

Commission for Prevention and Protection against Discrimination

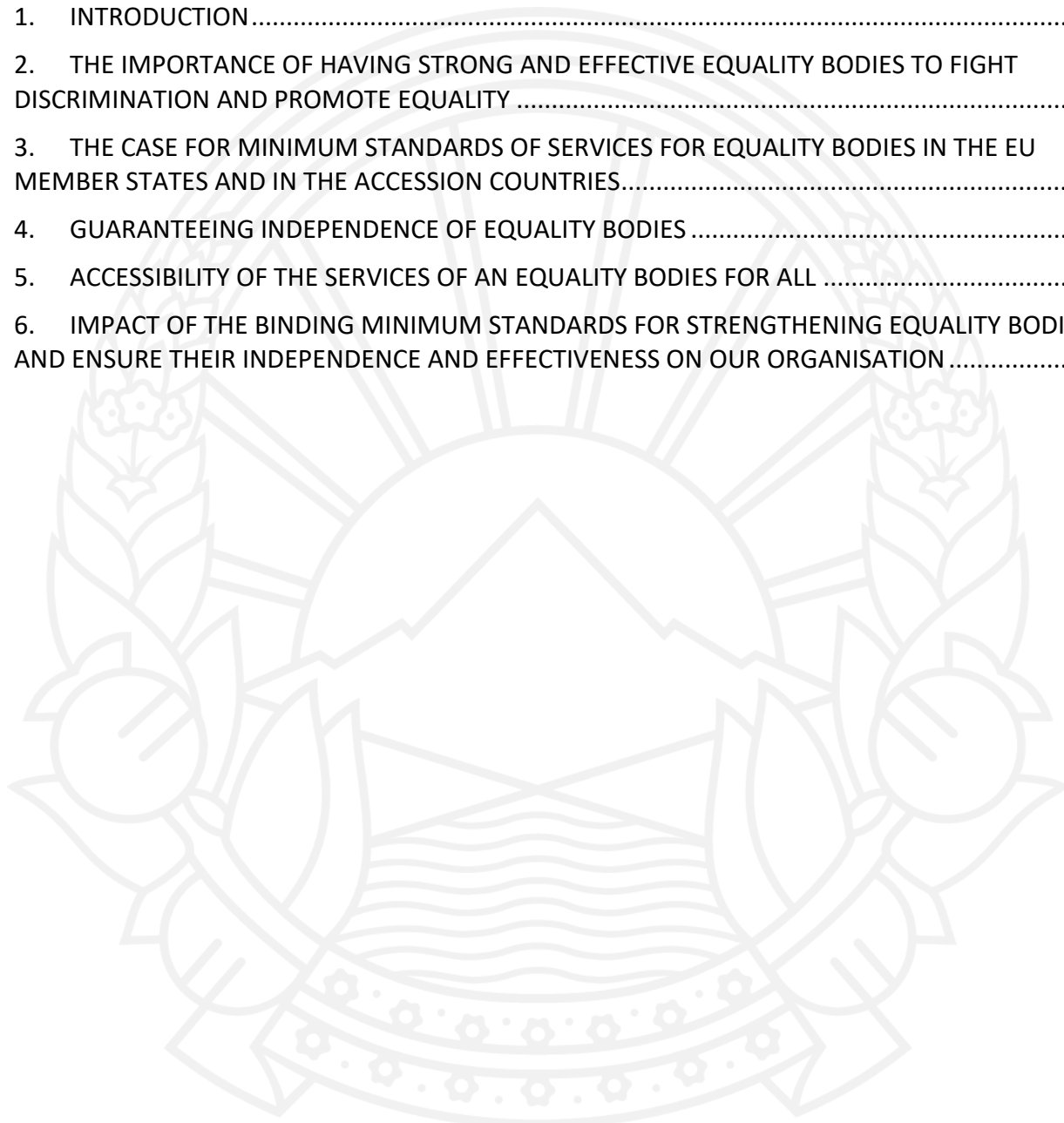
**Importance, role and challenges for equality bodies in the promotion
of equality and the fight against discrimination
Contribution to the public consultation process “Equality bodies –
binding standards”**



