

## Strengthening the Role and Independence of Equality Bodies <sup>1</sup>

### ABSTRACT

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

Drawing from the literature on equality bodies from a range of European level sources, this study **examines and makes recommendations on the Commission's proposals for two substantially identical Directives on standards for equality bodies: COM(2022)689 final of 7.12.2022;<sup>2</sup> and COM(2022)688 final 7.12.2022.<sup>3</sup>**

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

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

Equality bodies are **key institutions for securing policy implementation in the field of equal treatment**. They contribute to significant and positive social change aligned with the EU values of equal treatment and

<sup>1</sup> Full study in English: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747189/IPOL\\_STU\(2023\)747189\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/747189/IPOL_STU(2023)747189_EN.pdf)

<sup>2</sup> Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC (2022/0401 (APP)), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0689>.

<sup>3</sup> Proposal for a Directive of the European Parliament and of the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU (2022/0400(COD)), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0688>.



non-discrimination, at: the **individual** level, for those who experience inequality; the **institutional** level, in relation to policymakers, employers, and service providers; and at the **societal** level, in public attitudes, and the perspectives of duty bearers, and rights holders.

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

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

There is an **uneven development** of equality bodies across the Member States and the potential of equality bodies has been trammelled by **limitations** in the provisions made for their institutional architecture, and for their independence, effectiveness, and accessibility.

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

**Independence** is relevant to the structure, establishment, organisation, and internal functioning of equality bodies. Key issues found in this regard, are inappropriate legal structure, inadequate processes for appointment of leadership, inappropriate systems of accountability, lack of budgetary and management autonomy for equality bodies, and the quality of their internal leadership.

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

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

The **legal basis** of a directive is an appropriate instrument to establish standards for equality bodies. It would not be useful for the directives to list equality bodies or to provide for ongoing modification of such a list; or to reference other institutions. It is recommended for the preamble (Recital 1) to identify equality bodies as champions for the equality and non-discrimination values of the EU. It would not be useful for the directives to further broaden the fields within which equality bodies operate.

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

- the **institutional architecture** of equality bodies, most effectively for multi-mandate bodies. However, Article 3(4) could be amended to strengthen this. The issues for multi-function bodies with a decision-making function are not adequately addressed and a different approach is recommended for Article 8 to allow for provision of this function by Member States rather than to require it, and to ensure the

decision-making function does not undermine the implementation of other functions. A further Article is recommended to ensure a focus on all grounds in multi-ground equality bodies.

- the **independence** of equality bodies, most usefully in relation to the legal status of and appointments to the equality body. However, more detail is recommended in relation to both issues, in amending Article 3(1) and Article 3(2). A more detailed Article is recommended to address issues of accountability.
- the **effectiveness** of equality bodies, valuably in addresses the issue of lack of resources in Article 4. There is significant progress made in addressing issues related to competences, but it is recommended that these provisions on competences be strengthened in relation to: promotion of equality (Article 5(b)); decision making (Article 8(3) and (4)); making recommendations on policy and legislation (Article 13) and on equality data (Article 14(13)); undertaking surveys and conducting research and studies (Article 14(4)); and undertaking self-evaluations (Article 15). In protecting the current potential of equality bodies, it is recommended that Article 9(4) and Article 6(4) be deleted.
- The **accessibility** of equality bodies, particularly in addressing awareness of the equality body and in relation to accessible premises and services. However, it is recommended that these provisions on be further strengthened with more detail (Article 11).

Provisions on common indicators for monitoring **implementation** of the Directives (Article 16), are valuable. It is recommended that their development would involve **Equinet**, the European network of equality bodies, and that further **indicators** be included on: multi-mandate bodies; multi-function equality bodies with a decision-making function; accountability systems; appointment systems; competences accorded; and accessibility.

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

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