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COMMISSION RECOMMENDATION

of 22.6.2018

on standards for equality bodies

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) It follows from Article 2 of the Treaty on European Union that the Union is founded on the value of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.
- (2) Article 8 of the Treaty on the Functioning of the European Union provides that in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.
- (3) Article 21 of the Charter of Fundamental Rights of the European Union prohibits any discrimination on any grounds, such as sex, race, ethnic origin, religion or belief, disability, age or sexual orientation. Article 23 of the Charter enshrines the right to equality between men and women in all areas, including employment, work and pay. Its Article 26 recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. Moreover, the equality of everyone before the law is enshrined in Article 20 of the Charter of Fundamental Rights of the European Union.
- (4) Pursuant to Article 19 of the Treaty on the Functioning of the European 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, without prejudice to the other provisions of the Treaties and within the limits of the powers conferred upon the Union. Under Article 157(3) of the Treaty on the Functioning of the European Union, the European Parliament and the Council 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.
- (5) Several Directives on the prohibition of discrimination in the relevant areas have been adopted on the basis of these provisions.

- (6) Council Directive 2000/43/EC¹ prohibits direct and indirect discrimination based on racial or ethnic origin, including harassment. It applies to all persons, as regards both the public and private sectors, including public bodies, in relation to (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations; (e) social protection, including social security and healthcare; (f) social advantages; (g) education; and (h) access to and supply of goods and services which are available to the public, including housing.
- (7) Council Directive 2000/78/EC² prohibits direct or indirect discrimination, including harassment, on the grounds of religion or belief, disability, age or sexual orientation as regards employment, occupation and vocational training. It applies to all persons, as regards both the public and private sectors, including public bodies, in relation to points (a) — (d) cited in the previous recital.
- (8) Council Directive 2004/113/EC³ prohibits direct and indirect discrimination based on sex, including harassment and sexual harassment, in access to and supply of goods and services.
- (9) Recast Directive 2006/54/EC⁴ on sex equality provides for a prohibition against direct and indirect discrimination based on sex, including harassment and sexual harassment, in matters of access to employment, including promotion, and to vocational training, working conditions, including pay, and occupational social security schemes.
- (10) Directive 2010/41/EU⁵ prohibits direct and indirect discrimination, including harassment and sexual harassment, between men and women engaged in an activity in a self-employed capacity. The scope of the Directive covers all types of discrimination, but social protection and maternity benefits are specifically mentioned.
- (11) All the above-mentioned Directives (hereinafter ‘the equality Directives’) have been transposed by the Member States. The equality Directives, except for Directive 2000/78/EC, provide that Member States shall designate a body or bodies for the promotion, including the analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds covered by the respective Directives (hereinafter ‘equality bodies’). Accordingly, all Member States have established equality bodies.
- (12) The present Recommendation applies to the equality bodies set up under the above-mentioned equality Directives.

¹ Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

² Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

³ Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

⁴ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

⁵ Directive 2010/41/EU 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.

- (13) Where the equality Directives provide for such equality bodies to be established, they require Member States to ensure that the competences of these bodies include providing independent assistance to victims, conducting independent surveys concerning discrimination, publishing independent reports and making recommendations on any issue relating to such discrimination.
- (14) In addition, on 2 July 2008 the Commission adopted a proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation.⁶ The scope of the proposal covers (a) social protection, including social security and healthcare; (b) social advantages; (c) education; and (d) access to and supply of goods and services which are available to the public, including housing. Under the proposed Directive Member States are obliged to designate a body or bodies for equal treatment also in those areas, which may be the same bodies as those already established under the equality Directives. Although the proposal has not been adopted to date, Member States should be encouraged to designate equality bodies in those areas, since experience shows that designation of such bodies strengthens protection from discrimination.
- (15) Directives 2006/54/EC and 2010/41/EU in addition require Member States to ensure that the tasks of the equality bodies include exchange of information available with corresponding European bodies.
- (16) In a number of Member States, the mandate of equality bodies also covers hate crime and hate speech. This bears relevance, in particular, as regards ensuring effective implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, setting minimum standards for the criminalisation, prosecution and sanctioning of racist hate speech and crime.
- (17) In addition to their obligations under the Directives to establish equality bodies, most Member States have extended the mandate of their equality bodies' to encompass generally the scope of application of discrimination on the grounds of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation in the areas of employment and occupation, access to and supply of goods and services, education, social protection and social advantages, therefore covering the scope of Directive 2000/78/EC, as well as other areas.
- (18) The text of the equality Directives leaves a wide margin of discretion to Member States on the structure and functioning of equality bodies. This results in significant differences between the equality bodies established in the Member States, in terms of the bodies' mandate, competences, structures, resources and operational functioning. This in turn sometimes leads to unsatisfactory access to protection for citizens, a protection which is unequal from one Member State to another.⁷
- (19) Some Member States have founded more than one equality body, which requires creating clear mechanisms for their coordination and cooperation.

