

STUDY

Requested by the LIBE committee



Strengthening the Role and Independence of Equality Bodies



Policy Department for Citizens' Rights and Constitutional Affairs
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Strengthening the Role and Independence of Equality Bodies

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), examines and makes recommendations on the two Directives on standards for equality bodies proposed by the Commission in 2022. It explores the current situation for equality bodies, establishing issues that trammel their potential due to inadequacies in the design of their institutional architecture, and the conditions created for their independence, effectiveness, and accessibility. The study finds that the Directives, while requiring strengthening, hold significant promise.

This document was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs.

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LIST OF ABBREVIATIONS

ECRI	European Commission against Racism and Intolerance
ECNI	Equality Commission for Northern Ireland
EIGE	European Institute for Gender Equality
EQUINET	European Network of Equality Bodies
LIBE	Committee on Civil Liberties, Justice and Home Affairs, European Parliament
NHRI	National Human Rights Institution
UN	United Nations

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EXECUTIVE SUMMARY

Drawing from the literature on equality bodies from a range of European level sources, this study **examines and makes recommendations on the Commission’s proposals for two substantially identical Directives on standards for equality bodies:**

- the Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their **racial or ethnic origin**, equal treatment in the field of employment and occupation between persons irrespective of their **religion or belief, disability, age or sexual orientation**, equal treatment between **women and men** in matters of **social security** and in the access to and supply of **goods and services**, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC (**COM(2022)689 final of 7.12.2022**); and
- the Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between **women and men in matters of employment and occupation**, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU (**COM(2022)688 final 7.12.2022**).

The Directives build on the **2018 Commission Recommendation** on standards for equality bodies and are aligned with standards for national human rights institutions, developed by the **UN**, and standards for equality bodies, developed by the **Council of Europe’s Commissioner for Human Rights** (2011) and **European Commission against Racism and Intolerance** (ECRI) (2018).

The **Racial Equality Directive** (2000/43/EC), the **Gender Equality Directive** in the field of **goods and services** (2004/113/EC), the Gender Equality Directive in the field of **employment** (2006/54/EC), and the Gender Equality Directive in the field of **self-employment** (2010/41/EU) make provision for equality bodies and have contributed to a significant expansion in their establishment, designation, and functions across Member States. **Forty** such equality bodies are identified in this study.

Equality bodies are **key institutions for securing policy implementation in the field of equal treatment**. They contribute to significant and positive social change aligned with the EU values of equal treatment and non-discrimination. This change is secured at: the **individual** level, for those who experience inequality and discrimination; the **institutional** level, in the policies, procedures, and practices of policymakers, employers, and service providers; and at the **societal** level, in public attitudes, the perspectives of duty bearers, and the confidence of rights holders.

Equality bodies contribute to such change through a spectrum of **functions**:

- **promotion and prevention:** in guiding and supporting good practice, making recommendations and providing policy advice; commissioning and undertaking **research and surveys**; engaging in public discourse; and engaging with stakeholders.
- **support and litigation:** receiving complaints; providing personal support and legal support and advice to complainants; representing complainants in Court; and acting as *amicus curiae*, and taking cases in their own name.
- **decision-making:** receiving, examining, hearing, and conciliating claims of discrimination and making and issuing decisions in such cases; applying sanctions in cases where discrimination is found; and following-up on implementation of decisions issued.

There is a **diversity** of equality bodies across the Member States which leads to an **uneven implementation** of equal treatment legislation and related policy objectives. The potential of equality

bodies has been trammelled through **limitations** in the provisions made for their institutional architecture, and for their independence, effectiveness, and accessibility.

Institutional architecture encompasses **multi-mandate bodies, multi-functional bodies, and multi-ground bodies**. In some multi-mandate bodies, where the equality mandate is sited alongside other mandates, there can be a loss of visibility for and action on the equality mandate. In some multi-function equality bodies, where a decision-making function is accorded to the body alongside other functions, there can be limitations posed on the ambition for and implementation of its promotion and prevention functions, and of its support and litigation functions. In some multi-ground bodies, issues of lack of attention to or lack of clear definition of some of the grounds is evident.

Independence refers to the autonomy of equality bodies, in terms of their structure, establishment and organisation, and of their internal functioning. Key issues found in this regard, in relation to the conditions created for some equality bodies are inappropriate legal structure, inadequate processes for appointment of leadership, inappropriate systems of accountability, and lack of budgetary and management autonomy for equality bodies. Issues can also be found in the conditions created by some equality bodies in relation to the nature and quality of their internal leadership.

Effectiveness refers to the capacity of the equality body to make an impact. Key issues found in this regard, in the conditions created for some equality bodies, are lack of resources provided for equality bodies, and inadequacy in the range of competences and in the nature of the competences, afforded to them. Issues can also be found in the conditions created by some equality bodies for effectiveness, in relation to a lack of strategic planning and self-evaluation, and in limited arrangements for formal engagement with stakeholders.

Accessibility refers to access to the premises, procedures, and/or services of equality bodies. Key issues found in this regard are: lack of awareness of equality bodies; inaccessible premises or location; lack of local/regional offices or of a local presence; barriers to access in the procedures and systems; and costs and complexity in accessing justice.

The **legal basis** of a directive is an appropriate instrument to establish standards for equality bodies, as it guarantees necessary flexibility. Further, it would not be useful for the directives to list equality bodies or to provide for an ongoing adoption and modification of such a list; or reference national human rights institutions, ombudsman offices or similar bodies. It is recommended to identify in the preamble (Recital 1) that equality bodies are valued champions for the equality and non-discrimination values of the EU. It would also not be useful for these directives to further broaden the fields within which equality bodies operate, as this is better done through specific legal acts as found necessary.

The provisions made on standards for equality bodies are well crafted in both proposed Directives. It is **imperative that the provisions remain identical in both Directives**. The Directives address issues for:

- the **architecture** of equality bodies, most effectively for multi-mandate bodies. However, Article 3(4) could be amended to strengthen this. The issues for multi-function bodies with a decision-making function are not adequately addressed and a different approach is recommended for Article 8 to allow for provision of this function by Member States rather than to require it, and, if it is not to be located in a separate body, to ensure the decision-making function does not undermine the implementation of other functions. A further Article is recommended to ensure a focus on all grounds in multi-ground equality bodies.
- the **independence** of equality bodies, most usefully in relation to the legal status of and appointments to the equality body. However, more detail is recommended in relation to both

issues, in amending Article 3(1) and Article 3(2). A more detailed Article is recommended to address issues of accountability.

- the **effectiveness** of equality bodies, most valuably in addressing the key issue of lack of resources in Article 4. There is significant progress made in addressing the issues related to competences, but it is recommended that these provisions on competences be strengthened in relation to: promotion of equality (Article 5(b)); decision making (Article 8(3) and (4)); making recommendations on policy and legislation (Article 13) and on equality data (Article 14(13)); undertaking surveys and conducting research and studies (Article 14(4)); and undertaking self-evaluations (Article 15). In protecting the current potential of equality bodies, it is recommended that Article 9(4) and Article 6(4) be deleted.
- The **accessibility** of equality bodies, particularly in addressing awareness of the equality body and in making provision for accessible premises and services. However, it is recommended that provisions on accessibility be further strengthened with more detail in Article 11.

The provisions on monitoring **implementation** of the Directives in Article 16, and on common indicators for this, are valuable. It is recommended that they would further require the involvement of **Equinet**, the European network of equality bodies, in this monitoring, and provide for common **indicators** on: multi-mandate bodies; multi-function equality bodies with a decision-making function; accountability systems; appointment systems; competences accorded; and accessibility.

Key findings and tables are provided in the study to summarise the main contents of each chapter, while **table 12** summarises the issues identified in this study for equality bodies of institutional architecture, independence, effectiveness, and accessibility, and sets out how these are addressed by the Directives, along with recommendations for improvement of the Directives.

1. INTRODUCTION

This study has been prepared in response to a request from the Committee on Civil Liberties, Justice and Home Affairs (LIBE committee) of the European Parliament to the Policy Department for Citizens' Rights and Constitutional Affairs. The aim of the study is to **examine the Commission proposals for Directives on standards for equality bodies in the field of equal treatment and make recommendations** in relation to any further development of these found to be necessary.

This study first provides an **historical context** for the emergence and impact of equality bodies across the European Union, with a snapshot of the **current situation** for the presence and mandate of these equality bodies, noting issues in relation to the **institutional architecture** that has evolved. It then examines the current situation for the **independence, effectiveness, and accessibility** of these equality bodies with a view to establishing the issues they face in fulfilling their potential and realising their mandate.

The Commission's proposals for standards for equality bodies are then examined with a view to establishing their capacity to address and resolve the issues identified. A number of further specific questions posed for the study are then addressed. Finally, **recommendations** are made with a view to strengthening the Commission's proposals.

Table 12 summarises relevant elements of this study by presenting the issues for equality bodies of institutional architecture, independence, effectiveness, and accessibility; examining whether and how these are addressed by the Commission Directives; and making relevant recommendations for improvement of the proposals.

The **methodology** implemented in undertaking this study involved a **review of the literature** relevant to equality bodies, available at a European level. This literature encompasses publications of the European Commission, research from the EU Agency for Fundamental Rights, perspectives developed by Equinet, the European network of equality bodies, and independent research studies.

The literature serves first to establish **standards** that are in place, at European and international levels, that relate to equality bodies. It then serves to identify those **issues** of institutional architecture, independence, effectiveness and accessibility that persist for equality bodies due to the inadequacies of these current standards and/or their implementation. These issues, once identified, provide a frame through which to examine the proposed Directives on standards for equality bodies and to assess their potential for addressing these issues and ensuring the potential of equality bodies.

Equinet, the European network of equality bodies, defines equality bodies as 'national, publicly funded institutions set up across Europe to promote equality and tackle discrimination. They facilitate effective access to justice and play a fundamental role in the non-discrimination architecture of Europe'¹.

Equality bodies have **functions** that can encompass some or all of the following:

- **promotion and prevention:** the function to promote equality and prevent discrimination, taking initiatives such as to: guide and support good practice; make recommendations and provide policy advice; commission and undertake research and surveys; communicate and engage in public discourse on issues such as discrimination and equality and on access to rights; and engage with stakeholders.

¹ National Equality Bodies: Champions of Equality and Non-Discrimination, Equinet, Brussels, 2023.

- **support and litigation:** the function to support people exposed to discrimination and intolerance and to pursue litigation on their behalf, taking initiatives such as to: receive complaints; provide personal and legal support and advice to complainants; represent complainants in court; act as *amicus curiae*, and take cases in their own name.
- **decision-making:** the function to take decisions on complaints, taking initiatives such as to: receive, examine, hear, and conciliate claims of discrimination; make and issues decisions in cases of discrimination; apply sanctions in cases where discrimination is found; and follow-up on decisions issued to ensure their implementation².

The **proposals** of the European Commission on standards for equality bodies are detailed in two Directives published, in December 2022. **Table 1** presents relevant information on the two proposals.

Table 1: Commission proposals and relevant information

Directives	COM(2022)689 final 7.12.2022	COM(2022)688 final 7.12.2022
Titles	Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin , equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation , equal treatment between women and men in matters of social security and in the access to and supply of goods and services , and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC.	Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation , and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU
Legal basis	Article 19 (1) TFEU: Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex racial or ethnic origin, religion or belief, disability, age or sexual orientation.	Article 157 (3) TFEU: The European Parliament and the Council , acting in accordance with the ordinary legislative procedure , and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

² Par. 10, Council of Europe, European Commission against Racism and Intolerance, General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

<p>Procedure</p>	<p>Special legislative procedure: Council (unanimously) after obtaining the consent of the European Parliament. 2022/0401(APP)</p>	<p>Co-decision. 2022/0400(COD)</p>
<p>European Parliament</p>	<p>Committee responsible: - Women's Rights and Gender Equality (FEMM) Committees for opinion: - Employment and Social Affairs (EMPL) <i>joint committee (Rule 58)</i> - Civil Liberties, Justice and Home Affairs (LIBE) <i>requested an interim report (Rule 105.5), EP final decision is pending</i> - Internal Market and Consumer Protection (IMCO) decided not to give an opinion.</p>	<p>Committee responsible: - Women's Rights and Gender Equality (FEMM) Committees for opinion: - Employment and Social Affairs (EMPL) <i>joint committee (Rule 58)</i> - Civil Liberties, Justice and Home Affairs (LIBE) <i>requested shared competence (Rule 57) on the whole text and exclusive competence on data protection parts, EP final decision is pending</i> - Legal affairs (JURI) decided not to give an opinion.</p>
<p>Additional Note</p>	<p>This proposal covers the Racial Equality Directive (2000/43/EC), the Gender Equality Directive in the field of goods and services (2004/113/EC); as well as the Employment Equality Directive (2000/78/EC) and the Gender Equality Directive in the field of social security (79/7/EEC), which do not refer to equality bodies.</p>	<p>This proposal covers the Gender Equality Directive in the field of employment (2006/54/EC), and the Gender Equality Directive in the field of self-employment (2010/41/EU).</p>

These two Directives are **substantially identical** in their provisions, though **each has its own legal basis and they each require a different adoption procedure**. They do not purport to change existing legislation, rather to set standards to ensure implementation of existing legislation: the EU equal treatment Directives. The Directives emerge from a body of recent work undertaken by the European Commission and the European Parliament on standards for equality bodies.

In particular, the **European Commission** published a non-binding **Recommendation on standards for equality bodies in 2018**³. This Recommendation set out measures that Member States could apply to improve the independence and effectiveness of equality bodies, with standards for equality bodies set under the headings of mandate, independence and effectiveness, and coordination and cooperation.

The **European Parliament** called on the Commission, in a 2021 resolution, to 'propose legislation on the standards for equality bodies following consultations with organisations representing persons with a disability, thereby providing them with a **stronger mandate and adequate resources** to safeguard the equal treatment of persons with a disability and ensure **accessible information dissemination** for

³ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, OJ, L 167, Brussels 4.7.2018, p. 28-35.

all⁴. The European Parliament, in a 2022 resolution, stressed that Member States should improve their application of the Racial Equality Directive, in particular, ‘by **enhancing the independence of equality bodies by ensuring they have the proper mandate and resources** to effectively carry out the tasks assigned to them in the EU’s non-discrimination legislation⁵.

⁴ Par. 30, European Parliament resolution of 10 March 2021 on the implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in light of the UNCRPD (2020/2086(INI)).

⁵ Par. 27, European Parliament resolution of 15 September 2022 on the situation of fundamental rights in the European Union in 2020 and 2021 (2021/2186(INI)).

2. CONTEXT

KEY FINDINGS

The **Racial Equality Directive** (2000/43/EC), **Gender Equality Directive** in the field of **goods and services** (2004/113/EC), the Gender Equality Directive in the field of **employment** (2006/54/EC), and the Gender Equality Directive in the field of **self-employment** (2010/41/EU) have driven an **expansion in the number of equality bodies** across the Member States, underpinning them with a broad mandate but a limited number of competences.

The minimal nature of the provisions made in the directives has resulted in a **wide diversity in the nature and competences** of the equality bodies in place across the Member States, contributing to an **uneven enforcement of the Directives** across the Member States, thus stimulating a concern to introduce more detailed standards for equality bodies.

The capacity of equality bodies to contribute to policy implementation in the field of equal treatment has been availed of by the Commission in subsequent Directives, Regulations, and policy strategies that provide for **new competences** for equality bodies, though care is needed to ensure any new competences are matched by additional **resources**, and to ensure **coherence** is sustained in the mandate and operation of equality bodies.

The Directives on standards for equality bodies have been preceded by: standards for national human rights institutions developed at **UN** level (1993); standards for equality bodies developed at Council of Europe level by the **Commissioner for Human Rights** (2011) and by **ECRI** (2018); and at an EU level by the **2018 Commission Recommendation** on standards for equality bodies.

Equality bodies have a potential to ensure **implementation** of equal treatment legislation and to **progress** equality at: the **individual** level, regarding people's direct experience of inequality and discrimination; the **institutional** level, in terms of organisational priorities and processes, policymaking systems, and institutional drive for equality; and the **societal** level, in terms of attitudes and culture. **Achievements** have been documented in: improving the situation of individual victims of discrimination; influencing the practices of organisation, and the content of policy and legislation; informing and enhancing the impact of other stakeholders; and stimulating a culture of compliance with equal treatment legislation, a culture of rights among those exposed to discrimination, and a wider societal culture that values equality.

This chapter explores the **legal base** for equality bodies and the **mandate** and competences afforded to equality bodies (2.1), the current **standards** in place of relevance to equality bodies at UN, Council of Europe, and EU levels (2.2), and the **potential** of equality bodies and the **impact** they can make (2.3).

