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From:	Permanent Representatives Committee (Part 1)
To:	Council
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Subject:	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 <i>- General approach</i>

I. INTRODUCTION

On 7 December 2022, the Commission submitted to the Council a 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.

Under EU equality legislation, all Member States are required to designate “Equality Bodies” to combat discrimination based on racial or ethnic origin (Directive 2000/43/EC), as well as on the grounds of sex (Directive 2004/113/EC). Equality Bodies provide assistance to victims of discrimination, conduct independent surveys, publish reports, and make recommendations on matters relating to discrimination. Currently, the mandate and competences of Equality Bodies vary significantly between Member States. The proposed Directive aims to strengthen their role and independence, to set minimum standards for their functioning, and to extend their mandate to the matters covered by Directives 79/7/EEC and 2000/78/EC, which do not currently confer powers to Equality Bodies.

The proposal is based on Article 19(1) of the Treaty on the Functioning of the European Union (TFEU), which grants the EU competence to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The proposed Directive will be negotiated under the special legislative procedure foreseen in Article 19(1) TFEU, according to which the Council shall act unanimously after obtaining the consent of the European Parliament. The proposal was adopted by the Commission together with another proposal on standards for Equality Bodies, which covers two more Equality Directives and is based on Article 157 TFEU (ordinary legislative procedure).¹

The national parliaments of IT and PT and one of the two chambers of the CZ Parliament (Senate) submitted opinions on the Commission's proposal. The LT parliament also issued a resolution on the proposal.²

The European Economic and Social Committee adopted its opinion on 22 March 2023.³

The European Data Protection Supervisor issued its opinion on 2 February 2023.⁴

EE has maintained a parliamentary scrutiny reservation.

¹ See doc. 10038/23.

² No review of the proposal was required on the part of the Commission.

³ Doc. 8910/23.

⁴ Doc. 6296/23.

II. STATE OF PLAY IN THE COUNCIL

In the course of the examination of the proposal by the Working Party on Social Questions,⁵ the Presidency has revised the text extensively in order to resolve the concerns expressed by delegations. Many of the modifications introduced aim to accommodate the diversity and particularities of the national systems in place, all Member States having already set up Equality Bodies within the context of their respective legal and administrative frameworks.

The main changes include the following:

1. The concept of the independence of Equality Bodies in Article 3 has been clarified, especially as regards their organisational and internal structure, and the exercise of their various competences.
2. Changes were also made in Article 4 to ensure that Equality Bodies are provided with adequate resources while allowing sufficient flexibility to accommodate the different national contexts and systems in place.
3. For greater clarity, the Presidency has divided Article 8 into two articles, one devoted to “Inquiries” (Article 8) and the other devoted to “Opinions and decisions” (Article 8a).
4. The choices available to Member States in conferring powers of litigation to Equality Bodies in Article 9 have been revised in order to take into account the fact that the legal systems of the Member States vary greatly.

⁵ Meetings were held on 10 and 20 January, 7 February, 2 March, 20-21 March, 18-19 April, and 15 and 25 May 2023.

5. Concerning the mechanisms relating to monitoring and reporting referred to in Article 16, the current text clarifies the fact that the indicators shall be established by means of an implementing act to be adopted under the examination procedure. In addition, the revised text foresees a deadline (*24 months after the date of entry into force of the Directive*) within which the Commission shall adopt the implementing act, and clarifies the fact that the indicators will concern “the functioning of the equality bodies designated under the Directive” and not the practical effects of the Directive as such.
6. The transposition period has been changed to 36 months as opposed to 18 months in the Commission proposal.

III. THE PRESIDENCY COMPROMISE PROPOSAL

On 31 May, the Presidency presented a compromise text⁶ to Coreper, with a view to reaching a general approach at the EPSCO Council on 12 June 2023. A very large majority of delegations supported the Presidency’s text. One delegation requested changes to the provisions concerning monitoring and reporting (Recital 44 and Article 16), while another delegation expressed remaining concerns and entered a scrutiny reservation.

Aiming to secure a strong mandate and the widest possible support by delegations, the Presidency prepared a new compromise proposal, which was presented to Coreper on 7 June 2023.⁷ The Presidency reworded Article 8 concerning the powers of inquiry to be accorded to Equality Bodies, and introduced a new sentence in Article 16 on monitoring and reporting stating that the indicators on the functioning of Equality Bodies shall not be for the purpose of ranking or of issuing specific recommendations to individual Member States.

Almost all delegations were able to support the new compromise text and no delegation was opposed to it.

