Equal Treatment), Finland (two equality bodies), France, Germany, Hungary, Iceland, Italy (UNAR), Malta, Norway (two equality bodies), Portugal (CEARD and CIG), Sweden and the UK (Britain and Northern Ireland). This is not best practice and can be viewed as compromising independence.

⁷⁶ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K. (2010), *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC, Synthesis report*, Human European Consultancy & Ludwig Boltzmann Institute.

Parliament appoints the leadership of 13 out of 43 equality bodies in: Belgium (UNIA), Croatia (two equality bodies), the Czech Republic, Estonia (Chancellor of Justice), Greece, Ireland, Latvia, Lithuania, Luxembourg, Poland, Romania and Slovenia. This has been defined as good practice.⁷⁷ However, it is only in a small number of instances that there is evidence of a transparent, competency-based and participatory procedure in such appointments by Parliament. This, too, must be viewed as compromising independence. Ireland and the Netherlands stand out as positive exemplars in this regard with both having an identified procedure in place.

The other 10 equality bodies reflect less straightforward approaches as set out above.

Good Practice

In Ireland, the members of the Irish Human Rights and Equality Commission are appointed following a public call for applications. An independent interview process of candidates is conducted by the Public Appointments Service. The names of successful candidates are forwarded to the Minister for Justice and Equality for subsequent approval by Parliament and appointment by the President. Criteria are set for selection by the Public Appointments Service in conjunction with the Ministry for Justice and Equality.

The setting of criteria was, however, subject to controversy in 2018 when it was claimed they were set in a manner that excluded some candidates. Nonetheless, this approach mobilises an engagement by Parliament and combines this with procedures that are transparent and competency based.

There is an independence issue with appointments to equality bodies from other stakeholders or on an ex-officio basis, as is done in 7 countries: Austria (Equal Treatment Commission), Denmark (Danish Institute for Human Rights), Italy (Equal Opportunities National Committee), Liechtenstein (two equality bodies), Portugal (CITE), Slovakia and Spain. This creates a situation where another entity has representation on the board of the equality body and could pursue its specific interests through such representation.

This needs attention and management to ensure independence is not diminished or compromised in relation to the interests of the institution represented. There is clarity in this regard when it comes to a representative of a Government ministry. However, the same issues apply to representation from social partners or from another statutory body.

Protections are afforded to appointments in most instances. These include: tenures of around five years on average, which are often renewable; immunity from prosecution within the framework of carrying out their duties; and safeguards to protect from arbitrary removal. However, it should be noted that renewable mandates can be viewed as compromising independence with the appointee possibly exercising caution to ensure renewal of their mandate. In one instance, commissioners are only appointed for a two-year period, which appears inadequate to generate independent leadership (Malta).

Appointments can be subject to direct political interference that compromises the independence of the equality body. This is reported in various countries.

- Appointments to the Bulgarian equality body have provoked controversy, being criticised as non-transparent and arbitrary rather than competence based.
- There was controversy in Cyprus over the 2017 process of appointment of the ombudsperson.
- The director of UNAR in Italy departed from office on foot of a letter of complaint about hate speech sent to a parliamentarian by UNAR in 2015.

⁷⁷ See: United Nations (UN), Office of the High Commissioner for Human Rights (OHCHR), International Coordinating Committee of National Human Rights Institutions, the National Assembly and the Protector of Citizens of the Republic of Serbia (2013), Belgrade Principles on the Relationship between National Human Rights Institutions and Parliaments, Serbia, 22-23 February 2013.

- In 2008, the National Equality Advisor was removed from office by the Labour Minister following a change of Government in Italy.
- Appointments to the equality body in Romania in 2015 have been criticised for not ensuring the requisite professional background among those appointed.
- The head of the equality body in Sweden was dismissed in 2011, supposedly for poor management skills, although this is contested.

4.4 Accountability

The manner in which the accountability of the equality body is structured and to what entities this accountability must be given is another key factor for independence. Processes of accountability and the consequences that can attend this accountability could end up determining what gets prioritised by equality bodies and what fails to get adequate attention.

Holtmaat in 2007 found that most equality bodies are ‘under a duty to report to the government (mostly to the Ministry that provided the budget) how they spent their funding. Some of them were simultaneously accountable to (a committee of) parliament. In a number of other cases the equality body has a duty to provide its accounts to a State audit office, audit commissioner or State accountant’.⁷⁸

This present report found that of the 21 equality bodies governed by a single head, eight were accountable to Parliament and eight were accountable to Government, ministers or President. Of the five other equality bodies:

- the Commissioner for Gender Equality and Equal Treatment in Estonia and the Office of the Greek Ombudsman had no specified accountability;
- the French Defender of Rights is accountable to the President and Parliament;
- The Chancellor of Justice in Estonia was accountable to the State Audit Office and the Centre for Gender Equality in Iceland was accountable to the State Financial Management Authority.

This report found that of the 22 equality bodies governed by a board or commission, five were accountable to Parliament and 11 were accountable to Government or ministers. Of the six other equality bodies:

- the Equal Treatment Commission in Denmark, and the Slovak Centre for Human Rights had no specified accountability;
- the Centre for Equal Treatment in Luxembourg is accountable to Government and Parliament;
- the Netherlands Institute for Human Rights is financially accountable to various ministries;
- in Liechtenstein, one body was required to have an external auditor and the other was accountable to an NGO assembly.

Overall 13 of the 43 equality bodies were accountable to Parliament in: Belgium (UNIA), Bulgaria, Croatia (two equality bodies), the Czech Republic, Denmark (Danish Institute for Human Rights), Hungary, Ireland, Latvia, Lithuania, Poland, Romania and Slovenia. Nineteen equality bodies were accountable to Government, ministers or the President in: Austria (two equality bodies), Belgium (IEWM), Cyprus, Finland (two equality bodies), Germany, Italy (two equality bodies), Malta, Norway (two equality bodies), Portugal (three equality bodies), Spain, Sweden and the UK (Britain and Northern Ireland). Equality bodies in France and Luxembourg were accountable to both.

This would appear to be an improvement from 2007 from an independence perspective, given that accountability to Parliament is viewed as lending itself to greater independence. However, given the high numbers still accountable to Government, ministers or President, there is clearly some distance to go

⁷⁸ Holtmaat, R. (2007), *Catalysts for Change? Equality bodies according to Directive 2000/43/EC*, European Network of Legal Experts in the Field of Non-Discrimination, European Commission, Brussels.

in resolving issues of independence and accountability. More advanced good practice is evident in eight other jurisdictions where equality bodies have no formal accountability identified or are accountable solely to state audit authorities. The equality body working on disability issues in Liechtenstein has an accountability to an NGO assembly.

Good Practice

Equality bodies in Estonia (Chancellor of Justice) and Iceland (Centre for Gender Equality) have an accountability restricted to the statutory audit authorities. This strikes an important balance by ensuring full independence, while sustaining an integrity with a formal accountability in financial governance. This narrow accountability protects independence and is in line with the recommendation of ECRI in General Policy Recommendation No. 2.⁷⁹

Equality bodies in Denmark (Equal Treatment Commission), Estonia (Commissioner for Gender Equality and Equal Treatment), Greece, Liechtenstein (Association for Human Rights) and Slovakia have no formal accountability identified. The equality body in the Netherlands is financially accountable to several ministries. These equality bodies, similarly, point the way to an emerging model of good practice for an approach to accountability that protects independence.

Accountability to Parliament is largely by way of presenting and sometimes debating the annual report. In Croatia and Romania, the annual report is subject to parliamentary approval. The Parliament in Croatia rejected the annual report of one equality body (People's Ombudsman) in 2016. While this could have had serious consequences for the continuing appointment of the leadership of the bodies, none were pursued. Shifting political balances mean that accountability to Parliament can hold risks for independence. In Poland, for example, there have been political calls and campaigns to revoke the mandate of the Ombudsman. In Norway, one party in Government has stated that it does not want an equality body.

4.5 Practice

Independence is not solely determined by the conditions created externally for equality bodies. Internal culture and practice is key, whatever conditions are externally created. In this, the quality of the leadership of equality bodies is crucial.

Functional independence is acknowledged across all the equality bodies reported on in this present report. In most instances, this is protected in the legislation establishing the equality body. This de-facto independence includes the:

- management and deployment of the equality body's human and financial resources;
- exercise of the equality body's various powers;
- adoption of regulations to govern the exercise of the equality body's functions.

There are issues where caution on the part of equality bodies in implementing certain powers or articulating certain aspects of their mandate is identified in some jurisdictions. This includes Finland, Denmark, Hungary and Iceland. This caution could indicate a strategic approach to negotiating complex political contexts, managing diverse stakeholders, or engaging a hostile public. However, it could be a product of pressure on the independence of the body and a failure of leadership in managing this. Further investigation would be required to draw conclusions, but the issues focus attention on the importance of internal leadership for the independence of equality bodies.

79 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

Independent functioning is further queried where there has been some evidence of political interference in the appointments process for equality bodies or, to a lesser extent, where the legal structure is not adequately independent.

4.6 Key Learning

Although there are exceptions, the independence of equality bodies is largely accepted by governments, established in the conditions created for equality bodies and pursued by the equality bodies themselves. Where there are flaws in the conditions created for equality bodies, these are often compensated for by the quality of the leadership within the equality bodies. There are, however, issues of independence evident in relation to the manner of appointment, form of accountability and cautious leadership.

Independence requires the use of transparent, participative and competency-based appointment procedures, no matter what entity ultimately makes the appointment. It appears to have been considered sufficient for independence that appointments become the prerogative of parliament. However, it is clear that this is inadequate for independence and has been subject to abuse.

Accountability of equality bodies can be used to undermine their independence, in particular where they are accountable to a Government ministry. Accountability to Parliament is an improvement on this. However, it still fails to include accountability to those people who experience inequality and discrimination. The simplest and most effective approach from an independence perspective is to limit any direct accountability to the relevant state audit authorities. However, this is only evident in two instances.

There has been inadequate attention paid to the quality and competence of leadership required by equality bodies. These are unique entities as independent statutory bodies committed to advancing social change. They require particular models of leadership and such models have never been explicitly articulated or supported. Although the importance of leadership for the impact of equality bodies has been acknowledged, no assessment or critique of current leadership models has been conducted.

Beneficial Measures at National Level

A transparent, competency-based and participatory procedure for making appointments to equality bodies implemented under the auspices of Parliament and avoid representation of other bodies.

Restructuring the accountability required of the equality body such that it keeps Parliament informed through its annual report and has a single accountability limited to the relevant state audit authority.

Beneficial Measure Involving Equality Bodies

Development of models of leadership for equality bodies, creation of opportunities for capacity building in implementing such models and promotion of their implementation through processes of mutual support and peer review.

