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Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies

Accompanying the document

Report from the Commission to the European Parliament and Council

on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')

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Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies

1. INTRODUCTION

This staff working document accompanies the report on the application of Directive 2000/43/EC¹ (hereafter the ‘Racial Equality Directive’) and of Directive 2000/78/EC² (hereafter the ‘Employment Equality Directive’) (‘the 2021 Application report’).

The purpose of this document is to take stock of the current situation regarding equality bodies across the EU and to assess the current situation concerning the implementation of Commission Recommendation 2018/951 of 22 June 2018 on standards for equality bodies (‘the Recommendation’)³.

The bodies examined in this document are those referred to as ‘bodies for the promotion of equal treatment’ (the ‘equality bodies’) in Article 13 of the Racial Equality Directive, Article 12 of Directive 2004/113/EC⁴ (‘hereafter ‘the Gender Equality Directive in goods and services’), Article 20 of Directive 2006/54/EC⁵ (‘the Gender Equality Directive in employment’) and Article 11 of Directive 2010/41/EU⁶ (‘the Gender Equality Directive in self-employment’)⁷.

These articles require Member States to designate (and to make the necessary arrangements for⁸) a body or bodies to promote, analyse, monitor and support equal

¹ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0043>).

² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32000L0078>).

³ (<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32018H0951>)

⁴ 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 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0113>).

⁵ 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) (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006L0054>).

⁶ 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 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0041>).

⁷ New provisions on equality bodies are also included in the proposal for a Pay Transparency Directive that was adopted by the Commission on 4 March 2021 (COM(2021) 93 final; https://ec.europa.eu/info/sites/info/files/aid_development_cooperation_fundamental_rights/com-2021-93_en_0.pdf); as these provisions are not yet in force, they are not covered in this staff working document.

⁸ This specification is provided for only in the Gender Equality Directives in employment and in goods and services.

treatment of all. Their provisions are almost identical and give powers to the equality bodies to provide independent assistance to victims, to produce independent surveys and reports, and to issue recommendations. The Gender Equality Directives in employment and self-employment add a further role for the bodies: to exchange information with corresponding European bodies, such as the European Institute for Gender Equality (EIGE).

While Member States are obliged to meet the minimum requirements set out by the Directives, they have a wide margin of discretion to decide on the structure and functioning of their equality bodies. This has led to major differences in the mandate, functions, structure, independence and resources allocated to equality bodies across the EU. On the one hand, these differences appear to be the natural expression of Member States' differences in legal cultures and administrative structures. On the other hand, it has resulted in very different levels of protection against discrimination, from one Member State to another. That is why, in 2018, the Commission recommended common standards for equality bodies.

The Recommendation lists measures to achieve an optimal enforcement of the Directives' provisions to ensure that equality bodies can effectively perform their functions. It focuses on (i) the mandate of equality bodies, (ii) their independence, effectiveness and accessibility, and (iii) the coordination and cooperation between equality bodies (and other entities) across the EU.

This staff working document follows the structure of the Recommendation and examines the current situation in these various areas.

The analysis is based both on specific contributions received during the preparation of the 2021 Application report or on pre-existing information from the Member States⁹, the European Network of Equality Bodies (Equinet)¹⁰, the European Union Agency for Fundamental Rights (FRA), the European Commission against Racism and Intolerance (ECRI), equality bodies, civil society and the European Network of legal experts in gender equality and non-discrimination¹¹¹². It also builds on good practices that were shared during the Good Practice Exchange Seminar co-organised by the Commission and the Swedish government in June 2019¹³.

⁹ Chapter III of the Recommendation invites Member States 'to include information on how they take the [...] Recommendation into account in their communications on the application of Directives 2000/43/EC, 2000/78/EC, 2004/113/EC and 2006/54/EC'.

¹⁰ For Equinet's contribution to the 2021 Application report, see: <https://equineteurope.org/2020/a-perspective-from-the-work-of-equality-bodies-on-european-equality-policy/>.

¹¹ <https://www.equalitylaw.eu/>.

¹² See in particular the 2018 report 'Equality bodies making a difference', written by Niall Crowley (https://ec.europa.eu/info/sites/info/files/equality_bodies_making_a_difference.pdf) and the 2020 comparative analysis of non-discrimination law in Europe (<https://www.equalitylaw.eu/downloads/5118-a-comparative-analysis-of-non-discrimination-law-in-europe-2019-1-72-mb>).

¹³ The seminar brought together the members of the EU High Level Group on Non-Discrimination, Equality and Diversity, as well as the FRA, Equinet and a few national equality bodies. It offered support for a shared understanding of the Recommendation and established good practices for its implementation.

2. MANDATE

The first standards put forward by the Recommendation¹⁴ concern the equality bodies' mandate. They cover the scope of powers and functions of equality bodies (i.e. independent assistance, surveys, reports and recommendations). They also cover the promotion of equality.

2.1. Scope

2.1.1. *Grounds and fields covered by equality bodies*

The Gender Equality Directives¹⁵ and the Racial Equality Directive ('the Directives') require Member States to create or nominate (an) equality body(ies). On grounds of racial or ethnic origin, this is required in fields (self-)employment and occupation, education, social protection and social advantages including healthcare and access to and supply of goods and services. On the ground of sex, this is required in the fields of (self-) employment and access to and supply of goods and services. Directive 79/7/EEC¹⁶ (the Gender Equality Directive in the field of social security) and the Employment Equality Directive do not include provisions related to equality bodies.

The Recommendation suggests to entrust equality bodies with all the grounds listed in Article 19 of the Treaty on the Functioning of the EU ('TFEU') (sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation) in all the above-mentioned fields ((self-) employment and occupation, education, social protection and social advantages including healthcare, and access to and supply of goods and services).

More specifically, it encourages Member States to designate an equality body to cover discrimination on the grounds of religion or belief, disability, age or sexual orientation within the scope of the Employment Equality Directive. In addition, it invites Member States to consider extending the equality bodies' mandate to all prohibited grounds of discrimination in the fields of access to and supply of goods and services, education, social protection and social advantages. It also encourages them to cover hate speech related to these grounds in these areas¹⁷.

In most Member States, national provisions have given a mandate to equality bodies that goes beyond the strict requirements of the Directives, even before the adoption of the Recommendation. In all but three Member States¹⁸, the equality bodies are competent in relation to all the grounds covered by the Employment Equality Directive. In around two thirds of Member States, equality bodies are competent in relation to all the grounds and all the fields mentioned in the Recommendation. Following the Commission's adoption of the Recommendation, two Member States¹⁹ indicated that they would initiate reforms to align their legal framework with the provisions of the Recommendation.

¹⁴ See Recommendation 1.1 of Chapter II.

¹⁵ These cover the above-mentioned Directives 2004/113/EC, 2006/54/EC and 2010/41/EU.

¹⁶ 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 (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A31979L0007>).

¹⁷ See Recommendation 1.1.1. (1) and (2) of Chapter II.

¹⁸ Spain, Portugal and Finland.

¹⁹ Spain and Estonia.

In addition, in about two thirds of Member States, equality bodies have the power to address hate speech. In about 10 Member States, equality bodies count ‘addressing violence against women’ and ‘addressing hate crimes’ as part of their functions.

2.1.2. *Structure of equality bodies*

The Directives do not contain provisions on the structure of equality bodies.

Most Member States have set up one body in charge of all grounds of discrimination (i.e. a multi-ground equality body).

One Member State²⁰ only has single-ground equality bodies (each body covering one ground of discrimination, racial and ethnic origin, and sex/gender) and is currently preparing a reform of its Equality law that would create a new multi-ground equality body. Other Member States have put in place two bodies (i) a multi-ground body and (ii) a separate single-ground body to cover a specific ground such as disability or gender. As a result, a number of Member States have several equality bodies.

In practice, multi-ground bodies often have several mandates. In addition to their ‘equality mandate’, they can for instance be a National Human Rights Institution (NHRI)²¹ or an Ombudsperson²².

The Recommendation²³ refers to the importance of putting in place an internal structure that allows equality bodies to focus sufficiently on each ground and each part of their mandate. Another key issue is to ensure balanced resources.

