BRIDGING THE DIVIDE?

Integrating the Functions of National Equality Bodies and National Human Rights Institutions in the European Union

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Executive Summary

INTRODUCTION

National equality bodies (NEBs) and national human rights institutions (NHRIs) play a key role in promoting respect for the principle of equal treatment and wider human rights values respectively. Both types of body often engage in similar activities, perform similar functions, have similar legal powers and seek to achieve similar objectives. However, in the majority of European states, NEBs and NHRIs are viewed as performing separate roles. This reflects the existence of a broader divide between equality and human rights – even though equality is a fundamental human right, it is common for equal treatment and human rights to be treated as different and distinct spheres of concern by national governments, European institutions and civil society.

However, a number of EU member states have recently established single combined bodies which are designed to perform the functions of both NEBs and NHRIs. Such an integration process has either been recently completed or is currently underway in a number of EU member states, including Belgium, France, Ireland, the Netherlands and the UK (specifically in Britain).

The emergence of this new hybrid model of institution is a relatively new development in the EU. It has received little attention in the academic literature or in official reports. This gap is striking, given that many of the new hybrid institutions have been formed by the merger of some of the most prominent, best-funded and longest-established NEBs and NHRIs in the EU. The establishment of these new integrated institutions gives rise to an interesting array of issues: it represents an attempt to 'bridge the divide' that currently exists in many EU states between the spheres of equality and human rights, but developing effective links and synergies between functions commonly associated with NEBs and those associated with NHRIs can be hard to achieve.

As a result, valuable lessons may be learnt from how this integration process has unfolded. In particular, this experience may yield useful insights for states considering whether to proceed with integrated NEBs and NHRIs in the future, for newly integrated bodies exploring how to implement their new combined mandate, and for European and international bodies and civil society organisations responding to integration. It may also provide guidance as to how effective functional co-ordination can be achieved between NEBs and NHRIs which remain separate and independent institutions but nevertheless wish to work more closely together. Light may also be shed on how the gap between equality and human rights can be bridged in other contexts, including in the work of public authorities and civil society activism.

This study concentrates upon developments in five EU member states, where integrated bodies have been or are in the course of being established: Belgium, Denmark, Ireland, the Netherlands and the UK (with specific reference to Britain). Five in-depth expert reports were prepared for this study, which analysed how the integration process has proceeded in each of these states: all of these reports were based on data collected through a combination of desk-based research and interviews

with key stakeholders from civil society, government departments, academia and the institutions directly affected by the integration process.

This study also refers to the recent integration of the French NEB - *Haute Autorité de Lutte contre les Discriminations et pour l'Egalité* (HALDE) - within the institution of the *Défenseur des Droits* in France, which was the subject of a sixth in-depth expert report, and to the experience of the Polish Ombudsman in combining the functions of a NEB and a NHRI as extensively documented in academic and official publications. Reference is also made to developments in other EU states and non-EU states such as Australia and Canada where appropriate, and to the results of further desk-based research and interviews with representatives of the European Network of Equality Bodies (Equinet), the European Network of Human Rights Institutions, the EU Agency for Fundamental Rights (FRA), the UN Office for the High Commissioner on Human Rights (OHCHR) and the European Commission.

NATIONAL EQUALITY BODIES AND HUMAN RIGHTS INSTITUTIONS IN THE EUROPEAN UNION

The Diverse Range of NEBs and NHRIs in the European Union

In general, NEBs and NHRIs are expected to function independently of government in combating discrimination and promoting equality of opportunity, in the case of NEBs, and encouraging greater compliance with national and international human rights standards in the case of NHRIs. However, considerable variations exist between the power, functions, mandates and operational practices of NEBs and NHRIs across the EU. The institutional and operating relationship between NEBs and NHRIs can also differ considerably from state to state, as can their relationship with national ombudsmen and other organs of the state performing similar functions.

This complex 'biodiversity' of NEBs, NHRIs and other public bodies who perform related functions makes it difficult to make generalisations about the functioning of NEBs and NHRIs, or the national contexts in which they operate. However, it is still possible to compare and contrast the key characteristics of both types of bodies, the European and international standards that serve as significant reference points for their functioning, and the factors that have influenced their development.

National Equality Bodies (NEBs)

There are now thirty-six NEBs in the EU. There are two principal types of equality bodies: predominantly tribunal-type equality bodies, who spend the bulk of their time and resources hearing, investigating and determining individual cases of discrimination, and predominantly promotion-type equality bodies who focus on promotional, advocacy and campaigning work and the provision of legal assistance to victims of discrimination.

Both types of NEBs are primarily focused on securing compliance with the requirements of national and EU anti-discrimination law, although some also engage with the provisions of UN and Council of Europe human rights instruments, and in particular with the provisions of non-discrimination instruments such as the UN Convention on the Rights of Persons with Disabilities (CRPD). The development of

national and EU anti-discrimination law, and in particular the expansion of EU equal treatment law since 2000, has exercised a major influence on the establishment and evolution of NEBs and remains the primary frame of reference for much of their activities.

NEBs tend to play an especially active role in combating discrimination in the sphere of employment and occupation, reflecting the development of national and EU law in that context. This means they engage closely with employers, trade unions and other private and non-state actors in addition to public bodies: their work straddles the public/private divide. Their promotional activities usually focuses on forms of unequal treatment that particularly affect particular disadvantaged groups, such as women, persons with disabilities and ethnic minorities: 'promotional-style' NEBs in particular often come to be viewed as 'champions' of such groups.

NEBs often display strong independence in how they engage with public and private actors (Yesilkagit, 2008). They also benefit from the protection afforded by the provisions of Article 13 of the EU Race Equality Directive 2000/43/EC and Article 20 of the Recast Gender Equality Directive 2006/54/EC, whereby EU member states are obliged to designate public bodies to promote equal treatment, provide 'independent assistance' to victims of discrimination, and to publish independent surveys and reports on related issues.

However, these requirements are comparatively limited in scope when compared to the standards set out in the UN Paris Principles that apply to NHRIs. The European Commission, the EU Agency for Fundamental Rights (FRA), the Council of Europe Commissioner for Human Rights and the European Commission on Racism and Intolerance (ECRI) have all recommended that states should take steps to ensure that NEBs enjoy guarantees of independence and operational efficiency that are consistent with the requirements of the Paris Principles. However, these views do not always receive an echo at national level, where certain NEBs have been subject to political pressure, budgetary cuts and government interference in their internal functioning.

National Human Rights Institutions (NHRIs)

At present, there are 17 NHRIs in the EU. They are expected to play a role in bridging the 'implementation gap' between international human rights law and national law, policy and practice, by monitoring how rights are respected, publishing research, highlighting problem areas and recommending appropriate reforms. As with NEBs, they are diverse in size, shape and function. The FRA notes that 'the main models of NHRIs, typically used to depict the wide spectrum of existing bodies, include: commissions, ombudsperson institutions and institutes or centres' (FRA, 2010).

The impetus for the establishment of NHRIs in Europe, as elsewhere in the world, came principally from developments in the international sphere, rather than from EU law or other European regional initiatives. The UN, the Council of Europe, the OECD, the European Parliament and the FRA have all encouraged states to establish NHRIs and emphasised the importance of conforming to the requirements of the requirements of the UN Paris Principles, which set out certain standards relating to independence, mandate, scope of functions and powers, and the operational effectiveness of national human rights bodies.