Table 6: Independence of Equality Bodies

Country	Equality Body	Legal Status	Appointment	Accountability	Practice	Issues
Austria	Ombud for Equal Treatment	Integrated into Federal Chancellery	Three ombuds by Federal Chancellor	Federal Chancellor	Functionally independent	
	Equal Treatment Commission	Established at ministry within Federal Chancellery	Members are emissaries of social partners and the ministry, appointed by Federal Minister	Federal Chancellor	Functionally independent	
Belgium	Institute for Equality of Women and men	Own legal personality	Management board by Federal Government on proposal of the minister	Minister in charge of equal opportunities	Functionally independent but subject to instruction re implementation of gender policy.	Double role in implementing gender policy of Federal Government
	Inter-federal Centre for Equal Opportunities (UNIA)	Own legal personality	10 members by House of Representatives and 10 members by Parliaments of Regions and Communities	Federal and regional parliaments	Functionally independent	
Bulgaria	Protection Against Discrimination Commission	Own legal personality	Five members elected by Parliament and four appointed by President	Parliament	Functionally independent	Arbitrary appointments noted. Regional offices provided by regional governor in regional government building.
Croatia	Ombudsperson for Gender Equality	Own legal personality	Ombudsperson and deputy appointed Parliament	Parliament	Functionally independent	
	People's Ombudsman	Own legal personality	Ombudsperson elected by Parliament as a result of public call	Parliament	Functionally independent	<i>2015 Annual Report</i> , issued 2016, not approved by Parliament
Cyprus	Commissioner for Administration and Human Rights	Own legal personality	Ombudsman appointed by President and approved by Parliament	Annual report to President	Functionally independent	Appointment in 2017 not viewed as competence based. Lacks power to manage staff and resources and to adopt internal regulation.
Czech Republic	Public Defender of Rights	Own legal personality	Ombudsman and deputy elected by parliament following a proposal of President and Senate.	Parliament	Functionally independent	

Country	Equality Body	Legal Status	Appointment	Accountability	Practice	Issues
Denmark	Danish Institute for Human Rights	Own legal personality	Board members appointed by various named institutions in civil society and academia	Parliament	Functionally independent	
	Board of Equal Treatment	Own legal personality	Board members appointed by ministry	None specified	Functionally independent	
Estonia	Commissioner for Gender Equality and Equal Treatment	Own legal personality	Minister of Social Affairs appoints the commissioner	None specified	Functionally independent	
	Chancellor of Justice	Own legal personality	Parliament appoints the ombudsman	State Audit Office	Functionally independent	
Finland	Equality Ombudsman	Annexed to Ministry of Justice	Government appoints ombudsman	Normal administrative accountability for civil servants	Functionally independent	
	Non-Discrimination Ombudsman	Annexed to Ministry of Justice	Ombudsman nominated by Council of State on proposal of the Ministry of Justice	Ministry	Functionally independent	Annual agreement on goals and budget with Ministry of Justice
France	Defender of Rights	Own legal personality	Defender of Rights appointed by President by decree of cabinet after consultation with Parliament	President and Parliament	Functionally independent	
Germany	Federal Anti-Discrimination Agency	Associated with Ministry of Family Affairs, Senior Citizens and Youth	Head of body appointed by minister	Ministry	Functionally independent	
Greece	Office of the Greek Ombudsman	Own legal personality	Ombudsman elected by special parliamentary committee. Six deputy ombudsmen appointed by Ministry of Interior on proposal of the ombudsman.	None specified	Functionally independent	
Hungary	Equal Treatment Authority	Own legal personality	Head appointed by President following a recommendation of Prime Minister	Keeps Parliament informed	Functionally independent	

Country	Equality Body	Legal Status	Appointment	Accountability	Practice	Issues
Iceland	Centre for Gender Equality	Under Ministry Equality and Social Affairs	Director appointed by minister	State financial management authority	Functionally independent	
Ireland	Irish Human Rights and Equality Commission	Own legal personality	Commissioners appointed by President following a proposal by Parliament after open selection process through Public Appointments Service	Parliament Public Accounts Committee	Functionally independent	Criteria for selection of Commissioners set by Minister of Justice and Equality with Public Appointments Service
Italy	National Office for Racial Anti-Discrimination (UNAR)	Within Office of Ministry of Equal Opportunities as part of Prime Minister Office	Director appointed by ministry	Ministry and Prime Minister	Functionally independent	Evidence of interference in 2014 activity related to sexual orientation and in departure of director as a result of a challenge to hate speech by a Parliamentarian in 2015.
	National Equality Advisory, Local Equality Advisors, Equal Opportunities National Committee	Within Ministry of Labour	President EONC by Ministry of Labour, with six members from trade unions, six from employers and 11 from women's associations. National Equality Advisor by Ministry of Labour and Local Equality Advisors by Ministry of Labour on local government proposal.	Ministry of Labour	Functionally independent	Evidence of interference in 2008 with removal of National Equality Advisor
Latvia	Ombudsman	Own legal personality	Ombudsman appointed by Parliament	Parliament	Functionally independent	
Liechtenstein	Association for Human Rights	Founded by 26 NGOs with status enshrined in law	NGO assembly appoints board	None specified other than external auditor	Functionally independent	

Country	Equality Body	Legal Status	Appointment	Accountability	Practice	Issues
Liechtenstein	Office for Equality of People with Disabilities	Attached to Association for People with Disabilities with status enshrined in law	Assembly of Association appoints members	Assembly of Association	Functionally independent	
Lithuania	Office of the Equal Opportunities Ombudsperson	Own legal personality	Head officer appointed by Parliament	Parliament	Functionally independent	
Luxembourg	Centre for Equal Treatment	Own legal personality	Members appointed by Grand Duke on nomination of Parliament	Government and Parliament	Functionally independent	
Malta	National Commission for the Promotion of Equality	Own legal personality	Commissioners appointed by Prime Minister	Ministry responsible for equality	Functionally independent	Two-year mandate
Netherlands	Netherlands Institute for Human Rights	Own legal personality	Board vacancies are advertised, advisory council to the body makes suggestions to Minister of Security and Justice who recommends for appointment by royal decree	Financially accountable to various ministries.	Functionally independent	
Norway	Equality and Anti-Discrimination Ombud	Own legal personality	Ombud appointed by the King in council	Administratively and fiscally to the Ministry of Children and Equality otherwise not professionally accountable	Functionally independent	
	Equality and Anti-Discrimination Tribunal	Own legal personality	Tribunal members appointed by the King in council	Administratively and fiscally to the Ministry of Children and Equality otherwise not professionally accountable	Functionally independent	Re-location to Bergen in 2018
Poland	Commissioner for Human Rights	Own legal personality	Ombudsman appointed by Parliament	Parliament	Functionally independent	Disproportionate budget cuts.

Country	Equality Body	Legal Status	Appointment	Accountability	Practice	Issues
Portugal	Commission for Equality and Against Racial Discrimination	Own legal personality	Governing body designated by Prime Minister and Minister responsible for Equality and Citizenship	Prime Minister and Court of Auditors	Functionally independent	
	Commission for Citizenship and Gender Equality (CIG)	Public service, integrated in the administration with administrative autonomy	Governing body appointed by Government	Ministry and Secretary of State for Equality		
	Commission for Equality in Labour and Employment (CITE)	Own legal personality	Governing body appointed by Government and social partners	Ministry of Labour and Social Affairs and Secretary of State		
Romania	National Council for Combating Discrimination	Own legal personality	Council appointed by Parliament following hearings by relevant parliamentary committees	Parliament	Functionally independent	Appointments to Board not seen as competence based.
Slovakia	Slovak National Centre for Human Rights	Own legal personality	Nine members appointed by President, chair of Parliament, Ombudsman, Prime Minister, Minister Labour, Social Affairs and Family and four law faculties	None specified	Functionally independent	
Slovenia	Advocate of the Principle of Equality	Own legal personality	Advocate appointed by National Assembly following a proposal by the President after public call	National Assembly	Functionally independent	
Spain	Council for the Elimination of Racial and Ethnic Discrimination	Attached to the Ministry of Health, Social Services and Equality	Chair by Minister of Health, Social Services and Equality with 14 members by public administration and 14 by social partners and stakeholders	Minister of Health, Social Services and Equality	Functionally independent	
Sweden	Equality Ombudsman	Own legal personality	Ombud appointed by government	Government	Functionally independent	Government can issue specific instructions by regulation letter

Country	Equality Body	Legal Status	Appointment	Accountability	Practice	Issues
United Kingdom	Equality and Human Rights Commission	Own legal personality	Board appointed by Minister for Women and Equalities	Designated Secretary of State	Functionally independent	Significant budget cuts
	Equality Commission for Northern Ireland	Own legal personality	Board appointed by Secretary of State for Northern Ireland	Designated Secretary of State	Functionally independent	Significant budget cuts

5 Effectiveness

5.1 Introduction

The European Commission Recommendation has a concern for the effectiveness of equality bodies, encompassing resources, access and accessibility. Within this it identifies the importance of resources, staff numbers and capacity and the monitoring of their decisions. It states that 'Member States should ensure that each equality body is provided with the human, technical and financial resources, premises and infrastructure necessary to perform its tasks and exercise its powers effectively.'⁸⁰

The Commissioner for Human Rights of the Council of Europe takes a similar approach in stating:

'Effectiveness requires that [equality bodies] are able to deploy all of their functions and powers to a scale and a standard that ensures impact and the full realisation of their potential. The level of resources made available to the bodies and the functions accorded to them are key factors for effectiveness.'⁸¹

The Commissioner notes factors for effectiveness that are internal to equality bodies of 'being strategic, accessibility of their services, stakeholder engagement in their work and networking.'

The ECRI General Policy Recommendation No. 2 notes that:

'Effectiveness means that the equality body implements its functions and competences in a way and to a scale and standard that make a significant impact on the achievement of equality and the elimination of discrimination and intolerance. To be able to work effectively, equality bodies need, in particular, appropriate competences, powers and resources'.⁸²

It recommended that, for effectiveness, equality bodies should have sufficient staff and funds, be able to raise funds from sources other than the state, engage in strategic planning and conduct evaluations, develop a communication strategy, engage in sustained dialogue on equality issues with the authorities, and establish structures for the sustained involvement of stakeholders.

Holtmaat, in 2007, pointed to the importance of resources for the effectiveness of equality bodies. She noted that 'complaints about insufficient funding and a lack of (well trained) staff were frequently noted. This may mean that, under the circumstances, many of the equality bodies find that they cannot function effectively.'⁸³

Ammer et al., in 2010, emphasised the provision of sufficient resources as central to effectiveness. They found that most equality bodies reported that their financial resources were insufficient to carry out their core work. The internal factors they identified for the effectiveness of equality bodies include: elaborating and implementing a multi-annual strategic plan; introducing a strategic mix of actions across their different functions to achieve outputs in all areas of competences; networking with relevant stakeholders

80 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

81 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

82 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

83 Holtmaat, R. (2007), *Catalysts for Change? Equality bodies according to Directive 2000/43/EC*, European Network of Legal Experts in the Field of Non-Discrimination, European Commission, Brussels.

to profit from expertise and ensure accessibility; and elaborating and implementing a communication strategy for presenting the equality body to the public and creating a media profile.⁸⁴

This body of work suggests a useful framework for an examination of the effectiveness of equality bodies. This starts with the conditions externally created for effectiveness: the human and financial resources allocated to the equality body and the range and nature of the competences accorded to the equality body. It continues with the internal conditions for effectiveness: the engagement of the equality body in the planning cycle and in stakeholder engagement. This framework is followed for the rest of this chapter.

5.2 Resources

Resources both human and financial are central to the ability of the equality body to implement its functions and to be effective. This is classically about the level of the resources required by the equality body to make an impact and the gap between that and the resources actually made available. It can be difficult to establish the resources available to an equality body, in particular where it forms part of a multi-mandate body or where it forms part of a ministry. In some cases, budgets are not available and in others they are inflated in that they also cover mandates beyond the equality mandate.

