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2022/0401 (APP)

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**

{SWD(2022) 386 final} - {SWD(2022) 387 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Equality bodies play a fundamental role in the non-discrimination architecture of the EU. They are public organisations that assist victims of discrimination, monitor and report on discrimination issues, and contribute to raising awareness of people's rights and the value of equality. Equality bodies are so far required by EU law to combat discrimination on the grounds of racial and ethnic origin and sex in specific fields. National law often provides for a broader remit.

The aim of this proposal is to establish binding standards for equality bodies in the field of:

- (a) equal treatment between persons irrespective of their racial or ethnic origin,
- (b) equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation and,
- (c) equal treatment between women and men in matters of social security and in the access to and supply of goods and services.

A separate proposal has been adopted by the Commission<sup>1</sup> to establish binding standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, including self-employment ('parallel proposal'). Together with the parallel proposal, this proposal aims at creating a strengthened framework for equality bodies in the European Union to promote equal treatment and equal opportunities and combat discrimination on all grounds and in the fields set out by the Equality Directives referred to below.

Equality bodies were first established by the Racial Equality Directive (2000/43/EC)<sup>2</sup>. They were tasked with promoting equal treatment through the following missions:

- Providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
- conducting independent surveys concerning discrimination,
- publishing independent reports and making recommendations on issues relating to discrimination.

Three subsequent equality Directives entrusted equality bodies with the same mission in their respective fields: the Gender Equality Directive in the field of goods and services (2004/113/EC)<sup>3</sup>, the Gender Equality Directive in the field of employment (2006/54/EC)<sup>4</sup> and

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<sup>1</sup> COM(2022)688.

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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, 26.07.2006, p. 23).

the Gender Equality Directive in the field of self-employment (2010/41/EU)<sup>5</sup>. The latter two added the further task of exchanging information with corresponding European bodies.

Two other equality Directives, the Employment Equality Directive (2000/78/EC)<sup>6</sup> and the Gender Equality Directive in the field of social security (79/7/EEC)<sup>7</sup>, do not include provisions on equality bodies. In practice, however, many Member States chose to entrust equality bodies with all the grounds and fields of discrimination covered by these two Directives and sometimes more<sup>8</sup>, through national law. A vast majority of Member States have now set up ‘multi-grounds’ equality bodies that deal with several grounds of discrimination and fields, often going beyond those protected by EU law. However, this is not the case in all Member States, and in a few cases<sup>9</sup>, equality bodies do not yet cover the grounds and fields of Directives 2000/78/EC and 79/7/EEC.

The existing EU equality Directives do not include provisions on the actual structure and functioning of equality bodies, but only require that they have certain minimum competences, and that they act independently within the exercise of their remit. Due to the wide margin of discretion left to the Member States in implementing these provisions, there are significant differences between equality bodies across Member States, in particular as regards their mandate, powers, leadership, independence, resources, accessibility and effectiveness. This affects the fulfilment of their objectives under EU law. While their differences are partly due to the variety of legal traditions and legal systems in Member States, the situation also reflects different levels of ambition and achievement in Member States in pursuing the objectives of the Directives.

To ensure that equality bodies can achieve their full potential, contribute effectively to the enforcement of all equality Directives and help victims of discrimination access justice, the Commission adopted a Recommendation on standards for equality bodies in 2018<sup>10</sup>. In particular it aimed to address challenges resulting from the broad and incomplete provisions on equality bodies in the EU Directives.

In 2021 the Commission published a report on the application of the Racial Equality Directive and the Employment Equality Directive. The report looked into the implementation of the Commission’s 2018 Recommendation and was accompanied by a more detailed Staff Working Document on equality bodies<sup>11</sup>. The report highlighted that equality bodies have emerged as necessary and valuable institutions for change at the level of individuals, institutions and society at large.

However, most of the issues the Recommendation aimed at addressing remained unresolved, hindering some equality bodies in carrying out their role in an effective way. Protection

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<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> Some Member States’ laws offer a wider protection in terms of grounds and fields, i.e. nationality, economic status, gender expression, or even a non-exhaustive list of grounds.

<sup>9</sup> See SWD(2021) 63 Part 2.1.1 [commission\\_staff\\_working\\_document\\_-\\_equality\\_bodies\\_and\\_the\\_implementation\\_of\\_the\\_commission\\_recommendation\\_on\\_standards\\_for\\_equality\\_bodies\\_en.pdf \(europa.eu\)](#).

<sup>10</sup> Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies (OJ L 167, 4.7.2018, p. 28).

<sup>11</sup> SWD(2021)63 of 19 March 2021.

against discrimination, enforcement of the Directives and promotion of equality and awareness-raising among the general public and national institutions remained unequal across the EU. This showed that the Recommendation was not sufficient. The Commission therefore committed to assessing whether to propose possible legislation to strengthen the role of national equality bodies by 2022.

The retrospective analysis set out in the analytical document that accompanies this proposal confirmed this assessment<sup>12</sup>. It concluded that the ambition of ensuring the implementation and enforcement of EU law on combating unequal treatment and discrimination and increasing their prevention has not been fully achieved. Levels of discrimination remain high, and victims' awareness of their rights remains low. Underreporting is still a considerable problem; public awareness about and knowledge of discrimination remain limited. Many equality bodies are not properly equipped, in terms of powers and resources, to assist victims effectively.

The European Parliament and the Council have expressed their support to adopting new rules to strengthen equality bodies. In 2021, the European Parliament called<sup>13</sup> on the Commission to propose legislation on standards for equality bodies, providing them with a stronger mandate and adequate resources to safeguard the equal treatment of persons with disabilities, and ensure accessible information dissemination for all. In 2022, the Council<sup>14</sup> invited Member States to support robust equality bodies and adopt a legislative framework enabling them to carry out their role independently, and provide them with the adequate resources to carry out their tasks effectively. Moreover, the European Economic and Social Committee underlined the need for greater support for national equality and human rights bodies, especially as regards improving their independence and increasing their staffing and financial resources; and expressed support for a Commission's initiative on the effectiveness of national equality bodies and developing their potential, their multiple roles and their capacities<sup>15</sup>.

Therefore, as announced in its work programme for 2022<sup>16</sup>, the Commission is proposing binding rules to strengthen the role and independence of equality bodies. This is part of the Commission's work towards a Union of equality for all, as set out in the political guidelines of the Commission for 2019-2024.

The goal of this Directive is to set out standards on equality bodies, addressing their 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;
- (c) promote equal treatment and prevent discrimination.

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<sup>12</sup> SWD(2022)386.

<sup>13</sup> European Parliament resolution of 10 March 2021 on the implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation in light of the UNCRPD (2020/2086(INI).

<sup>14</sup> COUNCIL CONCLUSIONS on combating racism and antisemitism - 6406/1/22 REV 1.

<sup>15</sup> European Economic and Social Committee own-initiative opinion on Improving equality in the EU, SOC/724-EESC-2022, adopted on 26/10/2022.

<sup>16</sup> [https://ec.europa.eu/info/strategy-documents/commission-work-programme/commission-work-programme-2022\\_en](https://ec.europa.eu/info/strategy-documents/commission-work-programme/commission-work-programme-2022_en).

This proposal builds on the substance of the existing provisions on equality bodies contained in Directives 2000/43/EC and 2004/113/EC to replace them with a strengthened and more detailed set of rules. The new rules incorporate all the minimum obligations that were provided for by the two Directives.

This proposal strengthens protection in the field of equal treatment and non-discrimination by extending the mandate of equality bodies to cover the grounds and fields of Directives 79/7/EEC and 2000/78/EC.

- **Consistency with existing policy provisions in the policy area**

This proposal is part of several strategies and action plans adopted to achieve a Union of Equality: the gender equality strategy<sup>17</sup>, the anti-racism action plan<sup>18</sup>, the Roma strategic framework for equality, inclusion and participation<sup>19</sup>, the LGBTIQ equality strategy<sup>20</sup>, and the strategy for the rights of persons with disabilities<sup>21</sup>. It was also referred to in the strategy on combating antisemitism and fostering Jewish life<sup>22</sup>.

Notably, the EU Roma strategic framework for equality, inclusion and participation and the Council recommendation of 12 March 2021 on Roma equality, inclusion and participation<sup>23</sup> provide for the involvement of equality bodies in structures set up to oversee the implementation, monitoring and review of national Roma strategic frameworks.

Equality bodies designated pursuant to Directive 2006/54/EC are also competent for matters falling under Directive (EU) 2019/1158<sup>24</sup> on work-life balance for parents and carers. By replacing the relevant provisions of Directive 2006/54/EC, the parallel proposal will also apply to equality bodies when tackling discrimination covered by Directive (EU) 2019/1158.

