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## **Recent Developments in the Regulation of Equality Bodies in the European Union\***

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### *1. Introduction*

In the last two decades, the European anti-discrimination legislation has represented a successful vehicle for the enforcement of non-discrimination and equality principles and for achieving social justice in the world of work among European countries. Nevertheless, some weaknesses are still apparent, especially due to the excessive fragmentation of the legislation and its heterogeneous implementation across Member States.

Equality bodies were originally designed to extend the protection against discrimination with competence to analyse the problems involved, study possible solutions and provide concrete assistance for the victims. However, they have experienced limitations in their actions because of external and internal factors characterising their mandates, structures and resources.

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Eventually, the European Union institutions have proceeded, through the draft of two directive proposals recently adopted in May 2024, to strengthen national bodies' powers and mandate to fight discrimination on grounds of sex, race, religion or belief, disability, age and sexual orientation.

Given the circumstances, it appears crucial to conduct an in-depth investigation of the role played by equality bodies until today, at the same time considering hypothetical developments which may derive from the newly increased standards provided at the EU level. In order to do so, a comparative analysis is conducted on two levels: the first relates to the weighting of the changes made at the EU regulatory level; while the second concerns the assessment of legal frameworks, policies and initiatives that support equality bodies' actions across different European countries which, taking into account the impact of socio-economic factors, legal and institutional structures, can represent valid examples to be followed for the effective implementation of the new directives by Member States which are still running below these standards.

The analysis is organised as follows. After a brief introduction to the creation and initial developments of equality bodies, the first part focuses on the establishment, mandate and characteristics of renewed equality bodies following the new legislation; afterwards, the second part is dedicated to the identification of equality bodies' functions, commonly divided into promotion and prevention, decision-making, and support and litigation, and the instruments at their disposal, considering both those following an *ex-ante approach* while pursuing the prevention of discrimination and those designed for an *ex-post* reaction to discrimination; in the third part, the focus shifts to the analysis of cooperative relationships established between equality bodies and other actors, including social partners and stakeholders, in the broader perspective of ensuring the highest possible social and work inclusion of people from vulnerable groups; finally, the last section focuses on the role that renewed equality bodies could play in contemporary societies, characterised by the use of new technologies and artificial intelligence systems, especially through the collection and use of *equality data*.

## 2. *Equality bodies as originally established by EU anti-discrimination directives*

Equality bodies were originally established within the broader renewed anti-discrimination legislation of the first years of the 2000s (the "Equality

Directives”). In particular, article 13 of the *Racial Equality Directive* (dir. 2000/43/EC) stated that: “Member States shall designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin”<sup>1</sup>. This first provision was soon followed by article 20 of dir. 2006/54/EC and article 11 of dir. 2010/41/EU, concerning the protection against discrimination based on gender<sup>2</sup>.

Truth was that some Member States had already established such organisms, since the ‘60s and the ‘70s, especially in some countries with common law traditions, and in general in the Northwestern part of the continent<sup>3</sup>. Nevertheless, it was mainly due to the adoption of the *Racial Equality Directive* that equality bodies spread all over Europe. The phenomenon constituted, and still constitutes, a *unicum* in comparison with other organisms established with similar mandates in extra-EU countries, especially because of their mandatory nature. However, in the European context, mandatory is only the creation of equality bodies, while their inner structure, mandate and functions depend primarily on how each Member State has decided to assemble and manage them.

Overall, it seems that the variety of legal traditions, administrative structures and political frameworks which constantly characterise countries in the European Union context is also identifiable in the general architecture of equality bodies<sup>4</sup>. Given the circumstances, *Equinet* – the *European Network*

<sup>1</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>2</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); 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.

<sup>3</sup> On the topic, *see*, among others: EUROPEAN COMMISSION, 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”), Brussels, 19.3.2021 COM(2021) 139 final, pp. 13–16; BENEDI LAHUERTA, *Equality Bodies: advancing towards more responsive designs?*, in *IJLC*, 2021, 17, pp. 390–392.

<sup>4</sup> On the topic, *see*, among others: KÁDÁR, *Equality Bodies: a European Phenomenon*, in *IJDL*, 2018, 18, 2–3, pp. 145–146.

of *Equality Bodies* – was established in 2007 with the aim of guaranteeing, at least, minimum standards of harmonisation and effective cooperation between these bodies<sup>5</sup>.

The context where equality bodies act is worrying, considering that discrimination is still too spread among European countries and several doubts and weaknesses continue to characterise the implementation of acceptable standards: for instance, a high degree of uncertainty surrounds the concept of “discrimination” in the first place, especially due to the emergence of new forms of discrimination (such as algorithmic or statistical discriminations); besides, the number of cases denounced and brought before judges is modest, indicating both fear in victims’ behaviour and low awareness of the existence of support services; lastly, follow-up measures to decisions in matters of discrimination are currently ineffective, where present<sup>6</sup>. More particularly, different levels of protection against discrimination have been registered among European countries for years: a situation hardly conceivable for the progressively social European Union which is currently becoming more and more solid<sup>7</sup>.

Equality bodies appear to be, at least on paper, actors capable of contributing to the enforcement of the anti-discrimination legislation<sup>8</sup>, for several reasons: in the first place, they have shown resilience, surviving challenges like the 2008 financial crisis or the limited harmonisation in their regulation across Europe; not only that, some of them have been deeply developed due to the over-transposition of legislation by some innovative Member States, thus representing examples to be followed<sup>9</sup>; as for their functioning, they can carry out different tasks in single structures, through the adoption of a complementary approach on multiple levels; and lastly, the use of a “cross-domain approach” and the establishment of a strong interconnection between discrimination and the protection of human rights enable the introduction of

<sup>5</sup> See <https://equineteurope.org>.

<sup>6</sup> EUROPEAN COMMISSION, COM(2021) 139 final, cit., pp. 25 and 26.

<sup>7</sup> EUROPEAN COMMISSION, COM(2021) 139 final, cit., pp. 13–16.

<sup>8</sup> ELIZONDO-URRESTARAZU, *Introduction*, in EQUINET, *Equality Bodies working on cases without an identifiable victim: Actio popularis*, 2022, pp. 6–9, defines Equality Bodies as “equality watchdogs”.

<sup>9</sup> FARKAS, *Learnings from the piloting of indicators for the mandate and independence of equality bodies*, Equinet Report, European Network of Equality Bodies, 2022, pp. 5 and 6; CALAFÀ, *Equality Bodies in attesa di riordino*, in BORZAGA, CALAFÀ, GUARRIELLO, VALLAURI, *Sesso, genere, discriminazioni: riflessioni a più voci (Parte terza)*, in *LD*, 2023, 1, pp. 26–29, indicates Sweden, Great Britain and Belgium as inspiring Countries.

functions providing victims with tailored assistance<sup>10</sup>. As a whole, these characteristics can lead to favourable impacts in, at least, three areas<sup>11</sup>: in the first place, equality bodies can contribute to a radical change at the societal level, spreading the values of diversity and equality in the national culture (“macro-perspective”); secondly, they can lead to organisational changes, both in the public and in the private sectors, by influencing policy-making and procedures (“meso-perspective”); and lastly, their actions impact on the personal situation of the victims who entrust equality bodies for some form of support (“micro-perspective”).