2.1.2.1. Issues specific to multi-ground bodies

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 intersectionality²⁴.

However, multi-ground bodies also face challenges, for instance to ensure sufficient focus and visibility on each of the grounds covered, partly due to limited resources.

A good practice could be for the equality bodies to work on three levels to:

- 1) join-up activities, seeking progress on all the grounds covered (‘multi-ground level’);
- 2) address issues specific to one particular ground, drawing attention to it (‘single-ground level’);

²⁰ Spain.

²¹ National Human Rights Institutions (NHRIs) are state-mandated bodies, independent of government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. NHRIs address the full range of human rights, including civil, political, economic, social and cultural rights. For more information, see: <http://ennhri.org/about-nhris/>.

²² An Ombudsperson is generally an independent institution mandated to protect the rights and freedoms of citizens against public authorities, for instance by investigating complaints about maladministration.

²³ See Recommendation 1.1.1.(3) of Chapter II.

²⁴ On multiple discrimination and intersectionality, please refer to Chapters 2.1 and 2.3.3 of the 2021 Application report.

- 3) respond to the particular identity, experience and situation of groups at the intersection between the grounds covered ('cross-ground level').

2.1.2.2. Issues specific to multi-mandate bodies

In about half the Member States, equality bodies have multiple mandates. Historically, the 'equality mandate' was often given to a pre-existing body.

The advantages identified in those set-ups include possible synergies between the functions exercised under each mandate, mutual learning, cost savings, broadening staff expertise, greater availability for victims (through a 'one-stop-shop'). Multi-mandate bodies may also be better known by the public.

On the other hand, reported challenges include 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.

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.

Good practice in this field includes a dedicated leadership for the equality mandate, balanced resources allocated to each mandate, a separate and specialised department dedicated to the equality mandate and/or a specific annual report focusing only on the equality mandate.

Conclusion

In most Member States, the grounds and fields of discrimination put forward by the Recommendation are protected under the mandate of one or more national equality bodies. However, there are still gaps in the protection for some grounds and/or some fields in around a third of Member States. Two Member States have indicated that they intend to carry out further reforms in this field as a follow-up to the Recommendation.

Multi-ground bodies are widespread. Although this has advantages, those bodies need to be supported by a clear organisational structure to ensure sufficient focus and resources for each ground. Progress is still needed in that direction.

A similar need has been highlighted for multi-mandate bodies, which are also NHRI and/or Ombudsperson, to preserve the strength and visibility of the equality mandate. Good practice includes giving the equality mandate to a specific department with dedicated resources and leadership.

2.2. Functions

Equality bodies exercise, either formally or via specific tasks executed in practice, the functions provided to them in the Directives: independent assistance to victims, and the production of independent surveys, reports and recommendations.

2.2.1. Assistance and decision-making

The Directives require Member States to ensure that their equality bodies provide independent assistance to victims of discrimination in pursuing their complaints about

discrimination. The Directives do not mention any specific form of assistance. The Recommendation goes into more details and lists several powers that Member States could consider granting to their equality bodies. These include²⁵:

- receiving and handling individual or collective complaints;
- providing legal advice to victims, including in pursuing their complaints;
- representing complainants in court;
- acting as *amicus curiae*²⁶ or expert;
- engaging in activities of mediation and conciliation;
- engaging or assisting in strategic litigation²⁷;
- issuing recommendations in individual or collective cases of discrimination;
- issuing legally binding decisions in individual or collective cases of discrimination; and
- gathering relevant evidence and information.

These activities can be divided into two groups (i) support and litigation and (ii) decision-making.

2.2.1.1. Support and litigation²⁸

The function of support and litigation covers activities of equality bodies in assisting victims of discrimination, including by:

- offering legal advice about rights and means of redress;
- providing support to file a complaint;
- handling complaints through amicable settlements²⁹;
- representing victims or victims' organisations in cases³⁰;
- taking cases in their own name³¹;
- intervening in support of a party³²;
- acting as *amicus curiae* or engaging in strategic litigation;
- carrying out situation testing³³.

²⁵ See Recommendation 1.1.2.(1), (2), (3) and (4) of Chapter II.

²⁶ When an equality body acts as *amicus curiae*, it submits its observations as an expert in equality law to assist the court, without seeking a particular outcome or without taking sides for one of the parties to the case.

²⁷ 'Strategic litigation' refers to the use of litigation strategies to elicit social, legal or policy change and is often carried out by civil society organisations and/or lawyers as a form of activism.

²⁸ Besides the sources mentioned in the introduction of this staff working document, this section makes use also of the following publication : Tamas, K., 'The legal standing of equality bodies', European Equality Law Review, 2019, no. 1, prepared for the European Commission, at: <https://www.equalitylaw.eu/downloads/4930-european-equality-law-review-1-2019-pdf-1-051-kb>.

²⁹ This refers to a situation where the equality body supports a process in which the victim and the perpetrator enter into a dialogue with the aim of finding a constructive solution.

³⁰ This power could be exercised through representation, with consent of the victim or the organisation, by the equality body's own staff or by engaging and paying a lawyer to represent the party before the court.

³¹ This refers to equality bodies taking a case before the court without an identifiable victim being a party to the proceedings. This includes cases of *actio popularis* (i.e. claims whereby the organisation bringing the claim acts in the public interest on their own behalf, without a specific complainant to support or represent, where the discrimination case affects a larger, unidentifiable group of persons). In some legal traditions, it may also include bringing the case of an identifiable victim, with their consent, but without this victim formally becoming a party to the proceedings.

³² This refers to a situation where the victim is a party to the proceedings and the equality body intervenes on their side as an interested party to seek a particular outcome in a case.

When carrying out some of these activities, equality bodies may not only play a useful role in assisting individual victims of discrimination, but may also serve a wider interest. For instance, when equality bodies have the power to litigate in their own name, they may engage in cases of collective discrimination to represent the public interest, without there being a specific complainant³⁴. This may be particularly beneficial in tackling cases of discrimination caused by artificial intelligence³⁵ and/or in cases of discriminatory public speech affecting a large group of people. Engaging in strategic litigation is another such example. This particular form of litigation serves a broader objective of promoting equality. Here, the equality body selects suitable cases ('test cases') to bring to court with the ambition that these legal proceedings will have a positive impact on law and policy development and will set a precedent for similar cases.

The extent to which equality bodies can exercise support and litigation functions varies widely from one Member State to the other.

For instance, in fewer than 10 Member States, equality bodies have legal standing³⁶ to represent victims of discrimination before the courts. In less than half, they report they can bring proceedings in their own name (with or without an identifiable victim) and in a few Member States, the bodies reportedly have legal standing to act in legal proceedings in support of a party. In about half of the Member States, equality bodies indicate they have the power to submit *amicus curiae* briefs or to take similar actions. In about half of the Member States, the equality bodies say that they have been involved in strategic litigation³⁷.

Some Member States have granted very limited powers to equality bodies in relation to litigation. Indeed, a few bodies indicate not having legal standing for any of the following forms of assistance: (i) representing victims of discrimination before courts, (ii) bringing proceedings in their own name, (iii) intervening in support of a party and (iv) submitting *amicus curiae* (or similar) letters.

³³ Situation testing is a method helping to bring to light discrimination on the basis of a pair-comparison testing e.g. matched pairs test application for a job vacancy, using an identical application differing solely as regards a particular characteristic under examination (e.g. age).

³⁴ See, for instance, the case of *Feryn*, where the CJEU argued that 'Article 7 of Directive 2000/43 does not preclude Member States from laying down, in their national legislation, the right for associations with a legitimate interest in ensuring compliance with that Directive, or for the body or bodies designated pursuant to Article 13 thereof [i.e. the equality bodies], to bring legal or administrative proceedings to enforce the obligations resulting therefrom without acting in the name of a specific complainant or in the absence of an identifiable complainant' (judgment of 10 July 2008, *Feryn*, C-54/07, ECLI:EU:C:2008:397, paragraphs 26-27).

³⁵ For more on the challenges created by AI and the equality bodies' perspective on the subject, see Equinet's report [Regulating for an equal AI: a new role for equality bodies](#).