This present report found that the resources allocated to equality bodies vary across the Member States and EFTA countries. At one extreme there are the equality bodies in Spain (one staff member and a budget of EUR 0.52 million), Slovakia (15 staff and a budget of EUR 0.55 million for two mandates), Estonia (Commissioner for Gender Equality and Equal Treatment with eight staff members and a budget of EUR 0.39 million in 2018) and Slovenia (seven staff members and a budget of EUR 0.2 million). At the other extreme there are the equality bodies in Belgium (UNIA with 100 staff and a budget of EUR 8.08 million), France (225 staff and a budget of EUR 22.59 million for three mandates), the Netherlands (57.6 staff and a budget of EUR 6.92 million for two mandates), Norway (Anti-Discrimination Tribunal with 62 staff and a budget of EUR 5.75 million) and the UK (EHRC with 172 staff and a budget of EUR 23.1 million and ECNI with 84 staff and a budget of EUR 5.9 million).

Few equality bodies are identified as having an adequacy of funding sufficient to make a real impact. This emerges as the most significant barrier to effectiveness and equality bodies realising their full potential. The requirements of international standards in relation to resources are far from being achieved. Equality bodies are also identified as facing increasing numbers of applications from complainants in a context of stagnant resources. In particular, this is noted in Croatia, Finland and Hungary.

There is a positive side to the picture in terms of a slowly improving resource context: 16 out of 43 equality bodies have experienced an increase in staffing and/or budget in recent years. This is the case in: Austria (Ombud for Equal Treatment), Belgium (UNIA), Bulgaria, Croatia (People's Ombudsman), the Czech Republic, Finland (Non-Discrimination Ombudsman), Greece, Hungary, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Portugal (CEARD), Romania and Slovenia. Nine equality bodies have experienced a certain stability in resource levels: Croatia (Ombudsperson for Gender Equality), Denmark (Danish Institute for Human Rights), Finland (Equality Ombudsman), France, Germany, Italy (UNAR), Malta, Slovakia and Sweden. A number of equality bodies have secured external resources, in particular EU funding. However, this funding is project based and time limited.

Equality bodies in Greece, Hungary, Iceland, Ireland, Latvia, Luxembourg, and Portugal have had some budget increase after a period of significant budget cuts. The equality body in Ireland has nearly completely recovered its budget after disproportionate budget cuts in earlier years.

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

Eleven equality bodies have experienced a decrease in staffing and/or budget in recent years in: Belgium (IEWM), Cyprus, Estonia (Commissioner for Gender Equality and Equal Treatment), Italy (gender bodies), the Netherlands, Norway (two equality bodies), Poland, Spain and the UK (Britain and Northern Ireland). State funding also serves as a point of pressure on equality bodies. The equality body in Poland has experienced disproportionate budget cuts. In the UK, the EHRC has had its budget cut by 70 % since 2010 and ECNI has had its budget cut by 18.9 % between 2012 and 2017. There is no resource related information available on the other seven equality bodies.

5.3 Competences

Effectiveness requires that equality bodies not only have the necessary resources to implement all their functions, but that they also have the full range of competences necessary to implement each of their functions and deploy a strategic mix of these competences in pursuit of their goals.

The European Commission Recommendation sets out equality body competences as including: to provide independent assistance to victims; to conduct independent surveys; to publish reports; to make recommendations; and to promote equality. The competence to promote equality and diversity includes: providing training, information, advice, guidance and support to duty bearers; raising awareness of the equality body, the equal treatment legislation and redress mechanisms; engaging in public debate, dialogue with public authorities and communication with discriminated groups and stakeholders; and promoting good practice and positive action.⁸⁵

The ECRI General Policy Recommendation No. 2 recommends that the competences afforded to equality bodies for:⁸⁶

- The promotion and prevention function should include: conducting inquiries on their own initiative and making recommendations; conducting and commissioning research; developing, promoting and supporting standards for good practice and promoting and contributing to training; raising awareness across society and among groups experiencing discrimination; supporting the implementation of positive equality duties; and engaging with the consultation process for new legislation and policy.
- The support and litigation function should include: receiving complaints and providing personal and legal support to complainants; mediating settlements in cases of discrimination; representing people in cases of discrimination, taking cases on their own initiative and intervening in cases as *amicus curiae*; and monitoring the implementation of decisions in cases of discrimination.
- The decision-making function should include: receiving, examining, hearing and mediating cases of discrimination; deciding cases of discrimination, issuing legally binding decisions and imposing sanctions; and ensuring the execution of their decisions.

The ECRI General Policy Recommendation No. 2 identifies two models for the decision-making function of equality bodies.⁸⁷ In one, equality bodies can issue binding decisions and can impose sanctions. In the other, equality bodies can issue recommendations that are not binding and do not impose sanctions. Institutions that combine an ombudsperson mandate with an equality mandate are seen as usually reflecting this second model. A clear preference for the first model is stated.

85 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

86 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

87 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

The Commissioner for Human Rights of the Council of Europe identifies limitations in the support and litigation function where equality bodies do not have competences to bring cases of discrimination to court or take legal proceedings on their own initiative.⁸⁸ It points to issues for equality bodies with a decision-making function where they cannot order effective and dissuasive sanctions, their decisions are not legally binding, and they cannot engage in follow-up to ensure that their decisions and recommendations are implemented.

The European Commission Recommendation points out that ‘assistance to victims can include issuing recommendations’ and continues, ‘where so authorised under national law’ this could also include issuing ‘legally binding decisions in individual or collective cases of discrimination, as well as following up on them to ensure implementation.’ It adds that when equality bodies have this power, ‘the Member State should also grant them the capacity to issue adequate, effective and proportionate sanctions.’⁸⁹

The European Union Agency for Fundamental Rights also identified the importance of equality bodies with a decision-making function being able ‘to take legally binding decisions. This would include the ability to issue proportionate, dissuasive and effective decisions, including awarding compensation and targeting systemic problems. Efficient follow-up is linked to this’.⁹⁰

There are limitations in the competences afforded to equality bodies with a decision-making function. Of the 25 equality bodies with a decision-making function, 19 do not have the competence to issue legally binding decisions or to impose sanctions: in Austria, Croatia (two equality bodies), the Czech Republic, Estonia (two equality bodies), Finland (two equality bodies), France, Greece, Latvia, Lithuania (can impose administrative fines), Malta, the Netherlands, Norway (Equality and Anti-Discrimination Tribunal decisions not legally binding on public bodies), Poland, Slovakia, Slovenia (legally binding but cannot impose sanctions) and Sweden. Sanctions that can be imposed by four equality bodies are identified as not being sufficient to serve as a deterrent: in Bulgaria, Cyprus, Denmark and Lithuania.

Good Practice

Equality bodies in Hungary and Romania have and implement competences under their decision-making function that include: receiving, hearing, mediating and making decisions on cases of discrimination; and making recommendations and imposing sanctions that are legally binding. This accords with international standards where the decision-making function is only viewed as effective where equality bodies holding such a function have the ability to make legally binding decisions and impose sanctions.

A lack of, or limited, competences in relation to having legal standing to take cases of discrimination or to act as *amicus curiae* before the courts is evident for 17 equality bodies in 16 countries: Austria (Ombud for Equal Treatment can only take cases in limited circumstances), Croatia (Ombudsperson for Gender Equality), Cyprus, the Czech Republic, Denmark (Danish Institute for Human Rights – limited to *amicus curiae*), Finland (Non-Discrimination Ombudsman, though courts can seek opinions from both bodies), France (limited to provision of observations to courts), Germany (limited to *amicus curiae*), Greece, Iceland, Italy (UNAR, limited to *amicus curiae*), Lithuania, Luxembourg, Norway (Equality and Anti-Discrimination Tribunal), Portugal (CITE and CIG, limited to *amicus curiae*) and Sweden (limited to taking cases).

Follow-up by equality bodies to ensure implementation of their decisions enables high levels of compliance with these decisions and enhanced standing for the equality bodies as a result. The People’s Ombudsman in Croatia, the Defender of Rights in France, and the Netherlands Institute for Human Rights lead the way in this follow-up work. Lack of or limited follow-up is evident by eight equality bodies in eight countries:

88 Council of Europe, Commissioner for Human Rights (2011), *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Strasbourg, Council of Europe, 21 March 2011.

89 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

90 FRA (European Union Agency for Fundamental Rights) (2012), *Access to justice in cases of discrimination in the EU – steps to further equality*, Vienna.

Austria (Equal Treatment Commission), Bulgaria, Denmark (Board of Equal Treatment), Finland (Equality Ombudsman), Hungary, Latvia, Norway (Equality and Anti-Discrimination Tribunal) and Poland. Ammer et al., in 2010, noted that ‘very few equality bodies seem to allocate resources to follow-up activities’.⁹¹

Good Practice

Equality bodies in Croatia, France and the Netherlands have and implement competences to follow-up and track their decisions made in cases of discrimination. Rigorous follow-up by equality bodies of their decisions in cases brought before them has been key to ensuring a high level of compliance with decisions and implementation of the recommendations made. This is vital in establishing the standing and authority of the equality body and contributes to a culture of compliance among employers and service providers that is important in preventing discrimination in the first place.

Competences to develop, promote and support good practice standards for equality, diversity and non-discrimination on the part of policy-makers, service providers and employers are central to the developmental role of equality bodies and their contribution to institutional change. There is limited evidence of such competences being accorded to or implemented by equality bodies. Only 14 equality bodies have been able to develop some level of activity under such competences: in Belgium (two equality bodies), Denmark (Danish Institute for Human Rights), France, Germany, Italy, Iceland, Ireland, Liechtenstein, Portugal (CIG and CITE), the UK (Britain and Northern Ireland) and Sweden.

Good Practice

Equality bodies in Belgium, Ireland and the UK (Britain and Northern Ireland) have and implement a full range of competences for the functions of promotion and prevention and of support and litigation. They have: enforcement competences with full legal standing in court; promotion competences to develop, promote and support standards for good practice; research competences to develop a knowledge base in the field; and communication competences to build a culture of rights in the general public, develop a culture of compliance among employers and service providers, and address under-reporting. This accords with good practice established in international standards for these functions. It has enabled effective strategies for social change to be pursued by these equality bodies as they are able to deploy a complete and strategic mix of competences to this end.

Equal treatment legislation in a number of countries includes positive equality duties that require organisations in the public and/or private sector to be proactive in promoting equality and/or preventing discrimination. An Equinet study highlighted the importance of attributing competences to equality bodies to support and/or enforce these positive duties to ensure their implementation and impact.⁹² Ten equality bodies have such competences in relation to positive duties in their equal treatment legislation: in Belgium (Institute for Equality between Women and Men), Croatia (Ombudsperson for Gender Equality), Finland (two equality bodies), Ireland, Norway (two equality bodies), Sweden and the UK (Britain and Northern Ireland).

Good Practice

Public authorities in Northern Ireland are required to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations. They must publish an equality scheme that includes: the internal arrangements for implementing the duty; how they will assess and consult on the likely impact of their policies; and a monitoring arrangement for any future negative impact of their policies. The duty has been found to stimulate more informed, evidence-based and inclusive policy making that better reflects the needs of people.