⁶ Doc. 9442/23.

⁷ Doc. 9539/23.

IV. CONCLUSION

The Council (EPSCO) is invited to reach a General Approach on the text as set out in the Annex to this note.

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 amending Directive 2000/43/EC and Directive 2004/113/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 19(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the consent of the European Parliament⁸,

Having regard to the opinion of the European Economic and Social Committee⁹,

⁸ OJ C , , p. .

⁹ OJ C , , p. .

Having regard to the opinion of the Committee of the Regions¹⁰,

Having regard to the opinion of the European Data Protection Supervisor¹¹,

Acting in accordance with a special legislative procedure,

Whereas:

¹⁰ OJ C , , p. .

¹¹ OJ C , , p. .

- (1) The Treaties and the Charter of Fundamental Rights of the European Union recognise the right to equality and the right to non-discrimination as essential values of the Union,¹² and the Union has already adopted several Directives on the prohibition of discrimination.
- (2) Pursuant to Article 19 (1) TFEU, 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.
- (3) The purpose of this Directive is to lay down minimum requirements for the functioning of equality bodies to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment as derived from Council Directives 79/7/EEC¹³, 2000/43/EC¹⁴, 2000/78/EC¹⁵ and 2004/113/EC.¹⁶
- (4) Directive 79/7/EEC prohibits discrimination based on sex, in matters of social security.
- (5) Directive 2000/43/EC prohibits discrimination based on racial or ethnic origin.
- (6) Directive 2000/78/EC prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment, occupation and vocational training.

¹² Articles 2 and 3 of the Treaty on European Union ('TEU'), Articles 8 and 10 of the Treaty on the Functioning of the European Union ('TFEU'), and Articles 21, 23 and 26 of the Charter

¹³ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.1.1979, p. 24).

¹⁴ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22).

¹⁵ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

¹⁶ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37).

- (7) Directive 2004/113/EC prohibits discrimination based on sex in access to and supply of goods and services.
- (8) Directives 2000/43/EC and 2004/113/EC require Member States to designate one or more bodies for the promotion of equal treatment, 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’). The Directives require Member States to ensure that the competences of equality 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.
- (9) Directives 2006/54/EC¹⁷ and 2010/41/EU¹⁸ of the European Parliament and of the Council also provide for the designation of equality bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex.
- (10) All Member States have established equality bodies pursuant to Directives 2000/43/EC and 2004/113/EC. A diverse system of equality bodies has been put in place, and good practices have emerged. However, many equality bodies face challenges, in particular concerning the resources, independence and powers necessary to perform their tasks.

¹⁷ 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 (OJ L 204, 26.7.2006, p. 23).

¹⁸ Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC (OJ L 180, 15.7.2010, p. 1).

- (11) Directives 2000/43/EC and 2004/113/EC leave a wide margin of discretion to Member States as regards the structure and functioning of equality bodies. As a result there are significant differences between equality bodies established in the Member States, in terms of the bodies' mandates, competences, structures, resources and operational functioning. This, in turn, means that protection against discrimination differs from one Member State to another.
- (12) Although Directives 79/7/EEC and 2000/78/EC do not require Member States to designate equality bodies to deal with the matters covered by those Directives, such bodies have competence for those matters in most Member States, where laid down in national law. However, that is not the case in all Member States, which leads to different levels of protection against discrimination as regards the matters covered by those Directives across the Union.
- (13) To ensure that equality bodies can effectively contribute to the enforcement of Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC by promoting equal treatment, preventing discrimination and offering assistance to all individuals and groups that are discriminated against to access justice across the Union, it is necessary to adopt minimum standards for the functioning of those bodies, and to extend their mandate to the matters covered by Directives 79/7/EEC and 2000/78/EC. The new standards take into account Commission Recommendation 2018/951¹⁹, drawing on some of its provisions and the approach recommended therein. They also draw on other relevant instruments, such as the General Policy Recommendation N°2²⁰ on equality bodies adopted by the European Commission against Racism and Intolerance (ECRI) and the Paris Principles²¹ adopted by the United Nations and applicable to national human rights institutions.

¹⁹ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies (OJ L 167, 4.7.2018, p. 28).

²⁰ ECRI General Policy Recommendation N°2 revised on Equality Bodies to combat racism and intolerance at national level - adopted on 13 June 1997 and revised on 7 December 2017.

²¹ Principles relating to the Status of National Institutions adopted by General Assembly resolution 48/134 of 20 December 1993.

