

## Recent activities at European level in the area of non-discrimination

Current Reflections on EU Anti-discrimination Law  
ERA Seminar, Trier, 3 June 2019



This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

[www.equineteurope.org](http://www.equineteurope.org)

## European elections

New directions?

- ❖ Importance of non-discrimination in election campaigns (see [Equinet Recommendation](#))
- ❖ Interim period, slowdown of policymaking and legislation
- ❖ Possible new directions and new policy strategies



# EU legal framework for equal treatment

- ❖ The current EU equality law framework, if properly implemented, is strong – but incomplete

Fields/Grounds	Race	Gender	Sex. orientation	Age	Disability	Religion
Employment	YES	YES	YES	YES	YES	YES
Education	YES	NO	NO	NO	NO	NO
G & S, housing	YES	YES	NO	NO	NO	NO
Soc. Protection (Healthcare)	YES	YES	NO	NO	NO	NO
Soc. advantages	YES	NO	NO	NO	NO	NO

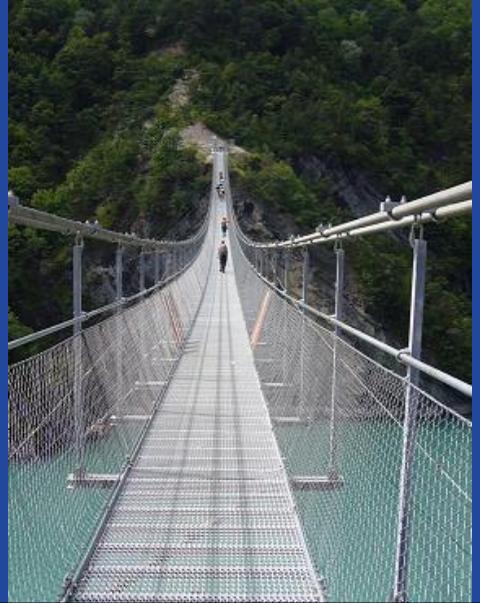
# Equality and non-discrimination

- ❖ Equality and non-discrimination are fundamental values of the EU and in the constitutional traditions of all MS
  - ❖ International obligations (ECHR, CRPD, SDGs, etc.)
- ↓
- ❖ Equality bodies in 26 EU Member States already cover some or all areas not covered by EU law



## Passerelle clause?

- ❖ Earlier idea: enhanced cooperation procedure (a group of nine or more MS moving ahead with a proposed initiative)
- ❖ April 2019: [European Commission Communication](#) proposing to consider the use of the passerelle clause for the area of non-discrimination, moving from unanimity to QMV



## Meanwhile: a developing text?

What do you think of this definition?

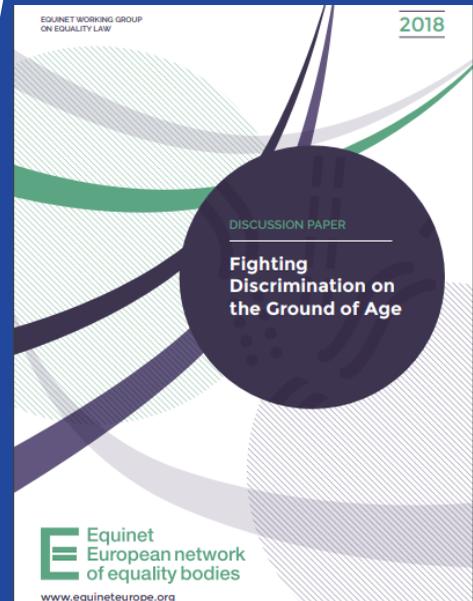
*Article 2 (3-a): “Discrimination on multiple grounds occurs when discrimination is based on any combination of the grounds set out in Article 1 of this Directive.*

*Discrimination on multiple grounds may occur on the basis of any such combination also where discrimination would not occur on one or more of the grounds when taken separately.”*

*Consolidated text of the Horizontal Directive, November 2018 (latest published version)*

## The case work of equality bodies I

- ❖ Free preventive annual breast cancer screening only available to women aged 40-69
- ❖ The equality body recommended the extension of the eligible age group in particular due to the risk of breast cancer being highest among women aged 75-79



## The case work of equality bodies II

- ❖ A municipality denied transport for an 8-year old wheelchair user to her new school – even though the length of the drive was almost unchanged
- ❖ Reference to municipal rules that taxi rides are not organised to special music schools
- ❖ The equality body successfully invoked reasonable accommodation rules and negotiated a settlement

**OFFICE OF THE NON-DISCRIMINATION OMBUDSMAN**  
Finland

Olivia and Kaarina, 8-year old twin sisters were so happy when they got accepted to a special music school. The happiness was quickly wiped away when local authorities decided that one of the sisters, who uses a wheelchair and goes to school by taxi, wouldn't be driven to her new school, although the school ride is almost the same.