These developments at international level are encouraging even more European states to establish NHRIs. Furthermore, the International Coordinating Committee of National Human Rights Institutions (ICC) operates an accreditation system, whereby NHRIs participate in a peer-led review conducted by the ICC sub-committee on accreditation which assesses the extent to which their attributes comply with the Paris Principles. European states often face pressure to ensure that their NHRIs obtain an 'A status' accreditation, meaning that they fully conform to the requirements of the Principles. The country studies prepared as part of this research project have identified the desire of states to be seen to comply with emerging international best practice and to obtain 'A status' accreditation as an important factor behind recent moves to establish NHRIs in a number of states, including the Netherlands and Belgium.

Most NHRIs are engaged primarily in promotional/advocacy work, in particular in the provision of expert advice and recommendations to public bodies on how best to comply with their international and European human rights commitments, and in investigating the extent of state compliance with these commitments. With the exception of the ombudsman-style NHRIs in Poland, Portugal and Spain, they tend to concentrate less on helping individual victims of discrimination than do most NEBs. Their promotional/enforcement activities also tend to be predominantly focused on the public sector rather than on the private or voluntary sectors, although some European NHRIs are becoming more involved in encouraging private businesses to take greater account of human rights standards.

Natural Bedfellows? Comparing the Role and Functions of NEBs and NHRIs

In general, NEBs and NHRIs have much in common, and from one perspective could appear to be natural bedfellows. They share a similar purpose: both types of body are expected to promote respect for fundamental rights, with NEB focusing on the right to equality and non-discrimination and NHRIs on a broader human rights remit. Both are also expected to play an independent role in helping to build up a national culture of respect for human dignity and equality of status.

In addition, the powers and functions of NEBs and NHRIs often overlap: in particular, both types of body are expected to monitor and report on matters that come within the scope of their respective remits. A diverse range of issues, ranging from same-sex marriage to the treatment of ethnic minorities by police, come within both their remits. There also exists a reasonable degree of congruence between the international standards that apply to both NEBs and NHRIs, i.e. the requirements of the EU race and gender equality directives and the Paris Principles. On the more negative side of things, NEBs and NHRIs can also face similar threats to their independence and effective functioning, namely government interference with the appointment of office holders and staff, inadequate resources and a lack of political support.

However, it is clear that the 'equality functions' generally associated with and performed by NEBs differ in certain respects from the 'human rights functions' generally associated with and performed by NHRIs. The mandate of NHRIs usually extends across the full range of international human rights standards, and their activities are often 'aligned' towards the UN and the Council of Europe and focused

on international human rights law: in contrast, the mandate of NEBs is generally limited to promoting respect for the principle of equal treatment, and they remain focused on securing compliance with national and EU anti-discrimination laws.

NHRIs usually focus on providing expert advice and recommendations to public bodies, and it is not common for them to support individual human rights claims. Of the EU's 12 'A' accredited NHRIs, only the NHRIs in Ireland and Northern Ireland have powers to support freestanding cases under human rights law – powers which have been used very sparingly (FRA, 2010). They also tend to have limited direct involvement with private and non-state actors, reflecting the predominantly 'vertical' nature of human rights obligations in international human rights law. In contrast, NEBs are often closely involved with individual complaints of discrimination. They also regularly engage with both public and private sector bodies, both through their promotional and enforcement work.

Furthermore, turning to their 'external' relationships with stakeholders, NEBs and NHRIs often engage with different 'communities of interest', to borrow a phrase coined by Professor Rikki Holtmaat in the country report for the Netherlands – the civil society organisations, lawyers, academics, civil service units and other interested parties that are closely involved with equality and non-discrimination issues often differ from those who are involved in other areas of human rights. The responsibility for handling equality and human rights issues is also often handed over to different government departments and state agencies, which creates a fragmented regulatory landscape that NEBs and NHRIs must traverse in different ways.

In addition, NEBs and NHRIs can also face different obstacles in giving effect to their functions – for example, national anti-discrimination legal standards may be better developed and more elaborated than that country's human rights laws (or vice-versa), while the 'equality agenda' associated with NEBs may face greater political and media hostility than the 'human rights agenda' associated with NHRIs (or again vice-versa). As a consequence, different promotional and enforcement strategies may have to be used to give effect to equality and human rights functions, along with different legal and policy tools. As already mentioned, NHRIs also tend to enjoy greater formal guarantees of independence than do NEBs, although in practice both sets of bodies exhibit a considerable degree of independence in their dealings with other public bodies.

Some of these distinctions are a manner of emphasis and degree. The diverse range of NEBs and NHRIs also means that it is difficult to make generalisations about either type of body. However, in general, the mode of functioning of NEBs and NHRIs can differ in significant ways, despite everything that they have in common. This poses inevitable challenges for any attempt to combine responsibility for these functions within the remit of a single integrated institution which perform the functions of both types of body.

THE MOVE TOWARDS INTEGRATION

The Integration Trend

At present, the standard model for EU states is to have separate bodies designated as NEBs and NHRIs. However, in recent years, a trend can be detected across Europe for institutions concerned with equality and human rights to be merged together into a single integrated body, or for new institutions to be established which combine the functions associated with both NEBs and NHRIs. This trend has accelerated in recent years. Several EU member states have now established such integrated bodies, and several more are giving serious consideration to following suit.

Until recently, the only two institutions in the EU who were classified as being both a NEB for the purposes of the EU race and gender equality directives and an 'A' ICC-accredited NHRI were the Danish Institute for Human Rights (DIHR) and the Polish Ombudsman. However, a third integrated body, the British Equality and Human Rights Commission (EHRC), subsequently came into existence in December 2007 having been established by the Equality Act 2006. The Polish Ombudsman, which already enjoyed the status of being Poland's NHRI, was designated as the NEB in 2010.

Recently, a fourth such body has also been established, namely the new Netherlands Institute for Human Rights (NIHR) into which the Dutch Equal Treatment Commission has been incorporated. In Belgium, reforms are planned which will establish an 'arc-institution' that will being a number of different bodies within a single overarching institutional framework which will be eligible for 'A' accredited status with the ICC. In Ireland, pending legislation will merge the Irish Human Rights Commission (IHRC) and the Equality Authority (EA) into a new integrated Human Rights and Equality Commission (IHREC).

In France, the Equal Opportunities and Anti-Discrimination Commission - *Haute Autorité de Lutte contre les Discriminations et pour l'Egalité* (HALDE) - was not merged with the national human rights body but instead has been integrated into the framework of a new ombudsman institution, the Defender of Rights (*Défenseur des Droits*). However, as the *Défenseur des Droits* performs promotional and enforcement functions in respect of human rights that are similar to those performed by 'official' NHRIs in other European states, this merger can be seen as representing the establishment of yet another hybrid equality and human rights institution.

Furthermore, discussions are also underway in Croatia, Slovenia and a number of other EU states about the possibility of bringing national human rights and equality bodies together under one roof, or at least achieving greater 'functional co-ordination' between their various activities (Carver, 2011). Hybrid equality/human rights institutions have become part of the European regulatory landscape, and their number may grow further over the next few years.