2.1. Establishment, Mandate and Competences of Equality Bodies

The EU equal treatment Directives making provision for equality bodies are:

- the **Racial Equality Directive** (2000/43/EC)⁶;

⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22–26.

- the **Gender Equality Directive** in the field of **goods and services** (2004/113/EC)⁷;
- the Gender Equality Directive in the field of **employment** (2006/54/EC)⁸; and
- the Gender Equality Directive in the field of **self-employment** (2010/41/EU)⁹.

The **2008 Commission Proposal for a Council Directive on implementing the principle of equal treatment** outside the labour market between persons irrespective of religion or belief, disability, age or sexual orientation, makes provisions for an equality body identical to that provided for in the Racial Equality Directive¹⁰. It is of note that no such provisions are made in equal treatment Directive in regard to employment and occupation on the grounds of religion or belief, disability, age, and sexual orientation (2000/78/EC)¹¹. The earlier Gender Equality Directive in the field of social security (79/7/EEC) makes no reference to an equality body¹².

The equal treatment Directives that make provision for an equality body **require Member States to designate a body or bodies** for this mandate, which may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights, or with the implementation of the principle of equal treatment (with the latter reference to equal treatment only noted in gender equality Directive 2004/113/EC).

The equal treatment Directives establish a **broad mandate** for equality bodies and a number of **competences** to be attributed to them to pursue this mandate:

Table 2: EU Legislative Provision for Equality Bodies

Directive	Mandate	Competences
Article 13 2000/43/EC	Promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin.	Provide independent assistance to victims of discrimination in pursuing their complaints of discrimination. Conduct independent surveys concerning discrimination.
Article 12 2004/113/EC	Promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex.	Publish independent reports and make recommendations on any issue relating to such discrimination.

⁷ 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, OJ L 373, 21.12.2004, p. 37–43.

⁸ 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), OJ L 204, 26.7.2006, p. 23–36.

⁹ 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, OJ L 180, 15.7.2010, p. 1–6.

¹⁰ Art. 12, Proposal for a COUNCIL DIRECTIVE on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, Brussels, 2.7.2008..

¹¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16–22.

¹² Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6, 10.1.1979, p. 24–25.

Article 20 2006/54/EC	Promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex.	Provide independent assistance to victims of discrimination in pursuing their complaints of discrimination. Conduct independent surveys concerning discrimination. Publish independent reports and make recommendations on any issue relating to such discrimination.
Article 11 2010/41/EU	Promotion, analysis, monitoring and support of equal treatment of all persons covered by this Directive without discrimination on grounds of sex.	Exchange available information with corresponding European bodies such as the European Institute for Gender Equality.

Holtmaat, in a **2007** report, noted the establishment of nine new equality bodies, a renewed mandate for nineteen already existing bodies in this field, and two further equality bodies on the cusp of establishment in the two years since the transposition date for the Racial Equality Directive. She identified that the **'spread of equality bodies** throughout the European Union has been rapid, like a field of mushrooms appearing out of the ground overnight'¹³.

The **'decisive influence' of these EU equal treatment Directives** on the emergence and growth of equality bodies is noted by Crowley¹⁴. In a 2018 report, he found that, prior to this, at the time of adoption of the first of these Directives in 2000, equality bodies had been established **in only ten** of the 28 EU Member States he examined.

The equal treatment Directives are, however, minimal in the nature of their provisions in relation to equality bodies. This has led to a **broad diversity** of such bodies. Holtmaat (2007) found a **'wide variety** in the powers, competencies, budgets and staffing of the 30 equality bodies included in the research'¹⁵. She further noted that 'there is no consensus in the Community about what is meant by crucial terms in Article 13. The words "assistance", "surveys" and "reports" are not defined, it is not clear what exactly "independent" means in this context'¹⁶. Ammer et al. (2010), in their study, underline that 'The 48 equality bodies are diverse in their histories, structures, functions, scale and grounds covered'¹⁷.

Crowley (2018) found that the institutional architecture of equality bodies across '31 countries is **diverse** in terms of their mandates, functions, and grounds covered'¹⁸, noting: 14 multi-mandate bodies in 14 countries; 19 of the 43 equality bodies having competences combining all or part of the functions of promotion and prevention, support and litigation, and decision-making; 16 having all or

¹³ Holtmaat, R., *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, p. 28.

¹⁴ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 40.

¹⁵ Holtmaat, R., *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, p. 29.

¹⁶ Holtmaat, R., *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, p. 7.

¹⁷ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 43.

¹⁸ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 7.

part of the promotion and prevention function and the support and litigation function; 4 having only a decision-making function; and, of the 43 equality bodies, 26 cover more grounds than those of Article 19 of the Treaty on the Functioning of the European Union with 10 working to an open list of grounds, 6 covering the six Article 19 grounds, and 10 covering a single ground.

The Commission, in its 2021 report on the application of the equal treatment Directives, noted this diversity as **problematic**, finding that ‘there are **divergences** between equality bodies in terms of their mandate, powers, structure, leadership, independence, resources and effectiveness. In turn, these divergences have led to an **unequal enforcement of the Directive** across Member States, as regards the level and nature of protection and the promotion of equality and awareness-raising among the general public and national institutions’¹⁹. This concern is at the core of the Commission’s work to develop standards for equality bodies.

The provision made for the establishment or designation of equality bodies in the EU equal treatment Directives, reflects a significant and positive concern with policy implementation in this field. The Commission has noted that ‘**in most cases, equality bodies have proved to be key to promoting and enforcing equal treatment legislation**’²⁰. Crowley (2018) notes that, ‘**equality bodies provide the infrastructure that enables equal treatment legislation to achieve its purpose and potential within the Member States**’²¹.

This capacity to contribute to policy implementation in the field of equal treatment has been availed of by the Commission in subsequent Directives, Regulations, and policy strategies that provide for **expanding the mandate and competences** of equality bodies. In contexts of constrained resources, care is needed in this to avoid an **overburdening** of equality bodies. Attention is also needed to ensure **coherence** is sustained for the mandate and competences of equality bodies.

The 2014 Directive on measures facilitating the exercise of rights conferred on **workers**, in the context of freedom of movement for workers²², provides for the designation of a body or bodies with a mandate to promote, analyse, monitor and support equal treatment of Union workers and members of their family without discrimination on grounds of nationality, unjustified restrictions or obstacles to their right to free movement. Crowley (2018)²³ found that equality bodies in 17 Member States had their mandates expanded in being designated to play various roles under this Directive²⁴. The 2019

¹⁹ *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘the Racial Equality Directive’) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (‘the Employment Equality Directive’)*, COM(2021) 139 final, Brussels, 19.3.2021, p. 13.

²⁰ *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘the Racial Equality Directive’) and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (‘the Employment Equality Directive’)*, COM(2021) 139 final, Brussels, 19.3.2021, p. 13.

²¹ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 39.

²² Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, OJ L 128, 30.4.2014, p. 8–14.

²³ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 41.

²⁴ In: Austria, Belgium, the Czech Republic, Estonia, Finland, France, Greece, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia and the UK.

work-life balance Directive refers to equality bodies, in that, Member States must ensure they are 'competent with regard to issues relating to discrimination falling within the scope of this Directive'²⁵.

The 2021 Commission proposal for a Directive on **equal pay** for equal work or work of equal value between men and women, identifies a number of roles for equality bodies and provides that equality bodies shall be 'competent with regard to matters falling within the scope of this Directive'²⁶. The Directive, notably, further states that Member States 'provide equality bodies with the adequate resources necessary for effectively carrying out their functions with regard to the respect for the right to equal pay between men and women for the same work or work of equal value'.

The 2022 Commission proposal for a Directive on combating **violence against women and domestic violence**, provides for a body or bodies, that may form part of equality bodies, to provide independent assistance and advice to victims of such violence, publish reports and make recommendations on issues relating to such violence, and exchange information with European bodies such as EIGE²⁷. This has the potential to raise an **incoherence** of mandate for equality bodies in drawing them into the field of **criminal law**.

The Regulation setting out **common provisions for the European Structural and Investment Funds** provides for a partnership approach, specifying that the partners include 'relevant bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination'²⁸. This provision has been understood to include equality bodies, bringing these bodies into processes to plan for, monitor, and evaluate programmes funded by the EU Funds.

Equality bodies are referenced, with additional roles set out, in further EU policy documents that address issues of equality and human rights. For example, the **EU Anti-racism Action Plan** notes roles for equality bodies in the design, implementation and evaluation of national action plans against racism and in strengthening their own equality data collection systems²⁹. The **EU Roma Strategic Framework** similarly notes a role for equality bodies in policy-relevant consultation and cooperation under national Roma strategic frameworks and in supporting data collection capacities³⁰. The Commission's **strategy for the application of the Charter of Fundamental Rights** seeks cooperation from 'rights defenders' networks on Charter training and sharing of practice, with **Equinet**, the European network of equality bodies, named in this regard³¹.

²⁵ Art. 15, Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L 188, 12.7.2019, p. 79-93.

²⁶ Art. 25, Proposal for a Directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. COM/2021/93 final.

²⁷ Art. 24, Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, COM/2022/105 final.

²⁸ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231 30.6.2021, p. 159-706.

²⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, A Union of Equality: EU anti-racism action plan 2020-2025, COM (2020) 565 final, Brussels, 18.9.2020, p. 21 and p. 15.

³⁰ Communication from the Commission to the European Parliament and the Council, A Union of Equality: EU Roma strategic framework for equality, inclusion, and participation, COM(2020) 620 final, Brussels, 7.10.2020, p. 8 and p. 10.

³¹ Communication from the Commission: *Strategy to strengthen the application of the Charter of Fundamental Rights in the EU*, COM(2020)711 final, Brussels, 2.12.2020, p. 12.

2.2. Standards for Equality Bodies

The Commission's proposals for Directives on standards for equality bodies in the field of equal treatment build on and reflect previous initiatives in regard to such standards, at the UN and Council of Europe levels.

At international level, the **UN Human Rights Commission issued the 'Paris Principles' in 1992**, which were subsequently **adopted by the UN General Assembly in 1993**³². This standard for **national human rights institutions**, rather than equality bodies, addresses the competence and responsibilities, composition and guarantees of independence and pluralism, and methods of operation of national human rights institutions, with additional principles for those institutions with a quasi-judicial competence. The Principles emphasise the independence of national human rights institutions, including a specific focus on their appointments process, adequacy of powers, sufficiency of resources, and autonomous functioning. The **International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights provides accreditation** for national human rights institutions by applying the Paris Principles.

At European level, the **Council of Europe, in a 2011 Opinion of the Commissioner for Human Rights of the Council of Europe**, addresses equality bodies³³. This standard focuses on independence and effectiveness in relation to both the establishment and operation of equality bodies³⁴. There is no reference to mechanisms for implementation of this standard.

The general **policy recommendation revised in 2018** in relation to equality bodies adopted by the **European Commission against Racism and Intolerance (ECRI) of the Council of Europe**, also addresses the establishment, institutional architecture, functions, promotion and prevention competences, support and litigation competences, decision-making competences, powers to obtain evidence and information, independence and effectiveness, and accessibility of equality bodies³⁵. This standard is implemented as part of ECRI's country monitoring.

At **European Union** level, previous action by the **European Commission** on this issue includes, in particular, the non-binding Recommendation on standards for equality bodies in 2018³⁶. This offers standards in relation to:

- **mandate**, in addressing: discrimination grounds covered by and scope of mandate; ensuring focus on the equality mandate in multi-mandate settings and focus on each ground in multi-ground settings; and functions of independent assistance, independent surveys, independent resources, recommendations, and promoting good practice.
- **independence and effectiveness**, in addressing: independence in terms of structure, budget allocation, operations, appointments and leadership standards; effectiveness in terms of resources, staffing, and monitoring of decisions, and accessibility in terms of submission of complaints, accessible premises and location, and investment in awareness of the public.

³² United Nations, UN General Assembly, Principles Relating to the Status of National Institutions (The Paris Principles), General Assembly Resolution 48/134, adopted 20 December 1993.

³³ Council of Europe, Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, CommDH(2011)2 original, Strasbourg, 21 March 2011.

³⁴ Council of Europe, Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, Comm DH(2011)2 original, Strasbourg, 21 March 2011.

³⁵ Council of Europe, European Commission against Racism and Intolerance, General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

³⁶ *Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies*, OJ, L 167, Brussels 4.7.2018 p. 28-35.

- **coordination and cooperation**, in addressing: coordination among equality bodies in a Member State, dialogue between national authorities and equality bodies, collaboration between equality bodies at European and international levels, and collaboration with other relevant national bodies.

2.3. Potential and Achievements of Equality Bodies

The preamble to the **Commission's Recommendation** on standards for equality bodies sets out that 'Independent equality bodies play an **essential role** in implementing Union legislation effectively and enforcing it comprehensively and consistently. Equality bodies are also **valuable institutions** for the sustained development of equal and inclusive democratic societies'³⁷. The Commission subsequently noted that equality bodies 'have emerged as necessary and valuable institutions for change at the level of individuals, institutions and society at large'³⁸.

The Commission, in its 2022 report on the **rule of law** situation in the EU, emphasises that 'Civil society organisations, and independent authorities such as **equality bodies**, the Ombudsperson and National Human Rights Institutions are an indispensable element in the system of **checks and balances** in a healthy democracy, and attempts to restrict their operating space can present a threat to the rule of law', and points out that 'NHRIs, Ombudspersons and equality bodies need structural guarantees of **independence** as well as sufficient **resources** to work effectively, and a number of them continue to face challenges.'³⁹.

Ammer et al., in a **2010 research** on equality bodies across 27 Member States and three European Free Trade Association countries, found that 'equality bodies emerge from the country fiches as necessary and valuable institutions for **social change**. At the basic level, they demonstrate potential to stimulate and support the implementation of equal treatment legislation and to advance the objectives of this legislation. In doing so, they reveal a higher level potential to unlock the powerful business, economic and societal benefits that arise from **greater equality and diversity**'⁴⁰. Ammer et al. also establish that equality bodies offer the **potential** to:

- 'improve the situation of **individuals** experiencing the barriers of inequality and discrimination;
- enhance organisational performance by enabling **businesses** to invest effectively in diversity and equality systems;
- improve **policy-making** and ensure the greatest impact from scarce resources **for all** in society;
- mobilise and contribute to a **broader institutional drive** for **equality and non-discrimination**;

³⁷ Preamble (30), *Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies*, OJ, L 167, Brussels 4.7.2018 p. 28-35.

³⁸ *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')*, COM(2021) 139 final, Brussels, 19.3.2021, p. 13.

³⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, *2022 Rule of Law Report: The rule of law situation in the European Union*, COM/2022/500 final, Luxembourg, 13.7.2022, p. 22 and p. 24.

⁴⁰ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 128.

- build and inform a **public supportive** of and committed to equality and non-discrimination⁴¹.

Crowley (2018) noted that ‘Equality bodies have the potential to contribute to **social change** for individuals, institutions and society’, involving action to empower people experiencing discrimination, enable institutions to introduce equality and diversity systems, and promote awareness and engage equality values in society⁴².

Equinet, the European network of equality bodies, developed a framework for tracking the impact of equality bodies, reflecting the work of Ammer et al., in terms of the change equality bodies contribute to, at three interconnected levels:

- **individual** level: in the situation and experience of individuals who experience discrimination;
- **institutional** level: in institutional policies, procedures and practices that incorporate equality and diversity systems; in policymaking processes that efficiently take account of issues of equality, diversity, and non-discrimination; and in a broader set of institutions mobilised and capacitated to promote equality and combat discrimination; and
- **societal** level: in public attitudes in relation to equality, diversity, and non-discrimination; in attitudes of employers and service providers in relation to compliance with equal treatment legislation; and in attitudes of those who experience discrimination towards reporting this experience⁴³.

In terms of achievements, Ammer et al. (2010) note that ‘few studies of the **impact** of equality bodies have been conducted’ and the assessments of this impact made in their work are ‘based on the opinions of stakeholders and analyses of equality bodies themselves’⁴⁴. They, nonetheless, note significant **achievements**, in finding:

- ‘The impact of equality bodies on **individual** victims of discrimination is significant in scale and in nature’ and ‘This scale of impact is also growing’⁴⁵.
- ‘Equality bodies emerge from the country fiches as having significant influence on the practice of **organisations in the private and public sectors**’ through recommendations made, guiding and supporting good practice, and supporting implementation of statutory equality duties⁴⁶.
- ‘Equality bodies have influenced the drafting of new **legislation and policies** and the redrafting of existing legislation and policies’⁴⁷.

⁴¹ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 128.

⁴² Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 58.

⁴³ Crowley N., *Processes and indicators for measuring the impact of equality bodies*, Equinet, Brussels, 2013, p. 26.

⁴⁴ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 128.

⁴⁵ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 128.

⁴⁶ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 130.

⁴⁷ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 133.