Eventually, the potential positive impact deriving from equality bodies’ intervention came to the attention of the European institutions, which decided to act, firstly through the publication of a Recommendation<sup>12</sup> about the necessity to improve the minimum standards for their functioning in 2018; and afterwards, given that no effective changes were registered, as showed by an investigation<sup>13</sup> which followed the Recommendation, they intervened by proposing two draft directives on the subjects. The two directives<sup>14</sup> have been adopted in May 2024.

<sup>10</sup> SOLANES CORELLA, *Equality bodies in the European Union: The Spanish independent authority for equal treatment*, in *DJHR*, 2023, 11, pp. 107–113.

<sup>11</sup> On the topic, see, among others: KÁDÁR, *Equality Bodies*, cit., pp. 147–150; VAN DE GRAAF, *Procedural justice perceptions in the mediation of discrimination reports by a national equality body*, in *IJDL*, 2020, 20, 1, pp. 46–47.

<sup>12</sup> Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, published in L 167/28, 4 July 2018.

<sup>13</sup> EUROPEAN COMMISSION, Commission Staff Working Document, Equality bodies and the implementation of the Commission Recommendation on standards for equality bodies, 19 March 2021, Brussels, SWD(2021) 63 final, accompanying the document Report from the Commission to the European Parliament and 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’), COM(2021) 139 final.

<sup>14</sup> Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters 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 amending Directives 2000/43/EC and 2004/113/EC. Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 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 amending Directives 2006/54/EC and 2010/41/EU.

Dir. 2024/1499/EU and dir. 2024/1500/EU regulate “standards for equality bodies” in the field of equal treatment and equal opportunities, respectively: the first, about racial or ethnic origin, religion or belief, disability, age or sexual orientation, and gender (in matters of social security and the access to and supply of goods and services); while the second, concerning gender in matters of employment and occupation. The necessity to adopt two directives depended on the different legal basis on which the *Equality Directives* are based: on the one hand, Directive 2024/1499/EU amends previous Directives 2000/43/EC and 2004/113/EC, with art. 19 TFEU as a legal basis; on the other hand, Directive 2024/1500/EU amends the 2006/54/EC and 2010/41/EC Directives, with art. 157(3) TFEU as legal basis.

The following paragraphs provide an analysis of the two Directives and the major changes made compared to previous legislation.

### 3. *Establishment, mandate and characteristics of renewed equality bodies*

Article 1 of the new directives introduces a first improvement, given that it assigns equality bodies the competence to act against discrimination based on all the grounds covered by the *Equality Directives*: as a matter of fact, one of the limits highlighted until now about the functioning of these bodies was the absence of a mandate to act in the field of discriminations due to religion or belief, disability, age or sexual orientation of the victims, as covered by dir. 2000/78/EC. However, over the years, Member States have proved to be quite flexible and proactive, almost all recognising their equality bodies the competence to contrast discrimination deriving from the expected grounds, thus showing a general over-transposition of the EU anti-discrimination requirements in this area. Lastly, as for the number of grounds that a single body can treat, no strict requirements are provided for in the directives but, from the analysis of national practices, it emerges that both single-ground bodies and multi-ground bodies exist<sup>15</sup>.

Since article 2 of the Directives foresees that one or more bodies can be established in the same country, a widespread usance consists of the co-existence of two national bodies, one focused on a single ground and a multi-ground body. As far as the latter is concerned, both positive and negative

<sup>15</sup> See EUROPEAN COMMISSION, SWD(2021) 63 final, cit., pp. 3–6.

aspects can be highlighted. In relation to the advantages, reference is made to the provision of easier access for victims, to the greater coherence in the planning of activities and cost-effectiveness, as well as to the capacity to efficiently deal with multiple and intersectional discrimination, which is a characteristic of high valuable importance. In relation to the negative aspects of multi-ground bodies, sometimes, they experience difficulties in granting the same visibility to all the protected grounds, together with the complexity of equally investing and employing human and financial resources in each field<sup>16</sup>. However, good practices exist and consist mainly in the organization of joint activities to achieve progress in more than one area at the same time, or in the application of a “cross-ground approach” to solve needs placed at the intersection of more grounds. In general, extensive expertise in dealing with different victims is fundamental for the effectiveness of equality bodies’ actions<sup>17</sup>.

The new directives also deal with the regulation of a number of aspects that define both the internal functioning of equality bodies and their external appearance<sup>18</sup>, as can be observed in article 3 about the “independence” of equality bodies, article 4 about their “resources”, and articles 12 and 13 regarding “equal access for all, along with accessibility and reasonable accommodations for persons with disabilities”<sup>19</sup>. Overall, these provisions represent an important improvement in comparison with the limited existing framework.

Concerning the independence of equality bodies<sup>20</sup>, previous legislation

<sup>16</sup> *Ibidem*, pp. 3–6. See also IORDACHE, IONESCU, *Effectively enforcing the right to non-discrimination. Promising practices implementing and going beyond the requirements of the Racial Equality and Employment Equality Directives 2021*, European network of legal experts in gender equality and non-discrimination, European Commission – Directorate-General for Justice and Consumers, 2022, pp. 63–67.

<sup>17</sup> IORDACHE, IONESCU, *cit.*

<sup>18</sup> ECRI General Policy Recommendation No. 2 of the Council of Europe on Equality Bodies to combat racism and intolerance at national level, adopted on 13 June 1997 and revised on 7 December 2017, recommends for *independence*, *accessibility* and *quality* as essential characteristics of efficient Equality Bodies. On the topic, see also, SOLANES CORELLA, *cit.*, pp. 107–113.

<sup>19</sup> Articles 3, 4, 12, 13 of Council Directive (EU) 2024/1499 of 7 May 2024 and of Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024. For a general analysis of the regulatory developments concerning renewed equality bodies, see EQUINET, *Understanding the New EU Directives on Standards for Equality Bodies. Key principles derived from the Legal Digest on Standards for Equality Bodies*, 2024.

<sup>20</sup> CROWLEY, *Equality Bodies making a difference*, European Commission – Directorate-

didn't provide for them to be formally independent or to have their own legal personality, causing several critical consequences<sup>21</sup>: in the first place, equality bodies have been experiencing limited autonomy in the organisation of their work due to the role played by national Governments; related to this, they haven't been able to manage properly human and financial resources, thus causing their inability to effectively exercise all their functions, and making it difficult for victims to receive assistance. In this last regard, other aspects must be considered<sup>22</sup>: first and foremost, among all their competencies, equality bodies across Europe have most commonly minimised the recourse to strategic litigation due to the high costs involved; secondly, they have limited the recruitment of specialised staff; and they have also avoided the opening of scattered local offices, thus affecting accessibility for victims of discrimination. As a whole, the reduced financial resources appear today as a substantial obstacle to the correct functioning of equality bodies<sup>23</sup>. Besides, their independence must be considered also when thinking about the context surrounding them: for example, the national political framework

General for Justice and Consumers, Publications Office of the European Union, 2018, p. 7. The situation in relation to legal status was largely positive with 31 out of 43 equality bodies having their own legal personality. However, 10 equality bodies formed part of Government ministries and independence is curtailed in such situations (Austria (2 EBs), Finland (2 EBs), Germany, Iceland, Italy (2 EBs), Portugal (CIG) and Spain). Two equality bodies were part of NGO associations (Liechtenstein).

