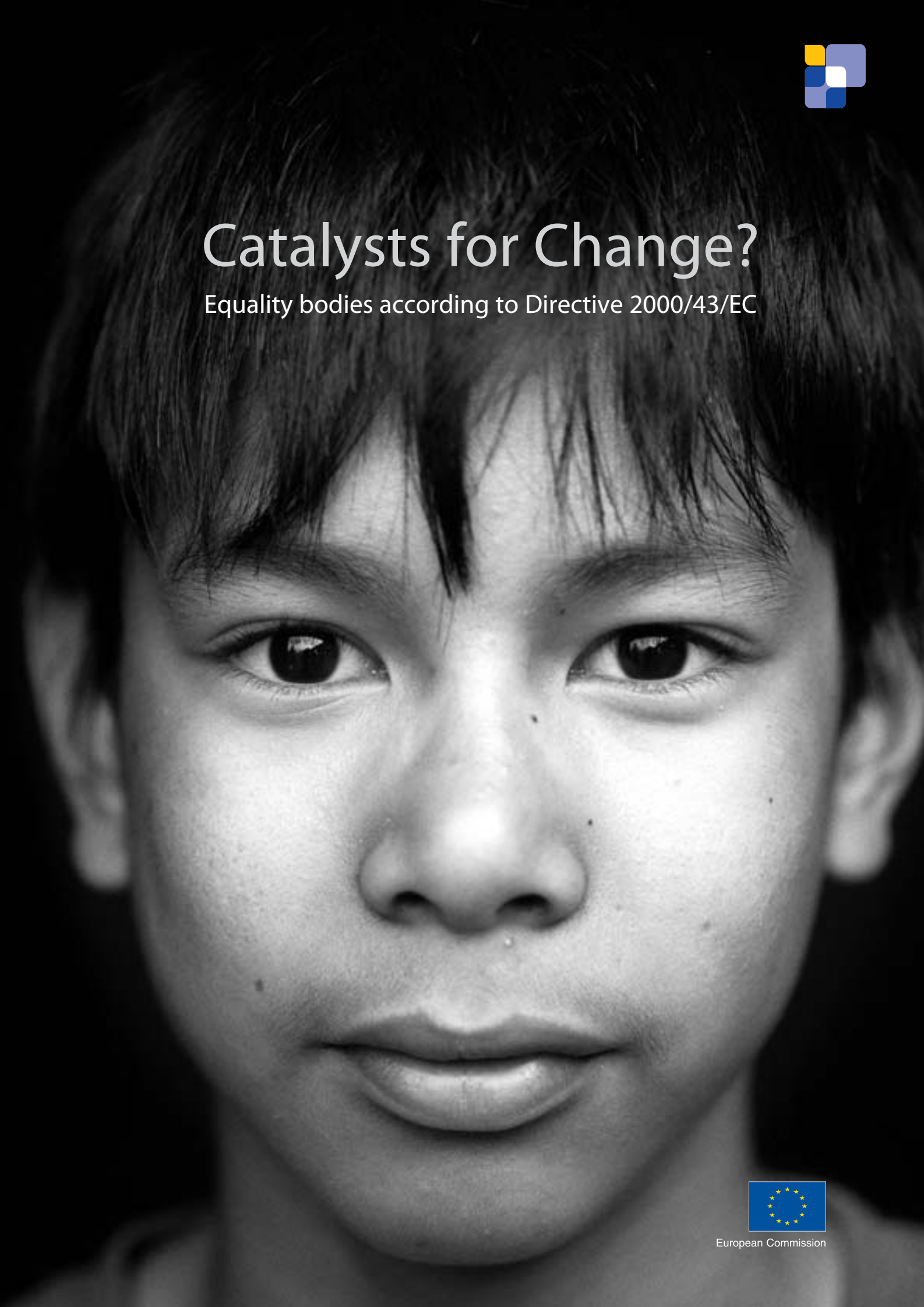

Catalysts for Change?

Equality bodies according to Directive 2000/43/EC

European Commission

Catalysts for Change?

Equality bodies according to Directive 2000/43/EC - existence, independence and effectiveness

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The Action Programme has three main objectives. These are:
1. To improve the understanding of issues related to discrimination
2. To develop the capacity to tackle discrimination effectively
3. To promote the values underlying the fight against discrimination

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Executive Summary

Introduction

In the Preamble to the Racial Equality Directive, the EU legislator considered that "[p]rotection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance to victims." [Recital 24.] In this light the EU has required all Member States to establish "bodies" to assist victims of racial and ethnic discrimination, to conduct surveys about the forms and prevalence of discrimination and to issue reports and recommendations. This obligation has been laid down in Article 13 of the Racial Equality Directive (Directive 2000/43/EC):

"1. 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. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.
2. Member States shall ensure that the competencies of these bodies include:
- *without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,*
- *conducting independent surveys concerning discrimination,*
- *publishing independent reports and making recommendations on any issue relating to such discrimination."*

This report is the result of a study into the extent to which EU Member States had implemented this provision by the end of 2005. For this purpose a questionnaire was send to 25 members of the Network of Experts in the Non-Discrimination field. International documents like the *General Recommendation No 2*, issued by the Council of Europe's European Commission against Racism and Intolerance (ECRI) and the *Paris Principles* issued by the UN Human Rights Commission, provided useful additional guidelines as to what is necessary for an independent and effective functioning of such bodies.

This thematic study has three main parts. First, it considers the existence, competencies and structure of the designated bodies in the Member States. Second, it considers to what extent their work is independent, and, finally, to what extent these bodies are effective. The report ends with some conclusions and recommendations.

Equality bodies in the EU

Most Member States have implemented Article 13 of the Racial Equality Directive either by designating some existing institution or by setting up a new institution to carry out the competencies mentioned in Article 13. As of December 2005, there were 28 officially designated equality bodies functioning in EU Member States. Two more institutions were appointed, but were not yet functioning. In five countries no such institution was in place at that date. Equality bodies with a specific equality brief outnumber those that are placed within an agency with a wider mandate (e.g. human rights). Most equality bodies cover more than one discrimination ground.

Only four equality bodies have a limited mandate, restricted to issues around racial and ethnic discrimination. Out of the 30 existing equality bodies only eight have exactly the same material scope as under the Racial Equality Directive. Ten organisations or institutions do not cover all of the areas that fall under the scope of this Directive.

Information about the bodies' budgets very often appeared not to be available, especially when details about the amount of money that should be spent on the various activities of the equality body were requested. The answers varied from 50.000.000 Euro to "no information available". A problem in this respect is that the mandate and scope of work of equality bodies vary greatly, which makes it impossible to say that any particular body is in a better position than another body. In a number of cases the body does not have a separate budget, but receives money from a department or other part of the government according to its needs. In most cases the money comes (partly) from a Ministry or from another part of the government, and/or it appears separately in the national fiscal budget. Twelve equality bodies receive (some) money from sources other than the national government. As with the budget, information on the number of staff and specifications regarding their education and training was also very difficult to obtain. The figures that were presented vary from 168 full time employees to 3,5 employees. Comparisons are very difficult to make since equality bodies that have to cover every conceivable discrimination ground and all forms of human rights violations probably have a far bigger workload than a body that deals only with race and ethnic discrimination. A general conclusion with respect to the budgets and staffing of the equality bodies is that very often transparency is lacking and that information (as far as it exists) is not made available to the public.

As far as the competencies and mandate of the equality bodies are concerned it appeared that there is a lot of confusion about what is meant by providing assistance, conducting surveys and issuing reports and recommendations, as the Directive requires. The following "data" should be read with this restriction in mind.

Twelve out of 30 equality bodies do not have a mandate to assist victims of racial and ethnic discrimination in some manner or other. Only four out of the 30 existing equality bodies do not have the power to conduct surveys. A small minority of three equality bodies do not have the power to issue reports and recommendations as prescribed in Article 13 of the Directive. Besides, more than two thirds of all equality bodies (22) have some power to hear and investigate complaints. However, it remains unclear what this mandate requires. Comparable situations may be treated in different ways by different jurists. For the purpose of clarity, a distinction should be drawn between, on the one hand, equality bodies where "assistance" and "hearing cases" are more or less equivalent and, on the other hand, bodies that may act as an independent quasi-judicial body. Several equality bodies have other additional competencies, e.g. to advise their government about new legislation in the field of non-discrimination or about implementation issues.

Independence of equality bodies

The Directive requires that the three core tasks of equality bodies should be carried out independently. This topic has two different aspects:

(a) whether the bodies have a guaranteed independent status and therefore are (in theory) able to function independently, and
(b) whether – regardless of whether they formally have independent status – in practice they can function in an independent manner as far as their core competencies is concerned.

Based on the recommendations and guidelines in international documents (see introduction, above) we designed a list of indicators for independent functioning.

Some conclusions that we have drawn from this study are:

- Quite a number of equality bodies are not established on the basis of a constitutional or legal provision, which makes their position vulnerable to sudden changes in the policies of the government.
- A number of them have official ties with the government, in the sense that government officials are part of the (board of the) institution or otherwise have some say over the institution's policies, or can have some (undue)

influence on the outcome of surveys or investigations (e.g. by way of their right to appoint or dismiss members of staff).
- A number of equality bodies do not have adequate premises outside government buildings.
- Quite a number of equality bodies have official ties with NGOs. It is not always clear how their independence in their relationship with these NGOs is maintained (e.g. with respect to the appointment or dismissal of "representatives" from NGOs in the board of the institution).
- As far as unofficial contacts with the government and with NGOs are concerned, there is a dilemma: such contacts may on the one hand undermine the appearance of independence necessary to carry out the mandate of the body; on the other hand, they can be desirable in order to combine forces in the fight against discrimination. It appears that not all equality bodies are holding the balance appropriately.
- Most staff and quite a number of (board) members or directors have a position as a civil servant, which – under certain conditions – can mean that they are somehow obliged to follow instructions from the government.
- The position of the equality bodies as regards their budget and their financial accountability is in a considerable number of cases not certain and not fully transparent.
- As far as the independent carrying out of their competencies is concerned, it appears that – with the exception of the activity of assisting victims in some countries – there seems to be a serious lack of adequately educated and trained staff. This is particularly so as regards conducting surveys and issuing reports and recommendations. A lack of money to employ such people is the principal cause of this situation.

On the basis of these observations it may be advisable for guidelines on the independent operation of equality bodies designated to exercise the competencies of Article 13 of the Directive to be drawn up to support the Member States in the implementation process.

Effectiveness

As regards making an assessment of the effectiveness of these institutions, this is very hard to measure. A true assessment of the effects of the work of such institutions would require a so-called "zero-measurement" (the situation before the equality bodies became active) and an extended survey and analysis of the effects of their work in practice. With the exception of the UK, such zero measurements do not seem to exist in any of the Member States. This being the case, it was concluded that the only research that could be done in this respect was to investigate and describe *how* the equality bodies are functioning *de facto*. Therefore this issue was reformulated in the following twofold manner:

1. Do the equality bodies have enough resources, i.e. are the amount of money and the number and quality of staff made available to them sufficient for exercising the three competencies mentioned in the Directive with at least a minimum degree of consistency and quality?
2. Are the equality bodies actually exercising the three competencies outlined in the Directive with at least a minimum degree of consistency and quality?

It became clear from the study that information about the budgets of equality bodies and their staff is scarce. This means that no clear conclusions are possible as regards the first question.

However, complaints about insufficient funding and a lack of (well trained) staff were frequently noted. This may mean that, under the circumstances, many of the equality bodies find that they cannot function effectively. In future research, it would be most important to ask the directors or boards of these bodies what they themselves consider to be sufficient funding levels and staff numbers to make some impact in the fight against discrimination. For this purpose it would be most helpful to have some guidelines on the reporting obligations of the equality bodies or external research institutions.

The second question was also hard to answer. Again, there is no clear yardstick to evaluate whether this is or is not the case. Looking from the perspective of the purpose of the Directive, we considered whether in those cases where no or hardly any activities are carried out, one can conclude that, although a Member State may have officially designated a certain institution as the equality body, it may not be in compliance with the Directive. However, such a conclusion is not possible on the basis of the current study.

From the results of the enquiry it becomes apparent that in most countries the task of assisting victims is not only an official competence of one or more equality bodies, but is also actually exercised by them. A lot of time and energy goes into this activity. The forms that assistance takes vary widely. As for the two other competencies mentioned in Article 13, the picture is less positive. Although these competencies are included in the mandate of most equality bodies, very few surveys into the forms and prevalence of racial and ethnic discrimination have been done and very few reports and recommendations about these issues have been published..

Conclusions and recommendation

The main conclusion that can be drawn from the current study is that continuing research and monitoring is necessary in order to make a clear assessment into the question whether Member State have correctly implemented Article 13 of the Race Directive and whether the equality bodies that were officially designated to carry out the functions which are mentioned in that Article are doing this in an independent and effective way.
It is apparent that there is no consensus in the Community about what is meant by crucial terms in Article 13. The words "assistance", "surveys" and "reports" are not defined, it is not clear what exactly "independent" means in this context. Also, there are no standards as to what can be considered as an effective functioning.

As far as the variety of competencies and powers of equality bodies is concerned, it is recommended that a clearer distinction be made between several competencies that can be discerned. On the basis of such an inventory, guidelines could be developed as to which competencies can be combined in an equality body and which should be allocated to separate institutions.

As far as the topic of independence is concerned the list of indicators that was developed in the framework of this study can serve as a tool for gaining a better and deeper understanding of what it takes to create truly independent specialised equality bodies. Therefore, it is recommended that the European Commission further develops this research tool and uses it as a basis for a continuing in-depth study into this issue.

With respect to the effective functioning, again, it would be useful for more specific guidelines to be developed by the European Commission. These should concern the minimum amount of money and staff that should be made available to equality bodies.

Also, it is desirable that a common format for the evaluation of the actual carrying out of the core competencies of Article 13 is agreed within the European Community.

Helen | *1999*

Part I

Introduction

Combating racial and ethnic discrimination is high on the European Union's agenda. In order to make its legislative measures against discrimination more effective, the EU has required all Member States to establish "bodies" to assist victims of racial and ethnic discrimination, to conduct surveys about the forms and prevalence of discrimination and to issue reports and recommendations. This obligation has been laid down in Article 13 of the Racial Equality Directive (Directive 2000/43/EC):

"1. 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. These bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights.

2. Member States shall ensure that the competencies of these bodies include:

- *without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 7(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,*
- *conducting independent surveys concerning discrimination,*
- *publishing independent reports and making recommendations on any issue relating to such discrimination."*

This report is the result of a study into the extent to which EU Member States had implemented this provision by the end of 2005.[1] This study addresses the question of whether the Member States actually have designated such institutions, and aims to provide a contribution to evaluate the independence and effectiveness of these equality bodies.[2]

Rikki Holtmaat conducted this study as part of the work of the *Network of Legal Experts in the Non-Discrimination Field*, which was set up and is financed in the framework of the Community Action Programme to Combat Discrimination. She established an appropriate research methodology after consultation with the European Commission and the Network's Scientific Board. Members of the Network provided the necessary information by answering an extended questionnaire about the existence, independence and effectiveness of the designated equality body or bodies in their country.

This thematic study has three main parts. First, it considers the existence, competencies and structure of the designated bodies in the Member States. Second, it considers to what extent their work is independent, and, finally, to what extent these bodies are effective. The report has been structured accordingly. To start off, the next part gives a short introduction and considers the role of equality bodies in the fight against discrimination more generally.

The author hopes that this publication will contribute to the spread of information and knowledge about the structure and functioning of equality bodies in EU Member States and the role that such institutions can play in combating racial and ethnic discrimination.

1 This study only examined those equality bodies that were officially designated by the governments of the Member States as the institutions by which they have implemented Article 13 of the Racial Equality Directive. The restriction to designated bodies means that all kinds of institutions that in theory or practice can play a similar role in assisting victims or doing research, etc. - but that have not been officially designated, were not included in the research (see however the case of the *Equality Tribunal* in Ireland, mentioned below in Part III, in the text at footnote 19 and 20). This also means that no separate attention has been paid to the obligation of the Member States – on the ground of Article 8a of Directive 2002/73/EC – to designate equality bodies in the field of gender. However, the majority of the equality bodies that exist in the Member States actually do cover more grounds than race and ethnicity. For a brief description of each of 21 equality bodies in the Member States of the Council of Europe, see the recent ECRI document, "Examples of good practice - Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level", January 2006 (Strasbourg, ECRI) available at http://www.coe.int/T/e/human_rights/ecri/4-Publications/

2 In the Directive these institutes are named "body or bodies." Therefore, in this report I speak of equality bodies. Other terminology more or less covering the same phenomenon includes "specialised bodies" or "independent body".

The author thanks all of the experts from the Network and its Scientific Board for their extensive and valuable information and for their support in putting together this report. I also thank all the other people that helped the Network experts to gather the necessary information.

The text of this report has been finalised in March 2006.

Daan | *1999*

Part II

The role of equality bodies in the fight against racial and ethnic discrimination and the purpose and format of this study

1. The role of equality bodies in the fight against racial and ethnic discrimination

Racial and ethnic discrimination is a persistent and complex social phenomenon. It has many forms, varying from physical attacks to hate speech, from laws providing for segregation[3] to the silent exclusion of particular groups from certain social and cultural activities, from the selection of clients through postal codes to refusals to hire people of a certain ethnic background for jobs. Sometimes disrespectful treatment and exclusion on the ground of race comes into the open in incidents that are hurtful and damaging for the person against whom it is directed. Sometimes the harassment and exclusion is structural and hidden, for example the way in which in some countries the police force reacts to the influx of people from different ethnic backgrounds in their ranks.[4] In all instances the effect of discrimination is that people – on the grounds of their race or ethnic origin – are treated in an undignified and disrespectful manner and are denied the full enjoyment of their human rights.[5] Combating this social evil requires the combined efforts of legislators, policy makers, the judiciary, employers' and employees' organisations, educational institutions, the media, non-governmental organisations and specialised anti-discrimination institutions. In this report I concentrate on the role of such "independent bodies","specialised bodies" or "equality bodies."[6]

In the Preamble to the Racial Equality Directive, the EU legislator considered that "[p]rotection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance to victims." [Recital 24.]

According to Niessen and Cormack, specialised anti-discrimination institutions (or equality bodies, as they are called in the language of the Directive) "(…) are extremely important for the implementation of anti-discrimination legislation on all grounds, given the role that they can play in supporting victims of discrimination, giving guidance to governments and other public and private bodies on how to work towards equality, providing other stakeholders and the public with information on anti-discrimination rights, and conducting specialized surveys and research into discrimination and ways of eradicating it."[7]

2. International obligations and recommendations

With the inclusion of Article 13 in the Racial Equality Directive, the European Union acted in conformity with other international recommendations on the same topic.

In the European context, *General Recommendation No 2*, issued by the Council of Europe's European Commission against Racism and Intolerance (ECRI) is of key importance[8]. ECRI recommends that governments consider the

3 Since the civil rights movement in the USA and the abolition of the apartheid system in South Africa this form of State discrimination is now in the past.

