

**ECRI GENERAL POLICY  
RECOMMENDATION NO. 2:**

**EQUALITY BODIES TO COMBAT RACISM  
AND INTOLERANCE AT NATIONAL LEVEL**

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## **The European Commission against Racism and Intolerance (ECRI)**

Recalling the prominence given to the right to equality and to the fight against racism and intolerance in many international instruments of the United Nations, the Council of Europe, the European Union, the Organization for Security and Co-operation in Europe, and other international bodies as well as in the constitutions and legislation of the member States;

Convinced that the achievement of equality and the fight against racism and intolerance are indispensable for the sustained development of democratic societies and that the resulting social cohesion is an important safeguard for peace and security in and among the Council of Europe member States;

Emphasising, based on the findings of its country monitoring, that equality bodies to combat racism and intolerance play an essential role in achieving equality and in combating discrimination and intolerance;

Welcoming the fact that equality bodies have been set up and are functioning in most Council of Europe member States and acknowledging the valuable pioneering work carried out throughout Europe that has made this possible;

Recognising that the institutional form and activities of such bodies vary, and continue to change, adapt, and evolve across the member States;

Aware of the difficulties and pressures that have been experienced by such bodies in seeking to fulfil their mandate and emphasising therefore the need for equality bodies to be independent and effective;

Convinced that the extent of inequality, racism and intolerance in Europe and the member States necessitates further investment in and strengthening of equality bodies to combat racism and intolerance;

Aware of the need to review the initial version of this General Policy Recommendation adopted on 13 June 1997 to include the experience acquired and the good practices developed in the member States during the last 20 years;

Building on other standards developed in this field, such as the Paris Principles on National Institutions for the Promotion and Protection of Human Rights and the European Union's equal treatment directives;

Wishing to assist member States to further strengthen equality bodies and the work of both member States and equality bodies to achieve equality and social cohesion;

Recommends the following to the governments of member States:

### **I. Establishment of equality bodies**

1. Member States should establish by constitutional provision or legislation passed by parliament one or more independent equality bodies to combat racism and intolerance (equality body).
2. This text should clearly set out that equality bodies are independent and should establish the conditions to ensure this independence. Equality bodies should have both *de jure* and *de facto* independence, be separate legal entities placed outside the executive and legislature, and have the necessary competences, powers and resources to make a real impact. The different elements which are necessary to guarantee actual independence and effectiveness are set out in §§ 22 to 39 of this General Policy Recommendation (GPR).
3. The mandate, institutional architecture, functions, competences and powers, appointment and dismissal procedures, safeguards and terms of office for the leadership positions and the arrangements for the funding and accountability of equality bodies should be set out in the

law in a manner that ensures both their independence and effectiveness.

4. The mandates of these bodies should individually or collectively cover:
  - a. The promotion and achievement of equality, prevention and elimination of discrimination and intolerance, including structural discrimination and hate speech, and promotion of diversity and of good relations between persons belonging to all the different groups in society (equality mandate).
  - b. The discrimination grounds covered by ECRI's mandate, which are "race",<sup>1</sup> colour, language, religion, citizenship, national or ethnic origin, sexual orientation and gender identity, as well as multiple and intersectional discrimination on these grounds and any other grounds such as those covered by Article 14 of the European Convention on Human Rights, while also integrating a gender perspective. Equality bodies may also cover additional grounds such as sex, gender, age and disability.
  - c. All areas in both the public and private sectors, in particular: employment, membership of professional organisations, education, training, housing, health, social protection and social advantages, social and cultural activities, goods and services intended for the public, whether commercially or freely available, public places, exercise of economic activity and public services and functions, including law enforcement.
  - d. The whole territory of the member State.

## **II. Institutional Architecture**

5. Depending on the legal and administrative traditions of the member States, equality bodies may take different forms.
6. Equality bodies can cover a single ground or multiple grounds. In the case of a multi-ground equality body, it is necessary to ensure a clear and appropriate focus on each of the grounds covered and on the intersections between them.
7. Equality bodies can be stand-alone or form an equal part of multi-mandate institutions that include a human rights or Ombudsperson mandate. In this latter case, the following provisions should apply:
  - a. Legislation should explicitly set out the equality mandate of the institution.
  - b. Appropriate human and financial resources should be allocated to each mandate to ensure an appropriate focus on the equality mandate.
  - c. Governing, advisory, and management structures should be organised in a manner that provides for clear leadership, promotion and visibility of the equality mandate.
  - d. Reporting arrangements should give adequate prominence to the concerns arising and work carried out under the equality mandate.
8. Where equality bodies form part of multi-mandate institutions, this General Policy Recommendation shall apply to these institutions and their activities in the field of equality. The competences and powers attached to all mandates in such institutions should be harmonised and levelled up so that each mandate should, as far as possible, enjoy the broadest competences and powers available to any of the other mandates.

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<sup>1</sup> Since all human beings belong to the same species, ECRI rejects theories based on the existence of different "races". However, in this Recommendation ECRI uses this term in order to ensure that those persons who are generally and erroneously perceived as belonging to "another race" are not excluded from the protection provided for by the Recommendation.

9. Where different equality bodies exist, their competences and powers should be levelled up and co-ordination should be ensured to address overlaps, enable joint action and optimise the use of resources. The equality bodies should develop a common interpretation of the anti-discrimination legislation and make co-ordinated use of their competences and powers.

### **III. Functions**

10. Equality bodies should be assigned:

- a. The function to promote equality and prevent discrimination (promotion and prevention function) as set out in detail in § 13;
- b. The function to support people exposed to discrimination and intolerance and to pursue litigation on their behalf (support and litigation function) as set out in detail in § 14;

and may also be assigned:

- c. The function to take decisions on complaints (decision-making function) as set out in detail in § 17.

The decision-making function can be shared between equality bodies and the judiciary or be assigned entirely to the judiciary.

11. If the support and litigation and the decision-making functions are combined in one body, it is necessary to ensure that each function is provided by a different unit or by different staff. Appropriate human and financial resources should be allocated to all functions and the equality body should ensure that comprehensive legal and personal support is provided to people exposed to discrimination or intolerance.
12. Equality bodies should have the right to decide which competences, objectives and actions they will focus upon at any given time, and what combination of these they will use.

### **IV. Promotion and prevention competences**

13. The promotion and prevention function of equality bodies should include the competences to:

- a. Promote and achieve equality, prevent and eliminate discrimination and intolerance, and promote diversity and good relations between the different groups in society.
- b. Build a continuous dialogue with groups experiencing discrimination and intolerance and their representative organisations, and with organisations working more generally on human rights and equality issues.
- c. Conduct inquiries on their own initiative into all matters falling under their mandate, addressing both individual and structural discrimination, and make and publish recommendations.
- d. Conduct and commission research on any issue falling under their mandate.
- e. Build across society awareness, knowledge, valuing of and respect for equality, diversity, equal treatment legislation, non-discrimination and mutual understanding.
- f. Build, among groups experiencing discrimination and intolerance, knowledge about the rights and remedies established under the equal treatment legislation, capacity to exercise these rights, and trust in the equality bodies.
- g. Develop standards and provide information, advice, guidance and support to individuals and institutions in the public and private sectors on good practice for promoting and achieving equality and preventing discrimination and intolerance.

- h. Promote and support the use of positive action to remedy inequality in the public and private sectors.
- i. Support the implementation of the general duty on all authorities to promote equality and prevent discrimination in carrying out their functions as recommended in ECRI's General Policy Recommendation No. 7, establish standards for its implementation and, where appropriate, enforce them.
- j. Take part in the consultation procedures for new policy, legislation and executive acts, monitor existing policy, legislation and executive acts and make recommendations for the modification or introduction of policy, legislation or executive acts.
- k. Promote and contribute to the training of key groups in relation to equality and non-discrimination.
- l. Monitor the implementation of their recommendations.
- m. Track decisions made by courts and other decision-making bodies.
- n. Promote and support the ratification of relevant international treaties and the implementation and dissemination of such treaties and of the relevant standards, case law and reports emanating from intergovernmental organisations; take part in the proceedings of and with relevant intergovernmental organisations, take their recommendations into account and monitor their implementation.
- o. Cooperate with and support organisations with similar objectives to those of the equality body. Develop shared understanding on key issues in relation to equality and conclude cooperation agreements with such organisations.