The proposed Equal Treatment Directive<sup>25</sup> also includes an article on equality bodies. Before adoption, the legislator should consider a cross reference to this proposal<sup>26</sup> in that article.

The EU and all Member States are Parties to the United Nations Convention on the Rights of Persons with Disabilities which includes the obligation to prohibit discrimination on the basis of disability and to guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

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<sup>17</sup> COM(2020)152 [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en).

<sup>18</sup> COM(2020)565 [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/eu-anti-racism-action-plan-2020-2025_en).

<sup>19</sup> [https://ec.europa.eu/info/publications/new-eu-roma-strategic-framework-equality-inclusion-and-participation-full-package\\_en](https://ec.europa.eu/info/publications/new-eu-roma-strategic-framework-equality-inclusion-and-participation-full-package_en).

<sup>20</sup> COM(2020)698 [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en).

<sup>21</sup> COM(2021)101 <https://ec.europa.eu/social/main.jsp?catId=1484>.

<sup>22</sup> COM(2021) 615 [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_4990](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4990).

<sup>23</sup> Council Recommendation of 12 March 2021 on Roma equality, inclusion and participation 2021/C 93/01 (OJ C 93, 19.3.2021, p. 1).

<sup>24</sup> Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79).

<sup>25</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008)426 of 2 July 2008.

<sup>26</sup> Or, if adopted by that time, this Directive.

- **Consistency with other Union policies**

Other EU instruments provide for a specific role for equality bodies.

The Free Movement Directive<sup>27</sup> tackles discrimination on the grounds of nationality and unjustified restrictions or obstacles to the right to the free movement of Union workers and members of their family. It provides for ‘*bodies for the promotion, analysis, monitoring and support of equal treatment of Union workers and members of their family without discrimination on grounds of nationality, unjustified restrictions or obstacles to their right to free movement*’ and specifies that ‘*those bodies may form part of existing bodies at national level which have similar objectives*’. Most Member States have chosen to put an equality body in charge of these cases of discrimination. While the grounds and fields in question are not covered by this proposal, horizontal measures to improve the functioning, accessibility and independence of equality bodies may also have a positive effect on the exercise of their competence under the Free Movement Directive.

The Common Provisions Regulation for shared management funds<sup>28</sup> requires the Member States to involve equality bodies throughout the preparation, implementation, and evaluation of such programmes, including through participation in monitoring committees.

The strategy to strengthen the application of the Charter of Fundamental Rights in the EU<sup>29</sup> (the ‘Charter’) includes the involvement of equality bodies in training on the Charter and cooperation and coordination with other relevant actors on Charter-related activities.

The proposal for a Directive on combating violence against women and domestic violence<sup>30</sup> also provides for a potential role for equality bodies set up pursuant to Directives 2004/113/EC, 2006/54/EC and 2010/41/EU. It leaves Member States the flexibility to involve an equality body or another body to perform the tasks laid down in the proposed Directive, in terms of independent assistance and advice to victims of violence against women and domestic violence; publishing independent reports and making recommendations in the field; and exchanging information with corresponding European bodies.

By strengthening the assistance to individuals and groups that are discriminated against to access justice across the European Union, this proposal is complementary to EU legislation already adopted in the field of victims’ rights<sup>31</sup> and access to justice (on legal aid<sup>32</sup>, alternative

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<sup>27</sup> See Article 4 of Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ L 128, 30.4.2014, p. 8). This Directive does not cover the grounds of discrimination laid down by Article 19 TFEU. It is based on Article 46 TFEU, free movement of workers.

<sup>28</sup> Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

<sup>29</sup> Communication from the Commission: Strategy to strengthen the application of the Charter of Fundamental Rights in the EU, COM(2020)711.

<sup>30</sup> Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence, COM(2022)105 of 8.03.2022.

<sup>31</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA - OJ L 315, 14.11.2012, p. 57–73.

dispute resolution mechanisms<sup>33</sup> and collective redress<sup>34</sup>) and to combat strategic lawsuits against public participation<sup>35</sup>.

Equality bodies alongside ombudspersons and national human rights institutions (NHRIs) are also essential components of the system of checks and balances in a healthy democracy. Attempts to restrict their operating space can present a threat to the rule of law. The 2022 Rule of Law Report highlights that these bodies need structural guarantees of independence and sufficient resources to work effectively, and several of these bodies in the Member States continue to face challenges<sup>36</sup>.

By strengthening their effectiveness, independence and resources, this proposal will also help improve the contribution of equality bodies in all those fields where they play an important role.

This proposal is also in line with the European Pillar of Social Rights<sup>37</sup>, notably its second and third principles on Gender Equality and on Equal Opportunities.

Given that the Union advances equality in its external policy, with this proposal it leads by example in promoting equality bodies and strengthening their independence. At the same time, the strengthening of equality bodies will also benefit non-EU citizens who experience discrimination in the EU on the grounds and in the fields covered by the Equality Directives.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The aim of the two parallel proposals of this initiative is to strengthen the role and independence of equality bodies under all the Directives already adopted in the field of equal treatment: Directives 79/7/EEC, 2000/43/EC, 2000/78/EC, 2004/113/EC, 2006/54/EC and 2010/41/EU. As these Directives were adopted under two different legal bases, with two different adoption procedures, this initiative consists of two essentially identical proposals, with two different legal bases.

This proposal is based on Article 19(1) of the Treaty on the Functioning of the European Union (TFEU), which provides a legal basis for secondary legislation, such as Directives, to take action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. More precisely, Article 19(1) TFEU stipulates that, '(W)ithout prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a

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<sup>32</sup> Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes - OJ L 26, 31.1.2003, p. 41–47.

<sup>33</sup> Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters - OJ L 136, 24.5.2008, p. 3–8.

<sup>34</sup> Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law - OJ L 201, 26.7.2013, p. 60–65 and Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC - OJ L 409, 4.12.2020, p. 1–27.

<sup>35</sup> COMMISSION RECOMMENDATION (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings ('Strategic lawsuits against public participation').

<sup>36</sup> [2022 Rule of law report | European Commission \(europa.eu\)](https://european-council.europa.eu/media/eap/2022/04/27/222758main_en.pdf)

<sup>37</sup> [social-summit-european-pillar-social-rights-booklet\\_en.pdf \(europa.eu\)](https://european-council.europa.eu/media/eap/2022/04/27/222758main_en.pdf)

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’.

Directives 2000/43/EC, 2000/78/EC and 2004/113/EC were adopted by unanimity on the basis of Article 13 of the Treaty establishing the European Community which has become Article 19(1) TFEU.

Directive 79/7/EEC was adopted by unanimity under Article 235 of the Treaty establishing the European Economic Community, which was referred to as the “flexibility clause”<sup>38</sup>, as the Treaty did not provide any specific legal base for this legislative action. Article 19 TFEU now provides such a legal base.

The parallel proposal is based on Article 157(3) TFEU, which provides for ‘the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee’ to adopt ‘measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value’ and which is the legal basis for Directives 2006/54/EC and 2010/41/EU.

- **Subsidiarity (for non-exclusive competence)**

Equality and non-discrimination are fundamental EU values, enshrined in Article 2 of the Treaty on European Union (TEU) and protected by Article 21 and 23 of the Charter. They should be sufficiently protected everywhere across the EU.

The present initiative does not introduce legislation in a new area. It revises already existing legislation to increase its effectiveness. There is already common agreement that EU-level action is necessary in this area and that it is in line with the principle of subsidiarity.

As explained above, the existing legislative measures are not sufficient to address the challenges faced by equality bodies, in ensuring the implementation and enforcement of EU law combating unequal treatment and discrimination and increasing prevention. This results in an insufficient and unequal level of protection against discrimination across the EU.

The analysis of the situation before the adoption of provisions on equality bodies clearly demonstrated the added value of the EU intervention<sup>39</sup>. Prior to the establishment of EU provisions on equality bodies in the EU Equality Directives, equality bodies existed only in few Member States.

At the same time, the 2021 Staff Working Document on equality bodies and the analytical document accompanying this proposal clearly show that the 2018 Recommendation on standards for equality bodies had a limited impact. Less than half of the Member States

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<sup>38</sup> Article 235 allowed the Council to adopt (by unanimity) Directives when a Community action appeared to be necessary to achieve one of the goals of the Community and the Treaty did not confer the necessary specific powers.

<sup>39</sup> The EU intervention, or EU Framework, referred to in this proposal, encompasses the provisions concerning equality bodies in the Equality Directives and the 2018 Recommendation on standards for equality bodies.

reported taking measures as a follow-up to the Recommendation and only four Member States<sup>40</sup> reported that they were working on legislative reforms.

