The European Commission proposals to strengthen equality bodies

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Equality bodies as key players in anti-discrimination law

3 types of functions:

- Support and ligitation 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



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

Role in:

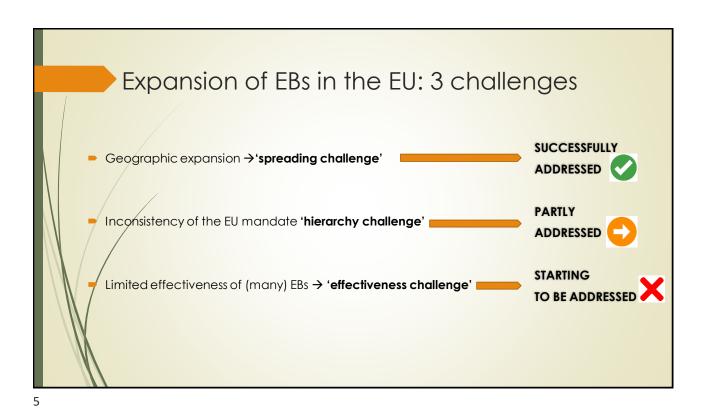
- Dirs 2000/43/EC (race), 2004/113/EC (goods), 2006/54/EC (recast), 2010/41/EU (self-employed)
- Dir 2014/54/EU (EU mobile workers)
- Horizontal Directive Proposal (2008)
- <u>Directive on Women in Company Boards</u> (2022/2381/EU)
- Pay Transparency Directive (2023/970/EU)
- <u>Directive Proposal to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

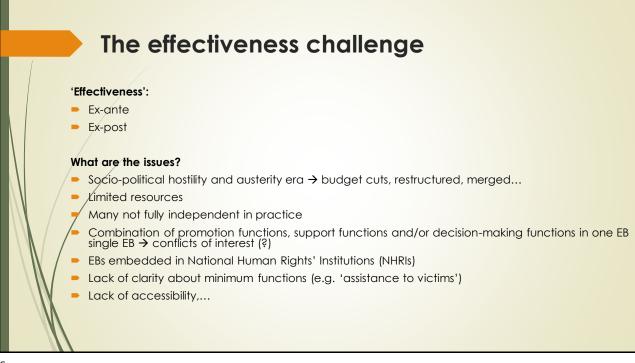


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Overview

- ► 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





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

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 The mandate would be expanded also to covers: include: ✓ Racial Equality directive Directives on Equality ✓ Directive on nondiscrimination on grounds of religion or belief, disability, between women and men in goods and services; in age or sexual orientation in employment; and in selfemployment the workplace ✓ Directive on Equality between women and men in social security

Source: European Commission 2022.



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 <u>selection</u>, <u>appointment</u>, <u>revocation</u> and <u>potential</u> 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 <u>human</u>, 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

Minimum standards:

more clarity & detail – key provisions (3)

Art. 4 - Resources:

- Para. 1: Ensure <u>human</u>, <u>technical and financial resources</u> necessary to perform all tasks effectively, for all grounds, in all fields
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- □ 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

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

The Directive Proposal v 2 remaining challenges

Geographic expansion →'spreading challenge'

Inconsistency of the EU mandate 'hierarchy challenge'

Limited effectiveness of (many) EBs → 'effectiveness challenge'

STARTING
TO BE ADDRESSED

?