<sup>21</sup> See, among others, FILI, *Le direttive gemelle (UE) 2024/1499 e (UE) 2024/1500 sugli organismi di parità*, in *DRI*, 2024, 4, pp. 1246 and 1247; BORZAGA, *Il destino di Consigliere e Consiglieri di Parità in Italia dopo le più recenti riforme*, in *ERDDA*, 2024, 3-4, pp. 348-349; BENEDI LAHUERTA, *cit.*, pp. 397-400; CROWLEY, *Taking Stock. A perspective from the work of equality bodies on: European equality policy strategies, equal treatment directives, and standards for equality bodies*, Equinet, 2020, pp. 23-26; BORZAGA, *Va ripensato il ruolo delle consigliere e dei consiglieri di parità?*, in BORZAGA, CALAFA, GUARRIELLO, VALLAURI (eds.), *Sesso, genere, discriminazioni: riflessioni a più voci (Parte terza)*, in *LD*, 2023, 1, p. 17 ff.

<sup>22</sup> CROWLEY, *Equality Bodies making a difference*, *cit.*, pp. 11 and 12; CROWLEY, *Taking Stock*, *cit.*, pp. 23-26.

<sup>23</sup> CROWLEY, *Equality Bodies making a difference*, *cit.*, pp. 11-12. The author describes the following situation: a slow improvement in resources (staff and/or budget) has been recently registered for 16 EBs (Austria (Ombud for Equal Treatment), Belgium (UNIA), Bulgaria, Croatia (People's Ombudsman), the Czech Republic, Finland (Non-Discrimination Ombudsman), Greece, Hungary, Iceland, Ireland, Latvia, Lithuania, Luxembourg, Portugal (CEARD), Romania and Slovenia). Conversely, 11 EBs have experienced a decrease in staffing and/or budget in recent years (Belgium (IEWM), Cyprus, Estonia (Commissioner for Gender Equality and Equal Treatment), Italy (gender bodies), Netherlands, Norway (2 EBs), Poland, Spain and the UK).



plays a significant role, that can range from hostility to support, including an overall disinterest, towards their activities<sup>24</sup>.

The new directives provide for some improvements in the regulation of equality bodies' independence, especially through the adoption of article 3, titled precisely "independence", which aims at guaranteeing "neutrality"<sup>25</sup> to these organs. Here, explicit reference is made in the first paragraph to grant that equality bodies can work without being subjected to any external influence, which may derive from Governments, other public bodies as well as private ones. Moreover, an independent management of all types of resources is requested. The second paragraph focuses on the recruitment process of their staff, in order to guarantee transparent procedures, as asked and in the 2018 Recommendation<sup>26</sup>. Finally, the fourth paragraph addresses the theme of multi-mandate bodies, indicating the necessity to build a solid internal structure within them to efficaciously exercise the equality mandate at the same level as the other ones.

In this context, multi-mandate bodies deserve special attention because of the convergence of the equality mandate and other different functions in the hands of the same organ<sup>27</sup>, thus causing positive and negative consequences<sup>28</sup>. On the one hand, the potential of multi-mandate bodies is mainly related to the opportunity to establish synergies among different mandates through the recourse to cooperation and integrated approaches, while indirectly improving staff expertise and flexibility in the fight against discrimination and ensuring an intersectional perspective. Moreover, having more

<sup>24</sup> On the topic, CROWLEY, *Equality Bodies making a difference*, cit., p. 7. The context is the following: in 8 countries, there is political hostility toward EBs (Bulgaria, Croatia, Cyprus, Italy, Poland, Romania, Sweden and the UK); political disinterest is instead registered in 12 countries (Austria, Belgium, Estonia, Finland, Greece, Hungary, Liechtenstein, Luxembourg, Lithuania, Slovakia, Slovenia and Spain); finally, a supportive political context is evident in 7 countries (France, Germany, Iceland, Ireland, Latvia, Netherlands and Portugal).

<sup>25</sup> FARKAS, *cit.*, p. 6, uses the term "neutrality".

<sup>26</sup> CROWLEY, *Equality Bodies making a difference*, cit., pp. 10–11.

<sup>27</sup> FARKAS, *cit.*, pp. 15–18, provides us with a practical definition of a "multi-mandate body": "The classic example of a multi-mandate body is a National Human Rights Institution with competences to deal with a wide range of human rights issues. Clearly, the extent of a National Equality Body's mandate outside equal treatment is much more limited and focused than that of a classic National Human Rights Institution".

<sup>28</sup> On the topic, see among others, FARKAS, *cit.*, pp. 15–18; CROWLEY, *Equality Bodies making a difference*, cit., pp. 8–9; EUROPEAN COMMISSION, SWD(2021) 63 final, cit., pp. 3–6; IORDACHE, IONESCU, *cit.*, pp. 65–67.

than one mandate could provide these bodies with more popularity and visibility, even across victims. Lastly, the potential cost-saving effect of the convergence of different mandates is interesting. On the other hand, costs might represent also a risk for the correct functioning of multi-mandate bodies, especially because of the possible competition that could take place between different mandates to secure a part of the already low budget. Finally, the lack of planning could create problems linked to the effective organisation of the work, both in terms of activities' prioritisation and the mere control of them. In this context, some good practices can be highlighted, ranging from the establishment of a dedicated leadership and separate staff for each mandate, along with a balanced apportioning of resources, followed by the draft and publication of annual reports monitoring the activities of each department.

As a whole, from the analysis of the new directives, mixed sensations are evoked in this area. Undoubtedly, the general requests moved by the European institutions have been answered positively, especially taking into account the introduction of transparent procedures, as well as the specifications concerning independence for all equality bodies and also for multi-mandate ones. Conversely, failures or – more appropriately – potential “missed opportunities” are related to: first and foremost, the lack of explicit safeguards to guarantee independence or the absence of legal avenues to be used to “counterattack” when the independence of equality bodies is violated; secondly, while providing for transparent procedures in staff's recruitment, ideally, a reference to the possibility to include exponents of vulnerable groups directly in the staff would have been appreciated, thus further representing a whole diverse society<sup>29</sup>; and lastly, no explicit reference is made to the need to overcome the incidence of national political contexts on equality bodies' activities nor any means are provided for to address the issue.

As far as resources allocated to equality bodies are concerned, article 4 of the new directives explicitly refers only to the need to grant these organs, including multi-mandate bodies, with “sufficient resources”. Once again, a missed opportunity can be pointed out, given that no procedures are foreseen to create, firstly, a multi-annual budget and, secondly, a monitoring programme of the budget<sup>30</sup>. In so doing, the legislator has missed the chance to

<sup>29</sup> BENEDI LAHUERTA, *cit.*, pp. 392–397.

<sup>30</sup> On the topic, EUROPEAN COMMISSION, SWD(2021) 63 final, *cit.*, pp. 16–18; BENEDI LAHUERTA, *cit.*, pp. 392–397.

spread a good practice that could have been applied to all equality bodies, flexibly, by adequately considering the specific functions, activities and needs of each of them.