4 See e.g. The Commission for Racial Equality, 'The Police Service in England and Wales: Final report of a formal investigation by the Commission for Racial Equality, March 2005 (London: CRE, 2005), available at http://www.cre.gov.uk/policefi_final.pdf

5 In the UN Convention on the Elimination of all forms of Racial Discrimination (CERD) racial discrimination has been defined as follows (Article 1): "the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

6 Terminology is not consistent over Europe. In this study I name them equality body/bodies.

7 Niessen and Cormack 'National specialised equality bodies in the wake of the EC antidiscrimination Directives', in: Cormack, Janet (ed.), '*Considerations for establishing single equality bodies and integrated equality legislation*' 2004, p. 21.

8 General Policy Recommendation no 2 of the ECRI can be found at: http://www.coe.int/t/e/human_rights/ecri/1-ecri/3-general_themes/1-policy_recommendations/recommendation_n2/Rec02en.pdf

setting up of an independent specialised body to combat racism, xenophobia, anti-Semitism and intolerance at national level. It is convinced that such specialised bodies "(…) at national level can make a concrete contribution in a variety of ways to strengthening the effectiveness of a range of measures taken in this field and to providing advice and information to national authorities." The Appendix to this ECRI document sets out guidelines with respect to the mandate, competencies, operation and independence of such bodies.[9]

It has also been recommended at UN level that States should establish human rights committees that can play a role in supervising and implementing universal human rights standards, including the right not to be discriminated against. In 1992, the UN Human Rights Commission issued the *Paris Principles*, in which it gives guidelines on the status, powers and modes of operation of such national human rights institutions. These principles were adopted by the UN General Assembly in December 1993.[10] These internationally agreed recommendations underline the importance that international organisations attach to the existence of independent and effective equality bodies.

Apart from the fact that their work should be independent, Article 13 does not specify how the equality bodies should function. Therefore, these international documents – although they are soft law instruments – may serve as important guidelines when it comes to the correct implementation of European Union law. In *ECRI General Recommendation No 2* and in the *Paris Principles* it is recommended that countries should make use of several basic principles when establishing such specialised bodies. These include several guiding principles on independence and accountability.

Very briefly summarised, the following are the main preconditions for the independent and effective operation of human rights bodies mentioned in the *Paris Principles*:

- the independence of the body should be guaranteed by a constitutional or legislative framework
- the body should have autonomy from the government
- the body should be based on pluralism, including pluralism of composition
- the body should have a broad mandate
- the body should have adequate powers of investigation
- the body should have sufficient resources

ECRI Recommendation No 2 and the *Paris Principles* have served as a source of inspiration for many of the questions that were included in the questionnaire that was sent to members of the Network, which provides the primary basis for this thematic report. A list of indicators concerning independence that I have derived from these documents is presented in the introduction to Part IV of this report.

3. A further analysis of the role and operation of equality bodies

According to Article 13(2) of the Racial Equality Directive, the equality bodies should play a role in at least three different respects:

1. They should provide "independent assistance to victims of discrimination in pursuing their complaints about discrimination ".
2. They should conduct "independent surveys concerning discrimination".
3. They should issue "independent reports" and make "recommendations" on any issue relating to such discrimination.[11]

[9] E.g. Part III: Competencies and responsibilities of specialised bodies, Principle 5 Independence and accountability.

[10] Commission on Human Rights Resolution 1992/54; General Assembly Resolution A/RES/48/143. The Paris Principles can be found at : http://www.unhchr.ch/Huridocda/Huridoca.nsf/(Symbol)/A.RES.48.134.En?Opendocument

The Directive does not specify what exactly "assisting victims" involves, what kinds of "surveys" should be done, nor to whom "reports and recommendations" should be issued – nor does it specify what conditions should be fulfilled in order to comply with the criterion that all of these activities should be exercised in an independent manner. One of the aims of this thematic study is to make an assessment of whether and how the Member States have safeguarded the independent operation of the equality bodies. The second goal is to find out whether such bodies indeed contribute effectively to the goal of putting an end to racial and ethnic discrimination.

The implementation date of the Racial Equality Directive was 19 July 2003. Now, more than two and a half years later, a wide variety of practices concerning equality bodies are flourishing in the EU Member States. A study commissioned by the European Commission provided a first inventory of bodies that served or might serve as anti-discrimination bodies.[12] A brief description of officially designated bodies was included in the Country Reports prepared by the members of the above mentioned Network of Experts in the Anti-Discrimination Field at the beginning of 2005.[13] The network of experts in the field of gender equality also prepared a report on gender equality bodies.[14] These studies and reports show that most Member States have now officially designated one or more institutions as the "Article 13 Equality Body". However, an initial superficial survey of the practices that have been adopted also reveals that there is an enormous difference in the mandate, powers, competencies, status, budget, staffing and so on of these equality bodies. The European Commission therefore requested the Network of Legal Experts in the Non-Discrimination Field to conduct this more detailed thematic study.

4. The purpose of this study and the research questions

The purpose of the study is to consider how far and in what way Article 13 of Directive 2000/43/EC has been implemented by the Member States by officially designating a body or bodies as the institution responsible for the activities that are mentioned in this provision. This general issue has been divided into three sub-goals:

(i) providing more detailed information about the existence of equality bodies: what are their names, competencies, budget, staff, et cetera,
(ii) considering whether the designated equality bodies are in a position to exercise their competencies *independently*, and
(iii) considering whether their work is *effective*.

As far as the second and third goals were concerned, the following research questions were formulated:

1. Are the designated equality bodies in the 25 EU Member States functioning in an *independent* manner?
2. Are the designated equality bodies in the 25 EU Member States functioning in an *effective* manner?

The expression "functioning in an independent manner" in the first research question is open to two interpretations. It can mean:

[11] In Part III, par. 5.1 it will be noted that the meaning of the words "assistance", "surveys" and "reports and recommendations" is subject to a wide variety of interpretations.

[12] Report by PLS Ramboll Management, completed in May 2002. (See bibliography.) For recent developments in the establishment of such bodies see Janet Cormack and Jan Niessen, Considerations for Establishing Single Equality Bodies and Integrated Equality Legislation, Report of the 7th Experts' Meeting of the project Strengthening the cooperation between specialised bodies, hosted by the Equality Commission for Northern Ireland, Belfast on 17-18 June 2004.

[13] See: http://ec.europa.eu/employment_social/fundamental_rights/policy/aneval/legnet_en.htm#pub or http://www.migpolgroup.com/documents/3169.html

[14] Commission's Network of legal experts on the application of Community law on equal treatment between women and men, 'Report on Gender Equality Bodies', October 2004, available at http://www.bifrost.is/kennarar/Files/Skra_0007969.doc

(a) that the bodies have a guaranteed independent status and therefore are (in theory) able to function independently, or
(b) that – regardless of whether they formally have independent status – in practice they can function in an independent manner as far as their core competencies is concerned.

Since Article 13 of the Directive does not speak of "independent bodies" as such but of "independent assistance to victims, etc.", this means that (b) certainly needs to be addressed. Nevertheless I have chosen to investigate (a) as well, because independent status is relevant to considering whether specific activities will be carried out in an independent fashion. In order to assess the extent to which the equality bodies are independent when measured against the legal requirements in this respect, I have first made an inventory of these requirements. These will be presented in the Introduction to Part IV of this report.

As concerns the third goal, the Directive does not appear to offer any precise guidance as to how we can evaluate the effectiveness of the equality bodies. I hence concluded that the only research that I could do in this respect was to investigate how the equality bodies are functioning *de facto*. Even with this restriction, effectiveness is admittedly still very hard to measure.[15] I decided to concentrate on the following two research questions:

- Do the equality bodies have enough resources, i.e. are the amount of money and the number and quality of staff made available to them sufficient for exercising the three competencies mentioned in the Directive with at least a minimum degree of consistency and quality?
- Are the equality bodies actually exercising the three competencies outlined in the Directive with at least a minimum degree of consistency and quality?

The term "a minimum degree of consistency and quality" in these questions was interpreted against the background of the objective of the Directive, which is to contribute to the fight against discrimination on the grounds of race and ethnic origin.[16] On this basis a detailed questionnaire was prepared, consisting of an empirical part and two separate parts about independence and effectiveness. The Network's experts supplied information about the situation in their country, as far as this information was available in December 2005. The current report is based on the outcome of this questionnaire. Information that became available after December 31 2005 has not been included.

5. The structure of this report

The results are presented according to the three parts of the study as described above. I have avoided presenting and comparing the situation in each Member State in any detail. Such an approach would lead to a report that would be very unattractive to read and would contribute little to a better understanding of the approaches taken. I have therefore decided to give a brief overview of the main facts about equality bodies in Part III, supplemented with an appendix in which the outcome of the first part of the questionnaire is presented as a chart. As far as the issues of independence and effectiveness are concerned, I have selected a number of subjects that are connected to these issues and discussed these in a general, analytical fashion. The aim of the presentation in Part IV and V is to clarify the necessary conditions for, and the obstacles to, the independent and effective operation of equality bodies in practice. These issues will be illustrated by describing some good practices, and some more questionable practices. The report concludes in Part VI with some general observations about the functioning of equality bodies in the Member States and some recommendations concerning the future policy of the Commission, including its research policy, as regards this particular issue.

[15] See the Introduction to Part V.

[16] Ibid.

Hanne | *1999*

Part III

Equality bodies in the EU

1. Introduction

Most Member States have implemented Article 13 of the Racial Equality Directive in one of two different ways: either they have designated some existing institution or they have set up a new institution to carry out the competencies mentioned in Article 13. Tracking these developments is difficult because of the speed at which changes are occurring. In this part I will present the information that was collected through an extended questionnaire sent to each of the 25 members of the Network of Legal Experts in the Non-Discrimination Field. Based on the outcome of this questionnaire I describe how many such bodies existed as of December 2005, what their mandate is, whether they work at the national, regional or provincial level, the size of their budget, who provides it, and how many people are on the institution's staff. This is a general and comparative description. More detailed information about the situation in each country is presented in the chart in Appendix 1 and 2.

2. The number and form of equality bodies

A first observation is that Member States are not always very clear about how and when they appointed institution(s) to fulfil the roles that are mentioned in Article 13 of the Racial Equality Directive. Only in the case of nine equality bodies there is a particular legal document that clearly designates them as the official Article 13 body. In Belgium, Sweden, the Netherlands and the UK for example, the designation of Article 13 bodies is based on statements by a minister or a letter from the government to parliament. In some cases there is a ministerial decree or some kind of soft law. At times this leads to confusion, as in the case of Ireland: the European Commission's website[17] only mentions the *Equality Authority* as the Irish equality body, but some experts also consider the *Equality Tribunal* to be such an institution.[18] This situation reflects a lack of clarity about what can be defined as an equality body.[19]

According to the reports provided by the Network experts, there were 28 officially designated equality bodies functioning in EU Member States as of December 2005. In this account we have counted only one equality body for Cyprus, i.e. the Cyprus Anti Discrimination Body, which is part of the Ombudsman Office. However, after the research was finished information came to our knowledge that perhaps two separate bodies should be counted, i.e. also the so-called Cyprus Equality Authority. Since this information was not available at that time it is not included it in this report. Two more institutions were appointed, but are not yet functioning.[20] In five countries no such institution was in place at that date.[21] This means that these countries appear to be in breach

17 See: http://europa.eu.int/comm/employment_social/fundamental_rights/rights/neb_en.htm

18 For the purpose of this report I have decided to include the *Equality Tribunal* in the list of equality bodies.

19 As in the case of Ireland I have decided to include this institution in the research, despite these question marks.

20 In Spain the government has adopted a law that establishes an equality body, but this law has not yet been implemented. The same goes for the *Discrimination Ombudsman for the Åland Islands* in Finland. This brings us to a total number of 30 officially designated bodies. In the rest of this report I will describe these 30 institutions.

21 In Luxembourg and in the Czech Republic a law providing for such an institution has been proposed but has not yet been adopted. Germany and Malta do not have an equality body or any (published) bills which propose to establish one. Germany did have a proposal for an Equal Treatment Law in which a so-called *Antidiskriminierungsstelle* was included. However, the new Christian Democrat – Social Democrat coalition Government established in 2005 withdrew this Bill and it is unclear whether such an institution will be included in a new bill. In Malta a bill has been drafted and is currently being reviewed by the Attorney General's office. However, this bill has not yet been published and therefore its contents are not known. In Poland the *Government first designated the Government Plenipotentiary for Equal Status of Women and Men*. However, before the *Plenipotentiary* could make a start with its work in the field of racial and ethnic discrimination the new Government abolished this institution. Its competences were taken over by a specialised unit within the Ministry of Labour. In any case, please note that the Ombudsman can intervene in cases involving constitutional rights of the citizens (including the rights not to be discriminated against)

of the Directive's requirement to set up such an institution. In eight countries there is more than one equality body.

In the rest of this report I will only describe the situation in the countries that actually have an operational equality body, with the exception of Spain and Finland, where a law has been adopted but the body is not yet functioning.[22] Out of these 30 equality bodies, 11 are new institutions and 19 were already in existence. Some of the latter already have a long history. For instance, the *Commission for Racial Equality* in the UK dates back to 1976. Almost all bodies (27) work at national level. Two bodies work at provincial level (in Finland and Austria) and one body works at regional level (Northern Ireland, UK).

As for the form that the equality bodies take, their names alone lead us to suspect that these institutions are organised in many different ways, which presumably somehow correspond to their mandate and powers (see the chart in Appendix 1 and 2). There are ombudsmen, commissions or committees, councils, high authorities or high commissioners and human rights institutes. There is also an advocate, a centre and a tribunal in the list. Quite often the equality body is a part of a bigger institution (e.g. a human rights institute or ombudsman's office), which makes it difficult to assess what exactly its mandate is and to what extent the competencies mentioned in Article 13 are actually carried out.[23]

Article 13 leaves it open whether the promotion of equal treatment is entrusted to a specialised body or to an agency with a wider brief (e.g. human rights). Niessen and Cormack have already noted that the equality bodies with a specific equality brief outnumber those that are placed within an agency with a wider mandate.[24] Further research is necessary in order to reach a firm conclusion about whether the specific form of the institutions and whether they are embedded in another institution affects their independence and their effectiveness in terms of contributing to the goals set by the Directive. (See also Part IV, Paragraph 2.4 and Part V, Paragraph 2.2.)

3. The discrimination grounds covered and the field of application

So far, European anti-discrimination law only requires that equality bodies are set up in the fields of race and gender. However, many countries have equal rights commissions or other bodies that deal with other discrimination issues as well. In Europe there has been considerable debate about whether it would be more effective to have separate specialised equality bodies for each type of discrimination or to set up one single body for each country covering multiple grounds.[25] In fact, most equality bodies designated to carry out the competencies listed in Article 13 of the Racial Equality Directive cover more than one discrimination ground. Only four equality bodies have a limited mandate, restricted to issues around racial and ethnic discrimination.[26] The

[22] In Finland, one equality body is already functioning, a second one has been adopted but is not yet operational. I have chosen to exclude the Czech Republic and Luxembourg because the situation could still alter during the legislative process. For the same reason the proposed single Commission for Equality and Human Rights (CEHR) for the UK has not been included in the description.

[23] I will come back to this issue in Part V, where I discuss the effectiveness of the equality bodies.

[24] Niessen and Cormack 2004, p. 25.

[25] See the report of the conference held in Belfast in 2004 entitled "Considerations for establishing single equality bodies and integrated equality legislation" (full references in bibliography).

[26] These are the *Complaints Committee for Ethnic Equal Treatment* in Denmark, the *Ombudsman for Minorities* in Finland, the *National Office against Racial Discrimination* in Italy and the *Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin* in Spain. Niessen and Cormack (2004, p. 26) counted seven so-called "single bodies" in the field of race. These authors also mention the Portuguese *Commission for equality and against racial discrimination* and the British *Commission for Racial Equality*. However these Commissions also cover nationality discrimination. The same goes for Sweden, where religion and other beliefs are also covered by the *Ombudsman against ethnic discrimination.*

remaining bodies all have a broader mandate. In the case of Cyprus, for example, the body's mandate includes several grounds that involve discrimination connected with national or ethnic background.[27] Some equality bodies deal with one or more of the grounds mentioned in the Framework Directive (i.e. religion and belief, disability, age and sexual orientation); sometimes gender is included as well. In some cases the mandate is still broader. In Belgium the list is particularly long; it covers sex, race, colour, descent, national or ethnic origin, sexual orientation, civil status, birth, wealth, age, religious or philosophical conviction, actual or future state of health, disability or a physical characteristic. It may also be noted that the Belgian *Centre for Equal Opportunities and Opposition to Racism* also exercises certain competencies that do not relate to combating discrimination strictu senso, including activities relating to the trafficking of human beings, protecting the rights of aliens, and combating poverty. Estonia and Hungary have a similarly long list, which ends with "other grounds specified by law" and "any other situation, attribution or condition of a person or group". Such open-ended clauses make the scope of the work of the equality body very wide. Further research is necessary in order to evaluate what the effect of such broad mandates is in terms of the effectiveness of the equality bodies.

Twenty-six out of the 30 officially designated equality bodies cover a greater number of grounds of discrimination than stipulated by the Directive. In the questionnaire it was asked whether the competencies that these 26 bodies exercise in the field of race and ethnic discrimination are in any way different from those that they have with respect to these other grounds.[28] In a small minority of cases, this appeared to be the case.[29] This may be problematic since it may cause confusion as to the body's competencies in a case of multiple discrimination. Given the fact that sometimes equal treatment or non-discrimination norms are laid down by various laws, the multiple-ground bodies may face the problem of having to apply different standards with respect to different grounds. This may also lead to the creation of a hierarchy of grounds of discrimination, one type being better protected than another.[30] However, in the framework of this research there was no opportunity to investigate how having a variety of competencies may affect the work of the equality bodies. I therefore recommend that further studies be conducted in this respect.

Article 3 defines the material scope of the Racial Equality Directive. Discrimination is prohibited in the limited number of fields it lists. It is interesting to ascertain whether the equality bodies are competent to act in the areas outlined by the Directive, or whether their mandate is wider or narrower. Out of the 30 existing equality bodies only eight have exactly the same scope as under the Racial Equality Directive. Ten organisations or institutions do not cover all of the areas that fall under the scope of this Directive. These omissions include discrimination regarding membership of an employees' or employers' organisation, vocational education and social protection and social advantages. In some countries (e.g. Austria and Greece) where more than one equality body exists, this omission is compensated for by another body or bodies covering the areas omitted. This is not the case in Belgium, Finland and Lithuania. It is possible that, in this respect, the Directive has not been fully implemented in these countries. There are 12 equality bodies that have a broader scope than under the Directive (sometimes going as far as including all human rights infringements in every social, cultural and economic area of life).

27 The Cyprus *Equality Body* can deal with discrimination based on the grounds of race, community, language, colour, religion, political or other beliefs and national or ethnic origin.

28 These are called "single bodies" in the discussion between proponents of setting up one single body for all the grounds of discrimination and proponents of setting up individual bodies for each type of discrimination which would lead to multiple bodies in a given country.

29 This was the case in Austria (concerning their three equality bodies), Belgium, Ireland (concerning the *Equality Tribunal*) and the UK (concerning the *Equality Commission for Northern Ireland- ECNI*).

30 See also Niessen and Cormack 2004, p. 27. Both in the UK and in the Netherlands there are now legislative proposals to streamline or "integrate" anti-discrimination laws and consequently to streamline the competencies of the equality bodies that play an important role in implementing these laws.