The municipality referred to rules stating that the municipality does not arrange school transport to special schools. The twins' mother got help from the Finnish Non-Discrimination Ombudsman. During negotiations with the municipality, municipal authorities were reminded of non-discrimination law, the obligation to make reasonable accommodation and the principle that equality does not mean the same rules for everyone. Olivia may now attend music school together with her sister.

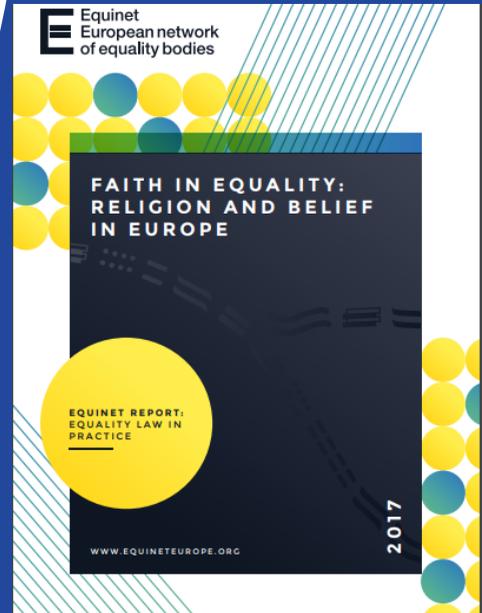
**DECEMBER**

M	T	W	T	F	S	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

- 3 International Day of Persons with Disabilities
- 10 Human Rights Day
- 18 International Migrants Day

## The case work of equality bodies III

- ❖ A woman wearing a Muslim headscarf was harassed by her doctor
- ❖ Aspersions about the Muslim religion, her position as a woman in society, her willingness to be oppressed...
- ❖ The doctor went as far as calling the woman's employer
- ❖ The equality body dealt with the case as intersectional discrimination (gender-religion): a necessity given that the religion ground is not covered outside employment



## The case work of equality bodies IV

- ❖ Refusal by a company to print a roll-up stand with the name and logo of the 'LGBT Business Forum'
- ❖ The equality body took up the case that ultimately went up to the Supreme Court
- ❖ Christian convictions of the employee of the printing company were found not to be justified reasons for the refusal of the service

**COMMISSIONER FOR HUMAN RIGHTS POLAND**

The Commissioner for Human Rights informed the police about a possible offence committed by a printing company which refused to print a roll-up with the name and logo of the "LGBT Business Forum" Foundation. The employee of the printing company sent an email to the Foundation saying that he did not want to support the promotion of LGBT movements through his work, referring to his Christian convictions. In July 2016, the Court of first instance found the employee guilty of discrimination based on sexual orientation and expressed that he had no right to refuse services on a discriminatory basis. Because of the difficult personal situation of the employee, the Court decided not to fine him. The Court of second instance upheld the decision. The case was referred to the Supreme Court, which upheld the previous judgments. The Supreme Court stated that the employee of the printing company had no justified reason to refuse the demand of the customer because of his Christian convictions.

**MAY**

M	T	W	T	F	S	S	5
		1	2	3	4	5	European Independent Living Day
6	7	8	9	10	11	12	17 International Day against Homophobia, Transphobia and Biphobia
13	14	15	16	17	18	19	
20	21	22	23	24	25	26	
27	28	29	30	31			

## Work-Life Balance

- ❖ Initiative under the European Pillar of Social Rights (legislative and non-legislative)
- ❖ Paternity leave: 10 days, sick pay
- ❖ Parental leave: 4 months, two of which non-transferable and remunerated (level set by MS)
- ❖ Carer's leave: 5 days per year
- ❖ Right to request flexible working arrangements



## Hate speech online

- ❖ May 2016: Code of conduct on countering illegal hate speech online – European Commission and social platforms
- ❖ February 2019: results of the 4<sup>th</sup> monitoring cycle
- ❖ 89% of notifications reviewed within 24 hours
- ❖ 72% of illegal hate speech notified is removed