The Process of Integration

This report provides a brief overview of the integration process that is underway in each of the countries surveyed in depth for this study, namely Belgium, Denmark, Ireland, the Netherlands and Britain. This illustrates the diverse nature of the integrated bodies under examination, and of the different integration processes that have or are taking place in each of the states concerned. However, despite all these differences, certain common features of the integration process can be identified.

In all the countries surveyed for this study, the integration process has generated a degree of tension and controversy. Considerable uncertainty appears to exist as to how equality and human rights functions should be linked together, even though there is relatively broad support in the abstract for the notion that human rights and equality can 'fit' together at the conceptual level. In general, it appears as if integrated bodies and their linked communities of interest are only beginning to engage in depth with the issues thrown up by the linking together of equality and human rights functions.

The study also found little evidence of sustained debate or discussion regarding the practical challenges of integrating the functions of NEBs and NHRIs within a single body. Debate has tended to focus overwhelmingly upon matters of organisational structure and on the duties and powers of the integrated institutions, rather than on how equality and human rights functions can be effectively combined together in practice. However, the pros and cons of integration, and the challenges it presents, have in general not been discussed in detail.

THE POTENTIAL ADVANTAGES OF INTEGRATION

Conceptual Coherence: The Common Foundations of Equality and Human Rights

The right to equality and non-discrimination is an integral element of the wider framework of international and European human rights law, as reflected for example in the provisions of Article 14 of the European Convention on Human Rights and Articles 20, 21 and 23 of the EU Charter of Fundamental Rights. Furthermore, national and EU anti-discrimination legislation has been expressly framed and interpreted with a view to giving effect to this fundamental right to equality and non-discrimination.

As a result, when NEBs promote awareness of best practice in respect of equality of opportunity and enforce compliance with anti-discrimination law, they are helping to ensure greater respect for human rights. Furthermore, both the equality functions associated with NEBs and the more general human rights functions associated with NHRIs share a common conceptual foundation in the form of the principle of human dignity. Therefore, the argument can be made that the functions of integrated bodies are ultimately linked by a common respect for the underpinning principle of human dignity and associated values such as individual autonomy and equality of status.

The Potential for Synergy between Equality and Human Rights Functions

Furthermore, many forms of discriminatory treatment arise out of or are linked to infringements of other human rights, while infringements of other rights such as freedom of expression or the right to a fair trial also often have a discriminatory component. This means that any comprehensive attempt to address issues of discrimination and inequality must also engage with the other human rights issues that play a role in creating the injustices in question, while attempts to promote respect for human rights in general must take account of equality and non-discrimination concerns.

Integrated bodies which combine the functions usually performed by NEBs and NHRIs may thus be well-placed to play an active promotional and enforcement role across the full spectrum of human rights, in a way that is not unduly confined by the existence of artificial distinctions between equality principles and other human rights. Furthermore, the 'bridge' created by the bringing together of equality and human rights functions under one institutional roof has the potential to give rise to new synergies between and across both elements of the new body's mandate. In contrast, NEBs and NHRIs may at times lack the expertise, legal mandate or the necessary powers and functions to deal with issues that go beyond their core remit.

The Operational Advantages of Integration

Integrated bodies are also potentially better able to develop a linked approach to equality and human rights function by bringing staff together within a shared roof, streamlining administrative functions, avoiding duplication of effort and resources, enabling the development of shared expertise and providing a single focus point for the general public.

An integrated body may also be well-placed to bring together public authorities and civil society organisations operating in different areas coming within its broad remit, and to help encourage the development of a comprehensive and co-ordinated approach to the promotion of equality and human rights. The FRA has drawn attention to the potential strengths of integrated bodies in this regard: '[th]ere is a clear need to adopt a more comprehensive approach to human rights at the national level, with efforts and resources focused on key institutions, such as a visible and effective overarching NHRI in each Member State…that can ensure that all issues are addressed by some entity, that gaps are covered and that human and fundamental rights are given due attention in their entirety' (FRA, 2010, at p. 7).

Delivering on Potential?

In general, it thus appears as if integrated bodies have the potential to develop useful synergies between the human rights and equality aspects of their mandate. However, the effectiveness of any integrated body will depend on whether their potential can be realised in practice. Integration also has a shadow side: it brings in its wake a range of different challenges, which if unaddressed may stunt the functioning of an integrated body.

THE CHALLENGES OF INTEGRATION

Role, Purpose and Priorities

To start with, integrated bodies may face particular difficulties in defining their role, purpose and priorities. Their remit is often very wide, extending across the full range of human rights recognised in international human right law as well as across the different equality grounds set out in national and EU anti-discrimination law. This means that integrated bodies must often pick and choose which areas to focus on in depth, in particular when they make use of their promotional or investigatory powers.

Making such choices will inevitably require integrated bodies to make difficult decisions about what elements of their mandate to prioritise and which to de-emphasise.

Selecting strategic priorities in this manner poses challenges for all NEBs and NHRIs. However, the problem is amplified in the case of integrated bodies, given the breadth and diversity of their mandates and the potential that exists for fault-lines to be exposed between the equality and human rights elements of their mandates.

Integrated bodies also face the particular challenge of ensuring that one area of the organisation's mandate does not consume a disproportionate share of its energy and resources. There will be times when an integrated body may need to focus more on one aspect of its mandate than other. However, in general, integrated bodies will be failing to discharge their statutory responsibilities if they neglect the equality element of their mandate in favour of the human rights element, or vice versa. Furthermore, integrated bodies must be seen to be engaged with both elements of their remit if they wish to maintain a constructive relationship with the different equality and human rights 'communities of interest'.

The country reports prepared for this study also note that concern was expressed by a range of interviewees that integrated bodies could lose sight of the perspectives and needs of particular disadvantaged groups. Several interviewees also suggested that they might be tempted to adopt abstract, 'one size fits all' cross-cutting approaches to the different elements of their mandate, and could also become 'bloated', bureaucratic and detached from the realities of 'lived' discrimination and other forms of human rights abuses.

In general, all of the country reports prepared for this study make it clear that uncertainty exists as to how integrated bodies should define their role, purpose and priorities in relation to the equality and human rights elements of their mandate. In every state surveyed, interviewees noted that no real consensus existed as to how such bodies should balance the different elements of their remit.

Powers, Functions and Mode of Operation

Integrated bodies may also have to make difficult strategic choices about how to use their powers and make use of their (inevitably limited) resources. Like NEBs and NHRIs, integrated bodies need to develop a work programme and establish a cohesive, effective and coherent mode of functioning that reflects the organisation's role, purpose, mandate and strategic priorities. However, this can be a challenging process: integrated bodies must not alone link together their promotional and enforcement work in an effective manner, but also must ensure that the balance they strike between these different functions works well for both the equality and human rights aspects of their remit.

Integrated bodies may face particular difficulties when an asymmetry exists between the promotional and enforcement roles they are expected to play in respect of the equality and human rights elements of their mandate, or when some of their powers can only be exercised in relation to one of these elements and not the other. Such imbalances may cause divergences to open up between its work relating to equality

and human rights, and make it difficult for an integrated body to develop effective synergies between the different elements of its remit.

Furthermore, integrated bodies can also face particular difficulties in circumstances where they are expected to function both as an active and engaged agent of social transformation and as an enforcement and regulatory agency charged with securing compliance with established equality and human rights standards. Once again, this can cause damaging imbalances to open up between the different elements of its mandate.