4. Budget and staff

Information about the bodies' budgets very often appeared not to be available, especially when details about the amount of money that should be spent on the various activities of the equality body were requested. In a number of cases the body does not have a separate budget, but receives money from a department or other part of the government according to its needs. Responses varied from "no information available" to a total expenditure of almost €50,000,000 in the UK. Making comparisons between the countries in terms of which government spends more or less on combating racial discrimination is particularly difficult because €1,000 "buys" much more in some countries than others, especially in terms of staff. In addition, some equality bodies cover many more grounds than others, which means that although the equality body may seem very well off, it may in fact have less to spend on racial discrimination than a single-ground body with a lower budget.

Information about the origin of the money was easier to obtain. In most cases the money comes (partly) from a Ministry or from another part of the government, and/or it appears separately in the national fiscal budget. Twelve equality bodies receive (some) money from sources other than the national government. An exceptional situation exists in Belgium where the budget is provided by profits from the National Lottery, which the Federal Government distributes. The European Union contributes to the funding of equality bodies in Latvia and Slovakia. Estonia has received some foreign aid for this purpose.

As with the budget, information on the number of staff and specifications regarding their education and training was also very difficult to obtain. Here the same reservations about multiple and single-ground bodies must be made as above. The *Ombudsman Institute* in Greece has a staff of 178 full time employees, but such a figure may give far too optimistic a picture of the situation, since it is not clear how many of these people deal specifically with racial discrimination. Again, comparisons are very difficult to make. A staff of 48 full time employees and which has to cover every conceivable discrimination ground (as in Estonia) probably has a far bigger workload than a staff of 3.5 that deals only with ethnic discrimination (as is the case with the *Complaints Committee for Ethnic Equal Treatment* in Denmark). At first sight, this last number seems very low as compared to Italy where a single-ground committee has a staff of 18. However, both institutions work at national level and Italy has a far larger population than Denmark

In yet other countries there are no staff allocated to the equality body at all, as in Slovenia, where the *Council of the Government for the Implementation of the Principle of Equal Treatment* consists of 24 representatives of individual ministries and governmental agencies, non-governmental organisations and expert institutions in the field of equal treatment, whose work for the equality body is unpaid. Very few people work for the equality bodies in for example Austria and Denmark. At the other end of the spectrum, the UK's *Commission for Racial Equality*, which covers only racial and ethnic discrimination, has a staff of 204 and the *Equality Commission for Northern Ireland* employs another 122 people.

The staff members of most equality bodies have an employment contract as civil servants or a contract that offers them more or less the same employment conditions and protection as civil servants.[31] An exception to this overall picture is Latvia, where the staff of the *National Human Rights Office* do not belong to the general civil service system. This means that on the one hand, they are outside the civil service hierarchy; on the other hand they may not enjoy the social advantages enjoyed by civil servants and their salaries may be lower. This can be illustrated by the case of Portugal where only three members of the *High Commissariat* are civil servants. All the other staff members have

[31] This issue is important with a view to the independent functioning of the equality body. I will return to that in the next part.

better employment conditions than civil servants but they can be dismissed more easily. Nevertheless, the status of a civil servant is not always a guarantee of job protection (and consequently of independence) as is shown in the case of Denmark. There, employment conditions in the equality body are comparable to those of civil servants. However, when the *Danish Board for Ethnic Equality* was dissolved, the staff members, who were civil servants as well, were dismissed and they were not guaranteed work in other parts of the public administration.[32]

A general conclusion with respect to the budgets and staffing of the equality bodies is that very often transparency is lacking and that information (as far as it exists) is not made available to the public.

5. The competencies and mandate of the equality bodies

5.1. Introduction

The Racial Equality Directive speaks in Article 13(2) of three different competencies for equality bodies: to give assistance to victims, to conduct surveys and to issue recommendations and reports. Although these competencies can be exercised in a variety of ways, I assumed initially that there was a common understanding of what constitutes "assistance", "surveys", "reports and recommendations". In the questionnaire I therefore employed normal (academic) language. However, from the answers given by the experts it became clear that there were considerable differences in how these words were interpreted. With respect to *assistance* some experts were of the opinion that independent assistance to victims is something quite different from hearing and investigating complaints of discrimination. The latter term was reserved by these experts to institutions with a semi-judicial or quasi-judicial status that can give binding or non-binding judgments or opinions about cases (e.g. a commission, ombudsman, authority or tribunal). However, some experts did include these activities under the category of assistance to victims. It appeared that others included many other activities in this category, for instance providing information about the existence of anti-discrimination legislation and about the possibility of taking legal action against discrimination, referring the victim to an organisation / institution that could assist with formulating an official complaint, or helping the victim and the (alleged) perpetrator come to an amicable settlement (mediation).

Moreover, with respect to *surveys* it was not clear whether this category of activity only covered surveys about the prevalence and forms of discrimination or whether surveys of the impact of anti-discrimination legislation or even surveys of the effects of the work of the equality body itself should also be included.[33] Sometimes reports of cases that were heard and investigated and subsequently found to be discriminatory were included under this heading.[34] In some countries, such as Sweden, this term was interpreted much more broadly, going as far as to include leaflets and brochures explaining the content and scope of anti-discrimination legislation to the public at large. Furthermore, some experts included reports that were not only about the issue of racial and ethnic discrimination but also covered other grounds of discrimination.

A similar difficulty arose when I considered the answers in respect of *reports and recommendations*. Some experts restricted this category of activities to reports about the prevalence and forms of discrimination as such, and to recommendations about the methods to be used to combat discrimination. Others included the evaluation of

[32] This Board was the predecessor of the current equality body in Denmark.

[33] The annual report is apparently included in this category of activities in Portugal, Ireland, Slovakia and Latvia.

[34] For example in Estonia and France.

existing anti-discrimination legislation and comments on proposals for new legislation. Still others included reports on the investigation of individual complaints, or leaflets and brochures about the content and scope of anti-discrimination legislation, under this heading.

In this study I have chosen not to put forward a strict definition of what I consider to be assistance, surveys and reports and recommendations (and to use this definition to test whether these competencies are actually exercised in an independent or effective manner), but simply to present the answers of the experts, thereby showing the variety in interpretation of these terms across Europe.

It appears necessary, however, to provide clearer guidance as to what can be considered as providing assistance, conducting surveys and issuing reports and recommendations in order to fulfil the requirements that are set out by the Directive. I will discuss the consequences of this lack of clarity in more detail in Chapters IV and V. It suffices to say here that any figures presented in this report about the number of equality bodies that have certain mandates or competencies must be read with this warning in mind.

The Directive gives three core competencies to the equality bodies. However, the *Paris Principles and ECRI General Recommendation No 2* make it clear that in order to combat discrimination effectively, equality bodies should have a broad mandate, including the power to hear and investigate complaints about discriminatory practices.[35] That is why I have included an inventory of these additional competencies as part of this research.

5.2. The three core competencies of equality bodies

Twelve out of 30 equality bodies do not have a mandate to assist victims of racial and ethnic discrimination in some manner or other. This is the case in four countries where there is no other body to undertake this role (Estonia, Lithuania, Slovenia and the Netherlands), which means that these Member States appear not to be in compliance with the Directive. The fact that the other 18 equality bodies legally have the power to assist victims is no proof that they actually are in a position to do so. I will come back to the effective operation of equality bodies in Part V.

Only four out of the 30 existing equality bodies do not have the power to conduct surveys.[36] As above, Slovenia and Lithuania appear not to comply with the Directive, since their governments have not assigned the task of conducting surveys to any other body.

A small minority of three equality bodies do not have the power to issue reports and recommendations as prescribed in Article 13 of the Directive.[37] Sometimes the government interprets this competence in quite a narrow sense. The situation in Lithuania can serve as an example: Article 12 of the Lithuanian Law on Equal Opportunities provides that the *Equal Opportunities Ombudsman* shall report on the implementation of this Law and the Law on Equal Treatment and submit recommendations to the government and administrative institutions of the Republic of Lithuania on the revision of legal acts and equal rights policy priorities. However, the aim of Article 13 seems to be broader than this, and includes the competence to analyse the problems involved and to study possible solutions (see Consideration 24 of the Preamble to the Directive). I understand this to mean the responsibility to analyse the situation with respect to the prevalence and forms of

35 See *ECRI Recommendation No 2*, Part III, Principle 3 and *Paris Principles*, Part on Competencies and responsibilities.

36 The *Equality Tribunal* in Ireland, both equality bodies in Slovenia and the equality body in Lithuania.

37 This concerns the same bodies in Lithuania and Ireland and the *Complaints Committee for Ethnic Equal Treatment* in Denmark.

discrimination and to propose effective policies or strategies against discrimination, which can include anti-discrimination legislation, but is not restricted to that. Hence, when an equality body's mandate is restricted to only giving advice on legislation, this may indicate that Article 13 of the Directive has not been implemented correctly.

5.3. Hearing and investigating cases and giving an independent judgment or opinion

Strictly speaking, Member States are only in compliance with the Directive when they have an equality body or bodies that independently and effectively exercises all three competencies that I have discussed above. I have pointed out above that, from the perspective of other international documents, it is desirable to give equality bodies a broader mandate, and especially to include the power to hear and investigate complaints of discrimination. From the study it appears that this is indeed the case in most Member States. More than two thirds of all equality bodies (22) have some power to hear and investigate complaints. However, it remains unclear what this mandate requires. Are they doing this in the course of their work of assisting the victims, or is this a kind of semi-judicial review of complaints about discrimination? Comparable situations may be treated in different ways by different jurists. For the purpose of clarity, a distinction should be drawn between, on the one hand, equality bodies where "assistance" and "hearing cases" are more or less equivalent and, on the other hand, bodies that may act as an independent quasi-judicial body, in the fashion of the Dutch *Equal Treatment Commission*.

Where a body with investigatory powers does exist in a country, a range of persons, institutions and organisations have the power to file complaints. In most countries there are hardly any restrictions on this. However, in some countries (e.g. Hungary) it is not altogether clear who has the right to file a complaint, and it is especially unclear whether an organisation can do so on behalf of a victim and whether in the latter case the victim's permission is required. Guidelines on the conditions under which equality bodies can hear and investigate complaints could be helpful for some Member States.

As far as dealing with complaints is concerned it appeared that four equality bodies have no investigatory powers at all.[38] The investigatory powers of other equality bodies vary widely, from rather vague provisions (e.g. Italy) to situations where the equality body is in a similar position to a public prosecutor or to a (investigating) judge. In some cases it can even impose sanctions when information is not provided by the person or organisation under investigation (e.g. Hungary). Some additional information about the power to give binding judgments, impose sanctions or mediate in cases is given in the chart that accompanies this report.

My conclusion is once again that further in-depth research needs to be done into the differences in the powers of the equality bodies and the consequences that these differences may have for their independent and effective operation.

[38] The *Complaints Committee for Ethnic Equal Treatment* in Denmark, Portugal (both bodies) and Slovakia. The situation in Denmark is illustrative: the *Complaints Committee* has no power to demand information from the accused and it cannot hear witnesses. As a consequence many cases have to be left without a decision.

5.4. The combination of assisting victims of discrimination and hearing and investigating complaints

The Dutch *Equal Treatment Commission* is of the opinion that in order to hear and investigate an alleged case of discrimination in a neutral and objective fashion and to give an independent judgment or opinion, an equality body with this mandate should not have the competence of assisting victims of discrimination as well.[39] The situation in this respect varies across the EU. Out of the 12 equality bodies that do not have the responsibility to assist victims, 11 have the power to hear and investigate complaints. Out of the 18 equality bodies that have the task of assisting victims, 11 also have the power to hear and investigate cases of discrimination. Apparently the combination of these competencies is not always seen as problematic. This can be understood when we keep in mind the fact that hearing and investigating cases does not involve a semi-judicial procedure for most equality bodies, in contrast to the Dutch *Equal Treatment Commission*. In two instances where both responsibilities have been assigned to the equality body, the power to hear and investigate complaints goes as far as the power of giving a binding judgment on the case and imposing sanctions on the perpetrator.[40]

This research has given us some indication that the nature of the combination of these two competencies is perceived as problematic in some Member States. It is very important to study in more detail what "hearing and investigating complaints" means in practice, what procedures are followed by equality bodies in this respect, and what this means for their role in providing assistance to victims.

5.5. Other competencies

Several equality bodies have other additional competencies. Some examples must suffice to give an impression of the variety involved.

Many equality bodies advise their government, as for instance the provincial bodies in Austria which can make recommendations with regard to legislative proposals. In France the *High Authority against Discrimination and for Equality* can contribute to establishing and adopting the French Republic's position in international negotiations relating to discrimination. Very broad and general competencies seem to have been given to the equality body in Slovenia, where the *Council of the Government for the Implementation of the Principle of Equal Treatment*, has the power, inter alia, to submit proposals for promoting education, awareness-raising and research in the field of equal treatment. In Latvia the equality body devises programmes promoting human rights, as well as co-ordinating human rights programmes developed by other state and municipal institutions and working groups.

Some of these additional competencies are examples of governments taking a more pro-active stance against discrimination and giving the equality bodies a role in this policy. In Spain, for example, the equality body has the additional task of promoting equal treatment in collective bargaining. The *Ombudsman* in Cyprus has the power to publish statistics and to draw up codes of good practice regarding the activities of any persons in both the private and public sectors, obliging them to take practical measures for the purpose of promoting equality of opportunity irrespective of community, racial, national or ethnic origin, religion, language and colour. The UK provides a clear example of such a pro-active stance: the Race Relations Act 1976 permits the *Commission for*

[39] See for example the first 5-year evaluation report of the Dutch ETC, Gelijke Behandeling in Beweging; Evalualtie van vijf jaar Algemene Wet Gelijke Behandeling 1994-1999. Available in Dutch only

[40] In Cyprus and Hungary.

Racial Equality (CRE) to prepare codes of practice, which are not legally binding documents, although courts and employment tribunals are required to take them into account in deciding discrimination cases. The CRE can also assist public authorities in fulfilling their obligations of eliminating unlawful discrimination and promoting equality of opportunity, as imposed by the positive Racial Equality duty introduced by the Race Relations (Amendment) Act 2000. Much of the CRE's work now involves working with public bodies to implement this duty. The *Equality Commission for Northern Ireland (ECNI)* has similar powers as those of the CRE, including the powers to fund other bodies engaged in promoting good relations, to comment on legislation and to promote respect for equality.

As far as the whole range of additional activities is concerned, it would be interesting to have a more complete overview of them and to investigate how far such activities are compatible with the requirement for equality bodies to be independent. The impact of exercising a wide range of competencies on equality bodies' effectiveness (as mentioned in Article 13) also deserves further attention.

6. Some final remarks

The spread of equality bodies throughout the European Union has been rapid, like a field of mushrooms appearing out of the ground overnight. In a remarkably short period of time (between 2003 and 2005), we have witnessed the birth of nine new institutions in this field, as well as the renewal of the mandate of 19 existing institutions in the field of human rights protection and equal treatment. Two more countries are on the brink of setting up such an institution. A small minority of three Member States have as yet no concrete plans to do so.

At some points I have had to conclude that Member States might not be fully in compliance with the Directive, e.g. by restricting the mandate in such a way that the full scope of the Racial Equality Directive is not covered, or by restricting the mandate in such a way that all three core competencies are not covered.

I have come to the conclusion in several places in this part that it would be useful to do additional research into this subject. As far as the variety of competencies of the equality bodies is concerned, I recommend that a clearer distinction be made between competencies that can be categorised as:

- (legal) protection against discrimination be it in a (quasi) judicial form or in the form of helping victims to find their way in the court system or offering them free legal aid;
- advisory work with respect to the development of new legislation and monitoring the effects of existing anti-discrimination law;
- research into the prevalence, forms and causes of discrimination;
- information campaigns aimed at the general public and providing information to victims of discrimination about the availability of legal redress;
- co-operative work with other stakeholders (both governmental and non-governmental) in the development of proactive strategies and policies, including codes of good practice and positive action schemes.[41]

[41] Compare the distinction made by the authors of the report on the gender equality bodies between (pseudo) judicial work, legislative work, research and information and collaborative work. (See bibliography.)

There is a great deal of debate about how compatible some of these competencies are with others. On the basis of research into how different bodies with these mandates operate in practice, guidelines could be developed as to which competencies can be combined in an equality body and which should be given to separate institutions.

In this part I have shown the wide variety in the powers, competencies, budgets and staffing of the 30 equality bodies included in the research. In the following chapters I will turn to the two remaining research questions of the study: are these institutions operating in an independent manner, and is their work effective?

Robin | *1994*

Part IV

The independence of equality bodies and their work

1. Introduction

One of the main topics of this study is whether the 30 equality bodies described in the previous part function in an independent manner. In this part I present the results of the research regarding this particular issue.
Before doing this, I need to make some preliminary remarks.

To begin with, it needs to be established exactly what "to function in an independent manner" implies. It may mean:
(a) that the bodies have an independent status and therefore are able (in theory) to function independently, or
(b) that the bodies – no matter whether they formally have an independent status or position – can or do exercise their competencies independently in practice.

Since the Directive does not speak of "independent bodies" but of "independent assistance", et cetera, the second aspect certainly needs to be the primary focus of attention. Nevertheless, in this thematic study I have chosen to investigate both aspects of the issue of independence because an independent position or status is likely to contribute to exercising the prescribed competencies in an independent manner. This means that issues relating to both ways of looking at the issue of independence are examined in this study.

A further preliminary question is what is meant by *independence* in the framework of this study. From the explicit usage of the word "independent" (three times) in Article 13(2) of the Directive, it can be seen that the European legislator had in mind that independence is an important feature of the work of the equality bodies that it wanted to have established in each of the Member States. The provision should be understood against the background of its apparent aim, which is to contribute to providing protection against discrimination. (See Preamble, consideration 24.) Apart from interpreting the provision against this background, the question of what independence means, although important, is not an easy one to answer since the Racial Equality Directive itself does not define what it means when it prescribes that the three competencies mentioned in Article 13 (2) should be exercised in an independent way. However, this does not mean that there are no legal standards at all concerning the status and functioning of such bodies.

From an examination of other international documents (e.g. the *Paris Principles* and *Recommendation No 2 of ECRI*[42]) that have similar aims and of earlier studies in this field,[43] it becomes clear that *independence* relates to at least three different aspects:[44]

(a) the ability to act autonomously (without having to ask permission to do so from a third party or being threatened with the loss of mandate or money);
(b) the appearance of neutrality and objectivity (i.e. not being perceived as acting in the interest of certain groups or interests); and
(c) the possession of sufficient competence and authority to be taken seriously by all parties (i.e. having "weight" or reputation, having sufficiently educated and trained staff, etc.).

I attach particular weight to the *Principles* and *Recommendations* because they concern documents from a body established by the Council of Europe (in the case of *ECRI*) and by the United Nations (in the case of the *United Nations Human Rights Commission*). Since all Member States of the European Union are also Members of these international

[42] See Part II of this report.

[43] See bibliography in the appendixes to this report.