## **V. Support and litigation competences**

14. The support and litigation function of equality bodies should include the competences to:
- a. Receive complaints and provide personal support and legal advice and assistance to people exposed to discrimination or intolerance, in order to secure their rights before institutions, adjudicatory bodies and the courts.
  - b. Have recourse to conciliation procedures when appropriate.
  - c. Represent, with their consent, people exposed to discrimination or intolerance before institutions, adjudicatory bodies, and the courts.
  - d. Bring cases of individual and structural discrimination or intolerance in the equality body's own name before institutions, adjudicatory bodies and the courts.
  - e. Intervene as *amicus curiae*, third party or expert before institutions, adjudicatory bodies, and the courts.
  - f. Monitor the execution of decisions of institutions, adjudicatory bodies, and the courts dealing with equality, discrimination and intolerance.
15. Equality bodies should have the right to choose, based on published criteria established by them, the cases they take up for representation and strategic litigation and the venues in which they seek to secure the rights of people exposed to individual and structural discrimination.
16. Member States should ensure that there is a system by which people exposed to discrimination or intolerance do not have to bear court and administrative fees or representation fees, in particular in cases of structural discrimination and where their cases are taken up for strategic litigation.

## **VI. Decision-making competences**

17. The decision-making function, where assigned to equality bodies, should include the competences to:
  - a. Receive, examine, hear and conciliate individual and collective complaints of discrimination and make decisions on these complaints based on the relevant legislation including the provisions on the shared burden of proof.
  - b. Decide whether there has been a breach of civil or administrative anti-discrimination legislation.
  - c. Issue legally binding decisions that require action to put an end to discrimination, achieve full equality, and avert future discrimination and impose effective, proportionate and dissuasive sanctions including payment of compensation for both pecuniary and non-pecuniary damage, fines and the publication of the decision and the name of the perpetrator.
  - d. Ensure the execution and implementation of their decisions and publish their decisions and recommendations.
18. If equality bodies that take decisions on complaints are not provided with the competence to issue legally binding decisions and impose sanctions as set out in paragraph 17 c) and d), the equality body should be provided with the competence to:
  - a. Issue non-binding recommendations requiring action to put an end to discrimination, achieve full equality, and avert future discrimination.
  - b. Ensure the implementation of its recommendations and, as appropriate, publish its decisions and recommendations.
19. The law should provide for a right to appeal before the courts against legally binding final decisions of the equality body.
20. The law should provide that complainants have the right to choose whether they first initiate proceedings before the equality body or whether they proceed directly to the courts. Proceedings before equality bodies should suspend the time limits for the initiation of subsequent court proceedings.

## **VII. Powers to obtain evidence and information**

21. Equality bodies should, in particular when conducting inquiries and deciding on complaints, have powers to obtain evidence and information. They should include powers to:
  - a. require the production of files, documents and other material for inspection, examination and making copies thereof;
  - b. conduct on-site inspections;
  - c. question persons;
  - d. apply for an enforceable court order or impose administrative fines if an individual or institution does not comply with the above.

## **VIII. Independence and effectiveness**

22. Equality bodies should function without any interference from the State, political parties or other actors and should not be given any instructions by them; they should be fully independent at institutional and operational level.

23. The persons holding leadership positions in equality bodies should be selected and appointed by transparent, competency-based and participatory procedures. The executive should not have a decisive influence in any stage of the selection process.
24. The persons holding leadership positions should benefit from functional immunity, be protected against threats and coercion and have appropriate safeguards against arbitrary dismissal or the arbitrary non-renewal of an appointment where renewal would be the norm.
25. The law should set out any activities and affiliations which are incompatible with holding leadership positions.
26. The persons holding leadership positions should have clearly defined responsibilities, be remunerated at a suitable level, and be appointed for an appropriate time period.
27. Equality bodies should decide independently on their internal structure and how to manage their resources, have the powers to recruit and appoint their own staff and have their own premises, which should be adequate for their needs.
28. Equality bodies should be provided with sufficient staff and funds to implement all their functions and competences with a real impact. They should have a separate budget or budget line and their funding should be subject annually to the approval of parliament. There should be no arbitrary or disproportionate reduction in the budget of the equality body. Where the mandate, functions or competences of the equality body are expanded, this should be consistent with its equality mandate and be accompanied by appropriate additional funding.
29. Equality bodies should have the right to raise additional funds for the carrying out of their functions in an open and transparent manner from sources other than the State in and outside the country while ensuring that this does not compromise their independence.
30. Equality bodies should have the right to make public statements and produce and publish research and reports without prior permission from, approval by or notification to government or any other institution or external party.
31. Equality body operations should be based on the relevant international and national legal framework, standards, and case law. Their reports and recommendations should be expert and evidence based through the use of research, investigation, documentation, and impartial and independent information.
32. Equality bodies should be subject to public service law and to the financial accountability and expenditure rules that apply to public authorities.
33. Equality bodies should engage in strategic planning on a regular basis, develop and track output and impact indicators to assess their progress, and conduct evaluations at appropriate moments.
34. Equality bodies should develop a communications strategy to shape and guide their awareness raising.
35. Equality bodies should publish annual reports, which should be discussed by parliament or its relevant committees and by government, but which should not be subject to their approval.
36. Authorities and equality bodies should build a sustained dialogue on progress in the field of equality and non-discrimination. Government and other authorities should consult and cooperate with equality bodies and take their recommendations on legislation, policy, procedure, programmes, and practice into account. The law should provide that government and other authorities must reply to or take action to implement the equality body's recommendations within a certain timescale.



37. Equality bodies should establish structures for sustained involvement and contribution of stakeholders, and in particular civil society organisations, to the planning and work of the equality body.
38. The leadership, advisory bodies, senior management, and staff of equality bodies should, as far as possible, reflect the diversity of society at large and be gender balanced.
39. The staff complement of equality bodies should have the multiple skills required for fulfilling all functions and competences assigned to the equality body.

## **IX. Accessibility**

40. Equality bodies should be accessible to those whose rights they are established to protect. Accessibility requires:
  - a. Easily accessible premises, online, email and telephone services, and flexibility in meeting the time constraints of those seeking access to the services of the body.
  - b. Local outreach initiatives and local and regional offices for conducting the work of the body.
  - c. Being present with groups experiencing discrimination and intolerance at key moments and building sustained links with them as set out in § 12b.
  - d. The possibility for people exposed to discrimination or intolerance to contact and engage with the equality body in a confidential way and in a language in which they are proficient, to have face-to-face contact, and to submit complaints orally, online or in written form, with a minimum of admissibility conditions.
  - e. Adjustments in their premises, services, procedures and practices to take account of all forms of disability.
  - f. The use of easy-to-read language in publications, in particular those providing information on rights and remedies, and translation of selected publications into all languages commonly used in the country.
  - g. The functions and services of the equality body to be free of charge to complainants and respondents.
  - h. Taking steps to publicise these provisions for accessibility and to make them available.

## **X. Monitoring**

41. Monitoring of the implementation of this General Policy Recommendation will form part of the country monitoring and constructive dialogue between ECRI and the Council of Europe member States.