This shows that only a binding EU initiative will ensure that sufficient progress is achieved in all Member States and will address the significant differences in the level of protection against discrimination across the EU.

This proposal sets out minimum standards taking into account the diversity of legal traditions in the Member States and fully respecting their institutional autonomy. It allows Member States to set higher standards.

The strengthening of equality bodies will also help strengthen economic and social cohesion by ensuring that people in all Member States enjoy a common minimum level of protection against discrimination, with comparable rights to redress, while taking into account of the diversity of Member States systems.

Common minimum standards in this field are also important for the functioning of the single market. In the context of the free movement of people, it is essential to guarantee the fundamental right of non-discrimination in a uniform way across the EU and to ensure access to protection from discrimination and to redress mechanisms in all Member States.

- **Proportionality**

Article 5(4) TEU provides that ‘[u]nder the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties’.

The current provisions on equality bodies and the 2018 Recommendation have not fully achieved the objective of implementing and enforcing EU law on combating unequal treatment and discrimination and increasing prevention. This is due to the wide latitude left to the Member States on how to apply the provisions on equality bodies in the Directives, the lack of such provisions in Directives 79/7/EEC and 2000/78/EC, and the non-binding nature of the Recommendation.

Soft measures have not been effective enough to safeguard people’s fundamental right to non-discrimination. The proposed initiative sets minimum standards to be implemented by Member States. Those minimum standards are expected to significantly improve the level of protection against discrimination, which will have a considerable positive impact on the situation of (potential) victims of discrimination.

In setting minimum standards, the proposal fully respects Member States’ competencies and procedural autonomy<sup>41</sup> and leaves them discretion to decide how to implement the proposed measures and set more favourable standards for the functioning of equality bodies.

- **Choice of the instrument**

A legal instrument in the form of a Directive makes it possible to strengthen equality bodies and guarantee common minimum standards, while leaving Member States discretion as to how to implement the new requirements in light of their national context. This approach is in

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<sup>40</sup> PT, ES, MT, LT. Spain has meanwhile adopted a new law (Ley 15/2022 of 12 July 2022).

<sup>41</sup> Many measures must be implemented in accordance with national law and some measures are not being proposed in order to respect the procedural autonomy of Member States, such as requiring that equality bodies can adopt binding decisions.

line with the original form of the EU intervention in this field, while at the same time addressing current challenges.

Under the proposal, the existing provisions on equality bodies in Directives 2000/43/EC and 2004/113/EC will be deleted. A new Directive will be dedicated to equality bodies and will bring together all relevant provisions for their effective functioning as regards the grounds and fields covered by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. Deleting the current provisions also means that the current list of tasks of equality bodies can be clarified and supplemented, for example by explicitly adding the provision of prevention and promotion activities, which were not clear enough in the existing provisions.

### **3. COLLECTION OF EXPERTISE, ANALYSIS AND STAKEHOLDER CONSULTATIONS**

#### **• Collection of expertise and analysis**

The Commission awarded a contract for a study to support the preparation of a retrospective and prospective analytical document, with a view to a legislative proposal on binding standards for equality bodies. The analytical document accompanies both this proposal and the parallel proposal covering equal treatment and equal opportunities between women and men in matters of employment and occupation, including self-employment. It includes a retrospective analysis of existing EU provisions on equality bodies, and a prospective analysis of a possible further EU intervention.

A fully-fledged evaluation and impact assessment were not carried out for the following reasons:

#### **(1) Proportionality - the limited scope of the EU intervention**

The proposals are solely focused on equality bodies that are covered by one Article in four Equality Directives (and not included in two other Equality Directives). The said Article is almost identical in the four Directives. The proposals do not amend the other provisions of the Directives. The proposals are also based on the existing 2018 Commission Recommendation on standards for equality bodies, which was assessed in 2021. Therefore, a fully-fledged evaluation of the relevant Directives in their entirety was considered neither proportionate nor necessary.

#### **(2) The absence of simplification potential**

The retrospective analysis shows that the existing provisions on equality bodies in the Equality Directives are too narrow and vague. There is no simplification potential in these provisions. The feedback on the implementation of the 2018 Recommendation never pointed to any need for simplification or any administrative burden.

#### **(3) The difficulty of assessing impacts**

In the area of equality and non-discrimination, economic, social, and environmental impacts are difficult to quantify and monetise and data availability is limited. The social impact of the activities of equality bodies, such as assisting victims of discrimination and preventing or promoting equal treatment in general, cannot be measured in the absence of comprehensive equality data. This is a challenge that this proposal will help address by requiring equality bodies to collect data on their own activities, conducting surveys, and giving them the possibility to play a coordination role in the collection of equality data by other public or private entities.

### *Retrospective analysis of existing legislation*

The retrospective analysis addresses the effectiveness, efficiency, coherence, EU added value and relevance of the EU provisions on equality bodies in the Equality Directives and the 2018 Recommendation<sup>42</sup>.

The effectiveness of the existing EU framework for equality bodies has been assessed as limited as regards progress in the fight against and prevention of discrimination. Some progress has been made, especially in Member States where equality bodies did not exist before the EU intervention. However, the desired effects<sup>43</sup> were not fully achieved. The analysis has shown that levels of discrimination remained high, while victims' awareness of their rights remained low. Underreporting is still a considerable problem and public awareness about and knowledge of discrimination remains limited. Many equality bodies are not properly equipped, in terms of powers and resources, to assist victims effectively.

The efficiency of the existing EU framework for equality bodies was assessed as limited as regards the ability of equality bodies to fight and prevent discrimination, and inconclusive as regards costs and benefits, mainly due to the limited data availability. The retrospective analysis has shown that the current EU framework provided by the Directives is too general and narrow in scope and does not address the setup, efficiency or resources of equality bodies. This situation has not been mitigated by the more detailed 2018 Recommendation due to its non-binding nature. The retrospective analysis has shown that equality bodies' resources are a considerable problem in this context, as they vary greatly between Member States and are insufficient for most equality bodies to be able to fulfil all their tasks effectively.

The coherence of the existing EU framework has been assessed as positive overall at all levels. The analysis has shown that coherence with the Treaties and the Charter is high, as the EU framework aims to enhance equality and non-discrimination, which are among the founding values of the EU. Equality is also a fundamental right protected by the Charter. While international instruments, such as the United Nations 'Principles Relating to the Status of National Human Rights Institutions'<sup>44</sup> (the so-called 'Paris Principles') and Recommendation No 2 of the European Commission against Racism and Intolerance (ECRI) from the Council of Europe<sup>45</sup> are more detailed due to their different legal nature, the various instruments are consistent on substance.

The EU added value has been assessed as positive. The analysis has shown that at the time of the adoption of Directive 2000/43, only about half of the then EU-15 Member States had an equality body with a limited mandate, and only one Member State of the remaining EU-12 had an equality body before the process of accession. Stakeholders consulted at the time of the study confirmed that equality bodies would not have been set up in all Member States without the EU taking action. The fact that levels of discrimination<sup>46</sup> remain high throughout the Member States shows that action at EU level is still needed. However, it would need to be more detailed and concrete than the current legal framework to provide more legal clarity on the measures to be implemented by the Member States.

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<sup>42</sup> Hereafter referred to as the EU Framework or EU intervention.

<sup>43</sup> The expected key impacts were (i) an effective implementation and enforcement of EU equal treatment and non-discrimination legislation, (ii) a decrease in levels of discrimination and unequal treatment and (iii) increased prevention and higher awareness.

<sup>44</sup> <https://www.un.org/ruleoflaw/blog/document/principles-relating-to-the-status-of-national-institutions-paris-principles/>.

<sup>45</sup> <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.2#:~:text=ECRI%20General%20Policy%20Recommendation%20N%C2%B02%20revised%20on%20Equality,and%20combating%20discrimination%20and%20intolerance.>

<sup>46</sup> See Chapter 3 of Annex 5 of the analytical document for detailed figures from the 2019 Eurobarometer.

The relevance of the EU framework's original objectives in the light of the original and current needs has been assessed as positive. However, the original legal framework for equality bodies has been considered as too narrow and vague. This view is broadly shared by all stakeholders, especially equality bodies, civil society organisations (CSOs), and Member States. The analysis has shown that there is overwhelming support for taking further action to tackle the issues identified above<sup>47</sup> and to make sure that equality bodies have the resources to address new challenges in the field of non-discrimination, such as those related to the use of automated systems, the frequency and seriousness of which have increased with technological development.

Considering all the above, a number of lessons learned were identified, as indicated below. Due to the vagueness of the current provisions on equality bodies, equality bodies face several problems in Member States, as explained below. Even though the 2018 Recommendation aimed at addressing these issues, it had only limited impact due to its non-binding nature, hence the proposed binding legal instrument to tackle them more effectively.