[44] This corresponds to the requirements set by Niessen and Cormack in their inventory of aspects that relate to the issue of independence of equality bodies. (Niessen and Cormack 2005, p. 24.) These authors mention: (1) the authority to act independently (which includes a robust and independent legal status), (2) neutrality and (3) the capacity to act independently.

organisations, the current author is of the opinion that they (and ultimately also the EU itself) should seek guidance from the content of these documents when implementing Article 13 of the Racial Equality Directive.[45] Based on an analysis of these documents I have drawn up the following list of indicators that are relevant for determining whether a body is in an independent position generally, such that it is likely to affect the functioning of an equality body:

- The existence of a firm legal basis for the existence of the equality body.
- The existence of a firm legal basis for the mandate, objectives and competencies of the equality body.
- The existence of a firm legal basis for the equality body's budgetary independence (from the government or third parties).
- The existence of sufficient financial resources to exercise the competencies autonomously and to appoint sufficiently experienced and trained staff.
- The existence of a secure position for the members of the board of the equality body, the members of the equality body, and the head or director of the equality body, where these exist (e.g. are they fixed-term appointments?).
- The holding of autonomous decision-making power by the body's board and/or its head / director as far as the appointment and dismissal of members of staff is concerned.
- The security of the position of members of staff as far as their employment conditions and dismissal are concerned (e.g. is their position comparable to that of civil servants?).
- The existence of adequate premises for the equality body, separate from government buildings.
- The freedom of the equality body from interference by other (non-governmental) organisations.
- The existence of staff members who are specifically (and highly) educated and trained to exercise the three competencies of Article 13 in a professional way.
- The accountability of the (board of the) equality body to external parties (audit, parliament, the press, the general public) about the way it has exercised its competencies and spent its budget.

This is a tentative, non-exhaustive list of the main issues that I have designed for the purpose of this study. The list was used in the process of drafting a detailed questionnaire for legal experts in the non-discrimination field in each of the 25 Member States. These experts were asked to provide information about the legal status of the relevant bodies, their funding, the number and educational background of their staff, the employment conditions of the board and of staff, et cetera. In addition, I asked them to evaluate what, in their experience, the practical barriers to the independent operation of the equality body or bodies in their country are. In this part I present some basic findings from this inquiry. I draw a distinction between some observations about the independent status and position of equality bodies (Paragraph 2 infra) and their independent operation (Paragraph 3 infra). In the final part of this part (section 4 infra) I will make some observations regarding the extent to which this research has provided us with new insights into the issue of independence.

2. The independent status and position of equality bodies

The list of indicators includes a considerable number of issues related to the independent status and position of an equality body. In this section these issues are grouped under four headings: independence from government interference with their work (Paragraph 2.1. infra), independence from other (non-governmental) organisations (Paragraph 2.2. infra), financial independence (Paragraph 2.3. infra), and independence of the board/members/staff (Paragraph 2.4. infra).

[45] See for a similar argument with respect to the obligation of the EU Member States to implement the CEDAW Convention, Rikki Holtmaat & Christa Tobler, 'CEDAW and the EU's Policy in the Field of Combating Gender Discrimination', *Maastricht Journal of European and Comparative Law*, 2005, Vol 12, no. 4, pp 399 – 425, at page 424, where the authors refer to the Matthews case at the European Court of Human Rights. See *Matthews v the UK,* application no 24833/94, Judgment of 18 February 1999.

2.1. Independence from government interference

In history we have seen instances of brutal discrimination that were officially or unofficially allowed for or even encouraged by the government. The most extreme example of this is the Nazi Party that came to power in Germany in 1933. But even today governments sometimes commit discrimination, or do not take an active stance against it. This means that equality bodies should be in a position to do their work independently of the political and ideological preferences of whatever government is in power at the time.[46]

In Part III, I described how most equality bodies were officially designated (in one way or another) by national governments as bodies aiming to meet the requirements of Article 13 of the Racial Equality Directive. Such a designation does not tell us much about the legal status of an equality body. I therefore also asked whether there is a provision in the countries' constitutions, a statute, or any other legal document that guarantees that the body will exist for a fixed period of time and cannot be abolished by (a member of) the government on a sudden whim.[47] In a small minority of Member States the existence of one or more of the bodies is guaranteed by the Constitution, which makes it particularly difficult to abolish them.[48] In most countries the equality body's competencies are specified by law (e.g. an anti-discrimination or equal treatment law). As a result these competencies might ultimately be changed or withdrawn by an act of parliament. In some cases there is no constitutional or legal provision at all which safeguards the existence of the equality body.[49] The status of equality bodies seems particularly weak in Slovenia, where the *Advocate of the Principle of Equal Treatment* is a civil servant.[50] The Slovenian *Council of the Government for the Implementation of the Principle of Equal Treatment* has been set up by Government decree for a period of five years, but there is no provision to prevent either the Government withdrawing its mandate or the organisations that are involved in the selection of members withdrawing support for their candidates (which could mean that they would have to resign from the Council).

Premises constitute a second factor that may influence an equality body's independent operation.[51] Being located in premises that have no connection with the government or with non-governmental organisations working in the field of anti-discrimination may contribute to the equality body having a "neutral face" and being easily accessible to those whose rights they are intended to protect.[52] This is particularly important where individual victims are invited to come forward with complaints about discrimination. For that purpose accommodation in a separate building is an important issue. The majority of equality bodies have more or less adequate accommodation in premises outside government buildings. However, some equality bodies are housed in a Ministry's buildings, as is the case in Italy.

Apart from issues relating to legal status and premises, there may be other relationships between the equality body and the government that can pose a threat to the institution's independence. In this respect we face a dilemma. Links between the government and the equality body can be very useful for exchanging

46 *ECRI*, General Policy Recommendation No 2, Chapter E: Style of operation of specialised bodies, Principle 7, sub 3.

47 See *Paris Principles*, Chapter on Composition and guarantees of independence and pluralism, principle 3. See also ECRI, General Policy Recommendation No 2, Chapter D: Administration and functioning of specialised bodies, Principle 5: Independence and autonomy.

48 In Greece (the *Ombudsman*), Hungary and Portugal (both bodies).

49 In Greece (*Labour Inspectorate*), Latvia and Lithuania

50 I will come back to the issue of the position of the board or members, below in Par. 2.4.

51 See *Paris Principles,* Chapter on Composition and guarantees of independence and pluralism, principle 2.

52 ECRI, *General Policy Recommendation No 2*, Chapter D: Administration and functioning of specialised bodies, Principle 6, par. 1.

information and developing joint strategies to combat discrimination.[53] However, when this means that the government has some sort of control over the equality body (in terms of setting its agenda or influencing the outcome of its investigations or surveys) this appears to contradict the Directive's express stipulation that the work done by these bodies should be independent. It appears that there are only three equality bodies where there are no links with the government at all.[54] The relationship appears to be closest in Italy, where the *National Office against Racial Discrimination* is an integral part of the Government. It is not clear what the Network's experts meant when they said that there were some links; therefore, the question arises as to whether this contact is of such a nature that it constitutes a threat to the equality bodies' independence. Further research is necessary on this point.

2.2. Independence from other (non governmental) organisations

It is important that equality bodies keep a certain distance from organisations that are active in the fight against discrimination, especially with a view to maintaining an appearance of neutrality and objectivity (and hence enhancing their credibility and authority). In other words, the equality body should not be equated in the public mind simply with a lobby or pressure group. Findings of discrimination which result from the investigation of individual complaints or from research activities could then easily be dismissed as being "prejudiced" and "ill founded".[55] The equality body, in other words, should not be seen as an institution that is always "taking sides".

This damaging image can be avoided in various ways. One method is to appoint qualified staff and independent experts (e.g. academic lawyers, prosecutors or judges) to carry out certain roles, especially in an equality body that has the mandate of hearing and investigating complaints and issuing opinions or judgments. I will consider this topic subsequently (in Paragraphs 2.4 and 3.2), where I examine the position of the board, members and staff of equality bodies in more detail.

A second method is to be open and transparent about the rules of procedure when hearing and investigating complaints of discrimination and about the methodology that is used to conduct surveys into the prevalence and forms of discrimination. I consider this subsequently in Paragraph 3.2 of this part.

Another method of avoiding a biased image is to ensure that the (board of the) equality body is composed in such a way that it represents a broad spectrum of societal organisations (including, for example, employers' organisations, trade unions, action groups against discrimination, legal experts, and government representatives). This would be in accordance with one of the recommendations in the *Paris Principles* which states that the body should be based on pluralism, including pluralism of composition.[56] From survey results, it appears that several equality bodies have formal links with NGOs.[57] However, from another perspective, the presence of NGOs on the

[53] ECRI, *General Policy Recommendation No 2*, Chapter E: Style of operation of specialised bodies, Principle 7, par. 2: "In setting up specialised bodies Member States should ensure that they have appropriate access to governments, are provided by governments with sufficient information to enable them to carry out their competencies and are fully consulted on matters which concern them."

[54] This is the case of both institutions in Denmark and the *Labour Inspectorate* in Greece.

[55] The Dutch *Equal Treatment Commission* has sometimes been reproached as being a "one issue movement", meaning that they solely focus on equal treatment, thereby ignoring other interests that may be at stake (such as the protection of other human rights, e.g. freedom of religion).

[56] Paris Principles, Chapter on Competence and Responsibilities, Principle 1. See also *ECRI General Policy Recommendation No 2*, Chapter D: Administration and functioning of specialised bodies, Principle 4.

[57] In Belgium, Denmark (*the Institute for Human Rights)*, Slovenia (*the Council of the Government for the Implementation of the Principle of Equal Treatment*), Finland (*Ombudsman for Minorities*), France, Portugal (both bodies) and in Spain NGOs are somehow part of the supervision or advisory board of the equality body or of the body itself.

equality body's board or as part of the body itself may jeopardise its independence, as may be the case in Slovenia where an organisation which nominates a candidate for the equality body can withdraw the candidate's mandate at any time, thus rendering this person susceptible to undue influence.

Again, we face a dilemma. On one hand, links with NGOs may undermine the equality body's neutrality and objectivity; on the other hand, there are also strong arguments in favour of maintaining links, especially when they are of a less formal and consultative nature. One argument in favour of maintaining links such as these is that the equality body needs access to information about the prevalence and forms of racial and ethnic discrimination which is gathered by NGOs in the anti-discrimination field.[58] Other reasons are that NGOs can play an important role in spreading information and knowledge about the content and scope of anti-discrimination legislation among the general public, including information about the legal means to stand up to discrimination. They can also act as an intermediary between equality bodies operating at national level (as they often do) and local organisations that play a role in enforcing the legislation in practice.

From the research it appears that there are a great deal of more or less informal links between equality bodies and NGOs. The purpose and form of these links vary. In Ireland, for instance, *the Equality Authority* has built up partnerships and joint ventures with a variety of organisations with a view to promoting equality in Irish society. In Slovakia NGOs provide the *Slovak National Centre for Human Rights* with information and ask for assistance or expert opinions in cases of discrimination. Sometimes the equality body has an explicit legal duty to maintain dialogue with NGOs.[59] This duty seemingly corresponds to the duty that the government has under the Racial Equality Directive to keep in touch with non-governmental organisations that have a role in combating discrimination (see Article 12 of the Racial Equality Directive).

2.3. Financial independence

In Part III, Paragraph 4, I reported on the budget of equality bodies and the sources from which finance comes. It appears that half of the existing equality bodies in the EU have a budget that is fixed and indexed by a law or by another legal document and that is quite secure in terms of guaranteeing the bodies' independence.[60] In the case of the other bodies, their financial situation appears to be somewhat vague and unclear. Since this vagueness does not automatically mean that these bodies are not independent, further research needs to be done about how independence is or can be guaranteed in such cases.

The consequences of budgetary dependence may be serious, as the situation in Cyprus illustrates. The Ombudsman's Office (which is also the equality body in that country) does not have its own separate budget and depends on funding from the Ministry of Finance. This situation might, on occasion, affect the outcome of an investigation into the actions of the Ministry of governmental departments and affect the institution's impartiality. This is not to imply, however, that either of these considerations has yet actually affected the impartiality of the investigations undertaken by the Cypriot Ombudsman's Office.

The vulnerability of equality bodies became apparent in the case of Denmark. This country has a particularly revealing history so far as the existence of independent equality bodies is concerned. Until 2002, two separate

[58] See also *Paris Principles*, Chapter on Methods of Operation, subpoints f and g.

[59] As is the case with most *provincial bodies* in Austria and the *Equal Treatment Authority* in Hungary.

[60] *Paris Principles*, Chapter on Composition and guarantees of independence and pluralism, Principle 2. See also *ECRI, General Policy Recommendation No 2*, Chapter D: Administration and functioning of specialised bodies, Principle 5, Paragraph 1: "Specialised bodies should be provided with sufficient funds to carry out their competencies and responsibilities effectively and the funding should be subject annually to approval of the Parliament."

government-funded bodies existed. The funding of one was withdrawn quite suddenly when there was a change of government. The other institution was transformed into a general Human Rights Institute.

The question to whom the equality body is accountable for how it allocates its budget has also been examined.[61] The majority of equality bodies are under a duty to report to the government (mostly to the Ministry that provided the budget) how they spent their funding. Some of them were simultaneously accountable to (a committee of) parliament. In a number of other cases the equality body has a duty to provide its accounts to a State audit office, audit commissioner or State accountant. The only equality body that seems not to be financially accountable at all is the *Equal Opportunities Ombudsman* in Lithuania.

2.4. Independence of the board/members/staff

I discussed above the desirability of an equality body not appearing too "attached", either to the government or to non-governmental organisations. This topic is related to the issue of the independent position of staff members and the board or members of an equality body.[62]

In Part III, it was shown that the majority of equality body staff members are employed as civil servants or have employment conditions that are similar to those of civil servants (see Part III, Paragraph 4). On one hand, the status of civil servant can be an important safeguard for their independence (in those countries where civil servants have good protection from changes in their employment conditions, including remuneration and protection against dismissal). On the other hand, it may mean that these staff members are somehow in a subordinate position to their superiors (who are members of the government) and that they have to obey their orders. Without a deeper investigation into the exact nature of the employment relationship, one cannot draw any conclusions as to how dependent or independent the staff of equality bodies are.

A clear danger to the independent status of an equality body is presented when the equality body's head is a civil servant, as is the case with the *Advocate of the Principle of Equal Treatment* in Slovenia. Although this position means that she has legal protection against being dismissed after a change of government, the government may suddenly change her competencies or withdraw her mandate. Her status as a civil servant may also mean that she is not in a position to ignore orders from her superiors (e.g. an order from a Minister not to investigate a certain case of discrimination or an order to change the conclusions of a report).[63]

Quite a complicated picture results when we attempt to identify who appoints the chair and board members of an equality body, the members of the commission, the ombudsman or the high authority, or the director of the human rights institute, and who appoints the members of staff. The situation in most countries lies somewhere between the position in the Netherlands, where the members and director of the *Equal Treatment Commission* are independent experts who are appointed by a Minister and where staff members are subsequently appointed by the director, and the fragile situation in Italy, where the members of the council that supervises the work of the *National Office against Racial Discrimination* are all part of the Government and the staff of the *Office* are employed by the Presidency of the Council of Ministers.

61 *Paris Principles*, Chapter on Composition and guarantees of independence and pluralism, principle 2.

62 *ECRI, General Policy Recommendation no 2*, Chapter IV: Administration and functioning of specialised bodies, Principle 5, Paragraphs 2 and 4.

63 We point to this possibility in theory, there is no sign that this has actually happened in Slovenia.

The regulations concerning the composition and independence of the Board of the *Centre for Equal Opportunities and Opposition to Racism* in Belgium may serve as a positive example of how a government can seek to guarantee neutrality and objectivity. Belgian law stipulates very precisely that the members of federal, regional or community governments or parliamentary assemblies and of a number of named governmental institutions may not belong to the *Centre's* Management Board. In contrast to this exclusion, a number of members are appointed to the *Centre's* Management Board who occupy high profile positions within civil society organisations playing a leading role in combating racism and xenophobia and promoting the integration of migrants. In this role, however, they do not represent the views of their organisations, but rather are chosen for their experience and competence in the field of combating racial and ethnic discrimination.

3. The independent carrying out of the competencies of the equality body

Article 13(2) of the Directive states that *"Member States shall ensure that the competencies of these bodies include (…) providing* independent assistance *to victims of discrimination in pursuing their complaints about discrimination, conducting* independent surveys *concerning discrimination and publishing* independent reports and *making* recommendations *on any issue relating to such discrimination."* This part of the part looks at the actual functioning of the equality bodies in these areas.

In the overview of indicators that was presented in the introduction to this part, some items that are directly related to the independent carrying out of the competencies of the equality body were listed. Two aspects are particularly important in that respect:

- the existence of sufficient financial resources to exercise competencies autonomously and to appoint experienced and highly educated staff
- the existence of staff members who are specifically educated and trained to exercise the three competencies listed in Article 13 in a professional fashion.

In Part III, Paragraph 4 and in Appendix 1 I presented some figures about equality bodies' budgets and staff. In this section I will take a closer look at how these budgets are divided over several activities and whether staff members have sufficient qualifications to perform these activities.[64] In Part V, these issues will be discussed from the perspective of the effectiveness of the work of the equality bodies.

3.1. A sufficient budget to exercise the competencies independently

As was discussed before in this part, having an independent budget that cannot be withdrawn at the sudden whim of the government is essential for the independent position of any equality body. In addition, the independent performance of its activities is dependent on whether the body has *enough* money to exercise its competencies adequately.[65] It is important that the progress of its work is not dependent on being given additional financial resources, the absence of which could restrict its freedom to exercise its competencies in an objective and independent manner.

[64] It should be kept in mind that there is considerable confusion about what "assistance", surveys" and "reports and recommendations" entail. See Part III, Paragraph 5.1.

[65] *Paris Principles*, Chapter on Composition and guarantees of independence and pluralism, Principle 2.

In Part III Paragraph 4, we saw that the sources of funding and overall budgets of equality bodies vary enormously. In Part V Paragraph 2.3, the issue of the budget will be discussed from the perspective of whether the funding is sufficient to exercise the competencies that are mentioned in Article 13 of the Directive effectively.

As stated in Part III, one cannot attach any absolute significance to the figures about the budget that is available for an equality body. Therefore, in addition, it was asked how the budget is spent on the various activities that the equality body carries out. However, it has proven to be very difficult to obtain any insight into how much money is actually spent on each of the competencies mentioned in Article 13 of the Directive, or on additional competencies, such as hearing and investigating complaints about discrimination. Most equality bodies are provided with a budget that is not specifically divided between its various activities. If a division of the money is made, in for example an internal policy plan of the equality body, this is often not made public. In some cases, when the equality body forms part of a larger body, for instance a general human rights institute or an ombudsman, it is not even possible to separate the competencies in the field of equal treatment from those exercised in the framework of this broader mandate. In some instances, the budget only makes a division between costs of staff and "other expenses", which is mostly money for accommodation and various other activities, without any further subdivision.[66] Since staff members most often are not assigned to one single task (e.g. assisting victims or writing reports) it is impossible to indicate what part of the resources is actually spent on each of the competencies mentioned in Article 13 of the Directive or on additional functions.[67]

3.2. The presence of sufficient, highly trained and educated staff

A second factor that is crucial for the equality bodies to independently exercise their competencies is the presence of *enough* staff members who are *adequately educated and trained* to carry out each of these activities in a professional manner, and to maintain professional standards of neutrality, objectivity and due process.[68] In Part III, Paragraph 4, I presented some general figures about the numbers of staff. In Part V, Paragraph 2.2., where the effectiveness of the work of the equality bodies will be discussed, I will consider the topic of how many people are employed by the equality bodies in greater detail.