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1. Introduction

The Commission for Prevention and Protection against Discrimination (CPPD) is the first specialised, professional and independent national equality body that was established with the adoption of the Law on Prevention and Protection against Discrimination (Official Gazette of Republic of North Macedonia No. 258/2020, 24 October 2020). The CPPD is an independent and autonomous body that operates in accordance with its legal competencies in terms of informing and raising awareness on discrimination related issues and protective mechanisms; undertaking actions for prevention of discrimination and acting protecting against discrimination in received or ex officio initiated cases. The members of the CPPD were selected by the Assembly of the Republic of North Macedonia on 25 January 2021. The CPPD is composed of 7 members - commissioners, out of which one acts as the president of the body.

In this contribution, we provide a detailed reasoning to our positions expressed in the questionnaire for the public consultations on “Equality bodies – binding standards”.¹ Due to our position as a public equality body based in an EU candidate country, our approach to the topics elaborated on in this contribution is a two-pronged one. Firstly, we consider the topics from an *internal EU perspective*, as a public body from a prospective member of the EU and a contributor to the European level dialogue between equality bodies on important platforms, such as Equinet.² Second, we discuss the topics from an *external EU perspective*, and present a perspective of how such binding standards in the EU can and will spill-over in the Western Balkans countries. With this approach, we hope to present a clear case as to the importance of such binding standards and to the positive impact that they will have in the EU and beyond. For each topic, we first present briefly the key points from our national context and experience. Following this, we put forward proposals for the binding minimum standards for services for equality bodies.

2. The importance of having strong and effective equality bodies to fight discrimination and promote equality

We consider it very important for EU Member States and EU candidate and potential candidate countries to establish strong and effective equality bodies to fight discrimination and to promote equality. This position is shaped by the insights that we gain on daily level through our work as an equality body.

Equality is one of the founding principles of the European Union, and part of the constitutional traditions of all EU Member States and of all candidate countries. Deriving from here, the principle of equality should be made visible in a legally binding document and should be put outside of the realm of lip service and into the realm of practice. Equality bodies are a key instrument for upholding and operationalising this principle and this effort to transform principles into practice. Therefore, we consider that it is high time that the European Union legislates on binding minimum standards for services for equality bodies. Through our work we are (re)assured every day of the many ways that an equality body can make a change or can pull in the direction of change. Equality bodies prove time and again to be an essential element of rule of law and a clear indicator of how seriously a state takes the issue of equality. Paving the way towards social change and addressing complex challenges such as structural inequalities would be an impossible goal without equality bodies.

Equality bodies represent an open door to otherwise unattainable or difficult to reach protection, justice and reparation for victims of discrimination. Without equality bodies, this path is often closed by the complexity of judicial processes and other administrative dealings where citizens are expected to take on

¹ The call for public consultations can be accessed at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13098-Equality-bodies-binding-standards/public-consultation_en

² Equinet official website: <https://equineteurope.org>

the institutions by themselves. Equality bodies ensure that citizens³ are not alone, that they are seen and that they can attain satisfaction for the wrong they have endured. How does this look in practical terms? Equality bodies provide independent assistance to victims and to protecting citizens. But they also contribute beyond the individual level and can work to support the full institutional framework and the building of its capacities towards building more sensitive institutions. Equality bodies are key to creating a critical mass for dealing with discrimination cases by encouraging allies and partnerships, but also for tackling the pervasive problem of underreporting of discrimination cases. Equality bodies support the implementation of equality legislation directly, by monitoring and awareness raising, and indirectly, by discouraging people who think they can discriminate and get away with it. Their role is particularly important for preventing discrimination and promoting equality and the idea of human rights, in particular for combating stereotypes and changing narratives.