#### *Resources and independence*

The analysis has shown that lack of resources is a recurrent problem that significantly hampers the functioning of equality bodies. Similarly, lack of independence hampers equality bodies carrying out their tasks and objectives effectively.

#### *Assistance to victims*

The assistance provided to victims and the powers granted to equality bodies to this end vary greatly between Member States. To ensure a minimum level of protection of the fundamental right of non-discrimination, more specific common rules in this area would be beneficial. Litigation powers are powers of particular interest in this regard. To be able to assist all victims of discrimination, it is also important to ensure that equality bodies are accessible to all victims of discrimination without barriers.

The Employment Equality Directive and the Gender Equality Directive in the field of social security currently do not contain provisions on equality bodies. However, the retrospective analysis has shown that levels of discrimination on the grounds and fields covered by those Directives remain high in Member States.

#### *Knowledge of discrimination*

The retrospective analysis shows that the regularity with which equality bodies conduct independent research, carry out surveys and publish reports varies greatly. The same is true of the collection of primary and secondary data on equality. Given the fact that awareness about and knowledge of discrimination remain insufficient, clearer rules are needed in this area.

#### *Cooperation*

The extent to which equality bodies cooperate and share information with each other and with relevant national, European, and international authorities or bodies varies between Member States. Such exchanges would however be beneficial to share knowledge and create synergies.

#### ***Prospective analysis on possible new EU action***

When it comes to policy options for a possible new EU action, non-legislative options have already been tested without fully producing the expected results. Non-legislative interventions have included:

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<sup>47</sup> In particular, the overwhelming majority of respondents to the Open Public Consultation (97.2%) consider that establishing strong and effective equality bodies is important – see [Equality bodies – binding standards \(europa.eu\)](#).

- (a) the setting-up of an active network of equality bodies financed by the Commission (Equinet),
- (b) the non-binding 2018 Commission Recommendation,
- (c) exchanges of best practices, and
- (d) direct funding through the Citizens, Equality, Rights and Values Programme ('CERV').

While all these measures produced positive effects and will remain in place in the future, the Recommendation, due to its non-binding nature, was only partially implemented.

That is why the only policy option examined beyond the status quo was the adoption of new legislation. An analysis of the type of measures that should be included in the new legislation was carried out per policy measure, as further explained below.

The objectives of the EU intervention can be grouped under three main goals for equality bodies:

- help enforce the six Equality Directives,
- effectively assist victims of discrimination to access justice, and
- promote equal treatment and prevent discrimination.

The analysis identified 21 objectives to tackle the problems explained above. To reach these objectives, three operational objectives were identified as key, namely ensuring that:

- equality bodies are free from external influence so that they can exercise all their tasks independently,
- equality bodies have the necessary resources to perform all their tasks, and
- if an equality body is part of a multi-mandate body, there is an internal structure (a so called 'firewall') that guarantees sufficient independence, focus and resources for the equality mandate.

48 measures, falling under 11 thematic blocs<sup>48</sup>, that could be included in legislation to help achieve the above objectives, were selected for further analysis.

The analytical document investigated the proposed measures on the basis of the five criteria of effectiveness<sup>49</sup>, efficiency<sup>50</sup>, coherence<sup>51</sup>, EU added value<sup>52</sup> and relevance<sup>53</sup>. The assessment of EU added value, relevance and coherence was done for the proposed legislative initiative as a whole, while the assessment of effectiveness and efficiency was done per

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<sup>48</sup> Mandate, powers, access, cooperation, surveys, data collection, monitoring, enforcement, independence, resources and structure.

<sup>49</sup> The analysis of effectiveness considers the extent to which the proposed measure is expected to contribute towards progress towards the objectives defined in the intervention logic.

<sup>50</sup> The analysis of efficiency assesses the relationship between the resources used by a proposed measure and the changes it is expected to generate.

<sup>51</sup> The analysis of coherence focuses on how well the proposed measure is expected to work together with other EU, international and national instruments.

<sup>52</sup> The analysis of EU added value looks at changes to be triggered by the proposed measure over and above what could reasonably be expected from stakeholders alone or from no action at all.

<sup>53</sup> The analysis of relevance looks at whether the proposed measure is an appropriate response to the needs.

thematic bloc, looking at individual measures. For some measures, a full assessment was not possible due to limited availability of data or methodological constraints. This is especially true for efficiency.

The study concludes that new directives, respecting the principles of subsidiarity and proportionality, would be the appropriate response. 44 measures identified were retained to be included in the proposals.

A small number of Member States already empower their equality bodies with a fairly comprehensive set of resources and powers, while most of the others only partially meet the above objectives. The need for and extent of adaptation arising from new EU rules would therefore vary, for each policy measure, depending on the situation in each Member State as regards the features of their equality body (or bodies)<sup>54</sup>.

### *Other expertise and analysis*

The Commission also used the information gathered during the preparation of the Staff Working Document on the implementation of the Commission Recommendation on standards for equality bodies published on 19 March 2021<sup>55</sup>. It included contributions received as well as pre-existing information from the Member States, the European Network of Equality Bodies (Equinet), the EU Agency for Fundamental Rights (FRA), the European Commission against Racism and Intolerance (ECRI), equality bodies, civil society and the European Network of legal experts in gender equality and non-discrimination. It also built on good practices that were shared during the Good Practice Exchange Seminar co-organised by the Commission and the Swedish government in June 2019.

The Commission drew on additional existing sources from the European Institute for Gender Equality (EIGE) and the European Network of National Human Rights Institutions (ENNHRI) to gather evidence that was used to support the analytical document.

Finally, the Commission took into account the findings of a study on possible gaps in legal protection against discrimination on grounds of racial or ethnic origin, carried out as provided for in the anti-racism action plan. The study investigated possible gaps in the protection mechanisms set out in the Racial Equality Directive, including the role of equality bodies.

The study confirmed that equality bodies are perceived as a (very) important protection mechanism in the fight against discrimination. The respondents to the targeted survey carried out as part of the study confirmed this finding. It found that equality bodies – given their competences, especially if reinforced – could enhance the effectiveness of other protection mechanisms. In addition to the role of equality bodies, the protection mechanisms that may contribute to the prevention of and protection against discrimination include provisions on defence of rights and victimisation, sanctions, positive action, and dialogue. The study identified some potential gaps in relation to these existing mechanisms (e.g. sanctions, defence rights) and mechanisms/measures that could enable the use of more proactive/preventive approaches while tackling discrimination (e.g. national action plans, equality duties, equality data collection). It recommended a larger role for equality bodies in relation to:

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<sup>54</sup> More information on the situation in each Member State is in Annex 4 of the analytical document.

<sup>55</sup> SWD(2021)63 final.

- (a) information, awareness raising, guidance and training,
- (b) defence of rights including investigative and litigation powers, alternative dispute resolution and sanctions,
- (c) the use of equality data,
- (d) dialogue, cooperation and collaboration, and,
- (e) positive action/equality duties<sup>56</sup>.

- **Stakeholder consultations**

Numerous consultation activities were carried out in preparation of this legislative initiative. There is strong support from stakeholders for new EU measures in the field.

A total of 182 respondents replied to the Open Public Consultation. The contractor conducted around 100 interviews and received 84 replies to specialised online surveys. A total of 239 stakeholders participated in three workshops and a final conference to brainstorm on key topics and possible measures. In parallel, the Commission organised four meetings to inform and consult Member States representatives. Regular stakeholders' presentations were also given.

These activities were targeted to a very wide range of stakeholders, so as to reach out to all interested parties and gather their input and opinions. Among others, the following stakeholders were consulted: all equality bodies, the Equinet, the FRA and the EIGE, representatives of all Member States at ministry level, key academics and experts in the field of anti-discrimination, civil society organisations, social partners including representatives of employers at the EU level, and EU residents (EU citizens and third country nationals).

A Youth Policy Dialogue entitled 'Equality bodies that work for all of us' was organised by Commissioner Dalli on 24 May 2022 with young activists in the field of equality. It was part of the 2022 European Year of Youth and aimed to further broaden the consultation activities ahead of this proposal. Participants confirmed that few young people would refer to an equality body if their rights had been infringed. They insisted on the need for strengthened cooperation between equality bodies and youth organisations, also at grassroots level.