- [(14) The same minimum standards for the functioning of equality bodies as regards the matters covered by Directives 2006/54/EC and 2010/41/EU are provided for in Directive (EU) .../... [*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 amending Directive 2006/54/EC and Directive 2010/41/EU*²²].
- (15) This Directive should apply to equality bodies' action as regards the matters covered by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. The standards should only concern the functioning of equality bodies and should not extend the material or personal scope of those Directives.
- (16) In promoting equal treatment, preventing discrimination, collecting data on discrimination and assisting victims of discrimination, equality bodies should pay particular attention to discrimination based on several of the grounds protected by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.
- (16a) (new) Member States should designate one or more bodies to exercise the competences laid down in this Directive. Member States may divide the competences between several equality bodies, for example by entrusting one body with prevention of discrimination, promotion of equal treatment and assistance to victims, and another with decision-making functions. This directive is without prejudice to the competences of labour inspectorates or other enforcement bodies, as well as the social partners.

²² COM (2022) 688.

- (17) Equality bodies can only effectively fulfil their role if they are able to act with complete independence without being subject to any external influence. For that purpose, Member States should take a number of measures that contribute to the independence of equality bodies. Equality bodies that exercise competences laid down in this Directive may be part of a ministry or another organisational entity, provided that their independence is ensured. While performing their tasks and exercising their competences, equality bodies should retain their independence in relation to any external influence, whether direct or indirect, by refraining from seeking or taking instructions from anybody. Equality bodies should be able to manage their own financial and other resources, including by selecting and managing their own staff, and be able to set their own priorities within the existing legal framework. Staff members holding a decision-making or managerial position, whether permanent or temporary, such as the head or deputy head of the equality body and, where applicable, members of the governing board, should be independent, qualified for their position, and selected through a transparent process. The transparency in this process can be ensured, for example by publishing vacancy notices publicly.
- (18) Member States should ensure that the internal structure, such as the internal organisation and processes, of equality bodies allows the independent, and where appropriate impartial, exercise of their various competences, by establishing appropriate safeguards where equality bodies have potentially conflicting tasks, especially when some of those tasks focus on support to alleged victims. Equality bodies should, in particular, act impartially while conducting an inquiry or assessing a case, especially when the equality body holds binding decision-making powers.
- (18a) Where the equality body is part of a multi-mandate body, such as an ombudsperson with a broader mandate or a national human rights institution, the internal structure of such a multi-mandate body should guarantee the effective exercise of the specific equality mandate.

- (19) Through their respective national budgetary processes, Member States should ensure that equality bodies receive sufficient resources as this is key to their effective functioning and the fulfilment of their tasks, including qualified staff, appropriate premises and infrastructure to carry out each of their tasks effectively, within a reasonable time or within the deadlines established by national law.
- (19a) It is important that the allocation of financial resources remains stable, is planned on a multi-annual basis, and allows equality bodies to cover costs that may be difficult to anticipate, such as in the event of increases in complaints, litigation costs and the use of automated systems. Devoting attention to the opportunities and risks presented by the use of automated systems, including artificial intelligence is key. In particular, equality bodies should be equipped with appropriate human and technical resources, notably, to enable them to use automated systems for their work on the one hand and to assess such systems as regards their compliance with non-discrimination rules on the other hand. Where the equality body is part of a multi-mandate body the resources necessary to carry out its equality mandate should be ensured.
- (20)
- (21) Equality bodies, alongside other actors, have a key role in the prevention of discrimination and the promotion of equality. To address the structural aspects of discrimination and to contribute to social change, equality bodies should be empowered to carry out activities to prevent discrimination on the grounds and in the fields covered by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC and to promote equal treatment. Such activities can include the sharing of good practice, positive action and equality mainstreaming among public and private entities, and providing them with relevant training, information, advice, guidance and support. It is also vital that equality bodies communicate with relevant stakeholders and engage in public debate.