The Legal Framework

Integrated bodies may also face challenges arising out of the legal context in which they function. Equality and human rights issues in the EU are usually regulated by two separate if interconnected legal regimes. This can ensure that promotional and enforcement work in one field becomes 'compartmentalised' and detached from the other. It also means that the staff of integrated bodies may struggle to carry across their expertise into different work areas.

The Lack of 'External' Integration of Equality and Human Rights

Even in those states that have already or which are in the process of creating integrated bodies, national legislation, public bodies and civil society tend to treat equality and human rights as largely separate and distinct spheres of concern, as confirmed by the country reports prepared for this study. This lack of 'external integration' can be a problem for integrated bodies, as highlighted in all of the country reports. It can complicate the integration of equality and human rights functions within the mandate of a single body, as staff members recruited from the equality communities of interest will often have little expertise in wider areas of human rights and vice versa. It also means that integrated bodies will often have to interact in different ways with the various equality and human rights communities of interest, which may make it more difficult for such bodies to build synergies between different aspects of their work programme.

Independence and Resources

Another set of challenges arise in respect of the guarantees of independence that should be enjoyed by integrated bodies. To start with, it is clear that different views exist as to what 'independence' entails in the context of equality and human rights bodies. 'Tribunal-style bodies are expected to be 'neutral' arbitrators who maintain an even-handed stance as between parties to discrimination or human rights complaints. In contrast, 'promotional' bodies are usually expected to play a more activist role. These different understandings of what independence means can potentially come into conflict when an integrated body is expected to function both as an impartial regulator and as an active agent of social change with respect to different elements of its combined mandate. This fear was particularly expressed in respect of France and the Netherlands, where integrated bodies are expected to perform a mixture of adjudicatory and campaigning roles which differ in relation to the equality and human rights elements of their mandates.

The various country studies also noted the need to consider both *de jure* and *de facto* independence, i.e. both the formal guarantees of independence enjoyed by integrated bodies and its actual capacity to act in a manner free from government control. The creation of an integrated body poses particular challenges and opportunities when it comes to both these types of independence: it can be an opportunity to 'level up' *de jure* independence and embed a culture of *de facto* independence, or it can create a risk of 'levelling down'.

Issues of resource allocation also loom large in this respect. If integrated bodies are established but not given sufficient resources to develop a work programme in respect of both the equality and human rights elements of their mandate, then this will prevent them from giving full effect to their remit. For example, in Poland, the Polish Ombudsman was not granted extra resources when his functions were extended to cover equality and non-discrimination, which has been the subject of strong criticism.

Mergers and Organisational Culture

A final set of challenges arise out of the process of establishing an integrated body and getting it up and running as an effective organisation. Irrespective of exactly how integrated bodies are established, the previous institutional arrangements that were in place appear to cast a long shadow. New bodies inherit stakeholder relationships – and expectations – from their predecessors, and how they manage this legacy can have a considerable bearing on their effectiveness and credibility.

Harvey and Spencer (2012) note that merger processes inevitably bring tensions in their wake that can prove divisive, and that the pressure of established expectations can cause considerable difficulties for newly established equality and human rights bodies. Furthermore, Harvey and Spencer also highlight the problems of organisational culture and staff expertise that may arise from a merger process. The staff of merged bodies 'may have had little prior experience of working in partnership': there also may be 'differing institutional cultures, staffing practices, and staff and commissioner profiles'.

Furthermore, other defects in the process of establishing an integrated body can also hinder its subsequent functioning. Setting such a body up can take a substantial period of time. While the new body is being established, staff in the predecessor bodies may be unsure about their own personal future and uncertain about how to carry forward their work agenda. Stakeholders may also be uncertain about the future aims, priorities and work programme of the new body, and may become disengaged if its establishment turns into a long-drawn-out process. However, an excessively rushed transition also poses risks: it risks causing alienation and discontent, and may give the impression that the new body is keen to cut ties with the legacy of its predecessor bodies.

MEETING THE CHALLENGES OF INTEGRATION

This study has identified a range of measures that integrated bodies, national governments, European institution and international organisations can take to address some of the challenges of integration. However, it needs to be emphasised from the

outset that there exists no set 'solution' to the problems that integration can cause: there is no straightforward 'path to success' in establishing integrated bodies.

The Need for Proactive Engagement with the Challenges of Integration

The country reports prepared for this study all emphasise that both the potential upside and downside of integration needs to be acknowledged – otherwise, the challenges of linking equality and human rights functions within a single institutional framework may be glossed over, which in turn may generate disappointed expectations and hostile reactions further down the line. The challenges of integration also need to be proactively addressed through some form of proactive 'change management' strategy. Priority needs to be accorded to managing stakeholder expectations, deciding what new work practices need to be developed, and dealing with the 'legacy effect'. There is also a need for careful consideration to be given to the role, purpose and priorities of the new body and what powers, functions, resources and guarantees of independence it needs to maximise its effectiveness.

This type of proactive 'change management strategy' can involve *internal* measures relating to the staff, structure and internal functioning of an integrated body. For example, staff should be trained in the new competencies they will require, and be encouraged to work outside their previous 'silos' of expertise. It can also involve *external* initiatives directed towards establishing good links with the diverse communities of interest with whom an integrated body has to engage.

There is also a need to adopt a *co-ordinated* and *comprehensive* approach to the problems of integration. National governments should aim to work together with the board and staff of integrated bodies and their predecessor bodies to address any obstacles that may prevent effective synergies developing between its equality and human rights functions. It may also be necessary for integrated bodies to continuously reassess their policies, priorities and work practices, to ensure that they are maximising their potential. Integration strategies may thus have to be kept under *continuous review*.

In addition, there is also a need for *transparency* and *consultation* in this context. The establishment of an integrated body can generate a complex mixture of fears, assumptions and expectations which can impede its subsequent development. However, if these issues are openly discussed and all the relevant stakeholders are included in the conversation, this may help an integrated body to form better relationships with its various communities of interest.

This process also needs to take into account the nature and purpose of equality and human rights bodies. Any meaningful attempt to engage with the challenges of integration will need to give due weight to the importance of ensuring that integrated bodies continue to perform this role in an effective manner. In other words, it will have to be *purposive*.

An effective strategy of dealing with the challenges of integration will also have to be built around a commitment to the importance of equality and human rights principles. Also, the guarantees of independence and operational effectiveness set out in instruments such as the Paris Principles and the provisions of the EU race and gender

equality directives need to be central reference points in the development of any strategy concerned with addressing the challenges of integration. Such a strategy will thus need to be *principled and reflect relevant international standards*.

A Clear Statement of Values

Many interviewees have also suggested that integrated bodies would benefit from a clear articulation of the new organisation's goals, values and approach. Such a strategic compass could be provided by legislation or by some other authoritative reference point, and it could guide integrated bodies in deciding how to allocate resources, use their powers and link their equality and human rights functions together in a coherent set of work practices. Examples of such a statement of values would include the 'general duty' imposed by s. 3 of the Equality Act 2006 on the EHRC in Britain, or the 'purpose clause' proposed by the Working Group established to consider the establishment of the new IHREC in Ireland.