# Explanatory memorandum

## Introduction

1. This General Policy Recommendation (GPR) focuses on the key elements for the establishment and operation of equality bodies having the capacity to make a real impact. Such bodies are vital for advancing equality and for eliminating racism and intolerance in a sustained manner. Equality bodies play a pivotal role in making people and institutions aware of the importance of equality and in assisting them to take steps towards making equality a reality.
2. Twenty years after the adoption of the original version of GPR No. 2 in 1997, ECRI decided to revise its text in order to include the experience and the many good practices that have developed during this time. The term 'national specialised bodies', which was used in the original text, is updated to the term which is now commonly used for such bodies: 'equality bodies'.
3. Together with the original version of GPR No. 2 from 1997, the EU's equal treatment Directives (Article 13 of Directive 2000/43/EC dealing with discrimination on the ground of racial or ethnic origin and Article 12 of Directive 2004/113/EC, Article 20 of Directive 2006/54/EC and Article 11 of Directive 2010/41/EU dealing with the ground of gender) have been a driving force for the development of equality bodies. With the adoption of these directives, the EU member States accepted the obligation to set up equality bodies.
4. Almost all Council of Europe member States have also ratified the UN Convention on the Rights of Persons with Disabilities (CRPD), Article 33.2 of which provides for a similar obligation.
5. The 2001 Durban Declaration and Programme of Action of the UN world conference against racism and the Council of Europe's Commissioner for Human Rights (Opinion CommDH (2011)2) have also called for the establishment and reinforcement of such institutions. The Paris Principles on National Institutions for the Promotion and Protection of Human Rights, adopted on 20 December 1993 by the General Assembly of the UN, and the General Observations for their interpretation and implementation have served as an important guideline for the establishment of equality bodies. The UN Committee on the Elimination of Racial Discrimination has done additional substantial work in this field.
6. The recommendations in this GPR build on these texts and are intended to further strengthen the efforts of both member States and equality bodies to achieve equality and social cohesion. They should not be used in any way to limit or weaken existing equality bodies or existing guarantees for their independence and effectiveness.

### **I. Establishment of equality bodies**

#### *Paragraph 1 of the Recommendation*

7. Member States should establish a strong equality body. Some member States have set up more than one equality body to cover the different discrimination grounds (§ 4b of the GPR), all areas of the public and private sectors (§ 4c of the GPR), the whole territory of the member State (§ 4d of the GPR) and the different functions set out in this GPR (§ 10 of the GPR).
8. However, setting up too complex a system composed of too many bodies involves several risks: limited human and financial resources could be scattered, the visibility of the bodies could suffer, people might not know to which body to turn, and valuable resources could be bound up in ensuring co-ordination between these bodies instead of being available for work on the substance of their mandate. Where more than one equality body has been established and where this has proven to be effective, the authorities should ensure

coherence and close cooperation between these bodies.

9. Establishing equality bodies by constitutional provision offers strong and additional guarantees, as the abolition or substantial weakening of the equality body would be made more difficult. ECRI therefore considers it preferable to use constitutional provision. Details about the organisational structure of the body could be laid down in a separate law. If equality bodies are not established by constitutional provision, member States should proceed by organic or ordinary law passed by parliament.
10. The existence of comprehensive and clear anti-discrimination legislation constitutes another indispensable foundation for the functioning and impact of equality bodies. Guidelines for such legislation are set out in ECRI's General Policy Recommendation No. 7 on National legislation to combat racism and racial discrimination.

#### *Paragraph 2 of the Recommendation*

11. Equality bodies need to be independent, in particular of government, to be able to address issues of equality, discrimination and intolerance as they see fit and without interference from any quarter. This also provides them with the necessary freedom to find and pursue new ways of promoting and achieving equality. Accordingly, independence is a precondition for the effectiveness and impact of equality bodies. Independence is particularly important where equality bodies address (structural) discrimination emanating from authorities and where they are assigned the function of taking decisions on complaints (§ 10c of the GPR).
12. Equality bodies should have both *de jure* and *de facto* independence. The necessary safeguards for *de jure* independence should be contained in the constitutional and legal provisions establishing the equality body (see § 3 of the GPR). The manner, in which these elements should be dealt with, is set out in particular in §§ 22 to 39 of the GPR.
13. Equality bodies should be separate legal entities and, subject to the legal order of the member State, separate legal persons. The recommendation to place them outside the executive and legislature does not exclude all interactions with these bodies. The executive and the legislature should, on the contrary, consult and exchange views with the equality body on all matters falling under the latter's mandate. At the same time, the executive or the legislature should not have power to instruct the equality body with regard to its strategic planning, operations, and activities.
14. *De facto* independence means that the executive and the legislature should not try directly or indirectly to instruct or inappropriately influence the equality body. Ways of exercising such influence include cutting the budget disproportionately or removing competences and powers, threatening the equality body, its leaders or staff, and using the media or other public or private institutions to put pressure on the equality body. To protect the independence and effectiveness of the equality body from such inappropriate influence, the law should also contain safeguards with regard to the equality body's competences, powers and resources (see §§ 3 and 28 of the GPR).
15. The persons holding leadership positions in the equality body should emphasise and assert their independence when acting for the equality body. An additional safeguard is to make the exchanges between the executive, the legislature and equality bodies open and transparent to the greatest possible extent.
16. Independence needs to be paired with effectiveness to ensure that the equality body can make an impact. Effectiveness means that the equality body implements its functions and competences in a way and to a scale and standard that make a significant impact on the achievement of equality and the elimination of discrimination and intolerance. To be able to work effectively, equality bodies need, in particular, appropriate competences, powers and resources, as set out in §§ 13 and seq. of the GPR.

*Paragraph 3 of the Recommendation*

17. Details regarding the core elements, which should be regulated by the text establishing the equality body or, where the body is established through constitutional provision, in an additional more detailed law on the equality body, are described in the following paragraphs of the GPR.

*Paragraph 4 of the Recommendation*

18. The mandate of the equality body should be broad and comprehensive in scope and encompass all activities aimed at promoting and achieving equality. Achieving equality encompasses both: equal access to and exercise of rights by people experiencing discrimination and intolerance, and improvement of their individual and collective situation in various fields. These fields include, inter alia, education, employment, housing and health; political representation, power and influence on decisions; recognition, status and standing; and relationships of care, respect and solidarity with other groups and institutions.
19. The prevention and elimination of discrimination and intolerance is a foundation stone for achieving equality and includes combating all forms of racism (including xenophobia, Islamophobia, antisemitism and anti-gypsyism), homophobia and transphobia and their expression, such as hate speech and cyber hatred. The text establishing the equality body or the anti-discrimination legislation should explicitly set out that hate speech constitutes a form of discrimination and that equality bodies are mandated to counter hate speech at least through the means of civil and administrative law in accordance with § 8 of ECRI's GPR No. 15 on Combating hate speech. Whereas the police and prosecution services are the authorities primarily competent for dealing with hate crime, equality bodies should be competent to provide personal support and legal advice to people exposed to hate crime and refer them to the competent authorities (see §§ 72 and 81 of the Explanatory Memorandum).
20. Structural discrimination refers to rules, norms, routines, patterns of attitudes and behaviour in institutions and other societal structures that, consciously or unconsciously, present obstacles to groups or individuals in accessing the same rights and opportunities as others and that contribute to less favourable outcomes for them than for the majority of the population. Equality bodies should have a particular focus on addressing structural discrimination, as (i) persons involved in structural discrimination are often not aware of the discriminatory effect of their actions, (ii) structural discrimination regularly affects large numbers of persons and (iii) isolated persons are often not able to challenge structural discrimination within powerful institutions.
21. Promoting diversity means supporting a valuing of diversity and its added value in society and organisations. It includes making reasonable adjustments to take account of the practical implications of diversity. Promoting good relations between different groups in society entails fostering mutual respect, understanding and integration while continuing to combat discrimination and intolerance.
22. ECRI's mandate is limited to the discrimination grounds explicitly listed in § 4b of the GPR and to multiple and intersectional discrimination on these and other grounds falling under Article 14 of the European Convention on Human Rights and Article 1 of Protocol No. 12 to the Convention. The mandates of many equality bodies also cover other grounds mentioned in these provisions but not covered by ECRI. The recommendations of this GPR can be applied, *mutatis mutandi*, to equality bodies responsible for grounds not falling under ECRI's mandate.
23. A gender perspective should be an integral part of the work of equality bodies. This involves analysing whether the needs, situation and experiences of both women and men have been equally taken into account and addressed in the equality body's plans and

activities.

