

Standards for equality bodies

Equal treatment between women and men in employment (ordinary legislative procedure)

OVERVIEW

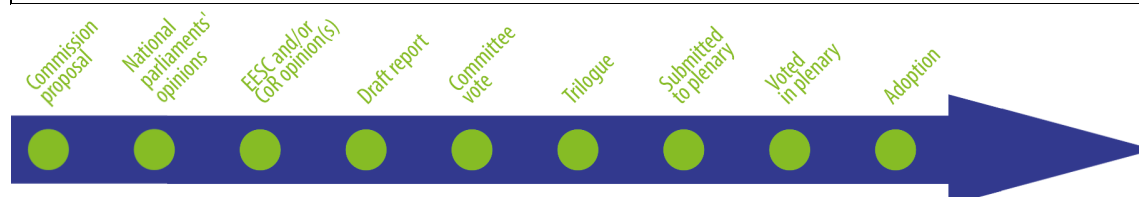
Several EU directives dealing with equality require EU Member States to establish equality bodies to assist victims of discrimination and to fight discrimination more broadly. However, their rules are general and do not define these bodies' duties and operation, leading to disparities among Member States. Additionally, some Member States' bodies have experienced a lack of resources, limited independence or a narrow remit.

To address this situation, in December 2022 the European Commission published a proposal, under the ordinary legislative procedure, setting standards for equality bodies involved in fighting discrimination on grounds of sex in the area of employment, in parallel to another proposal, under the consent procedure, on fighting discrimination on other grounds. The proposal focusing on equality bodies also sought to reinforce their independence, resources and mandate.

Overall, stakeholders welcomed the proposal but suggested changes. In trilogue negotiations, the co-legislators agreed on an amended text affording more flexibility to Member States by taking into account their institutional and legal setups. Parliament endorsed the agreement in its April I 2024 plenary. Council adopted the act on 7 May. The act was published in the Official Journal on 29 May and entered into force on 18 June 2024. The transposition deadline is set for June 2026.

Proposal for a directive 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

<i>Committees responsible:</i>	Employment and Social Affairs (EMPL) and Women's Rights and Gender Equality (FEMM) (jointly under Rule 58)	COM(2022) 688 7.12.2022
<i>Co-rapporteurs:</i>	Sirpa Pietikäinen (EPP, Finland) Marc Angel (S&D, Luxembourg)	2022/0400(COD)
<i>Shadow rapporteurs:</i>	Rosa Estaràs Ferragut (EPP, Spain); Carina Ohlsson (S&D, Sweden); Max Orville (Renew, France); Irène Tolleret (Renew, France); Romeo Franz (Greens/EFA, Germany); Kira Marie Peter-Hansen (Greens/EFA, Denmark); Margarita de la Pisa Carrión (ECR, Spain); Guido Reil (ID, Germany); José Gusmão (The Left, Portugal); Eugenia Rodríguez Palop (The Left, Spain)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Procedure completed.</i>	OJ L 29.5.2024 Directive (EU) 2024/1500	



Introduction

The fight against discrimination is an area where, historically, the EU has made a difference. In particular, equality between women and men in employment and occupation has a long tradition of [EU action](#), and has given rise to a rich [case law](#) from the European Court of Justice. Equality and respect for human rights, in a society where equality between women and men prevails, are among the values on which the EU was built, as laid down in [Article 2](#) of the Treaty on European Union. [Article 157](#) of the Treaty on the Functioning of the European Union (TFEU) enshrines the principle of equal treatment of women and men in working life, and provides that the ordinary legislative procedure applies. Article 21 of the EU Charter of Fundamental Rights prohibits discrimination in general, and Article 23 prohibits it implicitly between women and men in all areas.

Women in the EU are still facing inequality and obstacles on the labour market, and there is a [10 %](#) gap in employment between them and men. There is furthermore a persistent [pay gap](#) between women and men, which the EU aims to eradicate through recently adopted [legislation on salary transparency](#). Because of [care obligations](#) towards children and other family members, women are [over-represented](#) in part-time work and face obstacles in accessing employment. Persistent gender stereotypes perpetuate [horizontal](#) and vertical [segregation](#) between women and men in employment, and often [prevent](#) women from taking up scientific and engineering [careers](#). This results in a missed [opportunity](#) for the EU in terms of increasing its GDP.

