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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	6801/2023
No. Cion doc.:	15899/22 + 15902/22
Subject:	Proposal for a COUNCIL DIRECTIVE on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC; and Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU

Delegations will find attached a set of drafting suggestions prepared by the Presidency concerning the above proposals in the light of the discussions that have taken place in the Working Party and written comments received from delegations. To facilitate the further discussion, and in order to continue the work on both proposals as a package at this stage, the Presidency has decided to present these suggestions in a single document.

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NB. The recitals have been taken from the proposal contained in doc. 15899/22¹ and are numbered accordingly. At this stage, *only the recitals that are identical in the two proposals* will be worked on and *the recitals (or parts of recitals) that are specific to each proposal*, marked here in square brackets, will be addressed later.

Changes in relation to the previous versions (doc. 6801/23 for the articles and doc. 15899/22 for the recitals) are indicated as follows: new text is in **bold or bold underlined** type and deletions are marked "[...]".

This document will be discussed at the next meeting of the Working Party, which is scheduled for 18 and 19 April 2023.

¹ Inter-institutional file 2022/0401(APP).

(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,² and the Union has already adopted several Directives on the prohibition of discrimination.

[(2) Pursuant to Article 19 (1) TFEU, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, without prejudice to the other provisions of the Treaties and within the limits of the powers conferred upon the Union.]

(3) The purpose of this Directive is to lay down minimum requirements for the functioning of equality bodies to improve their effectiveness and guarantee their independence in order to strengthen the application of the principle of equal treatment as derived from [Council Directives 79/7/EEC³, 2000/43/EC⁴, 2000/78/EC⁵ and 2004/113/EC.⁶]

[(4) Directive 79/7/EEC prohibits discrimination based on sex, in matters of social

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- ² 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
- ³ 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).
- ⁴ 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).
- ⁵ 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).
- ⁶ 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).
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(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/EC⁷ and 2010/41/EU⁸ of the European Parliament and of the Council also provide for the designation of equality bodies.]

⁷ 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).

⁸ 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).

(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.⁹

(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.

(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

⁹ See the detailed analysis in SWD(2021) 63 final “Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies”.

Commission Recommendation 2018/951¹⁰, 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°2¹¹ on equality bodies adopted by the European Commission against Racism and Intolerance (ECRI) and the Paris Principles¹² 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*] ¹³.]

(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.]

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

¹¹ 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.

¹² Principles relating to the Status of National Institutions adopted by General Assembly resolution 48/134 of 20 December 1993.

¹³ COM(2022)688.

(17)¹⁴ 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 [...] a number of **measures** that contribute to the independence of equality bodies. [...] **Equality bodies that exercise competences laid down in this Directive may be part of a ministry or another organisational entity, as long as their independence is ensured. While performing their tasks and exercising their competences, equality bodies should remain free from external influence, whether direct or indirect, and should neither seek nor take instructions from anybody. 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.** [...] Staff members **including** persons holding a managerial position, [...] **whether permanent or temporary, such as the head or deputy head of the equality body and, where applicable, members of the governing board,** should be independent, qualified for their position, and selected through a transparent process. [...]

(18)¹⁵ [...] Member States should ensure that the internal structure of equality bodies allows the independent exercise of their various competences. **Appropriate safeguards should be put in place, in order to allow equality bodies to exercise all their competences, such as procedures establishing a separation between the potentially conflicting tasks of equality bodies, to guarantee that the equality body can effectively exercise those tasks independently. Equality bodies should act impartially while investigating complaints or assessing a case, especially when the equality body holds binding decision-making powers.** [...]

(18a)¹⁶ Appropriate safeguards should also be put in place where the equality body is part of a multi-mandate body such as an ombudsperson with a broader mandate or a national human rights institution. The internal structure of the multi-mandate body should guarantee the effective, exercise of the specific equality mandate.¹⁷

¹⁴ See Article 3.

¹⁵ See Article 3.

¹⁶ See Article 3.

¹⁷ Note: part of Recital 18a has been moved to Recital 18 and reworded.