³⁶ 'Legal standing' refers to the right or ability to bring a legal action to a court of law, or to appear in a court. Following article 7(2) of the Racial Equality Directive, 9(2) of the Employment Equality Directive and the respective articles of the Gender Equality Directives (Article 8(3) of 2004/113/EC, Article 17(2) of 2006/54/EC and article 9(2) of 2010/41/EU), associations, organisations or other legal entities, with a legitimate interest in combatting discrimination, and with the approval of the complainant, should be allowed to engage in discrimination disputes either on behalf or in support of the complainant. Member States have discretion in setting criteria and conditions for the legal standing of those entities. Legal standing is a concept that is closely linked to national procedural law and legal traditions.

³⁷ In one Member State, the equality body reported that reforms are underway so to allow the equality body to engage in this form of litigation.

In addition, in Member States where several equality bodies co-exist, it may be that the legal standing of each equality body differs leading to a fragmented situation for those seeking help.

Most equality bodies attempt to reach amicable out of court settlements. In about a third of Member States, the equality bodies always aim for an amicable settlement, and in about half, the bodies say they sometimes do.

Although an equality body may have the powers to engage in certain forms of support or litigation, important differences exist when it comes to using those powers in practice. For example, among the equality bodies engaging in litigation cases, some reported having pursued more than 10 cases in 2019 in relation to ethnic or racial discrimination, while this number was one or zero for several other equality bodies. For equality bodies engaging in friendly settlements, it appears that some multi-ground bodies have less than 50 successful friendly settlements each year³⁸ (across all grounds), while other, similar bodies, have reported several hundreds (across all grounds) each year.

A major reason for inaction seems to be a lack of funding combined also with a risk of having to pay high legal costs when losing a court case. This may lead to a situation where an equality body would primarily act in cases that are not too complex or where there is a low risk of losing the case. This may cause frustration for victims and limit trust and the effectiveness of offering victim assistance.

2.2.1.2. Decision-making in discrimination cases

In some Member States, equality bodies have (primarily) been granted a decision-making power, which includes issuing recommendations and binding decisions in individual and/or collective cases of discrimination. This may be understood as going beyond offering assistance to victims.

If the equality body has the power to issue legally binding decisions in discrimination cases, the Recommendation explicitly encourages Member States to ensure that the equality body:

- can gather the relevant evidence and information in accordance with national law;
- has the capacity to issue adequate, effective and proportionate sanctions; and
- puts in place an effective judicial remedy and standards of due process, in particular when it comes to the right to appeal³⁹.

In about two third of Member States, equality bodies have the power to carry out *ex officio* investigations⁴⁰.

Although in most Member States, equality bodies can make recommendations on claims of discrimination, they only have the power to take legally binding decisions on claims - and therefore act as a quasi-judicial body - in fewer than 10 Member States. In most of these Member States, equality bodies can defend these decisions before the courts (if an appeal were to be lodged).

³⁸ For the period 2015-2020.

³⁹ See Recommendation 1.1.2.(4), (5) and (6) of Chapter II.

⁴⁰ For issues of coordination and cooperation in this respect, see Part 4.

In some Member States where the equality body can take binding decisions, they do not have the power to impose sanctions. In a few Member States, the sanctions that equality bodies can impose have been identified as insufficient and lacking a deterrent effect. As good practice, one Member State has announced reforms offering powers to the decision-making section of the equality body to order interim measures, impose administrative penalties, order payment of compensation including for non-pecuniary damages, request the infringements to cease and be remedied, and order further sanctions if its findings are ignored.

While a few equality bodies have good practice in place to ensure an effective follow-up of the decisions they have taken⁴¹, a lack of or a limited follow-up has been observed in other Member States. The latter may hinder a high level of compliance with the decisions made and does not lead to an effective enforcement of equality legislation.

Another challenge is observed in a few Member States where equality bodies have a decision-making role alongside their function of victim assistance. The latter 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.

In such a situation, good practice could be to ensure that where the equality body has a decision-making function alongside other functions, each function is provided by a different department or by different staff and is supported by the necessary resources. For instance, one Member State has announced reforms so that the decision-making function would be carried out by a separate equality board, of a quasi-judicial nature. The chairperson and members of this board would be appointed separately.

Conclusion

Equality bodies can have important powers in supporting victims and/or engaging in litigation, both in individual and in collective cases of discrimination. These powers are not only beneficial for individual victims, they also serve the public interest and promote equality. Good practice in line with the Recommendation involve entrusting the equality bodies with a broad set of powers and appropriate legal standing to enable them to offer effective assistance to victims.

In addition, some equality bodies have the competence to issue recommendations or binding decisions in cases of discrimination. Good practice involves separating the decision-making function from other functions and allowing those equality bodies to carry out investigations, to issue appropriate sanctions and to follow-up on their decisions.

While in several Member States, equality bodies have a broad range of powers to achieve the goal of victim assistance, this is not the reality in all countries. Moreover, even in Member States where equality bodies have certain powers on paper, they are not always

⁴¹ As also advised in Recommendation 1.2.2.(3) of Chapter II (on 'resources'), Member States should enable equality bodies to monitor effectively the execution of their own decisions.

able to apply them to a significant extent in practice, partly because of insufficient resources.

2.2.2. *Surveys, reports, recommendations and promotion*

While the Directives require equality bodies to conduct independent surveys, publish independent reports and make recommendations on any issue related to discrimination, the Recommendation provides a number of examples of what this could entail. It also specifies the role equality bodies can play in promoting equality. This outlines the potential of equality bodies to be centres of knowledge on discrimination and equality, influencing public policies and driving social change.

2.2.2.1. Independent surveys

As emphasised in the 2021 Application report⁴², equality data collection is crucial but remains challenging. The Recommendation encourages Member States to enable their equality bodies to regularly carry out independent surveys⁴³. It specifies that the surveys should serve to gather a sufficient amount of sound quantitative and qualitative data on discrimination to enable the analysis necessary to draw evidence-based conclusions on where the main challenges lie and how to address them. It therefore sets a vision where equality bodies play a central role in collecting national data on discrimination.

In cases of indirect discrimination, including when caused by artificial intelligence, the collection of a comprehensive, regular and comparable set of equality data is of great importance to allow equality bodies to offer victim assistance and to contribute to effective rights enforcement. Data collected will also feed in the independent reports from the equality bodies and will help them make recommendations.

In around a third of Member States, equality bodies do not carry out surveys or have not done so for a number of years. The main cause for inaction appears to be the lack of sufficient resources to carry out such tasks.

In the second third of the Member States, equality bodies do carry out surveys but face limitations in their capacity to do so on a regular basis, for all discrimination grounds or in a manner that guarantees sufficient quality of the data. The lack of resources is frequently mentioned as a cause for these limitations.

Finally, in the last third of Member States, equality bodies do conduct regular surveys without being limited in their capacity to do so.

National data systems and data collection processes are often inadequate in the field of discrimination, notably for lack of resources. In addition, data collection in the field of equality and non-discrimination, especially data disaggregated by ground, is not harmonised across the EU, which constitutes a barrier to producing comparable national data sets in this area⁴⁴.

⁴² See Chapter 2.5. of the 2021 Application report.

⁴³ See Recommendation 1.1.2(7) of Chapter II.

⁴⁴ On data collection, and what has been put in place to improve it, see Chapter 2.5 of the 2021 Application report.

Good practice to overcome these challenges include devoting a separate part of the permanent budget of an equality body to surveys and dedicating adequately qualified staff to this function. Having a dedicated budget for research projects or receiving funds from external sources (EU funding, different ministries) to carry out annual surveys are other possibilities.

Other good practice follow from putting in place channels of cooperation⁴⁵.

For instance, when collecting data, some equality bodies have developed working relations with national statistical offices. Others have worked closely together with government officials to explore innovative approaches to improve the collection and use of equality data based on the guidelines issued by the Subgroup on Equality Data of the EU High Level Group on Non-Discrimination, Equality and Diversity⁴⁶. Equality bodies across the EU have also joined forces under the auspices of Equinet's Working Group on Research and Data Collection, to further improve and coordinate (comparable) data collection.