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

92 Crowley N., Equinet (2016), *Making Europe More Equal: A Legal Duty?*, Brussels.

The Equality Commission for Northern Ireland provides guidance on the form and content of equality schemes and these must be submitted to the equality body for approval. The equality body has enforcement powers to consider complaints about public authority failures to comply with their approved equality scheme. The equality body is found to have played a critical role in ensuring the effectiveness of the duty.⁹³

This present report identified 17 equality bodies that do not appear to deploy or be able to deploy all their competences under each of their functions. Lack of resources or limitations in strategy can often be at the root of this. Such concerns were identified in several countries.

- Austria: Equal Treatment Commission follow-up to decisions not evident.
- Bulgaria: Protection Against Discrimination Commission follow-up to decisions has been limited, has not used its litigation powers to any significant extent and its reports are limited to annual reports.
- Cyprus: Commissioner for Administration and Human Rights follow-up to decisions has been limited and surveys and reports are rarely commissioned.
- Czech Republic: Public Defender of Rights has not used its litigation powers to any significant extent and has made limited use of its competences under the promotion and prevention function.
- Estonia: Chancellor of Justice is not viewed as significantly active on its equality mandate.
- Finland: Non-Discrimination Ombudsman resources are consumed by competences related to its decision-making function and a selection of cases to be heard has to be made. Equality Ombudsman has not used its litigation powers to any significant extent, applies sanctions rarely, and follow-up to decisions has been limited.
- Hungary: Equal Treatment Authority follow-up to decisions has been limited and has not used its litigation powers to any significant extent.
- Ireland: Irish Human Rights and Equality Commission has not used its support and litigation powers to any significant extent.
- Italy: UNAR does not conduct surveys or collect data beyond data from the contracted contact centre, has not used its power to conduct inquiries and has not intervened in court on behalf of claimants, although it has created a solidarity fund to assist complainants.
- Latvia: follow-up to decisions has been limited and the Ombudsman has not used its powers to assist complainants at court to any significant extent.
- Netherlands: Netherlands Institute for Human Rights has not used its power to intervene in court on behalf of complainants.
- Norway: Equality and Anti-Discrimination Ombud did not use its litigation powers to any significant extent nor its powers to conduct surveys and issue reports.
- Portugal: Commission for Equality and Against Racial Discrimination resources are consumed in dealing with complaints.
- Slovakia: Slovak National Centre for Human Rights has not used its litigation powers to a significant extent and has not used its powers to prepare reports and surveys to any extent.
- Spain: Council for the Elimination of Racial and Ethnic Discrimination competences are not implemented beyond funding a network of NGO centres to provide assistance to complainants.
- Sweden: the Equality Ombudsman investigates about 15 % to 20 % of complaints received and has not used its litigation powers to a significant extent.

5.4 Strategy

When it comes to internal action to create the conditions for effectiveness the effective engagement by equality bodies in the planning cycle is central. This planning cycle encompasses strategic planning, annual workplans, monitoring and tracking progress in implementation, and evaluation.

93 Equality Commission for Northern Ireland (2008), *Section 75 – Keeping it Effective, Reviewing the Effectiveness of Section 75 of the Northern Ireland Act 1998*, Belfast.

Strategic planning is about establishing that strategic mix of competences that enable the equality body to contribute to individual change, institutional change and societal change. Ammer et al., in 2010, noted that 'less than half of the 40 equality bodies reported having a strategic plan and that tribunal-type bodies are more likely to have one than promotion-type bodies'.

This present report found that 25 out of 43 equality bodies did not have a strategic plan. Two of these equality bodies are of recent establishment. Only 14 equality bodies engaged in strategic planning with associated annual workplans: Belgium (two equality bodies), Croatia (two equality bodies), Denmark (Danish Institute for Human Rights), Finland (Non-Discrimination Ombudsman), Ireland, Latvia, Lithuania, the Netherlands, Norway (Equality and Non-Discrimination Ombud), Sweden and the UK (two equality bodies). Four equality bodies had annual workplans in place but did not engage in strategic planning: Italy (Equal Opportunities National Committee), Portugal (CEARD), Slovakia and Spain.

All equality bodies produce some form of annual report, often as part of their accountability mechanisms and sometimes as a means of bringing forward recommendations from the experience of their work. The annual report evidences some engagement in tracking and monitoring the work done, against a strategic plan where this is in place.

Good Practice

The Netherlands Institute for Human Rights is subject to periodic evaluation of its functioning every five years as an autonomous administrative authority, on the basis of the Autonomous Administrative Authorities Framework Act. This evaluation is conducted by an independent research organisation.

Only 10 equality bodies engaged in any form of evaluation: Austria (two equality bodies), Belgium (two equality bodies), Croatia (Ombudsperson for Gender Equality), Denmark (Danish Institute for Human Rights), Lithuania, Netherlands, Sweden and the UK (Equality and Human Rights Commission). This was internal in four instances and possibly rudimentary in nature: Belgium (Institute for Equality for Women and Men), Croatia, Denmark and Lithuania. Engagement with the full planning cycle is under-developed among equality bodies.

5.5 Stakeholder engagement

Stakeholder engagement is another key element in internally creating the conditions for effectiveness. This not the same as stakeholder engagement by the equality body in engaging with the wider equality and non-discrimination infrastructure as examined earlier. This is an engagement that is primarily focused on the work of the equality body itself.

Stakeholder engagement, in particular with civil society organisations, is an important source of knowledge and expertise for equality bodies. It contributes to trust and shared understanding of equality and discrimination issues. It enables ongoing communication through tried and trusted channels with members of different groups. It facilitates the dialogue that can underpin the social change sought by equality bodies.

Stakeholder engagement by equality bodies is often unofficial and informal. This is supposed to protect their independence, but this strict interpretation of independence impedes effectiveness. This informal approach has been usefully pursued by equality bodies in ensuring consultation on issues with relevant stakeholders. However, it cannot harness the full gains possible from formal and structured stakeholder engagement for the effectiveness of the equality body. Such arrangements do not compromise independence.

More formal stakeholder engagement was evident only in 12 equality bodies. In some instances this is underpinned by legislative duties on the equality body. Stakeholder engagement takes a range of forms

including: joint initiatives by equality bodies with stakeholders; the use of stakeholder engagement as a working method for equality bodies; and equality bodies acting as a hub around which stakeholders are engaged.

Joint initiatives with stakeholders have included:

- the People’s Ombudsman in Croatia has developed an agreement with five civil society organisations to act as regional contact points for the equality body;
- the Ombudsperson for Gender Equality in Croatia has organised events and developed resource materials in cooperation with civil society organisations, employers and trade unions;
- the Equal Opportunities Ombudsperson in Lithuania established a national Equality and Diversity Forum. This forum networks equality organisations working on the different grounds in order to organise annual ‘National Equality and Diversity Awards’;
- the Ombudsman in Poland has been a leading partner with civil society organisations in a range of EU funded projects including a campaign against homophobia.

Stakeholder engagement as a working method has been pursued by only four equality bodies. This has included, in particular, institutional structures to advise the equality body on its work.

- The Danish Council for Human Rights, made up of civil society organisations, public authorities, social partners, and parliamentarians, is appointed to meet quarterly to discuss the work of the Danish Institute for Human Rights. The Danish Council for Human Rights has established an equality committee that also meets quarterly to advise the Danish Institute for Human Rights.
- The Federal Anti-Discrimination Agency in Germany convenes an advisory council to promote dialogue with social groups and organisations working on discrimination issues. The council advises the equality body on reports and recommendations to Parliament and on research projects.
- The Equal Opportunities Ombudsperson in Lithuania established an independent consultative board made up of academics, experts, activists and trade union representatives to advise the body on its work.
- The Equality and Anti-Discrimination Ombud in Norway convenes an advisory group made up of representatives of 14 civil society associations representing the various grounds of discrimination.

Good Practice

In Croatia, the legislation requires the People’s Ombudsman to consult with a wide range of stakeholders in preparing its annual report and in drafting recommendations and opinions. This enables the equality body to be better informed of the equality situation in the country as it prepares this key report and to have its recommendations informed and underpinned by the experiences brought forward as part of this process. It supports a stronger standing for the annual report in its consideration by Parliament.

There are examples of equality bodies establishing structures for ongoing exchange on specific issues with stakeholders: UNIA in Belgium has established a support committee involving disability associations, academia, and social partners, to inform its work on the ground of disability, specifically under the UNCRPD; and the Irish Human Rights and Equality Committee has established an advisory committee involving four worker representatives and four employer representatives to advise the body on employment equality and workplace issues, and equal status in service provision.

Good Practice

In Finland, the Act on Non-Discrimination Ombudsman establishes the Advisory Board on Non-Discrimination. This is chaired by the Non-Discrimination Ombudsman and serves as the basis for stakeholder engagement by the equality body. Its 37 members are drawn from civil society, public bodies, local government bodies, service providers, employers and trade unions.

Three equality bodies are identified as acting as a hub to bring stakeholders together. The Institute for Equality of Women and Men in Belgium convenes a network of companies to exchange and promote best practice. The Non-Discrimination Ombudsman in Finland chairs an Advisory Board on Non-Discrimination (see 'Good Practice' above). The Defender of Rights in France has established a platform for dialogue with civil society for mutual consultation and information. This includes consultation committees with NGOs representing and/or working on: people with disabilities; LGBTI people; the ground of origin; children's rights, and access to employment and recruitment

5.6 Key Learning

Limitations in financial and human resources are the key constraint on the effectiveness of equality bodies. This has been true for many equality bodies since their establishment. It continues to be true for most equality bodies. This means that the full potential of equality bodies can still only be imagined and has never been fully tested for lack of adequate resources. It will be important to establish a means of assessing adequacy of resources and to ensure the provision of adequate resources. International standards have in recent years become more focused on this issue.

Beneficial Measure at European Level

Development and monitoring of a template for establishing adequacy of funding for equality bodies that could take account of the size of the Member State; its population; the level and nature of reported and unreported incidents of discrimination; the range, capacity and contribution of other bodies working in the field; the costs involved in implementing the competences of an equality body to a scale and quality necessary to make an impact; and the scale of the national budget.

Beneficial Measure at National Level

Provision of adequate funding for equality bodies to implement all their functions and competences to a scale and standard necessary for impact.

The lack of resources influences the core issue in relation to the competences of equality bodies, which is their inability to fully implement all their competences and 17 equality bodies find themselves in this situation. It is exacerbated in contexts where there is growing demand on equality bodies from those who are experiencing discrimination. Their effectiveness is further undermined as the strategic mix of interventions required to contribute to social change cannot be deployed.

Many equality bodies lack the full range of competences to give full effect to their functions. This is particularly true of those equality bodies with a decision-making function that do not have powers to make legally binding decisions and impose sanctions. This undermines their capacity to make an impact through enforcement of the equal treatment legislation. The support and litigation function of many equality bodies is undermined where they are not afforded adequate legal standing before the courts. The promotion and prevention function of some equality bodies is limited by lack of competences to develop, promote and support good practice standards for policy makers, employers and service providers in promoting equality, accommodating diversity and preventing discrimination.

Positive duties on the public sector and on employers and service providers in all sectors to be proactive in promoting equality, accommodating diversity and preventing discrimination are a necessary evolution for equal treatment legislation, particularly given the high levels of under-reporting of discrimination. Positive duties take the sole onus to act from the person experiencing discrimination and places this, in part, on duty bearers. The effective implementation of these duties requires support from and enforcement by equality bodies.