⁶ COM(2008)426 final.

⁷ See, among others, Human European Consultancy in partnership with the Ludwig Boltzmann Institute of Human Rights, October 2010, A Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC, and 2006/54/EC, page 177, and European Network of Equality Bodies, October 2012, Equality Bodies. Current Challenges.

- (20) In some Member States existing equality bodies have seen their mandate extended to the most diverse fields without an appropriate increase in resources. A number of equality bodies have even faced significant reductions in their budgets, which may result in weakening their capacities to carry out their tasks.⁸
- (21) Cases of equality bodies lacking independence and effectiveness, for instance due to external pressure or inadequate staffing have been pointed out in studies.⁹
- (22) In practice, independence could be affected in particular when the equality body is set up as part of a ministry taking instructions directly from the Government.
- (23) Equality bodies should not concentrate to a disproportionate extent on some tasks to the detriment of others.¹⁰
- (24) To help groups or individuals that are discriminated against to make use of their rights, equality bodies should also raise the general public's awareness of their existence, of the anti-discrimination rules in force and of ways to seek redress. For this purpose, it should be easy for all to access equality bodies, physically and online. Submission of complaints should also be facilitated by confidentiality and simple procedures which are free of charge.
- (25) To help ensure that equality bodies function properly and in an equivalent way across the Union, it appears appropriate to recommend Member States standards for equality bodies.
- (26) The need for standards for equality bodies was further underlined in the 2014 Joint report on the application of Directives 2000/43/EC and 2000/78/EC¹¹, the 2015 Report on the application of Directive 2004/113/EC¹² as well as in the evaluation report of the 2014 Pay Transparency Recommendation and the EU Action Plan 2017-2019 'Tackling the gender pay gap'¹³. In addition, the European Parliament called for equality bodies' standards in its 2015 resolution.¹⁴

⁸ Human European Consultancy, op.cit, pages 78, 125, 142, and European Network of Equality Bodies, op.cit., pages 8 and 17. See also European Network of Equality Bodies, Strategic Role of Equality Bodies, 2009, pages 43-44 and 52.

⁹ Human European Consultancy, op.cit., pages 70-145 and European Network of Equality Bodies, op.cit., pages 8 and 13-20.

¹⁰ European Commission, 2006, Catalysts for Change? Equality bodies according to Directive 2000/43/EC — existence, independence and effectiveness, page 57.

¹¹ Joint report on the application of Directives 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), COM(2014) 2 final.

¹² Report on the application of Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, COM(2015) 190 final. This need was also mentioned in the Midterm review of the EU framework for national Roma integration strategies, COM(2017) 458 final; by the Fundamental Rights Agency's Fundamental Rights Report of May 2017; in the Report on the implementation of Commission Recommendation on strengthening the principle of equal pay between men and women through transparency, COM(2017) 671 final.

¹³ Report on the implementation of Commission Recommendation on strengthening the principle of equal pay between men and women through transparency, op.cit.; EU Action Plan 2017-2019 Tackling the gender pay gap, COM(2017) 678 final.

¹⁴ European Parliament resolution of 8 October 2015 on the application of 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 (2014/2160(INI)).

- (27) Standards for equality bodies and human rights institutions have already been adopted by the United Nations¹⁵, the European Network of Equality Bodies¹⁶ and the Council of Europe¹⁷.
- (28) The present Recommendation is addressed to Member States. It aims to contribute to closing the gap in standards between equality bodies across Europe.
- (29) The Recommendation sets out standards regarding the mandate, independence, effectiveness, accessibility, and coordination of equality bodies and regarding access to them, with a view to ensuring that they can effectively perform their functions.
- (30) This Recommendation builds on the Commission's commitment to encourage and help Member States to improve their capacity to enforce Union legislation and provide remedies to ensure that individuals and groups that are discriminated against and protected by Union law can fully enjoy their rights, in line with the Communication 'EU law: Better results through better application'¹⁸. 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.
- (31) In the areas covered by Union competence, the standards for equality bodies also have to comply with the accessibility requirements enshrined in the United Nations Convention on the Rights of Persons with Disabilities. This Convention was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009, and is thus an integral part of the EU legal order prevailing over EU secondary law.
- (32) Directives 2000/43/EC, 2000/78/EC, 2004/113/EC and 2006/54/EC contain an obligation for Member States to communicate all available information on their application so that the Commission can draft a report assessing of the measures they have taken under the relevant Directives. The communication is to take place within certain pre-established intervals¹⁹ in order to enable the Commission to adopt and publish the report. Including in that communication information on the Member States' compliance with the present Recommendation would enable an assessment of its impact.
- (33) At Union level, the present Recommendation is without prejudice to the principles of national procedural law and the legal traditions of the Member States. It does not entail an extension of the Union's powers as defined by the Treaties and by secondary Union law.