24. At the same time, the situation of transgender and intersex persons should be taken into account alongside analyses that reject binary gender categorisation (Council of Europe Commissioner for Human Rights (2015), *Human Rights and Intersex people*, p. 37 et seq.).
25. Multiple discrimination refers to discrimination experienced on two or more grounds of discrimination. Intersectional discrimination refers to a situation where several grounds of discrimination interact with each other at the same time in such a way that they become inseparable and their combination creates a new ground (§ 1c and the Explanatory Memorandum of ECRI's GPR No. 14 on Combating racism and racial discrimination in employment). As multiple and intersectional discrimination often affect victims in a particularly severe way, and as people at these intersections present a particular diversity of identity and experience, equality bodies should have a specific focus on these issues. Equality bodies should, in a similar way, take into account the needs of children exposed to discrimination and intolerance.
26. Definitions of different discrimination grounds can be found in § 7 of the Explanatory Memorandum to ECRI's GPR No. 15 on Combating hate speech.
27. Equality bodies should cover the whole of the private and public sectors, including law enforcement (see § 7 of ECRI's GPR No. 7). However, many equality bodies, in particular equality bodies established under the EU's equality directives, do not cover the full public sector and they are not competent for functions such as policing (see ECRI's GPR No. 11 on Combating racism and racial discrimination in policing), prisons and the military. Their mandate should be extended or another independent body such as a National Human Rights Institution or an Ombudsperson Institution should be tasked with the equality mandate in these areas.
28. There should be a consistent and coherent coverage of all regions of the member State, in particular in those with a federal structure, and there should be no territory without coverage by an equality body. The mandate should, as appropriate, also cover certain persons outside the country, such as citizens living abroad or people seeking asylum from outside the country.

## **II. Institutional Architecture**

### *Paragraphs 5 to 9 of the Recommendation*

29. Over recent decades, a rich and diverse system of equality bodies has developed in the 47 member States. Details are documented in ECRI's country monitoring reports.
30. In some member States one equality body has been set up to cover multiple grounds, in others several equality bodies have been set up to cover single or multiple grounds. In all cases it is important to avoid any hierarchy emerging between the grounds and to ensure that an appropriate focus is given and appropriate resources are allocated to each ground and to the intersections between them.
31. Stand-alone equality bodies have an advantage in being able to concentrate on their equality mandate, have a dedicated budget for equality issues and develop specific expertise and visibility in the field of equality.
32. In some member States, the equality mandate has been attributed to a multi-mandate institution that also encompasses a human rights mandate and/or an Ombudsperson mandate. In other member States, single and multi-ground equality bodies have been merged with National Human Rights Institutions and Ombudsperson Institutions.
33. Locating the equality mandate in a multi-mandate institution can have a positive potential to address issues of equality, discrimination and intolerance more comprehensively and

effectively by using all of its mandates. However, the realisation of this potential requires strong and innovative leadership in achieving efficient co-ordination and integration between the different mandates.

34. Within such multi-mandate institutions there can be tensions, particularly in the aftermath of a merger. Each mandate comes with its own tradition, approach and objectives. It is important to simultaneously respect and sustain this diversity and to progress integration of the merged mandates, in order to improve the impact of the body.
35. § 7 of the GPR contains recommendations to ensure an appropriate focus on the equality mandate in such institutions. A clear leadership structure for the equality mandate helps to ensure “ownership” for this mandate. In addition, there should be a strategic plan for the equality mandate (see § 33 of the GPR) and the implementation of activities in relation to equality issues should be organised in such a way as to ensure visibility for this mandate. An advisory committee (see § 114 of the Explanatory Memorandum) can help to improve the impact under the equality mandate. The term “equality” could also be included in the name of the institution.
36. The approach of merging or locating equality bodies in multi-mandate institutions should be pursued only where it does not weaken the equality mandate and where an appropriate focus on and appropriate resources for this mandate are ensured. Otherwise, it is preferable to establish or retain a stand-alone body.
37. Where the mandate of a multi-mandate institution is confined to the public sector, its equality mandate should be expanded to the private sector (and vice versa where the existing mandate covers only the private sector). This is preferable to tasking another equality body with the additional mandate.
38. Where equality bodies form part of a multi-mandate institution, the recommendations of this GPR should apply to the whole institution as far as possible. Whereas some of the GPR’s recommendations will apply only to the institution’s activities in the field of equality, others, such as the recommendations about the equality body’s independence, need to be applied to the whole institution.
39. In multi-mandate institutions, member States should harmonise, as far as possible, the competences and powers with regard to each of these mandates. In some cases, such multi-mandate institutions have been granted certain competences and powers only with regard to one mandate rather than to all mandates. In other cases, the criteria for the exercise of such competences and powers are different from one mandate to another. In order to achieve effective protection and impact over all mandates, these differences should be eliminated and this harmonisation should, where possible, be made to the highest standard available among the different mandates (“levelling-up”).
40. Equality bodies should co-ordinate and co-operate with each other, where there is more than one such body, and with other human rights institutions, including National Human Rights Institutions and Ombudsperson Institutions. This co-ordination and co-operation should aim to maximise their overall impact in relation to the equality mandate. They should also ensure that as broad a coverage of equality issues as possible is achieved, issues of intersectionality are duly addressed, cases are cross referred, and there is no duplication of effort. This co-ordination and co-operation involves dialogue in their planning processes, joint initiatives in their work, and sustained ongoing communication.

### **III. Functions**

#### *Paragraphs 10 to 12 of the Recommendation*

41. Equality bodies fulfil different functions. Three main functions can be identified, for which this GPR uses the terms: (i) promotion of equality and prevention of discrimination (promotion and prevention function), (ii) support to people exposed to discrimination and intolerance and litigation on their behalf (support and litigation function) and (iii) taking

decisions on complaints (decision-making function).

42. As documented in ECRI's country monitoring reports, the situation in the member States is diverse also with regard to these functions: in some member States, all three functions have been assigned to equality bodies, in others only one or two. Whereas some member States have assigned all functions to the same equality body, others have distributed them among different equality bodies. In several member States, the decision-making function is assigned entirely to the judiciary; in others, the support and litigation function and the promotion and prevention function have been partly or fully delegated to civil society or other institutions. Government and the authorities also generally make a significant contribution to the promotion and prevention function.
43. ECRI considers, as it had also recommended in § 24 of its GPR No. 7, that all member States should assign to equality bodies the two functions of (i) promotion and prevention and (ii) support and litigation. Civil society organisations can and should play a role and make a valuable contribution in relation to these two functions alongside the equality body. People exposed to discrimination and intolerance often initially turn to civil society organisations, which subsequently encourage and help them to contact the equality body. Equality bodies and civil society organisations need to co-operate in these areas with a view to finding the best solution to enforce the rights of people exposed to discrimination and intolerance and co-ordinating their efforts.
44. In addition, member States can entrust a separate equality body with a decision-making function or assign this function fully to the judiciary. Equality bodies with a decision-making function can offer a more accessible, less adversarial, and more specialised venue for discrimination cases than the judiciary. Through the concentration of discrimination cases before one body, they allow for the development of expertise and consistent case law and thereby contribute to the implementation of and respect for the anti-discrimination legislation. Within the judiciary, a similar specialisation could be achieved by the concentration of discrimination cases in a small number of courts or court chambers or divisions specialising in this subject.
45. The support and litigation function and the decision-making function should preferably be assigned to different bodies. Equality bodies need to be impartial when exercising the decision-making function, whereas they are on the side of and act as advocates for the complainant when they implement the support and litigation function. Assigning both functions to the same body may affect stakeholders' trust in its impartiality, which is indispensable for exercising the decision-making function in a credible way.
46. Where both functions are nevertheless located in the same body, each function should be implemented by a different unit or by different staff and this should be clearly visible to the public.
47. Bodies which are responsible for both the decision-making function and the promotion and prevention and/or the support and litigation functions, are often obliged to use most of their resources on the decision-making function to ensure timely and high quality decisions in large numbers of cases. As there is a danger that such bodies may not be able to implement both the support and litigation and the promotion and prevention functions adequately, it is important to ensure that they have appropriate resources for these two functions.
48. Equality bodies should be free to choose, including in the context of their strategic planning (see § 33 of the GPR), which parts of their mandate, functions and competences they will focus upon at different times. This enables them to tailor their strategy and activities to the specific needs of the situation and gives them the flexibility to adapt to the ever-changing environment. Such flexibility is also needed to make the best use of limited resources.