- 'Equality bodies influence the level of commitment, expertise and work of other **stakeholders** in relation to equality and non-discrimination. In particular, they impact on **trade unions, business networks and non-governmental organisations**'⁴⁸.
- In their awareness raising work, equality bodies have had an impact in developing 'a **culture of compliance** with equal treatment legislation among employers and service providers', 'a **culture of rights** within groups experiencing discrimination and across the wider society', and 'a culture within the wider society that **values equality** and has **no place for discrimination**'⁴⁹.

Crowley (2018) notes that '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'⁵⁰.

Equinet has developed a significant body of literature documenting the contribution made through the activities of equality bodies to change at these three levels⁵¹. These encompass activities of: **investigating cases** of discrimination; providing **information and legal support** to victims of discrimination; undertaking **research**; providing **policy advice and recommendations**; supporting **good practice** by employers, service providers and policy makers: and promoting a **public discourse** that values equality.

The 2022 report on the **public consultation** organised by the Commission in relation to developing Directives on standards for equality bodies, captures the importance attached to equality bodies with 97.2% of respondents being of the opinion that 'establishing strong and effective equality bodies is **important**' and 81.3 % being of the opinion that 'adopting new binding minimum standards for equality bodies would have a **positive** impact for them'⁵².

⁴⁸ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 134.

⁴⁹ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 134.

⁵⁰ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 124.

⁵¹ See: <https://equineteurope.org>

⁵² *Binding Standards for Equality Bodies: Factual Summary Report, Open Public Consultation*, Directorate D: Equality, Unit D.1: Non-discrimination and Roma coordination, DG Justice and Consumers, European Commission, Ares(2022)4231110 - 08/06/2022, p. 9.

3. EQUALITY BODIES AND THEIR INSTITUTIONAL ARCHITECTURE: ISSUES OF MANDATES, FUNCTIONS AND GROUNDS

KEY FINDINGS

Forty equality bodies, from across all Member States, are identified in this study, within a **diverse institutional architecture** in relation to the nature of the mandates held, the range of functions held, and the range of grounds covered. A number of **issues** for attention in any **standards** for equality bodies emerge from this diversity.

In terms of **mandate**, **14** of the bodies identified are **multi-mandate** bodies with the equality mandate standing alongside a human rights mandate and/or an ombudsperson office mandate.

While there are **gains** to be reaped for the equality mandate in a multi-mandate setting, **issues** emerge including a lack of: **visibility** for equality mandate in multi-mandate settings; **balance** in the resources allocated to the equality mandate in multi-mandate settings; **coherence** in the legal base in terms of the competences accorded to the body for different mandates in multi-mandate settings; and active **management** of diverse mandates within multi-mandate settings.

In terms of **functions**, the following combinations of functions are found: promotion and prevention, support and litigation functions, and decision-making functions in 22 of the 40 equality bodies identified; promotion and prevention, and support and litigation functions in 13 of the 40 equality bodies identified; promotion and prevention, and decision-making functions in 2 of the 40 equality bodies identified; and a singular decision-making function in 3 of the 40 equality bodies identified (with separate equality bodies with a wider range of function in the jurisdiction in each case).

There is a tension where the **decision-making function** is held by an equality body alongside other functions with **issues** emerging in such contexts, including: lack of balance in the resources allocated to other functions; limitations in the assistance provided to victims of discrimination; and limitations in the implementation of other functions.

In terms of **grounds** covered, **28** of the 40 equality bodies identified have a **multi-ground** mandate, and the remaining **12** have a **single ground mandate** (7 on the ground of gender, 3 on the ground of disability, and 2 on the ground of racial or ethnic origin).

While there are **gains** to be reaped from a multi-ground approach in allowing for comprehensive and intersectional action on equality and discrimination, there is the issue of lack of **visibility** for and action on each of the grounds in multi-ground settings.

This chapter identifies the **equality bodies** in place across the Member States (section 3.1), setting these out in **Table 3** allowing for a comparison of their institutional architecture of mandates held, range of functions and grounds covered, and explores the **issues** faced by equality bodies in relation to these aspects of their **institutional architecture** (section 3.2). A summary of these issues is provided in **Table 4** at the end of this chapter.

3.1. Equality Bodies

Forty equality bodies, from across all Member States, **are identified for this study**. Thirty-seven of these are identified in the Commission's Staff Working Document that accompanied the two Directives (on the basis of Equinet data), with a further three equality bodies noted from Crowley (2018). The further three equality bodies are specific in that they only have a decision-making function and in that they stand alongside equality bodies with other functions in the Member State.

Table 3 provides **comparative** information on the institutional architecture of equality bodies in EU Member States in relation to the nature of their **mandates, their functions and range of discrimination grounds** they cover. Issues in relation to these aspects are examined in detail in section 3.2.

Table 3: National equality bodies in the EU Member States⁵³

Member State	Equality Body	Nature of Mandate	Range of Functions	Range of Grounds
AT	Ombud for Equal Treatment	Equality mandate	Promotion and prevention & support and litigation	Multi-ground
	Austrian Disability Ombudsman		Promotion and prevention & support and litigation & decision-making	Single ground
	Equal Treatment Commission		Decision-making	Multi-ground
BE	Unia – Inter federal Centre for Equal Opportunities	Equality mandate	Promotion and prevention & support and litigation	Multi-ground
	Institute for Equality between Women and Men			Single ground
BG	Commission for Protection against Discrimination	Equality mandate	Promotion and prevention & support and litigation & decision-making	Multi-ground
CY	Office of the Commissioner for Administration and Human Rights	Equality, human rights, & ombudsperson mandates	Promotion and prevention & decision-making	Multi-ground
CZ	Public Defender of Rights	Equality & ombudsperson mandates	Promotion and prevention & support and litigation & decision-making	Multi-ground
DE	Federal Anti-discrimination Agency FADA	Equality mandate	Promotion and prevention & support and litigation	Multi-ground

⁵³ Source: Equinet, European directory of equality bodies, Brussels, 2023 as noted in the Commission Staff Working Document, SWD(2022) 386 final, Brussels, 7.12.2022, that accompanied the two Directives on standards for equality bodies, with additions taken from Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018.

DK	Danish Institute for Human Rights	Equality & human rights mandates	Promotion and prevention & support and litigation	Multi-ground
	Board of Equal Treatment	Equality mandate	Decision-making	
EE	Gender Equality and Equal Treatment Commissioner	Equality mandate	Promotion and prevention & support and litigation & decision-making	Multi-ground
	Chancellor of Justice	Equality & ombudsperson mandates	Decision-making	
EL	Office of the Greek Ombudsman	Equality & ombudsperson mandates	Promotion and prevention & decision-making	Multi-ground
ES	Institute for Women and Equal Opportunities	Equality mandate	Promotion and prevention & support and litigation	Single ground
	Council for the Elimination of Ethnic or Racial Discrimination			
FI	Non-Discrimination Ombudsman	Equality mandate	Promotion and prevention & support and litigation & decision-making	Multi-ground
	Ombudsman for Equality			Single ground
FR	Defender of Rights	Equality, human rights, & ombudsperson mandates	Promotion and prevention & support and litigation & decision-making	Multi-ground
HR	Office of the Ombudsman	Equality, human rights & ombudsperson mandates	Promotion and prevention & support and litigation & decision-making	Multi-ground
	Gender Equality Ombudsperson	Equality mandate		Single ground
	Ombudswoman for Persons with Disabilities			
HU	Office of the Commissioner for Fundamental Rights	Equality & human rights mandates	Promotion and prevention & support and litigation & decision-making	Multi-ground
IE	Irish Human Rights and Equality Commission	Equality & human rights mandates	Promotion and prevention & support and litigation	Multi-ground
IT	National Office Against Racial Discrimination	Equality mandate	Promotion and prevention & support and litigation	Multi-ground
	Equal Opportunities National Committee			Single ground
LT	Office of the Equal Opportunities Ombudsperson of the Republic of Lithuania	Equality mandate	Promotion and prevention & support and litigation & decision-making	Multi-ground

LU	Centre for Equal Treatment	Equality mandate	Promotion and prevention & support and litigation	Multi-ground
LV	Ombudsman's Office of the Republic of Latvia	Equality, human rights & ombudsperson mandates	Promotion and prevention & support and litigation & decision-making	Multi-ground
MT	National Commission for the Promotion of Equality	Equality mandate	Promotion and prevention & support and litigation & decision-making	Multi-ground
	Commission for the Rights of Persons with Disabilities	Equality & human rights mandates		Single ground
NL	Netherlands Institute for Human Rights	Equality and human rights mandates	Promotion and prevention & support and litigation & decision-making	Multi-ground
PL	Office of the Commissioner for Human Rights of the Republic of Poland	Equality & human rights & ombudsman mandates	Promotion and prevention & support and litigation & decision-making	Multi-ground
PT	High Commission for Migration	Equality mandate	Promotion and prevention & support and litigation & decision-making	Single ground
	Commission for Equality in Labour and Employment		Promotion and prevention & support and litigation	
	Commission for Citizenship and Gender Equality			
RO	National Council for Combating Discrimination	Equality mandate	Promotion and prevention & support and litigation & decision-making	Multi-ground
SE	The Equality Ombudsman	Equality mandate	Promotion and prevention & support and litigation & decision-making	Multi-ground
SI	Advocate of the Principle of Equality	Equality mandate	Promotion and prevention & support and litigation & decision-making	Multi-ground
SK	Slovak National Centre for Human Rights	Equality & human rights mandates	Promotion and prevention & support and litigation & decision-making	Multi-ground
TOTAL	40 Equality bodies	14 multi-mandate	22: promotion and prevention, support and litigation functions, and decision-making	28 multi-ground mandate 12 single ground mandate (7 on gender, 3 on

			13: promotion and prevention, and support and litigation 2: promotion and prevention, and decision-making 3: singular decision-making	disability, 2 on racial or ethnic origin).
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There is, further, the **Equality Commission for Northern Ireland (ECNI)**, which needs to be considered in the context of ‘Brexit’ and with regard to the EU (Withdrawal Agreement) Act 2020 and the Protocol on Ireland/Northern Ireland.

The ECNI is a single mandate equality body, covering a range of grounds, with functions of promotion and prevention, and support and litigation. In its response to the proposed Directives on standards for equality bodies, the ECNI concludes that ‘the development and adoption of these binding standards for equality bodies will be a significant and important step to ensure that EU equality legislation is better applied, reducing opportunities for any divergence of rights across countries where such legislation applies, including Northern Ireland’⁵⁴.

In this response, the ECNI notes that, under Article 2 (1) of the Ireland/Northern Ireland protocol, the **UK government is committed to ensuring there is no diminution of rights, safeguards and equality of opportunity protections and provisions** as set out in the relevant part of the Belfast (Good Friday) Agreement. The ECNI further notes that under Annex 1 to the Ireland/Northern Ireland Protocol there is a commitment to ensuring that some of Northern Ireland’s equality laws will keep pace with any changes the EU may make to amend or replace the EU equality laws. It points out that the ECNI and the Northern Ireland Human Rights Commission are empowered, under the EU (Withdrawal Agreement) Act 2020, to **monitor, advise, report on, promote, and enforce implementation of Article 2(1) of the Ireland/Northern Ireland Protocol**⁵⁵.

3.2. Institutional Architecture: Issues

The **diversity** of equality bodies in terms of their **mandate(s), range of functions, and the discrimination grounds they cover**, is captured in **Table 3** above. This diversity can lead to challenges, that need to be addressed, that are of relevance to any standards developed for equality bodies. In this section, issues of institutional architecture related to mandates, functions and discrimination grounds covered by equality bodies are examined. The issues found are summed up in **Table 4** at the end of this section.

3.2.1. Mandate

In regard to the mandates held, fourteen of the bodies identified, in fourteen Member States, are **multi-mandate bodies** with the **equality mandate standing alongside a human rights mandate and/or an ombudsman mandate**. This, to a limited extent, can be seen as an emerging **trend**, with

⁵⁴ European Equality Commission for Northern Ireland response to the European Commission’s proposals on Binding standards for Equality Bodies, ECNI, Belfast, 03 February 2023, p.4.

⁵⁵ European Equality Commission for Northern Ireland response to the European Commission’s proposals on Binding standards for Equality Bodies, ECNI, Belfast, 03 February 2023, pp. 1-2.

eight such multi-mandate bodies emerging since 2009⁵⁶. Equinet has identified the potential and challenges in multi-mandate bodies, based on surveys of their members.

In **multi-mandate bodies** that combine an **equality** mandate and a **human rights** mandate, **gains** for the equality mandate are noted to include: strengthening the voice and influence of the body; enabling situations that involve an interaction of discrimination and human rights to be effectively addressed; and enhancing access for complainants, with a single institution to be approached⁵⁷. Particular **challenges** are noted to include: tensions between the two mandates due to different traditions and work methods that pertain to the fields of equality and human rights; competing communication narratives due to the different cases that can be made for equality and for human rights; issues of imbalance in the allocation of resources between equality related and human rights related work; the different legal base for each field, limiting aspirations for an integrated approach to the two mandates with different competences accorded for each of the different mandates; and managing the viewpoints of the different stakeholders aligned to each area who can be mistrustful of each other⁵⁸.

In multi-mandate bodies that combine an **equality** mandate and an **ombudsman** mandate, **gains** for the equality mandate are noted to include: enhanced independence and the mutual learning that can occur across two mandates rooted in different traditions; and change that might be sought by the body and the approaches to achieving change that might be pursued. Particular **challenges** are noted to include: 'one mandate being overshadowed by another in terms of prioritisation, of resourcing and of public visibility'⁵⁹; and more specific issues of triage, with cases involving discrimination and mal-administration not being identified or addressed as discrimination cases.

Crowley (2018) notes a **potential** in the institutional location of the equality mandate **in a multi-mandate body**, 'to address issues of equality and discrimination more comprehensively and effectively than single-mandate equality bodies'⁶⁰. However, **challenges** are identified also: the equality mandate being constrained in ambition and approach by the traditions associated with the other mandates held by the body; and securing visibility of and investment in the equality mandate. In addition, the study found no active management of the diversity of mandates in seven of the fourteen multi-mandate bodies, and 'issues of lack of visibility for the equality mandate and limited use of equality mandate competences are evident in six of those seven bodies'⁶¹.

The standard developed for equality bodies by **ECRI**, of the Council of Europe, recognises this issue in providing that, in multi-mandate bodies: legislation should explicitly set out the equality mandate of the institution; 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

⁵⁶ Croatia, the Czech Republic, France, Hungary, Ireland, Malta, the Netherlands, and Poland.

⁵⁷ *Equality Bodies and National Human Rights Institutions – Making the link to enhance impact*, Equinet, Brussels, 2011, p. 11.

⁵⁸ *Equality Bodies and National Human Rights Institutions – Making the link to enhance impact*, Equinet, Brussels, 2011, p. 12.

⁵⁹ Crowley N., *Enhancing the Impact of Equality Bodies and Ombudsperson Offices: Making Links*, Equinet, Brussels, 2017, p. 34.

⁶⁰ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 9.

⁶¹ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 9.

of the equality mandate; and reporting arrangements should give adequate prominence to the concerns arising and work carried out under the equality mandate.⁶²

The **Commission** in reporting on the implementation of its Recommendation on standards for equality bodies found **multi-mandate bodies in about half of the Member States**, noting **advantages** as being ‘possible synergies between the functions exercised under each mandate, mutual learning, cost savings, broadening staff expertise, and greater availability for victims (through a ‘one-stop-shop’), but pointing to **challenges** reported of ‘competition for resources between the different mandates of the body, and sometimes the equality mandate lacking and/or losing priority and visibility compared to the other mandates’, and noting that ‘Only half of the multi-mandate bodies actively manage their multiple mandates. In a few Member States, the equality mandate has lost priority due to budget cuts or a change in leadership’⁶³.

3.2.2. Functions

In regard to the range of functions held, the current configurations for equality bodies are:

- a combination of **promotion and prevention, support and litigation, and decision-making** functions, in **22** of the 40 equality bodies identified.
- a combination of **promotion and prevention, and support and litigation** functions (no decision-making functions), in **13** of the 40 equality bodies identified.
- A combination of **promotion and prevention, and decision-making** functions (no support and litigation functions), in **2** of the 40 equality bodies identified.
- a singular **decision-making** function (and no promotion and prevention, and support and litigation functions), in **3** of the 40 equality bodies identified (with separate equality bodies with a wider range of function in the jurisdiction in each case).

The key challenge that emerges, in relation range of functions, relates to the positioning of the **decision-making** function and its combination with other equality body functions, in particular the **support and litigation function, as with these two functions located in the same body the support and litigation function is hampered by the impartiality required of the decision-making function**. As it can be seen in detail in Table 3 above, **22** of the 40 equality bodies identified combine a decision-making function with a support and litigation function. It is of note that equality bodies in **Cyprus and Greece** combine functions of promotion and prevention with their decision-making function, but not the support and litigation function. The **Netherlands** Institute for Human Rights combines all three functions, but does not implement its support and litigation function for it being inappropriate for a body with a decision-making function.

