

# LEGISLATING FOR STRONGER, MORE EFFECTIVE EQUALITY BODIES

KEY ELEMENTS FOR AND  
EXPECTATIONS FROM FUTURE EU  
LEGISLATION ON EQUALITY BODIES



*Legislating for stronger, more effective equality bodies* is published by Equinet, European Network of Equality Bodies. Equinet brings together 47 organisations from across Europe which are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation.

**Equinet members:** Commissioner for the Protection from Discrimination, **Albania** | Austrian Disability Ombudsman, **Austria** | Ombud for Equal Treatment, **Austria** | Unia (Interfederal Centre for Equal Opportunities), **Belgium** | Institute for Equality between Women and Men, **Belgium** | Institution of Human Rights Ombudsman, **Bosnia and Herzegovina** | Commission for Protection against Discrimination, **Bulgaria** | Office of the Ombudsman, **Croatia** | Ombudsperson for Gender Equality, **Croatia** | Ombudswoman for Persons with Disabilities, **Croatia** | Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman), **Cyprus** | Office of the Public Defender of Rights, **Czech Republic** | Danish Institute for Human Rights, **Denmark** | Gender Equality and Equal Treatment Commissioner, **Estonia** | Ombudsman for Equality, **Finland** | Non-Discrimination Ombudsman, Finland | Defender of Rights, **France** | Public Defender (Ombudsman), **Georgia** | Federal Anti-Discrimination Agency, **Germany** | Greek Ombudsman, **Greece** | Office of the Commissioner for Fundamental Rights, **Hungary** | Irish Human Rights and Equality Commission, **Ireland** | National Office Against Racial Discrimination, **Italy** | Ombudsperson Institution, **Kosovo\*** | Office of the Ombudsman, **Latvia** | Office of the Equal Opportunities Ombudsperson, **Lithuania** | Centre for Equal Treatment, **Luxembourg** | National Commission for the Promotion of Equality, **Malta** | Commission for the Rights of Persons with Disability, **Malta** | Council on Preventing and Eliminating Discrimination and Ensuring Equality, **Moldova** | The Protector of Human Rights and Freedoms (Ombudsman), **Montenegro** | Netherlands Institute for Human Rights, **Netherlands** | Commission for Prevention and Protection against Discrimination, **North Macedonia** | Equality and Anti-Discrimination Ombud, **Norway** | Commissioner for Human Rights, **Poland** | Commission for Citizenship and Gender Equality, **Portugal** | Commission for Equality in Labour and Employment, **Portugal** | High Commission for Migration, **Portugal** | National Council for Combating Discrimination, **Romania** | Commissioner for Protection of Equality, **Serbia** | National Centre for Human Rights, **Slovakia** | Advocate of the Principle of Equality, **Slovenia** | Council for the Elimination of Ethnic or Racial Discrimination, **Spain** | Institute of Women and for Equal Opportunities, **Spain** | Equality Ombudsman, **Sweden** | Equality and Human Rights Commission, **UK – Great Britain** | Equality Commission for Northern Ireland, **UK – Northern Ireland**

*\*This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.*

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## Introduction

The past few months saw a major breakthrough in the recognition of and standards for equality bodies, with the [EU's anti-racism action plan](#) raising the **possibility of proposing EU-level legislation to strengthen the role and independence of equality bodies**. Since then, the [Disability](#), [LGBTIQ+](#) and [Roma](#) Equality Strategies have reiterated this commitment by the European Commission. This has been confirmed, albeit without providing further details, in the Commission's [report](#) on the application of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC), acknowledging the crucial role of equality bodies as well as the many well-documented issues and challenges when it comes to their mandate, powers, independence, and resources.

It is important that EU equality strategies and the Commission's report explicitly consider the possibility of proposing binding legislation to strengthen the role and independence of equality bodies. This demonstrates the high importance and potential that the European Commission attributes to these institutions in the anti-discrimination architecture, alongside civil society organisations.