2.2.2.2. Independent reports

The Directives do not set a frequency for the equality bodies to publish their independent reports.

The Recommendation encourages Member States to enable their equality bodies to do so 'regularly'⁴⁷. It states that the scope of the independent reports should be broad enough to make possible an overall assessment of the situation regarding discrimination in the Member State, for each of the grounds covered.

It also recommends allowing equality bodies to carry out independent research and to collect detailed data on the complaints they handle or follow (e.g. number of complaints per ground, duration of proceedings and outcome of administrative and judicial cases)⁴⁸. These recommendations complement those on surveys and data collection to ensure that equality bodies regularly produce comprehensive overviews of the national situation on discrimination.

By being in direct contact with victims, equality bodies have access to a lot of information about discrimination cases. Most of them keep a record of the complaints they handle and of the decisions they take (when they have such powers)⁴⁹. However, the detail and accuracy of the information gathered varies from one body to another. In most instances, they share the information with the public through their websites and reports. However, in a few cases, information is only communicated upon request.

⁴⁵ On coordination and cooperation, see Part 4.

⁴⁶ The Subgroup on Equality Data brings together representatives of EU Member States and Norway, the European Commission, Eurostat and FRA with the aim to support Member States in their efforts to improve the collection and use of equality data. The guidelines are available at: https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=112035.

⁴⁷ See Recommendation 1.1.2(8) of Chapter II.

⁴⁸ See Recommendation 1.1.2(9) of Chapter II.

⁴⁹ For an overview of the data collected per equality body, please see the website of Equinet, where data collected by each equality body is available, as well as a link to their own website: <https://equineteurope.org/what-are-equality-bodies/european-directory-of-equality-bodies/>.

In all Member States except two, equality bodies publish reports regularly. In these two Member States, the resources attributed to the equality mandate are scarce, which partly explains this inaction.

Among those who do publish reports, a significant number of equality bodies only publish annual activity reports (sometimes responding to a legal obligation). The quality of these reports varies and they do not always contain a detailed analytical overview of the challenges and the current situation of discrimination in the country. Sometimes, the independence of the report may also be questioned. This can be the case for instance when equality bodies are financially dependent on, or overseen by, public authorities⁵⁰.

In around a third of Member States, equality bodies do publish independent reports regularly, both on their annual activity and on specific topics related to discrimination thanks to the data drawn from their surveys and the research they carry out or fund.

Resources and independence appear as the main issues hampering the production of reports by equality bodies. In a significant number of cases, resources are used in priority to assist victims, especially when there are legal obligations to treat complaints.

Good practice to improve the situation include devoting a separate part of the budget to reports and dedicating adequately qualified staff to this function.

2.2.2.3. Recommendations

In line with the Directives, equality bodies must be able to make recommendations on any discrimination issue. The Recommendation strengthens this advisory function by saying that equality bodies' 'recommendations' directed to public authorities, for instance on legislation, policy, procedure, programmes and practice, should be taken into account. Member States should also ensure that the authorities inform the equality body and publicly report on their subsequent actions⁵¹. This gives equality bodies the potential to play a prominent role in the definition of public policies.

The function of issuing recommendations goes hand in hand with the ability of equality bodies to gather data and produce qualitative assessments of the challenges and current situation in matters of discrimination, as the knowledge emerging from those functions will inform the recommendations they give.

Almost all equality bodies issue recommendations. Most of them issue general recommendations in their annual or thematic reports. In addition, they may produce ad hoc recommendations or opinions to public authorities on specific issues, during the policy-making or legislative process. Equality bodies generally report having the power to advise governments on the development, adoption and amendment of law and policy.

In some Member States, the 'recommendations' provision in the Directives has been interpreted as (also) covering individual recommendations to victims of discrimination⁵².

In practice, some equality bodies are very much involved in the public debate. Public authorities ask for their opinion, which is often followed-up in practice. In a number of

⁵⁰ On independence, see Part 3.1.

⁵¹ See Recommendation 1.1.2(10) of Chapter II.

⁵² On recommendations in individual cases, see Part 2.2.1.2.

instances, though, their lack of resources and independence or the unfriendly political climate in which they operate, may hamper the process. In a number of cases, equality bodies regret the absence of any response from the relevant public authorities or the fact that they are not engaged early enough in the policy-making or legislative process⁵³.

Good practice involves the early consultation of equality bodies during the policy-making process as well as establishing an obligation for public authorities to ask the advice of equality bodies and to report on how the bodies' recommendations were addressed.

In the context of the COVID-19 pandemic, existing patterns of discrimination have been brought to light and exacerbated⁵⁴. A significant number of equality bodies have used their advisory role to highlight the needs of vulnerable and discriminated groups and the necessity for everybody – e.g. public authorities, employers, media – to continue to respect human rights and non-discrimination legislation. These recommendations have taken the form of public statements, communications and letters to targeted audiences, public authority, private companies and media outlets.

2.2.2.4. Promotion

In the Directives, equality bodies are referred to as 'bodies for the promotion of equal treatment'. However, their role of promotion is not further detailed.

The Recommendation states that this role may include preventing discrimination by providing training, information, advice, guidance and support to duty bearers having obligations under the Directives, institutions and individuals, and raising public awareness of the bodies' existence, of the content of the existing anti-discrimination rules and of how to seek redress⁵⁵.

This role could also encompass engaging in public debate, having a regular dialogue with public authorities, communicating with (representatives of) discriminated groups and stakeholders, and promoting good practice and positive actions⁵⁶.

Most equality bodies report being active in this field in one way or another. Relevant and interesting practices and initiatives have been reported, aiming both at raising awareness of the laws and the existence of the equality body, and at promoting diversity and equality, more generally. These include:

- providing training and/or educational sessions aimed at employers, public authorities, schools and real estate agencies;
- drafting and sharing guidelines, codes of conduct and brochures on specific fields and/or grounds of discrimination;
- using online information and awareness campaigns in the media, including making full use of social media and internet platforms to reach the largest audience;
- organising awareness-raising events and projects targeting the public;

⁵³ More on coordination and cooperation between equality bodies and public authorities, see Part 4.2.

⁵⁴ For more information regarding the impact of the pandemic on fundamental rights, see FRA Bulletin 6 2020 (<https://fra.europa.eu/en/publication/2020/covid19-rights-impact-november-1#TabPubRelated>).

⁵⁵ See Recommendation 1.1.2(11) of Chapter II.

⁵⁶ See Recommendation 1.1.2(12) of Chapter II.

- organising annual or ad hoc themed weeks or days (for example against racism or LGBTIQ-phobia);
- organising roundtables and sharing practices in specific fields and grounds⁵⁷;
- creating different annual awards to reward and promote actions by individuals or organisations in equality;
- cooperating and partnership with specialised civil society organisations, social partners and other relevant stakeholders in relation to all of the above activities;
- building capacity and advising.

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 engaging with public authorities and relevant stakeholders, including civil society organisations, social partners and private actors⁵⁸. For example, in around four Member States equality bodies report not having a function to organise training, advising and capacity-building activities for stakeholders (for instance employers) on meeting their obligations.

As put forward in the 2021 Application report⁵⁹, a major challenge remains: the underreporting of cases of discrimination and lack of awareness of victims of their rights and of existing mechanisms for receiving assistance or redress, including from equality bodies.

Different levels of engagement may be linked to limited resources, to the absence of an explicit obligation in the Directives for equality bodies 'to promote,' as well as to challenges on the independence of the equality body or to the difficult political and/or public climate in which they have to operate.

In a number of Member States, the law has imposed positive equality duties on public and/or private organisations. It requires them to be proactive in promoting equality and/or preventing discrimination. In this case, a good practice is to enable equality bodies to support and/or enforce these obligations.

Conclusion

Equality bodies can play an important role in collecting data and reporting on the current situation of discrimination and equality in their Member State, building an expertise in these fields, issuing recommendations, contributing to the enforcement of the law, and promoting both equality and their own role. This is (partly) acknowledged by the Directives and further detailed in the Recommendation.

Best practice to fulfil this role and to raise awareness include carrying out very regular surveys, engaging in research projects, publishing both annual and ad hoc reports and conducting regular promotion actions.