Objective and Transparent Criteria for Setting Priorities and Evaluating Performance

Integrated bodies may also find it useful to draw up and publish a list of objective criteria for identifying their strategic priorities. This may help them to cope with the breadth of their remit, which inevitably means that there is a need to select specific equality and human rights issues on which to focus. It may also assist in establishing the *bona fides* of an integrated body amongst its diverse range of stakeholders. Similarly, integrated bodies might also benefit from drawing up a list of performance indicators to assess whether they are making the most effective use of their powers and functions.

An Integrated Work Programme

Furthermore, in identifying their priorities and drawing up their work programmes, integrated bodies may want to give serious consideration to integrating equal treatment principles into every aspect of their activities, thereby maximising the potential for synergy to develop between their human rights and equality mandates. Similarly, factoring in human rights considerations into their anti-discrimination work may also enhance their capacity to deal with persisting forms of inequality, and help to bridge the divide between the work practices associated with NEBs and NHRIs. An interviewee in the Danish study commented that '[i]n a fully integrated institution, equal treatment should be incorporated into all human rights projects and vice versa….Human rights, non-discrimination and equality cut across all areas.'

Common Powers and Functions

Integrated bodies will only be able to generate strong synergies between their equality and human rights functions if their statutory duties and powers make it possible for them to link together their work in both fields, rather than requiring them to operate in a compartmentalised fashion. As a result, the more an integrated body's equality and human rights powers are 'aligned' with each other, the more freedom of action it will have to work effectively across the full range of its remit.

Staff Training and Expertise

Many interviewees also emphasised the importance of the staff and board of integrated bodies having a comprehensive and well-developed understanding of both equality and human rights concepts. To achieve this, they suggested that newly integrated bodies should conduct a detailed survey of (inherited) staff capabilities, and set up a personnel development programme to ensure that all their staff members have the skills, understanding and expertise to play an effective role in implementing the wide remit of the new organisation.

An Inclusive Strategy for Engaging with Stakeholders

Integrated bodies also need to address the challenges posed by the manner in which equality and human rights are treated as largely separate and distinct spheres of concern by many governments, NGOs and civil society at large. They also will need to find ways of engaging with their diverse communities of interest, and to bridge the gaps between the different equality and human rights communities that exist in every one of the countries surveyed for this study.

Integrated bodies may also wish to encourage public authorities, private sector bodies and civil society groups to bring together equality and human rights perspectives in their own work, and to escape the 'silos' of compartmentalised thinking that exist in every state surveyed as part of this study. The importance of a close link with ombudsmen was particularly emphasised by a number of interviewees.

The Establishment of a Culture of Genuine Independence

Issues of independence have proved or are proving to be central in relation to debates regarding integration in most of the countries covered in this study. Given the fundamental importance of this issue to the effective functioning of equality and human rights bodies in general, it is a question which merits prioritisation in the establishment of integrated institutions.

The Paris Principles are providing to be an important reference point in the establishment of integrated bodies in most of the countries surveyed for this study. This is an encouraging development. However, there is a danger involved in relying solely upon the Paris Principles as a baseline set of minimum standards in this context. There is also a need for the EU institutions, including FRA, to consider setting out more detailed standards regarding the independence and effective performance of the mandate of NEBs, including integrated bodies.

Furthermore, when an integrated body is formed by the merger of previously existing bodies, there is a very strong likelihood that the predecessor bodies may have developed subtly different understandings of their independent status. These differences need to be openly discussed and reconciled where possible. Good leadership, transparent discussion and a clear focus on organisational priorities will be needed to make this process work.

Finally, the issue of resources is also key. National governments need to provide integrated bodies with the resources they need to do their job, and to recognise that an

effective integrated work agenda cannot be developed on the cheap: as this study illustrates, linking together equality and human rights is a complex process that involves more than a simple doubling-up of functions.

A Transparent Process of Establishment

Interviewees from all the surveyed countries emphasised the need for wide-ranging consultation with stakeholders during the entire period during which the establishment of an integrated body is being contemplated, planned and subsequently implemented. They also stressed the importance of transparency, while emphasising the dangers of an overly-rushed or overly-secretive process.

In general, the process of creation of integrated bodies provides a significant opportunity to seek to reconcile these potential tensions and to foster greater consensus regarding the purpose and methods of operation of the new or reformed body. There are examples of good practice which indicate how this can be done – for example, through the establishment of special advisory groups containing a broad range of different stakeholder perspectives as was done in Britain and Ireland.

The Embrace of Difference

Finally, many interviewees emphasised that different approaches were needed to deal with different equality and human rights issues, and that an integrated body should not adopt a 'one size fit all' work programme that disregards the specific issues generated by specific elements of its remit. An integrated body will have to develop distinct strategies in respect of certain areas of its work, such as disability rights and children's rights, even if its approach to these specific elements of its mandate can be informed by a transversal commitment to linking equality and human rights.

In general, the available evidence suggests that the internal structure of an integrated body does not have a decisive impact on its ability to combine an integrated approach with a specific focus on particular equality and human rights issues. What does appear to be important is that recurring factor, good leadership, the existence of good channels of communication with a diverse range of communities of interest, and a genuine commitment on the part of the staff and board members of an integrated body to embracing the different aspects of its remit.

Overview: The Ingredients of a Successful Approach to Integration

To summarise, it appears as if the challenges of integration can be addressed at least in part through a proactive and principled process of 'change management', which gives careful consideration to how equality and human rights functions should be linked together within the functioning of an integrated body as outlined above. However, at the end of the day, the leadership, staffing and organisational culture of integrated bodies will be a key factor in shaping their capacity to respond positively to the potential and challenges of integration.

Furthermore, other actors also have an important role in helping integrated bodies thrive, ranging from national governments and legislatures to the EU institutions, other international bodies and civil society at large. This highlights an important

dimension to the challenge of integrating equality and human rights functions: the success of an integration process will in part depend on the extent to which the divide between equality and human rights can be bridged across wider society, not just within the internal structure of a unified equality and human rights body.

CONCLUSION – WIDER LESSONS

Establishing integrated bodies which combine the functions of NEBs and NHRIs has the potential to generate new synergies between the different elements of their remit. However, this potential may remain unfulfilled if the challenges of integration are not adequately addressed. Proactive steps need to be taken to bridge the gap that exists between the spheres of equality and human rights, which is all too often glossed over in discussions of integration.

Insufficient evidence currently exists as to whether integrated bodies function better or worse than separate and free-standing NEBs and NHRIs. Establishing an integrated body may encourage the development of a comprehensive approach to equality and human rights and help to break down some of the 'silos' that help to create the current fragmented landscape that exists in this context. However, it may also risk destabilising existing arrangements for limited gain, especially if the challenges of integration are not addressed. Much will depend upon the specific national political, legal and social context in question: however, what is clear is that integration does not necessarily represent an 'easy' or 'cost-free' process.

The lessons that can be drawn from the integration processes analysed in this report can be applied in other contexts. They can provide some guidance as to how effective functional co-ordination can be achieved between freestanding NEBs and NHRIs which wish to work more closely together, supplementing the useful work already produced by Equinet on this topic (Equinet, 2011). They also give some indication as to how the gap between equality and human rights can be bridged in other contexts, including in the work of public authorities and the activism of civil society.

Equality and human rights share common conceptual foundations and strong synergies can be developed between them: however, the differences that exist between their respective historical development, legal frameworks, communities of interest and value orientations should be acknowledged. Equality and human rights may be different dialects of a common language, but mutual comprehension should not always be assumed.