Equality bodies themselves have fallen short of the standards required for effectiveness. This is particularly evident in the lack of strategic planning and evaluation in the practice of many equality bodies. It is also evident in the limited range and formality of their engagement with stakeholders, in particular civil society stakeholders that represent and work with those who experience inequality and discrimination.

Beneficial Measures at National Level

Review of the competences afforded to equality bodies with steps to ensure they have the full range of competences required to give effect to their functions, in particular competences to make legally binding decisions and impose sanctions, to have legal standing before the courts, and to promote standards for good equality and diversity practice.

Introduction of provisions for positive equality duties in their equal treatment legislation and empowerment of equality bodies with competences to set standards for their implementation and to monitor and enforce the meeting of these standards.

Beneficial Measures Involving Equality Bodies

Steps to evolve the strategic planning and evaluation of equality bodies, including the development and application of common indicators.

Development of templates and guidance for stakeholder engagement that includes approaches to involve relevant stakeholders in:

- deliberations of the equality body;
- joint initiatives;
- hubs created by the equality body to motivate and inform stakeholders.

Table 7: Effectiveness of Equality Bodies

Country	Equality Body	Budget 2017	Staff 2017	Resource Issues	Competence Issues
Austria	Ombud for Equal Treatment	Not available	c. 30	Recent increase in staff	Limited legal standing (for a ruling on principle, in its own name, with consent of complainant, where disagrees with ETC) to bring cases to court.
	Equal Treatment Commission	Not available	3 senate chairs plus secondees		Decisions not legally binding. No sanctions. No follow-up evident.
Belgium	Institute for Equality of Women and Men	EUR 6.5 million	40	Includes role of implementing Federal Government policy Recent decrease in budget, staffing stable	No legal standing as amicus curiae.
	Inter-federal Centre for Equal Opportunities (UNIA)	EUR 8.08 million	c. 100	Funds supplemented by ministries for projects Recent increase in staff and budget	

Country	Equality Body	Budget 2017	Staff 2017	Resource Issues	Competence Issues
Bulgaria	Protection Against Discrimination Commission	EUR 1.25 million	89, including 9 members	Recent increase in budget, staffing stable Has availed of EU funding in the past	Sanctions not deterrent. Reports limited to annual report. Limited follow-up evident. Limited assistance to victims.
Croatia	Ombudsperson for Gender Equality	EUR 0.41 million	9	Availing of EU funding Increasing demand with rising complaint numbers Funding and staffing stable	No legal standing. Decisions not legally binding. No sanctions. Limited assistance to victims.
	People's Ombudsman	EUR 1.52 million for two mandates	46 for two mandates	Staffing and budget for all mandates, no breakdown for equality mandate Increasing demand with rising complaint numbers Recent increase in staff and budget	Decisions not legally binding. No sanctions. Limited assistance to victims.
Cyprus	Commissioner for Administration and Human Rights	Not available	Not available		No assistance to victims. Sanctions not being imposed. No legal standing.
Czech Republic	Public Defender of Rights	EUR 5.4 million for two mandates	11 for two mandates	Budget is for all mandates, no breakdown for equality mandate Recent increase in staff	Decisions not legally binding. No sanctions. Limited assistance to victims. No legal standing.
Denmark	Danish Institute for Human Rights	EUR 1.5 million	14	Recent increase in staff, budget stable	Limited legal standing (amicus curiae).
	Board of Equal Treatment	EUR 0.81 million	6 with board of 12		Limited follow-up. Sanctions not deterrent.
Estonia	Commissioner for Gender Equality and Equal Treatment	EUR 0.61 million including project funding	8	Recent increase in staff Budget decrease to EUR 0.39 million in 2018 (including project funding)	No legal standing. Decisions not legally binding, unless in mediation procedure. No sanctions.
	Chancellor of Justice	Not available	Not available		No legal standing. Limited assistance to victims. Decisions not legally binding. No sanctions.

Country	Equality Body	Budget 2017	Staff 2017	Resource Issues	Competence Issues
Finland	Equality Ombudsman	EUR 1.02 million (2015)	11.5 (2015)	Apparently stable budget and staff	Limited legal standing (can support victim in 'test' cases). Limited assistance to victims. Decisions not legally binding. Sanctions rare. Limited follow-up.
	Non-Discrimination Ombudsman	c. EUR 1.4 million	15	Recent increase in staff and budget with expansion of mandate Increasing demand with rising complaint numbers	No legal standing. Limited assistance to victims. Decisions not legally binding. No sanctions. Does not address cases in employment (dealt with by Occupational Health and Safety Authorities).
France	Defender of Rights	EUR 22.59 million for three mandates	225 for three mandates	Budget is for all mandates, no breakdown for equality mandate Staff is stable with slight decrease in budget Increasing demand with rising complaint numbers	Limited legal standing (cannot bring case on its own initiative). Decisions not legally binding. No sanctions.
Germany	Federal Anti-Discrimination Agency	c. EUR 4.4 million	c. 35	Staff stable, recent increase in budget	Limited legal standing.
Greece	Office of the Greek Ombudsman	EUR 6.45 million for two mandates	182 for two mandates	Staffing and budget for all mandates, no breakdown for equality mandate Budget increase in 2017 but small compared to previous cutbacks Staff increase with new competence in 2016 but no budget attached	Limited assistance to victim. Decisions not legally binding. No sanctions. No legal standing.
Hungary	Equal Treatment Authority	EUR 1.24 million	27	Recent increase in staff and budget, after period of cutbacks Increasing demand with rising complaint numbers	Limited follow-up.

Country	Equality Body	Budget 2017	Staff 2017	Resource Issues	Competence Issues
Iceland	Centre for Gender Equality	EUR 0.84 million	8	Recent budget increase after period of budget cuts Staff stable	No legal standing.
Ireland	Irish Human Rights and Equality Commission	EUR 6.61 million for two mandates	41 for two mandates	Budget and staff for all mandates no breakdown for equality mandate Recent increase in budget and staff	
Italy	National Office for Racial Anti-Discrimination (UNAR)	EUR 2.04 million	18	Staff decrease in recent years with budget stable	Limited legal standing (on behalf of complainant).
	National Equality Advisory, Local Equality Advisors, Equal Opportunities National Committee	Not available	Not available		
Latvia	Ombudsman	EUR 1.37 million for three mandates	46 for three mandates	Staffing and budget for all mandates, no breakdown for equality mandate Recent slight budget increase	Limited assistance to victims. Decisions not legally binding. No sanction. Limited follow up.
Liechtenstein	Association for Human Rights	EUR 0.3 million	3		
	Office for Equality of People with Disabilities	Not available	Not available		
Lithuania	Office of the Equal Opportunities Ombudsperson	EUR 0.54 million	19	Recent increase in staff and budget Availing of EU funds, dependence on project funds	Limited assistance to victims. Decisions not legally binding Sanctions not deterrent. No legal standing.
Luxembourg	Centre for Equal Treatment	EUR 0.087 million	2	Recent increase in budget but has not returned to original levels, staff stable	No legal standing. Limited legal assistance.
Malta	National Commission for the Promotion of Equality	EUR 0.35 million	11 (2016)	Budget and staff stable	Decisions not legally binding. No sanctions.

Country	Equality Body	Budget 2017	Staff 2017	Resource Issues	Competence Issues
Netherlands	Netherlands Institute for Human Rights	EUR 6.92 million for two mandates	57.6 for two mandates	Staffing and budget for all mandates, no breakdown for equality mandate Recent decrease in budget, staff stable	Decisions not legally binding. No sanctions. Assistance to victims provided by anti-discrimination bureaux.
Norway	Equality and Anti-Discrimination Ombud	EUR 5.75 million	62	Budget decrease in 2018	Limited assistance to victims. Decisions not legally binding. No sanctions.
	Equality and Anti-Discrimination Tribunal	Not available	12 members and 5 staff	Staffing loss with move to Bergen as of 2018	Decisions not legally binding on public bodies.
Poland	Commissioner for Human Rights	Not available for equality mandate	12	Recent increase in staff on equality mandate Significant budget cuts	Limited assistance to victims. Limited power to intervene in private sector. Decisions not legally binding. No sanctions. No follow-up.
Portugal	Commission for Equality and Against Racial Discrimination	Not available	Not available	Recent slight budget increase after period of cutbacks	Limited assistance to victims. No legal standing.
	Commission for Citizenship and Gender Equality (CIG)	Not available	Not available		Limited legal standing (as amicus curiae).
	Commission for Equality in Labour and Employment (CITE)	Not available	Not available		Limited legal standing (as amicus curiae).
Romania	National Council for Combating Discrimination	EUR 1.3 million	70 budgeted, 67 occupied	Recent budget increase, staff stable Availing of EU funds	Limited legal standing (as amicus curiae). Limited follow-up.
Slovakia	Slovak National Centre for Human Rights	EUR 0.55 million for two mandates	15 for two mandates	Staffing and budget for all mandates, no breakdown for equality mandate Staff and budget stable	Limited assistance to victims. Decision not legally binding. No sanctions.
Slovenia	Advocate of the Principle of Equality	EUR 0.2 million	7	Recent increase in staff and budget	No sanctions.
Spain	Council for the Elimination of Racial and Ethnic Discrimination	EUR 0.52 million (2016)	1	Recent budget decrease, staff stable	Limited assistance to victims.

Country	Equality Body	Budget 2017	Staff 2017	Resource Issues	Competence Issues
Sweden	Equality Ombudsman	EUR 12 million	95	Stable with recent budget increase of about 10 % between 2017 and 2018 and small decrease in staff over that period	Limited legal standing (taking cases). Decisions not legally binding. No sanctions.
United Kingdom	Equality and Human Rights Commission	EUR 23.1 million	172	Staffing and budget for all mandates, no breakdown for equality mandate Recent decrease in staff and budget – budget cut by c. 70 % from 2010	
	Equality Commission for Northern Ireland	EUR 5.9 million	84	Recent decrease in staff and budget – budget cut by 18.9 % from 2012	

6 Accessibility

6.1 Introduction

Accessibility of equality bodies is important in a context of high levels of under-reporting of discrimination and of identified barriers to accessing justice. The European Union Agency for Fundamental Rights has established three strands for action required to improve access to justice in cases of discrimination.⁹⁴

- Structures: action on the complex pathways for complaints of discrimination and the geographical proximity of the first point of contact for complaints.
- Procedures: action on the usability, fairness and effectiveness of procedures established for cases of discrimination.
- Supports: action on access to legal advice and assistance, access to emotional, personal and moral support, rights awareness, and the accommodation of the diversity of complainants, in particular people with disabilities.

The European Commission Recommendation includes a specific concern for access to and accessibility of equality bodies.⁹⁵ It recommends that Member States ensure ease of access to the physical premises of equality bodies, their information and communication and their services and products. Where necessary Member States should consider enabling local and/or regional offices for equality bodies. Procedures for submitting complaints to equality bodies need to be simple and free of charge.

The ECRI General Policy Recommendation No. 2 has a specific focus on accessibility that starts from the premise: 'As members of groups exposed to discrimination and intolerance often face multiple problems and obstacles ... equality bodies should pay particular attention to ensuring that they are easily accessible for them.'⁹⁶

The recommendations made by ECRI include: the need for accessible premises; having local outreach and local and regional offices; being present at key moments with groups experiencing discrimination, offering a range of means of contact for complainants including face-to-face contact; minimal admissibility conditions; adjustments to take account of all forms of disability; services that are free of charge; steps to address literacy issues, language diversity, and time constraint barriers for complainants.