Lastly, with regard to accessibility to equality bodies, two perspectives must be taken into account and analysed, namely: awareness of the existence of these organs and more generally of anti-discrimination support procedures, along with proper access of victims to equality bodies and their services. As far as the first dimension is concerned, low awareness of anti-discrimination rights and procedures to combat it have been already denounced<sup>31</sup>: in this context, the conduction of a good awareness-raising project by equality bodies may be an efficient instrument to reach higher standards in terms of knowledge of both victims and duty-bearers (employers or service providers)<sup>32</sup>. Good practices for the increase of awareness levels highlighted among equality bodies around Europe are, for instance: the draft of guidelines and codes of conduct, as well as the organisation of training and educational courses seem to be efficient for the preparation of duty bearers; while hosting awareness campaigns in the media, along with events and the delivery of annual awards contribute to the dissemination of information among citizens<sup>33</sup>. In this regard, the new Directives seem to have welcomed the suggestions about the need to introduce standards for the promotion of equality bodies and their actions within the anti-discrimination framework: article 5 entails the use of all appropriate means to spread awareness on the existence of equality bodies, also enumerating a series of activities suitable for the further dissemination of anti-discrimination procedures. Furthermore, the first paragraph contains an explicit reference to the necessity to spread information “with particular attention to individuals and groups at risk of discrimination”.

In relation to the second dimension of accessibility to equality bodies, the *Racial Equality Directive* didn't provide for any clear standards and only limited its interference to the need to spread information among victims

<sup>31</sup> On the topic, see EUROPEAN COMMISSION, COM(2021) 139 final, cit., pp. 11–12. Data show that at least 71% of the members of ethnic and immigrant minorities are unaware of the existence of organs providing support against discrimination.

<sup>32</sup> EUROPEAN COMMISSION – DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS, *A comparative analysis of non-discrimination law in Europe 2019*, publications Office of the European Union, 2020, pp. 147–150.

<sup>33</sup> On the topic, see EUROPEAN COMMISSION, SWD(2021) 63 final, cit., pp. 11–15.

“by all appropriate means”<sup>34</sup>. Data show that only few equality bodies have worked on and accomplished to allow access to their services to a broad diversity of victims. Besides, in situations where they have acted on the matter, they haven’t been able to apply systematic approaches towards diverse complainants<sup>35</sup>.

Generally speaking, access for victims to equality bodies and their services must be granted through flexible, clear and simple procedures. Several different and effective approaches emerge from the analysis conducted at the EU level<sup>36</sup>: first and foremost, support shall be offered free of charge; secondly, accessibility must be granted by providing different channels of contact and communication (oral, online, by e-mail or face-to-face meeting), and by making it possible for victims to use the language they prefer to denounce their situation; moreover, confidentiality during the procedures must be ensured, together with the application of faster deadlines to facilitate the outcome; and lastly, both regional and local offices are open and located all over the country in order to grant visibility to equality bodies and easier access for victims, by also implementing accommodations to ensure physical access for all. In this latter direction, the new directives reiterate multiple times the point: firstly, article 5(3) states that these organs must implement all appropriate instruments and formats to reach the audience, taking into account multiple vulnerable groups of people; secondly, article 12 explicitly refers to the absence of barriers to be ensured in the submission of complaints and to the importance of cost-free procedures; and lastly, article 13 specifically relates to issues concerning access to equality bodies for people with disabilities. Overall, the directives seem to have followed a clear and linear strategy in the matter.

#### 4. *Functions and tools of renewed equality bodies*

The original functions of equality bodies following article 13 of the *Racial Equality Directive* were the provision of independent assistance to victims, the conduction of independent surveys, the publication of independent

<sup>34</sup> BENEDI LAHUERTA, *cit.*, pp. 397–400.

<sup>35</sup> CROWLEY, *Equality Bodies making a difference*, *cit.*, p. 13.

<sup>36</sup> On the topic, BENEDI LAHUERTA, *cit.*, pp. 392–397; IORDACHE, IONESCU, *cit.*, pp. 83–86; EUROPEAN COMMISSION, SWD(2021) 63 final, *cit.*, pp. 19–24.

reports and the issuing of recommendations. Among them, assistance to victims has been recognised as being used in the most varied ways among Member States.

All the old functions have been preserved within the new directives, sometimes broadly specified, others expanded or simply complemented with new ones<sup>37</sup>. In this way, new legislation has responded affirmatively to the requests advanced by the 2018 Recommendation, which asked for the further deepening of equality bodies' competencies.

Following the renewed legal framework, equality bodies' functions can be now divided into three main categories: promotion and prevention, decision-making, and support and litigation<sup>38</sup>. In this way, these organisms are solidly equipped to confront discrimination from two opposite perspectives<sup>39</sup>: in the first place, *ex-ante* instruments enable them to prevent discrimination and play a proactive role in creating the ideal conditions for uprooting any form of discrimination in several areas; secondly, equality bodies have at their disposal instruments suitable also to react to discrimination, thus ensuring *ex-post* interventions aimed at minimising the impact of unequal treatment. Overall, the improvements registered represent a significant change, especially because these organisms may be able to renovate most European anti-discrimination systems founded primarily on reaction to discrimination and individual enforcement<sup>40</sup>: a proactive spirit, together with collective and structural actions, may characterise the equality bodies of the future.

The following paragraphs will focus on the analysis of each of the mentioned functions.

#### 4.1. *Promotion and prevention function*

Article 5 of the new Directives deals with the first function recognised to equality bodies, that is the prevention of discrimination and the promotion

<sup>37</sup> See, among others, FILI, *cit.*, pp. 1248–1249; EUROPEAN COMMISSION, COM(2021) 139 final, *cit.*, pp. 13–16; IORDACHE, IONESCU, *cit.*, pp. 67–83; KÁDÁR, *Equality Bodies*, *cit.*, pp. 145 and 146; SOLANES CORELLA, *cit.*, pp. 113–117; FARKAS, *cit.*, pp. 26–27.

<sup>38</sup> EUROPEAN COMMISSION, SWD(2021) 63 final, *cit.*, pp. 6–10; CROWLEY, *Equality Bodies making a difference*, *cit.*; CROWLEY, *Taking Stock*, *cit.*

<sup>39</sup> On the topic, see BENEDI LAHUERTA, *cit.*, pp. 390–392; SOLANES CORELLA, *cit.*, pp. 113–117.

<sup>40</sup> BENEDI LAHUERTA, *cit.*, pp. 390–392.

of equal treatment. In this regard, many are the improvements that can be highlighted, among which, the promotion of positive actions and equality mainstreaming both in public and private entities; secondly, the provision of training, advice and support to organisations; and lastly, solid cooperation with stakeholders and social partners represent fruitful activities, also in relation to the promotion and exchange of good practices.

The *Equality Directives* of the 2000s originally indicated “independent assistance” as one of the main functions of equality bodies. However, this provision was quite vague in the definition of the characteristics of such assistance, especially because no specific activities were indicated, nor reference was made to the limits of the provided service<sup>41</sup>. The vagueness was generated by the general fear of encouraging an extremely litigious legal culture in European societies<sup>42</sup>, thus no criteria were established requiring Member States to guarantee legal collective standing to victims of discrimination or to institute agencies to conduct investigations or have decision-making powers. Actually, the direct consequence of this behaviour was rather a negative effect on the enforcement of *Equality Directives*, and besides, the extreme freedom left to Member States in the organisation of assistance for victims has given birth to the complex and varied framework already mentioned, thus increasing the need for new legislation better defining this “assistance to victims”.