- (22) Beyond prevention, a central task of equality bodies is to provide assistance to alleged victims of discrimination. This assistance should always include at least the provision of key information to complainants, including information as to whether the complaint will be closed or if there are grounds to pursue it further, unless the complaint was made anonymously. Member States are responsible for defining the modalities under which the equality body would inform the complainants, such as the timeframe of the process or procedural safeguards against repetitive or abusive complaints.
- (23) To ensure that all alleged victims are able to complain, it should be possible to submit complaints in various ways. According to Commission Recommendation 2018/951, the submission of complaints should be possible in a language of the complainant's choosing which is common in the Member State where the equality body is located. To address one of the causes of underreporting, namely fear of reprisals, equality bodies should inform alleged victims about the confidentiality rules applicable.
- (24) To offer a possibility for a quick, affordable, out of court resolution of disputes, Member States should provide for the possibility for parties to seek alternative dispute resolution, as offered by the equality body itself or by another existing competent entity. In case such a process ends without a resolution, or if the outcome is rejected by any of the parties, the parties should not be prevented from acting in court. Member States should define the modalities of the alternative dispute resolution process according to national law and practice.
- (25) Where the equality bodies suspect a possible violation of the principle of equal treatment laid down by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC or 2004/113/EC, they should be able to conduct inquiries, notably following a complaint or on their own initiative.

- (26) Evidence is key in determining whether discrimination has taken place and it is often not in the hands of the alleged victim. Equality bodies should therefore be able to access the information necessary to establish whether discrimination has occurred and to cooperate with other competent bodies, which can include the relevant public services, such as labour inspectorates or education inspectorates, and the social partners. Member States should establish an appropriate framework for the exercise of this competence, in accordance with national rules and procedures. Member States may entrust another competent body, in accordance with national law and practice, with conducting inquiries. In order to avoid a duplication of processes, such a competent body should provide the equality body, upon its request, with information on the results of the inquiry when the process is completed.
- (27) On the basis of the evidence gathered, equality bodies should provide their assessment of the complaint. Member States should determine the legal nature of this assessment that can be a non-binding opinion or a binding decision. Both should state the reasons for the assessment and include, where appropriate, measures to remedy any breach of the principle of equal treatment found and to prevent further occurrences, while taking into account the different nature of opinions and decisions. To ensure the effectiveness of equality bodies' work, Member States should adopt appropriate mechanisms for the follow-up of opinions and the enforcement of decisions.
- (28) To raise awareness of their work and equality law, equality bodies should be able to publish at least the summaries of those of their opinions and decisions which they consider to be of particular relevance.

- (29) Equality bodies should have the right to act in court proceedings in order to contribute to ensuring the respect of the principle of equal treatment laid down in Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. Such court proceedings may take place in courts or equivalent bodies handling matters of equal treatment and discrimination, in accordance with national law and practice. National law and practice on the admissibility of actions, and in particular any condition of legitimate interest, cannot be applied in a way that is liable to undermine the effectiveness of the equality bodies' right to act. The powers to conduct inquiries and to take decisions, and the right to act in court proceedings given to equality bodies by this Directive will facilitate the practical implementation of the current provisions of Directives 2000/43/EC, 2000/78/EC and 2004/113/EC on the burden of proof and defence of rights. Under the conditions provided for in this Directive, equality bodies will be able to establish facts from which it may be presumed that there has been direct or indirect discrimination, thereby fulfilling the conditions provided for in Article 8 of Directive 2000/43/EC, Article 10 of Directive 2000/78/EC and Article 9 of Directive 2004/113/EC. The support provided by equality bodies will therefore facilitate access to justice for victims. Equality bodies may select the cases they decide to pursue in court proceedings so as to contribute to the proper interpretation and application of equal treatment legislation.
- (29a) When equality bodies have the power to take binding decisions, they should be empowered to act as a party in proceedings on the enforcement or judicial review of those decisions. Equality bodies should also be able to submit observations to the courts, for example by providing their expert opinion, in accordance with national law and practice.

- (29b) The right of equality bodies to act in court proceedings can take different forms in different national legal frameworks. Therefore, Member States should choose, in accordance with national law and practice, one or more of the following actions: acting on behalf of one or several victims, or in support of one or several victims, or initiating court proceedings in its own name.
- (30) Equality bodies may act on behalf or in support of victims, where applicable with their approval, allowing them to access justice where procedural and financial barriers or a fear of victimisation often deters victims. When acting on behalf of one or several victims, equality bodies represent the victims before the court. When acting in support of one or several victims, equality bodies take part in court proceedings initiated by the victims, to support the claim.
- (31) Some instances of discrimination are difficult to combat because there is no complainant pursuing the case themselves. In its judgment in Case C-54/07 (*Feryn*)²³, which was brought by an equality body in its own name, the Court of Justice confirmed that discrimination can be established even in the absence of an identified victim. Therefore, in order to combat discrimination in the public interest, Member States may also provide that equality bodies should be able to act in their own name in certain cases of discrimination, for example due to their abundance or seriousness, or the need for legal clarification, each of which may imply that the discrimination is structural or systematic in nature. Member States may, in accordance with national law and practice, provide that such cases of discrimination require an identified person or entity as a respondent.