3. The case for minimum standards of services for equality bodies in the EU Member States and in the accession countries

We find it very important that binding minimum standards of services are established for equality bodies at EU level. Herein we single out six reasons in support of our position, three of which are important for the EU internally and three are important for EU's impact externally. Firstly, at present, there is an unequal implementation of the protection against discrimination throughout the different EU Member States because some Member States decided to keep their equality bodies at the bare minimum required with the EU directives, whereas others have decided to go beyond this. Second, the minimum standards for equality bodies established with the EU directives, starting with the two 2000 equality directives, have been in place for over twenty years now. Four years have passed since the 2018 Recommendation on standards for equality bodies. This is a sufficient time to at least implement the good practices from these past two decades throughout the whole Union as a minimum standard. Third, further regulation and establishment of minimum standards would help to clarify the position of equality bodies within the national legal and institutional frameworks, but also will clarify the position of equality bodies, especially when it comes to enlargement or downsizing of competences, which remains a tool for exerting pressure over equality bodies. Fourth, at present, the EU acquis, and most notably Chapter 23, says very little about standards for equality bodies. As such, it is not very helpful for the EU (potential) candidate countries to determine what is really expected - what needs to be done and what the state needs to guarantee when it comes to having an independent and effective equality body. Moreover, when genuine grassroots critical mass is formed demanding for higher standards for equality bodies, the EU acquis is a convenient excuse for the local political elites in (potential) candidate countries to keep the standards at the very minimum which would comply with EU *acquis*. Therefore, the legislative standards which we present in this contribution as being in place in our national context were achieved *in spite of* the limitations in the EU *acquis* rather than because of EU *acquis*. Fifth, as a result of this gap in the EU *acquis*, the European Union's leverage when it comes to conditioning (potential) candidate countries on any matter in relation to equality bodies is at present quite weak. Sixth, this then in turn diminishes the potential for impact and effective implementation of the overall equality and non-discrimination legislation in (potential) candidate countries, but it can also spill over into lack of effectiveness of the overall support for the rule of law which the EU is providing to these countries.

³ Herein, we refer to all residents of a country as "citizens" regardless of citizenship status.

4. Guaranteeing independence of equality bodies

We consider all elements listed in the questionnaire to be important for guaranteeing independence of equality bodies. We grouped the proposed elements into the following three *essential clusters*:

- 1) Independence of equality bodies as legal entities
- 2) Leadership independence
 - a) A transparent selection procedure of its leadership
 - b) A competence-based selection procedure of its leadership
 - c) Limited possibilities to remove its leadership
- 3) Resources independence
 - a) The ability to manage its own budget
 - b) The ability to recruit and manage its own staff
 - c) Sufficient resources

In this section, we discuss in which ways and in what aspects we see each of these as essential for guaranteeing independence.

Firstly, we consider that it is important for equality bodies to be established or appointed as **legal entities** under a clear legal ground established under a constitution or a law. From the experience in North Macedonia, we consider that there are issues which are usually disregarded when it comes to establishing a new institution, or an institution with new legal subjectivity (such as in cases of splitting or merging institutions). This includes the official registration of the legal subject. In the national context where we operate, there is a legal obligation for a new institution, such as our institution in 2021, to register with the central register as a legal person. Yet, there are no provisions which would mandate logistical and financial support for the starting up of the institution and for this registering. There is also little to no preparation being executed beforehand for the start of the work of the institution (such as securing of resources – premises, a start-up budget, transition/support staff for the set up stage). As a result, in our case we as commissioners were put in a position to conduct the registration by ourselves, including to pay for the expenses of the registration with our own personal funds. Further, no premises were allocated for our use, as a new institution. For three months the appointed commissioners worked from home, on personal equipment and using personal communication means. The equality body moved into premises allocated by the state only after three months. The allocated premises are not fully accessible for persons with disabilities, and no budget was allocated to adjust the accessibility of the premises. Such delay in securing the very basic conditions for the functioning of the equality body can have a negative impact on its independence. For this reason, and while this may be an experience which is less translatable to other national context, we consider it important to put forward the following recommendation for inclusion in the binding minimal standards:

- Ensure that there is clear legal ground for the establishment or appointment of the equality bodies under a constitution or a law.
- Establish a clear obligation for the Member States which opt to establish new equality bodies to support the establishment of these bodies as legal entities, in terms of support for registration of the legal entity and timely allocation of sufficient resources for the starting of the new institutions.