The EU has adopted legislative and non-legislative tools to ensure equality between women and men in employment, yet many of those who are discriminated against do not know how to seek help and are unaware of these tools. Some victims, as well as witnesses and whistle-blowers, avoid signalling about cases of discrimination for fear of negative consequences.

To address these issues, the existing EU anti-discrimination legislation provides for the establishment of equality bodies at national level, tasked with providing assistance to victims and promoting equality more broadly. A Commission [analysis](#) reveals that these bodies' operation has many flaws, due to the very general nature of applicable EU rules but also to these bodies' underfunding, limited independence and very narrow remit. Some equality bodies do not provide legal advice to victims, and others do not provide it free of charge. Yet others do not engage in mediation and/or conciliation activities. Equality bodies in less than half of the Member States can represent victims, intervene in court to support them, or engage in strategic litigation. This situation clearly points to the need for minimum standards across the EU.

Existing situation

The EU has several pieces of legislation on fighting discrimination. This patchiness is due to the existence of several specific legal bases. Equality between women and men in matters of employment and occupation is enshrined in [Article 157 TFEU](#), which provides for the application of the ordinary legislative procedure. Conversely, fighting discrimination in other areas falls under [Article 19\(1\)](#) TFEU, according to which the EU can take measures to fight discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, using a special legislative procedure. Taking into account this difference in legal bases, the Commission has made two quasi-identical proposals on equality bodies. This briefing looks at the first [proposal](#) (COM(2022) 688) based on Article 157 TFEU, falling under the ordinary legislative procedure. Table 1 below shows that equal treatment of women and men in employment is a singular case in the constellation of relevant EU legislation, since all the other cases fall under Article 19(1) TFEU.

Table 1 – Forms of discrimination in different areas, as covered by existing EU legislation

Grounds/area of discrimination	Employment, occupation, vocational training	Education	Social protection	Access to goods and services	
Legislative procedure	Ordinary legislative procedure	Special legislative procedure (unanimity in the Council and consent of the Parliament), Article 19(1) TFEU			
Gender	2006/54/EC 2010/41/EU	not applicable	-	79/7/EEC	2004/113/EC
Race	not applicable	2000/43/EC	2000/43/EC	2000/43/EC	2000/43/EC
Religion		2000/78/EC	proposed ¹	proposed	proposed
Disability		2000/78/EC	proposed	proposed	proposed
Age		2000/78/EC	proposed	proposed	proposed
Sexual orientation		2000/78/EC	proposed	proposed	proposed

Source: EPRS, based on legislative texts.

Note: The legislation (directives) that already provides (or, once adopted, should provide) for equality bodies, has been highlighted.

The requirement for Member States to designate bodies for the promotion of equality was first introduced in the Race Equality Directive ([2000/43/EC](#)), which focuses on race and ethnicity. Equality bodies with a mandate to fight discrimination based on sex were first introduced with the [2002 amendment](#) of Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The recast [Directive 2006/54/EC](#) of 5 July 2006 is the EU law currently applicable for implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Article 20 of the directive laid down an obligation for Member States to establish equality bodies. [Directive 2010/41/EU](#) on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity took over the relevant provisions from the 2006 directive. Both directives thus provided for equality bodies, which could be part of national agencies charged with the protection of human rights. They had to provide independent assistance to victims of discrimination in pursuing their complaints about discrimination, but also to promote and support equal treatment. Their competences further included conducting surveys on discrimination, publishing independent reports, making recommendations and exchanging information with relevant EU bodies.

In its [analysis](#) of the activity and mandate of existing bodies established under the directives, the Commission found wide divergence in the way national equality bodies operate, particularly with regard to their mandate, powers, independence and resources. Some of these bodies only meet the minimum requirements established in the directives, while others go well beyond those. Moreover, equality mandates under the EU directives are often fulfilled by national human rights or anti-discrimination institutions with broader mandates. This has engendered a [diversity](#) of institutional structures: most EU countries have one multi-equality body dealing with all grounds of discrimination, this being a requirement for national human rights institutions (NHRIs) under the United Nations' [Paris Principles](#)² (see the Section on 'Comparative elements' below). Others have a

multi-equality body plus a specific equality body (the latter dealing with single grounds of discrimination such as disability or gender equality). Equality bodies focusing specifically on gender equality exist in [Belgium](#), [Spain](#), [Croatia](#) and Portugal (which has both a [gender equality body](#) and [one](#) that focuses on equality in employment, including between women and men).