#### **IV. Promotion and prevention competences**

##### *Paragraph 13 of the Recommendation*

49. Equality bodies need a series of competences for the implementation of the promotion and prevention function. The first competence described in § 13a of the GPR is to undertake a complete range of promotion and prevention activities to fulfil their broad mandate as defined in § 4 of the GPR. The following parts of § 13 of the GPR describe the most important elements in a more detailed manner.
50. The dialogue between equality bodies and the persons and groups experiencing discrimination and intolerance lays the basis for planning and successfully implementing the promotion and prevention function. Having a regular in-depth dialogue with groups exposed to discrimination and intolerance and their representative organisations ensures knowledge of the full range of discrimination and intolerance they experience and of the priority issues that need to be tackled in order to improve their situation. It also enables identification of successful ways for resolving patterns of individual and structural discrimination.
51. This dialogue should seek to develop an understanding of the situation and the concerns of groups exposed to discrimination and intolerance; to involve these groups and their representative organisations in the activities and structures of the equality body (see § 37 of the GPR); to initiate processes of mutual education through the sharing of expertise and knowledge; and to ensure a regular presence of the equality body within these communities to support trust building and the reporting of instances of discrimination and intolerance.
52. The dialogue should encompass a wide range of societal groups and involve a broad variety of organisations, including, for example, grass roots organisations within these communities, minority consultative bodies, religious communities, civil society organisations and other stakeholders working with groups exposed to discrimination and intolerance such as trade unions and professional organisations.
53. Equality bodies should have the right to take up, on their own initiative, all matters falling under their mandate. As people exposed to discrimination and intolerance are often in a vulnerable situation and are not able to address structural discrimination on their own, it is important that equality bodies can conduct inquiries (in some member States the term investigation is used) and collect evidence on their own initiative in order to establish, expose, and address the, sometimes invisible, norms and processes within institutions that end up disadvantaging particular groups. These inquiry activities are important in uncovering and establishing the evidence of discrimination or intolerance that ultimately enables these experiences to be redressed. In cases and inquiries involving specific individuals, the equality body should act only with their consent.
54. Research is an important means of developing the knowledge and understanding needed to identify, analyse and tackle the problems that groups exposed to discrimination and intolerance face. Sound quantitative and qualitative data on equality, discrimination and intolerance are fundamental to inform the general public, policy-makers and practitioners about the nature and extent of discrimination and intolerance. They also help in identifying the means for achieving equality and motivating decision-makers to take remedial action. Research and data further serve the equality body in the planning, implementation, monitoring and evaluation of its activities.
55. Research comprises wide-ranging activities and includes surveys, studies and data collection conducted by the body itself and analysis of equality surveys, studies and data from various sources. Collecting and systematising case law on equality, discrimination and intolerance also provides added value.

56. Through their awareness-raising activities, equality bodies should promote understanding of how open and hidden discrimination operates and spread knowledge about what is required for greater equality. Equality bodies should provide information about rights, remedies, and responsibilities under equal treatment legislation and support a valuing of equality and diversity in society and within institutions.
57. These activities should target a range of audiences including the general public, politicians, senior officials and other decision-makers, employers, trade unions, human resource professionals, service providers, employees in the public and private sectors, educationalists, religious communities, civil society organisations, the judiciary, and other legal professionals, the police and media personnel.
58. Equality bodies should develop specific awareness activities for people and groups exposed to discrimination or intolerance. Empowering and helping these people and groups to take the necessary steps to tackle discrimination and intolerance is an important contribution to improving their situation. A first step is to spread knowledge about equal treatment and hate speech and hate crime legislation and to dispel any perception that the experience of discrimination and intolerance is normal and that nothing can be done to change it. Equality bodies should furthermore strengthen the individual and collective capacities of members of groups exposed to discrimination and intolerance by training them about their rights, available legal remedies and how to exercise them. In addition, they should facilitate their access to other bodies mandated with protecting them, such as the police, the prosecution services, regulatory bodies in the field of media, and educational and labour inspectors. Together with these institutions, equality bodies should analyse the root causes of under-reporting of discrimination and intolerance and take the necessary steps to ensure that cases of discrimination and intolerance are systematically reported to the competent bodies.
59. Equality bodies should promote the development, exchange and implementation of good practice in the field of equality, discrimination and intolerance. A particular focus should be placed on politicians, senior officials, other decision-makers and institutions in the public and private sectors. Equality bodies should provide guidance and support to bring an equality perspective into policy-making and the legislative process and to implement internal equality and diversity systems and safeguards. Good practice in the field of equality includes the development and implementation of equality policies in one's organisation and area of responsibility, establishing a post with responsibility for equality, training staff, consultation with those experiencing inequality, gathering equality data, and assessing the impact of key decisions on advancing equality and preventing discrimination and intolerance. Such good practice could also include the use of anonymised job application procedures, or facilitating access to identity documents or school enrolment for members of groups exposed to discrimination and intolerance.
60. Positive action, as provided for under § 5 of ECRI's GPR No. 7, involves measures to prevent or compensate for disadvantage suffered by groups exposed to discrimination and intolerance and to facilitate their full participation in all fields of life. Equality bodies should promote the use of positive action in particular in areas where deep-rooted, long-lasting structural discrimination needs to be addressed. Examples include special support in pre-schooling and schooling for groups exposed to discrimination and intolerance, and the targeted recruitment of members of such groups into employment in the public and private sectors.
61. In accordance with §§ 2 and 8 of ECRI's GPR No. 7, national anti-discrimination legislation should place public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions. In member States where such a statutory duty does not yet exist, equality bodies should promote the implementation of this recommendation.