Another crucial aspect is leadership of the body. We focus here on three elements in relation to **leadership**. Firstly, a transparent selection procedure of the leadership is crucial and has long-term implications on the independence of the body and on the perceptions of the independence of the body.

In our national context, the legislation does not provide for a more detailed selection procedure, beyond establishing that the persons to fill in the leadership positions (in our case seven commissioners) should be selected from among candidates that applied on a public vacancy add following a public deliberation. However, a number of issues were not established in the law, such as modalities surrounding the public deliberation and the accompanying procedures. This resulted in a procedure which, although conducted in line with the law, left room for doubt as to the independence of our institution. In particular, this was so in relation to the shortlisting of candidates that were proposed to the Parliament.

However, there is a procedure conducted at the national level which is a good example of a public, open and participative process which left lesser room for doubt over the independence of the candidates, and that is the procedure for selecting the members of another national independent body – the State Commission for Prevention of Corruption. For this independent body, the law foresees a more detailed procedure which includes the public in a participatory manner throughout the whole process – from administrative check of the fulfilment of conditions by the applicants up to shortlisting of the candidates to be proposed to the Parliament. In Box No.1 below we include the integral text of Article 12 of the Law on Prevention of Corruption and Conflict of Interests which establishes this procedure.

Box No.1: Selection of members of the State Commission for Prevention of Corruption

Article 12⁴

- (1) The procedure for election of the President and the members of the State Commission shall begin three months before the expiry of the mandate of the existing President and members of the State Commission.
- (2) In case of termination of the mandate or dismissal of term of the president or member of the State Commission before the expiration of the term, the Assembly of the Republic of Macedonia shall start procedure for election of a new president or member of the State Commission within 10 days from the termination of the term.
- (3) The procedure for election of the president and members of the State Commission starts with the publication of the public announcement for election of the president and members of the State commission and it is conducted by the Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia.
- (4) The Assembly of the Republic of Macedonia publishes announcements referred to in paragraph (3) of this Article in the "Official Gazette of the Republic of Macedonia" and in at least three daily newspapers issued on the entire territory of the Republic of Macedonia, two of which are newspapers that are issued in Macedonian language and one is in the language spoken by at least 20% of the citizens who speak an official language other than the Macedonian language. The announcement is also published on the website of the Assembly of the Republic of Macedonia and of the State Commission.
- (5) The deadline for submission of applications for the announcement referred to in paragraph (3) of this Article lasts 10 days from the day of the publication of the announcement in the "Official Gazette of the Republic of Macedonia".
- (6) The Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia within 10 days from publishing of the announcement from paragraph (3) of this article establishes Committee for selection of the president and members of the State Commission (hereinafter: Selection Committee).
- (7) The Selection Committee is composed of seven members:
 - one member nominated by the Ombudsperson;

⁴ Excerpt from the Law on Prevention of Corruption and Conflict of Interests, Official Gazette of the Republic of Macedonia, No.12/2019 (19.01.2019).

- representative of the NGOs appointed in the Council for cooperation between Government and civic sector in the field of Democracy and rule of law;
- representative of NGOs appointed for member of the Council for cooperation between the Government and civic sector in the field of Media and IT;
- two MPs from the ruling coalition and
- two MPs from the opposition.

(8) Administrative support of the Selection Committee is given by the organizational unit of the Administration of the Assembly which gives support to the working bodies of the Assembly of the Republic of Macedonia.

(9) Within 3 days from the expiration of the deadline for application referred to in paragraph (5) of this Article, the Selection Committee shall check the fulfilment of the conditions referred to in Article 11 of this law, and shall establish a list of candidates who applied with data on which candidates fulfil the conditions.