Comparative elements

The mandate and operation of equality bodies under EU legislation are similar to those of NHRIs under the Paris Principles and of equality bodies established in the context of the Council of Europe. As mentioned above, equality bodies under EU law may be part of NHRIs. According to a 2021 Commission [staff working document](#), 'in about half the Member States, equality bodies have multiple mandates'. In these, the equality mandate was often assigned to pre-existing bodies. Currently, out of the 37 institutions designated as 'equality bodies in EU countries, 13 are also members of the European Network of National Human Rights Institutions ([ENNHRI](#)). NHRIs are state-mandated bodies, independent of the government, with a broad constitutional or legal mandate to protect and promote human rights at the national level. They have international accreditation, provided they comply with the Paris Principles. Twelve of the 13 NHRIs that also act as equality bodies under EU legislation are fully or partially compliant with these principles.

The Paris Principles highlight the importance of implementing rigorous standards for the operation of way human rights institutions. These standards were outlined by the UN General Assembly in 1993 ([Resolution A/RES/48/134](#)) and include:

- guarantees of independence and pluralist representation;
- freedom to consider any questions falling into the competence of the human rights institution;
- the possibility for this institution to be authorised to hear and consider complaints and petitions about individual situations.

In 1997, the Council of Europe's European Commission against Racism and Intolerance ([ECRI](#)) issued a [recommendation](#) on equality bodies to combat racism and intolerance, which it revised in 2017. The recommendation is very detailed and specific on aspects related to equality bodies, such as their establishment, institutional architecture, functions, promotion and prevention competences, supporting and litigation competences, decision-making competences, powers to obtain evidence and information, independence and effectiveness, and accessibility. It provides, among other things, for *de jure* and *de facto* independence of equality bodies, which should be legal entities separate from the executive and the legislature. Their mandate should focus on promotion and achievement of equality. It should also focus on prevention and elimination of discrimination and intolerance on the grounds covered by the ECRI's mandate (namely: race, colour, language, religion, citizenship, national or ethnic origin, sexual orientation and gender identity, as well as multiple and intersectional forms of discrimination on these grounds and any other grounds such as those covered by Article 14 of the European Convention on Human Rights). In working in these areas, equality bodies should maintain a gender perspective.³ They may also cover additional grounds such as sex, gender, age and disability. Moreover, they should support those discriminated against and possibly decide on complaints.

Parliament's starting position

In past resolutions on the application of EU legislation aimed at fighting discrimination on grounds of sex, the European Parliament acknowledged the important role of equality bodies. It requested that equality bodies be strengthened by ensuring their independence and impartiality, enhancing their mandate, and securing sufficient resources. More specifically, in the [resolution](#) of 8 October 2015 on equal opportunities and equal treatment of men and women in matters of employment and occupation (the application of Directive 2006/54/EC), Parliament called on the Commission to introduce common standards and checks to ensure national equality bodies' independence and

effectiveness. The [resolution](#) of 15 September 2016 on the application of the Employment Directive Equality, Parliament considered that strengthening national equality bodies would increase access to judicial and non-judicial mechanisms for victims. The [resolution](#) of 14 March 2017 on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services highlighted that the competences of these bodies vary, and therefore called on Member States to strengthen their role.

Preparation of the proposal

In June 2018, the European Commission adopted a [recommendation](#) on standards for equality bodies. The focus was on ensuring greater independence, adequate resources and staffing, and the capacity of equality bodies to provide assistance effectively. The recommendation encouraged Member States to set up effective coordination and cooperation mechanisms at both EU and international level. It also suggested that Member States extend the discrimination grounds covered by equality bodies to include religion, belief, disability, age and sexual orientation. These grounds fall within the scope of Directive 2000/78/EC, which does not provide for equality bodies (see Table 1). The mandate of equality bodies should cover in relation to all protected grounds the areas of employment and occupation, access to and supply of goods and services, education, social protection and social advantages, including hate speech related to these grounds in these areas.

The Commission's 2021 [report](#) on the application of the Racial Equality Directive and the Employment Equality Directive and its accompanying [staff working document](#) on the implementation of the Commission recommendation presented unsatisfactory results. According to the staff working document, lack of adequate resources in terms of funding and staff was an issue common to most equality bodies. Other major challenges facing equality bodies included limited public awareness of their existence, limited independence (or insufficient legal safeguards for their independence), and limited ability to be involved in legal proceedings.

