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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	16933/1/23 REV 1
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 - *General approach*

I. INTRODUCTION

"Equality Bodies" were first established by the Racial Equality Directive (2000/43/EC) to provide assistance to victims of discrimination, conduct independent surveys, publish reports, and make recommendations on matters relating to discrimination. Subsequently the Gender Equality Directive 2004/113/EC has similarly mandated Equality Bodies in its respective fields.

On 7 December 2022, the Commission adopted 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.

This proposal falls under the special legislative procedure foreseen in Article 19(1) TFEU (unanimity in the Council, following the consent of the European Parliament). The proposal was issued by the Commission together with *a parallel proposal* on standards for Equality Bodies based on Article 157 TFEU (ordinary legislative procedure), which concerns the Equality Bodies designated pursuant to other equality directives not covered by the present proposal.[1]

The proposed Directive aims to strengthen the role and independence of Equality Bodies, and 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. It addresses Equality Bodies' mandate, tasks, independence, structure, powers, accessibility and resources, to ensure that they can, alongside other actors:

(a) effectively contribute to the enforcement of Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC;

(b) effectively assist victims of discrimination to access justice; and

(c) promote equal treatment and prevent discrimination.

The proposal builds on the substance of the existing provisions on equality bodies contained in Directives 2000/43/EC and 2004/113/EC, replacing them with a strengthened and more detailed set of rules.

[1] See doc. 9541/23.

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]

II. STATE OF PLAY IN THE COUNCIL

The Council reached a general approach on 12 June 2023,[5] after which the text was fine-tuned by the jurist-linguists of the Council.[6]

Meanwhile, on 12 December 2023, the Council and the European Parliament reached a provisional agreement on the parallel proposal. That agreement was confirmed in Coreper on 20 December 2023.[7]

III. CONCLUSION

With the aim of ensuring maximum consistency between the two Directives, the Presidency proposed adjusting the text of the general approach previously reached by the Council in order to align it with the wording of the compromise provisionally agreed on the parallel proposal, *mutatis mutandis*.[8] The aligned version was examined by the Working Party on Social Questions at its meeting on 8 January 2024. Following a discussion and some changes to the text, an agreement has been reached on the text as set out in the Annex.[9]

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2 No review of the proposal was required on the part of the Commission.
3 Doc. 8910/23.
4 Doc. 6296/23.
5 Doc. 10027/23.
6 Doc. 10788/23.
7 Doc. 16772/23 + ADD 1.
8 Doc. 16933/23.
9 Doc. 16933/1/23 REV 1.

The Permanent Representatives Committee is therefore invited:

- to examine and confirm the text as set out in the Annex to this note; and

- to recommend that the Council reach, as an 'A' item on the agenda of one of its forthcoming meetings, a general approach on the text as set out in the Annex to this note.

ANNEX

Proposal for a

COUNCIL DIRECTIVE (EU) 2023/…

of …

on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters 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 Directives 2000/43/EC and 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 Parliament[10],

Having regard to the opinion of the European Economic and Social Committee[11],

Having regard to the opinion of the European Data Protection Supervisor[12],

Acting in accordance with a special legislative procedure,

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10 Consent of …

11 Opinion of 22 March 2023 (not yet published in the Official Journal).

12 OJ C 64, 21.2.2023, p. 46.

Whereas:

(1) Equality and non-discrimination are recognised as essential values of the Union in 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) provide that the Union is to promote equality between men and women and combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, respectively, in all its activities. The Charter of Fundamental Rights of the European Union protects the right to non-discrimination, the right to equality between women and men and the integration of persons with disabilities in Articles 21, 23 and 26, respectively. The Union has already adopted several Directives to combat discrimination.

(2) The purpose of this Directive is to lay down minimum requirements for the functioning of bodies for the promotion of equal treatment ('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/EEC[13], 2000/43/EC[14], 2000/78/EC[15] and 2004/113/EC[16].

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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).

(3) Directive 79/7/EEC aims to combat discrimination based on sex, in matters of social security.

(4) Directive 2000/43/EC lays down a framework for combating discrimination based on racial or ethnic origin.

(5) Directive 2000/78/EC lays down a framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment, occupation and vocational training.

(6) Directive 2004/113/EC lays down a framework for combating discrimination based on sex in access to and supply of goods and services.

(6a) The Court of Justice of the European Union has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex.[17] In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from gender reassignment.

(7) 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 Directive. Those Directives require Member States to ensure that the competences of such 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.

[17] Judgment of the Court of Justice of 30 April 1996, P v S, C-13/94, ECLI:EU:C:1996:170; Judgment of the Court of Justice of 7 January 2004, K.B., C-117/01, ECLI:EU:C:2004:7; Judgment of the Court of Justice of 27 April 2006, Richards, C-423/04, ECLI:EU:C:2006:256; Judgment of the Court of Justice of 26 June 2018, M.B., C-451/16, ECLI:EU:C:2018:492.