As far as the educational background and professional training of staff members is concerned, it appears that most equality bodies employ at least one or two lawyers or other persons with an academic degree. Lawyers have a significant presence in several bodies, for instance in France, where there are 16 lawyers employed, but only one person with a different academic degree. In Latvia, the proportion of lawyers is even greater, with a ratio of 25:1. Lawyers are in the minority in Slovakia, however, where there are only five lawyers to eight other academically qualified staff. This also seems to be the case with both Commissions in the UK, where the *CRE's* sizeable staff of 204 and *ENCI's* staff of 122 both include around 20 lawyers. However, details of the educational or professional background of the remaining staff members are not available.

66 Information about separate parts of the budget was only (to some extent) available in the Netherlands, Belgium, the UK and France.

67 Another difficulty is that in several cases equality bodies do not make a distinction between, on one hand, hearing and investigating complaints and, on the other, assisting victims. In Part III I discussed this difficulty, pointing out that it is impossible to give exact figures about the number of equality bodies that perform one or both of these tasks.

68 This presumes that there is clarity about what these tasks entail. However, as we have seen in Part III, Paragraph 5.1, there exists a wide variety of interpretations of the terms "assistance", "surveys" and "reports and recommendations."

Independent assistance to victims of discrimination

As far as providing independent assistance is concerned, one third of equality bodies have no or very few staff members who are specifically qualified or trained in this area. In some cases this is due to the fact that this activity was not officially part of the equality body's mandate, as for instance is the case with the Ombudsman in Cyprus and the Equal Treatment Commission in the Netherlands.[69] Other equality bodies have members of staff who are qualified or specifically trained to assist victims of discrimination, in which I include all of those bodies that employ one or more lawyers or that reported that specific training courses for this purpose had taken place.

Conducting independent surveys

More than half of equality bodies do not have members of staff who are specifically qualified / trained to conduct surveys. The *Ombudsman against Ethnic Discrimination* in Sweden is one of the few equality bodies that have a sizeable staff for this purpose. In most cases the equality body has no or hardly any specialised staff for this particular purpose (the majority of the academically educated personnel being lawyers who usually are not trained to do social science research). Some equality bodies employ a small number of social scientists and economists, and it may be presumed that these staff will be able to conduct research in an independent and professional fashion. The problem is that in most cases the equality body has hardly any experience of conducting surveys. (See also Part V Paragraph 3.2, where I report about the small number of surveys that have been done so far.) The apparent cause is the lack of resources allocated for this particular competence.[70] The lack of sufficient and adequately trained staff in this area is overcome by a number of equality bodies by outsourcing the research activities to other independent institutions, mostly universities.[71]

In order to ascertain equality bodies' degree of independence in this field, one question concerned the validity of the methodologies used to conduct research. Again, the problem is that there are few reports of surveys so far conducted into the prevalence and forms of discrimination. A positive example of how to conduct research can be found in Slovakia, where the only survey (field research) that has been published laid out its methodology clearly.
In the UK and Sweden, the methodology used in the surveys is also usually explained in the survey results. No expert of the Network of Legal Experts in the Non-Discrimination Field reported a public dispute about the independence of bodies conducting surveys and other forms of research.

Issuing independent reports and recommendations

Almost one third of all equality bodies have no one on their staff who is specifically qualified to write reports and recommendations about the prevalence and forms of discrimination and the ways of combating this phenomenon. Where they do have such staff they are mostly the same people who are assigned to conduct surveys.

As has been shown above, most equality bodies have very little experience at present with research of this type. Reporting about the impact of equality legislation also came to my attention during this study. Many equality bodies give advice to governments concerning new anti-discrimination legislation or the amendment of existing legislation. The experts could not give us information about the level of expertise present in equality bodies for drawing up this particular type of report or recommendation.[72]

[69] In these two countries, providing assistance to victims is seen as incompatible with hearing and investigating complaints.

[70] The experts from the Netherlands, Ireland, Lithuania and Slovenia concluded that more should be done with regard to this particular task.

[71] This appears to be the case in Belgium, France, Latvia, Portugal and Ireland.

[72] However it remains to be seen whether this is what is meant by "independent reports and recommendations" in Article 13 of the Directive. See also Part III, Paragraph 5.1.

Independent hearing and investigation of complaints

Almost half of equality bodies have staff who are specifically trained to hear and investigate complaints about discrimination. The professional training of these staff members has mostly consisted of general academic legal education ("lawyers"), sometimes supplemented with specific "on the job" training programmes, as in the case of Cyprus. In most cases where no such staff were available, the body had not been charged with this task.[73] Remarkably, sometimes the equality body does have responsibility for this, but no specifically trained personnel seem to be available (e.g. in Austria and Portugal). In Cyprus, it emerges from the Ombudsman's Annual Report and from the *Ombudsman's* periodic public statements that staff are not under-qualified or under-trained, but rather overburdened and overworked and that additional funding must be allocated to her office to allow her to recruit additional personnel.

Another method of guaranteeing independence is to appoint independent experts specifically for hearing and investigating complaints about discrimination and giving opinions or judgments. In the Netherlands, for example, the Chair and vice-Chair of the *Equal Treatment Commission* are required to have the same level of academic qualification as judges. Furthermore, some Member States' equal treatment laws require equality body board members to be experts in human rights. This is the case in Hungary, where the Members of the *Advisory Board* are required to have extensive experience in the protection of human rights and in enforcing the principle of equal treatment. In France – as is probably the case in many other countries – it is not the staff, but the Council of the *High Authority against Discrimination and for Equality* which decides whether a case does or does not indicate racial or ethnic discrimination in the sense of national legislation or the Directive. However, the Council has followed the staff's recommendations in 48 complaints out of 52 since June 2005.

One means of checking whether an equality body is hearing and investigating complaints in a truly neutral and objective fashion is to ask whether the institution is open about the procedures followed in order to reach an opinion or judgment.[74] Only a few experts who reported that one or more of the equality bodies in their country actually had this mandate were able to give detailed information about the procedures used during an investigation.[75] In Austria the hearings are not open to the public and the two parties are kept strictly apart so that there is no opportunity to put questions to the other party. In Portugal the procedure for hearing and investigating a case is very complex, both bodies are involved, as well as several other institutions. In Estonia the conciliation procedure (in cases of discrimination by private parties) before the *Legal Chancellor* may be stopped if an alleged discriminator does not wish to take part. However, the Chancellor did not raise any concerns in this regard. In Sweden procedural guidelines do exist, although the public is not generally aware of them.

4. Some concluding observations

The Racial Equality Directive does not give much guidance as to what is required in order to implement Article 13 correctly. This is especially true when it comes to understanding what it means when it says that the competencies mentioned in Paragraph 2 of this Article should be exercised *independently*. Nevertheless, in this research some indicators were found for a plausible legal interpretation of this obligation on the part of Member States. First, this particular provision in the Directive should be interpreted in the light of its general aim, namely to contribute to combating racial and ethnic discrimination. This can only be done effectively when certain requirements concerning the independent status of equality bodies are met. Furthermore, I have found a number of indicators of what "independence" might entail in internationally agreed documents on the same topic. This relates to

[73] For example in Belgium and Slovakia.

[74] See *Paris Principles*, Chapter on Additional principles concerning the status of commissions with quasi-jurisdictional competence.

[75] This information was available in Cyprus, France, Hungary, Ireland, Sweden, the Netherlands and the UK.

documents from bodies established by the Council of Europe (ECRI) and by the United Nations (*UN Human Rights Committee*). Since all Member States of the EU are also Members of these international organisations, I am of the opinion that they (and ultimately also the EU itself) should seek guidance from these documents when implementing Article 13 of the Racial Equality Directive.

On the basis of the research that I have conducted into the independent position and operation of equality bodies in the EU, at this stage of the implementation of the Directive it really is too early to come to final conclusions about this topic. Many of the bodies have existed for a very brief period or have yet to start their activities. External and internal evaluations of their work are in most cases not yet available. Others have recently gone through a process of transformation as a result of having been designated (also) to exercise the competencies that are mentioned in the Racial Equality Directive. This means that it is impossible to make a final assessment of the situation in the Member States on the basis of the list of indicators that I have drafted according to the international standards that cover the independent operation of equality bodies. At various places in this part I have concluded that further empirical research is necessary. I believe that the list of indicators that was developed in the framework of this study can serve as a tool for gaining a better and deeper understanding of what it takes to create independent specialised equality bodies.

However, some tentative observations can be made at this stage. Very briefly summarised, the main points of concern as regards the independent status and operation of the equality bodies that were found in the experts' reports are the following:

- Quite a number of equality bodies are not established on the basis of a constitutional or legal provision, which makes their position vulnerable to sudden changes in the policies of the government.
- A number of them have official ties with the government, in the sense that government officials are part of the (board of the) institution or otherwise have some say over the institution's policies, or can have some (undue) influence on the outcome of surveys or investigations (e.g. by way of their right to appoint or dismiss members of staff).
- A number of equality bodies do not have adequate premises outside government buildings.
- Quite a number of them have official ties with NGOs. It is not always clear how their independence in their relationship with these NGOs is maintained (e.g. with respect to the appointment or dismissal of "representatives" from NGOs in the board of the institution).
- As far as unofficial contacts with the government and with NGOs are concerned, there is a dilemma: such contacts may on the one hand undermine the appearance of independence necessary to carry out the mandate of the body; on the other hand, they can be desirable in order to combine forces in the fight against discrimination. It appears that not all equality bodies are holding the balance appropriately.
- Most staff and quite a number of (board) members or directors have a position as a civil servant, which – under certain conditions – can mean that they are somehow obliged to follow instructions from the government.
- The position of the equality bodies as regards their budget and their financial accountability is in a considerable number of cases not certain and not fully transparent.
- As far as the independent carrying out of their competencies is concerned, it appears that – with the exception of the activity of assisting victims in some countries – there seems to be a serious lack of adequately educated and trained staff. This is particularly so as regards conducting surveys and issuing reports and recommendations. A lack of money to employ such people is the principal cause of this situation.

On the basis of these observations it may be advisable for guidelines on the independent operation of equality bodies designated to exercise the competencies of Article 13 of the Directive to be drawn up to support the Member States in the implementation process.

I started this part with the observation that – from a historical perspective – independence is a crucial feature for equality bodies. From this survey it appears that their independence is fragile. The political climate in some Member States contributes greatly to this. In Belgium and Ireland, for example, the equality bodies have managed to preserve their independence, despite the very delicate nature of the topics in which they have been developing their activities and the sometimes hostile political climate. In Poland and Denmark, by contrast, a change in the political climate has indeed led to the withdrawal of the mandate of previously existing equality bodies. This is a pressing reason for the European Commission to develop more clarity as to what exactly it is that Article 13 of the Racial Equality Directive demands from the Member States.

Mirte | *1997*

Part V

The effectiveness of the equality bodies and their work

1. Introduction

The third goal of this study was to obtain some insight on the question whether the equality bodies that have been established in EU Member States so far are functioning in an effective manner.

The first problem with the evaluation of the level of effectiveness of equality bodies is that the Directive does not give directions to the Member States as to which conditions should be fulfilled in order to be able to conclude that the Member States have created equality bodies that function effectively. Consequently, a (normative) legal assessment of this issue is difficult so long as no such guidelines have been developed either by the European legislator or in the case law of the European Court of Justice. The only available guideline for interpreting this obligation is the fact that it is quite clear that the European legislator wanted the Member States to set up equality bodies in order to make the fight against racial discrimination more effective. (See Directive 2000/43/EC, Preamble, Consideration 24.)[76] The legislator's goal is to ban racial discrimination from everyday life. In the longer term, it will be possible to estimate the success of equality bodies by establishing to what extent racial discrimination has declined in Member States, but such research is likely to be best carried out after more time has elapsed.

As regards making an assessment of the effectiveness of these institutions, it was acknowledged at the very beginning of this study that this is very hard to measure. A true assessment of the effects of the work of such institutions would require a so-called "zero-measurement" (the situation before the equality bodies became active) and an extended survey and analysis of the effects of their work in practice. With the exception of the UK, such zero measurements do not seem to exist in any of the Member States.[77] Besides, most of the bodies have only been set up recently, as a consequence of which (independent) reports about their operation are in most cases not yet available. Moreover, the budget and timeframe for this study did not allow for extended "on the ground" research by each of the 25 experts. This being the case, it was concluded that the only research that could be done in this respect was to investigate and describe *how* the equality bodies are functioning *de facto*. Therefore this issue was reformulated in the following twofold manner:

1. Do the equality bodies have enough resources, i.e. are the amount of money and the number and quality of staff made available to them sufficient for exercising the three competencies mentioned in the Directive with at least a minimum degree of consistency and quality?
2. Are the equality bodies actually exercising the three competencies outlined in the Directive with at least a minimum degree of consistency and quality?

These were the questions that guided this part of the study.
Again, some preliminary points need to be clarified.

Having enough resources and a minimum degree of consistency and quality
First, it had to be decided what were considered to be *enough resources* for the equality bodies to exercise the three competencies outlined in Article 13(2) of the Racial Equality Directive, and what was meant by the *minimum degree of consistency and quality* that was needed to exercise these competencies effectively.

[76] This purpose reflects the aims that are formulated in earlier international documents, especially *ECRI* General Policy Recommendation no 2 and the *Paris Principles* that were discussed in the previous chapters of this report. Although not offering much of a stronghold, by way of teleological interpretation I derived a guideline for the final assessment of the effectiveness of equality bodies. See below.

[77] See McCrudden, Christopher, Ford, Robert & Heath, Anthony, 'Legal Regulation of Affirmative Action in Northern Ireland; An Empirical Assessment', in: Oxford Journal of Legal Studies, Vol. 24, No 3, (2004), 363-415.

As stated above, the only available normative legal standard for the interpretation of this provision lies in the fact that it is clear that the objective of Article 13 of the Racial Equality Directive is for the equality bodies to contribute to the overall aim of the Directive: providing protection against racial and ethnic discrimination in the Member States of the Union. From this perspective it can be maintained that Member States are required to establish a body or bodies that will – not only in theory, but in practice – have some effect in the fight against racial and ethnic discrimination. Although not providing a very firm basis, the terms a *minimum degree of consistency and quality* and *enough resources* were interpreted against this legal background. This means that in cases where there are hardly any activities or no activities at all being carried out, or when no or hardly any staff or money are made available, one can conclude that, although a Member State may have officially designated a certain institution as the equality body, it probably will not be in compliance with the Directive.

Definitions of assistance, surveys and reports and recommendations
A second point for clarification concerns the question of what the *essential competencies* are that are mentioned in Article 13(2) of the Racial Equality Directive. Is there any clarification about what is meant by the words "assistance", "surveys" and "reports and recommendations" to be found in the drafting history of this Article in the Directive? As is explained in Part III Paragraph 5.1, this proved not to be the case. Also, it appears that these words are interpreted in a variety of ways among the equality bodies and the governments of the Member States. This means that the results of this research should be treated carefully, meaning that no absolute significance can be attached to any of the "facts" presented in this report.

The research method
On the basis of the methodological choices explained above, I formulated questions concerning the budget, staffing, training, education, etc. of the various equality bodies. To what extent have the three competencies that are mentioned in Article 13 of the Racial Equality Directive been exercised by the equality bodies in the past few years and what have the concrete outcomes of their work been until now? I asked questions about, *inter alia*, the numbers of victims that were assisted and the forms of assistance, the number and quality of surveys that were conducted, and the number and quality of reports and recommendations that were issued. I also asked about the concrete outcome of the work of the equality bodies so far as their other competencies were concerned. In addition, I asked the experts to evaluate what in their experience are the barriers to the effective operation of the body/bodies in practice.

In the analysis and description of the effectiveness of equality bodies in this part, a distinction is made between observations about the budget and staff of equality bodies (Paragraph 2 infra) and findings about the way in which they are exercising the core competencies mentioned in Article 13 of the Directive (Paragraph 3 infra). As far as the presentation of the results of this study is concerned, I will not give a full description of all of the individual answers that were obtained but, as in the previous part, I will illustrate the observations with selected good and bad practices in Member States. After this description I will end the part with some concluding observations (Paragraph 4 infra).

2. Findings about the budget and staff of the equality bodies

This paragraph discusses the amount of money and the number and quality of staff made available to the equality bodies in order to do their work. Both factors have already been discussed in this report: in a general descriptive way in Part III, Paragraph 4, and with respect to the topic of independence in Part IV, Paragraphs 2.3, 3.1 and 3.2. Here I discuss whether the budget and the number and quality of staff made available to the equality body is sufficient for its effective operation. In other words: is a body with a certain budget or a certain number of staff with a certain level of education and training able to exercise the competencies mentioned in the Directive with a minimum degree of consistency and quality?

2.1. The amount of money available

As was mentioned in Part III, Paragraph 4, questions about the budgets of equality bodies are very difficult to answer. Sometimes the information appeared not to be available at all. In a number of cases, the equality body does not have a separate budget, but gets money from a department or other part of the government. In other cases the budget for activities that come within the framework of the "Article 13 designation" is included in the wider budget of the institution, e.g. in cases when the work of the organisation as an equality body forms part of the work of an ombudsman institute or human rights commission. In Part III I made the observation that, on this ground, it is difficult to make comparisons between the countries in terms of which country spends more or less on combating discrimination. The same observation must be made with respect to effectiveness. It is difficult to draw conclusions about any effects that the equality bodies may have from these overall figures about their budgets.

I therefore asked for some further information about the amount of money that can or should be spent on each of the various competencies of the equality bodies. These figures were even more difficult to obtain. (See also Part IV, Paragraph 3.1.) Very often, the budget does not specify on which of the various competencies of the equality body the money should be spent. For example, the 2005 budget of *The Ombudsman for Minorities* in Finland consists of two headings: one for salaries, and one for "allowance for activities", the use of which is not predetermined.
Since, in most equality bodies, members of the staff are not assigned to specific activities but are involved in various activities, it was difficult to obtain any further information about how much money is involved in carrying out each of the various competencies that an equality body might have. (See also Paragraph 2.2. infra.)[78]
From this research it has become apparent that in the future it will be difficult to say anything about the effectiveness of equality bodies in terms of the amount of money that is spent on various activities as long as there is no information available on this point. It would be of considerable help if equality bodies were to break down their budgets in more detail in their policy plans and reports, including their annual reports.

Aside from this absence of information, complaints about insufficient funding (especially for the purpose of assisting victims) were made by several experts, who reported that this was not only their own observation, but was also the opinion of the equality bodies themselves, and sometimes that of their head or board. For example, the Irish *Equality Authority* recognises in its own publications and on its website that, because of a lack of resources, it is not possible to provide legal assistance for all those who request it. As a consequence, the Authority provides assistance only in a small percentage of cases based on criteria that have been set down by the Board of the Authority. These criteria include: whether the case is of strategic importance, the capacity of the complainants to represent themselves or get representation, be it via lawyers or trade unions, the complexity of the case and the nature of the claim. The equality bodies in the UK also make strategic choices as to which cases they will deal with and which they will not.