(10) The list referred to in paragraph (9) of this Article shall be fully published on the web site of the Assembly of the Republic of Macedonia, with data on the fulfilment of the conditions referred to in the Article 11 of this Law, immediately or within 1 day from the day of its establishing at the latest.

(11) Within five days from the establishing of the list referred to in paragraph (6) of this Article, interview shall be organized for the candidates who fulfil the conditions referred to in the Article 11 of this Law (hereinafter referred to as: the interview) which shall be transmitted to the Assembly television Channel. If any of the candidates does not appear for the interview, it shall be considered that he/she has withdrawn the application for president or member of the State Commission.

(12) The term for holding the interview shall be published on the web site of the Assembly of the Republic of Macedonia on the day of the publishing of the list referred to in paragraph (9) of this Article.

(13) The interview shall be conducted by the Selection Committee on public session of the Committee of the Election and Appointment Issues of the Assembly of the Republic of Macedonia.

(14) The manner of carrying out the interview, evaluation and ranking of the candidates shall be determined by an act adopted by the Assembly of the Republic of Macedonia. (15) At the same time with the publishing of the announcement referred to in paragraph (3) of this Article, an invitation to the Ombudsperson, the Macedonian Academy of Sciences and Arts and the Interuniversity Conference shall be published on the web site of the Assembly of the Republic of Macedonia to nominate their representatives who will participate at the interview within 10 days after the announcement of the invitation.

(16) At the same time with the publication of the announcement referred to in paragraph (3) of this Article, a call shall be made to the associations of journalists and other associations and foundations on the web site of the Assembly of the Republic of Macedonia to participate at the interview, in accordance with paragraph (17) of this Article. The deadline for applying at the call is 10 days from the date of its publication. (17) All associations of journalists established in accordance with the law, or registered for more than five years, and all associations or foundations registered in accordance with the law and with experience of at least five years in the field of prevention of corruption, rule of law or good governance shall have the right to apply to the call and participate in the interview, with one representative for whom they submit identification data.

(18) Apart from the MPs in the Assembly of the Republic of Macedonia, the representatives registered or nominated in accordance with paragraphs (15) and (19) of this Article shall have a right to ask questions to the candidates for president or members of the State Commission during the interview and after the end of the interview the same day.

(19) Within three days from the completion of the interview, the Selection Committee determines a rank-list of the candidates in accordance with the criteria determined in the act from paragraph (14) of this article, and submits it to the Committee for Elections and Appointment Issues of the Assembly of the Republic of Macedonia, which within two days proposes the best ranked candidates to the Assembly of

the Republic of Macedonia in a single proposal list for president and members of the State Commission, with an explanation for each of the proposed candidates.

(20) If the Committee on Election and Appointment Issues of the Assembly of the Republic of Macedonia does not establish the list referred to in paragraph (19) of this Article within the stipulated deadline, the Assembly discusses and votes individually for each of the candidates that fulfil the conditions in accordance with the ranking list prepared by the Selection Committee.

(21) If the Assembly does not elect a president and members of the State Commission, the selection procedure shall be entirely repeated with publishing of an announcement immediately, and not later than 10 days.

(22) The principle of adequate and equitable representation and the principle of equal gender representation shall be taken into account in the procedure for electing a president and members of the State Commission.

(23) The candidates for president or a member of the State Commission who consider that the provisions of Articles (10), (11) and (12) of this Law are violated in the procedure for election of a president or a member of the State Commission are entitled to a complaint to the Administrative court. The procedure before the Administrative Court is urgent.

Based on this, we propose for the binding minimum standards to:

- The leadership selection should be conducted in a transparent and participatory procedure, with direct inclusion of civil society and equality and non-discrimination experts throughout the whole selection process.