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(19)¹⁸ [...] Member States should ensure that equality bodies receive sufficient resources **as this is key to their effective functioning and the fulfilment of their tasks, including qualified staff**, appropriate premises and infrastructure to carry out each of their tasks effectively, within a reasonable time and within the deadlines established by national law. **[...] The budget of equality bodies is not to suffer cuts that are significantly higher than the average cuts to other public entities. It is important that the** budgetary allocation **remains** stable, is planned on a multi-annual basis, and allows **equality bodies** to cover costs that may be difficult to anticipate, **such as in the event of increases in competences, increases in complaints, litigation costs and the use of automated systems.** [...] **Devoting attention to the opportunities and risks presented by the use of automated systems, including artificial intelligence is key. In particular, equality bodies should be equipped with appropriate human and technical resources, notably, to enable them** to use automated systems for their work on the one hand and to assess such systems as regards their compliance with non-discrimination rules on the other hand. **Where the equality body is part of multi-mandate body the resources necessary to carry out its equality mandate should be ensured.**

(20) [...] ¹⁹

(21)²⁰ 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, [...] **equality bodies should be empowered to carry out activities to prevent discrimination in the fields of the [relevant Directives] and to promote equal treatment. Such activities can include the sharing of good practice**, positive action and equality mainstreaming among public and private entities, and **providing** them with relevant training, information, advice, guidance and support. **It is also vital that equality bodies** communicate with **relevant stakeholders and engage** in public debate. [...]

¹⁸ See Article 4.

¹⁹ Note: part of Recital 21 has been moved to Recital 20 and reworded.

²⁰ See Article 5.

(22)²¹ 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, [...] **including information as to whether the complaint will be closed or if there are grounds to pursue it further.** Member States should be in charge of defining the modalities under which the equality body would **inform the complainants**, such as the timeframe of the process or procedural safeguards against repetitive or abusive complaints.

(23) To ensure that all **alleged** victims are able to complain, it should be possible to submit complaints in various ways. 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, [...] confidentiality should be offered as far as possible **to alleged victims.**

(24)²² To offer a possibility for a quick, affordable, out of court resolution of disputes, Member States should provide for the possibility for parties to seek **alternative dispute resolution, as offered** by the equality body **itself** or **by** another existing **competent** entity. **In case such a process ends without a resolution, or if the outcome is rejected by any of the parties, the parties should not be prevented from acting in court.** Member States should define the modalities of the **alternative dispute resolution** process according to national law **and practice.**

(25) Where the equality bodies suspect a possible violation of the principle of equal treatment laid down by Directives [79/7/EEC, 2000/43/EC, 2000/78/EC or 2004/113/EC,] they should be able to act further following a complaint or on their own initiative.

²¹ See Article 6.

²² See Article 7.

(26) Evidence is key in determining whether discrimination has taken place and it is often **not** in the hands of the alleged **victim**. Equality bodies should therefore be able to access the necessary information to establish discrimination and **to** 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, [...] equality bodies should provide their assessment to the complainant. [...] 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)²³ To promote their work and equality law, equality bodies should be able to publish a summary of **those of** their opinions and decisions **which they consider to be of particular relevance**, without disclosing personal data.

(29) Equality bodies should have the right to act in court proceedings [...] in order to contribute to ensuring the respect of the principle of equal treatment laid down [in Directives 79/7/EEC, 2000/43/EC, 2000/78/EC and 2004/113/EC]. 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

²³ See Article 8a.

equality bodies by this Directive will facilitate the practical implementation of the current provisions of [Directives 2000/43/EC, 2000/78/EC and 2004/113/EC] on the burden of proof and defence of rights. Under the conditions provided for in this Directive, equality bodies will be able to establish facts from which it may be presumed that there has been direct or indirect discrimination, thereby fulfilling the conditions provided [for in Article 8 of Directive 2000/43/EC, Article 10 of Directive 2000/78/EC and Article 9 of Directive 2004/113/EC.] 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)²⁴ 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*)²⁵, 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. [...] **The equality bodies may act in their own name in certain cases of discrimination, in order to defend the public interest. Such cases of discrimination can be selected by the equality body for example based on their abundance or seriousness, or the need for legal clarification, each of which may imply that the discrimination is structural or systematic in nature.**

(32)²⁶ Equality bodies should also be able to submit **observations** to the courts, [...] **in accordance with national law**, as a lighter way to support cases with their expert opinion.

²⁴ See Article 9.

²⁵ Judgment of 10 July 2008 in *Feryn* (C-54/07, ECLI:EU:C:2008:397).

²⁶ See Article 9.

(33) [...]