(8) Directives 2006/54/EC[18] and 2010/41/EU[19] 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.

(9) All Member States have designated 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.

(10) 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 in the Member States, in terms of their mandates, competences, structure, resources and operational functioning. This, in turn, means that protection against discrimination differs from one Member State to another.

[18] 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).

[19] 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) 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, there are equality bodies that have competence for those matters in most Member States, where it is provided for under 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.

(12) 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 in accessing justice to all individuals and groups that are discriminated against across the Union, it is necessary to establish 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 minimum standards laid down in this Directive take into account Commission Recommendation (EU) 2018/951[20], drawing on some of its provisions and the approach recommended therein. They also draw on other relevant instruments, such as the revised General Policy Recommendation N°2 on equality bodies adopted by the European Commission against Racism and Intolerance (ECRI) and the Paris Principles relating to the Status of National Human Rights Institutions adopted by the United Nations, which are applicable to national human rights institutions.

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

(13) 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) …/… of the European Parliament and of the Council[21].

(14) 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 minimum requirements laid down in this Directive should only concern the functioning of equality bodies and should not extend the material or personal scope of those Directives.

(15) In promoting equal treatment, preventing discrimination, collecting data on discrimination and assisting victims of discrimination according to this directive, it is important that equality bodies pay particular attention to intersectional discrimination understood as discrimination based on a combination of grounds of discrimination protected under Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.

(16) 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 of discrimination, and another with decision-making functions. This Directive should be without prejudice to the competences of labour inspectorates or other enforcement bodies, as well as the autonomy and role of the social partners.

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[21] Directive (EU) …/… of the European Parliament and of the Council of … 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 (OJ L …).

[+] OJ: please insert in the text the number of the Directive contained in document PE-CONS …/… (2022/0400 (COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.

(17) Equality bodies can only fulfil their role effectively 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 competence laid down in this Directive may be part of a ministry or another organisational entity, provided that the necessary safeguards are in place to ensure the performance of their tasks independently from political, financial, religious, or any other influence. In particular, 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. Within the existing legal framework 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. 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. Transparency in that process can be ensured, for example, by publishing vacancy notices publicly.

(18) Member States should ensure that the internal structure of equality bodies, such as their internal organisation and processes, 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 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.

(19) 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.

(20) Through their respective national budgetary processes, Member States should ensure that equality bodies receive sufficient resources, 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. Receiving such sufficient resources is key to the effective functioning of equality bodies and the fulfilment of their tasks. It is important that, where new competences are ascribed to equality bodies, Member States ensure that their financial and other resources continue to allow them to perform their tasks and to exercise their competences effectively.

(21) It is important that the allocation of financial resources remain stable, be planned on a multi-annual basis and allow equality bodies to cover costs that can 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. Those resources should, in particular, enable equality bodies 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.

(22) Equality bodies, alongside other actors, such as the social partners and civil society organisations, 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.

(23) In addition to prevention, a central task of equality bodies is to provide assistance to victims of discrimination. Victims should be understood to encompass all persons who consider that they have experienced discrimination as referred to in Article 4 of Directive 79/7/EEC, Article 2 of Directive 2000/43/EC, Article 2 of Directive 2000/78/EC, and Article 4 of Directive 2004/113/EC. Any person can be a victim of discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and should benefit from equality bodies' assistance from an early stage, irrespective of whether discrimination has been established. Such assistance should always include at least the provision of key information to complainants, including information as to whether the complaint will be closed or whether 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.

(24) To ensure that all victims are able to complain, it should be possible to submit complaints in various ways. According to Recommendation (EU) 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 the fear of reprisals, equality bodies should inform victims about the applicable confidentiality rules.

(25) 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 selecting another competent entity, it is important to take into consideration entities established on a durable basis and to ensure that the person(s) in charge of the resolution process are independent, impartial and possess the necessary expertise. The resolution of disputes out of court is more likely to yield successful outcomes where it is done with the agreement of the parties. Having the possibility to seek independent advice or to be represented or assisted by a third party such as the social partners can also be helpful to the parties, at any stage of the alternative resolution of their dispute. The absence of a resolution, for example because one of the parties rejected the outcome of the process, should not prevent the parties from acting in court proceedings. Member States should define the modalities of the alternative dispute resolution process according to national law and practice.

(26) Where 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.

(27) Evidence is key in determining whether discrimination has taken place and it is often not in the possession of the 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 that 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.

(28) Equality bodies should be able to document their assessment of the complaint on the basis of the evidence gathered. 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.

(29) To raise awareness of their work and of 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.