⁵⁷ EU wide exchanges of good practices involving equality bodies have taken place, including in the context of tackling anti-Muslim⁵⁷ and Roma⁵⁷ discrimination, with the support of the Equinet, the Commission and Member States.

⁵⁸ On coordination and cooperation, see Part 4.

⁵⁹ See Part 2.2.1 Defense of rights.

However, national practice still vary widely from one equality body to another and most equality bodies do not have sufficient resources or the independence to fully fulfil this role.

3. INDEPENDENCE AND EFFECTIVENESS

The effectiveness of equality bodies in fulfilling their role varies significantly depending not only on the range of their mandate and functions, but also on how they can put these into practice. The latter largely depends on the extent to which the equality bodies can operate independently, the resources allocated to them and the availability and accessibility of the services they offer.

3.1. Independence

The Directives do not refer to the independence of equality bodies as such but they state that they must provide ‘independent’ assistance to victims of discrimination, conduct ‘independent’ surveys and publish ‘independent’ reports.

The Recommendation invites Member States to consider measures to guarantee the independence of the equality bodies in carrying out their tasks⁶⁰. These concern:

- the organisation of those bodies;
- their place in the overall administrative structure;
- the allocation of their budget;
- the procedures for handling resources;
- in particular procedures for appointing and dismissing staff, including persons holding leadership positions;
- restrictions to the ability of staff, including persons holding leadership positions and board members, to engage in any action or activity incompatible with their duties.

Almost all equality bodies enjoy functional – *de jure* – independence; their independence is established by legal provisions. However, this does not always guarantee that they are also *de facto* independent. In practice, several factors come into play to influence the equality bodies’ independence and the independent exercise of their functions.

3.1.1. *Legal status and place in the administrative structure*

Most equality bodies are set up as a separate legal entity.

However, in a few Member States, they are part of a ministry. In such cases, their staff, resources, leadership and internal organisation are usually directly under the authority of the government. A strong leadership and specific internal rules are good practice to mitigate this structural weakness.

Legal personality is however not in itself a guarantee for independence as many other aspects come into play.

⁶⁰ See Recommendation 1.2.1 of Chapter II.

3.1.2. *Budgetary independence*

Even when the equality body is a separate legal entity, its budget (or at least part of it) is generally set by the government and/or the parliament. It may therefore be affected by budgetary cuts and changing political priorities.

In some Member States, the independence of the equality body is affected by their budgetary dependence. For example, when the approval of their annual budget by parliament is tied to the approval of their yearly activity report, or when the allocation of their budget by a ministry corresponds to pre-determined goals and directions set by the government.

The ability for the leadership of equality bodies to allocate and manage funds independently, once a budget has been awarded to them, is also important. This is the case in most Member States. However, in a number of equality bodies, the leadership has limited or no power in budgetary matters. This reduces considerably their ability to act independently.

In a few cases, when equality bodies form part of a ministry or of a larger multi-mandate body, they have no budget of their own and take no part in the budgetary decisions.

To mitigate negative effects for equality bodies, a good practice seems to be a multiannual budget set in law, managed independently by the leadership of the equality body. In the case of multi-mandate institutions, a separate budget or an adequate amount of funds could be earmarked for the equality mandate.

In addition, equality bodies could be entitled to raise funds, from within and outside the Member State, in a way which would not compromise their independence. For example, some have applied for and been awarded action grants under the call for proposals to promote the effective implementation of the principle of non-discrimination under the EU Rights, Equality and Citizenship (REC) programme⁶¹.

3.1.3. *Rules on leadership*

Rules on selection, appointment (or revocation) and accountability of the persons holding leadership positions are also key to the independence and effectiveness of an equality body. The quality, competence and integrity of those in leadership positions influence the internal culture and practice of equality bodies, and have the potential to counterbalance structural weaknesses.

In practice, the leadership of equality bodies is ensured either by a single head or by a board, the former being slightly more frequent than the latter.

The government – minister(s), prime minister or president – usually appoints the head of the equality body or some members of the board. A better practice in light of the equality body's independence, applied in a growing number of Member States, is to involve the parliament, with a (qualified) majority vote. The parliament could even be responsible for the appointment.

⁶¹ See Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020, OJ L 354, 28.12.2013, p. 62–72.

Other arrangements include appointments of board members by various organisations and/or institutions or involving these organisations in the selection procedure. While this ensures representation of various actors and opinions, there is a risk of appointed members' independence being affected.

A public call for applications is a good practice to ensure the largest and most inclusive pool of candidates. This is organised in some Member States.

Most of all, transparent and competence-based selection procedures are needed to ensure the qualification and legitimacy of the leadership. However, selection procedures do not yet necessarily fulfil both these criteria. . Good practice includes setting key requirements beforehand (e.g. expertise in human rights, discrimination and equality, and number of years of experience), not to leave room for too much discretion in the selection process, and to put in place legal remedies. This can avoid appointments to be controversial and to affect the (perceived) independence of the equality body.

To ensure the independence of the leadership once appointed, and prevent any conflict of interest, a number of Member States have also limited the ability of the leadership to engage in other professional and/or political activities.

Rules limiting the possibility to revoke the leadership of equality bodies (e.g. for health reasons or financial mismanagement) is also a good practice to ensure that it can exercise its functions independently.

3.1.4. *Accountability*

A significant number of equality bodies are accountable to the government, which can impair their independence. In recent years, though, a growing number of equality bodies have become accountable to the parliament. Other accountability mechanisms exist, for example when the equality body reports both to the government and to the parliament. In a minority of cases, the legislation does not contain any particular accountability provision at all or the equality bodies are accountable to audit authorities. The latter is considered as good practice.

When equality bodies are accountable to the parliament, it is usually through their annual report. A good practice is for the parliament to debate the report but not to subject it to any formal approval.

3.1.5. *Political context and public opinion*

In some countries, the national political context and/or the public opinion may be unfriendly to (some of) the activities of equality bodies. Controversial, non-transparent and/or political appointments for heads of equality bodies and unfair sanctions sometimes made the headlines.

In the majority of Member States, equality bodies appear to benefit from *de facto* independence, despite being dependent on the government for their budget, appointment of their leadership and/or accountability. However, legal safeguards should be in place to resist political interference if circumstances change. In the absence of such safeguards, political interference can have damaging consequences and negatively affect the effective functioning of the equality body.

The independence of equality bodies is vital in fully exercising their functions. Therefore, the Recommendation invites Member States to consider measures to guarantee this independence of equality bodies in carrying out their tasks.

Best practice includes setting up a separate legal entity, a budget protected by legal provisions, transparent and competency-based selection procedures for the leadership and limited sanctions/accountability.

A significant number of equality bodies do not meet all these criteria and are still dependent on the government. In practice, this is not an issue under most political circumstances (the equality body may still function quite independently in practice) but it could raise serious concerns in less consensual political climates.

3.2. Resources

Without appropriate financial and human resources, equality bodies cannot properly perform their duties.

While the Directives are silent in this field, the Recommendation⁶² invites Member States to provide each equality body with the human, technical and financial resources, premises and infrastructure necessary to perform its tasks and exercise its powers effectively, after taking into account the powers and tasks allocated.

It also states that 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. It also provides that the staff of the equality bodies must be sufficiently numerous and adequately qualified in terms of skills, knowledge and experience, to fulfil adequately and effectively each of the equality bodies' functions.

In practice, the level of funding and staffing varies considerably from one Member State to another. Data collection on the resources does not always allow an exact comparison. However, the differences are quite remarkable with some equality bodies declaring that they function with a budget below half a million euros and/or less than 5 staff members while others declare more than 50 staff members and a budget of several million euros. This can be partly explained by different population sizes and the cost of living (which affects salaries and other costs) but not in all cases. In fact, some small Member States have equality bodies with high levels of funding and staff, while bigger Member States do not.

Sometimes, the data on resources are not fully transparent. For instance, when the equality body is part of a ministry or of a multi-mandate body, it is not always possible to determine the exact level of funding and staffing that goes to the equality mandate.

