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From:	European Economic and Social Committee
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To:	General Secretariat of the Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and deleting Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU *- Opinion of the European Economic and Social Committee*

Delegations will find attached the opinion adopted by the European Economic and Social Committee on the above proposal.

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European Economic and Social Committee

OPINION

European Economic and Social Committee

Strengthening the role and independence of equality bodies

Proposal for a Directive of the European Parliament and the Council on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation
[COM(2022) 688 final – 2022/0400 (COD)]

Proposal for a Council Directive on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in the field of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and deleting Article 13 of Directive 2000/43/EC and Article 12 of Directive 2004/113/EC
[COM(2022) 689 final – 2022/0401 (APP)]

SOC/750

Rapporteurs: **Sif HOLST** and **Nicoletta MERLO**

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Referral	European Parliament, 15/12/2022 (COM(2022) 688 final) Council of the European Union, 21/12/2022 (COM(2022) 688 final) European Commission, 08/02/2023 (COM(2022) 689 final)
Legal basis	Articles 19(1) and 157(3) of the Treaty on the Functioning of the European Union
Section responsible	Employment, Social Affairs and Citizenship
Adopted in section	08/03/2023
Adopted at plenary	22/03/2023
Plenary session No	577
Outcome of vote (for/against/abstentions)	164/01/02

1. Conclusions and recommendations

1.1 The EESC welcomes the initiative to give equality bodies the role of advocates for the rights of victims of discrimination, and particularly welcomes the explicit focus on promotion and prevention and on provision of adequate resources, enabling equality bodies to carry out their role independently and effectively.

1.2 The EESC emphasises the importance of striking the right balance between setting out standards for equality bodies and subsidiarity in the proposed directives, while ensuring that the overall objective of the directives – to increase the strength and effectiveness of equality bodies – remains a priority.

1.3 Believing that not properly taking into account intersectional and multiple forms of discrimination would be a missed opportunity, the EESC requests that the aspect of intersectionality be taken into account in policies at both national and EU level, so as to guarantee that every victim is given protection.

1.4 The EESC welcomes the introduction of the proposed legal obligation for equality bodies to be free from external influence and to ensure that they have sufficient sustainable human, professional, technical and financial resources.

1.5 The EESC supports the obligation for public institutions to consult with equality bodies in a timely manner and to take their recommendations into consideration, but recommends that Member States should be required to report on actions taken in relation to their interactions with equality bodies and the results of such actions.

1.6 The EESC believes that entrusting the supervision mechanism to the European Commission ensures a high level of attention to monitoring. However, for this to be effective, it calls for consideration to be given to whether the reporting timeframe can be reduced to three years instead of five, as proposed by the directives.

1.7 The EESC welcomes the clarification that accessibility for all also requires attention to the accessibility requirements of persons with disabilities and stresses that accessibility can also be a matter of access to advice.

1.8 The EESC considers it very important to respect the diversity of national legal frameworks and practices on non-discrimination – including the fact that many Member States have given equality bodies powers beyond the minimal requirements of the existing equality directives – and to take into account differences in the way social partners and civil society organisations are involved in the process. The proposals should respect the principles of subsidiarity and proportionality, while safeguarding against lowering of existing standards of protection for victims of discrimination. The EESC further insists that the proposals must promote a leading role for social partners and civil society organisations in the implementation of national non-discrimination frameworks and reinforce existing practices of support for social partners and civil society organisations from equality bodies.

1.9 The EESC recognises that exercising investigative powers in the context of proceedings on behalf of or in support of victims of discrimination must be without prejudice to the powers and independence of investigations by courts, tribunals and other public monitoring bodies such as labour inspectorates.

1.10 The EESC calls for adequate protection to be provided for complainants, proportionate compensation to be guaranteed for the offence suffered by the victim, and penalties to be ensured for offenders, with a view to focusing on an individual-centred approach to victims of violence or discrimination. The sanctions, which may comprise payment of compensation to the victim, must be effective, proportionate and dissuasive and set out at national level in line with the national legal frameworks and practices[1].

1.11 The EESC suggests that the promotion of information campaigns on EU rights and respect for diversity be developed and financed by the European Commission, and carried out at local level by national equality bodies, together with civil society organisations and social partners, and adapted to the needs of territories. Special attention should be paid to the most vulnerable groups and special campaigns should be planned targeting children and young people at school, from an early age.

1.12 The EESC calls for the regular collection and analysis of disaggregated data to monitor inequalities and discrimination, including multiple discrimination, and stresses the importance of carrying out systematic research on inequalities and discrimination, also in cooperation with organised civil society and social partners in work-place related matters.

2. Background to the Opinion

2.1 Equality bodies are national public institutions set up across Europe to promote equality for all and tackle discrimination. They are independent organisations protecting and assisting victims of discrimination, monitoring and reporting on discrimination issues. They play a fundamental role in the non-discrimination architecture of the EU[2].