The location, premises, and presence close to communities experiencing discrimination of the equality body emerges from this work as key to their accessibility. A further internal condition that can be established by equality bodies themselves to enhance accessibility is the introduction, dissemination and implementation of procedures to take account of the specific needs that flow from the diversity of people they work with.

6.2 Location, premises, and presence

There is a significant physical dimension to accessibility of equality bodies. This is related to the location of the head office, the nature of the premises they have and their ability to have a local and regional presence. These are conditions that are largely externally created for the equality body. Physical location is a necessary starting point for accessibility. A publicly visible and geographically and physically accessible premises is needed by equality bodies. In most instances this is reported to be the

94 FRA (European Union Agency for Fundamental Rights) (2012), *Access to justice in cases of discrimination in the EU – steps to further equality*, Vienna.

95 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

96 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

case for the equality bodies covered in this present report. However, there are issues of inaccessible premises reported for eight equality bodies. These issues are identified in: Belgium, where the Institute for Equality between Women and Men is in a Government building and is not deemed visible to the public; Bulgaria, where the Protection Against Discrimination premises is far from the city centre with its entrance not visible; Iceland, where the Centre for Gender Equality is located in a northern town, although staff do have access to a small office in the capital; Italy, where UNAR does not have an accessible or publicly visible office; Norway, where the Equality and Anti-Discrimination Tribunal has been relocated to Bergen; Romania, where the NCCD does not have an accessible or publicly visible office; Spain, where the Council for the Elimination of Racial and Ethnic Discrimination does not have an accessible or publicly visible office; and Sweden, where the Equality Ombudsman has been relocated from a central location in the capital to a suburban location.

Local and regional offices for equality bodies are valuable in enabling access for people who experience discrimination in larger jurisdictions. Ammer et al., in 2010, noted the importance of equality bodies having local or regional offices to any strategy to address under-reporting of discrimination in that they bring the equality body closer to the individual concerned. However, they identified such offices in only seven countries: Austria, Bulgaria, France, Hungary, the Netherlands, Romania and Slovakia.⁹⁷

Good Practice

Local and regional offices are operated by the Ombud for Equal Treatment in Austria (four offices), UNIA in Belgium (17 offices), Protection Against Discrimination Commission in Bulgaria (21 offices), the People's Ombudsman in Croatia, (three offices) Local Equality Advisors in Italy, the Commissioner for Human Rights in Poland (three offices and ten other local admission points), CEARD in Portugal (148 offices), CIG in Portugal (one office), the National Commission to Combat Discrimination in Romania (two offices), the Slovak National Centre for Human Rights (three offices), and the Equality and Human Rights Commission in the UK (Britain – three offices).

These offices vary in the level of staffing and even competence. However, they provide a more accessible first point of contact for equality bodies and enhance their local visibility. These outcomes are key for any strategy to address high levels of under-reporting.

Local and regional offices still tend to be the exception; 11 equality bodies in 10 countries were found to have regional or local offices in this present report. In the absence of such offices, six equality bodies have pursued other strategies to secure a regional presence through involving local entities that they have contracted or have an institutional connection with in their work.

Good Practice

Six equality bodies have secured a local presence through other entities: The People's Ombudsman in Croatia (engaged five NGOs as local contact points), the Non-Discrimination Ombudsman in Finland (works with local victim support centres), the Defender of Rights in France (engaged 475 local delegates), the Netherlands Institute for Human Rights (supports anti-discrimination bureaux established by each municipality), CITE in Portugal (interacts with the Labour Inspection Services and the Institute for Employment and Professional Training), the Council for the Elimination of Racial and Ethnic Discrimination in Spain (funds a network of assistance centres).

This local presence does not necessarily secure a visibility for the equality body at local level, but it does enable access for complainants at a local level. This is important in countries where head offices can be significant distances away, given that face-to-face contact with complainants can be vital in securing a full and accurate picture of the facts of a case.

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

Local outreach can be important for accessibility in the absence of local or regional offices. Equality bodies with local or regional offices tend to do outreach work from these offices. Some equality bodies without such offices tend to engage in some local outreach activities.

There are 10 exceptions to this where equality bodies do not appear to engage in outreach work: Belgium (Institute for Equality between Women and Men); Croatia (Gender Ombudsperson); Cyprus (Commissioner for Administration and Human Rights); Denmark (DIHR and Board of Equal Treatment); Finland (Equality Ombudsman and Non-Discrimination Ombudsman); Italy (UNAR); Norway (Equality and Anti-Discrimination Tribunal); and the UK (ECNI). In some instances this is due to the limited size of the jurisdiction.

A specific complexity that presents barriers for access to pathways to justice is noted in federal settings, such as Austria, where a diversity of approaches is evident across the provinces with each having their own specialised bodies to their own design.

6.3 Accommodation of difference

The diversity of personal characteristics held by people from across the grounds can have practical implications in terms of the specific needs of people seeking access to the services of an equality body. The internal development and communication by equality bodies of procedures to make adjustments for and accommodate this diversity are another key element for accessibility.

Out of 43 equality bodies, 28 appear to have some form of procedures to address the practical implications of diversity for their engagement with and service provision to people from different groups. There is no clear pattern to or template for these procedures, the range of needs that they might encompass or their implementation processes. There is a particular focus evident on the specific needs of people with disabilities in this activity.

Good Practice

In Belgium, UNIA conducted an audit of all its services to establish and secure access for people with disabilities. This initiative was taken as a result of its involvement in implementation of the UNCRPD. Although this initiative is confined to one ground, it is seen as serving as an example and entry point for similar action on other grounds.

There are instances of equality bodies that take account of the specific needs of:

- people with caring responsibilities and the flexibility in timing of meetings that they might need;
- people with literacy issues and the inaccessibility of written procedures;
- people for whom cost or associated costs might be a barrier and the issue of transport costs in particular; and
- people proficient in languages other than the first language of the country and the need for translation of documents and interpretation in exchanges.

Good Practice

In the Netherlands, a complainant can ask the NIHR to come to an opinion without a hearing, considering only the written documents and statements of the parties, where travelling to the hearing is too much of a burden. This is important in taking account of the practical implications of socio-economic difference.

In the absence of procedures, other equality bodies pursue more informal approaches to accommodating the specific needs that flow from diversity. There is a problem with informal approaches in that they tend not to be publicly known and they can vary over time and depending on who the initial contact is with.

Good Practice

In Ireland, the Irish Human Rights and Equality Commission has nominated an access officer from among its staff to provide, arrange for and coordinate assistance to people with disabilities in accessing the organisation's services. This is important in reflecting and addressing legal obligations on all organisations under the equal treatment legislation. Again, however, it could serve as a useful exemplar and entry point for action on other grounds.

6.4 Key Learning

A local presence offers significant potential for equality bodies in contexts of high levels of under-reporting. This development has yet to be realised for most equality bodies, mainly due to limited financial and human resources. A local presence offers proximity for complainants and visibility for stakeholders. It demands careful management to ensure competence in the work of the local office and alignment with the culture and ambition of the national office.

Beneficial Measure at National Level

Establishment of a local presence for the equality body throughout the geographical area it covers, in particular through a local office or intermediaries.

Equality bodies are clearly well disposed to taking action to accommodate the diversity of complainants in their services and activities. However, they have not yet developed significant or exemplary operational systems for accommodating diversity. In contrast, when promoting good practice standards to employers and service providers they can seek the introduction and operation of such systems.

Beneficial Measure Involving Equality Bodies

Steps to develop, implement and promote procedures and processes to accommodate the diversity of complainants and to adjust for the practical implications of this diversity in their procedures, supports and services.

7 Impact of equality bodies

7.1 Introduction

The impact that equality bodies seek flows from their mandate. The ECRI General Policy Recommendation No. 2, states that this mandate should cover ‘the promotion and achievement of equality, prevention and elimination of discrimination and intolerance, including structural discrimination and hate speech, and promotion of diversity and of good relations between persons belonging to all the different groups in society.’⁹⁸

The EU equal treatment directives require a mandate that is narrower in seeking the designation of equality bodies for the ‘promotion of equal treatment of all persons without discrimination’, specifically on the grounds of racial or ethnic origin and of gender.⁹⁹ The European Commission Recommendation, however, goes further in recommending a mandate that encompasses the grounds of gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation, in the areas of employment and occupation, access to and supply of goods and services, education, social protection and social advantages.¹⁰⁰ This is in line with the pending proposal of 2 July 2008 for a Council Directive on implementing the principle of equal treatment between persons, which covers all these grounds and it also reflects the situation already established for equality bodies in most Member States.

Most equality bodies have a mandate that goes beyond combating discrimination to also include the promotion of equality. Equality tends not to be defined in this mandate but the EU equal treatment directives point to a substantive understanding in allowing for positive action ‘with a view to ensuring full equality in practice’.¹⁰¹ Full equality in practice holds an ambition beyond equal treatment or ensuring new opportunities for people experiencing inequality. It seeks and secures new outcomes for them.

The potential impact of equality bodies has been identified in terms of social change.¹⁰² This social change embraces individuals, institutions and society.

Equality bodies:

- improve the situation and experience of individuals who are members of groups that are vulnerable to discrimination. Individuals can challenge incidents of discrimination, can get support in seeking redress for discrimination, and can achieve change in their situation following such incidents.
- enhance the operations of institutions as employers, service providers and policy makers. Institutions can be supported and guided to introduce and implement equality and diversity systems to improve their performance in promoting equality, accommodating diversity and preventing discrimination.
- strengthen the society’s value base of equality, diversity and human dignity. The general public can be engaged with these values, a culture of compliance can be established among employers, service providers and policy makers, and a culture of rights can be stimulated in communities exposed to discrimination.

98 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

99 Specifically: Racial Equality Directive 2000/43/EC and the Gender Equality Directives 2004/113/EC, 2006/54/EC, and 2010/41/EU.

100 European Commission (2018) COMMISSION RECOMMENDATION (EU) 2018/951 of 22 June 2018 on standards for equality bodies.

101 See for example: Article 5 of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

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

It is beyond the scope of this study to assess the actual impact of equality bodies across the EU and EFTA countries. However, a number of issues are evident that need to be addressed in any future assessment. It will be necessary for equality bodies to establish the specific social change they seek and, in order to establish the means by which such change occurs, they need a theory of change. Indicators of change achieved by equality bodies remain under-developed. Finally, the conditions have yet to be created for equality bodies to achieve the change they have the potential for. Each of these issues is addressed in this chapter.

7.2 Theory of change

A theory of change is defined simply as 'identifying the change an organisation is seeking and analysing how this change happens'.¹⁰³ A theory of change 'establishes the path from organisational activities to outcomes to impact' for an equality body. Equinet has identified the value in and need for equality bodies to establish a theory of change to inform their planning and evaluation cycle.

Holtmaat, in 2007, identified two theories of change among equality bodies: reactive and proactive.

'On the one hand there are bodies that want to concentrate on (legal) "assistance" (including hearing and investigating complaints and giving opinions about them). This can be described as taking a "reactive role" (reacting to instances of discrimination that have already occurred). ... On the other hand there are bodies that want to concentrate on their "proactive role" (i.e. preventing discrimination from occurring in the future), which prioritise their activities in the field of conducting surveys and issuing reports and recommendations (even going as far as drafting codes of good practice and playing a role in supervising the implementation of positive non-discrimination duties).'¹⁰⁴

Ammer et al., in 2010, emphasised the need for equality bodies to combine reactive and proactive approaches in a strategic mix of activities if they are to make an impact that reflects their full potential. This strategic mix needs to include 'outputs for enforcement of equal treatment legislation, awareness-raising of rights under the legislation, knowledge development in relation to discrimination and inequality, and promotion and support of good practice by employers and service providers'.¹⁰⁵ These outputs need to be of sufficient scale and quality and to respond to the particular societal context of the work and roles being played by other stakeholders.