We also reflected on competence-based selection procedure. There should be clear criteria and a competence-based selection procedure for the leadership and limited and very strictly established possibilities to remove the leadership of the equality body. We share herein our recommendations of what we think this should entail and what should be included in the binding minimum standards:

- There should be clearly established criteria as to the credentials that are needed and a transparent and clear procedure for checking of the credentials, including by publishing the outcome from this procedure. Regarding the checking of the credentials, consideration can be given as to the possibility for establishing one EU level accreditation system wherein checks can be conducted on a peer level.
- In addition to competences, in composite leaderships bodies, the persons at the leadership positions, as a whole, should reflect the composition of society, while paying particular attention to the dynamics of discrimination which are important in the national contexts. Gender balance should be respected as should the representation of various backgrounds (including professional).
- Official party function holders in political parties should not be eligible for leadership position/s in equality bodies.
- The removal procedure should be transparent and should clearly state what are the grounds for removal, who can initiate a removal procedure, and what are the options for appeal. Any such procedure should provide safeguards against victimisation.

The third and final cluster is the one on **resources**. The resources allocated to the equality body, as budget and as material and human resources, should be sufficient for the body to effectively exercise its whole mandate. In our case, inefficient funding prevents us from exercising the full mandate that we have been vested with. For example, our body cannot use funds for national and international cooperation with other independent bodies, or for cooperation with CSOs and trade unions, although they are part of our

mandate. Effectiveness of the spending of the funds is not regularly monitored internally and externally (via an independent audit), which prevents us from presenting a clear case as to how our potential for effectiveness is impeded by underfunding. When it comes to human resources, the usual standard of relying on providing a public servants status to the staff of the equality body may not be enough. Furthermore, it may result in unintended consequences which can breed challenges for the equality body, such as removing the equality body from the position to be the decisive voice in recruitment, by instituting limitations in terms of numbers, positions and execution of recruitment processes which might come with the status of public servants. The binding minimum standards must have this in mind and include an obligation for safeguarding from interference from the executive via the staff recruitment and management. Regarding this, and the other points in relation to resources discussed herein, we share the following recommendations for the binding minimum standards:

- The equality body should be able to propose a separate budget as an overall sum for at least one year directly to the Parliament, including the ability to explain and defend the budget proposal.
- The proposal made by the equality body and any budget cuts made by the Parliament should not result in a budget which will be inefficient and insufficient to cover the whole mandate. Any budget cuts by the Parliament should be conducted in the same manner/scope as are for the other institutions. The Parliament must give a reasoned position on any revisions to the proposed budget stating how the effectiveness of the body is still safeguarded. There should be no arbitrary and disproportionate reductions.
- Every equality body should be able to manage its own budget, including reallocations within the budget in a manner which will allow for most efficient and results-oriented spending.
- To increase trust in the institution and to support its operation and planning capacities and procedures, arrangements should be made for conducting regular independent financial audits.
- In addition to the budget, the equality body should have sufficient human and material resources. Every equality body should be able to recruit and manage its own staff. The national legislation should provide flexibility for the status of the staff of the body which will enable it to maximise its independence and the use of its full capacity.

5. Accessibility of the services of an equality bodies for all

In relation to accessibility, we can share in part our experiences and in part our aspirations and, based on this, what we think should become part of the minimum binding standards. As institution have a long road to becoming a fully accessible institution, so we discuss herein also the main challenges that we face many of which go back to the issue of insufficient resources (see section 4, above).

We have put in place assurances that any applicant⁵ can reach us online, by phone, in person or in writing. These are also the pathways for filing applications, with the exception of accepting applications made via phone which is in our case not possible due to the limitation of the phone communication when it comes to confirming the identity of the applicant (anonymous applications are not allowed in our national context). The complaints submissions procedure is otherwise simple, and free of charge. Under the national legislation, complains for discrimination to us can be filed in a language of the complainant's choosing from among the seven languages that are in use, albeit to varying degrees, in the public sector. Yet, based on our experience, we consider that, provided that the equality body is vested with sufficient resources, they should be able to accept applications in any of the languages which the complainant understands (we reflect on this point further in our recommendations, below).

⁵ Please see below for a discussion on the limitations as to accessibility for persons with disabilities which inevitably make accessing us via any of these channels a challenge.