(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. **For example, offering confidentiality to witnesses and whistle-blowers is an important way of encouraging the reporting of instances of discrimination.**

(35) The provisions on the equality bodies' right to act in court proceedings do not alter the rights of victims and of associations, organisations or other legal entities that enforce the rights of victims which have, in accordance with the criteria laid down by 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 Agency²⁷, 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 complainants. Member States should also make sure that the services of equality bodies are available to all potential victims throughout their territory, for example

²⁷ FRA EU-MIDIS II Survey.

through the establishment of local offices, including mobile ones, the organisation of local campaigns or cooperation with local delegates or civil society organisations **or through contracted service providers.**

(38) The Union and all Member States are parties to the UN Convention on the Rights of Persons with Disabilities²⁸ (UNCRPD) 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 UNCRPD. 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 digital²⁹ 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, **the social partners**, labour and education inspectorates, law enforcement bodies, agencies with

²⁸ OJ L 23, 27.1.2010, p. 37.

²⁹ 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.

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 UNCRPD. [...]

(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 [...] 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.³⁰ Equality bodies 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 [...] 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.

³⁰ 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.

(42) In addition to publishing an annual report on their activities, **as well as other reports relating to discrimination**, 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 **work** 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)³¹ [...] In order to ensure uniform conditions for the implementation of Member States' reporting obligations pursuant to Article 16(2) as regards the [...] **functioning of equality bodies designated under** this Directive, implementing powers should be conferred on the Commission to establish a list of relevant indicators, on the basis of which data should be collected. [...] **Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.**

(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.

³¹ See Article 16.

(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 [...] **referred to in Article 9(1) of Regulation (EU) 2016/679**, Member States should also ensure that national law respects the essence of the right to data protection and provides for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject, in accordance with Article 9(2), point (g), of Regulation (EU) 2016/679. Such safeguards should include for example internal policies and measures to ensure data minimisation, including through anonymisation of personal data, where possible; to apply pseudonymisation and encryption to personal data; to prevent unauthorised access and transmission of personal data; and to ensure that personal data is not processed longer than is necessary for the purposes for which they are processed.

(50) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on **2 February 2023**.

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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 [*relevant equality directives*].
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 [*relevant equality directives*].

Article 2

Designation of equality bodies

1. Member States shall designate one or more bodies (hereinafter referred to as 'equality bodies') to exercise the competences laid down in this Directive.
2. **This directive is without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners.**

Article 3

Independence

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

3. Member States shall ensure that appropriate safeguards are in place [...] in the internal structure of equality bodies to guarantee the independent, and where appropriate impartial, exercise of their competences.
4. Member States shall ensure that appropriate safeguards are in place in the internal structure of multi-mandate bodies to guarantee the effective 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 its tasks and to exercise its competences effectively, on the grounds and in fields covered by Directives [*relevant equality directives*].
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

1. Member States shall adopt appropriate measures, such as strategies, to raise awareness of the general population, throughout their territory, with particular attention to individuals and groups at risk of discrimination, on the rights under Directives [*relevant equality directives*] and on the existence of equality bodies and their services.
2. **Member States shall ensure that equality bodies are empowered** to carry out activities to prevent discrimination and to promote equal treatment.

3. Member States and equality bodies shall take into consideration appropriate communication tools and formats for each target group. They shall focus in particular on groups whose access to information can be hindered, for example by their **precarious** economic status, age, disability, literacy, nationality, or residence status or by their lack of access to online tools.

Article 6

Assistance to victims

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

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

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

Article 7

Alternative dispute resolution

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

Article 8

Investigation

1. Member States shall ensure that equality bodies are empowered to effectively investigate, following a complaint or on their own initiative, whether a breach of the principle of equal treatment laid down in Directives [*relevant equality directives*] has occurred.
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 and documents that are necessary to establish whether discrimination has occurred. It shall also provide for appropriate mechanisms for equality bodies to cooperate with relevant public bodies for that purpose.
3. **Member States may also entrust another competent body, in accordance with national law and practice, with the investigative powers referred to in paragraphs 1 and 2. Such a competent body shall, upon request, provide the equality body with information from its investigation that is necessary to pursue a complaint of discrimination.**

Article 8a

Opinions and decisions

1. Member States shall ensure that equality bodies are empowered to **document** their assessment of the case, including establishing the facts and a reasoned conclusion on the existence of discrimination. Member States shall determine whether this is to be done by means of non-binding opinions or by binding enforceable decisions.
2. Where appropriate, both non-binding opinions and binding 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 non-binding opinions, such as feedback obligations, and for enforcement of binding decisions.
3. Equality bodies shall publish summaries of **those of** their opinions and decisions, **which they consider to be of particular relevance**, without disclosing personal data.