(32)

(33)

²³ Judgment of 10 July 2008 in *Feryn* (C-54/07, ECLI:EU:C:2008:397).

- (34) To ensure the respect of individual rights, Member States should frame the powers of equality bodies with appropriate procedural safeguards, ensuring that key principles such as the right of defence and the right to judicial review of binding decisions are appropriately protected. Member States may, for example, offer confidentiality to witnesses and whistle-blowers as an important way of encouraging the reporting of instances of discrimination.
- (35) The provisions on the equality bodies' right to act in court proceedings do not alter the rights of victims and of associations, organisations or other legal entities that enforce the rights of victims which have, in accordance with the criteria laid down by national law, a legitimate interest in ensuring that Directives 2000/43/EC, 2000/78/EC and 2004/113/EC are complied with, as laid down in those Directives, including when these have engaged in any judicial and/or administrative procedures.
- (36) The effectiveness of equality bodies' work also depends on giving groups at risk of discrimination full access to their services. In a survey conducted by the European Union Fundamental Rights Agency²⁴, 71% of members of ethnic or immigrant minority groups reported to be unaware of any organisation offering support or advice to victims of discrimination. A key step to support this access is for Member States to ensure that people know their rights and are aware of the existence of and services offered by equality bodies. This is particularly important for disadvantaged groups and groups whose access to that information can be hindered, for example by their precarious economic status, age, disability, literacy, nationality or residence status or their lack of access to online tools.

²⁴ FRA EU-MIDIS II Survey.

- (37) Access to equality bodies' services and publications on an equal basis for all should be guaranteed. For that purpose, potential barriers to access to equality bodies' services should be identified and addressed. Services should be free of charge for complainants. Member States should also, without prejudice to the autonomy of regional and local authorities, make sure that the services of equality bodies are available to all potential victims throughout their territory, for example through the establishment of local offices, including mobile ones, through the use of communication tools, through the organisation of local campaigns, through cooperation with local delegates or civil society organisations or through contracted service providers.
- (38) In order to guarantee access for persons with disabilities to all services and activities of equality bodies, it is necessary to ensure accessibility, in accordance with the requirements set out in Directive (EU)2019/882²⁵ and to ensure reasonable accommodation in line with the United Nations Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006. Therefore, equality bodies should ensure physical and digital²⁶ accessibility by preventing and removing the barriers that persons with disabilities may face in accessing equality bodies' services and information, and provide reasonable accommodation, taking necessary and appropriate modification and adjustments where needed in a particular case.

²⁵ Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, OJ L 151, 7.6.2019, p. 70–115.

²⁶ See Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016 p.1-15) and related Implementing Decision.

- (39) Enabling equality bodies to regularly coordinate and cooperate at different levels, on a long-term basis, is key for mutual learning, coherence and consistency, and it may broaden the outreach and impact of their work. Equality bodies should cooperate, within their respective fields of competence, with other equality bodies within the same Member State and with public and private entities at local, regional, national, Union and international level, such as networks of equality bodies at EU level, civil society organisations, data protection authorities, the social partners, labour and education inspectorates, law enforcement bodies, agencies with responsibility at national level for the defence of human rights, national statistical offices, authorities managing Union funds, National Roma Contact Points, consumer bodies, and national independent mechanisms for the promotion, protection and monitoring of the UNCRPD.
- (40) Equality bodies cannot fulfil their role as experts in equal treatment if they are not consulted in sufficient time during the policymaking process on matters related to rights and obligations derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. Therefore, Member States should establish procedures to ensure consultation in a timely manner and should also allow equality bodies, where equality bodies deem necessary, to make recommendations and publish them in time for them to be taken into consideration.

- (41) Equality data are crucial for raising awareness, sensitising people, quantifying discrimination, showing trends over time, proving the existence of discrimination, evaluating the implementation of equality legislation, demonstrating the need for positive action, and contributing to evidence-based policymaking.²⁷ Equality bodies can contribute to the development of equality data for those purposes, for example by organising roundtables gathering all relevant entities. Equality bodies should also collect and analyse data on their own activities or conduct surveys and should, in accordance with national law, be able to access and make use of statistics related to the rights and obligations derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. Personal data collected by the equality body should be anonymised or, where this is not possible, pseudonymised.
- (41a) Equality bodies should adopt a work programme setting out their priorities and prospective activities, allowing them to ensure the coherence of their different strands of work over time and to address systemic issues of discrimination falling under their mandate as part of a long-term action plan.
- (42) In addition to publishing an annual activity report, equality bodies should regularly publish a report including an overall assessment of the situation regarding discrimination falling under their mandate in the Member States, as well as other reports relating to discrimination.