Holtmaat (2007) found that 22 of the 30 equality bodies identified, had some power to hear and investigate complaints, and 11 out of the 18 equality bodies that had a role of assisting victims, also had a role to hear and investigate cases of discrimination. She suggested that ‘from the perspective of

⁶² Par. 7, Council of Europe, European Commission against Racism and Intolerance, General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

⁶³ Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, p. 6.

other international documents, it is **desirable to give equality bodies a broader mandate**, and especially to include the power to **hear and investigate complaints** of discrimination⁶⁴.

At the same time, Holtmaat found that, in exploring the combination of functions to assist victims of discrimination and to hear and investigate cases of discrimination, 'the nature of the combination of these two competencies is perceived as **problematic in some Member States**'⁶⁵. She suggests that 'a distinction should be drawn between, on the one hand, equality bodies where "assistance" and "hearing cases" are more or less equivalent and, on the other hand, bodies that may act as an **independent quasi-judicial body**, in the fashion of the Dutch Equal Treatment Commission' (now the Netherlands Institution for Human Rights)⁶⁶.

Ammer et al. establish two classifications for analysis of equality bodies in their 2010 report: 'predominantly **tribunal-type equality bodies**. These equality bodies are 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**. These equality bodies 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'⁶⁷.

They characterised **24, out of the 48** equality bodies identified, as predominantly **tribunal-type** bodies and the remaining **24** as predominantly **promotion-type** bodies. While this classification does not directly establish a tension between functions held, it does reflect this challenge in resorting to a classification that, in effect, recognises that where there is such a combination, the decision-making function will dominate. The authors note that the 'best practice of **combining a promotion-type body with a separate tribunal-type body** in the same jurisdiction has only been implemented by a small number of Member States', noting **five** such instances⁶⁸.

Crowley (2018) found that **25 of the 48** equality bodies identified in a 2018 report that looked beyond the EU Member States, were accorded a **decision-making** function, including **4 with a decision-making function only**, and that **18** of these equality bodies combined a decision-making function with a support and litigation function. This combination of functions is identified as a **challenge**, in that, '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' and, in that, it can 'lead to competition for resources between the different functions with the exigencies of the decision-making function dominating budgetary and staffing decisions'⁶⁹.

⁶⁴ Holtmaat, R., *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, p. 26.

⁶⁵ Holtmaat, R., *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, p. 27.

⁶⁶ Holtmaat, R., *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, p. 26.

⁶⁷ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, pp. 43-44.

⁶⁸ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 123.

⁶⁹ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 9.

The Commissioner for Human Rights of the Council of Europe, in an opinion on equality bodies, identifies ‘two broad type of national structures for promoting equality’: **quasi-judicial** type bodies and **promotional** type bodies. The opinion identifies **issues**: where there is only a quasi-judicial type body established, which ‘can result in a limited range of assistance being provided to people who experience discrimination and a lesser range of activities to promote equality’; and where ‘a promotional mandate accorded to such a body may also run the risk of undermining its perceived impartiality’⁷⁰.

The standard for equality bodies established by ECRI, of the Council of Europe, reflects the tensions that arise where support and litigation, and decision-making functions, are combined in one body in providing that **‘The decision-making function can be shared between equality bodies and the judiciary or be assigned entirely to the judiciary’**⁷¹.

The Commission, in reporting on the implementation of its Recommendation on standards for equality bodies, found that in a few Member States where equality bodies have a decision-making role alongside their function of victim assistance, there were challenges in that, the **victim assistance function** ‘may reflect negatively on the **impartiality** of the equality body when it has to decide on a case of discrimination and, therefore, take a side. The dual function may also lead to problems of prioritisation. Indeed, the bulk of the **resources** risk becoming absorbed by the decision-making function to the detriment of the amount of resources spent on other activities. In a few Member States, the equality bodies have (or exercise) very limited powers for victim assistance precisely to avoid the challenges linked to holding the dual function and/or because of the resources required for the decision-making function’⁷².

Equinet identifies a tension for multi-functional equality bodies combining a decision-making function with promotion and prevention functions and support and litigation functions in that the legal imperatives attending the decision-making function limits their opportunities to deploy the other functions in contexts of constrained resources. This, it is suggested, **needs to be actively managed to achieve a balance of prioritisation**, and there is a need for a model for such active management⁷³.

The EU Agency for Fundamental Rights (FRA) in its 2020 report on the status and roles of National Human Rights Institutions (NHRIs) points to NHRIs as holding two responsibilities of: **protection** in dealing with individual cases, complaints and investigations alongside inspections and monitoring systemic investigations and redress for victims; and **promotion** in fulfilling human rights through education, and influencing policy through research, assessment and advice. It notes that the two responsibilities are ‘at times mutually reinforcing, but they can also pose difficulties in terms of prioritisation and allocating adequate resources to fulfil them’⁷⁴.

⁷⁰ Council of Europe, Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, CommDH(2011)2 original, Strasbourg, 21 March 2011, p. 14.

⁷¹ Par.10, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level* (Revised), adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

⁷² Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, p. 10.

⁷³ Crowley N., *Taking Stock, A Perspective from the Work of Equality Bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies*, Equinet, Brussels, 2020, p. 24.

⁷⁴ *Strong and Effective National Human Rights Institutions, Challenges, Promising Practices, and Opportunities*, European Union Agency for Fundamental Rights, Luxembourg, 2020, p. 53.

3.2.3. Discrimination grounds

In regard to discrimination grounds covered, the trend is and has been for the establishment of multi-ground bodies, either in the initial establishment of such bodies or by way of merger of single-ground bodies or by way of extension of equality body mandates. **Of the 40 equality bodies identified in Table 3, 28 have a multi-ground mandate**, with the remaining **12 having a single ground mandate** (7 on the ground of gender, 3 on the ground of disability, and 2 on the ground of racial or ethnic origin).

Equality bodies cover all grounds addressed in the EU equal treatment Directives, (gender, disability, age, sexual orientation, racial or ethnic origin, and religion or belief) **in 25 Member States**, whether in a single equality body or in a combination of equality bodies, according to Equinet's European Directory of Equality Bodies⁷⁵. The **exceptions are Spain and Portugal**, where single ground equality bodies cover only the grounds of racial or ethnic origin and gender. It is of note that **gender identity** is noted as being **explicitly covered** by equality bodies in **18 Member States**. In this coverage of multiple grounds, the protections afforded by equal treatment legislation in the various Member States can **differ** across the grounds, in a manner that reflects the current uneven coverage of the EU equal treatment Directives.

Ammer et al. specifically examine the potential and challenges in **extending the scope** of equality bodies, that previously held a single-ground gender mandate, to create multi-ground bodies. They note 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', but that they found '**no downgrading or de-prioritisation of gender** issues in budgetary terms'. The authors suggest 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**', pointing to the potential to address **intersectional discrimination** and to address women across the other grounds covered, and to avoid the creation of any hierarchies of types of discrimination⁷⁶.

Crowley (2018) notes the **gains** in a multi-ground mandate, in terms of '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, **challenges** are also identified to 'secure visibility for and action relevant to each ground covered' and in the 'potential scale of coverage in an open list of grounds and the vagueness surrounding the definition of the grounds'⁷⁷. He noted **nine equality bodies, in nine Member States, with an open list of grounds**.

The Commission, in reporting on the implementation of its Recommendation on standards for equality bodies, found that, while there 'are undeniable **advantages** with instituting multi-ground bodies, such as easing access for complainants, cost-effectiveness and capacity to deal with multiple discrimination and intersectionality, there are **challenges** to 'ensure sufficient focus and visibility on each of the grounds covered, partly due to limited resources'⁷⁸.

⁷⁵ *European Directory of Equality Bodies*, Equinet, Brussels.

⁷⁶ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 48.

⁷⁷ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 9.

⁷⁸ Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, p. 5.

Equinet, in its report on the work of equality bodies in addressing **intersectional and multiple discrimination**, has noted a significant body of work undertaken by equality bodies in this area. This has encompassed research and policy work in particular, but also casework, predominantly in Member States where provision is made for this in equal treatment legislation, and promotion of equality work. Equinet's report notes that 'intersectionality on the ground of **gender** is a particular and dominant focus in the work of equality bodies' and 'equality bodies expressed a particular concern about powerful and negative intersections of **gender stereotypes** with stereotypes on other grounds'⁷⁹.

Table 4: Issues of Institutional Architecture for Equality Bodies

<p>Mandates Held</p> <ul style="list-style-type: none"> • Lack of visibility for equality mandate in multi-mandate settings. • Lack of balance in the resources allocated to the equality mandate in multi-mandate settings. • Lack of coherence in the legal base in terms of the competences accorded to the body for different mandates in multi-mandate settings. • Lack of active management of diverse mandates within multi-mandate settings. <p>Functions Accorded</p> <ul style="list-style-type: none"> • Lack of balance in the resources allocated to other functions in settings where the equality body holds a decision-making function • Limitations in the assistance provided to victims of discrimination in settings where the equality body holds a decision-making function. • Limitations in the implementation of other functions in settings where the equality body holds a decision-making function. <p>Grounds Covered</p> <ul style="list-style-type: none"> • Lack of visibility for and action on each of the grounds in multi-ground settings.

⁷⁹ Crowley N., *Innovating at the Intersections: Equality Bodies Tackling Intersectional Discrimination*, Equinet, Brussels, 2016, p. 35.

4. INDEPENDENCE, EFFECTIVENESS AND ACCESSIBILITY: ISSUES

KEY FINDINGS

The **independence** of equality bodies is concerned, in particular, with legal status, appointments, accountability, and operational management. Issues of **legal status** arise where equality bodies form part of government. Issues of **appointments** arise in relation to: appointment of leadership by government; lack of transparent, participatory and merit-based appointment processes; political interference; and failure to address tenure of and functional immunity for this leadership. Issues of **accountability** arise in relation to forms of accountability to government. Issues of **operational management** arise in relation to budgetary control and staff management.

The **effectiveness** of equality bodies is concerned, in particular, with resources, competences, and internal functioning. Issues of **resources** relate to adequacy of resources and issues of transparency in regard to resourcing. Issues of **competences** arise in relation to: the support and litigation function (powers to provide assistance to victims, have legal standing to represent victims, bring cases in their own name, act in support of a party, act as amicus curiae, file class actions, pursue cases of hate speech, pursue cases against private and public sector, and take action under the Charter of Fundamental Rights); the prevention and promotion function (inadequate response to recommendations and inadequate range of competences); and the decision-making function (powers to require cooperation of respondent, to make legally binding decisions, apply sanctions, and follow up decisions). In relation to **internal functioning**, issues arise in relation to a lack of strategic planning, evaluation, and formal stakeholder engagement by equality bodies.

The **accessibility** of equality bodies is concerned, in particular, with enabling access to justice for people from the diverse groups covered by the discrimination grounds. Issues of accessibility include: inaccessible location; lack of local/regional offices and/or presence; inadequate internal procedures for accessibility; costs and complexity of access to justice; and lack of awareness of the equality body.

This chapter addresses **three key elements** found to underpin the performance and potential of equality bodies: **independence** (section 4.1), **effectiveness** (section 4.2), and **accessibility** (section 4.3). In each section the element is defined and the current **issues** facing equality bodies in relation to that element and that undermine potential and performance, are identified. The issues are summed up in **Table 5** below.

4.1. Independence

The equal treatment Directives point to independence in **functional terms**, the capacity to provide independent assistance, undertake independent surveys, and publish independent reports.

The Commission Recommendation on standards for equality bodies establishes the need for an underpinning of this independent functioning of equality bodies in that, to 'guarantee the independence of the equality bodies in carrying out their tasks, Member States should consider such elements as, the organisations 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'⁸⁰. This points, in particular, to the need to consider issues of **legal structure, accountability, budgetary and staff management, and appointments**.

The approach of the Recommendation reflects the opinion of the Commissioner for Human Rights of the Council of Europe on equality bodies that establishes, '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 key factors in securing independence for the body'⁸¹. In the ECRI standard for equality bodies, provision on independence addresses both **institutional and operational autonomy** of the body, and is reflected in specific provisions made in relation to **appointments** of leadership, safeguards for those holding leadership positions, forms of accountability for the body, and public voice for the body⁸².

Crowley (2018), while noting that 'functional independence is acknowledged across all the equality bodies reported on', found issues of independence in relation to:

- **Legal status:** good practice was identified in 31 out of 43 equality bodies in that, they had their own legal personality. However, **10 equality bodies formed part of Government ministries, with independence at issue**.
- **Accountability:** good practice was identified in 13 out of 43 equality bodies in that, they were accountable to **parliament**, largely by way of their annual report; new forms of good practice was noted in 5 equality bodies with no specific accountability for the equality body identified; 2 equality bodies were accountable to the statutory audit authorities; and 1 equality body was financially accountable to various ministries. However, **20 equality bodies were accountable to government, government ministers and/or the President, with independence at issue**.
- **Appointments:** good practice was identified in the leadership of 13 out of 43 equality bodies in that, they were appointed by **Parliament**. However, the **leadership in 20 equality bodies was appointed by Government or Government ministers, with independence at issue, and a transparent, competency-based and participatory process in appointments, even by Parliament, was noted as absent in most instances. In 10 equality bodies a variety of arrangements pertained, including appointments made by other organisations to the boards of 8 equality bodies, with such representation of interests holding a potential to diminish independence**.⁸³

The author also noted 'evidence presented of **political interference in appointments to six equality bodies, both in making appointments and in the removal from office of leadership personnel**'⁸⁴.

⁸⁰ Par. 1.2.1 (1), *Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies*, OJ, L 167, Brussels 4.7.2018 p. 28-35.

⁸¹ Council of Europe, Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, CommDH(2011)2 original, Strasbourg, 21 March 2011, p. 15.

⁸² Pars. 22-27, 30, & 32, Council of Europe, European Commission against Racism and Intolerance, General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

⁸³ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 10.

⁸⁴ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 11.

The Commission, in reporting on the implementation of its Recommendation on standards for equality bodies, points to **issues of**:

- **Legal status**, where equality bodies in a few Member States are part of a ministry with staff, resources, leadership and internal organisation **under the authority of the government**.
- **Budgetary management**, where: the equality body budget is set by government and/or the parliament and can be affected by budgetary cuts and changing political priorities; approval of the annual budget of the equality body by parliament is tied to approval of an annual activity report, or to goals and directions set by government; and there is limited internal budgetary management and allocation allowed.
- **Appointments**, where the head or board of an equality body are usually **appointed by government**, with, however, a **better practice of involving parliament emerging**, and where transparent and competence-based selection procedures are absent.
- **Accountability**, where a significant number of equality bodies are **accountable to government, which can impair independence**, with a growth, however, in the number of equality bodies accountable to parliament, and instances of accountability to **audit** authorities, which is considered good practice⁸⁵.

Equinet raises issues of **organisational independence** experienced by equality bodies, resulting in a diminishing of their autonomy and their capacity to pursue strategic approaches. Issues noted include in this regard relate to: the drawdown of their funding; their management of staff and finances; the lack of low-threshold venues to hear cases and of a functioning legal aid system to support victims; and forms of accountability required, including issues with accountability to parliament⁸⁶.

The 2020 EU Agency for Fundamental Rights (FRA) report on the status and roles of National Human Rights Institutions (NHRIs) pointed to the importance of **constitutional guarantees and/or a basis in law** for the independence of NHRIs⁸⁷. FRA emphasises the appointment of leadership in this regard, noting the **need for transparent, participatory and merit-based processes**, and finding that **Parliaments are key** in these processes in more than two-thirds of these NHRIs. It further points to the importance of **stable and secure tenure** for NHRI leadership and of a **functional immunity** for them in carrying out their tasks⁸⁸.

The report on the public consultation organised by the Commission in relation to developing Directives on standards for equality bodies, identified, positively, that:

'58.8 per cent of respondents considered the general independence of their national equality bodies as sufficient, with 32.2 per cent rating this as poor/very poor. Respondents identified the essential criteria to guarantee this independence as being: an independent legal entity; the ability to recruit and

⁸⁵ Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, pp. 17-18.

⁸⁶ Crowley N., *Taking Stock, A Perspective from the Work of Equality Bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies*, Equinet, Brussels, 2020, p. 25.

⁸⁷ *Strong and Effective National Human Rights Institutions, Challenges, Promising Practices, and Opportunities*, European Union Agency for Fundamental Rights, Luxembourg, 2020.