2.2. The number and quality of staff

In Part III, Paragraph 4, where I discussed the number of staff, and in Part IV, Paragraph 3.2, where I discussed the presence of educated and trained staff with respect to the independent operation of the equality bodies, I made the observation that the figures given by the experts are extremely difficult to interpret, especially in a

[78] In the Netherlands some quite detailed information about the division of the budget was available. Here it appeared that most of the money goes into hearing and investigating complaints, which also illustrates the fact that this is the main task of the Dutch *Equal Treatment Commission*. A very small part goes towards assisting victims, and only for the purpose of a telephone and e-mail help desk service. Relatively little money goes into conducting surveys, a task that is quite underdeveloped by the Dutch Commission. In Belgium the situation is the reverse: the major part of the money goes to assisting victims and no money goes into hearing and investigating complaints about discrimination. Conducting surveys and the publication of reports and recommendations get a relatively small share of the money in Belgium.

comparative way (between equality bodies or between Member States). That caveat should also be kept in mind when reading this paragraph.

It is very difficult to obtain a good insight into the effectiveness of these bodies simply from information about the numbers of staff. One problem is that staff members are most often not assigned to one single task (e.g. assisting victims or writing reports), which means that it is hard to say whether there are enough people who are actually fulfilling the competencies mentioned in Article 13 of the Directive. In a number of cases the equality body forms part of a bigger human rights or ombudsman institute; in other cases it is a single body, meaning that it has to cover a whole range of non-discrimination grounds besides race and ethnic origin. Very often, it appeared that staff members are only partly assigned to do work to do with combating racial discrimination, either in the form of assisting victims, conducting surveys or writing up reports and recommendations. An exact calculation of the division of tasks could not be given in most instances.
In the same way as with the budget and its breakdown, it is apparent that in the future it will be difficult to say anything about the effectiveness of equality bodies in terms of the amount of staff available for various activities as long as there is no information available on this point. It would be of great help if equality bodies were to describe the duties and activities of their staff in more detail in their annual and other reports. (See also below, Paragraph 2.3 infra)

Complaints about insufficient staffing were made by several experts, who wrote that this was not only their own observation, but was also the opinion of the equality bodies themselves, and sometimes that of their head or board. In Slovakia, according to the Head of the Department of Legal Services of the *Slovak National Centre for Human Rights*, taking into account the number of the requests for legal advice coming to the Centre the number of the qualified staff should be doubled. The *Ombudsman against ethnic discrimination* in Sweden points to the need, which has not been met, to recruit sociologists and experts with knowledge/experience on/of the social partners as well as the housing sector in order to be able to conduct surveys into the forms and prevalence of discrimination. In Hungary, in its report prepared for the October meeting of the Advisory Board, the *Equal Treatment Authority* claimed that at least ten new positions would be required for the *Authority* to be able to conclude investigations within the time limit required by the equal treatment law.

2.3. The process of assessment/evaluation of the functioning of the equality bodies

Above, I concluded that in order to make a valid assessment of the effectiveness of equality bodies in the future it would be most helpful if the bodies were to issue regular reports about the amount of money and (staff) time that is spent on the various competencies that are mentioned in Article 13 of the Directive. The same goes for reports about the actual outcome of their work: how many victims have been assisted, how many surveys done, etc?[79] External evaluation reports could also be helpful in that respect. Therefore, some separate attention was given in the questionnaire to the existence of evaluation schemes and reporting obligations.

More than two thirds of the equality bodies have a duty to issue a report about the way in which they have carried out their competencies or duties.[80] These equality bodies mostly report to the government on an annual basis. Reporting to parliament comes second. Frequently, they have to report to both the government and parliament. Sometimes, there is a legal duty to make the report known to the general public or there is a practice of doing so.[81]

[79] This requirement can also be found in *ECRI*, General Policy Recommendation No 2, Chapter D: Administration and functioning of specialised bodies, Principle 5: Independence and autonomy, par. 3: "Specialised bodies should independently provide reports of their actions on the basis of clear and where possible measurable objectives for debate in parliament."

[80] A minority of seven institutions do not have this obligation. This is the case for the two national equality bodies in Austria, both bodies in Denmark, the second equality body in Greece, Portugal and Slovenia. No information was available for the second equality body in Finland.

Sometimes the quality of the (internal) evaluation reports seems to be insufficient, for example in Slovakia, where the reports that are issued by the *Slovak National Centre for Human Rights* about its own activities only give selected examples about the assistance provided to victims.

Another way of gaining insight into the effectiveness of equality bodies would be to have an independent institution (independent from both the equality body itself and from the government) hold regular external evaluations of their work. Apart from financial auditing (which is described in Part IV, Paragraph 2.3), only one equality body (in the Netherlands) is under review in this way. Every five years an independent study is commissioned by the Government from an independent research institution (in practice, a law faculty and a legal sociology department of a university) into the operation of the *Equal Treatment Commission* as well as of the equal treatment legislation. Both UK commissions can commission external reports into their activities, using their own budgets. In 2005, the *Centre for Equal Opportunities and Opposition to Racism* in Belgium conducted an evaluation of its own activities through wide consultations with external actors, including academics and non-governmental organisations.

3. The effective operation of the bodies as regards their main functions

This paragraph discusses how and with what results the equality bodies do their work. I have followed the distinction made in Article 13 of the Directive between assistance, surveys and reports and recommendations. I have also included some information about other potential competencies, in particular the hearing and investigation of complaints about discrimination. These activities have already been discussed in this report: in a general descriptive way in Part III, Paragraphs 5.1 and 5.2, and with respect to the topic of independence in Part IV, Paragraphs 3.1 and 3.2. Here I discuss the work of the equality bodies from the perspective of whether the information given by the experts indicates that the bodies are actually exercising the three competencies outlined by the Directive with at least a minimum degree of consistency and quality.

The experts provided a lot of information and statistics about the numbers of victims who were assisted and of surveys and reports and recommendations, as well as cases that were dealt with by equality bodies. As with the budget and the number of staff made available to the equality bodies, it is difficult to draw comparisons between the countries or between the equality bodies as far as concrete activities are concerned. Presenting many detailed figures in this report would run the risk of invoking such comparisons by the readers, which I want to avoid. Therefore, I will restrict myself to giving examples from among the information reported by the experts of the successes and of the obstacles preventing the bodies from functioning effectively.

3.1. The amount and quality of assistance to victims[82]

As far as the number of persons helped is concerned, I detected the same wide variety between countries as between the budgets of the equality bodies. Sometimes the numbers of applicants for assistance are so big that people have to be turned away, as is the case in Ireland and the UK, for example. The Irish *Equality Authority* has had to adopt severe selection criteria, as I have described above (see Paragraph 2.1 infra). In contrast to these high numbers, there were also reports about jurisdictions where no victims came for assistance at all or where no victims were actually helped.[83] The figures for the other countries lie somewhere in between, with an average of around 300

[81] Examples of countries where there is such a legal duty are Hungary and Portugal; examples of such a practice can be found in Ireland, the Netherlands and the UK.

[82] Previously, I mentioned that the word "assistance" is interpreted in many different ways by different experts (and probably also by the equality bodies themselves). This also goes for the other competencies under Article 13. (See Part III, Paragraph 5.1.)

people per Member State having received some sort of help from an equality body in 2005. Again, there were a lot of complaints about the lack of sufficient resources to help every victim who turned to the equality body for help.

In the questionnaire I included a question about the level of satisfaction among the "clients" of the equality bodies. Only in three cases had the equality body done research into this.[84] In the UK, the results of this research proved difficult to interpret. The levels of satisfaction can vary greatly from circumstance to circumstance, and it is difficult to give a general picture. In Cyprus, a specific problem exists with respect to assisting victims, and this may play a role in other countries as well. In the Ombudsman's office there are no staff belonging to any vulnerable groups (disabled, migrants, gay, Turkish Cypriots etc), which could have facilitated contacts and communication with these groups. Greek seems to be the language in which most of the Ombudsman's activities take place, and it is the language of annual reports, decisions and the website. There are no members of staff who speak any of the native languages of the larger vulnerable groups (Russian, Arabic, Turkish). In Slovakia, the communication of the *Slovak National Centre for Human Rights* to the public seems to be quite formalistic and not as user-friendly as desirable.

The next question was whether the equality body itself was satisfied with the number of victims that it could assist and, if not, what the reasons for that negative conclusion were in its own view. Several of the experts reported that the equality body in their country was satisfied, given the amount of resources made available to it and considering the number of victims to whom it could somehow give assistance. It can be presumed that the number of victims who turn to the equality body for help constitutes only the tip of the iceberg.[85] More awareness raising is needed to inform the public about the new procedures and rights available to the victims of discrimination. Also, specific strategies need to be developed to reach vulnerable groups in society who are not aware of their rights. However, not all equality bodies seem to welcome more awareness raising since this leads to a sharp increase in the numbers of victims who turn to them for support. Since in most cases this is not matched with more money or more staff, it leads to serious problems. It was demonstrated above what the consequences are in the UK and in Ireland, where severe selection criteria had to be adopted. In short: receiving a great number of applications for support from victims means that the equality body needs to concentrate on "test cases", meaning that "ordinary people" may have to be turned away.
One of the consequences of a sudden increase in the numbers of victims asking for assistance is that it may be a long time before their cases are dealt with by the equality body. Several experts reported that this was a serious problem in their country. One body that seems to be successful in assisting a great many victims in a speedy way is the *Ombudsman against Ethnic Discrimination* in Sweden, where extra resources were allocated in order to get rid of a backlog of cases.

3.2. The number and quality of surveys

Conducting surveys into the forms and prevalence of racial and ethnic discrimination is far less popular than assisting victims or hearing and investigating complaints about discrimination. From the overview in Part III it appears that 26 of the existing equality bodies have the power to conduct surveys. However, only 12 were actually conducted in 2004 and 2005.[86] This figure does not include the numbers from the UK, where the *CRE* and *ECNI*

[83] This seems to be the case in Estonia. In Hungary, although legal assistance (in the form of legal representation offered to victims) is included in the statutory competencies of the *Equal Treatment Authority*, this body seems to lack the capacity to actually provide such assistance. See also the situation in Denmark, explained below, at point 3.4.

[84] Such research was done in Portugal, the Netherlands and the UK.

[85] This seems to be the case, for example, in Cyprus, Belgium, Estonia and Latvia.

carry out surveys and reports (with no strong distinction between the two categories), which they fit in with their overall strategies at the time. This means that the figures vary considerably from year to year.[87]

The lack of financial resources for this activity is often mentioned as the reason why no or few surveys were done.[88] A second cause could be the lack of a (sufficiently wide) mandate to perform this task, as is the case in the Netherlands.[89] The fact that so few surveys are done by most of the equality bodies could also be a consequence of the fact that most employees of equality bodies with an academic degree are lawyers, and are usually not trained to conduct empirical social science research. (See Part IV, Paragraph 3.2.)
As was discussed above, some equality bodies have addressed the problem of not having sufficient time or adequate staff resources by outsourcing the activity of conducting surveys to other (independent) bodies. However, this does not necessarily mean that a great number of surveys is carried out on their behalf.[90] Lack of money for this purpose might again be the cause of that. Finally, the low number of surveys can be the consequence of a policy choice by the equality body itself. In Finland and Sweden there appears to be a general consensus that there is no need for the Ombudsman's office to engage in this work, as there is a rich tradition of competent people elsewhere doing the job. The priority of the Ombudsman's work has been seen as the giving of assistance to victims of discrimination.

In Part IV, Paragraph 3.2, I discussed the *quality of the surveys* from the perspective of equality bodies' independence. I will not repeat this information here.

Where any surveys were conducted, the results were made public, in all cases on the website of the equality body, and sometimes also in print. The results of the surveys were not specifically brought to the attention of the government, with the exception of Slovakia. In Sweden, the report was distributed to all public authorities throughout the country. In the UK, the *CRE* surveys on integration received considerable media attention, especially after the London bombings in July 2005.
Finally, I asked the experts whether the publication of the outcome of the surveys had any impact on politicians, policy makers or public opinion. Most of them could not answer this question (since there had been so few surveys). In the UK it appears that, through its research work, the *CRE* has often highlighted the problem of race discrimination and segregation in this country, and that the Commission's work has encouraged a greater government focus on integration in recent times.

86 The surveys that were reported to us were carried out in Denmark (7), France (1), Slovakia (1), Sweden (2) and the Netherlands (1). These numbers may be higher where experts did not report to us the number of surveys that were tendered by the equality body and were performed by other institutions (e.g. in Ireland). As for the topics included in the surveys, some experts reported that they dealt with the situation of Roma people (e.g. Sweden, Slovakia and France.) In Sweden the 2005 survey was a general inquiry on the experience of discrimination on the grounds of disability, sexual orientation and/or ethnicity. It was carried out by the Swedish Central Bureau of Statistics (SCB) on behalf of the three separate Ombudsmen operating in these areas. In the Netherlands there has been a preliminary study about postcode profiling. In the UK the *CRE* has focused on segregation and integration in the UK. The *ECNI* has done studies on the prevalence of racial attacks on members of Northern Ireland's small ethnic minority communities. In France a poll on the meaning of the word "discrimination" among the French population was held in 2005 and in 2006 two more will report the results of situation testing in access to employment and access to private rented housing.

87 On average over the last three years, the *CRE* has tended to produce 4-5 surveys a year (including opinion polls and publishing the results of consultations), and 10-15 reports and recommendations a year (including general statements of policy, general statements of concern, detailed reports into particular areas and so on).

88 E.g. in Hungary, Cyprus, Estonia, and Latvia.

89 In the course of its first five-year evaluation, the *Equal Treatment Commission* complained that it had limited powers to do independent surveys as a result of a clause in the law stating that the survey should take place in the field of public service or in one or more specified sectors of society. This legal restriction has now been lifted.

90 Some of these external surveys are included in the above-mentioned number of 12 surveys.

3.3. The number and quality of reports and recommendations

A third function is mentioned in Article 13(2) of the Directive: the designated equality body should issue reports and make recommendations concerning discrimination.

Only three equality bodies lack the mandate to undertake this role. (See Part III, Paragraph 5.) Nevertheless, 13 equality bodies do not seem to have published any report or recommendation in 2003, 2004 or 2005. Again, the experts mentioned lack of resources as the main cause for not having done so.

As was explained in Part III, Paragraph 5.1, it appeared that the experts (on the basis of the information that was provided by the equality bodies) interpreted the words "reports" and "recommendations" in a wide variety of ways. Only in a few cases were reports seen as the written testimony of the outcome of surveys conducted by the equality body. As such, there were very few reports that had actually been published by them, since there were very few surveys. (See Paragraph 3.2 above.)

In all cases (with the exception of Hungary) the reports and recommendations that contained findings from surveys or evaluations of the work of the equality body were made public on its website or were published in hard copy. Sometimes the report was sent to the national parliament or to NGOs with an interest in anti-discrimination issues; sometimes they were accompanied by a press release to attract media attention. There is one exception to these publication policies. In France the official decisions rendered by the *High Authority* may be addressed to government or private parties, but the law does not allow them to be published and it does not let the "losing" party be identified unless the *High Authority* adopts a later decision regarding non-compliance with its recommendations.

3.4. The number and quality of hearings and investigations into complaints

Twenty-two out of 30 equality bodies have some sort of mandate to hear and investigate complaints about discrimination. (See Part III, Paragraph 5.2.) When it is taken into consideration that some experts may possibly have reported this function under the heading of "assistance", this number may be even higher in practice. What is the effect of this work? Again, I have to issue a warning against drawing firm conclusions in terms of whether some equality bodies are doing better or worse than others. The exact nature and scope of their mandate, their budget and staff, the circumstances under which they must work, and the level of awareness of discrimination issues in society all influence the numbers of cases that can be dealt with by an equality body. A further complicating factor as far as interpreting the numbers of cases is concerned is that in most countries the equality body has a broader mandate than simply dealing with racial and ethnic discrimination. In several instances the body is a "single body", meaning that it is the single equality body for all non-discrimination grounds; sometimes it is a general human rights body, considering complaints about other human rights infringements as well.[91]

Although there may be many complaints, this does not always mean that a large number of cases come to a decision (or lead to an official opinion being issued by the equality body). In Denmark, for example, there appears to be a wide gap between the numbers of complaints and the numbers of cases that were actually investigated or decided upon. Between the establishment of the Danish *Complaints Committee for Ethnic Equal Treatment* in 2003 and the summer of 2005 the Committee examined 142 cases, but – due to procedural obstacles – decided in favour of the complainant only once.[92] By the end of 2005 the number of complaints increased to 165 but only in six cases did the Committee find violations of the legislation. Compared to this, the situation in France appears to be much better: of the 15 cases that were heard by the *High Authority*, in 13 instances they concluded that there was indeed a case of unlawful discrimination. This may be due to the fact that – quite contrary to the situation in Denmark – the investigating powers of this institution are regulated by law in great detail and seem to be quite strong.

[91] For example, in Hungary a total number of 570 cases were received by the equality body, which covers all non-discrimination grounds.

[92] I will return to these obstacles below.

Several other countries had few or no cases. In Greece, for example, where three equality bodies have the power to investigate cases, only one case was investigated, and that did not even fall under the scope of the Racial Equality Directive, being a case about citizenship. Countries where there were also only few (one or two) cases included Estonia, Latvia, and Portugal. This seems to be due to the fact that these bodies are new, or to the fact that the task of dealing with complaints of racial discrimination has been newly assigned to them. In the UK no such individual complaints were adjudicated by the equality bodies. This is the result of a policy choice of the equality bodies not to invest too much time and energy in what in this country is called a "named person investigation". In the UK individual complaints are handled by employment tribunals or the ordinary courts.
Again, this illustrates the fact that figures about the amount of cases cannot be interpreted in terms of (in)effectiveness as long as no detailed information is available on the circumstances under which the equality body has to do its work and the policy choices that the body has made on this basis.

As with the other activities that they are supposed to carry out, the (board or directors of the) equality bodies themselves sometimes complain about the lack of staff and money to do their work.[93] Hearing and investigating individual complaints is both time and resource intensive, and not everyone is convinced of the effectiveness of such activities. In the UK, the *CRE* is of the opinion that better results have been generated by reports and recommendations resulting from general inquiries than from "named person investigations". On the other hand, a number of experts expressed the view that there were too few cases and that more should be done about awareness raising.[94] In the Netherlands, research has been done about the reasons why people who experience discrimination nevertheless do not raise complaints before the *Equal Treatment Commission*. The barriers are especially high among people from ethnic minorities. In the second five-year evaluation report the Commission recommends strengthening the (other, NGO) institutions that have a role in assisting and supporting victims of discrimination.[95] In several countries there are serious concerns about the length of time that investigations take and about the backlog of cases.[96]

In the course of this study I came across a number of other obstacles preventing equality bodies from exercising this assistance and support role adequately.
One problem is that most equality bodies that have the power to hear and investigate a complaint do not have the necessary powers to assemble evidence for the case.[97] The situation in Denmark clearly shows the consequence of the omission of these powers. The Danish *Complaints Committee* has no power to demand information from the accused and it cannot hear witnesses. If the accused does not answer or disputes the version given by the claimants, the Complaints Committee cannot progress the case. In a letter to the Ministry for Integration in July 2005 the Committee stated that it would like to suggest to the Ministry that the legislation be changed, in order to allow the Committee to issue a request for free legal aid in those cases that they have to reject because the accused does not answer or because of a lack of proof.[98] In Portugal procedural obstacles seem to be in the way of carrying out this activity effectively.