Analysing the new directives, it emerges that these requests have been heard and welcomed by the legislator. As a matter of fact, article 6 now enumerates a series of activities that equality bodies shall conduct while providing victims with assistance: it ranges from receiving complaints from victims to different steps to be taken while assisting vulnerable people. Among them, significant attribution is given to the dissemination of information about the legal framework, the services provided by the body, available remedies and technical provisions concerning confidentiality and protection of personal data. Besides, equality bodies hold now the competence to make suggestions and orient victims to complementary forms of support (such as psychological help). Lastly, equality bodies shall guarantee the respect of a reasonable time to respond to the assistance requests lodged by victims.

Overall, the two directives have provided specific standards for the or-

<sup>41</sup> FARKAS, *cit.*, pp. 15-18; BENEDI LAHUERTA, *cit.*, pp. 397-400.

<sup>42</sup> FARKAS, *cit.*, pp. 8-14.

ganisation of assistance within equality bodies, covering all phases of the victim support request procedure<sup>43</sup>.

#### 4.2. *Decision-making function*

Originally, article 13(2) of the *Racial Equality Directive* recognised the power of equality bodies to conduct independent surveys, publish independent reports and make recommendations. Critics from the doctrine have highlighted a “typical”, by now, vagueness in such a provision, which didn’t give any specifications about the nature of the mentioned recommendations or the topics to be addressed within surveys and reports<sup>44</sup>. As a consequence, only a limited number of Member States have organised their equality bodies in a way that allows them to issue legally binding decisions, and likewise, the opportunity to effectively ensure the enforcement of such decisions has been taken by even fewer organs<sup>45</sup>. Therefore, the European framework shows low numbers when it comes to equality bodies with decision-making competence and high degrees of unresponsiveness to decisions. Limits have been highlighted starting from the investigation phase, with problems registered both in general cooperation and in the exchange of information with respondents; besides, variety represents another problem, since not all equality bodies with a decision-making function can issue legally binding decisions; lastly, no effective mandatory mechanisms enable equality bodies to avoid general unresponsiveness, due to the low use of sanctions or the inadequacy of existing ones.

With the adoption of new legislation on equality bodies, extended specifications have been made about the nature of and the processes involved in their decision-making function. As a matter of fact, article 8 (titled “Inquiries”)<sup>46</sup> and article 9 (titled “Opinions and Decisions”) of the new directives regulate, respectively, the sphere of investigations conducted by equality bodies, and their ability to make assessments about cases and issue decisions about them. On the one hand, more clarity about definitions of roles and activities has been guaranteed, welcoming the suggestions made by the Eu-

<sup>43</sup> BENEDI LAHUERTA, *cit.*, pp. 392–397; SOLANES CORELLA, *cit.*, pp. 117–123.

<sup>44</sup> BENEDI LAHUERTA, *cit.*, pp. 397–400.

<sup>45</sup> On the topic, CROWLEY, *Equality Bodies making a difference*, *cit.*, pp. 11 and 12; CROWLEY, *Taking Stock*, *cit.*, pp. 23–26.

<sup>46</sup> For an analysis of art. 8 of the new directives, see FILÌ, *cit.*, p. 1249.

ropean institutions. On the other hand, concerning the enforcement of the decisions issued by equality bodies, it seems that both steps forward and steps back have been taken. Article 9, in its second paragraph, refers explicitly to “specific measures to remedy any breach of the principles of equal treatment found and to prevent further occurrences” and to the establishment of “appropriate mechanisms for the follow-up to non-binding decisions, such as feedback obligations, and for the enforcement of binding decisions”. In so doing, the legislator has appropriately satisfied the demands concerning the supply of mechanisms to actively follow equality bodies’ decisions, but the achievement of effective results appears unrealistic due to the lack of explicit reference to any sanctions<sup>47</sup>. In this sense, the legislator has missed the opportunity to follow entirely the 2018 Recommendation, which counted on the necessity to issue suitable, effective and proportional sanctions to achieve a high standard in the enforcement of equality bodies’ decisions. Of course, the mention of “feedback obligations” is welcomed, but it appears too weak in comparison, for example, to the provision of activities’ periodical monitoring. For instance, monitoring processes could have been mentioned and extensively treated in article 9, entailing both cyclic follow-ups in relation to further complaints received about the same issue of discrimination, or focused on the steps taken, subsequently to decisions, both by perpetrators and the legislator<sup>48</sup>. But surely, an improvement is generated by article 10(4), which entails the opportunity for equality bodies to initiate legal proceedings aiming at defending their legally binding decisions<sup>49</sup>.

#### 4.3. *Support and litigation function*

The support and litigation function granted to equality bodies mainly consists of, firstly, the possibility to act in court proceedings (on behalf or in support of one or more victims, or to defend the public interest), and secondly, the opportunity of recurring to forms of alternative dispute resolutions.

<sup>47</sup> On the topic, *see*, EUROPEAN COMMISSION – DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS, *cit.*, pp. 111–117; SOLANES CORELLA, *cit.*, pp. 107–113; EUROPEAN COMMISSION, SWD(2021) 63 final, *cit.*, pp. 3–6.

<sup>48</sup> IORDACHE, IONESCU, *cit.*, pp. 72–73. Only the Equality Bodies of Bulgaria, Cyprus, Denmark, France and Norway use monitoring processes to assess the follow-up to their decisions.

<sup>49</sup> Article 9 of directives 2024/1499/EU and 2024/1500/EU enables equality bodies to make legally binding decisions.



As far as the latter are concerned, new legislation constitutes an important improvement in the field, by introducing the use of alternative dispute resolutions for equality bodies across all Member States. In particular, article 7 of the new directives regulates the issue, suggesting mediation or conciliation as possible forms of alternative dispute resolutions, to be chosen by each State following their legal framework and traditions. Overall, this kind of support can prove to be effective in order to achieve structural responses, at the same time offering assistance to individual victims and adapting legislation to more appropriate standards<sup>50</sup>.

Additionally, “Member States shall ensure that equality bodies have the right to act in court proceedings in civil and administrative law matters relating to the implementation of the principle of equal treatment [...]”<sup>51</sup>. By doing so, article 10 of the new directives provides for the recognition of legal standing to all equality bodies, trying to put a remedy to the variegated framework in the field.

Legal standing, intended as the “right or ability to bring a legal action to a court of law, or to appear in a court”<sup>52</sup>, when recognized to equality bodies, allows for a series of improvements in the fight against discrimination, for several reasons<sup>53</sup>: first of all, it is considered the most effective instrument for acting against collective discrimination which harms entire groups of the society; secondly, it appears as a valuable mean to overcome the systematic issue of low access to justice by victims of discrimination, as well as under-reporting of such cases, giving that providing equality bodies with the possibility to represent these victims relieve the latter from the fear to be exposed and consequently to be victims of retaliation.