In our experience, making the physical premises and the online presence of the equality body accessible for persons with disabilities, regardless of type of disability, is a great challenge in contexts where equality bodies are not allocated adequate premises to begin with or are not provided with sufficient funding which will allow them to do the necessary adaptations. In a situation when there is no provision in EU law mandating online and offline accessibility for equality bodies, and when the national standards on this remain weak and partial, accessibility is treated as a “nice thing to have” instead as the must have that it is. This creates a paradoxical result in which institutions that are to fight against discrimination on grounds of disability remain in whole or in part inaccessible for persons with disabilities. For example, the previous institution in North Macedonia that was tasked serve as an equality body, the now non-existing Commission for Protection against Discrimination, was provided with premises that were on the 19th floor in a 20-storey building, which had an elevator going up only to the 18th floor, without any accessible facilities.

Local representation is also an important element of the accessibility of equality bodies. Local representation works towards accessibility for all regardless of class, place of residence, disability, gender, or belonging to a marginalised group. It is necessary for outreach activities, such as promotion and awareness raising, but also for actions directed towards tackling underreporting and encouraging cases referral. But, local representation is also often very difficult to achieve for equality bodies. Unlike for the ombudspersons, equality bodies are rarely under law provided with the possibility to have local offices. Operating with a very small budget further aggravates the challenge which we as an institution face to reach a decentralised presence. In lieu of a legal framework that will resolve the issue of local representation, we are currently looking at different modalities to achieve this, such as local decentralised presence through cooperation with other public institutions (primarily municipal councils and ombudsperson offices) and possibly CSOs; relying on cooperation with local actors for cases referral; funds for regular field visits. Based on this experience, we recommend that the binding minimum standards include the following:

- The application procedure in front of the equality bodies should be simple, free of charge and can be initiated through a variety of methods (online, in person or in writing).
- There should be a requirement that a complaint can be filed in a language that the complainant understands. Sensory accessibility should be secured for the online filing of applications, and sensory, physical and psycho-social accessibility for in person filing of applications. The application procedure should be accessible in sign language.
- Any guidelines or promotional materials for the application procedure should be accessible in the languages commonly used in the Member States, in Brail letters and sign language, and should include adjustments according to accessibility standards. There should also be versions published in simplified language (easy reading formats).
- There should be a requirement for the Member States to work with the equality bodies on identifying the most suitable and cost-effective arrangements for a decentralised accessibility of the equality body and to allocate adequate resources for effecting such arrangements.
- A sufficient budget should be allocated to the equality body for setting up accessible premises and online presence, for ensuring continuous language accessibility, decentralised accessibility and accessibility for persons with disabilities of the premises and the online presence.
- A sufficient budget should be allocated for periodic evaluation of the accessibility and undertaking of the necessary adjustments as per the evaluations findings.

6. Impact of the binding minimum standards for strengthening equality bodies and ensure their independence and effectiveness on our organisation

As a public entity in an EU candidate country, we will not be directly affected by such binding minimum standards. We expect potential indirect effects, which we already discussed under section 3 (above). These include:

- Further regulation and establishment of minimum standards would help to clarify the position of equality bodies within the national legal and institutional frameworks, but also will clarify the position of equality bodies, especially when it comes to enlargement or downsizing of competences.
- At present, the EU *acquis*, and most notably Chapter 23, says very little about standards for equality bodies. As such, it is not very helpful for the EU candidate and potential candidate countries to determine what is really expected - what needs to be done and what the state needs to guarantee when it comes to having an independent and effective equality body.
- As a result of this gap in the EU *acquis*, the European Union's leverage when it comes to conditioning (potential) candidate countries on any matter in relation to equality bodies is at present quite weak. This then in turn diminishes the potential for impact and effective implementation of the overall equality and non-discrimination legislation, but it can also spill over into lack of effectiveness of the overall support for the rule of law which the EU is providing to (potential) candidate countries.

For further information on any of the points discussed in this contribution, please feel free to approach us.

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