## Roma equality



- ❖ EU Framework for National Roma Integration Strategies (2011)
- ❖ Focus: employment, health, education, housing (latest evaluation proposing an increased focus on fighting discrimination and antigypsyism, as a separate priority area)
- ❖ Mid-term evaluation suggests
  - ❖ Improvement in education (except segregation), health, poverty, discrimination
  - ❖ No change or even deterioration in employment, housing, antigypsyism

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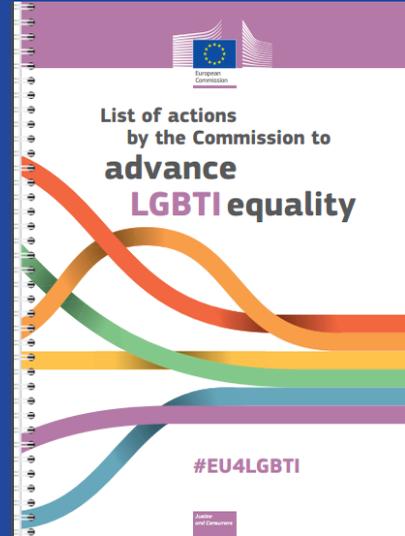
## European Accessibility Act

- ❖ Proposed in 2015, Adopted in April 2019
- ❖ Objective & legal basis: improve the functioning of the internal market for accessible products and services (Art. 114 TFEU)
- ❖ Scope: PCs, ATMs, ticketing machines, TV equipment, AV media services, banking, e-commerce, e-books, etc.
- ❖ The EAA doesn't cover e.g. transport and the built environment



## LGBTI List of Actions

- ❖ Adopted in 2015, annual reports since 2017
- ❖ #EU4LGBTI toolkit
- ❖ Financial support to organisations and projects
- ❖ CJEU case law (MB v Secretary of State for Work and Pensions; Coman)
- ❖ Audiovisual Media Services Directive



## Many actors in the field

- ❖ **European Union Agency for Fundamental Rights (FRA):** Fundamental Rights Report 2018 (focus chapter on ageing); Report on Roma women; Antisemitism survey; guide on preventing unlawful profiling; Being Black in the EU; 10 keys to effectively communicating human rights
- ❖ **European Institute for Gender Equality (EIGE):** Gender Equality Index; Toolkit on gender sensitive communication
- ❖ **European network of legal experts in gender equality and non-discrimination:** recent reports on equality bodies; family leave; Trans and Intersex rights; UN CRPD

# Creating the conditions for equality bodies to contribute

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## The work of equality bodies

### Hard and soft powers

#### Functions laid down in EU Directives:

- Independent assistance to victims of discrimination
- Independent surveys and reports concerning discrimination
- Recommendations on discrimination issues
- Exchange of information with European bodies

#### Wider functions accorded to Equality Bodies:

- Awareness-raising and promotion of values
- Promotion of good practices
- Work with stakeholders
- Monitoring and supervision

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# The potential of equality bodies



- ❖ Social – organisational – individual change
- ❖ Effective monitoring and enforcement of equality law and duties
- ❖ Prevention of discrimination
- ❖ Developing national and European jurisprudence
- ❖ Promotion of good equality practices
- ❖ Awareness-raising
- ❖ Research and knowledge creation
- ❖ Policy advice

# International and European standards

EU Directives

UN Paris Principles  
(for NHRIs)

ECRI GPR No. 2

CoE  
Commissioner for  
Human Rights  
Opinion

By analogy:  
Standards for  
Data Protection  
Authorities

European  
Commission  
Recommendation

## The added value of standards

- ❖ Expressing commitment to promoting and defending the fundamental value of equality
- ❖ Ensuring that equality bodies in each Member State have a wide mandate, a minimum set of powers and a minimum level of independence and resources;
- ❖ Enabling a more effective contribution to implementing equality legislation and creating equal societies
- ❖ Acknowledging the potential and contribution of equality bodies as specialist institutions and 'European good practice'

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## Implementing standards for equality bodies

Discussions and good practice sharing among Member States

Develop indicators for the Recommendation

Use standards for monitoring work by the European Commission

Discussions among equality bodies – Equinet project in 2019

Acknowledge equality bodies as a European good practice

Academic analysis of the situation and the needs

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**THANKS FOR YOUR ATTENTION!**

**ANY QUESTIONS ?**

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