62. Where such a statutory duty has been introduced, equality bodies should raise awareness about this general duty of mainstreaming equality in all activities of public authorities and support and monitor its implementation. To this end, equality bodies should develop standards that could for example include the development and implementation of guidelines for equality impact assessments and equality programmes (see in this respect § 27 of the Explanatory Memorandum to ECRI's GPR No. 7 and the Explanatory Memorandum to § 1 of its GPR No. 14, and for the sectors of policing and education the recommendations in its GPR No. 11 and section II.1 of its GPR No. 10). Equality bodies should furthermore assist authorities during the implementation of such standards through training and guidance material, and be involved in their regular assessment through monitoring and reviews of their impact. Where appropriate, equality bodies should enforce such standards or seek to have them enforced through bringing proceedings before the competent authority or by means of judicial review.
63. The competence to monitor legislative and executive acts at federal, regional and local level should be complemented by the competence to challenge them by litigation as set out in § 14 of the GPR.
64. Equality bodies should motivate and assist organisations responsible for providing training to develop and carry out initial and ongoing training on equality and non-discrimination. Key target groups should include politicians, senior officials and other decision-makers, employers, human resources professionals, trade unions, the judiciary, other legal professionals, the police, media personnel, educationalists, companies and service providers. Equality bodies could themselves provide such training, in particular where no other provider does so.
65. In order to make a real impact, equality bodies should not end their work with the issuing of recommendations, but also need to monitor their implementation. In many cases, it will be helpful to open a dialogue with those to whom the recommendations are addressed. Through this dialogue, equality bodies could explain their recommendations, show how they could be implemented and motivate the persons responsible to take the necessary steps. Equality bodies should track the progress in implementation of their recommendations and regularly publish an overview of their implementation status.
66. Equality bodies should also contribute to tracking and monitoring the implementation of relevant recommendations made by other similar bodies (see § 13n and o of the GPR).
67. A number of intergovernmental organisations, such as the United Nations, the Council of Europe and the Organization for Security and Co-operation in Europe and their associated courts, commissions and committees, have a mandate that includes promoting equality and preventing and combating discrimination and intolerance. There are considerable advantages for equality bodies in co-operating closely with such intergovernmental organisations. Equality bodies should promote ratification and implementation of relevant international treaties and disseminate knowledge about the standards, case law, reports and recommendations emanating from intergovernmental organisations. Connecting their work with the international framework increases the legitimacy and impact of the equality body's actions. Where necessary, equality bodies should promote the translation of such texts into the languages commonly used in their country.
68. Equality bodies should take part in the monitoring, advisory and co-operation activities of intergovernmental organisations. Within this framework, they should provide information and suggestions for recommendations. This enables intergovernmental organisations to take up the concerns and use the expert knowledge of equality bodies, base their own recommendations on these concerns and expert knowledge, give additional legitimacy to the positions of equality bodies and contribute to upholding and fostering their independence and effectiveness. Equality bodies should, in turn, promote and monitor the implementation of the recommendations of intergovernmental organisations at national level.

69. Equality bodies work within a broader framework of organisations and institutions concerned with equality, discrimination and intolerance. Building networks between these organisations, exploring their concerns and helping to co-ordinate their activities within these networks will increase their impact on the common goal. Equality bodies can in this way serve as a hub around which these organisations connect and exchange. Such networks should be used to develop shared understanding and objectives in the field of equality and to implement joint activities. In addition, co-operation with lawyers willing to work on a pro bono basis can be particularly important for both the promotion and prevention and the support and litigation functions.
70. Co-operation with equality bodies in other member States is an important source of peer learning, continuous improvement and strengthening of equality bodies. Equinet, the European network of equality bodies, for example, has a valuable role in this regard.

## **V. Support and litigation competences**

### *Paragraph 14 of the Recommendation*

71. People exposed to discrimination and intolerance face multiple problems and obstacles in addressing inequality. Many of them have neither the capacities nor the resources to enforce their rights. Equality bodies, therefore, have an important role in helping them to do so.
72. Equality bodies should have the right to receive and take action on complaints of discrimination and intolerance, including hate speech. To facilitate the submission of such complaints, they should ensure that they are easily accessible to people exposed to discrimination and intolerance (see § 40 of the GPR). These persons often need, as a first step, personal and emotional support in order to deal with the discrimination or intolerance they experience. At the next level, they need legal advice to clarify their rights and possible ways of securing these rights. They then need legal assistance in approaching public and private institutions, decision-making bodies and the courts with a view to realising their rights.
73. The term “institution” in this context encompasses all private and public sector institutions that have a role in addressing or resolving complaints about discrimination or intolerance. “Adjudicatory bodies” include any bodies that have adjudicatory competences placed outside the court system, such as equality bodies with a decision-making function.
74. Conciliation can be a quick and consensual process to put an end to discrimination or intolerance. The use of conciliation can be particularly advantageous where discrimination or intolerance has occurred in an ongoing relationship, such as an employment or leasing relationship. Conciliation should be entrusted to an impartial person or unit in or outside the equality body.
75. Equality bodies should have the right to represent people exposed to discrimination and intolerance through their own staff or to engage and pay for a lawyer to represent the person concerned before institutions, adjudicatory bodies and the courts.
76. In cases of discrimination, there are numerous avenues of redress from which equality bodies should choose the most effective to secure the complainant’s rights. In the fields of school enrolment problems or forced evictions of Roma settlements, for example, the equality body could initiate administrative proceedings before the competent authority or initiate proceedings before an equality tribunal or a regular court. In other cases, it may choose proceedings before a private sector institution such as a press council. It is also important to give equality bodies access to the constitutional courts in cases addressing the compatibility of legislative or administrative acts with the fundamental right to equal treatment. At international level, equality bodies should have the right to bring cases before international or regional courts, and the committees dealing with individual or collective complaints such as the Council of Europe’s Committee of Social Rights or the

United Nation's Committee on the Elimination of Racial Discrimination.

77. Equality bodies need the competence to bring cases in their own name where a whole category of persons is discriminated against and hence there is no named complainant. An example would be incitement to hatred by a politician against all LGBT persons. The same competence is needed where the person exposed to discrimination and intolerance feels unable to bring forward a case in his/her own name, for example in areas where people are fearful of victimisation. Member States should explore all possible approaches in order to confer this competence upon equality bodies.
78. Institutions, adjudicatory bodies and courts should use the expertise of equality bodies in their proceedings. Equality bodies should, for their part, have the right to intervene in such proceedings if they are of the opinion that their expertise could assist in dealing with the case.
79. There are legally defined procedures for the execution of the decisions of courts, adjudicatory bodies and institutions. At the same time, there is room for additional activities by equality bodies to facilitate the implementation of such decisions. These can include correspondence with the individuals, bodies or institutions to whom decisions have been directed, advice to these persons, bodies and institutions, site visits, and joint action with other relevant entities, such as inspectorates, to ensure that the decisions are implemented. Follow-up activities should be implemented in a timely and systematic manner.

*Paragraph 15 of the Recommendation*

80. While helping individual complainants, equality bodies should also develop and implement a policy of strategic litigation. Strategic litigation consists of identifying and carefully selecting cases for litigation in order to clarify, promote and protect the rights of a whole group of people who are in a similar situation, and ensuring widespread publicity for such cases and dissemination of their results including through the media. In the field of equality, the aim of strategic litigation is to (i) generate case law that clarifies the interpretation of the equal treatment legislation, (ii) ensure a critical mass of casework on the different grounds covered, (iii) develop case law on issues of structural discrimination, (iv) generate publicity and use this publicity to sensitise individuals and institutions about their obligations under the equal rights legislation and (v) motivate individuals and institutions to respect these obligations and to bring about societal change. Through such strategic litigation and its media coverage, equality bodies can substantially improve the situation of groups exposed to discrimination and intolerance and increase the impact of their support activities.
81. As equality bodies attract increasingly high numbers of complaints, it is impossible for them to provide representation to all persons approaching them. While they should provide initial support to all complainants and, where appropriate, referral to other competent institutions, they should have the possibility to prioritise certain cases and provide representation in those cases. This would enable them to make the most effective use of their resources and to pursue strategic litigation. To ensure transparency and consistency, equality bodies should publicise the criteria on which they base these choices.

*Paragraph 16 of the Recommendation*

82. People exposed to discrimination and intolerance are often unable to bear the cost and financial risk of proceedings initiated to secure their rights. Cases often need to be fought through several instances, in particular cases about structural discrimination and cases selected for strategic litigation. Costs and financial risks include (i) court and administrative fees; (ii) the cost of the complainant's own legal representation and (iii) exposure to the risk of having to pay the other party's legal fees in the event that the complainant loses the case.