BRIDGING THE DIVIDE? INTEGRATING THE FUNCTIONS OF NATIONAL EQUALITY BODIES AND NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE EUROPEAN UNION

'***Saying equality is part of human rights is like saying soccer is part of ball games'*** -
Conference Participant, March 2013

INTRODUCTION AND METHODOLOGY

National equality bodies (NEBs) and national human rights institutions (NHRIs) play important roles in promoting respect for human dignity and fundamental rights in many European states.[1] NEBs promote respect for the principle of equal treatment and help victims of discrimination to obtain a remedy under national and European Union (EU) anti-discrimination law. NHRIs promote respect for human rights and monitor state compliance with their commitments under international human rights law.

Both types of body often engage in similar activities, perform similar functions and have similar legal powers. However, in the majority of member states of the European Union (EU), NEBs and NHRIs are separate institutions, which are generally viewed as performing different functions. Of the EU's 36 national equality bodies and 17 accredited national human rights institutions, only 6 institutions fall into both categories, i.e. can be classified as being both a NEB and a NHRI: furthermore, of those 6 institutions, only 4 at present can be regarded as 'full' NHRIs.[2]

This reflects the existence of a broader conceptual divide between 'equality' and 'human rights' in legal, political and regulatory discourses across Europe.[3] Even though equality is a fundamental human right, it is common for non-discrimination/equal treatment norms and broader human rights values to be treated as different and distinct spheres of concern by national governments, European institutions and civil society.

For example, limited overlap exists between anti-discrimination law and human rights law in many European legal systems: at the pan-European level, the extensive anti-discrimination case-law of the European Court of Justice (ECJ) contains few references to the provisions of human rights instruments such as the EU Charter of Fundamental Rights or the European Convention on Human Rights (ECHR), while the anti-discrimination jurisprudence of the European Court of Human Rights (ECtHR) is very underdeveloped (O'Connell, 2009). As discussed in Part IV of this

[1] Other public bodies such as courts, parliamentary committees, national ombudsmen, data protection commissioners and so on also play a key role in protecting fundamental rights: for an overview, see FRA, 2012a.

[2] These are the Danish Institute for Human Rights, the British Equality and Human Rights Commission, the Polish Ombudsman, the Belgian Centre for Equal Opportunities and Opposition against Racism, the Netherlands Institute for Human Rights and the Slovak National Centre for Human Rights. Neither the Belgian nor the Slovak Centres qualify as fully accredited 'A' status NHRIs according to the classification system used by the International Co-ordinating Committee of National Human Rights Institutions (ICC), discussed below in Part I: both bodies are primarily focused on equal treatment issues and have a restricted mandate in respect of other human rights issues (FRA, 2010).

[3] For ease of reference, the term 'equality' will be used throughout this report to denote the moral principle that individuals and group should not be subject to discrimination on irrational or unjustified grounds (more commonly known as the 'principle of equal treatment', a term that is used in particular by the European Court of Justice in such cases as Case C-144/04, *Mangold v Helm* [2005] ECR I-9981), and the framework of national and EU anti-discrimination legislation that has been drawn up to give effect to this principle. In contrast, the term 'human rights' will be used to refer to the framework of legal standards set out in regional and international human rights law treaty instruments such as the UN Covenant on Civil and Political Rights and the European Convention on Human Rights. The use of these terms in this way is common in official publications issued by European bodies (see e.g. FRA 2010, Equinet 2011).

report, it is also common in many EU member states for different government departments to be responsible for state policy in relation to equality and human rights, for universities and other educational establishments to treat them as distinct and separate subjects, and for different elements of civil society to focus their energies on one or the other.

As discussed below in Part III, this divide between equality and human rights has begun to close in recent years. Furthermore, divides also exist within the spheres of equality and human rights: for example, a 'hierarchy of discrimination existing between race and gender equality on the one hand and other forms of discrimination in EU anti-discrimination law (Bell and Waddington, 2001), while socio-economic rights are often treated as 'poor cousins' of their civil and political counterparts in Europe (O'Cinneide, 2009). The divide between equality and human rights nevertheless remains a particularly significant axis of distinction in the fragmented system of rights protection in Europe.

However, a number of EU member states have recently established single combined bodies which are designed to perform the functions of both NEBs and NHRIs. Such an integration process has either been recently completed or is currently underway in a number of EU member states, including Belgium, France, Ireland, the Netherlands and the UK (specifically in Britain), and discussions about establishing integrated bodies appear also to be underway in a number of other European states.

The emergence of this new hybrid model of institution is a relatively new development in the EU. It represents an ambitious attempt to 'bridge the divide' that currently exists in many EU states between the spheres of equality and human rights. However, developing effective synergies between functions commonly associated with NEBs and those associated with NHRIs can be hard to achieve, as discussed below in Part IV of this report.

As a result, valuable lessons can be learnt from this process of integration about the challenges involved in bringing together equality and human rights functions into a combined programme of activity. In particular, this experience may yield useful insights for states considering whether to proceed with integrated NEBs and NHRIs in the future, for newly integrated bodies exploring how to implement their new combined mandate, and for European and international bodies and civil society organisations responding to integration.

It may also provide guidance as to how effective functional co-ordination can be achieved between NEBs and NHRIs which remain separate and independent institutions but nevertheless wish to work more closely together: even in EU member states where there are no plans to establish integrated bodies, there is a growing interest in co-ordinating the work of NEBs, NHRIs and other institutions charged with protecting the rights of citizens, as evidenced by a recent pan-European initiative to bring together national equality and human rights institutes with a view to reinforcing their commitment to working together to enhance rights protection across Europe.[4]

[4] See the Joint Statement issued by the European Network of Equality Bodies (Equinet), the European Network of Human Rights Institutions, the EU Agency for Fundamental Rights (FRA) and the Council of Europe on 10 October 2013, available at http://www.equineteurope.org/Europe-s-human-rights-and-equality (last accessed 11 October 2013).

Light may also be shed on how the divide between equality and human rights can be bridged in other contexts, including in the work of public authorities and civil society activism.

However, this integration process has received little attention in the academic literature or in official reports. This gap is striking, especially given that many of the new hybrid institutions have been formed by the merger of some of the most prominent, best-funded and longest-established NEBs and NHRIs in the EU. This study aims to fill this lacuna by providing a detailed account of the challenges involved in combining equality and human rights functions within the remit of a hybrid institutional framework. It also aims to provide some recommendations and practical guidance to policymakers grappling with some of these issues.

In delineating the scope and methodology of this study, it should be noted that it did not set out to address directly the question of whether or not it is desirable to integrated the functions of NEBs and NHRIs – as discussed below, the diverse powers and functions of NEBs and NHRIs across the EU and the differing roles they often play in the political and legal systems of its member states make it very difficult to reach any hard and fast conclusions about what might constitute the 'best' form of institutional structure in this context.

Furthermore, this report does not engage directly with the question of what might constitute the 'best understanding' of the relationship between equality and human rights: ground-breaking conceptual work has already been produced in this regard by leading academic commentators (Dworkin, 2000; Fredman, 2008; Sen, 2009). Instead this study focuses on the concrete experience of the integration process as it has unfolded in a number of EU member states, with a view to forming a comprehensive picture of the practical lessons that can be learnt from the attempt to combine equality and human rights functions at the institutional level.