Besides, the legal casework of equality bodies has succeeded in impacting equality law at different levels<sup>54</sup>: first and foremost, national non-discrimination legislation among all Member States has been deeply investigated and further interpreted thanks to legal actions taken also by equality bodies;

<sup>50</sup> See, on the topic, IORDACHE, IONESCU, *cit.*, pp. 67–83; KÁDÁR, *The legal standing of Equality Bodies*, in EUROPEAN COMMISSION – DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS, *EELR*, 1/2019, Publications Office of the European Union, pp. 7–9.

<sup>51</sup> Art. 10(1) of Directive n. 2024/1499/EU and of Directive n. 2024/1500/EU.

<sup>52</sup> KÁDÁR, *The legal standing*, *cit.*, p. 1.

<sup>53</sup> On the topic, *see*, among others, VAN DE GRAAF, *cit.*, pp. 58–59; ELIZONDO-URRESTARAZU, *cit.*, pp. 6–9; FARKAS, *cit.*, pp. 5–6.

<sup>54</sup> KÁDÁR, *Equality Bodies*, *cit.*, pp. 147–150.

additionally, these legal actions have reached several times the European Courts, namely through the encouragement directed to national courts to refer for preliminary ruling in front of the Court of Justice (CJEU), or by bringing cases in front of the European Court of Human Rights (ECtHR).

When it comes to the study of the legal standing of equality bodies, it is interesting to note that some specific legal provisions provide them with this competence, namely article 7(2) of dir. 2000/43/EC and article 9(2) of dir. 2000/78/EC, which allows them, as public institutions set up to fight against discrimination and to promote equality, to exercise this function in courts as well. The remarkable fact is that this concession doesn't derive from their *status* as victims of discrimination, as normality requests.

Equality bodies in Europe have developed and implemented different legal actions, depending on many internal and external factors characterizing their functioning. Therefore, several are the legal procedures that these bodies can advance in courts, thus constituting a wide set of legal instruments which best characterize their fight against both individual and structural disparities which weaken our societies<sup>55</sup>. More precisely, equality bodies shall appear in court in different circumstances, as indicated directly by article 10 of the new directives: firstly, as explicated in the second paragraph, they can issue *amicus curiae* observations to courts as experts in equality law, in this case not taking the side of any party<sup>56</sup>; secondly, as written in the fourth paragraph and observed above, they can act in court proceedings to defend and guarantee the correct enforcement of their legally binding decisions<sup>57</sup>. And lastly, the third paragraph enumerates a series of other circumstances in which these organs can appear in court: first of all, they can initiate court proceedings on behalf of one or several victims, by employing their own staff or lawyers paid for the job<sup>58</sup>; secondly, they can participate in support of one or several victims, taking the side of a party with the aim

<sup>55</sup> PIRKER, *Legal standing of Equality Bodies*, in EQUINET, *Equality Bodies working*, cit., pp. 11–17. For the analysis of different legal avenues at equality bodies' disposal, see, KÁDÁR, *The legal standing*, cit., pp. 1 and 2; EUROPEAN COMMISSION, SWD(2021) 63 final, cit., pp. 6–10.

<sup>56</sup> The *amicus curiae* function is commonly used by Equality Bodies who doesn't recur often to legal proceedings. LANTSCHNER, *Strategic litigation: equality bodies' strategic use of powers to enforce discrimination law*, in DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS, *European equality law review*, Publications Office of the European Union, 1/2020, pp. 16–18, indicates how the *amicus curiae* function is useful to obtain strategic results without straining resources.

<sup>57</sup> This is quite fundamental for those organs which act as quasi-judicial bodies.

<sup>58</sup> Art. 10(3), letter (a) of dir. 2024/1499/EU and of dir. 2024/1500/EU.

to obtain particular outcomes<sup>59</sup>; and lastly, they can initiate court proceedings in their own name to defend the public interest, both with identifiable or no identifiable victims (depending on national criteria) and by opting for class actions or *actio popularis*<sup>60</sup>, thus playing a proactive role in the fight against discrimination which harm the rights and interests of entire groups of persons.

As a matter of fact, further specifications concerning the legal standing of equality bodies were absolutely necessary to be developed and included in the new legislation and the fact that the two directives both provide for specific regulation in the field is of pivotal importance. This is also due to a series of challenges and risks which strongly affect the enforcement of legal actions lodged by equality bodies, and which derive from the already mentioned vague guidance provided by legislation until now. In particular<sup>61</sup>, limitations of economic resources influence the choice of equality bodies to recur to litigation, given the high costs; similarly, high costs may induce equality bodies to recur only to strategic litigation, thus impacting negatively on the “quantity” of proceedings, while preferring “quality” of them; besides, the general lack of internal planning of litigation can be also highlighted in the work of the bodies, thus requesting strategies to build a balance in the forms of support granted to victims; and lastly, given the scarce awareness of these bodies and their competencies, building trust among victims is even more complicated.

Among the legal actions mentioned, strategic litigation merits special attention. Even if not extensively regulated by the new directives, stricter re-

<sup>59</sup> Art. 10(3), letter (b) of dir. 2024/1499/EU and of dir. 2024/1500/EU.

<sup>60</sup> Art. 10(3), letter (c) of dir. 2024/1499/EU and of dir. 2024/1500/EU. *Actio popularis* can be defined as those proceedings initiated by an organization acting in the public interest on its own behalf without a specific victim to support or represent. PIRKER, *cit.*, pp. 17–19, reports that OSCE defines *actio popularis* as a “mechanism for the protection of a particular group of people against systematic violations of rights which represents a public interest in a society that is defined as democratic”. On the topic, see also, MICOV INOVÁ, *How have Equality Bodies used actio popularis?*, in EQUINET, *Equality Bodies working*, *cit.*, p. 21; EL MORABE, *Why should actio popularis be enabled for equality bodies?*, in EQUINET, *Equality Bodies working*, *cit.*, pp. 35–39.

<sup>61</sup> On the topic, see, CROWLEY, *Taking Stock*, *cit.*, pp. 23–26; KÁDÁR, *The legal standing*, *cit.*, pp. 7–15; EUROPEAN COMMISSION, SWD(2021) 63 final, *cit.*, pp. 6–10; LANTSCHNER, *cit.*, pp. 16–18. Different sources of strategic litigation can be highlighted: NGOs, the Media, Human Rights lawyers or individual complaints brought to Equality Bodies are the most common ways in which these cases come to the attention of Equality Bodies.

quirements for the mandatory legal competencies of equality bodies will probably support and encourage the spread of strategic proceedings as well. This legal avenue allows to obtain significant collective outcomes, having an impact well beyond the individual case and, for this reason, strategic litigation is often considered a tool suitable for advocacy of rights, as a trigger for social change, as well as a form of political participation, not forgetting the increased standards granted in access to justice<sup>62</sup>. The factors impacting equality bodies' use of strategic litigation are multiple: starting with the specific and independent transposition of the requirements in the field by the Member States; followed by the competencies and functions granted to equality bodies which must be also taken into account; and finally, special attention is to be turned to available economic resources, considering that strategic litigation implies elevated costs.