2.2 Equality bodies were first established by the Racial Equality Directive (2000/43/EC). Three subsequent equality directives entrusted equality bodies with the same missions in their respective field: the Gender Equality Directive in the field of goods and services (2004/113/EC), the Gender Equality Directive in the field of employment (2006/54/EC) and the Gender Equality Directive in the field of self-employment (2010/41/EU).

2.3 These directives do not include references to the structure and functioning of equality bodies, but only establish some minimum competences, and thus do not preclude the existence of even substantial differences between Member States. The European Commission adopted a Recommendation on standards for equality bodies in 2018[3], seeking to address challenges

1 Directive 2000/78/EC, Article 17 Sanctions, OJ L 303, 2.12.2000, p. 16.

2 Equinet.

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

resulting from the broad and incomplete provisions on equality bodies in the EU directives. However, this recommendation did not succeed in closing this gap either[4].

2.4 On 7 December 2022, the European Commission adopted two proposals[5] to strengthen equality bodies, in particular their independence, resources and powers, so that they can combat discrimination more effectively under all EU directives already adopted in the field of equal treatment.

3. General comments

3.1 Equality, as one of the EU's basic values, is also one of the EESC's priorities. In its previous opinions[6], the EESC recognised the EU's efforts in the fields of gender equality; protection against discrimination on the grounds of ethnic origin, race or age, religion, and opinion or belief; the protection of LGBTQIA+ rights and the rights of persons with disabilities; as well as its work on Roma integration and upholding migrants' rights. The EESC also stressed the need for strong policies, real resources, long-term engagement and more significant support for national equality and human rights bodies, especially as regards improving their independence, efficiency and increasing their staffing and financial resources[7].

3.2 The EESC welcomes this initiative on empowering equality bodies as defenders of the rights of discrimination victims, and sees it as an indispensable contribution to the European Commission's broader work to move towards a Union of Equality, which is focused on the promotion of equal treatment and non-discrimination as a general principle of EU law.

3.3 The EESC particularly welcomes the explicit focus of the two proposals on promotion and prevention as a timely recognition of the need for policies, actions and minimum standards that tackle the structural discrimination and stereotypes that are often still present in our society, promoting greater uniformity between Member States while respecting existing functioning structures and approaches at national level.

3.4 The EESC emphasises the importance of striking a proper balance between setting out standards for equality bodies and subsidiarity under the proposed directives, while ensuring that their overarching objective – namely, increasing the strength, independence and effectiveness of equality bodies – remains a priority.

3.5 The EESC agrees with the European Commission that, in order to create the conditions for everyone to live, thrive and lead regardless of differences, there is a need to empower existing

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

5 COM(2022) 688 final and COM(2022) 689 final.

6 See opinions on: *The situation of women with disabilities* (SOC/579), OJ C 367 of 10.10.2018, p. 20; *The situation of Roma women* (SOC/585), OJ C 110 of 22.3.2019, p. 20; *Shaping the EU agenda for disability rights* 2020-2030 (SOC/616), OJ C 97 of 24.3.2020, p. 41; *Diversity management in the EU Member States* (SOC/642), OJ C 10 of 11.1.2021, p. 7; the *LGBTIQ Equality Strategy 2020-2025* (SOC/667), OJ C 286 of 16.7.2021, p. 128, the *Action plan on integration and inclusion 2021-2027* (SOC/668), OJ C 286 of 16.7.2021, p. 134; the *Strategy for the rights of persons with disabilities* (SOC/680), OJ C 374 of 16.9.2021, p. 50; and *The new EU Roma strategic framework for equality, inclusion and participation post-2020*.

7 See EESC Opinion on "*Improving Equality in the EU*", OJ C 75, 28.2.2023, p. 56.

equality bodies, so that they can achieve their full potential and be better prepared to prevent discrimination and assist victims of discrimination.

3.6 The EESC believes that the promotion of equality bodies is crucial to ensure the fundamental rights of all EU-citizens. By actively promoting equality bodies, the EU is securing the support of any EU-citizens who are being discriminated against and ensuring their right to support and representation.

3.7 The EESC recalls point 2.10 in the EESC opinion on Improving equality in the EU[8]: "The EESC believes that promoting equality and protecting fundamental rights must be integrated into a broader social vision that multiplies and strengthens the tools through which the Member States and the European institutions give support to individuals and public and private actors".

3.8 EU-level action that is in line with the principles of subsidiarity and proportionality, and consistent with the other Union policies, is necessary in this area. The European Commission declared that the present initiative revises already existing legislation to increase its effectiveness, setting up minimum standards and involving social partners and civil society.