⁸⁸ *Strong and Effective National Human Rights Institutions, Challenges, Promising Practices, and Opportunities*, European Union Agency for Fundamental Rights, Luxembourg, 2020, pp. 46-47.

manage own staff; limited possibilities to remove the body's leadership; and a transparent selection procedure of its leadership'⁸⁹.

Crowley (2018) notes internal factors impeding the leadership of equality bodies, with inadequate attention paid to the **quality and competence of leadership** required by equality bodies and no assessment or critique of current leadership models conducted⁹⁰.

4.2. Effectiveness

The equal treatment Directives make **no reference to the concept of effectiveness** in terms of resources to be allocated to the equality body. The Directives do open up the issue of effectiveness, however, in according three **competences** to equality bodies: provision of assistance to victims; undertaking surveys; and publishing reports and making recommendations.

The Commission Recommendation on standards for equality bodies emphasises this concept of 'effectiveness' alongside independence. Effectiveness is specifically addressed in terms of **resources**: 'The 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' and 'Resources can only be considered adequate if they allow equality bodies to carry out each of their equality functions effectively, within reasonable time and within the deadlines established by national law'⁹¹. There is, further, reference to the **competences** to be accorded to equality bodies under the headings of independent assistance, independent surveys, independent reports and recommendations of equality bodies, and promotion of equality.

The opinion of the Commissioner for Human Rights of the Council of Europe on equality bodies establishes that, the resources made available to equality bodies, and the competences accorded to them, are the two key elements for their effectiveness. The opinion notes the importance of resources for equality bodies 'to deploy all of their functions and powers to a scale and a standard that ensures impact and the full realisation of their potential', and the importance of competences so that they have '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'⁹².

In the ECRI standard for equality bodies, effectiveness is addressed in specific provisions made in relation to: the nature and range of competences accorded to the body; **sufficiency of staff and funds available** to the body; and internal factors of **strategic planning, evaluation, and stakeholder engagement**⁹³.

⁸⁹ *Binding Standards for Equality Bodies: Factual Summary Report, Open Public Consultation*, Directorate D: Equality, Unit D.1: Non-discrimination and Roma coordination, DG Justice and Consumers, European Commission, Ares(2022)4231110 - 08/06/2022, p. 8 & p. 10

⁹⁰ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 11.

⁹¹ Par. 1.2.2 (1), *Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies*, OJ, L 167, Brussels 4.7.2018 p. 28-35.

⁹² Council of Europe, Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, CommDH(2011)2 original, Strasbourg, 21 March 2011, pp. 15-16.

⁹³ Pars IV, V, & VI and Arts. 28, 33-35, & 37, Council of Europe, European Commission against Racism and Intolerance, General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised), adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

4.2.1. Issues of resources

Turning first to **resources**, Crowley (2018), while acknowledging variety in resource levels for equality bodies, points to significant issues, in that: **'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'⁹⁴. **17 equality bodies did not or could not deploy all their competences under each of their functions. Increased resources were noted for 16 equality bodies in recent years, but 11 equality bodies had experienced decreased resources, with disproportionate budget cuts in three cases.**

Holtmaat reported, in 2007, a **lack of transparency on and information** about equality body budgets⁹⁵. Ammer et al. reported, in 2010, that: 'equality bodies in most countries cite lack of resources as an issue. However, there are particular and extreme examples where this results in a significant **gap** between what is legally stipulated and what is implemented'⁹⁶.

Equinet point to the **inadequacy of resources** as compromising effectiveness, such that, some equality bodies cannot: implement all of their functions; engage in strategic litigation; recruit specialised personnel required; and ensure accessibility through local offices⁹⁷.

The Commission, in reporting on the implementation of its Recommendation on standards for equality bodies, points to issues of **lack of transparency and lack of information** in relation to the resources made available to an equality body. It found that 'most equality bodies point to **inadequate resources** (e.g. lack of funding, insufficient staff or lack of appropriate qualifications) as the **main factor limiting their ability** to: devote equal and proportionate attention to all grounds and/or fields; engage in (strategic) litigation; carry out surveys and research; publish reports apart from their annual report; issue recommendations; engage in prevention and promotion activities; ensure local and regional representation; and/or engage in meaningful cooperation and coordination at different levels'. The Commission further noted that 'A number of equality bodies face an increase in **workload** - for example, caused by an increase in the number of complaints, or by additional tasks entrusted to them. However, this increase in workload is not accompanied with an increase in resources'⁹⁸.

The report on the public consultation, organised by the Commission, in relation to developing Directives on standards for equality bodies, underscores this issue of inadequate resources, with only 34.7 per cent of respondents being of the opinion that the current resources of their national equality bodies were sufficient⁹⁹.

⁹⁴ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, pp. 11-12.

⁹⁵ Holtmaat, R., *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, p. 5.

⁹⁶ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 10.

⁹⁷ Crowley N., *Taking Stock, A Perspective from the Work of Equality Bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies*, Equinet, Brussels, 2020, p. 25.

⁹⁸ Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, p. 20.

⁹⁹ Binding Standards for Equality Bodies: Factual Summary Report, Open Public Consultation, Directorate D: Equality, Unit D.1: Non-discrimination and Roma coordination, DG Justice and Consumers, European Commission, Ares(2022)4231110 - 08/06/2022, p. 8.

4.2.2. Issues of competences

Turning then to **competences**, Crowley (2018), while acknowledging the variety in the competences accorded to equality bodies, points to issues where:

- **19 out of 25 equality bodies with a decision-making function could not issue legally binding decisions and/or impose sanctions,**
- there is **limited follow-up** to their decisions in the operations of **8 equality bodies,**
- **17 equality bodies do not have legal standing** to take cases of discrimination, nor to act as *amicus curiae* before the courts, and
- **29 equality bodies had limited competences for the promotion** of good practice.

Holtmaat reported, in 2007, that: 12 out of 30 equality bodies do not have a mandate to assist victims of racial and ethnic discrimination in some manner or other, adding that the ‘fact that the other 18 equality bodies legally have the power to assist victims is no proof that they actually are in a position to do so’; 4 equality bodies do not have the power to conduct surveys; and 3 equality bodies do not have the power to issue reports and recommendations¹⁰⁰.

Ammer et al. reported, in 2010, that: there are ‘only a few equality bodies that can engage in’ taking cases to court on their own initiative, acting in an *amicus curiae* capacity or launching *actio popularis* claims, and ‘they very seldom make use of these powers’; and ‘very few equality bodies seem to allocate resources to follow-up activities as there are no legal obligations in place’¹⁰¹.

The Commission report on the implementation of its Recommendation on standards for equality bodies notes found the following:

- Equality bodies have **legal standing** to represent victims of discrimination **in fewer than 10 Member States**. In **less than half** of the Member States they can **bring proceedings** in their own name and **only in few** Member States can they act in legal proceedings in **support** of a party. In **about half** of Member States, equality bodies can submit **amicus curiae** briefs or take similar actions¹⁰².
- Equality bodies with decision-making competences can take legally **binding decisions** in **fewer than 10 Member States**. In some Member States where the equality body can take binding decisions, they **do not have the power to impose sanctions**, and in a few Member States the sanctions they can impose are **insufficient** and lacking a deterrent effect¹⁰³.
- In all the areas of **promotion** there seems to be **major differences** in the equality bodies’ powers and in how active equality bodies are in promoting equality, and in around four

¹⁰⁰ Holtmaat, R., *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, p. 5.

¹⁰¹ Ammer, M., Crowley, N., Liegl, B., Holzleithner, E., Wladasch, K., and Yesilkagit, K., *Study on equality bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC*, Synthesis report, Human European Consultancy & Ludwig Boltzmann Institute, Netherlands, 2010, p. 10.

¹⁰² Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, p. 8.

¹⁰³ Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, p. 10.

Member States equality bodies report not having a function to organise training, advising or capacity-building activities for stakeholders on meeting their obligations¹⁰⁴.

There are further issues noted by the Commission where there is an inability to implement competences for lack of resources. In relation to the production of reports, both lack of resources and of independence are cited as issues¹⁰⁵.

The report on the public consultation organised by the Commission in relation to developing Directives on standards for equality bodies, points to issues in relation to the support and litigation functions where: 46.9 per cent of the respondents replied 'Fair/Good/Excellent' against 38.1 per cent 'Poor/Very poor' or 'Service not provided' in relation to legal support provided by equality bodies; and 55.1 per cent of respondents replied with "Service not provided" or "Poor/Very poor" while 25.2 per cent answered with "Fair/Good/Excellent, in relation to equality bodies engaging in court on behalf of or in support of victims of discrimination¹⁰⁶. In relation to the decision-making function the report found that 10.4 per cent of respondents agreed that their national equality body(ies) issues sanctions that are both adequate and enforced¹⁰⁷.

Equinet point to issues for equality bodies where¹⁰⁸:

- their **litigation strategies** are compromised due to **limitations in competences** to: provide assistance to victims of discrimination; bring cases to court; act as amicus curiae; file class actions; pursue cases in relation to hate speech; pursue casework in relation to both the public and the private sector; and take actions in relation to the Charter of Fundamental Rights;
- their **decision-making functions** are compromised due to **limitations in competences** to: require information from and cooperation of respondents in both the public and the private sectors; make legally binding decisions; and apply effective, proportionate and dissuasive sanctions.

Equinet point to a further issue in relation to the competence of equality bodies to make **recommendations where there is an inadequate response** by public authorities, with recommendations not being given due consideration, with no response made, or with an inappropriate timing allowed for engagement in relation to the policymaking or legislative process involved.

The EU Agency for Fundamental Rights (FRA) 2020 report on the status and roles of NHRIs includes a particular concern at the **resourcing** of NHRIs and the breadth of their **mandate**¹⁰⁹. Both the level of budget and autonomy in its allocation are noted as important, but comparison between NHRIs as to the level of resources is noted as difficult due to their diversity. The level and appropriate qualification

¹⁰⁴ Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, p. 15.

¹⁰⁵ Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, p. 13.

¹⁰⁶ *Binding Standards for Equality Bodies: Factual Summary Report, Open Public Consultation*, Directorate D: Equality, Unit D.1: Non-discrimination and Roma coordination, DG Justice and Consumers, European Commission, Ares(2022)4231110 - 08/06/2022, p. 4.

¹⁰⁷ *Binding Standards for Equality Bodies: Factual Summary Report, Open Public Consultation*, Directorate D: Equality, Unit D.1: Non-discrimination and Roma coordination, DG Justice and Consumers, European Commission, Ares(2022)4231110 - 08/06/2022, p. 7.

¹⁰⁸ Crowley N., *Taking Stock, A Perspective from the Work of Equality Bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies*, Equinet, Brussels, 2020, pp. 23-24.

¹⁰⁹ *Strong and Effective National Human Rights Institutions, Challenges, Promising Practices, and Opportunities*, European Union Agency for Fundamental Rights, Luxembourg, 2020, pp. 50-53.

of **staff** is further noted as important in relation to resources. The report further notes the imperative for staff expansion in contexts of expanding mandates and functions.

4.2.3. Issues of internal factors

Turning finally to **internal factors**, Crowley (2018) notes internal factors impeding the effectiveness of equality bodies where: **only 14 equality bodies have engaged in strategic planning** with associated annual workplans; **only 10** equality bodies have engaged in any form of **evaluation**; and where **formal stakeholder engagement** is only evident in the work of **12** equality bodies¹¹⁰.

4.3. Accessibility

The equal treatment Directives make no reference to the issue of accessibility. The Commission Recommendation points to accessibility in relation to **access to the premises** of the equality body, its **information and communication, including information technologies, and its services and products**. Particular attention is given to accessibility for **people with disabilities**¹¹¹. The Recommendation further emphasises accessibility in terms of: free, accessible, flexible, and simple **procedures** for complaint submission; **local/regional** offices or a local/regional presence of the equality body; and sufficient resources made available to equality bodies to **raise awareness** of its role.

The ECRI standard for equality bodies emphasises that, 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’¹¹². Provisions made in relation to accessibility address: premises and services; outreach and local and regional offices; being present with groups experiencing discrimination; accessible forms of engagement with people exposed to discrimination; **accommodations** for people with disabilities; accessible language including easy-to-read and translations; functions and services that are free of charge; and publicising accessibility provisions.

Crowley (2018) found that: **all but eight equality bodies have accessibly located premises; only 11 equality bodies in 10 countries have local and regional offices, while 6 equality bodies have developed a local presence**, and many equality bodies engage in **outreach activities**, although there are **10 that do not; and only 28 out of 43** equality bodies appear to have some form of **procedure** to address and accommodate the practical implications of diversity in engaging with and providing services to people from different groups, with a positive focus on the needs of people with disabilities, 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 country¹¹³.

The Commission in reporting on the implementation of its Recommendation on standards for equality bodies points to a **lack of ‘comprehensive data’** currently available ‘on the costs and complexity of the different procedures in each Member State’ in relation to access to justice in cases of discrimination.

¹¹⁰ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 12.

¹¹¹ Par. 1.2.3 (4), *Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies*, OJ, L 167, Brussels 4.7.2018 p. 28-35.

¹¹² Par. 119 Explanatory Memorandum, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level* (Revised), adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

¹¹³ Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, pp. 12-13.

In terms of accessibility, the report notes: the equality body's main premises are reported not to be visible or open to the public in about **a third of Member States**; only around **half of Member States offer a local or regional presence** in various set-ups, whether local offices or a local presence secured through other bodies or outreach activities; in **more than half** of Member States, equality bodies have taken measures and/or established **procedures** to protect the rights of people with disabilities and/or to cater for diversity, however, in other countries, people can only rely on informal good practice that is not necessarily systematically applied; and resources and efforts are still very much needed to raise the level of **awareness** on the existence of equality bodies and the assistance they offer, both among the general population and even more among people and groups particularly at risk of discrimination¹¹⁴.

Table 5: Issues of Independence, Effectiveness, & Accessibility for Equality Bodies

<p>Independence</p> <ul style="list-style-type: none"> • Issue of legal status without a legal basis for own legal personality. • Inappropriateness of forms of accountability required to government. • Inappropriate systems for appointment of leadership, in particular appointments being made by government. • Inappropriate representation of stakeholder interests within leadership. • Absence of transparent, participatory and merit-based systems for appointments. • Lack of stable and secure tenure for leadership. • Lack of functional immunity for leadership. • Limitations to organisational independence and autonomy in decision-making in relation to draw down of funds, budgetary management and deployment of resources, and development of strategy. • Political interference in appointments and in removal of leadership. • Competence of internal leadership.
<p>Effectiveness</p> <ul style="list-style-type: none"> • Inadequate resources – financial and human. • Lack of transparency in and information on resources. • Lack of competences required for promotion and prevention function in relation to: <ul style="list-style-type: none"> ○ inadequate engagement by public authorities with recommendations made; ○ inadequate range of competences to promote equality. • Lack of competences for support and litigation function to: <ul style="list-style-type: none"> ○ provide assistance to victims; ○ have legal standing to represent victims, bring cases in their own name, or act in support of a party; ○ act as amicus curiae; ○ file class actions; ○ pursue cases of hate speech; ○ pursue cases against private and public sector; ○ take action under the Charter of Fundamental Rights. • Lack of competences required for decision-making function to: <ul style="list-style-type: none"> ○ require cooperation of respondent; ○ make legally binding decisions; ○ apply effective, proportionate and dissuasive sanctions; ○ follow up on decisions made.

¹¹⁴ Commission Staff Working Document, *Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies*, SWD(2021) 63 final, Brussels, 19.3.2021, pp. 21-24.

- Lack of **strategic planning** by and **evaluation** of equality bodies.
- Lack of formal **engagement** with stakeholders.

Accessibility

- **Inaccessible** location or premises.
- Lack of **local or regional** offices.
- Lack of **local** presence.
- Lack of internal **procedures** to make **adjustments** for diversity.
- Cost and complexity of procedures and absence of **legal aid** for victims.
- Inadequate investment in **awareness** of equality body.

5. THE COMMISSION PROPOSALS

KEY FINDINGS

The issues of **institutional architecture** identified for equality bodies in Chapter 3 of this study in relation to mandates, independence and effectiveness **are well addressed** in the proposed Directives, with some limitations.

In regard to **mandates**, clarity of terminology would assist in some instances, as well as specific provision on coherence of competences across the different mandates and for a common indicator in this area. In regard to **functions**, the issue of combining a decision-making function with other equality body functions is addressed but only in a limited manner. This situation is further exacerbated by a requirement that all equality bodies have such a function. A common indicator in relation to this issue would assist. In terms of **grounds** covered, the issue of lack of visibility for and action on each of the grounds in multi-ground settings is addressed, but only in the preamble.

The issues identified for equality bodies in Chapter 4 of this study in relation to **independence, effectiveness and accessibility for Equality Bodies are well addressed** in the proposed Directives.