Binding legislation on equality bodies would be a major step towards better implementation and enforcement of the EU's equal treatment legislation. In the absence of specific and detailed provisions for the independence, mandate, resources and operations of equality bodies, Member States currently have a wide margin to decide on the setting up and operations of these institutions. In practice, this has led to varying forms and levels of protection against discrimination and inequalities provided by equality bodies across Europe. This also manifests in some equality bodies around Europe facing significant challenges as regards their independence, mandate, powers and resources. The current situation endangers both the coherent implementation of EU equality legislation and strategies and the effective protection of the rights of all victims of discrimination across Europe.

## The Role of Equality Bodies and Challenges they face

The Commission's report on the Racial Equality Directive and the Employment Equality Directive recognises the crucial role of equality bodies by dedicating a distinct section in the report to them and also issuing a separate Staff Working Document on Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies.

Equality bodies are named as key partners in addressing the challenges identified in the report. It finds that *'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'*. The report explicitly refers to the important contributions of equality bodies through their powers to:

- provide accessible support to victims of discrimination (including through litigation and deciding cases);
- collect data and report on the current situation of discrimination and equality;
- build an expertise in these fields;
- issue recommendations;
- contribute to the enforcement of the law; and
- promote equality.

The report also reveals many issues and concerns. It finds that there are still gaps in the protection for some grounds and/or some fields in around a third of the Member States. Several equality bodies still lack the necessary litigation and/or decision-making powers to ensure effective support to victims of discrimination and even where the powers are there on paper, they are not always able to apply them to a significant extent in practice, partly because of insufficient resources. The level of resources is named as a major source of concern in general, where most equality bodies consider their resources inadequate – in terms of funding, number of staff and/or skill set of staff. This has repercussions for legal work, but also research, recommendations and policy work, and the accessibility of equality bodies where, for instance, they cannot set up the necessary regional and local offices. The report also confirms that a significant number of equality bodies are not fully independent and depend on the government.

Finally, the Commission notes that further strengthening of equality bodies' visibility, their role and their effective and independent functioning is crucial. They propose that *'continuing sharing of good practices at EU level and awareness-raising will also be very beneficial, including in the field of prevention. **In addition, and as already announced, the Commission will assess whether to propose new legislation to strengthen the role of national equality bodies by 2022**'*.

**This paper sets out Equinet's ambitions and proposals for EU legislation on equality bodies. It is based on and should be read together with the existing [European Commission](#) and [ECRI Recommendations](#) and prior [Equinet publication](#) and indicators (on [mandate](#) and on [independence](#)) on the issue. This is a working paper, striving to set a baseline for further discussions on future EU legislation on equality bodies.**



### 1. Create dedicated, ambitious and realistic legislation on equality bodies

There is a need for specific, dedicated and detailed legislation on equality bodies, given their horizontal importance for the implementation of all EU equality laws. Such dedicated EU legislation on equality bodies would ultimately ensure consistent and strong powers for and protection by equality bodies across all grounds and fields of discrimination, avoiding the risk of contributing to a perceived ‘hierarchy’ of discrimination grounds. It would also allow for sufficient detail in the legislation, something that the current regulatory model (with equality bodies mentioned in some, but not all grounds-based legislation) does not achieve.

EU legislation on equality bodies should be ambitious, based on the European Commission's 2018 Recommendation on standards for equality bodies, but providing further detail and compulsory and enforceable provisions on Member States’ obligations and guarantees.

Notwithstanding the need for a dedicated and ambitious legislation on equality bodies, Equinet also recognises and recalls the importance of developing a balanced proposal that is realistic and has a good chance of gathering the necessary support by the legislators.

### 2. Take into account the diversity of equality bodies

Any new EU legislation should take into account the diversity of equality bodies, as also noted by the European Commission’s report. This diversity is notable, among others, in their history, size, mandate, powers, structure and experience. While new EU legislation should aspire to achieve a certain convergence especially in fields such as the independence and effectiveness of equality bodies, it should recognise that **one size does not fit all** and different national

traditions and models could lead to equally valuable and effective outcomes. This will require a focus on the equality outcomes created by and with the contribution of equality bodies and a comprehensive monitoring system allowing for an in-depth analysis of the national context of the equality body.