²⁷ Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive') COM (2021) 139 final.

- (43)
- (44) In order to ensure uniform conditions for the implementation of Member States' reporting obligations pursuant to Article 16(2) as regards the functioning of equality bodies designated under this Directive, implementing powers should be conferred on the Commission to establish a list of relevant indicators, on the basis of which data should be collected. Those indicators should not be for the purpose of ranking or of issuing specific recommendations addressed to individual Member States.
- (44a) Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.²⁸
- (45) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.
- (45a) Any processing of personal data by equality bodies under this Directive should be carried out in full compliance with Regulation (EU) 2016/679. Member States should ensure that the tasks of equality bodies are clearly laid down in law, in accordance with Article 6(1), point (e), of Regulation (EU) 2016/679, read in conjunction with Article 6(2) and (3) of that Regulation. Equality bodies should process personal data only to the extent necessary to fulfil their tasks under this Directive which aims to enforce the fundamental rights and obligations derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. Individuals whose personal data are processed should be informed about their rights as data subjects, including the remedies available to them at national level.

²⁸ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (45b) Where the fulfilment of the tasks of equality bodies requires the processing of the special categories of personal data referred to in Article 9(1) of Regulation (EU) 2016/679, Member States should also ensure that national law respects the essence of the right to data protection and provides for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject, in accordance with Article 9(2), point (g), of Regulation (EU) 2016/679. Such safeguards should include for example internal policies and measures to ensure data minimisation, including through anonymisation of personal data, where possible; to apply pseudonymisation and encryption to personal data; to prevent unauthorised access and transmission of personal data; and to ensure that personal data is not processed longer than is necessary for the purposes for which they are processed.
- (46) This Directive builds on the rules laid down in Directives 2000/43/EC and 2004/113/EC by introducing strengthened standards for the functioning of equality bodies. Previous provisions on equality bodies in Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC should therefore be deleted.
- (47) This Directive aims at ensuring the functioning of equality bodies according to minimum standards, with a view to improving their effectiveness and guaranteeing their independence, so as to strengthen the application of the principle of equal treatment. Since the objective of this Directive cannot be sufficiently achieved by the Member States and should therefore be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive, which limits itself to setting minimum standards, does not go beyond what is necessary to achieve that objective.
- (48)
- (49)
- (50) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 2 February 2023.

Article 1

Purpose, subject matter and scope

1. This Directive lays down minimum requirements for the functioning of equality bodies to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment as derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.
2. The obligations placed on Member States and the tasks of equality bodies under this Directive shall cover the rights and obligations derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.

Article 2

Designation of equality bodies

1. Member States shall designate one or more bodies (hereinafter referred to as ‘equality bodies’) to exercise the competences laid down in this Directive.
2. This directive is without prejudice to the competences of labour inspectorates or other enforcement bodies, as well as the social partners.

Article 3

Independence

1. Member States shall take measures to ensure that equality bodies are independent and free from external influence while performing their tasks and exercising their competences, in particular as regards their internal structure, accountability, staffing, organisational matters and management of financial resources.
2. Member States shall provide for transparent procedures concerning the selection, appointment, revocation and potential conflict of interest of the staff of equality bodies holding decision-making or managerial positions, and where applicable members of the governing board, in order to guarantee their competence and independence.

3. Member States shall ensure that equality bodies establish an internal structure that guarantees the independent, and where appropriate impartial, exercise of their competences.
4. Member States shall ensure that the internal structure of multi-mandate bodies guarantees the effective exercise of the equality mandate.

Article 4

Resources

1. Member States shall, in accordance with their national budgetary processes, ensure that each equality body is provided with the human, technical and financial resources necessary to perform its tasks and to exercise its competences effectively, on the grounds and in fields covered by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC, including where equality bodies are part of a multi-mandate body.
- 2.

Article 5

Prevention, promotion and awareness raising

1. Member States shall adopt appropriate measures, such as strategies, to raise awareness of the general population, throughout their territory, with particular attention to individuals and groups at risk of discrimination, on the rights under Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC and on the existence of equality bodies and their services.
2. Member States shall ensure that equality bodies are empowered to carry out activities to prevent discrimination and to promote equal treatment.
3. Member States and equality bodies shall take into consideration appropriate communication tools and formats for each target group. They shall focus in particular on groups whose access to information can be hindered, for example by their precarious economic status, age, disability, literacy, nationality, or residence status or by their lack of access to online tools.