However, more detail is needed in the provisions made on **independence**, notably in relation to **legal status, budgetary and staff management, accountability, and leadership appointments systems**, including the nature of these, who should make these appointments, and the issue of functional immunity. In some instances, making use of the greater detail set out in the preamble would assist. Common indicators in relation to accountability and appointments systems would also assist.

The issues of **effectiveness** identified for equality bodies are well addressed in the proposed Directives in terms of resources and of competences. A number of issues arise in relation to the provisions made in relation to **competences** where greater detail would assist, where some elements are unhelpful and where further provision would assist. Such further provision is needed in relation to equality body competence to apply **sanctions**. A common indicator in relation to competences and their evolution would assist. There is positive provision made for equality body strategic planning but this could be accompanied by provisions in relation to **evaluation and formal stakeholder involvement**.

The issues of **accessibility** identified for equality bodies are well addressed in the proposed Directives in terms of accessible location, reasonable accommodation for people with disabilities, and awareness. However, some issues are only addressed in the preamble, and further detail is needed in relation to some provisions, and a common indicator for accessibility would assist.

This Chapter **examines and assesses whether and how the proposed Directives on standards for equality bodies address the issues** identified as currently undermining their potential and performance - issues identified in Chapter 3 related to **institutional architecture**, in relation to mandates, functions and grounds (section 5.1); and issues identified in Chapter 4 related to **independence** (section 5.2), **effectiveness** (section 5.3) and **accessibility** (section 5.4).

Recommendations to address these issues are then developed in **Chapter 7** of this study, where the proposed Directives are found in this assessment to require strengthening, in order to adequately and appropriately address these issues.

A **summary table** is provided at the end of Chapter 7 to capture the issues, the assessment findings, and the recommendations made.

5.1. Addressing issues of Institutional Architecture

Table 6: Issues of Mandate

Mandates Held: Issues
Lack of visibility for equality mandate in multi-mandate settings.
Lack of balance in the resources allocated to the equality mandate in multi-mandate settings.
Lack of coherence in the legal base in terms of the competences accorded to the body for different mandates in multi-mandate settings.
Lack of active management of diverse mandates within multi-mandate settings.

Article 3(4) and Article 4(2) of Directive COM(2022)689 and of Directive COM(2022)688 directly and valuably address equality bodies that form part of multi-mandate bodies.

Article 3(4), with its focus on guaranteeing the autonomous exercise of the equality mandate, holds potential but lacks clarity. It does not appear to allow for the gains available for multi-mandate bodies in taking advantage of the complementarity of these mandates, where different mandates can be combined in integrated approaches to specific incidents or situations, or in achieving specific efficiencies in internal management and in engagement with victims of discrimination. The **word ‘autonomous’** would need further clarification to allow for such integrated approaches. The issue that needs addressing in this Article is more to **guarantee an equal prioritisation of, and visibility for the equality mandate.**

It is of note, in this regard, that the standard for equality bodies of the ECRI, of the Council of Europe, provides that ‘Governing, advisory, and management structures should be organised in a manner that provides for clear leadership, promotion and visibility of the equality mandate’¹¹⁵.

Article 4(2) is particularly important in setting out that the provisions made in Article 4(1), in relation to the **resources** provided for the body, apply specifically to the equality mandate and its support staff and systems. As such, there is a requirement in multi-mandate settings that the equality mandate would have the human, technical and financial resources necessary for all related tasks to be performed and all related competences exercised effectively on all grounds and in all fields. This is key to addressing issues of visibility for and **balance in resource allocation** to the equality mandate. It would further enable the body’s **active management** of diverse mandates within multi-mandate settings.

Article 3(4) appears limited in its focus on ensuring safeguards are in place in the internal structure. There is a need for Member States to make legal provision for a **coherence of competences** across the

¹¹⁵ Par. 7 C, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

different mandates to be accorded to the multi-mandate body, and to ensure **safeguards** are in place not just in the internal structure, but also in the **leadership and strategy** of the multi-mandate body.

It is of note, in this regard, that the standard for equality bodies of ECRI, of the Council of Europe, provides that 'The competences and powers attached to all mandates in such institutions should be harmonised and levelled up so that each mandate should, as far as possible, enjoy the broadest competences and powers available to any of the other mandates'¹¹⁶.

The issue of **active management** of mandates is not addressed, but this is a matter of internal competence for the equality body and is better not addressed in the Directives

Article 16(1) provides for the Commission to 'establish a list of common indicators to measure the practical effects' of the Directive. This list could usefully include for an **indicator in relation to multi-mandate bodies** and their capacity to **give visibility to, leadership for, and fully implement their equality mandate**.

Table 7: Issues of Function

Functions Accorded: Issues
Lack of balance in the resources allocated to other functions, in settings where the equality body holds a decision-making function.
Limitations in the assistance provided to victims of discrimination, in settings where the equality body holds a decision-making function.
Limitations in the implementation of other functions , in settings where the equality body holds a decision-making function.

Article 4 of the Directives goes some way towards addressing the issue of **balance of resources**, with its focus on **ensuring adequate resources for an equality body 'to perform all its tasks and to exercise all its competences effectively'**, further usefully specifying that this should pertain in situations of 'increases in complaints'. This is important in enabling a balance of resources across the functions and addressing the limitations found in the implementation of functions other than the decision-making function where the equality body holds this function alongside other functions.

Article 8 of the Directives requires Member States to ensure that all equality bodies would have the **competence to investigate** cases where they consider there has been discrimination and to provide opinions and decisions in relation to these. This would appear to exacerbate the current situation, where 24 out of a total of 40 equality bodies identified combine a decision-making function with other functions, without addressing the issue identified as arising for equality bodies in these situations of **limitations** in the nature of the **assistance** provided to victims of discrimination in such contexts.

It is of note, in this regard, that the standard for equality bodies of ECRI, of the Council of Europe, only provides that equality bodies '**may be assigned**' a decision-making function and goes on to provide that, where equality bodies are assigned a decision-making function, the decision-making function should be provided by a **distinct unit or staff team** and that 'Appropriate human and financial resources should be allocated to all functions and the equality body should ensure that comprehensive

¹¹⁶ Par. 8, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

legal and personal support is provided to people exposed to discrimination or intolerance¹¹⁷. This seeks to ensure the provision of **assistance** to victims of discrimination, where the equality body has a decision-making function.

The issues in relation to the **combination of a decision-making function with other functions** of an equality body, are addressed in **Article 3(3)** of the Directives. However, the provisions of Article 3(3), with its concern addressed to guaranteeing the independent exercise of their competences, appears designed solely to protect the impartiality required of the decision-making function.

Recital (18) in the Preamble of Directive COM(2022)689 and Recital (17) in the preamble of Directive COM(2022)688 are framed in terms of a broader concern for guaranteeing the effective exercise of relevant competences and tasks, which is closer to addressing the issues that have been identified for equality bodies in this situation. However, this is still **limited** to a focus on ‘ensuring a strict separation between the relevant competences’.

It is of note, in this regard, that the opinion of the Commissioner for Human Rights in the Council of Europe Office of Human Rights, while emphasising the importance of ensuring ‘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’, goes on to identify that ‘It is good practice to **locate these distinct functions in different bodies**’¹¹⁸. This is currently the situation in a number of Member States.

Article 16(1) and the list of common **indicators** to be established by the Commission that are referenced, could further include a focus on multi-function equality bodies that have a decision-making function, with a view to better track the impact of this combination of functions and its active and effective management.

Table 8: Issues of Grounds

Grounds Covered: Issues
Lack of visibility for and action on each of the grounds in multi-ground settings.

Recital (16) in the preamble of Directive COM(2022)689 and Recital (15) of the preamble of Directive COM(2022)688 note the need to ‘pay particular attention to **discrimination based on several of the grounds protected**’ under the Directives. However, this concern is not brought into the core provisions of the Directives in a manner that would address the issue above.

It is of note, in this regard, that the standard for equality bodies of ECRI, of the Council of Europe, provides that ‘In the case of a multi-ground equality body, it is necessary to ensure a clear and appropriate focus on **each of the grounds** covered and on the **intersections** between them’¹¹⁹.

¹¹⁷ Par. 11, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

¹¹⁸ Council of Europe, Commissioner for Human Rights, *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, CommDH(2011)2 original, Strasbourg, 21 March 2011, p. 20..

¹¹⁹ Par. 6, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

5.2. Addressing issues of Independence

The report on the public consultation organised by the Commission in relation to developing Directives on standards for equality bodies, identifies that more than 79 per cent of respondents considered it necessary to make additional rules in relation to general independence and this has been responded to in the Directives¹²⁰.

Table 9: Issues of Independence

Independence: Issues
Lack of legal status , without a legal basis for own legal personality.
Inappropriateness of forms of accountability required to government.
Inappropriateness of systems of appointment of leadership, in particular appointments being made by government .
Inappropriate representation of stakeholder interests within leadership.
Absence of transparent, participatory and merit-based systems for appointments .
Lack of stable and secure tenure for leadership.
Lack of functional immunity for leadership.
Limitations to organisational independence and autonomy in decision-making in relation to draw down of funds, budgetary and staff management and deployment of resources, and development of strategy.
Political interference in appointments and in removal of leadership.
Competence of internal leadership.

Article 3(1) and (2) of the Directives make valuable provision in relation to the independence of equality bodies. **Article 3(1)** references this with regard to 'their legal structure, accountability, budget, staffing and organisational matters', thus taking up a wide range of the issues identified above.

This provision would benefit from further detail. Article 3(1) could usefully specify, in terms of legal structure, that '**equality bodies should not be set up as part of a ministry or body taking instructions directly from the government**', and, in terms of budget that 'equality bodies should be able to **manage their own budget and resources**, including by selecting and managing their own **staff**, and be able to set their own **priorities**', as is set out in Recital (17) of the preamble of Directive COM(2022)689 and Recital (16) of the preamble of Directive COM(2022)688.

The reference in Article 3(1) to **independence and accountability**, in particular, would benefit from more detail to address the issue of accountability noted above. It is of note, in this regard, that the standard for equality bodies of ECRI, of the Council of Europe, makes provision on accountability only in that 'Equality bodies should be subject to public service law and to the **financial accountability** and

¹²⁰ *Binding Standards for Equality Bodies: Factual Summary Report, Open Public Consultation*, Directorate D: Equality, Unit D.1: Non-discrimination and Roma coordination, DG Justice and Consumers, European Commission, Ares(2022)4231110 - 08/06/2022, p. 9.

expenditure rules that apply to public authorities'¹²¹. This is currently the practice in a number of Member States.

Article 3(2) provides for 'transparent rules and safeguards concerning selection, **appointment**, revocation and conflict of interest of staff, in particular persons holding a managerial position, with a view to underpinning their 'competence and independence', which addresses some of the issues.

This provision could usefully **specify governing boards alongside staff**, as is done in Recital (16) of the preamble of Directive COM(2022)689 and Recital (15) of the preamble of Directive COM(2022)688 which give 'member of a board managing the equality body, head of the equality body, deputy or in case of interim' as examples of persons holding a managerial position.

This provision of Article 3(2) would further address the issue of appointment systems noted above by specifically naming the need for **participatory and competence-based appointment systems**.

This provision does not address the issue of who is responsible for making appointments. It is of note, in this regard, that the standard for equality bodies of ECRI, of the Council of Europe, provides that '**The executive should not have a decisive influence** in any stage of the selection process'¹²². It further notes that 'Being **elected by the parliament** in an open and transparent process is one way to satisfy these conditions' for securing an independent leadership¹²³.

The Council of Europe's Venice Commission emphasises and further develops this approach in relation to safeguarding the independence of Ombudsman Institutions in stating: 'The Ombudsman shall preferably be elected by Parliament by an **appropriate qualified majority**'; and further setting out: that the selection procedure 'be public, transparent, merit based, objective, and provided for by the law'¹²⁴.

Consideration could be given to affording **functional immunity** to persons holding leadership positions in carrying out their duties, as is the case in the ECRI standard¹²⁵.

It is suggested that issues of internal leadership competence are not appropriate to be addressed in the Directives, beyond ensuring a competence-based appointments process.

The provisions could be further strengthened by committing to the development of specific **indicators on accountability and on appointments** under the provisions of Article 16(1) of the two Directives that addresses monitoring implementation of the Directives.

¹²¹ Par. 25, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

¹²² Par. 23, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

¹²³ Par. 95 Explanatory Memorandum, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

¹²⁴ Par. 6 and Art. 7, European Commission for Democracy through Law (Venice Commission), *Principles on the Protection and Promotion of the Ombudsman Institution ('The Venice Principles')*, Opinion no. 897/2017, Adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019) and Endorsed by the Committee of Ministers at the 1345th meeting of Ministers' Deputies (Strasbourg, 2 May 2019), Council of Europe.

¹²⁵ Par. 24, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

5.3. Addressing issues of Effectiveness

The report on the public consultation organised by the Commission in relation to developing Directives on standards for equality bodies, identifies that more than 79 per cent of respondents considered it necessary to make additional rules in relation to¹²⁶:

- sufficient **resources**;
- **litigation powers** for equality bodies on behalf of or in support of victims of discrimination in court;
- powers to issue adequate **sanctions** and enforce them, awareness of the existence of the equality body in the general population and awareness of the existence of the equality body by the groups at risks of discrimination;
- **easy complaint** submission;
- **coordination and collaboration** with national public authorities, national stakeholders, international/EU bodies;
- additional missions to ensure the **promotion** of equality and prevention of discrimination; and
- coverage of **all grounds** and fields of discrimination foreseen in EU law: gender, racial or ethnic origin, religion or belief, disability, age, sexual orientation and employment, education, social protection, goods and services.

These have been responded to in the Directives.

Table 10: Issues of Effectiveness

Effectiveness: Issues
<p>Inadequate resources – financial and human.</p> <p>Lack of transparency in and information on resources.</p> <p>Lack of competences required for promotion and prevention function in relation to: inadequate engagement by public authorities with recommendations made; and inadequate range of competences to promote equality.</p> <p>Lack of competences for support and litigation function to: provide assistance to victims; have legal standing to represent victims, bring cases in their own name, or act in support of a party; act as amicus curiae; file class actions; pursue cases of hate speech; pursue cases against private and public sector; take action under the Charter of Fundamental Rights.</p> <p>Lack of competences required for decision-making function to: require cooperation of respondent; make legally binding decisions; apply effective, proportionate and dissuasive sanctions; and follow up on decisions made.</p> <p>Lack of strategic planning by and evaluation of equality bodies.</p> <p>Lack of formal engagement with stakeholders.</p>

¹²⁶ *Binding Standards for Equality Bodies: Factual Summary Report, Open Public Consultation*, Directorate D: Equality, Unit D.1: Non-discrimination and Roma coordination, DG Justice and Consumers, European Commission, Ares(2022)4231110 - 08/06/2022, p. 9.

Article 4(1) of the Directives makes valuable and important provision for the **adequacy of resources** being made available to equality bodies. This provision is further strengthened by committing to a common indicator on resources in Article 16(1) of the two Directives that addresses the issue of monitoring implementation of the Directives. It is further underpinned by the detail in Recital (19) of the preamble of Directive COM(2022)689 and Recital (18) of the preamble of Directive COM(2022)688. This addresses the most significant impediment to the effectiveness of equality bodies.

The full and effective implementation of Article 4(1) and Article 4(2) will drive greater **transparency** in and information on resources. This issues would be further addressed in part by the provision to prepare a **common indicator** in relation to resources in Article 16(1).

Article 5(b) and Article 13 of the Directives make valuable and important provision in relation to the **competences required for the promotion and prevention function** of the equality body.

Article 5(b) makes provision for Member States to ensure that equality bodies engage in the **prevention of discrimination and in the promotion of equal treatment**, and adopt a strategy for this purpose.

This Article identifies communication work, provision of training and guidance, and promotion of equality duties, equality mainstreaming, and positive action. The language of this Article **could be strengthened in terms of: Member States according the necessary competences to equality bodies to engage in this work effectively; establishing the role of equality bodies in relation to equality duties, equality mainstreaming and positive action as being to support and provide guidance on implementation of these alongside their promotion.**

Article 13 makes provision for Member States to put in place procedures for **consultation** with equality bodies on legislation, policy, procedure, programmes and practices related to the rights and obligations derived from the equal treatment Directives and for equality bodies to have the right to make, publish and require feedback on recommendations. The wording ‘related to’ might lack clarity, whereas **a wording of ‘where the rights and obligations derived from the Directives pertain and have relevance’ could be clearer.**

Article 14 of the Directives opens up the field of equality data for equality bodies and for action by equality bodies. Article 14(4) ensures the competence of equality bodies to undertake surveys. This **could usefully be expanded** to capture the full spectrum of actions already being undertaken by equality bodies to build a knowledge base in this field: commissioning and undertaking surveys, research and studies. **Article 14(3)**, which usefully ensures equality bodies can make recommendations in relation to collection of equality data, should be accompanied by a similar approach to that taken in Article 13, by clarifying that they can also **require feedback on these recommendations**. This Article will be important in underpinning implementation of the work undertaken under the auspices of the **High Level Group** on Non-Discrimination, Equality and Diversity, on improving the collection and use of **equality data**, which work might usefully be noted as informing these provisions¹²⁷.