When it comes to trends, most equality bodies have seen their budget and staff slowly increase in the last years, although, for a few of them, this increase came after major budget cuts. In a few cases, equality bodies have seen their budget heavily cut some years ago, sometimes almost by half. In other Member States, resources have slowly decreased. On the other hand, in a few Member States, the equality body's budget has sharply

⁶² See Recommendation 1.2.2(1) and (2) of Chapter II.

increased in recent years. Some have reported sharp increases following the publication of the Recommendation. Nevertheless, 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;
- engage in meaningful cooperation and coordination at different levels.

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. This is a major concern as it may lead to the inability of the equality body to deliver on its additional/new tasks, and/or to a global reduction of its effectiveness.

Some equality bodies also face specific issues, for example, when they do not have their own premises and rely on the government or regional authorities to provide them with offices. This may impair their ability to perform their duties independently vis-à-vis those authorities.

In a few Member States, equality bodies are not free to hire their own staff or to manage them, as this prerogative remains with the ministry or the entity they belong to (Ombudsperson or NHRI). This may have a negative impact on the level of expertise and loyalty of the staff and their dedication to the equality mandate.

In multi-mandate bodies, the resources devoted to the equality mandate are sometimes very low compared to the overall resources, which can prevent the effective functioning of the equality body. Some equality bodies have been able to benefit from additional resources (e.g. EU funding, contribution from national public authorities) to carry out specific projects, but this funding is generally limited in time and purpose.

Conclusion

Without appropriate financial and human resources, equality bodies cannot properly perform their duties.

Some good practice has been reported with infrastructure, staff and budget allowing equality bodies to adequately and effectively fulfil their different functions in all fields and grounds in line with the Recommendation.

Trends in funding and resources are rather positive. However, in absolute numbers, the level of resources is a major source of concern. Most equality bodies consider their resources inadequate – in terms of funding, number of staff and/or skill set of staff. Another major concern is the attribution of new tasks without additional resources that may jeopardize the global effectiveness of an equality body.

3.3. Complaint submission, access and accessibility

To fulfil their role in promoting equality and in assisting victims of discrimination, the public needs to know about the services provided by the equality bodies and those services need to be easily accessible. This is even truer in a context where those most at risk of discrimination face barriers in reporting their case⁶³, in part because of the potential costs and complexity of the procedure.

While the Directives do not contain rules on accessibility, the Recommendation promotes good practice on access and accessibility⁶⁴:

- complaint submission via a free and simple procedure, orally, in written form and online, in a language of the complainant's choosing which is common in the Member State where the equality body is located;
- confidentiality for witnesses, whistle-blowers and, to the extent possible, for complainants;
- easy access to all services⁶⁵ for all, in particular accessibility for people with disabilities;
- local/regional offices or local/regional presence of the equality body where necessary for geographical or other reasons;
- sufficient resources to raise awareness about the existence of the equality body and its role in assisting victims.

3.3.1. *Complaint submission*

To help victims exercise their rights and report instances of discrimination, the procedure to contact equality bodies and submit complaints should be as simple as possible, allowing for different means of submission in languages ‘common in the Member State where the equality body is located.’ It should entail no cost.

Data show that, in almost all Member States, complaints can be made orally (by phone or face-to-face), in written form or online, in line with the Recommendation. In one Member State, though, making a complaint online is not possible. In a few Member States, making a complaint by phone is not an option. Besides, most equality bodies declare receiving complaints in languages other than the official language(s) of their country.

However, no comprehensive data are currently available on the costs and complexity of the different procedures in each Member State.

3.3.2. *Physical presence across the territory*

Good access to equality bodies also has a physical dimension, determined by the location of the main office, its visibility and whether there are local and/or regional representations.

⁶³ See Chapter 2.2.1 ‘Defence of rights’ of the 2021 Application report.

⁶⁴ See Recommendation 1.2.3 of Chapter II.

⁶⁵ Namely, easy access to the equality body’s physical premises, their information and communication including information technologies, and services and products such as documents and audiovisual material or meetings and events open or provided to the public.

In around a third of Member States, the equality body's main premises are reported not to be visible or open to the public.

Local or regional offices or presence are considered a good practice, where this is necessary for geographical or other reasons, as they can bring equality bodies closer to the individuals, offer face-to-face contact and ensure local outreach and visibility. They are key to overcoming high levels of underreporting by victims.

Around half of Member States offer a local or regional presence in various set-ups. Some equality bodies have a few local offices spread across the national territory. Others have secured a local presence through other bodies such as non-governmental organisations which represent them and provide some of their services. Some equality bodies rather organise local outreach activities. However, equality bodies in a few Member States have declared that their local presence had decreased in the recent years due to insufficient resources.

The physical presence of equality bodies can appear less and less necessary in a time of digitalisation. Digitalisation is essential to reach the largest population and specific groups across the whole territory – especially in the context of crises, such as the COVID-19 pandemic. However, some people, especially from vulnerable and discriminated groups, have limited IT-literacy and/or access to digital tools⁶⁶. This is why physical presence remains crucial to reach the whole population.

3.3.3. *Accommodate and reflect diversity*

The services provided for by equality bodies must be equally available to all, whatever their personal characteristics. To be as inclusive as possible and to improve trust, it is important that the equality body's staff reflects the diversity that exists in society. People from vulnerable and discriminated groups should also be involved in the work and activities the equality bodies undertake.

Equal access and accessibility are particularly important for people with disabilities. It is, for instance, essential that the premises of the equality bodies are physically accessible for people with mobility impairment. Similarly, their online material and promotion campaigns must be accessible, among others, for people with visual or hearing impairments.

Adaptations to cater for diversity can also include taking into account and accommodating other personal characteristics such as literacy issues in written procedures, scheduling issues for people with caring responsibilities, transportation

⁶⁶ According to the European Disability Forum and Age Platform Europe, the digital divide (in terms of digital literacy and access to IT tools) affects mainly the elderly and people with disabilities. In 2015, one in three persons with disabilities has never used the Internet, which represents 54% of those who have never been online. Besides, more than 69% of people who lack basic digital skills are aged over 55 years (<https://ec.europa.eu/futurium/en/content/european-disability-forum-recommendations-inclusive-digital-single-market>).

Roma communities are also affected by the digital divide, as evidenced by the very difficult access to online schooling during the pandemic (<https://fra.europa.eu/en/publication/2020/covid19-rights-impact-september-1>), although data needs to be further developed in this field (https://ec.europa.eu/info/sites/info/files/portfolio_of_indicators_en.pdf)

For more info on the digital inclusion policy of the Commission, see <https://ec.europa.eu/digital-single-market/en/policies/digital-inclusion-and-web-accessibility>

issues linked to costs or distance and translation needs when people do not speak a language commonly used in the Member State where the equality body is situated.

Data currently available on the accommodation for people with disabilities and adaptations to cater for diversity by equality bodies are not sufficient to describe the situation on the ground in detail. In general, though, it appears that 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.

3.3.4. *Awareness of the existence of the equality body*

The Recommendation invites Member States to provide ‘sufficient budget and resources to equality bodies to enable them to carry out effective awareness-raising aimed at informing the public of their existence and of the possibility to submit complaints about discrimination.’

Awareness of the existence and role of equality bodies is a prerequisite for people to make use of the protection and services those bodies offer. FRA data from 2017 do not present a rosy picture. For instance, 71% of respondents from minority ethnic groups were not aware of any organisation that offers support or advice to discrimination victims and 62% did not recognise the name of any equality body in their country of residence⁶⁷. There was a better awareness of some other groups at risk of discrimination such as lesbian, gay or bisexual (LGB) respondents with about 40% not knowing that their country has an equality body⁶⁸. Awareness among the general population of the existence of at least one equality body in their country – which includes bodies that cover racial or ethnic origin, or gender as grounds of discrimination – was also relatively high (61%)⁶⁹.

Across discrimination grounds, the general population does not seem inclined to report their case to an equality body or to an Ombudsperson. According to the 2019 Eurobarometer, only 12% said that, if discriminated, they would prefer to report their case to such a body⁷⁰. This result was even worse compared to the 2015 Eurobarometer, where 17% said they would prefer to report it to their national equality body⁷². The reasons for this result, although not mentioned in the Eurobarometer, include a lack of awareness of the existence of the equality body⁷³.