Article 6

Assistance to victims

1. Member States shall ensure that equality bodies are able to provide assistance to alleged victims as set out in paragraphs 2 to 4.
2. Equality bodies shall be able to receive complaints of discrimination.
3. Equality bodies shall provide assistance to alleged victims, initially by informing them on the legal framework, including advice targeted to their specific situation, on the services offered by the equality body and related procedural aspects, as well as on available remedies, including the possibility to pursue a case in court.

Equality bodies shall also inform alleged victims about the confidentiality rules applicable, on the protection of personal data and on the possibilities to obtain psychological or other types of relevant support from other bodies or organisations.

4. Equality bodies shall inform the complainants, within a reasonable time, whether the complaint will be closed or if there are grounds to pursue it further.

Article 7

Alternative dispute resolution

Equality bodies shall be able to offer the parties the possibility to seek an alternative resolution to their dispute. That process may be led by the equality body itself or by another competent entity in accordance with national law and practice, in which case the equality body may formulate observations to that entity. If such a process ends without a resolution, it shall not preclude the right to act in court.

Article 8

Inquiries

1. Member States shall ensure that equality bodies are empowered to conduct inquiries as to whether a breach of the principle of equal treatment laid down in Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC has occurred.
2. Member States shall provide a framework for conducting inquiries which enables equality bodies to carry out fact-finding. In particular, that framework shall provide equality bodies with effective rights to access information and documents that are necessary to establish whether discrimination has occurred. It shall also provide for appropriate mechanisms for equality bodies to cooperate with relevant public bodies for that purpose.
- 3.
4. Member States may also entrust another competent body, in accordance with national law and practice, with the powers referred to in paragraphs 1 and 2. When such a competent body has completed its inquiries, it shall provide the equality body, upon its request, with information on the results thereof.

Article 8a

Opinions and decisions

1. Member States shall ensure that equality bodies are empowered to document their assessment of the case, including establishing the facts and a reasoned conclusion on the existence of discrimination. Member States shall determine whether this is to be done by means of non-binding opinions or binding decisions.
2. Where appropriate, both non-binding opinions and binding decisions shall include specific measures to remedy any breach of the principle of equal treatment found and to prevent further occurrences. Member States shall establish appropriate mechanisms for the follow-up to non-binding opinions, such as feedback obligations, and for the enforcement of binding decisions.

3. Equality bodies shall publish at least the summaries of those of their opinions and decisions which they consider to be of particular relevance.

Article 9

Litigation

1. Member States shall ensure that equality bodies have the right to act in court proceedings in civil and administrative law matters relating to the implementation of the principle of equal treatment laid down in Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC as set out in paragraphs 2 to 5, in accordance with national law and practice on the admissibility of actions, including any rules on requiring the approval of the alleged victim.
2. The right of the equality body to act in court proceedings shall include the right to submit observations to the court, in accordance with national law and practice.
 - (a)
 - (b)
 - (c)
- 2a. The right of the equality body to act in court proceedings shall also include at least one of the following:
 - (a) the right to initiate proceedings on behalf of one or several victims;
 - (b) the right to participate in proceedings in support of one or several victims; or,
 - (c) the right to initiate proceedings in its own name, in order to defend the public interest.
- 2b. The right of the equality body to act in court proceedings shall include the right to act as a party in proceedings on the enforcement or judicial review of binding decisions, where equality bodies are empowered to take such decisions pursuant to Article 8a.

- 3.
- 4.
5. Member States may provide that no inquiries pursuant to Article 8(2) and Article 8a are initiated or continued while court proceedings on the same case are pending.

Article 10

Procedural safeguards

Member States shall ensure that, in the procedures referred to in Articles 6, 7, 8, 8a and 9, the rights of defence of natural and legal persons involved are protected. Binding decisions referred to in Article 8a shall be subject to judicial review, in accordance with national law.

Article 11

Equal access

1. Member States shall guarantee access to equality bodies' services and publications on an equal basis for all.
 - 1a. Equality bodies shall guarantee that there are no barriers to the submission of complaints, for example by being able to receive complaints orally, in writing and online.
2. Member States shall ensure that equality bodies provide their services at no cost to complainants, throughout their territory, including in rural and remote areas.