### 3. Introduce provisions enabling robust monitoring

EU legislation on equality bodies should be enforceable and it should be coupled with the setting up of a robust monitoring system for its effective implementation in practice. This means, on the one hand, introducing provisions that are concrete and unambiguous enough to be enforceable. On the other hand, the legislation should foresee regular monitoring, based on factual data and reports from all interested stakeholders, including international and national, as well as governmental and non-governmental sources alongside the equality body itself. Finally, in order to ensure the consistency and comprehensiveness of the monitoring exercise, indicators should be developed for provisions included in the legislation. Equinet has already developed such indicators on the mandate and independence of equality bodies ([here](#) and [here](#)) that can serve as inspiration for this process.

### 4. Ensure that equality bodies have a comprehensive mandate

EU legislation on equality bodies should require that all prohibited grounds of discrimination listed in Article 19 of the TFEU (sex/gender, racial or ethnic origin, religion or belief, disability, age, sexual orientation) are covered by the mandate of a national equality body.

Furthermore, all fields of life should be covered by the mandate of equality bodies. This means covering all fields currently covered by the Racial Equality Directive<sup>1</sup>, but including also actions by the state or its organs, such as the police.

The mandate of equality bodies should cover both the public and private sectors.

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<sup>1</sup> Article 3 of the Racial Equality Directive provides:

*'1. Within the limits of the powers conferred upon the Community, this Directive shall apply 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;*

*(h) access to and supply of goods and services which are available to the public, including housing.'*

The mandate of equality bodies should cover all forms of discrimination (direct discrimination, indirect discrimination, harassment, sexual harassment and instruction to discriminate) as well as victimisation and hate speech (hate speech is currently included in the mandate of around half of national equality bodies).

EU legislation on equality bodies should not be used to justify any regression or narrowing of the existing mandate of equality bodies at national level.

#### 5. Bolster equality bodies with adequate powers

EU legislation should require all equality bodies to hold powers to effectively promote and mainstream equality, such as conducting surveys, collecting equality data, monitoring, issuing reports and raising awareness.

EU legislation should guarantee that equality bodies can effectively use their power to make recommendations by ensuring that they are engaged in the legislative or policy-making process early enough and that their recommendations are responded to in an adequate manner.

EU legislation should require that all equality bodies have robust litigation powers (including for strategic litigation) with legal standing before the courts (in individual and collective complaints and ex officio) and/or authoritative decision-making powers with legally binding decisions and the capacity to issue effective, proportionate and dissuasive sanctions. If an equality body is vested with both functions, it is important to ensure a firewall between the parts of the institution carrying out these two functions. This is necessary to guarantee the impartiality in the decision-making function and it can also ensure that other forms of independent assistance, including litigation, are not suppressed by the imperative and workload of fulfilling the decision-making function.

EU legislation should guarantee that all equality bodies can effectively gather evidence in their procedure.

EU legislation on equality bodies should not be used to justify any regression or narrowing of the existing powers of equality bodies at national level.

#### 6. Coordinate and cooperate to ensure protection against discrimination and inequalities

EU legislation should guarantee that where an equality body is part of an institution with multiple mandates (for instance being also a National Human Rights Institution or an Ombud Institution), the equality body mandate receives adequate visibility, attention and resources (preferably with an own budget line). Without sufficient guarantees in this regard, other mandates of a multi-mandate institution could overshadow focused equality work, risking a lower level of protection against discrimination and inequalities.



Where multiple equality bodies exist in a country (for instance covering different grounds of discrimination), EU legislation should require that their powers, independence and resources are comparable and that they coordinate and cooperate closely with each other, including in cases of intersectional inequalities or discrimination.