93 E.g. in Hungary and Ireland.

94 E.g. in Cyprus, Estonia, Latvia and Lithuania.

95 See Commissie Gelijke Behandeling (Dutch Equal Treatment Commission), 'Het verschil gemaakt; Evaluatie AWGB en werkzaamheden CGB 1999-2004.' Utrecht 2006.

96 E.g. in the Netherlands, Sweden, Portugal and Ireland.

97 In Part III, I noted that four equality bodies do not have any investigating powers at all. See also the *Paris Principles*, Chapter on Methods of operation, sub b.

98 In the same letter, the Committee informed the Ministry that in the period from July 2003 until July 2005 it received a total of 142 cases. Out of these 142 complaints, the Committee only succeeded in one case in reaching an opinion that the Danish non-discrimination legislation had been violated.

Another problem is that most equality bodies that have the power to hear and investigate complaints do not have the *power to give binding decisions* on them. This means that after the case has been dealt with by the equality body the complainant has to bring their case to court to get a final decision. This can have the effect that the equality body's statements or recommendations may in fact only delay the process of producing case law in relation to the Racial Equality Directive. In the Netherlands it is much debated whether the work of the *Equal Treatment Commission* in this respect can have any effect because their opinions are non-binding. Research shows, however, that defendants do follow up on the conclusions and recommendations of the Commission. From the annual report on 2004, it appears that in the case of racial discrimination 89 % of the defendants accepted the conclusions of the Commission and changed their policies after that.

4. Some concluding observations

4.1. Introduction

The European legislator wanted the Member States to set up equality bodies in order to make the fight against racial and ethnic discrimination more effective. However, it did not issue specific guidelines to Member States on how to create the conditions for equality bodies to operate in (in terms of their legal position, mandate, powers, staff and budget) that would maximise the likelihood that they would function effectively.[99] This lack of legal standards, however soft, means that I am not able to come to any concrete conclusions on whether the Member States are implementing Article 13 of the Racial Equality Directive in a correct manner as far as the issue of effectiveness is concerned.

In the study I tried to circumvent this lack of specific legal guidance by investigating whether the equality bodies in the 25 EU Member States are functioning *de facto* in such a way that they can carry out the three essential competencies that are mentioned in Article 13 of the Racial Equality Directive with at least a minimum degree of consistency and quality, and whether they have enough resources to exercise these competencies. Although not offering much of a firm basis, the terms a *minimum degree of consistency and quality and enough resources*, were interpreted against the express formulation of the objective of the Racial Equality Directive in terms of providing protection against racial and ethnic discrimination in the Member States of the European Union. (See Preamble, Consideration 24.) In my view this means that in cases where there are no or hardly any activities being carried out or when no or hardly any staff or money are made available to the equality body, one may conclude that – although a Member State has officially designated a certain institution as the equality body – it may not be in compliance with the Directive.

I formulated a great number of detailed questions for the experts who provided a wealth of information about the practices of the equality body or bodies in their countries. When analysing and interpreting this information, however, I encountered many methodological and practical obstacles, the first of which was that there is apparently a lack of common definitions of most of the key concepts in this field. Such terms as "assistance" and "survey" appeared to have different meanings among the experts. Besides, a truly comparative analysis of the results of the research is only possible when more background information about the legal, social and political circumstances in which each of the equality bodies has to function is (made) available. Another reason to be careful about drawing any far-reaching conclusions is that, for many of the bodies, the length of time that they have been in existence is simply too short to get a real insight into the positive and negative aspects of their operation. The causes of the low numbers of victims who were assisted or the low numbers of reports that were issued, for example, could not be identified, apart from obvious remarks about a shortage of money or of (well trained) staff.

[99] Unlike the issue of independence, such guidelines can only minimally be derived from other international documents, such as the *Paris Principles or ECRI-General Recommendation No 2*. In as far as they are relevant I have made reference to them in the footnotes on this Part.

This study must be considered as only an initial assessment of what is at stake when discussing the effective contribution of equality bodies towards eliminating racial and ethnic discrimination in the European Union. Setting aside the difficulty of coming to firm conclusions about the (in)effectiveness of equality bodies in the EU, I will conclude this part with some observations about potentially problematic points or possible obstacles for the bodies' effective operation in the future with respect to the amount of money and staff that they have and concerning their actual carrying out of the competencies mentioned by the Directive. From these observations I derive some recommendations for further research in this field.

4.2. The amount of money and the number and quality of staff

The first research question for this part of the study was whether the amount of money and the number and quality of staff made available to the equality bodies was sufficient for their effective operation, as I have defined that term in the context of this research. In other words: is a body with a certain budget, or a certain number of staff with a certain level of education and training, able to exercise the competencies mentioned in the Directive with at least a minimum degree of consistency and quality?
As explained in the introduction to this Part, there is no "clear" yardstick to evaluate whether this is or is not the case. However, seen from the perspective of the purpose of the Directive, I considered whether where hardly any staff or money is made available, one can conclude that – although a Member State may have officially designated a certain institution as the equality body – it still may not be in compliance with the Directive.

On the basis of the study, both with respect to the budget and with respect to the staff, I have to conclude that no such conclusions can be drawn at this moment. The first and foremost reason for this is that time and resources for this thematic study were too limited to dig into this matter too deep. Some figures about numbers of staff and the amount of money were made available[100], but the experts have little idea how these resources are in fact used by the equality bodies. This picture is even more complicated where the equality body is a "single"(multiple ground) body or when it forms a part of a bigger or wider Ombudsman or Human Rights Institute. Also, most equality bodies can give no insight into the (sub-)division of their budgets or into the question which members of staff are carrying out which of the activities mentioned in Article 13 of the Directive. From this research it has become apparent that in the future it will be difficult to say anything about the effectiveness of equality bodies in terms of the amount of money spent and of the number of staff available for various activities as long as there is no specific information available in that respect. It would be of great help if equality bodies were to (sub-)divide their budgets and describe the activities of their staff in more detail in their policy plans and annual reports, including annual reports.

Complaints about insufficient funding and a lack of (well trained) staff were frequently noted by the experts. This may mean that, under the circumstances, many of the equality bodies find that they cannot function effectively. In future research, it would be most important to ask the directors or boards of these bodies what they themselves consider to be sufficient funding levels and staff numbers to make some impact in the fight against discrimination. For this purpose it would be most helpful to have some guidelines on the reporting obligations of the equality bodies or external research institutions.

4.3. Equality bodies' actual carrying out of their core competencies

For the second part of this part I investigated whether the equality bodies were exercising their competencies at all and, if so, whether they achieved at least a minimum degree of consistency and quality. Again, there is no clear yardstick to evaluate whether this is or is not the case. Looking from the perspective of the purpose of the

[100] See the Chart in Appendix 1.

Directive, I considered whether in those cases where no or hardly any activities are carried out, one can conclude that, although a Member State may have officially designated a certain institution as the equality body, it may not be in compliance with the Directive. Such a conclusion is not possible on the basis of the current study. I will present a few observations that might contribute to the formulation of research questions for future studies.

From the results of the enquiry it becomes apparent that in most countries the task of assisting victims is not only an official competence of one or more equality bodies, but is also actually exercised by them. A lot of time and energy goes into this activity. The forms that assistance takes vary widely. Since it is not at all clear what the European legislator had in mind when drafting the provision, it is difficult to evaluate whether the Member States are correctly implementing this requirement of the Directive. However, there seems to be no country where – taking the widest possible interpretation of the word "assistance" – no help at all is offered to victims of discrimination (with the exception of those where the equality body does not exist).

As for the two other competencies mentioned in Article 13, the picture is less positive. Although these competencies are included in the mandate of most equality bodies, very few surveys into the forms and prevalence of racial and ethnic discrimination have been done and very few reports and recommendations about these issues have been published.[101] This picture becomes slightly more positive when taking into account reports and recommendations with a different purpose and content (such as reports about the operation of anti-discrimination legislation or recommendations about proposed legislation). It seems that the two other competencies (assistance to victims and hearing and investigating individual complaints about discrimination) are taking up most of the money and time of the equality bodies, to the detriment of investigating the forms and causes of discrimination and making recommendations about how to structurally improve the situation.

At this point one can see two different strategies in Europe. On the one hand there are bodies that want to concentrate on (legal) "assistance" (including hearing and investigating complaints and giving opinions about them). This can be described as taking a "reactive role" (reacting to instances of discrimination that have already occurred). These bodies sometimes "outsource" the tasks of conducting surveys and making reports and recommendations to other (independent) institutions. On the other hand there are bodies that want to concentrate on their "proactive role" (i.e. preventing discrimination from occurring in the future), which prioritise their activities in the field of conducting surveys and issuing reports and recommendations (even going as far as drafting codes of good practice and playing a role in supervising the implementation of positive non-discrimination duties).
Since both reactive and proactive activities are mentioned in the Directive, it appears that the European legislator did not want to make a choice between them and intended to require that both aspects of the work should be carried out. However, this does not mean that these different roles need to be combined within one and the same equality body. Member States may designate different bodies for different competencies, as long as all of these activities are performed in such a way that they can contribute to the aims of the Directive.

On the basis of the experience of this study it would seem most desirable to have more specific guidelines on the issue of effectiveness. These should concern the minimum amount of money and staff that should be made available. It is also desirable that a common format for the evaluation of the actual carrying out of the core competencies of the Directives be agreed within the European Community.

[101] Although discussion about this point is possible, the author of the current report takes "surveys" to mean primarily surveys about the causes, forms and prevalence of racial discrimination. This I derive from a teleological interpretation of the Directive.

Stephan | *1992*

Part VI

Conclusions and recommendations

The main findings of our study were presented in the executive summary to this report, and conclusions to our findings with respect to each of the three research questions were presented in the final sections of each part. In this last part, it therefore remains only to highlight the main conclusion from this research and, on that basis, to formulate some recommendations for further action by the European Commission.

Is Article 13 of the Racial Equality Directive being implemented correctly?

I addressed this question by examining whether equality bodies are actually in place and whether, in each country, the three competencies of the Directive are being covered.
As of December 2005, five countries do not yet have an equality body. Two more countries have just designated a body, but these were not yet functioning by the end of 2005. These countries appear to be in breach of the obligation to implement the Racial Equality Directive in a timely manner.
With respect to the scope and mandate of the equality bodies, I discovered some serious deficiencies here too. In some countries not all areas that are covered by the Directive fall under the mandate of the equality body or bodies; in other countries one or more of the competencies mentioned in the Directive seems not to be covered. I write "seems" because during the research I found out that there is no common ground as regards the meaning of the words "assistance", "surveys" and "reports and recommendations". This makes it hard to draw final conclusions at this point.
As far as the variety of competencies and powers of equality bodies is concerned, it is recommended that a clearer distinction be made between several competencies that can be discerned. On the basis of such an inventory, guidelines could be developed as to which competencies can be combined in an equality body and which should be allocated to separate institutions.

Are the equality bodies functioning in an independent manner?

It is not possible to make a definitive legal assessment of whether the Member States are in compliance with the Directive as far as guaranteeing the independence of the equality bodies and their work is concerned. This is due to the fact that neither the Directive itself nor its Preamble, nor the case law of the ECJ, provides us with clear guidance as to what conditions need to be fulfilled in order to be able to speak of "independent" bodies or "independent assistance, surveys, reports and recommendations". Nevertheless, I have found some guidance in other international documents from the Council of Europe and the United Nations. On the basis of these (soft law) documents, I have drafted a list of indicators for independence.

My main observation on the basis of the research at this point is that, at this stage of the implementation of the Directive, it really is too early to come to final conclusions about this topic. Many of the equality bodies have only existed for a very brief period, or have yet to start their activities. External and internal evaluations of their operation are in most cases not yet available. Others have recently gone through a process of transformation as a result of the fact that they were designated to exercise (sometimes additionally) the competencies that are mentioned in the Racial Equality Directive. This means that it is difficult to make a final assessment of the situation in the Member States. At various points in Part IV I have concluded that further research is necessary. The list of indicators that was developed in the framework of this study can serve as a tool for gaining a better and deeper understanding of what it takes to create truly independent specialised equality bodies. Therefore, I recommend that the European Commission further develops this research tool and uses it as a basis for a continuing in-depth study into this issue.

Furthermore, on the basis of a list of problematic points that I identified during this research, the European Commission could support the Member States in the implementation process by drafting general guidelines for the independent operation of equality bodies designated to exercise the competencies of Article 13 of the Directive.

Are the equality bodies functioning in an effective manner?

With respect to the topic of effectiveness it is even more difficult to make a definitive legal assessment of whether the Member States are in compliance with the Directive. Apart from the very general objective of providing a contribution to combating racial discrimination, the Directive does not give us any detailed criteria as to what conditions need to be fulfilled in order to speak of (potentially) effective bodies. In this respect, I could not find much guidance from other international documents either. On that basis, I could not conclude other than that further research is necessary. As far as the actual carrying out of the three core competencies of Article 13 is concerned, a further complicating factor is the above-mentioned variety of interpretations of the meaning of the words "assistance", "surveys" and "reports and recommendations". Besides, a truly comparative analysis of the situation of equality bodies will only be possible once more background information about the legal, social and political circumstances in which each of these bodies have to function becomes available. Another reason to be careful in drawing any far-reaching conclusions regarding the effectiveness of equality bodies is that, for many of the bodies, the length of time they have been in existence has been too short to get a real insight as to the positive and negative aspects of their work. Therefore, I concluded that it *seems* that at the moment of our research each of the three core competencies actually is exercised to some extent. However, I also observed that especially with regard to surveys and reports and recommendations, there seems to be an underdevelopment of these functions.
Again, it would be useful for more specific guidelines to be developed by the European Commission. These should concern the minimum amount of money and staff that should be made available to equality bodies. Also, it is desirable that a common format for the evaluation of the actual carrying out of the core competencies of the Directives is agreed within the European Community.

To conclude

The results of the current study about the level of implementation of Article 13 of the Racial Equality Directive may seem meagre, mainly due to some serious methodological obstacles and – more importantly – the fact that, at this point in the history of the development of European anti-discrimination law, we do not have clear legal norms at hand to give us guidance on how to evaluate the correctness or incorrectness of the way in which this provision of the Directive has been implemented.
This especially goes for the concepts of effectiveness and independence, which are only slowly evolving into legal concepts, and which certainly do not seem to have reached a sufficient degree of legal concreteness that would permit a legal assessment to be made, except at the extremes. What I have been able to do is (a) to draw up a list of indicators (based on some soft law instruments) which are the beginnings of what might become the basis for more concrete legal assessments in the future, and (b) to apply these indicators to information that we have obtained from the Member States. Any conclusions, therefore, are tentative at the moment, without further research.
However, the present research is still useful because it begins to clarify the task of the Commission for the future, assuming that it wants to continue to monitor the independence and effectiveness of equality bodies in the Member States.

In particular, the results of our study point to (a) the need for continuing empirical research to be conducted, and (b) the need to clarify whether the concepts of independence and effectiveness are to become legal standards, and (c) if so, what the content of these legal standards should be.

In conclusion, then, this study should be seen as a scoping study for further work that the European Commission should consider carrying out in this field.

Daphida | *1995*

Appendix

Overview of Article 13 Equality bodies in the EU

The existence of equality bodies in the Member States

NB: Only included is the information about bodies that are officially designated by the governments of the Member States. In some countries a Bill in which a body is foreseen, is still under discussion. These bodies are not included, because it is uncertain whether the laws will be passed and when. Some countries do not have an equality body at all.

Based on the questionnaires

Country	Official name and website	Starting date (or started as designated body)	More than race?	Are the areas covered the same as in the Directive?	Annual budget	Source of the budget	Total number of people working for the E.B.
Austria (1)	Gleichbehandlungsanwaltschaft / National Equality Body [102] http://www.bmgf.gv.at/cms/site/themen.htm?channel=CH0210	01.03.2005	Yes	No, Employment conditions in the civil service area is excluded.	No information available	The budget of a Ministry or other part of the government.	3.5 fte paid staff members.
Austria (2)	Gleichbehandlungskommission /Equal Treatment Commission http://www.bmgf.gv.at/cms/site/themen.htm?channel=CH0365	01.04.2005	Yes	No, Employment conditions in the civil service area is excluded	No information available	The budget of a Ministry or other part of the government.	4 fte paid staff members. 31 unpaid committee members (number of fte's not specified)

[102] Consisting of Anwältin für die Gleichbehandlung und Gleichstellung von Frauen und Männern in der Arbeitswelt (Ombud for Equal Treatment and Equal Status of Women and Men in the Workplace); Anwältin für die Gleichbehandlung ohne Unterschied der ethnischen Zugehörigkeit, der Religion oder Weltanschauung, des Alters oder der sexuellen Orientierung in der Arbeitswelt (Ombud for Equaity at Work on the grounds of Ethnic Origin, Religion or Belief; Age or Sexual Orientation); Anwältin für die Gleichbehandlung ohne Unterschied der ethnischen Zugehörigkeit in sonstigen Bereichen (Ombud for Ethnic Equality in Goods and Services).

Austria (3)	Provincial Equality Bodies for all provinces [103]. **1.Oberösterreich** Anti-Diskriminierungsstelle http://www.land-oberoesterreich.gv.at/cps/rde/xchg/SID-3DCFCFC3-AD2F9040/ooe/hs.xsl/39240_DEU_HTML.htm **2.Kärnten** Anti-Diskriminierungsstelle: http://www.ktn.gv.at/default.asp?SIid=205 **3.Steiermark** Gleichbehandlungsbeauftragte: http://www.verwaltung.steiermark.at/cms/ziel/437133/DE/ **4.Niederösterreich** Gleichbehandlungskommission und Anti-Diskriminierungsstelle http://www.noe.gv.at/SERVICE/LAD/LAD1/Gleichbehandlung/GleichbehandlungAntidiskriminierung.htm **5.Wien** Beratungsstellen in Wien http://www.wien.gv.at/verwaltung/antidiskriminierung/adressen.html	Various dates	Yes	No , Employment conditions in the private economic area and Membership of an organisation of employees / employers and Vocational education are excluded	No information available	The provincial budgets.	information on all the provincial bodies is not available, but staff has usually the status of civil servants, who are trained lawyers.
Belgium	Centre pour l'égalité des chances et la lutte contre le racisme / Centrum voor gelijkheid van kansen en voor racismebestrijding / Zentrum für Chancengleichheit und für Rassismusbekämpfung / Centre for Equal Opportunities and Opposition to Racism http://www.antiracisme.be/	27.03.2003	Yes	No, Education is excluded. In another sense broader: the law covers all activities that are not "private" but in principle open to the public.	2004: 4,350,000 2005: 4,350,000 2006: 4,350,000	National Lottery, which the Federal Government distributes	57 fte paid staff members 21 fte unpaid Chairperson and Committee Members
Cyprus	Αρχή κατά του Ρατσισμού / Cyprus Anti-Discrimination Body [104] http://www.ombudsman.gov.cy	01.05.2004	Yes	Yes	2004: € 818,467.30 2005: € 1,031,837.80 2006: € 1,349,764.60	The annual national fiscal budget.	41 fte paid staff members

[103] Not all provinces have already set up these bodies

[104] This equality body forms part of the office of the Cyprus Ombudsman also referred to as Commissioner for Administration (in Greek: Επίτροπος Διοίκησης).
As already mentioned in the report we counted one body in Cyprus. Information about the Equality Authority is not addressed.