Article 11a

Accessibility and reasonable accommodation for persons with disabilities

Member States shall ensure accessibility and provide reasonable accommodation for persons with disabilities to guarantee their equal access to all services and activities of equality bodies, including assistance to victims, complaint handling, alternative dispute resolution, information and publications, as well as prevention, promotion and awareness-raising activities.

Article 12

Cooperation

Member States shall ensure that equality bodies have appropriate mechanisms in place to cooperate, within their respective fields of competence, with other equality bodies within the same Member State, and with relevant public and private entities, including labour inspectorates, the social partners, and civil society organisations, at national, regional and local level as well as in other Member States and at Union and international level.

Article 13

Consultation

Member States shall put in place procedures to ensure that the government and relevant public authorities consult equality bodies on legislation, policy, procedure and programmes related to the rights and obligations derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.

Member States shall ensure that equality bodies have the right to make recommendations on those matters, to publish them and to request follow-up regarding their recommendations.

Article 14

Data collection and access to equality data

1. Member States shall ensure that equality bodies collect data on their activities, with a view to producing the reports referred to in Article 15, points (b) and (c).
2. The data collected shall be disaggregated by the grounds and fields covered by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC, and in accordance with the indicators referred to in Article 16. The personal data collected shall be anonymised or, where this is not possible, pseudonymised.

3. Member States shall ensure that equality bodies are able to access statistics related to the rights and obligations derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC, in accordance with national law, where they deem such statistics necessary to make an overall assessment of the situation regarding discrimination in the Member State, and for drawing up the reports referred to in Article 15, point (c).
4. Member States shall allow equality bodies to make recommendations on which data is to be collected in relation to the rights and obligations derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC, to public and private entities including public authorities, the social partners, companies and civil society organisations. Member States may also allow equality bodies to play a coordination role in the collection of equality data.
5. Member States shall ensure that equality bodies may conduct independent surveys concerning discrimination.

Article 15

Reports and strategic planning

Member States shall ensure that equality bodies:

- (a) adopt a work programme setting out their priorities and prospective activities.
- (b) produce and make available to the public an annual activity report, including their annual budget, staff and financial reporting.
- (c) publish one or more reports, with recommendations, at least every four years, on the state of equal treatment and discrimination, including potential structural issues, in their Member State.

Article 16

Monitoring and reporting

1. By [24 months after the date of entry into force of this Directive], the Commission shall, by means of an implementing act, establish a list of common indicators on the functioning of the equality bodies designated under this Directive. When preparing the indicators, the Commission may seek advice from the European Union Agency for Fundamental Rights, the European Institute for Gender Equality and from networks of equality bodies at EU level. The indicators shall cover the resources, independent functioning, and effectiveness of equality bodies, as well as developments in their mandate, powers or structure, ensuring the comparability, objectivity and reliability of the data collected at national level. The indicators shall not be for the purpose of ranking or of issuing specific recommendations to individual Member States.

The implementing act shall be adopted in accordance with the examination procedure referred to in Article 18a(2).

2. By [7 years after the date of entry into force of this Directive], and every 5 years thereafter, Member States shall provide the Commission with all relevant information regarding the application of this Directive. Such information shall include at least data on the functioning of equality bodies and shall take into account the reports drawn up by the equality bodies under Article 15, points (b) and (c).
3. The Commission shall draw up a report on the application and practical effects of this Directive, based on the information referred to in paragraph 2 and additional relevant data collected at national and Union level, in particular from networks of equality bodies at EU level and other stakeholders, by the European Union Agency for Fundamental Rights and the European Institute for Gender Equality.

Article 17

Minimum requirements

1. Member States may introduce or maintain provisions which are more favourable than the minimum requirements laid down in this Directive.
2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the matters covered by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.

Article 18

Processing of personal data

1. Member States shall ensure that equality bodies may collect and process personal data only where necessary for the fulfilment of a task under this Directive.
2. Member States shall ensure that when equality bodies process the special categories of personal data, referred to in Article 9(1) of Regulation (EU) 2016/679, suitable and specific measures are provided to safeguard the fundamental rights and the interests of the data subject.

Article 18a

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 19

Deleted articles in Directives 2000/43/EC and Directive 2004/113/EC

Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC are deleted. References to the bodies for the promotion of equal treatment referred to in those Articles shall be construed as references to the equality bodies referred to in Article 2 of this Directive.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*36 months after the date of entry into force of this Directive*]. They shall immediately inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 21

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 19 shall apply from [*date referred to in Article 20(1)*].

Article 22

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President