As far as *actio popularis* are concerned, enablers of this type of action are the existence of a legal provision allowing for its use by equality bodies, as well as specific knowledge of *actio popularis* procedures in courts. Conversely, potential barriers are the lack of a clear mandate enabling equality bodies to act, followed by the difficulties in being aware of structural discriminations; and finally, the potential (negative) media attention on the proceedings<sup>63</sup>.

The selection of cases to be brought in court is an essential part of the strategic litigation process, consisting of an overall evaluation of potential positive and negative outcomes of the case. More precisely, equality bodies generally consider: the contribution of a case in the clarification of equality legislation; the existence of previous jurisprudence in the field or its absence; the interest showed by the social debate on the topic and the potential public interest for its outcome; and the interest of the equality body itself on the issue, or the expectations by its partners<sup>64</sup>.

Follow-up measures to strategic litigation by equality bodies can for sure contribute to spreading the potentiality of this instrument, through activities ranging from the publication of the case outcomes also through the media and social media, to the organization of academic discussions or sem-

<sup>62</sup> On the topic, LANTSCHNER, *cit.*, pp. 1-4. The author defines strategic litigation means "selecting suitable cases and bringing them to court, the outcome of which should have broader impact and go beyond the individual case", p. 1; EUROPEAN COMMISSION, COM(2021) 139 final, *cit.*, pp. 6-7.

<sup>63</sup> MICOV INOVÁ, *cit.*, p. 28-31.

<sup>64</sup> LANTSCHNER, *cit.*, pp. 7-16; EL MORABE, *cit.*, pp. 35-39.

inars on the topic. Probably, a structure of coordination is needed for the better use of this legal avenue, concerning the choice of selection criteria for cases, the dissemination of information about the procedure among both stakeholders and the victims, and finally, the establishment of partnerships to cooperate with other organizations interested in the topic (NGOs for example)<sup>65</sup>.

### 5. *Equality bodies' cooperation and consultation with other actors*

The fight against discrimination, in order to be coherent and effective, must be conducted at different levels, by several actors and in multiple areas that mark the lives of people involved. Equality bodies, where well organised and supported, are playing a significant role in this field, especially thanks to their capacity to build connections and start collaborations with several other actors engaged in the same fight against discrimination. For this reason, they have been sometimes renamed “equality hubs”, thus capable of connecting different actors and allowing mutual learning and coherent action, bringing the fight against discrimination to a systemic level<sup>66</sup>.

The original legislation, through article 11 of the *Racial Equality Directive*, only provided for the encouragement of social dialogue and cooperation between social partners and NGOs, without mentioning the involvement of equality bodies in these partnerships. Conversely, it appears that the new directives have bridged this gap, especially due to the introduction of article 14 (titled “Cooperation”) and article 15 (titled “Consultation”)<sup>67</sup>. In this scenario, collaboration is explicitly allowed and suggested at all levels (locally, regionally, nationally, and even at the EU and international levels), alongside the involvement of both public and private actors, thus including all those playing a role in the fight against discrimination in the society.

In general, collaborations with several actors are established in different areas, following varied aims and employing numerous instruments. In this regard, the first subject matter concerns the actors involved in such collaborations. Equality bodies tend to cooperate with other equality bodies at

<sup>65</sup> LANTSCHNER, *cit.*, pp. 7–16; IORDACHE, IONESCU, *cit.*, pp. 72–73.

<sup>66</sup> BENEDI LAHUERTA, *cit.*, pp. 392–397; CROWLEY, *Equality Bodies making a difference*, *cit.*, pp. 8 and 9.

<sup>67</sup> For an analysis of artt. 13 and 14 of the new directives, see FILÌ, *cit.*, p. 1249.

two levels<sup>68</sup>: in the national sphere, aiming at promoting the consistent application of equal principles and coherence of actions; more broadly, at the European level, these bodies are represented by Equinet, which plays a significant role in granting the exchange of good practices, regular meetings and discussion about specific issues by bringing together representatives of all national bodies. Besides, equality bodies establish collaborations with national public actors as well. The analysis of the good practices collected at the European level shows that different forms of dialogue are put into action<sup>69</sup>: invitations to review new legislation or the performing of advisory functions on the laws are very common, as well as the inclusion of equality bodies' representatives in policy working groups and the dialogue with civil servants, along with the establishment of direct relationships with Parliaments. Furthermore, cooperation with other stakeholders<sup>70</sup> is very common. In the first place, equality bodies tend to establish collaborations with social partners in order to help them in the prevention of discrimination at work and by suggesting good practices; not only that, equality bodies engage in the organisation of training activities for multiple duty bearers, including its staff members, labour inspectorates or judges; partnerships are built also with other public bodies engaged in the protection of fundamental rights in various sectors, such as education, healthcare and employment<sup>71</sup>. Lastly, fruitful collaborations are commonly established with NGOs: many activities are conducted to better represent the necessities of vulnerable groups, starting from their education, empowerment and autonomy; besides, equality bodies always refer to NGOs in order to select cases of potential interest for strategic litigation, sometimes initiating proceedings together and working side by side for the dissemination of case results to the public. Good practices for

<sup>68</sup> EUROPEAN COMMISSION, SWD(2021) 63 final, cit., pp. 24–29.

<sup>69</sup> EUROPEAN COMMISSION, *ibidem*, pp. 24–29.

<sup>70</sup> On the topic, see, KÁDÁR, *Equality Bodies*, cit., 2018, 147–152; BENEDI LAHUERTA, *cit.*, pp. 392–397; LANTSCHNER, *cit.*, pp. 16–18.

<sup>71</sup> IORDACHE, IONESCU, *cit.*, pp. 87–90. Different practices can be highlighted: organisation of educational courses, the draft of *memoranda* of understanding, joint policy groups and boards, referral mechanisms and advisory opinions. The impact of these actions in employment can be seen both in the long-term (incremental increase of awareness about discrimination) and in the short-term (non-discrimination standards applied consistently). For a general overview of the activities conducted by social partners for the prevention and fight against discrimination, also in collaboration with equality bodies, see EUROFOUND, *Role of social partners in tackling discrimination at work*, Publications Office of the European Union, 2020.

the establishment of fruitful collaborations are, for instance, the construction of specific structures offering support to victims, the entertainment of regular contacts and exchange of experiences, the implementation of clear and transparent procedures in the development of action plans, and the bargaining of formal rules to regulate collaboration<sup>72</sup>.

#### 6. *Equality bodies and the fight against algorithmic discrimination: the potentiality of equality data*

Equality bodies are called to play an increasingly important role these days, especially due to the dissemination of new forms of discrimination, such as algorithmic ones. As a matter of fact, equality bodies own a series of instruments and play several functions which can prove to be very fruitful in this field<sup>73</sup>: in the first place, as quasi-judicial bodies, they can request and have access to technical information about the functioning of AI systems, thus using their investigation powers as provided by article 8 of new legislation; in the second place, employing their decision-making function, they have the opportunity to impose effective follow-up measures to their binding decisions, or they can opt for public dissemination of their resolutions' outcomes, thus performing a still relevant awareness-raising function; moreover, these bodies can initiate collaboration with other actors in order to create proper architecture aiming at understanding the functioning and the impacts of algorithmic AI systems on vulnerable groups of people. The partnerships can be established with actors involved in data protection, consumer protection, health care, financial services and, employment rights (such as trade unions and employers' organisations in the latter case)<sup>74</sup>.