There is an absence of reference to any explicit theory of change informing the work of equality bodies reported in this present report. This is inevitably linked to the limited evidence of strategic planning found.

7.3 Indicators of change

Indicators that have the capacity to measure the change achieved by equality body remain to be adopted despite an amount of work done in their elaboration. Indicators are complex given the nature of social change sought by equality bodies, the lack of data to track progress, and the difficulties of establishing causality between change achieved and the work of equality bodies.

The ECRI General Policy Recommendation No. 2 emphasises the importance of equality bodies developing and using indicators as a means of measuring their impact. Equality bodies should 'establish indicators, baselines and targets for core objectives and activities enabling them to measure the input of resources

103 Crowley, N., Equinet (2013), *Processes and Indicators for Measuring the Impact of Equality Bodies*, Brussels.

104 Holtmaat, R. (2007), *Catalysts for Change? Equality bodies according to Directive 2000/43/EC*, European Network of Legal Experts in the Field of Non-Discrimination, European Commission, Brussels.

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

into activities, the outputs from these activities and the impact of individual activities and the overall impact of the equality body.¹⁰⁶

Equinet has pointed out that such indicators should reflect:

- the theory of change developed by the individual equality body;
- the potential for equality bodies to achieve change at the individual level, the institutional level and societal level;
- the equality body's ambition to have a transformative effect on society.¹⁰⁷

Difficulties noted by Equinet in developing indicators for equality bodies include: baseline data is inadequate; causality linking change to actions taken is hard to establish; and the pace of change is slow when it comes to equality. The use of 'proxy' indicators is promoted: indicators that measure inputs or outputs that are known, from research or documented experience, to contribute to a broader transformative impact. Equinet developed a menu of indicators for equality bodies that provides a starting point for measuring and assessing the impact of equality bodies (see table 8 below).

Indicators, even when they are common across jurisdictions, do not necessarily serve for comparative purposes or to establish any overall measurement of impact for equality bodies. This is principally due to how what is being measured is understood and the diversity of understanding that informs what appear to be common indicators.

This present report found that equality bodies' data systems are varied. Definitions of terms to be measured differ from one equality body to another (e.g. what is a complaint and what is an inquiry). Methodologies differ (e.g. whether complaints received or complaints admissible are recorded). What is tracked differs and the manner in which what is tracked is broken down differs (e.g. by mandate or by ground).

7.4 Achieving change

Given that equality bodies have not yet been afforded the conditions required to meet their potential, it is early to be considering their impact in terms of achieved change. However, enough work has been done to demonstrate the potential and achievements of equality bodies despite this barrier.

Ammer et al. in 2010 established the impact made by equality bodies on the proxy basis of the scale and nature of outputs from their work.¹⁰⁸

- The impact on individuals is identified as positive on the basis of the scale of complaints received and addressed by equality bodies. However, they note the significant challenge of under-reporting and emphasise the importance of equality bodies achieving a 'ripple effect' from the cases they deal with.
- The impact on institutions is identified as significant in both the private and the public sectors. This is evident from the scale and nature of outputs from these equality bodies of: recommendations and orders issued by equality bodies in cases of discrimination; activities to guide and support good practice by organisations in taking a planned and systematic approach to equality; and initiatives to support the implementation of positive equality duties in the equal treatment legislation.

106 Council of Europe, European Commission against Racism and Intolerance (ECRI) (2017), General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), Strasbourg, Council of Europe, 7 December 2017.

107 Crowley, N., Equinet (2013), *Processes and Indicators for Measuring the Impact of Equality Bodies*, Brussels.

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

- The impact on policy is identified as positive on the basis of the quantity and quality of recommendations made by some equality bodies in their advisory function and the positive responses to these. This impact depends on the status of equality bodies as authoritative sources of expertise on equality and discrimination.
- The impact on society is identified as useful on the basis of the scale and nature of public campaign, media work, and awareness raising outputs that can be understood as contributing to a culture of compliance among service providers and employers, a culture of rights among those at risk of discrimination, and a culture that values equality and diversity within the general public.

Equinet has tracked the work of equality bodies over the past decade in a series of perspectives on their work under the different grounds covered by the equal treatment legislation. This has been done on the grounds of: gender (2015 and 2009); disability (2014 and 2009); racial or ethnic origin (2016 and 2012 and Roma and Travellers specifically in 2010); LGBTI (2013 and Trans people specifically in 2010); age (older people (2011) and young people (2016)); and religion (2015). This work evidences a continuity in the scale, nature and quality of work being done by many equality bodies in the different areas of enforcement, promotion of good practice, communication and awareness raising, policy advice, and research across these six grounds.

This current report found that most equality bodies face barriers to the effectiveness of their work due to inadequate funding. It found 17 equality bodies out of 43 that do not or cannot deploy all their competences under each of their functions and it attributes this situation to lack of resources or limitations in strategy. Many equality bodies face barriers due to inadequate provision of competences. Only 14 out of 43 equality bodies were found to have or to be fully engaged with their promotion and prevention function, which is key to making an impact on institutional and societal change. This suggests that many equality bodies still have to achieve and demonstrate their full potential.

The actual impact of equality bodies is difficult to measure beyond this use of the proxy of scale and nature of outputs from their various fields of action. This is due to a range of factors including: lack of equality data; lack of resources to conduct the necessary research to establish impact; and difficulties in tracking causality between social change achieved and the work of equality bodies, given the range of factors at play and the slow pace of change.

This situation is not helped by the evident lack of evaluation of their work by equality bodies. This present report found that only 11 out of 43 equality bodies had engaged in recent evaluation of their work.

7.5 Key Learning

There is a lack of evidence of any established theory of change being held or pursued by equality bodies, individually or collectively. Further work is required to develop a body of thinking on and a shared understanding of the theory of change that could shape the work of equality bodies to maximise their impact. The capacity for strategic pursuit of social change needs further embedding across equality bodies. This would underpin impact from a coherent pursuit of change, informed by an effective and well-developed theory of change.

The menu of indicators developed by Equinet for equality bodies could assist in developing a planning culture and promoting a stronger ethos of evaluation in the work of equality bodies. This would enable equality bodies to measure impact and to articulate the difference they make for individuals, institutions and society. There is a need to develop equality body data systems and render them coherent across different countries to enable a clear and comparable focus on impact. This would facilitate peer learning and mutual support between equality bodies, allow an articulation of their contribution to social change across Europe and enable a tracking of the contribution of European standards for equality bodies to their effectiveness.

Adequate resources are required by all equality bodies if they are to deploy the strategic mix of competences to an adequate scale and quality required to make an impact, achieve social change and realise their full potential. A more widespread evaluation of their work by equality bodies themselves would enable a more informed assessment and, equally important, articulation of their impact.

Beneficial Measures Involving Equality Bodies

Development of templates and guidance for devising the theories of change open to and relevant for equality bodies in fulfilling their potential.

Development of templates and guidance for data systems that enable a coherent tracking of common indicators across jurisdictions.

Table 8: Indicators of Change¹⁰⁹

	Individual Level	Institutional Level	Societal Level
Inputs		<ol style="list-style-type: none"> 1. The number of initiatives taken by the equality body to support employers and service providers to engage in good practice and the level of investment in these. 2. The number of survey or research initiatives undertaken by the equality body to inform policy making and the level of investment in these. 3. The number of initiatives developed to enable the work of other organisations promoting equality and combating discrimination and the level of investment in these. 	
Outputs	<ol style="list-style-type: none"> 1. The number of individuals who make contact with the equality body and whose inquiries are responded to. 2. The number of individuals supported to take or resolve cases of discrimination or whose cases are heard or mediated. 	<ol style="list-style-type: none"> 1. The number of organisations, employers and/or service providers that engage with the equality body. 2. The number of organisations, employers and/or service providers, stimulated, supported or required to put in place equality policies, procedures and/or practices. 3. The number of instances when policy makers developing new policy or reviewing existing policy consult the equality body. 4. The number of policy recommendations made by the equality body. 	<ol style="list-style-type: none"> 1. Informed media coverage of key messages articulated by the equality body. 2. The level of participation by the equality body in public debate on the equality, diversity and non-discrimination messages that it has identified as key.

¹⁰⁹ Crowley, N., Equinet (2013), *Processes and Indicators for Measuring the Impact of Equality Bodies*, Brussels.

	Individual Level	Institutional Level	Societal Level
Impact	<ol style="list-style-type: none"> 1. The number of inquiry outcomes that meet claimant expectations. 2. The number of casework outcomes that meet claimant expectations. 	<ol style="list-style-type: none"> 1. The number of policy recommendations made by the equality body that are taken up by policy makers. 2. The number of changes made in equal treatment legislation as a result of interventions by the equality body. 3. The number of casework outcomes that result in new interpretations of the equal treatment legislation in the jurisprudence. 4. The number of employers and service providers that have developed equality policies, procedures and practices as a result of their engagement with the equality body. 5. The number of civil society organisations that take new actions to promote equality and combat discrimination within their sector or within society, which have been supported by the equality body. 6. The number of employer and employee organisations that take new actions to promote equality and combat discrimination within their sector or within society, which have been supported by the equality body. 	<ol style="list-style-type: none"> 1. The level to which the equality body voice is deemed to be an authoritative voice by stakeholders identified as key by the equality body. 2. Initiatives taken by educational establishments, following intervention by the equality body, to enable learning about equality, diversity and non-discrimination. 3. Knowledge of and commitment to the equal treatment legislation and its key provisions among employers, service providers, trade unions and consumer bodies. 4. Knowledge of the equality body among the general public. 5. Knowledge of and engagement with the equal treatment legislation and its key provisions among organisations representing groups experiencing discrimination. 6. Knowledge of the equality body among groups that experience discrimination. 7. Level of those who perceive that they have experienced discrimination and do not take action in response to this experience.

8 Conclusions and proposals

8.1 Conclusions

Equality bodies

Equality bodies are independent statutory bodies established to promote the principle of equal treatment on various grounds. Their core purpose is to implement equal treatment legislation. In practice, equality body mandates include both combating discrimination and promoting equality. They play roles in enforcement of rights, promotion of good practice, communication, research, and stakeholder engagement. A total of 43 equality bodies in 31 countries were examined for this report.

The institutional architecture of equality bodies is diverse.

- Mandates: holding multiple mandates (14) or a single equality mandate (29).
- Functions: having various combinations of promotion and prevention, support and litigation, and decision-making functions.
- Grounds: covering multi-ground (33), including variety in the actual grounds covered, or covering a single ground (10).

Significant levels of political indifference to equality bodies are found, notably in 12 countries. Indifference leaves equality bodies under-funded and under-resourced, and ultimately means that they cannot be game-changers. There is a supportive political context evident in seven countries. Political hostility is suggested, in the form of interference in appointments and removals from office, in five countries, in the form of disproportionate budget cuts in two countries, and in other forms in one country. There is a challenge to re-engage national politics with the potential and importance of equality bodies and to secure political support for their effective and independent functioning.