¹⁵ Office of the High Commissioner for Human Rights (OHCHR), UN General Assembly Principles relating to the Status of National Institutions (The Paris Principles), Resolution 48/134, 20.12.1993, and the General Observations on the interpretation and implementation of these principles by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, in their wording of 21.2.2018.

¹⁶ European Network of Equality Bodies, 2016, Developing Standards for Equality Bodies. An Equinet Working Paper.

¹⁷ European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No2 revised on Equality Bodies to combat racism and intolerance at national level, CRI(2018) 06, adopted on 7.12.2017.

¹⁸ C/2016/8600.

¹⁹ Every four years under Directive 2006/54/EC and every five years under Directives 2000/43/EC, 2000/78/EC and 2004/113/EEC.

HAS ADOPTED THIS RECOMMENDATION:

Chapter I-PURPOSE AND SUBJECT MATTER

- (1) The purpose of this Recommendation is to set out measures that Member States may apply to help improve the equality bodies' independence and effectiveness, in particular as regards their capacity to ensure that individuals and groups that are discriminated against can fully enjoy their rights.
- (2) All Member States should ensure that equality bodies can carry out their functions, as set out in Directives 2000/43/EC, 2004/113/EC, 2006/54/EC and 2010/41/EU, in an independent and effective way.

Chapter II-RECOMMENDED MEASURES

1.1. Mandate of the equality bodies

1.1.1. Grounds and scope covered by the equality bodies' mandate

- (1) In addition to their obligations under Directives 2000/43/EC, 2004/113/EC, 2006/54/EC and 2010/41/EU as regards designating bodies for the promotion of equal treatment (hereinafter 'equality bodies'), all Member States should consider designating an equality body to cover the discrimination on the grounds of religion or belief, disability, age or sexual orientation within the scope of application of Directive 2000/78/EC.
- (2) Member States should consider extending the equality bodies' mandate so that it covers, for all prohibited grounds of discrimination, the areas of employment and occupation, access to and supply of goods and services, education, social protection and social advantages, including hate speech related to these grounds in these areas.
- (3) Both for single-mandate bodies and for equality bodies which have several mandates and/or deal with several grounds, equality bodies' internal structure should ensure a focus on each part of the mandate and a focus on each ground. This should be proportionate to the impact of the related ground of discrimination, and resources should be balanced appropriately.

1.1.2. Functions covered by the equality bodies' mandate

Independent assistance

- (1) Member States should take into consideration the following aspects of providing independent assistance to victims: receiving and handling individual or collective complaints; providing legal advice to victims, including in pursuing their complaints; engaging in activities of mediation and conciliation; representing complainants in court; and acting as *amicus curiae* or expert where required.
- (2) Member States should also take into consideration that independent assistance to victims can include granting equality bodies the possibility to engage or assist in litigation, in order to address structural and systematic discrimination in cases selected by the bodies themselves because of their abundance, their seriousness or their need for legal clarification. Such litigation could take place either in the body's own name or in the name of the victims or organisations representing the victims, in accordance with national procedural law.

- (3) Member States should also take into consideration that assistance to victims can include issuing recommendations or, where so authorised under national law, legally binding decisions in individual or collective cases of discrimination, as well as following up on them to ensure implementation.
- (4) Member States should make it possible for equality bodies to gather relevant evidence and information, in accordance with national law.
- (5) Where equality bodies have the legal capacity to take binding decisions, the Member State should also grant them the capacity to issue adequate, effective and proportionate sanctions.
- (6) The exercise of the powers conferred on equality bodies should be subject to appropriate safeguards, including, where relevant, effective judicial remedy and due process. In particular, the right to appeal before the courts against binding decisions of equality bodies, where they have the competence to take such decisions under national law, should be explicitly spelled out in national law.

Independent surveys

- (7) Member States should enable equality bodies to carry out independent surveys regularly. The scope and design of surveys should ensure the gathering of 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.

Independent reports

- (8) Member States should enable equality bodies to publish independent reports regularly and present them to the public institutions concerned, including the relevant national or regional governments and parliaments where appropriate. Their scope 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.
- (9) For the purpose of obtaining independent reports of high quality, Member States should enable equality bodies to conduct independent research. This could include collecting data in particular on the number of complaints per discrimination ground; the duration of administrative proceedings from submission of the complaint to the closure of the case; the outcome of administrative proceedings; and the number, duration and outcome of judicial cases in which the equality bodies are involved.