Article 9 of the Directives makes valuable and important provision in relation to the **competences for the support and litigation function**.

This Article addresses a number of the issues noted above in relation to this area, in particular to: have legal standing to represent victims; to bring cases in their own name; to act in support of a party; and

¹²⁷ *Guidelines on improving the collection and use of equality data*, Subgroup on Equality Data, High Level Group on Non-Discrimination, Equality and Diversity, DG Justice and Consumers, European Commission, Brussels, 2018.

to act as *amicus curiae*. While class actions depend on the specific legal regimes of Member States, this article in effect further addresses the issue of filing class actions.

Article 9(4) imposes an unnecessary and problematic constraint on equality bodies in precluding their use of evidence obtained, through powers conferred on them under Article 8(3), in court proceedings they might be involved in as *amicus curiae* or in support of victims of discrimination. The provisions in the equal treatment Directives in relation to shifting the burden of proof recognise the need to rebalance to achieve an 'equality of arms' between the respondent and the claimant in a discrimination case. Article 9(4) runs counter to this principle and **risks undermining** the approaches already being taken to give effect to this principle.

Article 6 makes valuable and importance provision in relation to the **competences for the support and litigation** function that address the provision of assistance to victims of discrimination.

However, Article 6(4) with its requirement for an equality body to provide a preliminary assessment of the case seems unnecessarily **burdensome** where the equality body has a decision-making function and will provide a full assessment of the case at its conclusion, and appears **problematic** where the equality body has a support and litigation function in prematurely setting out the position of the equality body to all concerned, including potential respondents. Victims of discrimination approaching an equality body do need to be kept informed and this could be secured by way of a simpler requirement and text.

It is suggested that issues of lack of competences for support and litigation functions to: pursue cases of hate speech; pursue cases against private and public sector; and take action under the Charter of Fundamental Rights, are not appropriate to be addressed in these Directives. The Directives already apply to both the public and private sector, and issues in relation to hate speech and the Charter of Fundamental Rights are best addressed in the legislation pertaining to these areas.

Article 8 of the Directives makes valuable and importance provision in relation to the **competences required for the decision-making function** of an equality body.

As outlined above in relation to functions and combination of functions, this Article might be better in being permissive, allowing Member States to accord this function to an equality body, to establish a further equality body for this specific function, or to designate a relevant body with the appropriate capacity and mandate to take on this role. As such, the provisions of this Article could apply to whatever arrangement applied in the Member State.

Article 8(3) does address the need for requirements on the **respondent to provide information and documents requested** by the equality body. However, unlike the rest of this section it only provides that Member States *may* do so. To address the issues encountered by equality bodies, this Article **needs to require Member States to do so**.

Article 8(4) allows for the possibility for equality bodies to make legally binding decisions, by determination of Member States. This permissive approach might be necessary to ensure compatibility with the different legal regimes in the Member States. This article further provides for follow-up of decisions, which is valuable.

Article 8(4) usefully addresses the competence of an equality body to make an order for action on foot of a finding of discrimination, 'specific measures to remedy any breach found and to prevent further occurrences'. There is, however, no **reference to sanctions and the competence required for an equality body to apply appropriate, proportionate and dissuasive sanctions**.

Article 8(4) usefully requires that equality bodies shall publish decisions and opinions, however, it goes on to require that this would be without disclosing personal data. This further requirement **should be deleted** and it should be a matter for the discretion and strategy of the equality body while respecting local legal regime requirements. The naming of perpetrators of respondents can be a valuable dissuasive element in the decisions of the equality body which is an important dimension established in relation to sanctions. The naming of the perpetrator can provoke important discussion and change both within the sector where the respondent is located which can enable the function of the equality body to promote equality. Finally, it can meet the needs and wishes of the complainant in taking a case, which is important in a context of widespread underreporting of discrimination.

The preamble to both Directives state that ‘This Directive should be interpreted in a manner consistent with the **UNCRPD**’, recital 38 of COM(2022)689 and recital 37 of COM(2022)688. Given the specific provision of the UNCRPD in relation to access to justice, it might be useful to make specific reference to this alignment in Article 10 on **procedural safeguards**.

Article 16(1) of the Directives usefully includes a focus on both ‘activities and effectiveness’ in the list of common indicators to be established by the Commission and commits to tracking evolutions in their mandate, powers or structure. It would be useful to clarify the focus on baseline competences accorded as well as evolution in these, with a common **indicator** of ‘**competences accorded to equality bodies**’.

The issue of **lack of strategic planning by and evaluation of** equality bodies is addressed in part by Article 15(a) and (b) of the Directives. It would be **useful to make provision to require an equality body to undertake, every four years, an evaluation** of its functioning. It is of note, in this regard, that the standard for equality bodies of ECRI, of the Council of Europe, provides that ‘Equality bodies should engage in **strategic planning** on a regular basis, develop and track output and impact **indicators** to assess their progress, and conduct **evaluations** at appropriate moments’¹²⁸.

The lack of **formal engagement by equality bodies with stakeholders is not addressed**. It is of note, in this regard, that the standard for equality bodies of ECRI, of the Council of Europe, provides that ‘Equality bodies should establish structures for sustained involvement and contribution of stakeholders, and in particular civil society organisations, to the planning and work of the equality body’¹²⁹.

5.4. Addressing Issues of Accessibility

The report on the public consultation organised by the Commission in relation to developing Directives on standards for equality bodies, identifies that more than 79 per cent of respondents considered it necessary to make additional rules in relation to awareness of the existence of the equality body in the general population and awareness of the existence of the equality body by the groups at risks of

¹²⁸ Par. 33, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

¹²⁹ Par. 37, Council of Europe, European Commission against Racism and Intolerance, *General Policy Recommendation No. 2 on Equality Bodies to Combat Racism and Intolerance at the National Level (Revised)*, adopted 7 December 2017, CRI(2018)06, Strasbourg, 27 February 2018.

discrimination, and in relation to easy complaint submission, and this has been responded to in the Directives¹³⁰.

Table 11: Issues of Accessibility

Accessibility: Issues
Inaccessible location or premises
Lack of local or regional offices
Lack of local presence
Lack of internal procedures to make adjustments for diversity
Cost and complexity of procedures and absence of legal aid for victims
Inadequate investment in awareness of equality body

Issues of access, accessibility, cost, and reasonable accommodation are usefully addressed in **Article 11** of the Directives. These provisions would benefit from some further detail and could draw from Recital (36) and Recital (37) of the preamble of Directive COM(2022)689 and Recital (35) and Recital (36) of the preamble of Directive COM(2022)688 in this regard.

In particular, **further detail would be useful** with regard to: **the establishment of local offices and the achievement of a local presence for equality bodies; and of making reasonable accommodations on the other grounds covered by the Directives to enable their access to justice**, addressing issues such as literacy, digital access, first language, and caring responsibilities.

Article 5(1) of both Directives makes provision for Member States to adopt a **strategy** to raise **awareness** of the general population to raise awareness of their rights and of the existence of equality bodies. These provisions address some of the issues above.

The list of common indicators established under Article 16(1) of the Directives for monitoring implementation of the Directives could usefully include an **indicator** on '**accessibility**'.

¹³⁰ *Binding Standards for Equality Bodies: Factual Summary Report, Open Public Consultation*, Directorate D: Equality, Unit D.1: Non-discrimination and Roma coordination, DG Justice and Consumers, European Commission, Ares(2022)4231110 - 08/06/2022, p. 9.

6. COMMISSION PROPOSALS: SPECIFIC QUESTIONS

KEY FINDINGS

This chapter addresses a series of specific questions that might arise in relation to the Commission proposals.

The **legal basis and the choice of the instruments**: two Directives are proposed to establish standards for equality bodies. It would be important that these **remain identical** as they go through their different adoption procedures. The legal basis of a **Directive** for this initiative is considered most appropriate.

Designation of bodies: It is not considered appropriate or helpful for the Directives to include a list of equality bodies, or to provide for the successive adoption and modification of such a list.

Key stakeholder roles: **EIGE and FRA** are relevant stakeholders and the role proposed for them in the processes for monitoring and reporting on the application and practical effects of the Directives is appropriate and sufficient. **Equinet** needs to be identified as a third key stakeholder in the monitoring and reporting processes for the Directives.

Coverage of the Directives: It is not considered that there are gains to be made by including reference in the Directives to national human rights institutions, ombudsman offices or similar bodies, given the specificity of the equality mandate and the imperative to address this in standards for equality bodies.

Broader focus: It might be appropriate to identify, in the preamble, that equality bodies are **valued champions for the equality and non-discrimination values of the EU**. It is not considered appropriate to broaden the fields within which equality bodies operate in these Directives. This is best left to Directives, regulations, and policies addressing these other fields while respecting the principles that: **new competences** come with the **additional resources** required for their implementation; new competences come in a manner that is **coherent and consistent** with the core mandate and functions of the equality body as established in these Directives; and new competences are defined through a process of **engagement with equality bodies through Equinet**.

6.1. The Legal Basis

Two parallel, and currently identical, Directives are proposed for the setting of standards for equality bodies. The two Directives have **different legal bases and adoption procedures**. This reflects the different legal bases for the equal treatment Directives that made the original provision for the establishment or designation of equality bodies (see **Table 1**).

Directive COM(2022)689 is based on Article 19(1) of the Treaty on the Functioning of the European Union (TFEU), the legal basis for the Directives 2000/43/EC, 2000/78/EC and 2004/113/EC, which address the grounds of: racial or ethnic origin (all fields); disability, sexual orientation, age and religion or belief (employment and occupation); and gender (goods and services). Directive COM(2022)688 is based on Article 157(3) TFEU, the legal basis for the Directives 2006/54/EC and 2010/41/EU, which address the ground of gender (employment and occupation & self-employment).

The rationale for the two Directives is made clear. The starting point of **ensuring that the two Directives are identical is imperative**. It will be important to retain this starting point and to ensure that both Directives successfully traverse their different adoption procedures while **remaining identical**. Divergent Directives establishing different standards for equality bodies in relation to different groups and different fields will undermine effectiveness and diminish the potential of equality bodies.

The choice of legal instrument in setting standards for equality bodies is that of a **directive**. A regulation would have had the value of urgency and set direction, in that, regulations are directly applicable in Member States once they enter into force. A directive, on the other hand, is not directly applicable and must first be transposed into national legislation in a manner that meet the goals set in the directive. As such, there is less urgency, but **more flexible** direction involved.

In regard to setting standards for equality bodies, the choice of directive appears most **appropriate**. There is an existing infrastructure of equality bodies in place and functioning across the Member States. The goal is to build on, strengthen and, as required, expand this infrastructure so that its full potential can be realised. The transposition process involved in a directive allows a **tailoring to national circumstances** while retaining the goals set. This flexibility will be important in building on and strengthening what is a considerable infrastructure of equality bodies already in place. The time required for transposition offers time to make the necessary change at national level to meet the goals set by the Directives.

6.2. Designation of the equality body or bodies

The Directives will come into force in a context where there is already a **significant infrastructure of equality bodies in place**. This paper identifies 40 equality bodies. This is not a static field of infrastructure: new bodies continue to emerge, existing bodies continue to be merged, and existing bodies continue to be accorded new functions.

This infrastructure has emerged, stimulated by the provisions in the equal treatment Directives, on the basis of Member State designation of the body to hold the equality mandate or to be established to hold such a mandate. An **external listing** of equality bodies or an external attribution of the status of an equality body **might not be helpful** in such a context. The core imperative is to stimulate and drive the infrastructure in place to meet the standards set in the Directives.

External listing can miss bodies that, while not up to standard, are playing key equality body roles and that need support to grow and expand rather than the exclusion that results from external listing. This phenomenon can be further exacerbated in the external attribution of the status of equality body. Such a process ends up being punitive or excluding of equality bodies that are not up to standard, rather than supporting their growth and expansion. If equality bodies are not up to standard, it is the Member State that has failed to create the necessary conditions for the equality body and it is the Member State that should be the focus for any action in response to such failure.

As such, **it would not be appropriate or helpful for the Directives to include a list of equality bodies, or to provide for the successive adoption and modification of such a list.**

6.3. Key Stakeholder Roles

The Directives currently provide for **key stakeholder roles for the European Institute for Gender Equality (EIGE) and the EU Agency for Fundamental Rights (FRA)**. Their contribution to the process of development of the Directives is noted and, most significantly, they are accorded roles in

monitoring the Directives. **Article 16** of both Directives identifies that these two institutions could be asked to provide advice on the common **indicators** to be developed by the European Commission and to offer **input to the reports** to be made by the Commission on the application and practical effects of the Directives.

EIGE and FRA are relevant stakeholders and the role proposed for them in the processes for monitoring and reporting on the application and practical effects of the Directives is **appropriate and sufficient**.

However, neither EIGE nor FRA has a specialist expertise in equality bodies, the conditions created for equality bodies, and the operation of equality bodies across the Member States. As such, **it would be important to name and formalise the role of Equinet, the European network of equality bodies, as a third key stakeholder in the monitoring and reporting processes for the Directives**.

Equinet has a long tradition of enabling peer support across equality bodies in the exercise of their functions, identifying and supporting the emergence of the necessary conditions that need to be created for equality bodies to achieve their full potential, and of extracting a body of learning with regard to equality bodies from the experience of equality bodies across the Member States.

It would be important to harness this specialist learning in the development of common **indicators** by **naming Equinet as a further source in Article 16(1)**. The provision in relation to these stakeholders in Article 16(1) should also be made **mandatory** whereby the Commission shall seek advice from EIGE, FRA, and Equinet in the development of these common indicators. Equinet should be identified as a further **source, in Article 16(3), for the reports to be made by the Commission** on the application and practical effects of the Directives.

It would be useful to clarify, in **Article 16(2)**, that the **reports** developed as part of the ongoing work of equality bodies would not only feed into the five yearly Member State reports on the application of the Directives, as stipulated, but would also inform the reports prepared by the Commission on the application and practical effects of the Directives.

The importance of this monitoring process is reflected in the report on the public consultation organised by the Commission in relation to developing Directives on standards for equality bodies, which identifies that more than 79 per cent of respondents considered it necessary to make additional rules in relation to monitoring of the functioning of equality bodies across the EU¹³¹.

6.4. Coverage of the Directives

The Directives address **equality bodies specifically**, and the equality mandate where this is held within a **multi-mandate body**. While these multi-mandate bodies are most likely either national **human rights institutions or ombudsmen offices**, **the Directives do not address these other mandates or these other institutions beyond the equality mandate held**.

This is **appropriate and necessary**, that the Directives would be solely dedicated to equality bodies, addressing the specificities of equality bodies, and ensuring equality bodies can realise their full potential.

Equality bodies, national human rights institutions, and ombudsman offices all draw from **different traditions, legal bases, mandates, and means of intervention**. That is why, for example, the

¹³¹ *Binding Standards for Equality Bodies: Factual Summary Report, Open Public Consultation*, Directorate D: Equality, Unit D.1: Non-discrimination and Roma coordination, DG Justice and Consumers, European Commission, Ares(2022)4231110 - 08/06/2022, p. 9.

international standards developed for national human rights institutions, the **Paris Principles**, were found to hold learning for equality bodies but were not found to be a good fit to serve as a standard for equality bodies. **Distinct standards were needed for equality bodies** and are now being put in place.

It would be important to respect this diversity and hold the singular focus on equality bodies and the equality mandate in these Directives. There are **no gains** to be made by including reference to national human rights institutions, ombudsman offices or similar bodies, and only potential confusion and distraction from the specific conditions required for and needs of equality bodies.

6.5. Broader Focus

The preamble, **Recital (1)**, to both Directives locate this endeavour within the **values of the Union, specifically equality and the right to non-discrimination**. This is valuable and appropriate. Crowley (2018) identified that '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 (**Article 2 Treaty of the European Union**); and 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 (**Article 8 Treaty on the Functioning of the European Union**)¹³². It would be appropriate to identify in **Recital (1) in the preamble that equality bodies are valuable champions for these values of the EU**.

The Commission has, as noted above, opened up **new competences** and avenues of intervention for equality bodies in its Directives, regulations, and policies. These new competences have related to: the Charter of Fundamental Rights; the European Structural and Investment Funds; and roles related to the provisions of Directives and proposed Directives on: equal treatment of Union workers and their families without discrimination on the ground of nationality; work-life balance; equal pay and pay transparency; and combating violence against women and domestic violence.