(30) 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 can 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 under this Directive are expected to 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 can 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 under this Directive will therefore facilitate access to justice for victims. It should be possible for equality bodies to select the cases they decide to pursue in court proceedings so as to contribute to the proper interpretation and application of equal treatment legislation.

(31) Where 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.

(32) 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 forms of action for equality bodies: acting on behalf of one or several victims, or in support of one or several victims, or initiating court proceedings in its own name.

(33) Equality bodies should be able to act on behalf of 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 deter victims. Where equality bodies act on behalf of one or several victims, they represent the victims before the court. Where equality bodies act in support of one or several victims, they take part in court proceedings initiated by the victims, to support the claim.

(34) 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[22], 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 should have the option to provide that equality bodies be able to act in their own name in certain cases of discrimination, for example due to the abundance or seriousness of cases or the need for legal clarification, each of which could imply that the discrimination is structural or systematic in nature. Member States should be able to provide, in accordance with national law and practice, that such cases of discrimination require an identified person or entity as a respondent.

[22] Judgement of the Court of Justice of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding* v *Firma Feryn NV*, C-54/07, ECLI:EU:C:2008:397.

(35) To ensure the respect of individual rights, Member States should frame the powers of equality bodies within appropriate procedural safeguards, ensuring that the right of confidentiality as well as general principles of law such as the right to a fair trial, the right to judicial review of binding decisions and the right of defence are appropriately protected, including where the equality body acts as a party or on behalf of a party in court proceedings. Member States can, for example, offer confidentiality to witnesses and whistle-blowers as an important way of encouraging the reporting of instances of discrimination.

(36) The provisions of this Directive on equality bodies' right to act in court proceedings do not alter the rights of victims of discrimination or 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 those victims, associations, organisations or other legal entities have engaged in any judicial or administrative proceedings or both.

(37) The effectiveness of equality bodies' work also depends on giving groups at risk of discrimination full access to their services. In the Second European Union Minorities and Discrimination Survey conducted by the European Union Fundamental Rights Agency, 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 such 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.

(38) 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, the use of communication tools, the organisation of local campaigns, cooperation with local delegates or civil society organisations or through contracted service providers.

(39) 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) 2019/882 of the European Parliament and of the Council[23] and to ensure reasonable accommodations 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 digital accessibility by preventing and removing the barriers that persons with disabilities can face in accessing equality bodies' services and information, and provide reasonable accommodations, making necessary and appropriate modifications and adjustments where needed in a particular case.

[23] 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).

(40) 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 can 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 Union 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 United Nations Convention on the Rights of Persons with Disabilities.

(41) Equality bodies cannot fulfil their role as experts in equal treatment nor contribute to equality mainstreaming 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 such consultation in a timely manner and should, where equality bodies consider it necessary, allow them to make recommendations and publish them in time for them to be taken into consideration.

(42) 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. 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, be able to conduct surveys and, 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.

(43) 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.

(44) 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.

(45) In order to ensure uniform conditions for the implementation of Member States' reporting obligations 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. Such indicators should not be for the purpose of ranking or of issuing specific recommendations addressed to individual Member States.

(45a) Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[24].

(46) 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.

(47) Any processing of personal data by equality bodies under this Directive should be carried out in full compliance with Regulation (EU) 2016/679[25]. 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. Individuals whose personal data are processed should be informed about their rights as data subjects, including the remedies available to them at national level.

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[24] 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).

[25] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119 4.5.2016, p. 1).

(48) 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.

(49) 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 Directives 2000/43/EC and 2004/113/EC should therefore be deleted.

(50) 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 but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. 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.

(51) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council[26] and delivered an opinion on 2 February 2023,

HAS ADOPTED THIS DIRECTIVE:

[26] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

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 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 (‘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. This Directive is without prejudice to the rights and prerogatives of the social partners according to national law and practice, including with regard to collective agreements, and representation and defence in court.

Article 3

Independence

1. Member States shall take measures to ensure that equality bodies are independent and free from external influence, and do not seek or take instructions from the government or from any other public or private entity while performing their tasks and exercising their competences. In line with the objectives of this Directive and within the applicable legal framework, equality bodies shall be able to manage their own financial and other resources as well as to adopt their own decisions with regard to internal structure, accountability, staffing and organisational matters.

2. Member States shall provide for transparent procedures concerning the selection, appointment, revocation and potential conflicts 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

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 all its tasks and to exercise all its competences effectively, on the grounds set out in and in fields covered by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC, including where the equality bodies are part of multi-mandate bodies.

Article 5

Prevention, promotion and awareness raising

1. Member States shall adopt appropriate measures, such as strategies, to raise awareness among the general population, throughout their territory, with particular attention to individuals and groups at risk of discrimination, of 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 as derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. Such activities may inter alia include promoting positive action and equality mainstreaming among public and private entities and providing them with relevant training, advice and support, as well as engaging in public debate, communicating with relevant stakeholders including the social partners, and promoting the exchange of good practice. In carrying out these activities, equality bodies can take into consideration specific situations of disadvantage resulting from intersectional discrimination understood as discrimination based on a combination of grounds protected under Directives 79/7/EEC, 2000/43/EC, 2000/78/EC or 2004/113/EC.