Article 9

Litigation

1. Member States shall ensure that equality bodies have the right to act in court proceedings in matters relating to the implementation of the principle of equal treatment laid down in Directives [*relevant equality directives*] in accordance with paragraphs 2 to 5, without prejudice to national **law and practice** on the admissibility of actions.
2. The right of the equality body to act in court proceedings shall include:
 - (a) the right to act as a party in proceedings on the enforcement or judicial review of **binding enforceable** decisions taken pursuant to Article 8a; **and**
 - (b) the right to submit observations to the court in accordance with national law and practice.

2a.³² The right of the equality body to act in court proceedings shall also include at least one of the following:

- (a) the right to initiate proceedings on behalf of, or participate in proceedings in support of, one or several victims; **or**,
 - (b) the right to initiate court proceedings in its own name, in particular in order to address **cases of** discrimination selected by the equality body because of their abundance, their seriousness or their need for legal clarification.
- 3.
- 4.
5. Member States may **provide** that no investigations pursuant to Article 8(2) and Article 8a are initiated or continued while court proceedings on the same case are pending.

Article 10

Procedural safeguards

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

Article 11

Equal access

1. Member States shall guarantee access to equality bodies' services and publications
on an
equal basis for all.
- 1a. Equality bodies shall ensure that there are no barriers to submission of complaints, for example by being able to receive complaints orally, in writing and online.

³² Note: Article 9(2)(c) and (ca) have become Article 9(2a)(a) and (b).

2. Member States shall ensure that equality bodies provide their services at no cost to complainants, throughout their territory, including in rural and remote areas.

Article 11a

Accessibility and reasonable accommodation for persons with disabilities

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

Article 12

Cooperation

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

Article 13

Consultation

Member States shall put in place procedures to ensure that the government and relevant **public authorities** consult equality bodies on legislation, policy, procedure, programmes, and practices related to the rights and obligations derived from Directives [*relevant equality directives*].

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

Data collection and access to equality data

1. Member States shall ensure that equality bodies collect data on their activities, with a view to producing the reports referred to in Article 15, points (b) and (c).
2. The data collected shall be disaggregated by grounds and fields covered by Directives [*relevant equality directives*], and in accordance with the indicators referred to in Article 16. The personal data collected shall be anonymised and, where not possible, pseudonymised.
3. Member States shall ensure that equality bodies can access statistics related to the rights and obligations derived from Directives [*relevant equality directives*], in accordance with national law, where they deem such statistics necessary to make an overall assessment of the situation regarding discrimination in the Member State, and for drawing up the reports referred to in Article 15, point (c).
4. Member States shall allow equality bodies to make recommendations on which data is to be collected in relation to the rights and obligations derived from Directives [*relevant equality directives*], to public and private entities including public authorities, trade unions, companies and civil society organisations. Member States may also allow equality bodies to play a coordination role in the collection of equality data.
5. Member States shall ensure that equality bodies may conduct independent surveys concerning discrimination.

Reports and strategic planning

Member States shall ensure that equality bodies:

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

Monitoring and reporting

1. The Commission shall, by means of an implementing act, establish a list of common indicators **on the functioning of the equality bodies designated** under this Directive. When preparing the indicators, the Commission may seek advice from the European Union Agency for Fundamental Rights, the European Institute for Gender Equality and from networks of Equality Bodies at EU level. The indicators shall cover the resources, independent functioning, activities, and effectiveness of equality bodies, as well as developments in their mandate, powers or structure, ensuring the comparability, objectivity and reliability of the data collected at national level.
The implementing act shall be adopted in accordance with the examination procedure referred to in Article 18a(2).
2. By [7 years after the date of **entry into force**], and every 5 years thereafter, Member States shall provide the Commission with all relevant information regarding the application of this Directive, including data on **the functioning of equality bodies**, [...] 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 covered by the [*relevant equality Directives*] already afforded by Member States in the matters covered by those Directives.

Article 18

Processing of personal data

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

Article 18a

Committee procedure

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

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Article 19

Amended articles in Directives XX and XX

Article [xx] of Directive [xx] and Article [xx] of Directive [xx] are deleted. References to the bodies for the promotion of equal treatment referred to in those Articles shall be construed as references to the equality bodies referred to in Article 2 of this Directive.

Article 20

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after its entry into force]. 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

Entry into force

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

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

Article 22

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

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