83. In particular, in cases of structural discrimination and cases taken up for strategic litigation there should be a system to ensure that people exposed to discrimination and intolerance do not have to pay any such fees or costs. Member States could draw from existing good practice examples and address this situation in a range of different ways, for example by: (i) exempting people exposed to discrimination from court fees; (ii) providing legal aid in cases of discrimination that covers 100% of fees and costs; (iii) empowering equality bodies to recommend cases to courts “free of charge” so that people exposed to discrimination and intolerance do not have to pay court fees and get their legal representation for free through the state; (iv) ensuring that the complainant would not be liable for the costs of the other side in the proceedings where a case is unsuccessful but has raised important issues needing to be clarified or is in the public interest; (v) providing for class actions where a substantial number of complainants can combine together to take cases thereby reducing their exposure to costs or (vi) providing sufficient resources to enable equality bodies to represent people exposed to discrimination and intolerance through their own staff or paying for a lawyer to represent the person concerned, as already outlined in § 75 of the Explanatory Memorandum.

## **VI. Decision-making competences**

### *Paragraphs 17 and 18 of the Recommendation*

84. Many member States have given equality bodies the competence to take decisions on complaints about discrimination and intolerance. Among these equality bodies, two models can be distinguished: the first group of equality bodies can issue binding decisions and some of them can also impose sanctions (§ 17 of the GPR). The second group of equality bodies issues recommendations, which in practice can have a considerable impact, even if they are not binding and do not impose sanctions (§ 18 of the GPR). Institutions that combine an Ombudsperson mandate with an equality mandate often belong to this second group.
85. Equality bodies taking decisions on complaints can be similar to courts and deliver judgments or decisions, or be similar to independent administrative authorities and issue administrative acts or decisions.
86. Such bodies should be competent to receive complaints about discrimination including hate speech. It should be explicitly set out in the law that the rules on the shared burden of proof in discrimination cases (§ 11 of ECRI’s GPR No. 7) apply to the proceedings before them. Additional provisions on the procedure before such bodies are needed, which should enshrine basic procedural guarantees and could be drawn from the codes of civil and administrative procedure. It is beyond the scope of this GPR to set out the details of such provisions.
87. If member States set up an equality body with a decision-making function, they should provide it with appropriate decision-making and follow-up competences. The equality body should preferably have the competence to take legally binding decisions (first model § 17) rather than being limited to non-binding recommendations (second model § 18). Under both models, equality bodies that take decisions on complaints should provide reasoning for and publish their decisions, and have the competence to issue decisions aimed at putting an end to discrimination (for example a requirement to allocate Roma children evenly among all classes of a school), to achieve full equality (for example to require payment of an equal salary to the complainant) and to avert future discrimination (for example to put in place a regulation for the allocation of pupils among the different classes). Furthermore, they should preferably have the additional competence to impose effective, proportionate and dissuasive sanctions in discrimination cases including the payment of compensation for both pecuniary and non-pecuniary damage (§ 12 of ECRI’s GPR No. 7), fines and the publication of the decision with the name of the perpetrator (first model § 17). The complainant’s name should be published only with his/her consent.

88. Under the first model, member States should establish a system for the execution of the equality body's decisions. This could draw on the legislation on the execution of court or administrative decisions.

*Paragraphs 19 and 20 of the Recommendation*

89. It should be possible to appeal to the courts in the case of legally binding decisions, but this should apply only to final decisions on the merits of the case in question. Non-binding recommendations should not be subject to appeal.
90. If a complainant has chosen to initiate proceedings first before the courts, he/she should not be allowed to initiate subsequent proceedings before a decision-making equality body on the same matter.

**VII. Powers to obtain evidence and information**

*Paragraph 21 of the Recommendation*

91. Equality bodies need appropriate powers to obtain evidence and information with respect to all three functions outlined in this GPR. The powers of decision-making bodies could be more far-reaching than those of equality bodies mandated only with the promotion and prevention and the support and litigation functions.

**VIII. Independence and effectiveness**

*Paragraph 22 of the Recommendation*

92. For the best possible impact on and outcomes in the field of equality, member States should make a number of arrangements to ensure the equality body's independence and effectiveness (see also §§ 2 and 3 of the GPR).

*Paragraphs 23 to 26 of the Recommendation*

93. Leadership of high quality and integrity is essential for the independence and effectiveness of equality bodies. This GPR therefore contains several recommendations concerning the leadership of equality bodies.
94. As documented in ECRI's country monitoring reports, the leadership models for equality bodies in the member States vary considerably. Equality bodies can be led by a full-time or part-time executive chairperson or president of the board of the body, a single appointee (for example an Ombudsperson), with deputies responsible for different subject matters (for example deputy Ombudspersons), or a senior manager (for example a person recruited to head the equality body, often accountable to a board).
95. The primary safeguard for securing independent leadership of equality bodies is to select the people for leadership positions in a transparent and competency-based process with safeguards against any decisive influence by the executive in any stage of the selection process, in particular during the phase of nomination or (pre-) selection of candidates and during the decision-making phase. This process should be participatory, meaning that organisations representing or working with groups exposed to discrimination and intolerance should be involved in it. Being elected by the parliament in an open and transparent process is one way to satisfy these conditions.
96. The persons holding leadership positions should benefit from the same level of protection against threats and coercion as comparable representatives of the state. The law should contain provisions about the conditions under which persons holding leadership positions can in exceptional circumstances be dismissed or excluded from the selection process that could lead to a renewal of the mandate. Changes in the mandate or restructuring of the institution should not lead to the dismissal of persons holding leadership positions. Providing these persons with an appropriate level of immunity in relation to the carrying

out of their functions is an additional safeguard for independence. Details and standards can be found in the Council of Europe's Venice Commission's report on the Scope and Lifting of Parliamentary Immunities, CDL-AD(2014)011.

97. The persons holding leadership positions should not carry out activities or be members of bodies or institutions that might undermine the independence of the equality body, or otherwise compromise their roles. They should not, for example, be government ministers, senior officials, or heads of professional organisations.
98. Strong and stable leadership is crucial for the impact of equality bodies. Those responsible for leading equality bodies must achieve progress and impact in the different fields of their mandate while negotiating an ever-changing political context and upholding the mandate and independence of the body. They also need to build professional and committed staff, focused on the strategic priorities of the organisation, and to manage an array of different relationships with various stakeholders.
99. To ensure efficient leadership, the responsibilities of the persons holding leadership positions should be clearly defined. There should be at least one full-time or part-time paid leader concentrating on managing and directing the equality body, who is paid a competitive salary. The length of their mandate should allow time for them to make an impact and secure their independence. It could, for example, vary between four and five years with the possibility of renewal or cover a longer period without renewal.

*Paragraph 27 to 29 of the Recommendation*

100. Another important safeguard for the independence of equality bodies is the right to decide independently on their internal structure, the management of their budget and financial and human resources, and the hiring of their staff, and to identify and occupy their own, separate premises. These premises should, in size and purpose, correspond to the needs of the equality body. Secondment of staff from public sector institutions should be limited as this could impair the independence of the equality body and affect perceptions of its independence.
101. The adequacy of funding and staffing of equality bodies is a key factor for their effectiveness and should be calculated on the basis of objective indicators. These could include (i) the size of the member State and of its population, (ii) the level and nature of reported and unreported incidents of discrimination and intolerance including hate speech, (iii) the range, capacity and contribution of other bodies working on equality, discrimination and intolerance, (iv) the costs involved for the equality body in implementing its functions and competences to a scale and quality necessary to make an impact and (v) the scale of the national budget of the member State. Peer-to-peer reviews with other member States could assist in determining the appropriate level of resources for the equality body.
102. Transparency about the use of funds should be achieved, either through the annual report of the equality body or in another appropriate manner.
103. Entitlement to raise additional funds from sources other than the state, for example the EU, the Council of Europe or private philanthropic organisations, can contribute to increasing the impact of equality bodies so long as it does not compromise their independence.

*Paragraph 30 of the Recommendation*

104. The right to make public statements and to produce and publish documents, including annual reports, thematic reports, special reports and investigation reports, without prior approval or notification is an important element of independence. Reports should not require approval by parliament or government.