Recommendations of equality bodies

- (10) Member States should ensure that their public authorities take into account, to the extent possible, recommendations from equality bodies on legislation, policy, procedure, programmes and practice. It should be ensured that the public authorities inform the equality bodies of how the recommendations have been taken into account and make this information public.

Promotion of equality

- (11) To promote equality and diversity, Member States should enable equality bodies to contribute to preventing discrimination, in particular by providing training, information, advice, guidance and support to duty bearers having obligations under the equality Directives, institutions and individuals, and raising awareness both of the bodies' existence to the general public and of the content of the existing anti-discrimination rules and of how to seek redress.

- (12) For the same purpose, Member States should also enable equality bodies to engage in public debate, have a regular dialogue with public authorities, communicate with discriminated groups and stakeholders, and promote good practices and positive actions.

1.2. Independence and effectiveness

1.2.1. Independence

- (1) 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. Such consideration should be without prejudice to Member States' particular national organisational structures.
- (2) Member States should ensure that the staff of equality bodies, including persons holding leadership positions and board members, are prevented from engaging in any action incompatible with their duties and do not, during their terms of office, engage in any conflicting activity whether gainful or not.

1.2.2. Resources

- (1) 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. The resources allocated to equality bodies should take into account the competences and tasks allocated. 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.
- (2) Member States should ensure that the equality bodies' staff is sufficiently numerous and adequately qualified in terms of skills, knowledge and experience, to fulfil adequately and effectively each of the equality bodies' functions.
- (3) Member States should enable equality bodies to monitor effectively the execution of their own decisions as well as decisions by institutions, adjudicatory bodies and courts in relation to discrimination cases. To that effect, they should be promptly informed of such decisions and the measures taken to implement them.

1.2.3. Complaint submission, access and accessibility

- (1) Member States should ensure that it is possible to submit complaints to equality bodies orally, in written form and on-line, in a language of the complainant's choosing which is common in the Member State where the equality body is located.
- (2) Member States should ensure that the procedure to submit complaints to equality bodies is simple and free of charge.
- (3) Member States should provide for an obligation for equality bodies to offer confidentiality to witnesses and whistleblowers and, as far as possible, to complainants about discrimination.
- (4) Member States should ensure that it is easy for all persons to access the equality bodies' physical premises, their information and communication including information technologies, and services and products such as documents and audio-visual material or meetings and events open or provided to the public. They should in

particular be accessible for persons with disabilities, for whom in addition reasonable accommodation as defined in the United Nations Convention on the Rights of Persons with Disabilities should be provided, to ensure to persons with disabilities access to equality bodies on an equal basis with others.

- (5) Where this is necessary for geographical or other reasons, Member States should consider enabling equality bodies to establish local and/or regional offices of equality bodies or local and/or regional outreach initiatives for a regular temporary presence.
- (6) Member States should provide sufficient budget and resources to equality bodies to enable them to carry out effective awareness-raising aimed at informing the general public of their existence and of the possibility to submit complaints about discrimination.

1.3. Coordination and cooperation

- (1) Where several equality bodies exist in the same Member State, Member States should enable them to set up regular and effective coordination in order to ensure that they apply non-discrimination principles in a consistent way. Equality bodies should not concentrate to a disproportionate extent on some tasks to the detriment of other tasks. When awareness-raising activities are carried out, other competent bodies should be involved to the extent possible in order to fully inform the general public.
- (2) Member States should enable equality bodies to engage in dialogue and cooperate effectively with relevant national authorities and bodies in the same Member State. This also implies ensuring that equality bodies are consulted in good time and transparently on policy and legislative proposals and developments related to matters covered by their mandate.
- (3) Member States should grant equality bodies the capacity to collaborate at European and at international level with other equality bodies and other organisations, including via shared surveys.
- (4) Member States should enable equality bodies to cooperate with relevant bodies. These include the National Frameworks designated under Article 33(2) of the United Nations Convention on the Rights of Persons with Disabilities; National Roma Contact Points; civil society organisations; and, to ensure that funds are not distributed to projects flawed by discrimination, the managing authorities of European Structural and Investment Funds.

Chapter III-COMMUNICATION BY MEMBER STATES

Member States are invited to include information on how they take the present Recommendation into account in their communications on the application of Directives 2000/43/EC, 2000/78/EC, 2004/113/EC and 2006/54/EC.

Done at Brussels, 22.6.2018

For the Commission
Vera Jourová
Member of the Commission