4. Specific Comments

4.1 Enhancing the competences of equality bodies

4.1.1 Given the prolonged stalemate with passing the so-called Horizontal Directive, and based on a victim-centre approach in which justice delayed is justice denied, the EESC believes that not taking proper account of intersectional and multiple forms of discrimination would be a missed opportunity. Some forms of discrimination cannot be addressed by looking at discriminatory grounds one by one, and do need an intersectional approach.

4.1.2 Though a number of existing directives require Member States to set up national equality bodies, current EU rules leave a wide margin of discretion in terms of set-up and operation, and there are significant differences among equality bodies regarding powers, independence, resources, accessibility and effectiveness. The new initiative introducing minimum standards for equality bodies is intended to contribute to the European Commission´s efforts to move towards a Union of Equality and strengthens the effectiveness of EU's non-discrimination law.

4.1.3 The European Commission's proposal to extend the mandate of equality bodies to cover Directive 79/7/EEC, so that equality bodies are able to provide protection against gender-based discrimination in the field of state social security, must be without prejudice to the role and powers of social partners and should serve to reinforce and support their work.

4.1.4 The EESC acknowledges the centrality and supports the introduction of the proposed legal requirement for equality bodies to be free from external influence and to ensure that they are provided with sufficient sustainable human, professional, technical and financial resources.

8 See EESC Opinion on "*Improving Equality in the EU*", OJ C 75, 28.2.2023, p. 56.

4.1.5 The EESC applauds the proposed strong safeguards for the independence of equality bodies, which is crucial to their ability to provide sufficient support to citizens.

4.1.6 The EESC emphasises the particular importance of safeguards for the availability and adequacy of the human, technical and financial resources provided to equality bodies. Resources are a prerequisite, both for the independence of equality bodies and for their ability to effectively protect victims and prevent discrimination.

4.1.7 Part of the European Commission's proposal is a requirement for public institutions to consult equality bodies in a timely manner, and to take their recommendations into consideration. The EESC recommends that Member States should be required to report on what action they have taken in relation to the recommendations made by equality bodies, as well as the results of these actions.

4.1.8 The proposal also stipulates that the European Commission establish common indicators to measure and ensure comparability of data collected at national level, and issue a report on equality bodies across the EU every five years. The EESC would welcome a shorter timeframe for this exercise, and therefore suggests that the European Commission reduce the reporting period to three years.

4.1.9 The importance of monitoring cannot be overemphasised. It is the only way to ensure that equality bodies can be truly effective and capable of providing the necessary support to victims of discrimination. The EESC believes that placing the oversight mechanism with the European Commission ensures a high level of focus on monitoring.

4.1.10 The EESC also believes that the European Commission must actively promote the general access of all victims to the resources and assistance of equality bodies. This can be done through effective oversight, adequate promotion of equality bodies operating at local level and dialogue with the Member States. Including civil society organisations and social partners in the dialogue can bring important added value and further effective oversight.

4.1.11 The EESC continues to call for increased cooperation with and support to civil society organisations and human rights defenders doing frontline work, especially in marginalised and vulnerable communities, as outlined in its previous work[9].

4.1.12 Recalling that "the intersection of race, ethnic origin, social class, age, sexual orientation, nationality, religion, sex, disability, refugee or migrant status etc. has a multiplier effect which increases the discrimination"[10], the EESC believes that it is important to continue to have knowledge-exchange and learning promotion programmes at all levels, including by securing an intersectional approach to the work.

4.1.13 The EESC welcomes the fact that the directives contain provisions for multi-mandate bodies to guarantee the necessary resources and visibility for the equality function. However, the meaning

9 OJ C 341, 24.8.2021, p. 50.

10 OJ C 367, 10.10.2018, p. 20.

of "autonomous exercise of the equality mandate" will have to be further defined and interpreted – also ensuring that it does not require a hermetic separation between the different mandates in cases where they can be used to strengthen and complement each other. Introducing a structural "firewall" in equality bodies with different dedicated departments could be counterproductive when it comes to achieving strong equality bodies.

4.2 Effective access to justice for victims of discrimination

4.2.1 Part of the proposals is to ensure that equality bodies are strengthened in handling discrimination cases and that the services of equality bodies are free and accessible to all victims, on an equal basis.

4.2.2 The EESC believes that the assistance provided by equality bodies is essential to ensure that victims of discrimination are not limited to individual recourse to judicial redress and the law, but that these competencies must be without prejudice and complementary to the collective representation and litigation powers of social partners. The EESC also appreciates the clarification of the fact that accessibility for all also requires a focus on the accessibility requirements of persons with disabilities and underlines that accessibility can also be a matter of access to counselling, for example, if individuals live at a remote location or have difficulties accessing online resources. The assistance of equality bodies is a prerequisite for addressing the structural, intersectional and systemic dimensions of inequalities.