This study concentrates in particular upon developments in five EU member states where integrated bodies have been or are in the course of being established: Belgium, Denmark, Ireland, the Netherlands and the UK (with specific reference to Britain). Five in-depth country reports were prepared for this study by national experts, which analysed how the integration process has proceeded in each of these states. All of these reports were compiled by reference to a common template, and were based on data collected through a combination of desk-based research and interviews with key stakeholders from civil society, government departments, academia and the institutions directly affected by the integration process.

Reference is also made to the recent integration of the French NEB - *Haute Autorité de Lutte contre les Discriminations et pour l'Egalité* (HALDE) - within the institution of the *Défenseur des Droits* in France, which was the subject of a sixth in-depth expert report, and to the experience of the Polish Ombudsman in combining the functions of a NEB and a NHRI as extensively documented in academic and official publications.[5] Reference is also made to developments in other EU states where

[5] The French and Polish cases of integration are both *sui generis*. The French integration process involves the merger of a NEB and other bodies within the overarching structure of an ombudsman institution rather than the national NHRI, the Consultative National Committee of Human Rights (*Commission Nationale Consultative des Droits de l'Homme* – CNCDH). In the Polish case, the

appropriate, as well as to the experience of the integrated equality and human rights commissions in Australia and Canada which have been in existence now for a number of decades.

The study also draws upon the results of a detailed review of the relevant academic literature, interviews with representatives of the European Network of Equality Bodies (Equinet), the European Network of Human Rights Institutions, the EU Agency for Fundamental Rights (FRA), the UN Office for the High Commissioner on Human Rights (OHCHR) and the European Commission, and the comments made by participants in a conference in London on 15th March 2013 at which the interim findings arising out of this research project were initially presented.[6]

national ombudsman now functions as both a NEB and a NHRI. Both these situations therefore differ from the integration process in other EU states, which have all involved the establishment of a combined body that performs the functions associated with both NEBs and NHRIs and whose functions in the human rights field go beyond the 'dispute resolution' functions normally performed by ombudsmen. As a result, the comparative analysis undertaken for this study has focused on other member states, but has also taken account of the French and Polish experiences where relevant.

[6] Details of the conference, including the names of invited speakers, can be found at http://www.ucl.ac.uk/human-rights/ihr-events-past/2013/bridging-the-divide (last accessed 10 October 2013).

1 NATIONAL EQUALITY BODIES AND HUMAN RIGHTS INSTITUTIONS IN THE EUROPEAN UNION

This Part provides an overview of the institutional architecture that exists at national level for the protection and promotion of equality and human rights in the European Union. In particular, it describes the functions generally performed by national equality bodies (NEBs) and national human right institutions (NHRIs), and analyses the overlapping if distinct roles both types of body play in promoting respect for equality and human rights.

1.1 The Diverse Range of NEBs and NHRIs in the EU

Many different public bodies are involved in protecting and promoting respect for equality and human rights in the various states that make up the EU. Legislatures, courts, the police, the civil service, data protection bodies, ombudsmen and a range of other institutions all play various roles in this respect. Of particular importance are the bodies classified as NEBs and NHRIs. These public bodies are expected to operate independently from government control and to play an active role in building up respect for equality and human rights through their promotional and enforcement activities. In other words, they are organs of the state, funded through public funds, whose primary *raison d'etre* is to combat discrimination and promote equality of opportunity, in the case of NEBs, and to encourage greater compliance with national and international human rights standards in the case of NHRIs (Ammer et al, 2010; FRA, 2012b).[7]

The terms 'national equality body' and 'national human right institution' are classificatory terms, which indicate that a particular national institution satisfies certain formal requirements – in the case of NEBs, the requirements set out in Article 13 of the EU Race Equality Directive 2000/43/EC and Article 20 of the Recast Gender Equality Directive 2006/54/EC, whereby EU member states are obliged to designate public bodies to promote equal treatment and to provide 'independent assistance' to victims of discrimination, and, in the case of NHRIs, the requirements set out in the UN Paris Principles, which set out certain standards relating to independence, mandate, scope of functions and powers, and operational effectiveness with which states establishing national human rights institutions are expected to comply.[8]

Considerable variations exist between the power, functions and mandates of the bodies formally classified as NEBS and NHRIs across the EU. For example, some NEBs are focused only on one aspect of non-discrimination (e.g. race, gender or disability), while others have a mandate that extends across multiple equality grounds, or combine a non-discrimination mandate with a wider human rights remit (Moon, 2007). Differences also exist in relation to the size of NEBs, their functions,

[7] For an excellent analysis of the 'unique' position of NHRIs, much of which is also relevant to freestanding NEBs, see Smith, 2006.
[8] For the text of the Paris Principles, see Appendix B of this report.

operational practices, and their relationship with other organs of the state (Ammer et al, 2010). NHRIs also often differ from each other in important respects, in particular when it comes to their methods of operation, the issues they choose to prioritise and their competency in respect of individual complaints (FRA, 2010). Furthermore, the national legal and political contexts in which NEBs and NHRIs operate can again vary considerably, which can generate differences between how bodies with a similar set of powers and functions chose to give effect to their mandate (Harvey and Spencer, 2012).

The relationship between NEBs and NHRIs can also differ considerably from state to state. At present, most EU states have designated different bodies to perform the roles of NEBs and NHRIs.[9] Some NEBs and NHRIs work closely together: others have a more arm's length relationship. Furthermore, as discussed in detail in this paper, some NEBs are also NHRIs, i.e. they are both the designated body under the EU race and gender equality directives and also comply with the requirements of the Paris Principles.

The relationship between NEBs, NHRIs and other public bodies which play a role in promoting respect for equality and human rights also tends to differ depending upon the specifics of a particular national situation. For example, the role of NEBs and NHRIs often overlaps with that of national ombudsmen and other institutions charged with protecting the rights of citizens. Indeed, in some EU states such as Poland, the national ombudsman is also the designated NEB and NHRI, while in other states ombudsmen performed functions closely associated with NEBs and NHRIs even if they are not formally designated as such, as in the case in France with the *Défenseur des Droits* (see below). Similarly, in certain states such as the Netherlands, some NEBs in particular perform a quasi-judicial 'tribunal-type' function and adjudicate complaints of discrimination, while in other states this role is left to the courts to perform.

One interviewee for this report described this complex pan-European 'ecosystem' of NEBs, NHRIs and other public bodies who perform related functions as exhibiting considerable 'biodiversity'. This phrase neatly encapsulates the variety of institutions involved in promoting respect for equality and human rights standards across the EU. This makes it difficult to make generalisations about the functioning of NEBs and NHRIs, or the national contexts in which they operate. However, it is possible to identify the key characteristics associated with both types of bodies, the European and international standards that serve as reference points for their functioning, and the factors that have influenced their development.

1.2 National Equality Bodies

At the time of writing, there are now thirty-six public bodies which are formally entrusted with protecting and promoting equal treatment in the European Union in

[9] A briefing paper prepared for the Northern Ireland Assembly has noted that '[t]he standard model for EU states to have separate bodies designated under the EU Directives and as national human rights bodies, although the form, size and function varies greatly'. See *Equality and Human Rights Institutions*, Research and Information Service of the Northern Ireland Assembly Paper 76/11, NIAR 325-11, 24 June 2011, p. 16, available at http://www.niassembly.gov.uk/researchandlibrary/2011/7611.pdf (last accessed 8 October 2013).

line with the provisions of the EU race and gender equality directives.[10] These bodies usually focus on promoting and enforcing compliance with anti-discrimination legislation, and engage with a wide range of public and private bodies (Ammer et al, 2010).