*Paragraph 31 of the Recommendation*

105. To underpin their independence and credibility, equality bodies should root their work in the relevant international and national legal framework, standards, recommendations and case law. Their work should be evidence-based and take into account and examine the views of relevant institutions and people.

*Paragraph 32 of the Recommendation*

106. It is compatible with the independence of equality bodies that they are subject to public service law and financial accountability rules. These should not be misused to hinder the activities of the equality body. Where appropriate, the rules applying to the judiciary in this regard could also be applied to equality bodies.

*Paragraphs 33 to 34 of the Recommendation*

107. Strategic planning and working in regular planning and management cycles are important for prioritising core issues, maximising impact, improving quality of work, using resources efficiently, and ensuring ongoing learning and continuous improvement within the equality body. These planning and management cycles typically involve analysing the outstanding challenges, defining goals and objectives, planning and developing activities, implementing activities, evaluating their impact and reflecting on work completed and progress made. They should be used to ensure that equality bodies pursue a strategic mix of activities across all their functions that will advance their objectives and maximise their impact (see § 12 of the GPR).
108. Equality bodies should establish indicators, baselines and targets for core objectives and activities enabling them to measure the input of resources into activities, the outputs from these activities and the impact of individual activities and the overall impact of the equality body. They should regularly assess their work by self-assessment and, from time to time, external evaluation and establish internal processes and information flows that involve all members of the staff in collective learning and continuous improvement. These planning and management processes should be simple but effective and not put too much of a strain on resources.
109. Given the complexity of the communication challenge faced by equality bodies, they should develop a separate communications strategy. This strategy should identify the communication objectives, the priority audiences targeted, core messages to be communicated, the various means of communication to use and the efficient use of available resources.
110. The core audiences and messages will usually include (i) the general public so as to support a societal valuing of and positive attitudes towards equality, diversity and non-discrimination, improve understanding of these issues and increase motivation to contribute to equality; (ii) the full range of institutions in the public and private sectors so as to provide knowledge and understanding of their obligations under equal treatment legislation and to foster and expand their motivation and capacity to fulfil and go beyond these obligations by implementing effective equality and diversity systems; (iii) groups exposed to discrimination and intolerance to inform them of their rights and to build the necessary trust, confidence and capacity that enables them to exercise their rights.

*Paragraphs 35 to 36 of the Recommendation*

111. The legislature, the executive and equality bodies all have important roles in promoting and achieving equality and in preventing and combating discrimination and intolerance. To maximise progress towards these shared goals, equality bodies should regularly discuss key issues and the implementation of recommendations with highest level decision-makers in the legislature and the executive. Annual, thematic and other reports and the recommendations made therein serve as an excellent basis for such regular exchanges.

Enshrining in the law at least one dialogue per year with the legislature and executive on the annual report sets out the necessary institutional framework for this co-operation.

112. Annual reports should identify the core issues arising with respect to equality, discrimination and intolerance and the recommendations of the equality body. They should also give an account of the activities of the equality body and the outcomes of these, including disaggregated data on discrimination complaints and their outcomes.
113. Authorities in general, and not only the highest level decision-makers mentioned in § 111 of the Explanatory Memorandum, should engage in regular dialogue with equality bodies. To this end, they should proactively refer draft legislation, policy and executive acts to equality bodies for consideration of their impact on equality and non-discrimination. Equality bodies should for their part approach authorities with comments and recommendations. Authorities should be open to such dialogue.

*Paragraph 37 of the Recommendation*

114. Equality bodies should not only establish external networks and co-operation with stakeholders (see § 12b of the GPR), but also involve stakeholders, in particular groups exposed to discrimination and intolerance and their representative organisations, in their own structures and work. A valuable tool for this involvement is the establishment of an advisory committee with a membership drawn from these groups and organisations. This committee would be involved in the strategic planning and monitoring of current and future work and plans of the equality body. A wider range of stakeholders including civil society, academia, employer and employee associations and the media could similarly be included in this committee or a separate committee. Equality bodies could furthermore set up temporary work and project groups with stakeholders to advance particular pieces of work and to set up and run joint activities and projects.

*Paragraph 38 to 39 of the Recommendation*

115. Equality bodies should serve as a model with regard to diversity and gender balance in all areas of their operations. Recruiting leaders and staff with various backgrounds and personal experiences will increase the equality body's capacity to understand, interact with and improve the situation of groups exposed to discrimination and intolerance. Diversity among the leadership of the equality body could be achieved by setting up a governing body and advisory committee with a membership drawn from the groups and organisations referred to in § 114 of the Explanatory Memorandum. Diversity among management and staff members could be achieved through a recruitment process based on equality and diversity systems, including positive action measures to recruit staff from underrepresented groups exposed to discrimination and intolerance.
116. Equality bodies should work towards achieving gender balance in their structures and staff and use positive action to achieve this goal, where appropriate.
117. Equality bodies have a broad range of competences (see §§ 13 to 18 of the GPR) and deal with issues of equality, discrimination and intolerance in a variety of fields. To carry out all necessary activities, their staff members need to be from different professions (for example educationalists, social scientists, lawyers) and have diverse competences (for example communication, counselling, research, data collection, drafting, legal and management skills).
118. Staff training within equality bodies is important to ensure that staff build up and maintain the full range of up-to-date knowledge, skills and awareness required to fulfil their roles to best effect.

## **IX. Accessibility**

### *Paragraph 40 of the Recommendation*

119. As members of groups exposed to discrimination and intolerance often face multiple problems and obstacles (see § 71 of the Explanatory Memorandum), equality bodies should pay particular attention to ensuring that they are easily accessible for them.
120. To facilitate the initial contact, equality bodies should offer members of groups exposed to discrimination and intolerance different and easy ways for accessing information and for making contact. Accessible premises, online, email and telephone services are essential resources in this context.
121. It is equally important to set up, as appropriate, local and/or regional offices for a permanent presence and/or to develop local and/or regional outreach initiatives for a regular temporary presence with groups exposed to discrimination and intolerance throughout the country. This is particularly important where such groups live in remote areas and in member States with a large territory. Such activities could put a special focus on regions and municipalities with a strong presence of groups exposed to discrimination and intolerance or high levels of discrimination and intolerance. For members of such groups who do not live close to the central, regional or local offices of the equality body, it is also important to be able to contact the equality body online and to use technologies such as video conversations.
122. People who experience (multiple) discrimination and intolerance come from diverse groups with their own specific needs and characteristics. Some may not be proficient in the official language(s) of the country, they may be illiterate, may be fearful of contacting authorities or may not be able to contact the equality body during normal office hours. A key element for accommodating this diversity of needs is flexibility in the procedures and practices of the equality body. Equality bodies should therefore regularly analyse the varying needs of different groups exposed to discrimination and intolerance and develop a procedure for reasonably adjusting to these needs as from the initial contact. Examples of such adjustments would be providing for the possibility to interact with the equality body in different languages, to have face-to-face contact and oral communication, to meet the equality body in a confidence-inspiring environment, to be available to a certain extent outside normal office hours and to provide care for children during discussions with parents. Staff should be aware of such obstacles and characteristics, be prepared to explore the specific needs of each person exposed to discrimination and intolerance and be ready to implement the necessary adjustments as from the first contact.
123. Another key element for ensuring low-threshold access is to place minimal requirements on people when they make their first contact with the equality body. It should be possible to submit complaints orally and with a minimum of admissibility conditions.
124. The term 'disability' should be understood as in Article 1.2 of the UN Convention on the Rights of Persons with Disabilities.
125. Members of groups exposed to discrimination and intolerance often fear they may suffer additional harm when seeking the assistance of an equality body. Therefore it should be possible to contact equality bodies in a confidential way to minimise this risk. Equality bodies should strive to prevent and take action against any such victimisation of people exposed to discrimination and intolerance in the course of the procedure by making use of the legal provisions that prohibit any such retaliatory measure (see § 27 of ECRI's GPR No. 7).