The Commission conducted a [public consultation](#) from 10 December 2021 to 18 March 2022. Of the respondents to the Commission survey, 81 % considered that adopting new binding minimum standards for equality bodies would have a positive impact.

On 7 December 2022, as part of the [equality package](#), the Commission adopted two proposals to strengthen equality bodies:

- one on equality between men and women, with Article 157(3) TFEU as its legal basis (ordinary legislative procedure), which is examined in this briefing; and
- another on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation, with Article 19(1) TFEU as its legal basis (special legislative procedure).

An analytical document and a subsidiarity grid were prepared for each proposal.

The changes the proposal would bring

The proposal establishes the minimum requirements that Member States should implement with regard to the mandate and the functioning of their equality bodies set up under Directives 2006/54/EC and 2010/41/EU. The provisions in these two directives concerning the obligation to designate and set up equality bodies will be removed, with the proposed directive taking over the provision on the designation of one or more equality bodies by Member States, to tackle discrimination under the scope of these two directives.

According to Article 3 of the proposal, Member States would have to ensure that equality bodies are **independent and free from external influence**. They would have to establish transparent procedures for the selection of staff, particularly managers, to guarantee their competence and independence. When equality bodies are part of human rights agencies with multiple mandates, these bodies would have to have an internal structure (a 'firewall') that would ensure the autonomous exercise of the equality mandate separately from other competences and tasks.

Article 4 provides for sufficient human, technical and financial resources for equality bodies, and specifically for the equality mandate within multi-mandate institutions.

The proposed rules on equality bodies' mandate and powers envisage that they:

- would have to fulfil the tasks of **awareness-raising** on risks of discrimination, **prevention** of discrimination, and **promotion** of equal treatment. They would also have to engage in public dialogue and communicate with individuals and groups at risk of discrimination;
- would have to be able to **assist victims of discrimination**. This entails receiving complaints and informing victims about the legal framework and available remedies, including the possibility to go to court. They would have to issue a **preliminary assessment of a complaint** based on information voluntarily submitted by the parties;
- should have the power to **investigate cases of breaches** of the equal treatment principle within the scope of the directives mentioned above, and to **issue a conclusion** in the form of a non-binding opinion or a binding decision. To this end, they should have the right to access information and the possibility to cooperate with other public bodies. The proposal introduces the option for Member States to impose a legal obligation on the alleged perpetrator or third parties to provide information to equality bodies;
- should have the right to **act in court** as a party, as an *amicus curiae* (i.e. assist the court with information and expertise), or on behalf of victims. In the latter case, they would not be authorised to provide information collected through their specific powers established by the proposal.

Further provisions regarding equality bodies refer to: cooperation among them at national, EU and international levels and with other entities; the possibility to consult them on legislation and policies; data collection; and publishing of reports (yearly on their activity, and with recommendations at least every 4 years).

Lastly, a non-regression provision bans the use of the proposed directive for the purposes of reducing the level of protection against discrimination already achieved by Member States.

Advisory committees

The European Economic and Social Committee (EESC) issued its [opinion](#) on the proposal on 22 March 2023. The opinion welcomes the proposal's focus on the role of equality bodies as victims' advocates, on promotion activities, and on the prevention of discrimination. It highlights the need to take into account forms of multiple and intersectional discrimination. It supports the proposal that equality bodies should be free from external influence and backed with sufficient resources. According to the opinion, the proposed directive should respect the diversity of national legal frameworks and practices on non-discrimination – including the fact that many Member States have given equality bodies powers going beyond the existing equality directives' minimal requirements, and should not lower existing protection standards. The bodies' investigative powers should be without prejudice to the powers of the courts and of other competent public bodies. The opinion further calls for protection of complainants, proportionate compensation for victims, and effective penalties for those who practice discrimination. The EU should fund awareness-raising campaigns, to be implemented locally by equality bodies together with civil society and social partners.