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 due to their precarious economic status, age, disability, literacy, nationality or residence status, or due to 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 victims as set out in paragraphs 2 to 4. For the purposes of this Directive, "victims" means all persons who consider that they have experienced discrimination within the meaning of Article 4 of Directive 79/7/EEC, Article 2 of Directive 2000/43/EC, Article 2 of Directive 2000/78/EC, and Article 4 of Directive 2004/113/EC.

2. Equality bodies shall be able to receive complaints of discrimination.

3. Equality bodies shall provide assistance to victims, initially by informing them about the following:

   a) the legal framework, including advice targeted to their specific situation;

   b) the services offered by the equality body and related procedural aspects;

   c) available remedies, including the possibility to pursue the case before the courts;

   d) the confidentiality rules applicable, and the protection of personal data; and

   e) the possibility of obtaining 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 there are grounds to pursue it further.

Article 7

Alternative dispute resolution

Equality bodies shall be able to offer the parties the possibility of seeking 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. This alternative dispute resolution can take different forms, such as mediation or conciliation, in accordance with national law and practice. The absence of a resolution shall not preclude the parties from exercising their right to act in court. Member States shall ensure a sufficient limitation period to guarantee that the parties to the dispute have access to court, for example by suspending the limitation period while the parties engage in an alternative dispute process.

Article 8

Inquiries

1. Member States shall ensure that equality bodies are empowered to conduct an inquiry into 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. 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 inquiry, it shall provide the equality body, upon its request, with information about the results thereof.

4. Member States may provide that no inquiries pursuant to paragraph 1 of this Article and Article 9 be initiated or continued while court proceedings in the same case are pending.

Article 9

Opinions and decisions

1. Member States shall ensure that equality bodies are empowered to provide and 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 a summary of those of their opinions and decisions which they consider to be of particular relevance.

Article 10

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 4 of this Article, in accordance with national law and practice on the admissibility of actions, including any rules on requiring the approval of the 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.

3. 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.

4. 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 9.

Article 11

Procedural safeguards

Member States shall ensure that, in the procedures referred to in Articles 6, 7, 8, 9 and 10, the rights of defence of natural and legal persons involved are protected. Binding decisions referred to in Article 9 shall be subject to judicial review in accordance with national law.

Article 12

Equal access

1. Member States shall guarantee access to equality bodies' services and publications on an equal basis for all.

2. 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.

3. 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 13

Accessibility and reasonable accommodations for persons with disabilities

Member States shall ensure accessibility and provide reasonable accommodations 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 14

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 15

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 the recommendations and to request follow-up regarding such recommendations.

Article 16

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 17, points (b) and (c).

2. The data collected by equality bodies 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 18 of this Directive. Any personal data collected shall be anonymised or, where that is not possible, pseudonymised.

2a. Member States shall ensure that equality bodies may conduct independent surveys concerning discrimination.

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 the equality bodies 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 17, point (c) of this Directive.

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.

Article 17

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; and

(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 18

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 Union level. The indicators shall cover the human, technical and financial resources, independent functioning, accessibility 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 21(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 17, 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 by equality bodies, networks of equality bodies at Union level such as Equinet, civil society organisations or other stakeholders, by the European Union Agency for Fundamental Rights and the European Institute for Gender Equality. This report shall address the independent functioning and the effectiveness of equality bodies in the Member States based on the indicators established under paragraph 1.

Article 18a

Dialogue on the Functioning of the Equality Bodies

1. Within the context of the monitoring and reporting exercise under Article 18, and in order to enhance the dialogue between the Union institutions and to ensure greater transparency, the European Parliament may invite the Commission annually to discuss matters referred to in Article 18 concerning the functioning of the equality bodies designated under this Directive.

2. The European Parliament may express its views in resolutions as regards the matters referred to in paragraph 1.

3. The Commission shall take into account, as appropriate, any elements arising from the views expressed through this dialogue, including the resolutions from the European Parliament if provided, also when reviewing the operation of this Directive.

Article 19

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 20

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 interests of the data subject.

Article 21

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 22

Amendments to Directives 2000/43/EC and 2004/113/EC

Chapter III of Directive 2000/43/EC and Chapter III of Directive 2004/113/EC are deleted. References to the bodies for the promotion of equal treatment referred to in those Chapters shall be construed as references to the equality bodies referred to in Article 2(1) of this Directive.

Article 23

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by … [*24 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 shall 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 24

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 22 shall apply from … [*24 months after the date of entry into force of this Directive*].

Article 25

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President