As underlined in the 2021 Application report⁷⁴, resources and efforts are therefore 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

⁶⁷ Second EU Minorities and Discrimination survey (EU MIDIS II). Main results, 2017, at: <https://fra.europa.eu/en/publication/2017/second-european-union-minorities-and-discrimination-survey-main-results>.

⁶⁸ FRA 2019 survey on LGBTI people, at: <https://fra.europa.eu/en/project/2018/eu-lgbti-survey-ii>

⁶⁹ FRA’s submission.

⁷⁰ Eurobarometer on discrimination in the EU 2019, at: <https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2251>

⁷¹ 35% would prefer to report this to the police while 20% prefer a friend or family member for example

⁷² Eurobarometer on discrimination in the EU 2015, factsheet, at :

https://ec.europa.eu/info/sites/info/files/factsheet_eurobarometer_fundamental_rights_2015_en.pdf

⁷³ For more on the reasons of underreporting, see the 2021 Application report 2.2.1 Defence of rights

⁷⁴ See Chapter 2.2.1 on ‘Defence of rights’ and Chapter 2.3.1 on ‘Information’.

people and groups particularly at risk of discrimination. Together with other factors, such as visibility, availability, accessibility and trust, awareness of equality bodies is crucial for addressing the issue of underreporting.

Conclusion

Ensuring available and accessible assistance is key to effectively protecting victims of discrimination, in particular people with disabilities, and to overcoming the current underreporting of discrimination cases.

Good practices in line with the Recommendation include simple and free complaint submission, and services that are digitally and physically accessible, have outreach to citizens from the whole territory, are well-known to the public and the victims, and designed to accommodate people with disabilities and to adapt to all people.

Some of the recommendations to ensure easily available support to victims are applied in almost all Member States (e.g. the various means to submit a complaint). However, additional efforts should be made to cater for the victims' diverse needs, to provide accommodation for people with disabilities, and to bring the equality bodies closer to all through physical presence and outreach to people across the territory, where this is necessary. In addition, increased efforts and resources would allow for a better awareness raising about the existence of equality bodies and the assistance and protection that they afford.

4. COORDINATION AND COOPERATION

Equality bodies are not supposed to operate in isolation. Enabling equality bodies to regularly coordinate and cooperate at different levels, on a long-term basis, is key for their good functioning and for the effective exercise of their tasks. It is also key for mutual learning, coherence and consistency and it may broaden the outreach and impact of their work.

The Gender Equality Directives in employment⁷⁵ and self-employment⁷⁶ are the only directives containing specific obligations in this field. They provide that Member States must ensure that equality bodies exchange information with corresponding European bodies, such as EIGE.

The Recommendation encourages Member States to enable coordination and cooperation at different levels such as between (and within) equality bodies, with national authorities and with relevant stakeholders, including at European and international levels⁷⁷.

4.1. Coordination and collaboration between (and within) equality bodies

Firstly, coordination and cooperation should take place between and within equality bodies at national level. Mechanisms for coordination and cooperation help to ensure that non-discrimination principles are applied consistently.

⁷⁵ Article 20(2)(d).

⁷⁶ Article 11(2)(d).

⁷⁷ See Recommendation 1.3. of Chapter II.

The setup of clear and effective mechanisms for coordination and cooperation is particularly important in Member States where several equality bodies operate and where local or regional offices have been established⁷⁸. Coordination and cooperation are even more essential when equality bodies fall under different levels of governance, such as in federal states⁷⁹. It is also needed to prevent different treatment of victims of discrimination depending on the sector concerned (for instance in the private versus the public sector, or in employment versus service provisions).

Secondly, cooperation between equality bodies is encouraged at EU level. The Equinet, which is supported by the Commission, plays a key role in this regard. In this network, national equality bodies regularly meet at EU level to ensure a coherent and effective implementation of the Directives on the ground. More particularly, the network organises capacity-building events and ensures that information and knowledge flow efficiently between its members, for instance by organising seminars and workshops⁸⁰. Recent results of this cooperation and networking include a project developing indicators⁸¹ to measure compliance with standards for equality bodies and a study on the role equality bodies can play in monitoring the equality impact of artificial intelligence⁸². The work of Equinet also contributes to law and policy-making at national and EU level, and raises public awareness on issues related to equality and non-discrimination. The network regularly issues publications, launches campaigns and shares concerns and good practice, including in response to crises, such as the COVID-19 pandemic⁸³.

Most Equinet publications are produced using surveys sent to the whole membership, which helps to ensure precious comparable data on key issues. Moreover, equality bodies use the network to gather comparative information regarding equality issues and how the legislation/policies have been applied to different situations. Many of these requests for information concern specific cases encountered by equality bodies, where the responses from other equality bodies help them to find a coherent application of EU equality law.

4.2. Cooperation with public authorities

The Recommendation encourages national authorities to engage in dialogue with equality bodies including by ensuring their timely and transparent consultation on policy and legislative proposals related to the equality bodies' mandate. The latter is an important aspect of the equality bodies' advisory function. As pointed out in the chapter above⁸⁴, Member States should ensure that their public authorities take account of the equality bodies' 'recommendations' addressed to them. As some equality bodies gather evidence and conduct investigations in addition to supporting victims and promoting equal treatment more generally, their cooperation with public inspectorates or other public bodies, such as labour inspectorates⁸⁵ or statistical offices is important, too.

Good practice has been reported to support dialogue with public authorities, including:

⁷⁸ See Part 3.3.2.

⁷⁹ In one Member State, a recent decision has been taken to decentralise the equality body.

⁸⁰ See: <https://equineteurope.org/equinet-at-a-glance/equinet-activities/page/2/>

⁸¹ See: <https://equineteurope.org/what-are-equality-bodies/standards-for-equality-bodies/>

⁸² See: https://equineteurope.org/wp-content/uploads/2020/06/ai_report_digital.pdf

⁸³ See: <https://equineteurope.org/covid-19-response/>

⁸⁴ See Part 2.2.2.3.

⁸⁵ On strengthening equality bodies' action by establishing a close cooperation and coordination with labour inspectorates, see, for instance, Recommendation 2014/124/EU of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, OJ L 69, 8.3.2014.

- an advisory function provided for in law;
- equality bodies receiving regular invitations to review new legislation or amendments to legislation;
- inclusion of equality bodies in policy working groups;
- organisation of discussions with civil servants to see how they best engage with equality bodies;
- setting up of a dedicated board to enable information sharing;
- equality bodies advising governmental bodies on how to better include equality in their employment practices;
- appointment of staff members engaging in relations with parliament;
- presentation – provided for by law – of equality bodies annual reports to parliament.

However, in some Member States, equality bodies report not having a function to participate in advocacy work at national level. Some equality bodies are also facing difficulties in accessing legislative and policy fora and creating working relationships with legislators and policy makers.

Another challenge is to engage with different state actors without undermining the independence of the equality body, e.g. not to be seen as developing government policies or to take ‘orders’ from the government. This challenge can be overcome by Member States putting in place processes and guarantees to ensure the independence of equality bodies⁸⁶.

In several Member States, national equality bodies are operating in a difficult political context or in a situation of political disinterest. Such a climate is prone to weaken the voice of equality bodies and, therefore, to hinder effective dialogue and cooperation with the authorities, putting barriers to the equality bodies’ possible impact including when it comes to their advice on new policy and legislative proposals.

4.3. Cooperation with other relevant stakeholders

Member States should also enable equality bodies to collaborate at national, European and international level with relevant organisations. This allows to share expertise, create a common understanding on equality issues, network, engage in cross-border data collection, join forces in awareness-raising campaigns, etc.

Engagement with stakeholders, such as civil society organisations, social partners, academics or relevant private actors (including employers, real estate agencies and service providers) often only exists unofficially and informally. This is unfortunate given the good practice identified in more formal and structural arrangements of engagement, without these compromising the independence of the equality body.