The proposal to adopt new EU rules to address the above issues received overwhelming support in the consultation activities. For instance, 97.2% of respondents to the open public consultation considered that establishing strong and effective equality bodies is (very) important. Stakeholders were in favour of EU rules on:

- independence (including transparent and competence-based selection of leadership, and budgetary independence),
- sufficient resources (human resources, financial resources and appropriate premises),
- coverage of all grounds and fields of discrimination falling under the Equality Directives,
- easy complaint submission and accessibility,
- litigation powers and investigative powers for all equality bodies,

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<sup>56</sup> Equality duties are an obligation for public and/or private entities to consider or think about how their policies or decisions will affect people protected under equal treatment law.

- enforcement of equality bodies binding decisions and possibility of imposing sanctions,
- awareness-raising of the existence of equality bodies in the general population and in groups at risks of discrimination,
- promotion of equality and prevention of discrimination,
- collection of data by equality bodies on their activities and access to equality data collected by other public and private entities, to produce regular reports, and
- coordination and cooperation with public authorities, stakeholders (e.g. CSOs and social partners) and international/EU bodies.

Stakeholders supported the most ambitious choices in the above areas. According to a large majority of stakeholders, the future legislation should make the Member States responsible for putting in place the conditions allowing equality bodies to fully play their role, as equality bodies cannot effectively deliver on their goals without the appropriate means and powers.

At the same time, they highlighted that the adoption of strengthened binding minimum standards for equality bodies should consider the diversity of legal traditions in the Member States and respect their institutional autonomy. The following elements were stressed as important in this respect:

- Binding decision-making powers (quasi-judicial function) should not be imposed on all equality bodies; instead, Member States should be able to decide whether to entrust equality bodies with binding decision-making powers and the best way to ensure their effectiveness.
- A centralised peer-review accreditation system of equality bodies should not be set up at this stage; instead, regular monitoring by the Commission according to a list of indicators should enable assessment of the extent to which the initiative's objectives have been achieved and its requirements fulfilled by Member States.
- In making sure that the services of equality bodies are available to all potential victims, some degree of flexibility is important as regards the physical presence of equality bodies throughout the national territory of the Member States (e.g. Member States should be free to organise this presence as they wish, for instance through a fixed network of offices, regular local visits ('flying offices') or cooperation with local CSOs.
- Member States should ensure that equality bodies have the appropriate mandate, conditions and tools to fulfil their missions, without prescribing how they should fulfil them in any given case (e.g. they would have the power to act in court, but not the obligation to do so).

All these aspects were considered and reflected in this proposal.

- **Fundamental rights**

The objectives of this proposal are in line with and aim to support the application of the Charter, in particular Article 21 which prohibits any discrimination on any grounds, such as sex, race, ethnic origin, religion or belief, disability, age or sexual orientation, and Article 23, which provides that 'equality between women and men must be ensured in all areas, including employment, work and pay'. Article 26 recognises the right of persons with disabilities to

benefit from measures designed to ensure their independence, social and occupational inclusion and participation in public life.

#### **4. BUDGETARY IMPLICATIONS**

The initiative does not create additional costs for the European Commission and its agencies. To support the monitoring of the implementation of this Directive, the FRA and the EIGE would collect and analyse relevant data. This type of task is already covered by the existing mandates of the FRA<sup>57</sup> and the EIGE<sup>58</sup> and can be performed without additional resources.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation, and reporting arrangements**

Member States must transpose this Directive within 18 months of its entry into force and communicate their transposition measures to the Commission.

To assess how effectively this initiative achieves its objectives, Member States will report on its implementation every 5 years and the Commission will adopt an implementation report on the basis of information provided by the Member States and data collected by the FRA and the EIGE according to a list of indicators to be developed by the Commission in close cooperation with these agencies and Equinet. The Commission plans to set up an expert group to consult Member States on those indicators.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 – Purpose, subject matter and scope

This provision specifies the purpose, subject matter and scope of the Directive. It clarifies that the minimum requirements established by the Directive apply to equality bodies within the scope of Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC.

Article 2 – Designation of equality bodies

This Article provides for the designation of one or more equality bodies by Member States, to tackle discrimination under the scope of Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. It mirrors the equivalent provision contained in Directives 2000/43/EC and 2004/113/EC.

Even if all Member States have designated equality bodies by now, it is necessary to keep the obligation to designate and set up at least one in the new Directive, since the current provisions will be deleted.

The provisions contained in Directives 2000/43/EC and 2004/113/EC and specifying the competences or tasks of equality bodies will also be deleted. They have been incorporated in this Directive, alongside new competences and tasks as follow:

- Independence: Article 3,

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<sup>57</sup> Article 4 of Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, p. 1.

<sup>58</sup> Article 3 of Regulation (EC) No 1922/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a European Institute for Gender Equality, OJ L 403 p. 9.

- Assistance to victims of discrimination: Articles 6 to 9,
- Opinions and recommendations: Articles 8, 13 and 14,
- Surveys and reports: Articles 14 and 15, and
- Cooperation: Article 12.

### Article 3 – Independence

Independence is a fundamental feature to ensure the proper functioning of equality bodies and the fulfilment of their mission.

This provision establishes a general obligation of independence for equality bodies, whereas the provisions of the Equality Directives only require them to act independently within the exercise of their competences.

Specific requirements that contribute to and/or guarantee this independence are listed in this provision. They concern the legal structure, accountability, budget, staffing, organisational matters of equality bodies, and rules applicable to their staff and leadership to ensure their competence and independence.

Moreover, this provision requires Member States to ensure that the internal structure of equality bodies guarantees the independent exercise of their mandate and competences. The (internal) structure of equality bodies conditions their ability to exercise their competences and deliver on their tasks effectively. For instance, taking decisions or issuing opinions on a case requires equality bodies to act with impartiality, whereas supporting victims may require equality bodies to take their side.

Some equality bodies are part of bigger entities that have several mandates, such as NHRIs or ombudspersons. In these cases there can be a conflict between these different mandates, in terms of resources – especially when the equality mandate has been added to the other mandate(s) – and in terms of exercise of powers. For example, Ombudspersons are usually required to act with impartiality, which is not always compatible with assisting victims, including before the courts.

These tensions can be solved by adopting an appropriate structure for the body, where these powers and/or mandates are exercised by different dedicated departments or staff members, i.e. by putting structural ‘firewalls’ in place.

### Article 4 – Resources

Adequate resources are a pre-condition for the effective functioning of equality bodies and the fulfilment of their mission.

This provision establishes a general obligation for Member States to equip equality bodies with sufficient resources to fulfil all their tasks and exercise all their competences effectively. It further specifies circumstances and/or areas that Member States are to take into account when determining financial resources: any increase in competences or tasks, the need for special expertise to use automated systems to address potential risks of discrimination, sufficient reserve to face litigation costs that may be difficult to predict, and the structure of the equality body as part of a multi-mandate body.

## Article 5 – Prevention, promotion and awareness raising

The fight against discrimination begins with taking the necessary measures to prevent it. The protection mechanisms put forward by the existing equality Directives are essentially retrospective (after an incident of discrimination has taken place), individualised and victim-centred. The Directives do not include comprehensive preventive mechanisms, and prevention was not explicitly part of the original equality bodies' tasks.

As regards the promotion of equal treatment, equality bodies were first called 'bodies for the promotion of equal treatment' in Directive 2000/43/EC, and then 'bodies for the analysis, monitoring and support of equal treatment' in subsequent equality Directives. Their role in the promotion of equal treatment was therefore always apparent, but never explicitly specified in the Directives.

This provision now clarifies the role of equality bodies in the promotion of equal treatment and in the prevention of discrimination that is closely related. This Directive aims at establishing them as public entities, in charge of fostering knowledge and building capacities of public and private entities on matters related to equal treatment, with the goal of preventing (re)occurrences of discrimination.

This provision also aims at ensuring that Member States adopt a strategy to address the low level of awareness of equality rights and of the services provided by equality bodies, considering the specific characteristics of different target groups.

## Article 6 – Assistance to victims

This provision specifies how equality bodies are to assist victims upon receiving their complaints, by providing relevant and targeted information on the legal framework, available remedies, the services offered by the equality body, the confidentiality rules applicable, the protection of personal data and the possibilities of obtaining psychological support (even though equality bodies themselves are not in charge of providing such support).

Equality bodies may gather information voluntarily submitted by the parties involved. They must issue a preliminary assessment of all complaints and inform the complainant of their assessment and the follow-up they suggest. Depending on their assessment of the case, they can select and suggest to the complainant a follow-up according to Articles 7, 8 and 9.

## Article 7 – Amicable settlement

This Article requires Member States to provide for the possibility of an amicable resolution of disputes, led by the equality body itself or another existing dedicated entity, upon agreement of all parties to engage in such a process. It leaves to the Member States to determine the modalities of the process, according to national law.