APPENDIX I

Country	Official name and website	Starting date (or started as designated body)	More than race?	Are the areas covered the same as in the Directive?	Annual budget	Source of the budget	Total number of people working for the E.B.
Czech republic	Veřejný ochránce práv / The Public Defender of Rights (Ombudsman) (Bill) http://www.ochrance.cz/	Not yet in existence	-	-	-	-	-
Denmark (1)	Institut for Menneskerettigheder (National afdeling)/ Institut for Human Rights (National Departement) http://www.humanrights.dk/	01-01-2003	Yes	Yes + everything that has do with human rights	2004: € 653,333 2005: € 653,333 2006: € 653,333	The budget of a Ministry or other part of the government	4.5 fte paid staff members 8 fte unpaid staff members
Denmark (2)	Klagekomitéen for Etnisk Ligebehandling/ The Complaints Committee for Ethnic Equal Treatment [105] www.klagekomite.dk	01-07-2003	No	Yes	same as body 1	The budget of a Ministry or other part of the government	3.5 fte paid staff members
Estonia	Õiguskantsler/ Legal Chancellor (or Chancellor of Justice) http://www.oiguskantsler.ee/	01-01-2004	Yes	Yes, + all other areas (with some exclusions, like churches and relations in family life)	2004: € 1,192,815 2005: € 1,116,487 2006 : € 1,154,604	The annual national fiscal budget; Foreign aid in 2004	48 fte paid staff members
Finland (1)	Vähemmistövaltuutettu /Ombudsman for Minorities (for Finland in general) http://www.vahemmistovaltuutettu.fi	01-09-2001	No	No, Employment conditions in the civil service area and Employment conditions in the private economic area are excluded.	2004: € 339,166 2005: € 342,709 2006: not yet specified	The annual national fiscal budget	8 fte paid staff members

[105] The Complaints Committee is (independent) part of the Institute for Human Rights, formed by three legal experts assisted by staff members from the Institute

Finland (2)	Diskrimineringsombudsmannen / Discrimination Ombudsman (for the Åland Islands) No website available	01-12-2005	Yes	No, Employment conditions in the private economic area and Membership of an organisation of employees / employers are excluded	2004 and 2005: not relevant 2006: € 66,000	Parliament of the Åland Islands	0.6 paid ombudsperson
France	Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE) / High Authority against Discrimination and for Equality http://www.halde.fr	04-03-2005	Yes	Yes, and all other grounds covered by French law or an International Convention ratified by the French Republic.	2004: not relevant 2005: € 7.5 Million 2006: € .7 Million	Budget of the Ministry of social affairs	53.5 fte paid staff members 4 fte unpaid staff members
Germany	(Bill was withdrawn by new government.)	-	-	-	-	-	-
Greece (1)	Συνήγορος του Πολίτ / Ombudsman http://www.synigoros.gr/	27.1.2005	Yes	No, excluded are: Employment conditions in the private economic area and Membership of an organisation of employees / employers	2004: € 5.8 million 2005: € 5.9 million 2006: € 7.4 million	The annual national fiscal budget	178 fte paid staff members

Country	Official name and website	Starting date (or started as designated body)	More than race?	Are the areas covered the same as in the Directive?	Annual budget	Source of the budget	Total number of people working for the E.B.
Greece (2)	Επιτροπή Ίσης Μεταχείρισης / Equal Treatment Committee No website available	27.10.2005	Yes	No, excluded are: Employment conditions in the civil service area, Employment conditions in the private economic area, Membership of an organisation of employees / employers, Vocational education	No estimation (general Budget of the Ministry of Justice)	The budget of a Ministry or other part of the government	1 fte paid staff member
Greece (3)	Σώμα Επιθεώρησης Εργασίας / Labour Inspection http://www.ypakp.gr/index.cfm?Level1=2&Level2=9&Level3=1&Level4=0&Level5=0&Level6=0	27.1.2005	Yes	No, excluded are: Employment conditions in the civil service area, Other education and Social protection, including social security and health care, Social advantages, Access to and supply to goods and services, including housing	No estimation (general Budget of the Ministry of Justice)	The budget of a Ministry or other part of the government	6 fte paid staff member
Hungary	Egyenlő Bánásmód Hatóság / Equal Treatment Authority http://www.obh.hu/index_en.htm	01-02- 2005	Yes	Yes, although membership of an organization of employees / employers is debatable	2004: The Authority did not exist. 2005: € 538,854 2006: € 803,308	The annual national fiscal budget The budget of a Ministry or other part of the government	19 fte paid staff member 6 (partly) paid Members of the Equal Treatment Advisory Board.

Ireland (1)	**The Equality Authority** http://www.equality.ie/	October 1999	Yes	Yes, and discriminating clubs.	2004: € 5,116,000 2005: € 5,451,000 2006: € 5,531,000	The annual national fiscal budget. The budget of a Ministry or other part of the government. + partnerships in the organisation of research projects and conferences	49 fte paid staff member
Ireland (2)	**The Equality Tribunal** http://www.tribunal.ie/	October 1999	Yes	Yes, and discriminating clubs.	2004: € 2,055,000 2005: € 1,970,000 2006: € 2,046,000	The annual national fiscal budget The budget of a Ministry or other part of the government	32 fte paid staff members
Italy	**Ufficio Nazionale Antidiscriminazioni Razziali –UNAR / National Office against Racial Discriminations** http://www.pariopportunita.gov.it/	16-11-2004	No	Yes, and other areas without limitations.	2004: not in function 2005: € 2,035,357 2006: € 2 million	The annual national fiscal budget	19 fte paid staff members
Latvia	Valsts Cilvēktiesību birojs/National Human Rights Office http://www.vcb.lv/	12.01.2006	Yes	Yes (and general human rights infringements in any area)	2004: € 226,206 2005: € 261,517 2006: € 326,532 of which € 54,589 is for the division for discrimination	The annual national fiscal budget + EU funding (e.g., Equal project)	31 fte paid staff member, of which 4 work for the division on discrimination and 3-5 fte unpaid members

Country	Official name and website	Starting date (or started as designated body)	More than race?	Are the areas covered the same as in the Directive?	Annual budget	Source of the budget	Total number of people working for the E.B.
Lithuania	Lygių galimybių kontrolierius / The Equal Opportunities Ombudsman http://www3.lrs.lt/pls/inter/w3_viewer.ViewTheme?p_int_tv_id=805&p_kalb_id=1	01-01-2005	Yes	No, excluded are: Membership of an organization of employees / employers, Vocational education, Social protection, including social security and health care and Social advantages	2004: € 139,000 2005: € 227,062 2006: € 321,188	The annual national fiscal budget	11 fte paid staff members
Luxembourg	Centre Pour L'egalite De Traitement/ Center for Equality of Treatment (Bill)	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-
Poland	Secretariat of the Government Plenipotentiary for Equal Status of Women and Men, Chancellery of the Prime Minister (the "Plenipotentiary") http://www.rownystatus.gov.pl/	-	-	-	-	-	-
Portugal (1)	Comissão para a Igualdade e Contra a Discriminação Racial /Commission for Equality and Against Racial Discrimination No website available	12-05-2004	Yes	Yes	No specific budget, expenses are paid by the Budget of the High Commissariat	The budget of a Ministry or other part of the government + subsidy from the Social Security Budget	No information available

Portugal (2)	Alto-Comissário para a Imigração e Minorias Étnicas / High Commissioner for Immigration and Ethnic Minorities http://www.acime.gov.pt/modules.php?name=Content&pa=showpage&pid=101	12-05-2004	Yes	Yes	No specific budget, expenses are paid by the Budget of the High Commissariat	The budget of a Ministry or other part of the government + subsidy from the Social Security Budget	No information available
Slovakia	Slovenské národné stredisko pre ľudské práva / The Slovak National Centre for Human Rights http://www.snslp.sk/rs/snslp_rs.nsf/vdb_HomePage/homepage_S?OpenDocument	01-07-2004	Yes	Yes	2004: € 229,085 2005: € 483,918 2006: € 401,579	The annual national fiscal budget The budget of a Ministry or other part of the government + EU budget, Visegrad fund	18 fte paid staff members 0.9 fte unpaid members 1 ad hoc driver
Slovenia (1)	Zagovornica načela enakega obravnavanja; / The Advocate of the Principle of Equal Treatment http://www.uem.gov.si/	01-01-2005	Yes	Yes, and any other personal circumstances	2004 not relevant 2005: € 370,768.00 2006: € 417,866.40	The annual national fiscal budget	1 fte paid Chairperson / Director; 1 Advocate of the Principle of equal treatment; support by civil servants but not known how many fte's are involved.
Slovenia (2)	Sveta Vlade Republike Slovenije za uresničevanje načela enakega obravnavanja / The Council of the Government for the Implementation of the Principle of Equal Treatment No website available	10-05-2005	Yes	Yes, and any other personal circumstances	Information not available	The budget of the Office for equal opportunities	24 unpaid representatives of ministries and governmental services, NGO's and expert institutions

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Country	Official name and website	Starting date (or started as designated body)	More than race?	Are the areas covered the same as in the Directive?	Annual budget	Source of the budget	Total number of people working for the E.B.
Spain	Consejo para la promoción de la igualdad de trato y no discriminación de las personas por el origen racial o étnico / Council for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. No website available	Expected in 2006	No	Yes	2006: € 200,000	The annual national fiscal budget	No information available
Sweden	Ombudsmannen mot etnisk diskriminering/ The Ombudsman against Ethnic Discrimination http://www.do.se/	01-07-2003	Yes	Yes	2004: € 3,256,932 2005: € 2,563,623 2006: € 32,744,204	The annual national fiscal budget The budget of a Ministry or other part of the government	60 fte paid staff members
The Netherlands	De Commissie Gelijke Behandeling /Equal Treatment Commission or ETC http://www.cgb.nl/	01-04-2004 (but functions since 1994)	Yes	Yes and giving advice about educational or career opportunities	2004: € 5,000,000 2005: € 4,000,000 2006: € 5,000,000	The budget of a Ministry or other part of the government (5 Ministries contribute)	45 fte paid staff members 1 fte unpaid staff member 1 paid Chairperson and 7 paid members of the Commission + 15 substitute Committee Members, (paid expenses)

The UK [106] (1)	Commission for Racial Equality (CRE) http://www.cre.gov.uk/	1976	Yes	Yes and immigration, criminal justice, integration policy, education in general, constitutional law and the exercise of public functions in general.	2003/04: € 29,447,423.65 2004/2005: € 26,161,639.63 2005/06: Final amounts yet to be determined	The budget of a Ministry Some funding from a variety of alternative sources	204 fte paid staff members
The UK (2)	Equality Commission for Northern Ireland (ECNI) http://www.equalityni.org/	October 1999	Yes	Yes and immigration, criminal justice, integration policy, education in general, constitutional law and the exercise of public functions in general	2003/2004: € 10,137,895.66 2004/05: € 9,799,463.73 2005/06: Awaiting final figures	The budget of a Ministry	123 fte paid staff members

[106] The UK Equality Act 2006 establishes the Commission for Equality and Human Rights (CEHR) and defines its purpose and functions. The CEHR will take on the work of the existing UK equality commissions (the Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE), and the Disability Rights Commission (DRC)), and will also assume responsibility for promoting equality and combating unlawful discrimination on the basis of sexual orientation, religion or belief, and age. The CEHR will also have responsibility for the promotion of human rights. It is expected that the Commission will take over the competences of the EOC and DRC, as well as its competences in respect of sexual orientation, age and religious discrimination, by October 2007. The Commission will take over the competencies of the CRE by 31st March 2009 at the latest. The CEHR will be funded out of the budget of the Secretary of State for Trade and Industry, in a manner comparable to the existing commissions. The CEHR will also have comparable powers and duties in relation to elimination of discrimination and the promotion of equality as do the existing commissions, and the UK government has indicated that its budget will be in the region of €101,145,471 (£70 million sterling). It is as yet unclear as to how many staff it will employ.

APPENDIX I

The scope and mandate of equality bodies in the Member States

NB: Only included is the information about bodies that are officially designated by the governments of the Member States. In some countries a Bill in which a body is foreseen, is still under discussion. These bodies are not included, because it is uncertain whether the laws will be passed and when. Some countries do not have an Equality Body at all.

Based on the questionnaires

Country	Mandate to assist victims	Mandate to conduct surveys	Mandate to write reports and issue recommendations	Mandate to hear and investigate complaints	Power to give binding judgments	Power to impose sanctions	Possibility to mediate	Other powers
Austria (1)	Yes	Yes	Yes	Yes	No	No	No (officially not a task, but possible)	No
Austria (2)	No	Yes	Yes	Yes	No	No	No (officially not a task, but possible)	No
Austria (3)	Yes	Yes	Yes	Yes	No	No	No (officially not a task, but possible)	In some cases the provincial body can make recommendations in regard to legislative proposals.
Belgium	Yes	Yes	Yes	No	Not relevant	Not relevant	Not relevant	Addressing recommendations to the public authorities, including recommendations about mainstreaming of racial equality.

Cyprus	No	Yes	Yes	Yes	Yes	Yes	Yes	To publish statistics and to draw up codes of good practice in both the private and public sector, obliging them to take practical measures for the purpose of promoting equality of opportunity.
Czech republic	-	-	-	-	-	-	-	-
Denmark (1)	Yes	Yes	Yes	No	Not relevant	Not relevant	Not relevant	No
Denmark (2)	No	Yes	No	Yes	No	No	Yes	No
Estonia	No	Yes	Yes	Yes	Yes, but only in case of discrimination by private parties.	Yes	Yes, but only in case of discrimination by pubic parties.	To propose to the Parliament to bring criminal charges against a member of the Parliament, the President, a member of the Government, or a (Chief) justice of the Supreme Court
Finland (1)	yes	yes	yes	No	Not relevant	Not relevant	Yes	To promote good ethnic (community) relations in society, and to monitor and promote the status and rights of foreigners and ethnic minorities.
Finland (2)	Yes	Yes	Yes	No	Not relevant	Not relevant	Not relevant	To monitor the civil servant's (contractual) conditions, to have a dialogue with NGO's and to give information on the non-discrimination law.

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Country	Mandate to assist victims	Mandate to conduct surveys	Mandate to write reports and issue recommendations	Mandate to hear and investigate complaints	Power to give binding judgments	Power to impose sanctions	Possibility to mediate	Other powers
France	Yes	Yes	Yes	Yes	No	Not relevant	Yes	Presentations before Civil, penal and administrative courts. Contribution to the preparation and definition of the position France in international negotiations relating to the field of discrimination.
Germany	-	-	-	-	-	-	-	-
Greece (1)	No	Yes	Yes	Yes	No	Not relevant	Yes	No
Greece (2)	No	Yes	Yes	Yes	No	Not relevant	Yes	To give any opinion about the interpretation of the equal treatment law.
Greece (3)	No	Yes	Yes	Yes	No	Not relevant	Yes	No
Hungary	Yes	Yes	Yes	Yes	Yes	Yes	Yes	To act as the legal representative of the injured party before courts and other authorities. To bring a so-called actio popularis claim
Ireland (1)	yes	yes	yes	No	Not relevant	Not relevant	Not relevant	To conduct inquiries and carry out equality reviews.
Ireland (2)	No	No	No	Yes	Yes	Yes	Yes	No information available

Italy	Yes	Yes	Yes	Yes	No	Not relevant	Yes	To promote the adoption, of specific measures – including projects of positive actions – aimed at eliminating or compensating the disadvantages related to a certain race or ethnic origin.
Latvia	Yes	Yes	Yes	Yes	No	Not relevant	Yes	To elaborate programs for promotion of observation of human rights, as well as to coordinate in the human rights sphere the execution of programs prepared by other state and municipal institutions and working groups".
Lithuania	No	No	Yes	Yes	Yes	Yes	Yes	No
Luxembourg	-	-	-	-	-	-	-	-
Malta	-	-	-	-	-	-	-	-
Poland	-	-	-	-	-	-	-	-
Portugal (1)	No	Yes	Yes	Yes, but only to hear them, no investigating powers	No	Not relevant	Yes	No
Portugal (2)	Yes	Yes	Yes	Yes, but only to hear them, no investigating powers	Yes	Yes	Yes	No

Country	Mandate to assist victims	Mandate to conduct surveys	Mandate to write reports and issue recommendations	Mandate to hear and investigate complaints	Power to give binding judgments	Power to impose sanctions	Possibility to mediate	Other powers
Slovakia	Yes	Yes	Yes	No, but only to hear them, no investigating powers	No	Not relevant	Yes	To develop educational activities, take part in public information campaigns with a view to increasing tolerance of the society Prepare expert opinions upon request from natural persons or legal entities or of its own initiative.
Slovenia (1)	No	No	Yes	Yes	No	No	No, not officially, but announced at website that a "calm resolution" is possible	No
Slovenia (2)	No	No	Yes	No	Not relevant	Not relevant	Not relevant	-implementation equal treatment act -monitoring discrimination -suggestions for implementation of equal treatment principle[107] -promotion of awareness raising and education[108]
Spain	Yes	Yes	Yes	No (hearing complaints, no investigation)	Not relevant	Not relevant	Not relevant	To promote measures for equal treatment in collective bargaining

[107] To provide for implementation of the provisions of the equal treatment act.

To monitor, ascertain and assess the position of individual groups within society with regard to implementation of the principle of equal treatment,

To submit proposals, initiatives and recommendations for the adoption of directives and measures that are necessary for the implementation of the principle of equal treatment.

To submit proposals for the promotion of education, awareness-raising and research.

[108] The decree establishing the body states in Article 3 that the body must also be familiar with the work of the Advocate through her yearly report on her work. (The Decree of the Government on the establishment)

Sweden	Yes	Yes	Yes	Yes	No	No	Yes	To co-operate with a network of NGO's. With them, the Ombudsman is elaborating an 'Action Plan to Combat Discrimination'.
The Netherlands	No	Yes	Yes	Yes	No	Not relevant	Yes	(Unofficially) to inform the general public, giving detailed information about the various equality laws to institutions and companies, to advise the government in new policies or legislation and to advise companies about their policies.
The UK (1)	Yes	Yes	Yes	Yes	No	Not relevant	Yes	To prepare codes of practice. To bring legal actions against discriminatory advertising and instructions to discriminate. To assist public authorities in fulfilling their positive duty to eliminate unlawful discrimination and promote equality of opportunity. To launch formal investigations into how public authorities are complying with this. To take steps to encourage good community relations. It can fund other bodies to play a role in promoting good relations.
The UK (2)	Yes	Yes	Yes	Yes	No	Not relevant	Yes	Idem body 1 + to approve the equality schemes drawn up by public authorities, by which they are to implement a positive duty to promote equality of opportunity.

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