National parliaments

The [deadline](#) for the subsidiarity check was 2 March 2023. Twelve Member States' parliamentary chambers completed their subsidiarity check, but none issued a yellow card. The Lithuanian Parliament's (Seimas) Committee on Human Rights issued an [opinion](#) endorsing the proposal, stating that it complies with the principles of subsidiarity and proportionality. In a 15 March 2023

[resolution](#), the Italian Senate's EU Policies Committee took a favourable position with respect to the proposal's compliance with the subsidiarity principle, but highlighted some critical issues relating to the proportionality principle, including the considerable financial resources required from Member States. In a 30 March 2023 [resolution](#), the Czech Senate expressed reservations about the proposal, in line with the Czech government's position, saying that the requirement that the equality body should carry out investigations while appearing in court on behalf of victims is incompatible with the requirement that it remain impartial and independent. It stresses that the 'vaguely stated power of the equality body to initiate legal proceedings to address structural and systematic discrimination' would undermine the separation of powers enshrined in the Czech constitution. The Slovenian National Assembly's Committee on EU Affairs [underlined](#) the need to achieve greater legal certainty and clarity in the provisions on the role of equality bodies in court proceedings.

Stakeholder views⁴

As mentioned above, work on the proposal was preceded by a public consultation. Some 81 % of the 182 respondents (including citizens, public authorities, non-governmental organisations (NGOs) and academic organisations) considered that adopting new binding minimum standards for equality bodies would have a positive effect.

Following the publication of the 'proposals, several equality bodies and their European network, as well as NGOs working in the area, issued their [feedback](#) on either one of the two proposals or both.⁵ While the general feedback was positive, some issues emerged as requiring more consideration.

The European Network of Equality Bodies (Equinet), which has been advocating strong and consistent EU-wide standards for equality bodies for several years, found through evaluations of its members' activities that 'differences between the Member States in the structure and functioning of equality bodies result in unequal protection against discrimination across the EU'. The [standards](#) to be established, according to Equinet, should include the mandate (covering all relevant grounds and fields); powers (legal, data collection, awareness raising); independence (free from interference); sufficient resources, accessibility for victims; and the ability to coordinate and cooperate with other bodies. Equinet is in favour of binding EU rules, which would be a 'major step' towards implementing and enforcing such standards, and welcomes the two Commission proposals. In a February 2023 [report](#), Equinet made some recommendations for improving the proposals, namely:

- to ensure that the two separate proposals remain similar at the end of the legislative process;
- to acknowledge multiple and intersectional discrimination;
- to strengthen independence provisions without unnecessarily isolating various equality functions inside the same institutions;
- to see to it that the obligation to issue a preliminary assessment of a complaint based on information voluntarily submitted by the parties involved is not burdensome;
- to make sure that equality bodies have the power to request information and documents from the alleged perpetrator and third parties, and oblige them to provide these;
- to remove the prohibition on equality bodies to initiate or continue an investigation during court proceedings, as is already the case in some countries;
- to delete Article 9(4) of the proposal prohibiting the use in courts of evidence collected by equality bodies using their power to require information, as this would constitute a step backwards compared with the existing situation in some Member States;
- to give equality bodies a stronger role in data collection, monitoring and reporting.

The Uppsala Anti-discrimination Office ([ADU](#)) and the Swedish Section of the International Commission of Jurists ([ICJ](#)) criticised Article 9(4) barring the submission of evidence obtained by equality bodies in courts, considering its justification based on the 'equality of arms' principle

inadequate. The NGO [Malmö against Discrimination](#) took a similar stance. The Austrian [Ombud for Equal Treatment](#) (Gleichbehandlungsanwaltschaft) expressed similar concerns – in the context of the other legislative proposal – about this provision, questioning in particular the respect of the subsidiarity principle. The Ombud also expressed reservations about the strict institutional separation of equality bodies from ministerial structures. Further, it deemed the merging of various functions problematic, namely the fact that equality bodies have to assist victims while also playing a quasi-judicial role.

The [Confederation of Danish Employers](#), while generally welcoming the proposals, expressed some concerns. It asked for the directives to respect the competence and rights of other bodies and/or social partners' autonomy in proceedings and conflict systems. The equality bodies' different tasks and competences, despite the firewalling systems included, risks jeopardising impartiality and coherence. The Confederation also stressed that data collection can be burdensome for companies. [Eurocadres](#) (the European trade union of managers) underlined the need for better reporting in the workplace, accompanied by stronger warranties of anonymity for those participating in data collection.

The need to incorporate the division of competences between the national and sub-national levels in federal systems in the proposals was underlined by the [Senate Department for Justice, Diversity and Non-discrimination](#) of the State of Berlin (in the context of the other proposal) and the [Anti-Discrimination Agency of the State of Baden-Württemberg](#), as well as by the [Diputació de Barcelona](#).