## Article 8 - Opinions and decisions

This provision allows equality bodies to investigate possible cases of discrimination and issue a motivated opinion (non-binding) or decision (binding), following a complaint or on their own initiative. If they already have sufficient information voluntarily submitted by the parties involved, they can issue such opinions/decisions without requesting further information. All parties should benefit from appropriate due process rights, including the right to be heard.

Until now, equality bodies had the competence to make recommendations on any issue relating to discrimination. The term ‘recommendation’ has been kept in this Directive to refer to policy recommendations under Articles 13, 14 and 15. Some equality bodies also used this competence to make ‘recommendations’ in individual cases. To distinguish these two situations, this Directive uses the term ‘opinion’ to refer to the competence of equality bodies to issue conclusions in individual cases. These opinions are not legally binding.

Some equality bodies have the power – under national rules - to issue binding decisions, when Member States so determine. While this Directive does not aim to give this power to all equality bodies in all Member States, it addresses the situations where equality bodies have such power under national rules and seeks to ensure the enforcement of binding decisions.

Where discrimination has occurred, issuing opinions and decisions are a means to put an end to a situation of discrimination, but also an opportunity to prevent further similar situations. Whenever relevant, equality bodies are required to include preventive measures in their opinions and decisions, in addition to specific measures to remedy the situation.

To encourage and follow-up on the implementation of the opinions or decisions, Member States are required to put in place appropriate mechanisms for follow-up to opinions, such as feedback obligations, and for enforcement of decisions.

#### Article 9 – Litigation

This Article grants litigation powers to equality bodies in order to ensure that the principle of equal treatment laid down in Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC is complied with.

Litigation powers allow equality bodies to concretely support victims in accessing justice, but also to elicit legal interpretation of rules and social change via strategic litigation. In that regard, being able to act in their own name, in the public interest, in the absence of an identified victim and in support or on behalf of several victims is particularly important. Finally, the possibility for equality bodies to submit oral or written statements to the courts (e.g. *amicus curiae*) usefully complements these litigation powers, as it is less resource-intensive for equality bodies, but still allows them to submit their expert opinion to courts.

This provision also ensures that equality bodies’ rights to act in court respect the principles of fair trial and equality of arms. The equality body will not be allowed to submit in proceedings evidence which the alleged perpetrator or any third party was legally bound to provide in previous investigations on the same case. This will not apply where the equality body acts as a party in proceedings on the enforcement or judicial review of an own decision or acts as *amicus curiae*.

#### Article 10 – Procedural safeguards

The procedures laid down in Article 6 to 9 must be framed by appropriate procedural safeguards for natural and legal persons involved, as regards the rights of defence, confidentiality and judicial review. Member States are responsible for defining such safeguards in accordance with national rules.

#### Article 11 - Access, accessibility and reasonable accommodation

To be able to provide assistance to all victims of discrimination, it is essential that equality bodies be accessible to all people without barriers, and that they provide free services to complainants throughout the territory of the Member States, including in rural and remote areas. This provision also requires the accessibility of all services as well as the provision of reasonable accommodation for persons with disabilities.

#### Article 12 – Cooperation

Cooperation with other public and private entities is essential to promote equal treatment and non-discrimination, inform equality bodies' work and coordinate their action with those of other entities.

#### Article 13 – Consultation

This provision aims to ensure that equality bodies are regularly consulted by the government and other public institutions on public policies involving questions of equality and non-discrimination, thanks to the adoption of timely and transparent procedures. It also enables equality bodies to make recommendations on such public policies, a competence that equality bodies have had since their creation under EU law. This provision thereby helps strengthen their role as public experts in equal treatment matters.

#### Article 14 – Data collection and access to equality data

This provision sets out equality bodies' (i) obligations to collect data on their own activities, (ii) powers to conduct surveys, (iii) powers to access and process statistics collected by other public or private entities, and (iv) possibility to play a coordination role in the collection of equality data by other public or private entities. Equality bodies will thus contribute to the collection of equality data that will feed their own reports, the monitoring report of the Commission referred to in Article 16, and public knowledge on equal treatment and discrimination in the Member States.

In addition, this provision ensures that equality bodies can make recommendations on the collection of equality data in the Member States. The collection of equality data is key 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.

#### Article 15 – Reports and strategic planning

The goal of this provision is to ensure that equality bodies regularly plan and publicly report on their work and on the state of equal treatment and non-discrimination. By making data available on their own activities, on the number of complaints received by grounds and fields, and on discrimination in general in the Member States, equality bodies will foster public knowledge about discrimination and about their own work.

In turn, this knowledge will help them make informed decisions about the future organisation of their work, their priorities for the coming years, and how to best allocate their resources.

#### Article 16 – Monitoring

According to this provision, the Commission will set a list of common indicators to monitor the implementation of this Directive and draw up an application report. In preparing the indicators the Commission may seek advice from FRA and EIGE. The list of indicators will

cover the resources, independent functioning, activities, and effectiveness of equality bodies and any changes in their mandate, powers or structure. Member States and stakeholders would be consulted at both national and EU level, and the indicators developed by Equinet will be taken into account.

This Article also introduces an obligation for Member States to communicate to the Commission every 5 years all relevant information concerning the implementation of the Directive on the basis of the indicators mentioned above, allowing the Commission to review the implementation of the Directive and to draw up its implementation report.

#### Article 17 – Minimum requirements

This is a standard "non-regression" provision that is relevant to Member States which have, or may wish to adopt, legislation providing for a higher level of protection than the one guaranteed by the Directive. It provides that there should be no lowering of the conditions already in place for the functioning of equality bodies by Member States when implementing this Directive.

#### Article 18 – Processing of personal data

Any personal data collected by equality bodies to fulfil their tasks, for instance when handling a complaint, should be processed in accordance with the General Data Protection Regulation<sup>59</sup>. This Article specifies that equality bodies may collect personal data only where necessary for the fulfilment of a task under this Directive. Additional safeguards should be adopted whenever equality bodies have to process sensitive personal data to carry out one of their tasks.

#### Article 19 – Deletion of current provisions on equality bodies

This Article amends Directives 2000/43/EC and 2004/113/EC to delete existing provisions on equality bodies and specifies that all references to the deleted provisions are to be construed as references to this Directive.

Article 21 further specifies the date of entry into force of this Article to ensure that there will be no gap in the functioning of equality bodies.

#### Article 20 – Transposition

This Article establishes the maximum period that Member States have to bring into force the Directive into national law and communicate the relevant texts to the Commission. This period is set at 18 months from the entry into force of this Directive.

#### Article 21 – Entry into force

This is a standard provision stipulating that the Directive is to enter into force on the twentieth day following its publication in the Official Journal. It also ensures that the current provisions on equality bodies will remain in force until the new provisions apply.

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<sup>59</sup> 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.

## Article 22 – Addressees

This is a standard provision on addressees, making clear that the Directive is addressed to the Member States.

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**

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 opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Having regard to the opinion of the European Data Protection Supervisor<sup>4</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (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<sup>5</sup>, 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

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

<sup>5</sup> 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

independence in order to strengthen the application of the principle of equal treatment as derived from Council Directives 79/7/EEC<sup>6</sup>, 2000/43/EC<sup>7</sup>, 2000/78/EC<sup>8</sup> and 2004/113/EC<sup>9</sup>.

- (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.
- (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’). They require Member States to ensure that the competences of these bodies include providing independent assistance to victims, conducting independent surveys concerning discrimination, publishing independent reports and making recommendations on any issue relating to such discrimination.
- (9) Directives 2006/54/EC<sup>10</sup> and 2010/41/EU<sup>11</sup> of the European Parliament and of the Council also provide for the designation of equality bodies.
- (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<sup>12</sup>.
- (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. This results in significant differences between the 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.

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<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> 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).

<sup>10</sup> 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).

<sup>11</sup> 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).

<sup>12</sup> See the detailed analysis in SWD(2021) 63 final “Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies”.

- (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 do have competence for those matters in most Member States, where required by national law. However, that is not the case in all Member States, which leads to differing 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 binding 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 should draw on the lessons learnt through the application of Commission Recommendation 2018/951<sup>13</sup>, building on some of its provisions and laying down new rules where necessary. They should also draw from other relevant instruments, such as the General Policy Recommendation N°2<sup>14</sup> on equality bodies adopted by the European Commission against Racism and Intolerance (ECRI) and the Paris Principles<sup>15</sup> adopted by the United Nations and applicable to national human rights institutions.
- (14) The same binding 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 deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU*]<sup>16</sup>.
- (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 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.
- (17) Equality bodies can only effectively play 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 into account a number of criteria that contribute to the independence of equality bodies. Equality bodies should not be set up as part of a ministry or body taking instructions directly from the government. Any staff member or person holding a managerial position – for example as member of a board managing the equality body, head of the equality body, deputy or in case of interim – should be independent, qualified for their position, and selected through a transparent process.