This has been valuable in strengthening policy implementation and in deepening the role of equality bodies, however, **care is needed** in this to respect principles that any such new competences:

- come with the **additional resources** required for their implementation;
- are **coherent and consistent** with the core mandate and functions of the equality body as established in these Directives; and
- are defined through a process of engagement with equality bodies through **Equinet**.

It is most **appropriate** to continue in the current modus operandi in this regard, rather than using the Directives on standards for equality bodies to introduce the equality bodies to new policy fields and competences. This additionality is **best left to Directives, regulations, and policies** that address these policy fields, through a process that ensures respect for the above principles.

¹³² Crowley N., *Equality Bodies Making a Difference*, European Network of Legal Experts in Gender Equality and Non-Discrimination, European Commission, Brussels, 2018, p. 39.

7. RECOMMENDATIONS

The two Directives on standards for equality bodies, COM(2022)689 and COM(2022)688, directly and **valuably address a comprehensive spectrum of issues that are currently experienced by equality bodies and which undermine their potential and achievements**. It is important that the Directives are adopted without unnecessary delay. The following **recommendations** seek to improve the two Directives and build on the significant advances made in the proposals that have been put forward by the Commission.

To better underpin and strengthen the **institutional architecture** of equality bodies, it is recommended that, for both Directives:

- Article 3(4) be amended to: ensure the **internal structure and operation** of the equality body is such as to provide for clear **leadership, promotion, implementation and visibility** for the equality mandate; and ensure the various **competences** accorded to multi-mandate bodies for their different mandates **are harmonised and levelled up** for each mandate.
- Article 8 be amended to: **allow rather than require** Member States to provide equality bodies with the competence to investigate cases where they consider there has been discrimination and to provide opinions and decisions in relation to these, reflecting that good practice in this regard is to locate the decision-making function in a separate equality body; and establish the imperative of guaranteeing the full and effective exercise of **all competences and tasks in its other functions** where an equality body is accorded a decision-making function.
- Include a further Article to: ensure that equality bodies are enabled and operate to address and respond to **each ground** adequately and appropriately and to the **intersections** between them, where their mandate covers more than one ground.

To better underpin and strengthen the **independence** of equality bodies, it is recommended that, for both Directives:

- Article 3(1) be amended to: clarify that in relation to **legal status**, equality bodies should not be set up as part of a ministry or body taking instructions directly from the government, and that in relation to **organisational matters**, equality bodies should be able to manage their own **budget and resources**, including by selecting and managing their own **staff**, and be able to set their own priorities.
- They include a further article to: ensure that accountability of equality bodies is organised in a manner to underpin their independence by **restricting this accountability to the financial accountability and expenditure rules** that apply to public authorities.
- Article 3(2) be amended to: specify **governing boards** alongside staff; establish that appointments systems be **transparent, participatory and competence-based**; specify that appointments be made by **parliament** using such an appointment system and based on an appropriate qualified majority vote alongside an unblocking mechanism to ensure appointments are not delayed by any political impasse; and specify that **functional immunity** be afforded to persons holding leadership positions in carrying out their duties.

To better underpin and strengthen the **effectiveness** of equality bodies, it is recommended that, for both Directives:

- Article 5(b) be amended to: clarify that the necessary **competences** must be accorded by Member States to equality bodies to engage in this work effectively; and that the role of

equality bodies in relation to **equality duties, equality mainstreaming and positive action** is also to support and provide guidance on their implementation.

- Article 13 be amended to clarify that **consultation** with equality bodies on legislation, policy, procedure, programmes and practices is where the rights and obligations derived from the Directives pertain and have relevance to these.
- Article 14 be amended to: establish that equality bodies can require **feedback** on recommendations made in relation to this field of equality data, as part of Article 14(3); establish that equality bodies should be accorded competences to undertake and commission **surveys, research and studies**, as part of Article 14(4); and identify that these competences draw from the the work done on equality data under the auspices of the **High Level Group on Non-Discrimination, Equality and Diversity**.
- Article 9(4) precluding equality bodies from using **evidence** obtained through the powers conferred on them by Article 8 (3), in court proceedings, be deleted.
- Article 6(4) requiring equality bodies to provide a **preliminary assessment** of the case, be deleted.
- Article 8(3) be amended to require Member States to make provisions for requirements on the **respondent** to provide information and documents requested by the equality body.
- Article 8(4) be amended to include a requirement that a competence be accorded to equality bodies with a decision-making function to apply proportionate, appropriate, and dissuasive **sanctions**.
- Article 8(4) be amended to delete the requirement that the publication of decisions and opinions would be without disclosing **personal data**.
- Article 10 be amended on procedural safeguards to specifically establish the alignment, in this, with the relevant provisions of the **UNCPRD**, given the alignment that is noted in the preamble.
- Article 15 be amended to: require an equality body to undertake an **evaluation** of its functioning every four years; and require an equality body to establish structures or processes for sustained **engagement** with relevant stakeholders.

To better underpin and strengthen the **accessibility** of equality bodies, it is recommended that, for both Directives:

- Article 11 be amended to: ensure **reasonable accommodations** are made on the other grounds covered by the Directives to enable their **access to justice**, addressing issues such as literacy, digital access, first language, and caring responsibilities, as part of Article 11 (3); and ensure the establishment of **local** offices for equality bodies or, where this might not be required, the achievement of a local presence for equality bodies, as part of Article 11 (2).

To better underpin and strengthen the adoption and implementation of the Directives, it is recommended that, for both Directives:

- The provisions made on standards for equality bodies remain **identical in both Directives**.
- Recital (1) in the preamble be amended to identify that equality bodies are **champions for the EU values of equality and non-discrimination**.
- Article 16(1) be amended to include for: **common indicators** in relation to multi-mandate bodies and their capacity to give visibility to, leadership for, and fully implement their equality

mandate; multi-function equality bodies that have a decision-making function, with a view to better track the impact of this combination of functions and its active and effective management; accountability systems; appointment systems; competences accorded to the equality body; and accessibility.

- Article 16(1) be amended to include **Equinet**, the European network of equality bodies, as a further source alongside EIGE and FRA and require this engagement with the three stakeholders by the Commission in the preparation of common indicators.
- Article 16(2) be amended to establish that the **reports** developed as part of the ongoing work of equality bodies would also inform the reports to be prepared by the **Commission**.
- Article 16(3) be amended to include **Equinet**, the European network of equality bodies, as a further source for the reports to be made by the Commission on the application and practical effects of the Directives.

To sustain an ongoing coherence for the mandate and operations of equality bodies, it is further recommended that a further Article is added to establish that:

- Any new competences to be attributed to equality bodies in future legislation or policy initiatives are to be **coherent and consistent** with the core mandate and functions of the equality body as established in these Directives, to be defined through a process of engagement with equality bodies through **Equinet**, and, to come with the **additional resources** required for their implementation.

Table 12: Issues identified & Recommendations made to ensure they are addressed
(with references to the relevant Chapters and Tables of this study)

Issues for Equality Bodies	Improvements to COM Directives
Institutional Architecture for Equality Bodies (Chapter 3)	
Mandates (Table 6)	
Lack of visibility for equality mandate in multi-mandate settings.	Addressed in Article 3(4), but need to amend it to ensure the internal structure and operation of the equality body is such as to provide for clear leadership, promotion, implementation and visibility for the equality mandate;
Lack of balance in the resources allocated to the equality mandate in multi-mandate settings.	Addressed in Article 4(2).
Lack of coherence in the legal base in terms of the competences accorded to the body for different mandates in multi-mandate settings.	Amend Article 3(4) to ensure the various competences accorded to multi-mandate bodies for their different mandates are harmonised and levelled up for each mandate .
Lack of active management of diverse mandates within multi-mandate settings.	This is a matter of internal competence for the equality body that is better not addressed in the Directives.
Functions (Table 7)	
Lack of balance in the resources allocated to other functions in settings where the equality body holds a decision-making function	Addressed by the provisions of Article 4.
Limitations in the assistance provided to victims of discrimination in settings where the equality body holds a decision-making function.	Amend Article 8 to allow rather than require Member States to provide equality bodies with the competence to investigate cases where they consider there has been discrimination and to provide opinions and decisions in relation to these, reflecting that good practice in this regard is to locate the decision-making function in a separate equality body.
Limitations in the implementation of other functions in settings where the equality body holds a decision-making function.	Amend Article 8 to guarantee the full and effective exercise of all competences and tasks in its other functions where an equality body is accorded a decision-making function.
Grounds (Table 8)	
Lack of visibility for and action on each of the grounds in multi-ground settings.	Noted in preamble. Include an Article to ensure that equality bodies are enabled and operate to address and respond to each ground adequately and appropriately and to the intersections between them, where their mandate covers more than one ground.
Independence, Effectiveness, and Accessibility (Chapter 4)	
Independence (Table 9)	
Lack of legal status without a legal basis for own legal personality.	Addressed in Article 3(1) but amend to clarify that in relation to legal status , equality bodies should

	not be set up as part of a ministry or body taking instructions directly from the government ,
Inappropriateness of forms of accountability required to government .	Addressed in Article 3(1) but include a further article to ensure that accountability of equality bodies is organised in a manner to underpin their independence by restricting this accountability to the financial accountability and expenditure rules that apply to public authorities
Inappropriate systems of appointment of leadership, in particular appointments being made by government .	Addressed in Article 3(2) but amend to specify that appointments be made by parliament using appropriate systems and based on an appropriate qualified majority, with provision for unblocking the process where there is a political impasse;
Inappropriate representation of stakeholder interests within leadership.	Would be addressed by amendment proposed to Article 3 (2) in relation to appointment systems.
Absence of transparent, participatory and merit-based systems for appointments.	Addressed in Article 3(2) but amend to establish that appointments systems be transparent, participatory and competence-based ;
Lack of stable and secure tenure for leadership.	Addressed in Article 3(2).
Lack of functional immunity for leadership.	Amend Article 3(2) to specify that functional immunity be afforded to persons holding leadership positions in carrying out their duties.
Limitations to organisational independence and autonomy in decision-making in relation to draw down of funds, budgetary and staff management and deployment of resources , and development of strategy .	Addressed in Article 3(1) but amend to clarify that in relation to organisational matters, equality bodies should be able to manage their own budget and resources , including by selecting and managing their own staff, and be able to set their own priorities .
Political interference in appointments and in removal of leadership.	Addressed by Article 3(1).
Competence of internal leadership.	This is a matter of internal competence for the equality body that is better not addressed in the Directives.
Effectiveness (Table 10)	
Inadequate resources – financial and human.	Addressed by Article 4.
Lack of transparency in and information on resources.	Addressed in part by the provision to prepare a common indicator in relation to resources in Article 16(1).
Lack of competences required for promotion and prevention function specifically in relation to:	
<ul style="list-style-type: none"> inadequate engagement by public authorities with recommendations made, 	Addressed in Article 13 but amend to clarify that consultation with equality bodies on legislation, policy, procedure, programmes and practices is where the rights and obligations derived from the Directives pertain and have relevance to these.
<ul style="list-style-type: none"> inadequate range of competences to promote equality. 	Addressed in Article 5(b) but amend to clarify that that the necessary competences must be accorded by Member States to equality bodies to engage in this work effectively; and that the role of equality bodies in relation to equality duties, equality mainstreaming and positive action is also to support and provide guidance on their implementation.
	Addressed in Article 14 but amend to establish that equality bodies should be accorded competences

	to undertake and commission surveys, research and studies, as part of Article 14(4);
Lack of competences for support and litigation function specifically in relation to:	
<ul style="list-style-type: none"> • provide assistance to victims; 	Addressed in Article 6 and Article 9.
<ul style="list-style-type: none"> • have legal standing to represent victims, bring cases in their own name, or act in support of a party; 	Addressed in Article 9.
<ul style="list-style-type: none"> • act as amicus curiae; 	Addressed in Article 9.
<ul style="list-style-type: none"> • file class actions; 	Addressed in Article 9.
<ul style="list-style-type: none"> • pursue cases of hate speech; 	This is a matter to be addressed in the pertinent legislation rather than in these Directives.
<ul style="list-style-type: none"> • pursue cases against private and public sector; 	This is a matter to be addressed in the pertinent legislation rather than in these Directives.
<ul style="list-style-type: none"> • take action under the Charter of Fundamental Rights. 	This is a matter to be addressed in the pertinent legislation rather than in these Directives.
<ul style="list-style-type: none"> • Further issues to be addressed in these provisions 	Delete Article 9(4) precluding equality bodies from using evidence obtained through the powers conferred on them by Article 8 (3), in court proceedings.
	Delete Article 6(4) requiring equality bodies to provide a preliminary assessment of the case.
Lack of competences required for decision-making function specifically in relation to:	
<ul style="list-style-type: none"> • require cooperation of respondent; 	Addressed in Article 8(3) but amend to require Member States to make provisions for requirements on the respondent to provide information and documents requested by the equality body.
<ul style="list-style-type: none"> • make legally binding decisions; 	Addressed permissively in Article 8(4).
<ul style="list-style-type: none"> • apply effective, proportionate and dissuasive sanctions; 	Amend Article 8(4) to include a requirement that a competence be accorded to equality bodies with a decision-making function to apply proportionate, appropriate, and dissuasive sanctions
<ul style="list-style-type: none"> • follow up on decisions made. 	Addressed in Article 8(4).
<ul style="list-style-type: none"> • Further issues to be addressed in these provisions 	Amend Article 8(4) to delete the requirement that the publication of decisions and opinions would be without disclosing personal data .
	Article 10 be amended on procedural safeguards to specifically establish the alignment, in this, with the relevant provisions of the UNCRPD , given the alignment that is noted in the preamble.
Lack of strategic planning by and evaluation of equality bodies.	Addressed in Article 15 but amend to require an equality body to undertake an evaluation of its functioning every four years;
Lack of formal engagement with stakeholders.	Amend Article 15 to include a requirement for an equality body to establish structures or processes for sustained formal engagement with relevant stakeholders.
Effectiveness in relation to additional functions accorded to equality bodies by the Directives	
	AM to Article 14 to establish that equality bodies can require feedback on recommendations made in relation to this field of equality data , as part of Article 14(3);

	AM to Article 14 to identify that these competences draw from the the work done on equality data under the auspices of the High Level Group on Non-Discrimination, Equality and Diversity.
Accessibility (Table 11)	
Inaccessible location or premises.	Addressed in Article 11 (1) and (2) but amendments proposed as below.
Lack of local or regional offices.	Addressed in preamble and in Article 11 (2) but amend to ensure the establishment of local offices for equality bodies or, where this might not be required, the achievement of a local presence for equality bodies, as part of Article 11 (2).
Lack of local presence.	Amend Article 11 to ensure the establishment of local offices for equality bodies or, where this might not be required, the achievement of a local presence for equality bodies, as part of Article 11 (2).
Lack of internal procedures to make adjustments for diversity.	Addressed in Article 11(3) on the disability ground but amend to ensure reasonable accommodations are made on the other grounds covered by the Directives to enable their access to justice, addressing issues such as literacy, digital access, first language, and caring responsibilities.
Cost and complexity of procedures and absence of legal aid for victims.	Addressed in Article 11(2).
Inadequate investment in awareness of equality body.	Addressed in Article 5(1).
Underpin and strengthen the adoption and implementation of the Directives	
	The provisions made on standards for equality bodies remain identical in both Directives.
	Recital (1) in the preamble be amended to identify that equality bodies are champions for the EU values of equality and non-discrimination.
	AM to Article 16(1) to include for common indicators in relation to <ul style="list-style-type: none"> • multi-mandate bodies and their capacity to give visibility to, leadership for, and fully implement their equality mandate; • multi-function equality bodies that have a decision-making function, with a view to better track the impact of this combination of functions and its active and effective management; • accountability systems; • appointment systems; • competences accorded to the equality body; • accessibility.
	Amend Article 16(1) to include Equinet as a further source alongside EIGE and FRA and require this engagement with the three stakeholders by the Commission in the preparation of common indicators .
	Amend Article 16(2) to establish that the reports developed as part of the ongoing work of equality

	bodies would also inform the reports to be prepared by the Commission .
	Amend Article 16(3) to include Equinet as a further source for the reports to be made by the Commission on the application and practical effects of the Directives.
	Add a further article to the effect that any new competences to be attributed to equality bodies in future legislation or policy initiatives are to be coherent and consistent with the core mandate and functions of the equality body as established in these Directives, to be defined through a process of engagement with equality bodies through Equinet , and, to come with the additional resources required for their implementation.

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This study, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), examines and makes recommendations on the two Directives on standards for equality bodies proposed by the Commission in 2022. It explores the current situation for equality bodies, establishing issues that trammel their potential due to inadequacies in the design of their institutional architecture, and the conditions created for their independence, effectiveness, and accessibility. The study finds that the Directives, while requiring strengthening, hold significant promise.

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