For other views of regional and local players on the subject of equality bodies, see the EPRS briefing on [Strengthening equality bodies throughout the EU](#).

Academic views

In a 2021 article,⁶ Sara Benedí Lahuerta, professor at University College Dublin, made the case for stronger standards by applying a 'responsiveness' model to assess equality bodies. She found that the existing standards had allowed Member States 'to fully comply with EU law by setting up, in many cases, largely unresponsive equality bodies'. Lahuerta argued that clearer standards for equality bodies were needed, and that these had to be properly designed and resourced.

Legislative process

In the European Parliament, the Committee on Women's Rights and Gender Equality (FEMM) and the Committee on Employment and Social Affairs (EMPL) were jointly tasked with handling the file. The Committee on Civil Liberties, Justice and Home Affairs (LIBE), in its role as an associated committee, issued an [opinion](#) on 12 October 2023. The Committee on Legal Affairs (JURI) was also invited to submit an opinion, but decided not to do so. Sirpa Pietikäinen (EPP, Finland) and Marc Angel (S&D, Luxembourg) were appointed rapporteurs for the file on 19 June 2023. The [parallel proposal](#) under the special legislative procedure, covering equality in various areas, was assigned to the FEMM committee, with Sirpa Pietikäinen appointed as rapporteur.

In May 2023, the FEMM committee held an [exchange of views](#) with representatives of the Belgian, French, Finnish and Swedish equality bodies, as well as of Equinet. All participants stressed the need for independence and sufficient resources and underlined the importance of equality bodies having adequate powers to act in court.

In a [meeting](#) held on 30 August 2023 by the two committees responsible for the file, the two rapporteurs presented their joint [draft report, which was subject to more than 100 amendments](#). The FEMM and EMPL committees debated the file and adopted their [report](#) on 7 November 2023. The report proposed to reinforce the institutional independence of equality bodies, by prohibiting their establishment within ministries or other government bodies, and by enhancing the selection of independent staff. On the other hand, the report included new provisions to make sure equality

bodies do not interfere with the autonomy and prerogatives of social partners on work-related matters, such as representation and defence before the courts or the enforcement of collective agreements. The report asked Member States to make sufficient resources available to equality bodies, particularly when their competences and tasks increase. Adequate budgets are also needed for data collection. Equality bodies should be able to act in court proceedings if they identify discrimination even in the absence of an individual complainant, as well as in cases of collective redress. Data collection should take into account multiple and intersectional discrimination.

The Council assigned the examination of the proposal to its Working Party on Social Questions, and debates started in January 2023. After several rounds of debates, in May 2023 the Swedish Presidency was able to secure a compromise with several significant modifications to the text. The Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) adopted the [Council's position](#) (general approach) on 12 June 2023. The changes it introduced to the proposal aimed to give the new legal provisions greater flexibility to accommodate the differences in the Member States' legal and administrative frameworks.

The Council modified the provision related to the independent legal structure of equality bodies, allowing them to continue being part of ministries. Further, the Council proposed to give equality bodies powers of 'inquiry' and not powers of 'investigation' (as per the Commission's proposal) and provided for the possibility to entrust another competent body with conducting inquiries as well. In this latter case, equality bodies should have access to information about the results. With regard to the powers of litigation, the Council maintained the right of equality bodies to submit observations to the court and to act as a party in court proceedings regarding their own binding decisions. Besides these, it proposed to grant equality bodies the right to act in court in 'at least one' of the following capacities: act on behalf of one or more victims; act in support of one or more victims; and initiate proceedings in its own name to 'defend the public interest' (the Commission had proposed that they should be empowered to act both in support or on behalf of victims as well as in their own name). The Council also amended the provision related to indicators to make clear that they would assess the functioning of equality bodies and not the implementation of the equality directives, and that they would not serve the purpose of ranking equality bodies. It also extended the transposition deadline to 3 years from 1 year in the Commission's proposal.

Trilogue negotiations started on 23 November 2023. During the second round, on 12 December 2023, representatives from the Parliament and the Spanish Presidency of the Council reached a [political agreement](#) on the legislative proposal. This agreement was endorsed by the FEMM and EMPL committees in a joint meeting on 11 January 2024, and Parliament adopted it with a substantial majority in its April I 2024 plenary session ([479 votes in favour, 116 against and 25 abstentions](#)). The Council accepted the changes agreed upon in the negotiations to the text of the parallel proposal under the consent procedure, and unanimously [decided](#) to submit it to the Parliament for consent. As remarked by stakeholders,⁷ divergence and potential conflicts among the obligations of equality bodies under their diverse mandates could hinder their proper functioning.