Additionally, as bodies endowed with litigation powers, they can initiate proceedings in courts, opting for collective redress, which appears to be a fundamental tool to effectively combat algorithmic discriminations, given that these systems usually harm entire groups of individuals. In this scenario,

<sup>72</sup> IORDACHE, IONESCU, *cit.*, pp. 97–100.

<sup>73</sup> CAPELLÀ RICART, *The role of European equality bodies to address algorithmic discrimination*, in *IJDL*, 2024, 24, 3, pp. 2–20; ALLEN, MASTERS (eds.), *Regulating for an equal AI: a new role for equality bodies. Meeting the new challenged to equality and non-discrimination from increased digitisation and the use of Artificial Intelligence*, Equinet Publication, 2020, pp. 67 ff.

<sup>74</sup> ALLEN, MASTERS, *cit.*, pp. 67 ff.

the intervention of equality bodies can range from: the request of access information about the functioning and the structure of AI systems; to the building and management of telematic public platforms used to centralise all the complaints about AI systems; and lastly, to using statistics and equality data to demonstrate the unequal treatment of certain groups in Court<sup>75</sup>.

As far as equality data are concerned, article 16 of the new Directives regulates their collection and access conditions for equality bodies. First and foremost, equality data can be defined as “any piece of information that is useful for the purposes of describing, analysing, reasoning about, and decision-making on the state of equality”<sup>76</sup>. In order to be effective, these data must present several characteristics, such as: robustness and objectiveness; they must be systematically collected, reliable and valid; clarity and transparency must characterise their collection, and they must be comprehensive and representative of the sample, in a way to enable comparisons<sup>77</sup>. In order to be effectively employed, equality data shall be treated only by specialised staff, able to manage their safe and correct collection and their other additional uses. Dedicated resources are needed and should be invested in the field<sup>78</sup>. Equality bodies must be granted the right to collect data directly, for instance by means of research and surveys, or indirectly, by obtaining equality data from public and private actors.

From the analysis of good practices collected at the European level, different ways of using this type of data by equality bodies emerge<sup>79</sup>. In the first place, they are commonly deployed to verify and evaluate the enforcement of the anti-discrimination legislation at the national and supranational levels; secondly, equality data are used as a catalyst for the establishment of collaborations with several different actors, such as statistic offices, public departments and agencies, labour inspectorates, civil society organisations, research

<sup>75</sup> As a consequence, the detection of similar issues is easier, people victims of the same discrimination are interrelated and the potential for strategic litigation increase, and lastly, evidence of structural discrimination can be found.

<sup>76</sup> ILIEVA, *Handbook on Identifying and Using Equality Data in Legal Casework*, Equinet - European Network of Equality Bodies, 2024, p. 12. Moreover, “the information may be quantitative or qualitative in nature. It could include aggregate data that reflect inequalities or their causes or effects in societies. Sometimes data that are collected primarily for reasons other than equality-related purposes can be used for producing equality data”.

<sup>77</sup> ILIEVA, *cit.*, pp. 14–17.

<sup>78</sup> EUROPEAN COMMISSION, SWD(2021) 63 final, *cit.*, pp. 11–15.

<sup>79</sup> EUROPEAN COMMISSION, COM(2021) 139 final, *cit.*, pp. 15–16.



centres and universities; and lastly, data can be useful in order to make effective recommendations about specific cases or situations where a risk of discrimination is detected.

Nevertheless, equality data are primarily used by equality bodies in their legal casework, as mentioned above. As a matter of fact, these data are essential to enable the correct and global evaluation of discrimination cases, providing contextual facts which are pivotal for the detection of discrimination. Besides, the use of equality data can be also beneficial to make comparisons between different treatments received by victims, thus serving as proof of discrimination, especially in cases concerning structural discriminations which affect several individuals. In these cases, the degree of complexity in identifying and proving discrimination is very high<sup>80</sup>.

As a whole, it appears that equality bodies are suitable actors to address collective discrimination deriving also from the use of AI systems, but their success is likely to depend on the results of the new directives' implementation by European Member States, paying particular attention to the availability and management of staff and financial resources. In this sense, the ability of equality bodies to intervene in support of both individual victims and the broader public interest in cases of algorithmic discrimination depends primarily on their own understanding of the phenomenon. In this circumstance, the resources allocated to equality bodies in each Member State acquire a fundamental relevance, directly impacting on the ability of the body to firstly know about, and then effectively counteract, such forms of discrimination<sup>81</sup>. With respect to the use of equality data, the current critical issues relate to the scarcity of resources itself, as well as to the lack of a coordinated approach to data collection and study, considering that there is still a great imbalance between data collected on some factors of discrimination compared to others, and in a still limited number of areas of victims' daily lives.

<sup>80</sup> ILIEVA, *cit.*, pp. 6–10.

<sup>81</sup> ALLEN, MASTERS (eds), *cit.*, pp. 67 ff.

### 7. *Final remarks*

The study of the two new directives adopted by the European Union on the organization and functioning of equality bodies, namely dir. 1499/2024/EU and dir. 1500/2024/EU, has helped to decipher the role that these bodies should play in the fight against discrimination following profound renewals.

As a matter of fact, the directives represent a significant step forward compared with the still too varied and generally dissatisfied conditions, which characterise contemporary equality bodies. Clearly, the effectiveness of the change can only be assessed at a later stage, once national implementation has taken place and is effective. On the one hand, it is possible to expect that for some Member States the required adjustments to the new standards will be almost insignificant, given the already widely positive results achieved in this area. For other States, the adaptation process will be more complex and will involve, in the first place, the revision of political priorities at government level, so as to ensure the recognition of an appropriate amount of economic resources to the cause. Moreover, where the new European legislation has failed to arrive, progressive States will arrive first, thus continuing to provide an example to follow for those who experience difficulties and for the European institutions themselves.

As a whole, the new legislation enables equality bodies to fight discrimination on a systemic and multi-level basis, thanks to the provision of functions and tools aimed both at preventing discrimination and remedying it. Furthermore, the opportunity to choose between several instruments constitutes, at the same time, an attempt to mediate the same variety of political, legal and social cultures that characterise the European Member States. While the emphasis on the need to build partnerships aims to underline the importance of being able to adopt a multilevel and interdisciplinary approach in the fight against discrimination, which has deep roots in all areas of society and requires structural action. This need is further amplified if we consider that we are facing a period of profound change due to the implementation of artificial intelligence in the management of our daily lives, making it equally necessary to increase and improve the tools available in the fight against new forms of discrimination.

### **Abstract**

The essay examines recent legislative developments at the European level in the field of anti-discrimination law with the adoption of EU directives 2024/1499 and 2024/1500 concerning equality bodies. Specifically, the analysis provides an overview of the establishment, mandate, and characteristics of the renewed equality bodies, with particular attention to the functions assigned to them: promotion and prevention; decision-making; support and litigation. The analysis concludes by identifying a hypothetical role for the renewed equality bodies in combating new forms of discrimination deriving from the use of artificial intelligence systems.

### **Keywords**

Equality bodies, Anti-discrimination, EU law, Labour law, Artificial Intelligence.