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<sup>13</sup> Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies (OJ L 167, 4.7.2018, p. 28).

<sup>14</sup> 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.

<sup>15</sup> Principles relating to the Status of National Institutions adopted by General Assembly resolution 48/134 of 20 December 1993.

<sup>16</sup> COM(2022)688.

Equality bodies should be able to manage their own budget and resources, including by selecting and managing their own staff, and be able to set their own priorities.

- (18) To ensure that equality bodies can exercise all their competences and fulfil all their tasks, Member States should ensure that the internal structure of equality bodies allows the independent exercise of their various competences. Particular attention should be paid to situations where bodies are required both to be impartial and to offer support to victims. This is particularly relevant where the equality body holds binding decision-making powers requiring impartiality or is part of a multi-mandate body where another mandate requires impartiality. An internal structure ensuring a strict separation between the relevant competences and tasks should guarantee that the equality body can effectively exercise them.
- (19) The lack of appropriate resources is a key issue hampering the ability of equality bodies to adequately fulfil their tasks. Therefore, Member States should ensure that equality bodies receive sufficient funding, can hire qualified staff and have appropriate premises and infrastructure to carry out each of their tasks effectively, within reasonable time and within the deadlines established by national law. Their budgetary allocation should be stable, except in case of increase in competences, planned on a multi-annual basis, and allow them to cover costs that may be difficult to anticipate such as costs linked to litigation. To ensure that equality bodies are provided with sufficient resources, their budget should for instance not suffer cuts that are significantly higher than the average cuts to other public entities; similarly, their annual growth should at least be pegged to the average growth in funding to other entities. Resources should increase proportionally if equality bodies' tasks and mandate are expanded.
- (20) Automated systems, including artificial intelligence, represent a useful tool to identify discrimination patterns, but algorithmic discrimination is also a risk. Equality bodies should therefore have access to qualified staff or services, able to use automated systems for their work on the one hand and to assess them as regards their compliance with non-discrimination rules on the other hand. Particular attention should be devoted to equipping equality bodies with appropriate digital resources, be it directly or by way of subcontracting.
- (21) Equality bodies, alongside other actors, have a key role to play in the prevention of discrimination and the promotion of equality. To address the structural aspects of discrimination and to contribute to social change, they should promote equality duties, good practices, positive action and equality mainstreaming among public and private entities, and provide them with relevant training, information, advice, guidance and support. They should communicate with public and private entities and groups at risks of discrimination and engage in public debate in order to combat stereotypes and raise awareness about diversity and its benefits, a key pillar of the Union's equality strategies.
- (22) Beyond prevention, a central task of equality bodies is to provide assistance to victims of discrimination. This assistance should always include the provision of key information to complainants and a preliminary assessment of their complaint, based on the initial information gathered from the parties on a voluntary basis. Member States should be in charge of defining the modalities under which the equality body would issue this assessment, such as the timeframe of the process or procedural safeguards against repetitive or abusive complaints.

- (23) To ensure that all victims are able to complain, it should be possible to submit complaints in various ways. Member States should also pay due regard to Commission Recommendation 2018/951 under which 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, and without prejudice to Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law<sup>17</sup>, confidentiality should be offered to witnesses and whistle-blowers, and as far as possible, to complainants.
- (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 an amicable resolution to their disputes, by the equality body or another existing dedicated entity. They should define the modalities of the amicable settlement process according to national law.
- (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 act further following a complaint or on their own initiative.
- (26) Evidence is key in determining whether discrimination has taken place and it is often in the hands of the alleged perpetrator. Equality bodies should therefore be able to access the necessary information to establish discrimination and cooperate with the relevant public services – such as labour inspectorates or education inspectorates. Member States should establish an appropriate framework for the exercise of this competence, in accordance with national rules and procedures.
- (27) On the basis of the evidence gathered, either voluntarily or through an investigation, equality bodies should provide their assessment to the complainant and the alleged perpetrator. Member States should determine the legal value of this assessment that can be a non-binding opinion or a binding enforceable decision. Both should state the reasons for the assessment and include, where necessary, measures to remedy any breach found and to prevent further occurrences. To ensure the effectiveness of equality bodies' work, Member States should adopt appropriate measures for the follow-up of opinions and the enforcement of decisions.
- (28) To promote their work and equality law, equality bodies should be able to publish a summary of their opinions and decisions without disclosing personal data.
- (29) Equality bodies should have the right to act in court proceedings in civil or administrative law matters 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. While those court proceedings should be subject to national procedural law, including national rules on admissibility of actions, such rules, and in particular any condition of legitimate interest, cannot be applied in a way so as to undermine the effectiveness of the equality bodies' right to act. The powers of investigation and decision-making 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

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<sup>17</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

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. Their support will therefore facilitate access to justice for victims.

- (30) Legal standing allows equality bodies to act on behalf or in support of victims, allowing them to access justice where procedural and financial barriers or a fear of victimisation often deters them. Legal standing also allows equality bodies to strategically select the cases they decide to pursue in front of national courts, and to contribute to the proper interpretation and application of equal treatment legislation.
- (31) Some instances of discrimination are difficult to fight because there is no complainant pursuing the case themselves. In its judgment in Case C-54/07 (*Feryn*)<sup>18</sup>, 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. It is therefore important that equality bodies can act in their own name, to defend the public interest.
- (32) Equality bodies should also be able to submit oral or written statements to the courts - e.g. *amicus curiae* – as a lighter way to support cases with their expert opinion.
- (33) Equality bodies’ rights to act in court must respect the principles of fair trial and equality of arms. Therefore, except where the equality body acts as a party in proceedings on the enforcement or judicial review of an own decision or acts as *amicus curiae*, the equality body should not be allowed to submit in court proceedings evidence obtained through previous investigations of the same case which the alleged perpetrator or any third party was legally bound to provide.
- (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, the right to judicial review and the right to confidentiality are appropriately protected.
- (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 their 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.
- (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 Agency<sup>19</sup>, 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 economic status, their disability, their literacy or their lack of access to online tools.
- (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

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<sup>18</sup> Judgment of 10 July 2008 in *Feryn* (C-54/07, ECLI:EU:C:2008:397).

<sup>19</sup> FRA EU-MIDIS II Survey.

complainants. Member States should also 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 organisation of local campaigns or cooperation with local delegates or civil society organisations.

- (38) The Union and all Member States are parties to the UN Convention on the Rights of Persons with Disabilities<sup>20</sup> (UNCPRD) which includes the obligation to prohibit discrimination on the basis of disability and to guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. This Directive should be interpreted in a manner consistent with the UNCPRD. To guarantee equal and effective legal protection and access for persons with disabilities to all services and activities of equality bodies, it is necessary to ensure accessibility, in accordance with requirements set out in Directive (EU)2019/882, and reasonable accommodation. Equality bodies should ensure physical and digital<sup>21</sup> accessibility by preventing and removing the barriers that persons with disabilities may face in accessing their services and information, and provide reasonable accommodation, taking necessary and appropriate modification and adjustments where needed in a particular case.
- (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, in particular, with other equality bodies in the same Member State and in other Member States – including in the framework of the European Network of Equality Bodies (Equinet) – and with public and private entities at local, regional, national, Union and international level, such as civil society organisations, data protection authorities, trade unions, labour and education inspectorates, law enforcement bodies, agencies with responsibility at national level for the defence of human rights, authorities managing Union funds, National Roma Contact Points, consumer bodies, and national independent mechanisms for the promotion, protection and monitoring of the UNCPRD. Such cooperation should not involve the exchange of personal data (i.e. equality data in the form that individuals can be identified).
- (40) Equality bodies cannot fully play their role as experts in equal treatment if they are not consulted sufficiently early 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 transparent procedures to ensure that consultation in a timely manner. They should also allow equality bodies to make recommendations and publish them.
- (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<sup>22</sup>. Equality bodies

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<sup>20</sup> OJ L 23, 27.1.2010, p. 37.

<sup>21</sup> 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.

<sup>22</sup> 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') SWD(2021) 63 final.

have a role to play in contributing to the development of relevant equality data for those purposes, for example by organising regular roundtables gathering all relevant entities. They should also collect and analyse data on their own activities or conduct surveys and should be able to access and make use of statistical information collected by other public or private entities – such as the national statistical offices, national courts, labour and education inspectorates, trade unions or civil society organisations - concerning the matters they are entrusted with under Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC. That statistical information should not contain any personal data.