The text agreed upon does not exclude the possibility of equality bodies being part of ministries, but it enhances their independence by prohibiting instructions from the government and other entities, and by guarantying them sufficient resources and autonomous decision-making power over finances and internal structure. The text also ensures transparent selection of managerial staff.

The agreed text enhances equality bodies' authority to prevent discrimination and promote equal treatment, including through the promotion of gender mainstreaming and consideration of the intersectional dimension of discrimination. It broadens the definition of victims to include any person who believes they have experienced discrimination within the meaning of Directives 2006/54/EC and 2010/41/EU. It inserts a new recital reaffirming the conclusion drawn in EU case law that equal treatment applies not only strictly to men and women but also to persons that have

undergone gender reassignment. It emphasises that the mandates of equality bodies should not encroach on the competences and prerogatives of labour inspectorates and social partners.

The text eliminates the requirement for equality bodies to issue a preliminary assessment of complaints. It explicitly states that alternative dispute resolution can take various forms, such as mediation or conciliation, and these alternative mechanisms should not restrict access to the court.

The text provides more flexibility with regard to inquiries, as it allows Member States to assign another entity to conduct them. This entity will have to provide the equality body, at its request, with information on the results. Similarly, in terms of case assessments and opinions, equality bodies will have the authority, but not the obligation, to issue binding or non-binding opinions in line with national practice.

Concerning litigation powers, the text aligns with the Council's more limited proposal, specifying that these powers should conform to 'national law and practice'. Apart from participating in courts as *amici curiae* or in the judicial review of their own binding opinions (should this be the case), equality bodies will have the authority to act in *at least one* of the following capacities: on behalf of victims, in support of victims, or on their own behalf to defend the public interest.

The principle of equality of arms, proposed by the Commission, which prohibits equality bodies from presenting evidence collected in the exercise of their powers in court, has been removed. Instead, a more general provision emphasising procedural safeguards protecting the right of confidentiality and the right to a fair trial, among other general legal principles, has been included.

The deadline for transposition has been extended to 2 years, striking a balance between the three deadlines proposed by the three EU institutions involved in the procedure, which ranged from 1 to 3 years.

Regarding indicators, the Council's position was retained, namely that they should not be used for ranking or issuing recommendations to Member States. The report to be issued periodically by the Commission will evaluate the independent functioning and effectiveness of equality bodies based on these indicators. As a compromise with the Parliament's desire for robust monitoring and assessment, the text now includes the option for the Parliament to invite the Commission annually to discuss the operations of equality bodies.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Collovà M. and Fernandes M., [Strengthening equality bodies throughout the EU](#), EPRS, December 2022.

Crowley N., [Strengthening the Role and Independence of Equality Bodies](#), Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies, May 2023.

Zamfir I., [Standards for equality bodies: Discrimination under Article 19 TFEU grounds](#), European Parliament, EPRS, June 2024.

OTHER SOURCES

[Standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation](#), Legislative Observatory (OEIL), European Parliament.

ENDNOTES

- ¹ This [legislative proposal](#), which goes back to 2008, aims to eliminate discrimination on grounds of religion and belief, disability, age and sexual orientation in areas other than employment. It has been blocked since then because of lack of unanimity in the Council. According to the [progress report](#) presented by the Swedish Presidency of the Council in May 2023, despite recent progress, unanimity among Member States is not yet within reach.
- ² Principles relating to the status of national institutions (the Paris Principles), adopted by the United Nations General Assembly in a 1993 resolution, stipulate in Article 2 that a human rights national institution 'shall be given as broad a mandate as possible'.
- ³ A gender perspective 'involves analysing whether the needs, situation and experiences of both women and men have been equally taken into account and addressed in the equality body's plans and activities' (point 23).
- ⁴ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.
- ⁵ Those that appear relevant are included here, even though they were issued in response to the other proposal. If this was the case, it has been mentioned in the text.
- ⁶ '[Equality Bodies: Advancing towards more responsive designs?](#)', *UCD Working Papers in Law, Criminology & Socio-Legal Studies*, Research Paper No 5 / 2021.
- ⁷ According to the Equinet representative at the hearing organised by the FEMM committee on 24 May 2023.

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