#### 7. Reinforce equality bodies with full independence

Independence is a crucial precondition for the effective work of equality bodies in promoting equality, fighting discrimination and implementing EU equality legislation. It is necessary to establish and maintain trust in the institution from persons and groups at risk of discrimination and thereby contributes to combatting under-reporting of discrimination incidents; it allows the equality body to work without instructions or undue interference from the government or other actors; it allows the equality body to autonomously decide on and ensure the most effective use of its powers and resources; and it allows the equality body to use all its powers without fear of repercussions for the institution, its staff or equality issues in the country.

EU legislation should ensure that all equality bodies are separate legal entities and/or have their own legal personality.

EU legislation should introduce a regular monitoring system with clear indicators to evaluate the independence of equality bodies. These indicators should include elements of the national legal framework; the functioning of the equality body; the budget and resources; and the appointments to and dismissals from leadership positions. The [indicators](#) developed by Equinet can be used as inspiration in this regard.

#### 8. Equip equality bodies with adequate resources

EU legislation should provide a method for calculating a minimum adequate level of resources for equality bodies, covering staff, financial and technical assets enabling an effective performance of all functions of the body. Provisions should guarantee adequate additional resources in cases of attributing additional functions to the equality body.

All equality bodies should have adequate resources to be fully accessible to all members of the public, with particular attention to ensuring accessibility to the most vulnerable groups. This should include the ability of setting up local or regional offices unless geographical or other reasons render this unnecessary.

EU legislation should prohibit any disproportionate cuts to the resources of the equality body when compared with other public bodies.

EU legislation should introduce a regular monitoring system with clear indicators to evaluate the resources allocated to equality bodies.

## 9. Ensure close involvement of equality bodies and Equinet

Any discussions leading to the development of legislation on equality bodies should involve equality bodies and Equinet as their European network. Equinet has been publicly underlining the importance of developing standards for equality bodies and has been providing guidance on the necessary steps since 2016 when we published our [Working Paper on Developing Standards for Equality Bodies](#). Equality bodies themselves, and Equinet, are best placed to evaluate the current situation and point to the shortcomings where there is a need for further standards and guarantees.

# Equinet Member Equality Bodies



## ALBANIA

Commissioner for the Protection from Discrimination  
[www.kmd.al](http://www.kmd.al)

## AUSTRIA

Disability Ombudsman  
[www.behindertenanwalt.gv.at](http://www.behindertenanwalt.gv.at)

Ombud for Equal Treatment  
[www.gleichbehandlungsanwaltschaft.at](http://www.gleichbehandlungsanwaltschaft.at)

## BELGIUM

Unia (Interfederal Centre for Equal Opportunities)  
[www.unia.be](http://www.unia.be)

Institute for the Equality of Women and Men  
<http://igvm-iefh.belgium.be>

## BOSNIA AND HERZEGOVINA

Institution of Human Rights Ombudsman  
[www.ombudsmen.gov.ba](http://www.ombudsmen.gov.ba)

## BULGARIA

Commission for Protection against Discrimination  
[www.kzd-nondiscrimination.com](http://www.kzd-nondiscrimination.com)

## CROATIA

Office of the Ombudsman  
[www.ombudsman.hr](http://www.ombudsman.hr)

Ombudsperson for Gender Equality  
[www.prs.hr](http://www.prs.hr)

Ombudswoman for persons with disabilities  
[www.posi.hr](http://www.posi.hr)

## CYPRUS

Office of the Commissioner for Administration and the Protection of Human Rights (Ombudsman)  
[www.ombudsman.gov.cy](http://www.ombudsman.gov.cy)

## CZECH REPUBLIC

Office of the Public Defender of Rights  
[www.ochrance.cz](http://www.ochrance.cz)

## DENMARK

Danish Institute for Human Rights  
[www.humanrights.dk](http://www.humanrights.dk)

## ESTONIA

Gender Equality and Equal Treatment Commissioner  
[www.volinik.ee](http://www.volinik.ee)

## FINLAND

Ombudsman for Equality  
[www.tasa-arvo.fi](http://www.tasa-arvo.fi)