- (42) In addition to publishing an annual report on their activities, equality bodies should regularly publish a report featuring an overall assessment of the situation regarding discrimination falling under their mandate in the Member States. That report should provide information for public and private entities and serve as a guide to determine the equality bodies' priorities for the future. Reports should not contain any personal data.
- (43) To determine their vision for the future and identify their organisation's goals and objectives, equality bodies should adopt a multi-annual programme. This should allow them to ensure the coherence of their different strands of work over time and address systemic issues of discrimination falling under their mandate as part of a long-term action plan.
- (44) In order to assess the effectiveness of this Directive it is necessary to establish a mechanism to monitor its application and, in addition to monitoring compliance, assess its practical effects. The Commission should be in charge of that monitoring and regularly draw up an application report. In order to ensure uniform conditions for the implementation of Member States' reporting obligations pursuant to Article 16(2) as regards the practical effects of 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. This monitoring should not involve the processing of personal data.
- (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.
- (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, 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) 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.
- (49) Where the fulfilment of the tasks of equality bodies requires the processing of special categories of personal data, namely data on racial or ethnic origin, religion or belief, disability or sexual orientation, 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.
- (50) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on [date].

HAS ADOPTED THIS DIRECTIVE:

### *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*

Member States shall designate one or more bodies (hereinafter referred to as ‘equality bodies’) to exercise the competences laid down in this Directive.

Equality bodies may form part of agencies with responsibility at national level for the defence of human rights or the safeguarding of individuals' rights.

### *Article 3*

#### *Independence*

1. Member States shall take measures to ensure that equality bodies are independent and free from external influence in performing their tasks and exercising their competences, in particular as regards their legal structure, accountability, budget, staffing, and organisational matters.
2. Member States shall provide for transparent rules and safeguards concerning the selection, appointment, revocation and potential conflict of interest of the staff of equality bodies, in particular persons holding a managerial position, in order to guarantee their competence and independence.
3. Member States shall ensure that appropriate safeguards are in place, in particular in the internal structure of equality bodies, to guarantee the independent exercise of their competences, notably where some require impartiality and others focus on support to victims.
4. Member States shall ensure that appropriate safeguards are in place in the internal structure of multi-mandate bodies to guarantee the autonomous exercise of the equality mandate.

### *Article 4*

#### *Resources*

1. Member States shall 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 all the grounds and in all fields covered by Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC including in the event of increases in competences, increases in complaints, litigation costs and the use of automated systems.
2. Where equality bodies are part of a body in charge of several mandates, paragraph 1 shall apply specifically to the equality mandate and its support staff and systems.

### *Article 5*

#### *Prevention, promotion and awareness raising*

Member States shall:

- (a) adopt a strategy 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;
- (b) ensure that equality bodies engage in the prevention of discrimination and in the promotion of equal treatment, and adopt a strategy defining how they will engage in public dialogue, communicate with individuals and groups at risk of discrimination, provide training and guidance, and promote equality duties, equality mainstreaming and positive action among public and private entities.

In doing so, Member States and equality bodies shall take into consideration the most appropriate communication tools and formats for each target group. They shall focus in particular on disadvantaged groups whose access to information can be hindered, for example by their economic status, age, disability, literacy, nationality, residence status or 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.
2. Equality bodies shall be able to receive complaints of discrimination, orally, in writing and online.
3. Equality bodies shall provide assistance to 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 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 issue a preliminary assessment of a complaint based on information voluntarily submitted by the parties involved. Member States shall define the precise modalities under which the equality body will issue such preliminary assessment.

Equality bodies shall inform the complainants of their preliminary assessment and whether it will close their complaint or whether there are grounds to pursue it further, including via the procedures laid down in Articles 7, 8 and 9.

## *Article 7*

### *Amicable settlements*

Equality bodies shall be able to offer the parties the possibility to seek an amicable resolution to their dispute. That process shall be subject to the agreement of the parties and may be led by the equality body itself or by another existing dedicated entity, in which case the equality body may formulate observations to that entity. Engaging in such a process shall not prevent the parties from exercising their right of access to court.

## *Article 8*

### *Opinions and decisions*

1. Member States shall ensure that where, following a complaint or on their own initiative, equality bodies consider that the principle of equal treatment laid down in Directives 79/7/EEC, 2000/43/EC, 2000/78/EC or 2004/113/EC may have been breached, those bodies are empowered to further investigate the case.

2. Member States shall provide for a framework which enables equality bodies to carry out fact-finding.

In particular, that framework shall provide equality bodies with effective rights to access information which is 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 provide that the alleged perpetrator and any third party is legally bound to provide any information and documents requested by equality bodies.

4. Member States shall ensure that equality bodies record in writing 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 by means of binding enforceable decisions.

Where appropriate, opinions and decisions shall include specific measures to remedy any breach found and to prevent further occurrences. Member States shall establish appropriate mechanisms for follow-up to opinions, such as feedback obligations, and for enforcement of decisions.

Equality bodies shall publish summaries of their opinions and decisions, without disclosing personal data.

## *Article 9*

### *Litigation*

1. Member States shall ensure that equality bodies have the right to act in court proceedings in administrative and civil 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 in accordance with paragraphs 2 to 5, without prejudice to national rules on the admissibility of actions.
2. The right to act in court proceedings shall include:
  - (a) the right of the equality body to act as a party in proceedings on the enforcement or judicial review of a decision taken pursuant to Article 8(4);
  - (b) the right of the equality body to submit observations to the court as *amicus curiae*;
  - (c) the right of the equality body to initiate or participate in proceedings on behalf or in support of one or several victims; in this case, the approval of the victims shall be necessary.
3. Member States shall ensure that the equality body can initiate court proceedings in its own name, in particular in order to address structural and systematic discrimination in cases selected by the equality body because of their abundance, their seriousness or their need for legal clarification.
4. Member States shall ensure that, except in cases referred to in paragraphs 2(a) and (b), the equality body does not submit in court proceedings evidence that it has obtained through the exercise of powers pursuant to Article 8(3).

5. Member States shall ensure that no investigations pursuant to Article 8(2) to (4) 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 and 9, the rights of defence of natural and legal persons involved are duly protected. Member States shall ensure that equality bodies guarantee confidentiality of witnesses and whistle-blowers, and as far as possible, of complainants.

Decisions referred to in Article 8(4) shall be subject to judicial review, in accordance with national law.

## *Article 11*

### *Access, accessibility and reasonable accommodation*

1. Member States shall guarantee access to equality bodies' services and publications on an equal basis for all and ensure that there are no barriers to submission of complaints.
2. Member States shall ensure that equality bodies provide all their services at no cost to complainants, throughout their territory, including in rural and remote areas.
3. 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, amicable settlement mechanisms, information and publications, and 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 civil society organisations, at national, regional, local level as well as in other Member States and at Union and international level.

## *Article 13*

### *Consultation*

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

They shall ensure that equality bodies have the right to make recommendations on those matters, to publish them and to require feedback from the authorities concerned.

## *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).

The data collected shall be disaggregated by 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 and, where not possible, pseudonymised.

2. Member States shall ensure that equality bodies can access statistics related to the rights and obligations derived from Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC collected by public and private entities including public authorities, trade unions, companies, and civil society organisations 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 report referred to in Article 15, point (c).
3. 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, trade unions, companies and civil society organisations. Member States shall also allow equality bodies to play a coordination role in the collection of equality data.
4. 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 multi-annual programme setting out their priorities and prospective activities, including the strategy referred to in Article 5, point (b);
- (b) produce and make available to the public an annual activity report, including their annual budget, staff and financial reporting;
- (c) publish a report, 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*

1. The Commission shall, by means of an implementing act, establish a list of common indicators to measure the practical effects of this Directive. When preparing the indicators, the Commission may seek advice from the European Union Agency for Fundamental Rights and the European Institute for Gender Equality. Those indicators shall cover the resources, independent functioning, activities and effectiveness of

equality bodies, as well as evolutions in their mandate, powers or structure, ensuring the comparability, objectivity and reliability of the data collected at national level.

2. By [5 years after the date of transposition], and every 5 years thereafter, Member States shall provide the Commission with all relevant information regarding the application of this Directive, including data on its practical effects collected on the basis of the indicators referred to in paragraph 1 of this Article, and in particular taking 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 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 this Directive.

### *Article 18*

#### *Processing of personal data*

1. Member States shall ensure that equality bodies may collect personal data only where necessary for the fulfilment of a task under this Directive.
2. Member States shall ensure that when equality bodies process special categories of personal data, namely data on racial or ethnic origin, religion or belief, disability or sexual orientation, suitable and specific measures are provided to safeguard the fundamental rights and the interests of the data subject.

### *Article 19*

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*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months] at the latest. 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. Member States shall determine how such reference is to be made.

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*

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*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council  
The President*