

The European Commission proposals to strengthen equality bodies

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ERA Seminar, Current Reflections on EU Anti-Discrimination Law
Dublin, 22-23 June 2022



Funded under the Citizens, Rights and Values Programme of the European Commission

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Equality bodies as key players in anti-discrimination law

3 types of functions:

- ▶ Support and litigation function
- ▶ Promotion and prevention function
- ▶ Decision-making function

Lots of work going on:

- Increasingly visible
- e.g. Case C-157/15, *Achbita v. G4S*
- In the background



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Equality Bodies (EBs) as... 'Jack of all trades'?

Role in:

- ▶ Dirs 2000/43/EC (race), 2004/113/EC (goods), 2006/54/EC (recast), 2010/41/EU (self-employed)
- ▶ Dir 2014/54/EU (EU mobile workers)
- ▶ Horizontal Directive Proposal (2008)
- ▶ [Directive on Women in Company Boards \(2022/2381/EU\)](#)
- ▶ [Pay Transparency Directive \(2023/970/EU\)](#)
- ▶ [Directive Proposal to combat Gender Violence \(2022\)](#)






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Overview

- ▶ The **expansion** of EBs in the EU: 3 challenges
- ▶ 'The **effectiveness** challenge'
- ▶ The 2018 EU **Recommendation**
- ▶ The Dec 2022 **Directive Proposal** – COM(2022) 689 final
- ▶ Minimum standards – **Key provisions**
- ▶ Minimum standards – **Overview of other interesting provisions**

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Expansion of EBs in the EU: 3 challenges

- ▣ Geographic expansion → **'spreading challenge'** SUCCESSFULLY
ADDRESSED 
- ▣ Inconsistency of the EU mandate **'hierarchy challenge'** PARTLY
ADDRESSED 
- ▣ Limited effectiveness of (many) EBs → **'effectiveness challenge'** STARTING
TO BE ADDRESSED 

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The effectiveness challenge

'Effectiveness':

- ▣ Ex-ante
- ▣ Ex-post

What are the issues?

- ▣ Socio-political hostility and austerity era → budget cuts, restructured, merged...
- ▣ Limited resources
- ▣ Many not fully independent in practice
- ▣ Combination of promotion functions, support functions and/or decision-making functions in one EB single EB → conflicts of interest (?)
- ▣ EBs embedded in National Human Rights' Institutions (NHRIs)
- ▣ Lack of clarity about minimum functions (e.g. 'assistance to victims')
- ▣ Lack of accessibility,...

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The EU 2018 Recommendation

- ▶ EU Commission Recommendation on Standards for Equality Bodies (adopted on 22.6.2018, C(2018) 3850 final):
 - ▶ 1st step to improve institutional designs and effectiveness
 - ▶ More clarity: all (pre-existing) benchmarks in 1 document
 - ▶ **BUT:** → **soft-law: recommendation**
→ **often ambiguous**

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The 2022 Directive Proposal (for Art. 19 TFEU new grounds)

Main added value:

- ▶ Providing **more clarity and detail** regarding minimum standards, and
- ▶ **Ring-fencing** minimum standards
- ▶ Putting an **end to the hierarchy challenge** → **Art. 1(2)** → covers **Directives 79/7/EEC, 2000/43/EC, 2000/78/EC, 2004/113/EC**

The mandate already covers:	The mandate would be expanded also to include:
<ul style="list-style-type: none"> ✓ Racial Equality directive ✓ Directives on Equality between women and men in goods and services; in employment; and in self-employment 	<ul style="list-style-type: none"> ✓ Directive on non-discrimination on grounds of religion or belief, disability, age or sexual orientation in the workplace ✓ Directive on Equality between women and men in social security

Source: European Commission 2022.

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Minimum standards: more clarity & detail – key provisions (1)

Art. 3 – Independence:

- ▶ Para. 1: Free from external influence 'as regards their legal **structure**, **accountability**, budget, staffing, and organisational matters'
- ▶ Para. 2: '[T]ransparent 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'
- ▶ Para. 3: Safeguards in **internal structure** to ensure independence and impartiality
- ▶ Para. 4: For **multi-mandate bodies** → safeguards to guarantee an autonomous exercise of the equality mandate (v human rights' mandate)

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Minimum standards: more clarity & detail – key provisions (2)

Art. 4 – Resources:

- ▶ Para. 1: Ensure human, technical and financial resources necessary to perform *all tasks effectively*, for all grounds, in all fields
- ▶ Para. 2: If **multi-mandate** → para 1 applies 'specifically to the equality mandate and its support staff and systems'
- ↳ Crucial in view of **excessive budget cuts** following the 2008 financial crisis

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Minimum standards: more clarity & detail – key provisions (3)

Art. 4 – Resources:

- ▶ Para. 1: *Ensure human, technical and financial resources necessary to perform all tasks effectively, for all grounds, in all fields*
- ▶ Para. 2: If **multi-mandate** → para 1 applies 'specifically to the equality mandate and its support staff and systems'
- ↳ Crucial in view of **excessive budget cuts** following the 2008 financial crisis

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Minimum standards: more clarity & detail – key provisions (4)

Art. 6 – Assistance to victims:

- ▶ Para. 2: '**shall** be able to receive complaints of discrimination, orally, in writing **and** online'
- ▶ Para. 3: Assistance to victims **shall** include information, 'advice targeted to **their specific situation**', services of the EB, procedural aspects, remedies and 'the possibility to pursue a case in court'
- ▶ Para. 4: EBs 'shall issue a preliminary assessment of a complaint based on information voluntarily submitted by the parties involved'

Art. 7 – EBs 'shall be able to offer the parties the possibility to seek an **amicable resolution**' of the dispute






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Minimum standards – overview of other interesting provisions

- ▶ Art. 8(2): **fact-finding powers** and legal obligation to provide information to Ebs (Art. 8(3))
- ▶ Art. 9: **Litigation** → new and extensive standing powers (e.g. amicus curiae, initiate or participate in proceedings on behalf/in support of victims, initiate proceedings in their own name) – Art. 9(2)-(3).
- ▶ Art. 11: **Accessibility and reasonable accommodation**
- ▶ Art. 14: **Data collection**
- ▶ Art. 16: **Monitoring** → indicators to assess effectiveness of the Directive

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The Directive Proposal v 2 remaining challenges

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|--|--------|-------------------------------------|---|
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