Non-Discrimination Ombudsman  
[www.syrjinta.fi/en/](http://www.syrjinta.fi/en/)

## FRANCE

Defender of Rights  
[www.defenseurdesdroits.fr](http://www.defenseurdesdroits.fr)

## GEORGIA

Public Defender (Ombudsman)  
[www.ombudsman.ge](http://www.ombudsman.ge)

## GERMANY

Federal Anti-Discrimination Agency  
[www.antidiskriminierungsstelle.de](http://www.antidiskriminierungsstelle.de)

## GREECE

Greek Ombudsman  
[www.synigoros.gr](http://www.synigoros.gr)

## HUNGARY

Office of the Commissioner for Fundamental Rights  
[www.ajbh.hu](http://www.ajbh.hu)

## IRELAND

Irish Human Rights and Equality Commission  
[www.ihrec.ie](http://www.ihrec.ie)

## ITALY

National Office against Racial Discrimination - UNAR  
[www.unar.it](http://www.unar.it)

## KOSOVO\*

Ombudsperson Institution  
[www.oik-rks.org](http://www.oik-rks.org)

## LATVIA

Office of the Ombudsman  
[www.tiesibsargs.lv](http://www.tiesibsargs.lv)

## LITHUANIA

Office of the Equal Opportunities Ombudsperson  
[www.lygybe.lt](http://www.lygybe.lt)

## LUXEMBOURG

Centre for Equal Treatment  
[www.cet.lu](http://www.cet.lu)

## MALTA

National Commission for the Promotion of Equality  
[www.equality.gov.mt](http://www.equality.gov.mt)

Commission for the Rights of Persons with Disabilities  
[www.crpdp.org.mt](http://www.crpdp.org.mt)

## MOLDOVA

Council on Preventing and Eliminating Discrimination and Ensuring Equality  
[www.egalitate.md](http://www.egalitate.md)

## MONTENEGRO

Protector of Human Rights and Freedoms of Montenegro (Ombudsman)  
<http://www.ombudsman.co.me/>

## NETHERLANDS

Netherlands Institute for Human Rights  
[www.mensenrechten.nl](http://www.mensenrechten.nl)

## NORTH MACEDONIA

Commission for Prevention and Protection against Discrimination  
[www.kzd.mk/mk/](http://www.kzd.mk/mk/)

## NORWAY

Equality and Anti-Discrimination Ombud  
[www.ldo.no](http://www.ldo.no)

## POLAND

Commissioner for Human Rights  
[www.rpo.gov.pl](http://www.rpo.gov.pl)

## PORTUGAL

Commission for Citizenship and Gender Equality  
[www.cig.gov.pt](http://www.cig.gov.pt)

Commission for Equality in Labour and Employment  
[www.cite.gov.pt](http://www.cite.gov.pt)

High Commission for Migration  
[www.acm.gov.pt](http://www.acm.gov.pt)

## ROMANIA

National Council for Combating Discrimination  
[www.cncd.org.ro](http://www.cncd.org.ro)

## SERBIA

Commission for the Protection of Equality  
[www.ravnopravnost.gov.rs](http://www.ravnopravnost.gov.rs)

## SLOVAKIA

National Centre for Human Rights  
[www.snslp.sk](http://www.snslp.sk)

## SLOVENIA

Advocate of the Principle of Equality  
[www.zagovornik.gov.si](http://www.zagovornik.gov.si)

## SPAIN

Council for the Elimination of Racial or Ethnic Discrimination  
[www.igualdadynodiscriminacion.msssi.es](http://www.igualdadynodiscriminacion.msssi.es)

Institute of Women and for Equal Opportunities  
[www.inmujer.es](http://www.inmujer.es)

## SWEDEN

Equality Ombudsman  
[www.do.se](http://www.do.se)

## UNITED KINGDOM - GREAT BRITAIN

Equality and Human Rights Commission  
[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

## UNITED KINGDOM - NORTHERN IRELAND

Equality Commission for Northern Ireland  
[www.equalityni.org](http://www.equalityni.org)

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