Standards

There is a growing body of European standards for equality bodies. These standards grapple to good effect with the diversity of equality bodies and provide a foundation which serves to protect this infrastructure and make progress in realising its potential.

Institutional architecture

Equality bodies operate in a wider equality infrastructure and need to be enabled to play their role within this infrastructure. They serve as a hub connecting different organisations working on equality issues and supporting mutual learning, shared understanding and coherence. They serve as the accessible entry point for pathways to access justice and provide supports to enable people to engage with these pathways.

Multi-mandate bodies that include an equality mandate have the potential to address issues of equality and discrimination more comprehensively and effectively than single-mandate equality bodies. However, there remain significant challenges to develop the integrated approaches that would realise this potential. Currently a core challenge is to secure visibility for the equality mandate and resources for its implementation.

The dominant approach to the active management of the different mandates is silo-based with a separate staff unit dealing with the equality mandate. This gives visibility to the equality mandate and ensures its competences are implemented, but falls short of the integrated approaches required to realise the full potential of multi-mandate bodies. Leadership for equality in multi-mandate bodies, with appointment of

a deputy ombudsman with specific responsibility for the equality mandate, has enabled strategic direction for the equality mandate and access to the specific expertise it requires.

Equality bodies have a mix of functions and associated competences, which often stretch beyond the requirements of the EU equal treatment directives. They require this broad range if they are to deploy the strategic mix of enforcement, promotion of good practice, communication, research and stakeholder engagement activities needed for their potential to be realised. However, there are tensions where the equality body combines a decision-making function with the promotion and prevention and support and litigation functions, due to the impartiality required by the decision-making function.

This tension has consequences for the nature and quality of the assistance provided to those who have experienced discrimination. Useful strategies in managing this tension include having a specialised unit within the equality body to interact with complainants or providing support to networks of locally based units providing assistance to complainants.

Multi-ground equality bodies are increasingly the norm, while single-ground equality bodies continue in some countries. Multi-ground equality bodies are challenged to secure visibility for and action relevant to each ground covered, often in a lengthy or even open list. Most equality bodies were viewed as giving adequate attention to the various grounds that they cover.

Despite this, there is limited evidence of the active management required of multi-ground mandates. Many equality bodies take a reactive approach, dealing with the cases that present to them. Others evidence a mix of multi-ground, single-ground and cross-ground (intersectional) activities. These point to the elements required in an integrated multi-ground perspective, but there is limited evidence of any strategy in establishing and pursuing the most effective mix and interplay of these three elements.

Independence

Legal structure, manner of appointment, forms of accountability and operational practice are key factors in the independence of equality bodies. Functional independence is acknowledged for all equality bodies reported on in this report.

While 31 equality bodies have their own legal personality, 10 equality bodies form part of Government ministries. Independence is curtailed in such situations. Strong leadership can, however, counter this in securing an independent functioning of such equality bodies. Two other equality bodies are part of NGO associations.

The leadership in 20 equality bodies is appointed by the Government or Government ministers, which raises issues of independence. Although Parliament appoints the leadership of 13 equality bodies, a transparent, competency-based and participatory procedure in such appointments is absent in most instances. Eight other equality bodies include instances of appointments made by various organisations. Such appointments, in creating a situation where another entity has representation on the board of the equality body, can diminish independence. There is evidence of appointments being subject to political interference in six instances. This is noted in making appointments and in removing people from office.

Nineteen equality bodies were accountable to the Government, ministers or President, raising issues of independence. Thirteen equality bodies were accountable to Parliament, largely by way of presenting their annual report. Two equality bodies were accountable to both Government and Parliament. There were exemplars of good practice with four equality bodies having no named accountability and two equality bodies accountable to the statutory audit authorities.

Effectiveness

Although there is great variety in the resource levels for equality bodies, few have an adequacy of funding sufficient to make a real impact. This emerges as the most significant barrier to effectiveness. There is, however, a slowly improving resource context with 18 equality bodies getting increased staffing and/or budget in recent years. Among these, equality bodies in six countries are only now experiencing some budget increase after a period of significant budget cuts. On the other hand, eight equality bodies have experienced a decrease in staffing and/or budget in recent years; three of these equality bodies have experienced disproportionate budget cuts.

Limitations in relation to competences is evident.

- Out of 25 equality bodies with a decision-making function, 19 are unable to issue legally binding decisions and/or impose sanctions.
- The sanctions that can be imposed by four equality bodies with a decision-making function have been inadequate to serve as a deterrent.
- Seventeen equality bodies do not have legal standing to take cases of discrimination and/or to act as *amicus curiae* before the courts.
- Eight equality bodies do not appear to engage in follow-up to their decisions.
- Only 14 out of 43 equality bodies are active in developing, promoting and supporting standards for good equality, diversity and non-discrimination practice by policy-makers, service providers and employers.
- Seventeen equality bodies do not appear to or be able to deploy all their competences under each of their functions due to lack of resources or limitations in strategy.

All equality bodies produce some form of annual report, but the engagement of equality bodies with the full planning cycle is under-developed: 25 equality bodies have not developed strategic plans; only 14 equality bodies have engaged in strategic planning with annual workplans; and only 11 equality bodies have engaged in evaluation.

Stakeholder engagement by equality bodies tends to be unofficial and informal. Although this has been useful in enabling consultation on issues, it cannot harness the full gains for effectiveness possible from stakeholder engagement. Only 12 equality bodies are engaged in more formal stakeholder engagement, including: joint initiatives with stakeholders; including stakeholders in the work and deliberations of equality bodies; and serving as a hub for a wider equality infrastructure.

Accessibility

All except 8 equality bodies have geographically and physically accessible premises. Issues of accessibility arise where local and regional offices for equality bodies tend to be the exception rather than the norm. Only 11 equality bodies in 10 countries have such offices. Six other equality bodies have secured a local presence by working through or supporting other entities to engage with complainants. Many equality bodies engage in local outreach activities, although 10 equality bodies do not. A specific complexity that presents barriers for access to justice is noted in federal contexts, such as Austria.

Out of 43 equality bodies, 28 appear to have some form of procedure to address the practical implications of diversity in engaging with and providing services to people from different groups. However, there is no clear pattern to or template for these. The other equality bodies appear to rely on informal approaches, but these suffer by not being publicly known and by depending on the individual point of contact.

Impact

The impact of some equality bodies has been established on the proxy basis of the scale and nature outputs from their work. The actual impact of equality bodies is difficult to assess due to lack of data, lack of resources to conduct the necessary research to establish impact, and difficulties in tracking causality. This situation is not helped by the limited evaluation done by equality bodies themselves. Inadequate resources, deficiencies in competences provided, and lack of strategy means many equality bodies still have to achieve their full potential.

Further work is required to develop thinking on and a shared understanding of the theory of change that could shape the work of equality bodies to maximise their impact. A menu of indicators developed by Equinet for equality bodies provides a starting point for measuring and assessing the impact of equality bodies.

8.2 Proposals

The European level has an important contribution to make in ensuring the necessary external conditions for equality bodies to be independent and effective. It has offered important leadership for the establishment and operation of equality bodies that are both independent and effective.

The following measures at European level could be beneficial:

1. Engagement of relevant civil servants from national governments in ongoing dialogue about the potential of equality bodies, the steps required to enable them to reach their potential, and the manner in which they might best engage with the equality body. This dialogue could be planned and pursued through arenas of peer learning established at this level: the High Level Group on Non-Discrimination, Equality and Diversity; the High Level Group on Combating Racism, Xenophobia and other forms of Intolerance; and the Advisory Committee on Equal Opportunities for Women and Men.
2. Promotion of dialogue on, and the building of a shared understanding across the Member States, of the European Commission Recommendation on standards for equality bodies and exploration of systems of monitoring and support to ensure capacity for and commitment to their implementation among the relevant Member State authorities. This could usefully include a focus on the full range of international standards concerning equality bodies.
3. Development and monitoring of a template for establishing adequacy of funding for equality bodies that could take account of the size of the Member State; its population; the level and nature of reported and unreported incidents of discrimination; the range, capacity and contribution of other bodies working in the field; the costs involved in implementing the competences of an equality body to a scale and quality necessary to make an impact; and the scale of the national budget.

The national level is central in ensuring the necessary external conditions for equality bodies to be independent and effective.

The following measures at national level could be beneficial:

1. Formal review of the conditions created for the equality body, against those set out in the European Commission Recommendation and the ECRI General Policy Recommendation No. 2, and improvements in these conditions if found to be necessary.
2. Introduction of provisions for multiple discrimination in equal treatment legislation that could enable cases to be taken on multiple grounds, address the complexities of comparator requirements for these instances, and reflect the additional gravity of cases where more than one ground is involved.

3. A transparent, competency-based and participatory procedure for making appointments to equality bodies that could be implemented under the auspices of Parliament and avoid representation of other bodies.
4. Restructuring of the accountability required of the equality body such that it keeps Parliament informed through its annual report but has a single accountability limited to the relevant state audit authority.
5. Provision of adequate funding for equality bodies to implement all their functions and competences to a scale and standard necessary for impact.
6. Review of the competences afforded to equality bodies with steps to ensure they have the full range of competences required to give effect to their functions, in particular competences to make legally binding decisions and impose sanctions, to have legal standing before the courts, and to promote standards for good equality and diversity practice.
7. Introduction of provisions for positive equality duties in equal treatment legislation and empowerment of equality bodies with competences to set standards for their implementation and to monitor and enforce the meeting of these standards.
8. Establishment of a local presence for the equality body across the geographical area it covers, in particular through local offices or intermediaries.

The institutional level is central in ensuring the necessary internal conditions for equality bodies to be independent and effective. Equality bodies can claim a valuable track record but they face new and evolving challenges in seeking to realise their potential.

The following measures involving equality bodies, collectively or individually, could be beneficial:

1. Examination of the conditions that have been created for the equality body against the European Commission Recommendation and the ECRI General Policy Recommendation and communication of their conclusions to the relevant authorities with recommendations for any improvements found to be necessary.
2. Assessment of the internal operations of the equality body against these standards, in an open and participative manner, and evolution of their operations if found to be necessary.
3. Development of templates and guidance for:
 - i. Active management of multiple mandates that ensures visibility for the equality mandate and underpins integrated approaches to the multiple mandates that secure positive synergies.
 - ii. Active management of multi-ground mandates that ensures visibility and relevance for the individual grounds covered, addresses the intersections between these and maximises the potential of multi-ground activities.
 - iii. Devising the theories of change open to and relevant for equality bodies in fulfilling their potential.
 - iv. Stakeholder engagement that includes approaches to involve relevant stakeholders in:
 - Deliberations of the equality body.
 - Joint initiatives.
 - Hubs created by the equality body to motivate and inform stakeholders.
 - v. Data systems that enable a coherent tracking of common indicators across jurisdictions.
4. Development of models of leadership for equality bodies, creation of opportunities for capacity building in implementing such models and promotion of their implementation through processes of mutual support and peer review.
5. Review, and enhancement if found to be necessary, of the nature and quality of the assistance provided to complainants by equality bodies with a decision-making function.
6. Steps to evolve the strategic planning and evaluation of equality bodies, including the development and application of common indicators.
7. Steps to develop, implement and promote procedures and processes to accommodate the diversity of complainants and to adjust for the practical implications of this diversity in their procedures, supports and services.

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