4.2.3 The EESC stresses the importance of the ability of equality bodies to act on both complaints from victims and to raise issues on a more general level, on its own initiative or after dialogue with relevant civil society organisations or social partners. Fear of the consequences, including loss of livelihood, might make it difficult for victims to come forward. A lack of awareness of rights and how to enforce them might also be a hindrance.

4.2.4 It is highly important to take into account the considerable diversity of Member States in terms of the number, structure and modus operandi of the equality bodies, and to respect the national legal frameworks and practices, while safeguarding against lowering of existing standards for anti-discrimination protection, including through the present powers of equality bodies being weakened under different national legislation. Moreover, there are also differences in terms of how the organisations of social partners and civil society are involved in the process, and this has to be taken into account[11].

4.2.5 The EESC believes that the right of equality bodies to participate in legal proceedings, which already exists in a number of Member States, is essential to ensure better protection of the principles of equal treatment, especially in situations where victims do not have access to justice due to procedural or financial obstacles, and they are not reached by social partners. The EESC further stresses that, in line with the existing equality directives, the litigation powers of equality bodies should be without prejudice and complementary to the relevant competences and legal

11 Matters relating to legal standing for all parties with a legitimate interest in engaging in non-discrimination proceedings under the EU Equality Directives, such as trade unions, employers' associations, equality bodies and civil society organisations, are regulated by the existing EU Equality Directives and, more specifically, by Article 9(2) of the Framework Employment Directive (Directive 2000/78/EC) and Article 17(2) of the Recast Gender Directive (Directive 2006/54/EC).

standing of social partners and civil society organisations, in accordance with the criteria laid down by their national law[12]. In this regard, it is very important that equality bodies cooperate at national level with the courts, with specialised administrative tribunals such as labour courts, and with social partners.

4.2.6 The EESC recognises that meeting the burden of proof obligations under the existing equal treatment directives requires access to evidence for all parties with a legitimate interest in bringing proceedings on behalf of or in support of victims of discrimination, such as social partners, equality bodies and civil society organisations. The exercise of investigative powers in this context must be without prejudice to the powers and independence of investigations by courts, tribunals and other public monitoring bodies such as labour inspectorates.

4.2.7 The EESC believes that these two proposals should focus more on an individual-centred approach to victims of violence or discrimination. In this regard, adequate protection should be provided for complainants, so as to avoid silence for fear of repercussions. Proportionate and adequate compensation should be guaranteed for the offence suffered by the victim, and penalties should be ensured for offenders. The sanctions, which may comprise payment of compensation to the victim, must be effective, proportionate and dissuasive, in line with Article 17 of Directive 2000/78/EC[13].

4.3 Awareness-raising

4.3.1 The EESC welcomes the focus on awareness raising and emphasises the importance for Member States and equality bodies to step up awareness-raising efforts, including by supporting organised civil society to prevent discrimination and create equality. The EESC proposes that information campaigns on EU rights and the respect of diversities developed and funded by the European Commission be carried out by national equality bodies together with civil society organisations and social partners and adapted to local needs. Special attention should be paid to the most vulnerable groups and special campaigns need to be planned and addressed to children and young people at school, starting from an early age.

4.3.2 The EESC urges for social partners and civil society organisations to be included in the preparation, execution, and dissemination of these information campaigns. The insights of the relevant organisations will further the reach and effectiveness of the campaigns, and can bring a voice the most vulnerable groups.

4.4 Collection of data

4.4.1 Equality bodies play an important role in data collection, which goes beyond collecting data about their own work. The directives acknowledge this and, among others, give powers to equality bodies to access statistics collected by public and private entities, including public

12 Recital 34 of Proposal for a Directive COM(2022) 688 final and Recital 35 of Proposal for a Directive COM(2022) 689 final, which state that the proposed provisions on legal standing are without prejudice to the role, powers and tasks of social partners and civil society in participating in proceedings enforcing obligations under anti-discrimination law.

13 OJ L 303, 2.12.2000, p. 16.

authorities, trade unions, companies, and civil society organisations. This statistical information should not contain any personal data and its collection must limit the additional administrative or financial burden on the referring entities as much as possible. Equality bodies will also be required to prepare annual activity reports and regular reports on the state of equal treatment and discrimination in their country. While these are important and far-reaching powers that can be put to very good use, they are also resource-intensive. Therefore, the EESC stresses the importance of providing equality bodies with adequate additional resources to deploy these powers.

4.4.2 To ensure regular focus on existing inequalities and discrimination, the EESC calls for the regular collection and analysis of disaggregated data to monitor discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation.

4.4.3 The EESC underlines the importance of regular research on inequality and discrimination, and the need for strong cooperation between the European Commission, Member States, human rights bodies, civil society organisations and social partners in work-place related matters regarding monitoring and evaluation and the development of the policy agenda.

Brussels, 22 March 2023

Christa Schweng
The president of the European Economic and Social Committee