For instance, in some Member States, that engagement consists of collaboration on data collection, joint publications, common campaigns or events, sharing of resource materials, the establishment of networks of equality organisations for instance to develop common anti-discrimination plans and strategies, or agreements with civil society organisations so they can act as (regional) contact points for the equality body.

⁸⁶ On independence, see Part 3.1.

Several Member States have encouraged equality bodies to set up specific structures to regularly enter into dialogue with stakeholders, to share advice and build up trust⁸⁷. For instance, several equality bodies have reported a formal engagement with civil society organisations. Some equality bodies also enter into such engagements without it being formalised. Only few equality bodies have mentioned formal forms of engagement with social partners. Some also do this work but do not have any process of social engagement. In general, relationships with the social partners are more likely to be with the trade unions than with business organisations.

In addition, equality bodies engage with other relevant public bodies at EU and international level. Besides regular collaboration with EU institutions and agencies (mainly FRA and EIGE), most equality bodies have developed important international cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Human Rights Treaty Bodies (e.g. the Committee on the Elimination of Racial Discrimination), the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE-ODIHR) and the Council of Europe (including the Commissioner for Human Rights and ECRI). Equinet is actively enabling these links at EU and international level. However, in some Member States, equality bodies reported not having a function to participate in advocacy work at EU or international level.

The Recommendation points to encouraging cooperation between equality bodies and the National Frameworks designated under Article 33(2) of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), National Roma Contact Points and the management authorities of the European Structural and Investment Funds.

Firstly, on cooperation with the National Frameworks under the UNCRPD⁸⁸, it is worth noting that most equality bodies holding an equality mandate on disability are part of the Frameworks as “Article 33(2)” bodies themselves.

Secondly, several equality bodies have made constructive contributions to developing and implementing national Roma integration strategies, including by cooperating with National Roma Contact Points⁸⁹. However, public authorities sometimes fail to involve them⁹⁰. To overcome this, the Commission, in its proposal for a Council Recommendation on Roma equality, inclusion and participation⁹¹, included a specific section⁹² encouraging Member States to support equality bodies in their cooperation with

⁸⁷ In some countries, stakeholders may not trust the equality body because of the perceived or effective lack of independence of some equality bodies.

⁸⁸ The UN Convention on the Rights of Persons with Disabilities, to which the EU and all Member States are party to, requires that State parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

⁸⁹ Member States are invited to implement national Roma integration strategies and to nominate national Roma contact points. See: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, An EU Framework for National Roma Integration Strategies up to 2020, Brussels, 5.4.2011, COM(2011) 173 final.

⁹⁰ See: https://equineteurope.org/wp-content/uploads/2020/07/Roma_Traveller-Inclusion_Equality-Bodies.pdf

⁹¹ Proposal for a Council Recommendation on Roma equality, inclusion and participation, Brussels, 7.10.2020 COM(2020) 621 final.

⁹² See Recommendations 14 and 15 of the proposal.

National Roma Contact Points and to enable them to be involved in the design, implementation, monitoring and evaluation of the national Roma strategic frameworks.

Thirdly, in the context of Cohesion policy⁹³, Member States and the Commission should ensure that equality between men and women, gender mainstreaming and the integration of a gender perspective are taken into account and promoted throughout the programmes cycle by taking advantage of the equality bodies' expertise.

The legal framework⁹⁴ includes equality bodies among the partners to be involved in the preparation of partnership agreements and throughout the preparation, implementation and evaluation of programmes, including through participation in monitoring committees. Furthermore, to ensure an effective and efficient use of EU funds, a list of enabling conditions and corresponding criteria for their assessment were proposed⁹⁵. Among the horizontal enabling conditions is the effective application and implementation of the EU Charter of Fundamental Rights, as well as of the UNCRPD. The thematic enabling condition related to Roma equality, inclusion and participation includes measures to prevent and eliminate segregation, and arrangements for ensuring effective partnership with all relevant stakeholders. The thematic enabling condition on gender equality calls for arrangements to ensure that equality bodies are properly involved in the design, implementation, monitoring and review of national strategic frameworks for gender equality. Equality bodies will therefore be essential in guaranteeing that equality is mainstreamed throughout EU funds' investments and coherent with national strategies, and should therefore be supported to fulfil this role in an effective manner.

A cross-cutting challenge affecting cooperation is time and resources. Often equality bodies find it hard to commit time to cooperation and coordination activities given their already stretched human resources, limited budget and growing workload.

Conclusion

A meaningful engagement in activities of cooperation and coordination at different levels allows equality bodies to effectively exercise their functions and benefits other bodies.

The Recommendation recognises this and encourages Member States to take the necessary measures to ensure that equality bodies coordinate and cooperate with a broad range of actors, such as other equality bodies, public authorities and other relevant organisations.

Good practice includes setting-up structured and formalised cooperation mechanisms, including with public authorities, civil society organisations and social partners; creating dedicated networks or boards e.g. for exchanging information and organising joint surveys or events; and providing by law for a regular advisory function on policy developments and legislation.

⁹³ Cohesion policy is the EU's strategy to promote and support the overall harmonious development of its Member States and regions (https://ec.europa.eu/regional_policy/index.cfm/en/policy/what/investment-policy/). (https://ec.europa.eu/regional_policy/index.cfm/en/policy/what/investment-policy/).

⁹⁴ The co-legislators reached on 1 December 2020 a political agreement on the Commission Proposal (COM(2018)375 final) for a Common Provisions Regulation (CPR) for the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument, Strasbourg, 29.5.2018, COM(2018) 375 final.

⁹⁵ See Annex III and Annex IV to the proposal for a CPR (see previous footnote).

All equality bodies engage in some form of cooperation and coordination, although to varying degrees of intensity and scope. All too often, such arrangements remain unofficial and informal.

Regular and effective cooperation and coordination of equality bodies require clear mechanisms of engagement, which are formal, structured and transparent. As a cross-cutting issue, interaction at different levels requires the necessary financial means, staff and institutional capacity and is therefore strongly determined by equality bodies having sufficient resources.

5. CONCLUSION

Many Member States have enabled their equality bodies to play a meaningful role, going beyond the minimum requirements of the Directives. Equality bodies in several Member States have managed to become important centres of expertise and support on discrimination matters, for individuals, organisations and public authorities. They actively promote equality and social change.

At the same time, the landscape of equality bodies in the EU is characterised by great diversity. Each equality body has its own traits in terms of mandate, functions, independence, effectiveness, availability, accessibility, practices of cooperation and collaboration, and political climate it is set in.

To some extent, this diversity reflects a variety in Member States' legal traditions and legal systems. It also reflects different levels of ambition and achievement in Member States pursuing the objectives of the Directives.

A key cross-cutting issue is the equality bodies' inadequacy of resources in terms of funding and staff. This issue is common to most equality bodies and impacts negatively on the execution of all their responsibilities and activities, including data collection.

Other important challenges include a limited awareness of the equality bodies' existence, limited independence (or insufficient legal safeguards to independence) and limited legal standing. In addition, not all equality bodies are competent for all the fields and grounds put forward by the Recommendation.

The Recommendation serves as a common standard for the effective and independent functioning of equality bodies. Four Member States have reported that they are currently working on legislative reforms⁹⁶ following the Recommendation.

However, a limited and unequal level of implementation of the Recommendation continues to hinder some equality bodies in effectively exercising their role. In practice, this leads to different levels of protection against discrimination across the EU.

⁹⁶ With the adoption of the 'Technical Support Instrument' by the Council and Parliament on 10 February 2021, Member States can now be supported when improving their institutional and administrative capacity, in particular to mainstream equality, including to improve the effectiveness of equality bodies (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2021:057:FULL&from=EN>)

Continuing to share good practice and/or guidance at EU level and raising awareness will be very beneficial. As already announced⁹⁷, the Commission will also assess whether to propose new legislation to strengthen the role of national equality bodies by 2022.

⁹⁷ In the 2020-2025 the EU anti-racism action plan 2020-2025 (https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en), the new EU Roma Strategic Framework of equality, inclusion and participation (https://ec.europa.eu/info/publications/new-eu-roma-strategic-framework-equality-inclusion-and-participation-full-package_en), and the LGBTIQ Equality Strategy 2020-2025 (https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en).