The development of national and EU anti-discrimination law since the 1970s has exercised a great influence on the establishment, mandate, powers and functions of NEBs. This legislative framework remains the primary point of reference for these equality bodies, even though they also take account of UN non-discrimination conventions such as the Convention on the Elimination of Racial Discrimination (CEDAW) and Council of Europe instruments such as the European Convention on Human Rights (ECHR). Indeed, the growth and evolution of national and EU anti-discrimination legislation since the 1960s has been the principal driver behind the establishment of NEBs across Europe.

The introduction of the Civil Rights Act 1964 in the United States, together with the global impact of feminist thought and the emergence of the disability rights, gay rights and anti-racism movements of the 1960s, encouraged many Western European states to impose legal controls on discriminatory behaviour. Significant steps were taken in particular in the field of gender equality, with European law in the form of the Equal Pay and Equal Treatment Directives, taken together with the directly effective provisions of Article 119 of the Treaty of Rome, playing a crucial role in this respect. Inspired in part by the establishment of similar bodies in the US, Canada and elsewhere, some European states also set up specialist anti-discrimination bodies with a mandate to combat discrimination: prominent examples of such bodies included the Equal Opportunities Commission (EOC) and the Commission for Racial Equality (CRE) in the UK and the Equal Treatment Commission (ETC) in the Netherlands. (As discussed below, all thee of these bodies have now been absorbed into new integrated bodies.) These bodies were among the first NEBs established in Europe, and often performed different functions – for example, the Dutch ETC functioned as a adjudicative 'tribunal-style' body, while the two British commissions played a more 'promotional' or 'activist' role. (See below for more on this distinction.) However, they rapidly came to play a prominent role in enforcing compliance with anti-discrimination law and spreading awareness of the importance of the principle of equality of opportunity.[11]

With a few prominent exceptions, such as the Commission for Racial Equality (CRE) that was established in Britain in 1976, most of these anti-discrimination bodies initially focused solely on gender equality. This reflected the fact that gender equality law was better developed in most European states than other area of anti-discrimination law, due to the existence of the highly evolved EU standards in this area. However, in 1997, the Treaty of Amsterdam gave the European Community the competency to adopt legislative measures to combat discrimination in the areas of racial or ethnic origin, religion or belief, disability, age and sexual orientation as well

[10] A full list of NEBs can be found on the website of the European Network of Equality Bodies (Equinet) - http://www.equineteurope.org/.

[11] For example, Barnard has estimated that by the early 1990s, cases supported by the British Equal Opportunities Commission represented about one third of all references heard by the European Court of Justice on matters relating to equal pay and equal treatment at the workplace (Barnard, 1995; also Alter and Vargas, 2000).

as gender.[12] Subsequently, in 2000, the EU Council adopted the Race Equality Directive 2000/43/EC and the Framework Equality Directive 2000/78/EC which prohibited discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation in the filed of employment and occupation, and discrimination on the grounds of racial or ethnic origin in the spheres of 'social protection, including social security and healthcare', 'social advantages', education and access to and supply of goods and services. The scope of EU gender equality law was also clarified and expanded by Directives 2004/113/EC and 2006/54/EC, which 'levelled up' protection against sex discrimination to that provided against race discrimination by Directive 2000/43/EC.

Furthermore, as mentioned above, both Article 13 of the Race Equality Directive 2000/43/EC and Article 20 of the Recast Gender Equality Directive Directive 2006/54/EC required states to designate bodies to promote equal treatment on the grounds of racial or ethnic origin and sex, which have competencies to provide independent assistance to victims of discrimination in pursuing their complaints about discrimination, conduct independent surveys concerning discrimination and publish independent reports and making recommendations on any issue relating to such discrimination.[13] Importantly in the context of this study, Article 13 (1) of the Racial Equality Directive and Article 20(1) of the Recast Gender Equality Directive also provides that '[t]hese bodies may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights'.

These developments resulted in the establishment of new NEBs in many member states, and the expansion of the remit of existing bodies to cover a wider range of equality grounds. Every EU member state has now established a NEB, in line with the requirements of the race and gender equality directives. A 2010 European Commission-sponsored study identified a number of instances in which states had failed to comply with the directives by failing to establish a NEB with the appropriate mandate and range of powers and functions (Ammer et al, 2010). However, the study also concluded that there had been a high level of formal compliance by member states with the requirements specified in the Directives. Furthermore, it also noted that a significant number of Member States have gone beyond the minimum requirements of Directives 2000/43/EC and 2006/54/EC by having equality bodies cover grounds additional to gender and racial or ethnic origin and by endowing them with powers and functions going beyond those required by the two directives.

In general, NEBs now play an active role in spreading awareness about national and EU anti-discrimination law and enforcing compliance with its provisions. In light with the requirements of the race and gender equality directive, their work is largely concerned with providing assistance to victims of discrimination, publicising the

[12] Article 13 of the Treaty establishing the European Community (TEC): now Article 19 of the Treaty on the Functioning of the European Union (TFEU).

[13] In drawing up the provisions of Article 13 (1) of the Racial Equality Directive and Article 20(1) of the Recast Gender Equality Directive, the European institutions were influenced by the experience of existing equality bodies in Ireland, the UK, the Netherlands and elsewhere. The purpose of the provisions in the Directives relating to NEBs was to ensure that each member state would be required to establish an equality body that would play a similar role in combating discrimination and promoting equality of opportunity as performed by the existing equality bodies. However, as the existing bodies performed a range of different functions, the Directives set out a very general template based on the functions that they had in common (Moon, 2007).

requirements of national and EU anti-discrimination law, and investigating patterns of discriminatory behaviour in both the public and private sector.

Within the scope of this general template, substantial variations exist in respect of their mandate, powers, functions and operational practices as discussed above. The 2010 European Commission-sponsored study already referred to above identified two principal types of equality bodies, who can be distinguished from each other by virtue of their differing functions (Ammer et al, 2010):

> *Predominantly tribunal-type equality bodies* - These equality bodies spend the bulk of their time and resources hearing, investigating and determining individual cases of discrimination that are brought before them, i.e. they are expert adjudicative bodies whose primary role is to assist victims of discrimination by identifying violations of the law.
>
> *Predominantly promotion-type equality bodies* - These equality bodies spend the bulk of their time and resources on a broader mix of activities, which include supporting good practice in other public and private sector organisations, raising awareness of legal rights, developing a knowledge base on issues related to equality and non-discrimination, and providing legal advice and assistance to individual victims of discrimination. These bodies thus play a promotional and advocacy role: they actively campaign as an interested party against discrimination, prejudice and entrenched forms of inequality, and assist victims of discrimination in bringing claims before courts and other adjudicatory bodies.

Both types of NEBs are primarily focused on securing compliance with the requirements of national and EU anti-discrimination law, although they also engage with the provisions of UN and Council of Europe human rights instruments, and in particular with the provisions of non-discrimination instruments such as the UN Convention on the Rights of Persons with Disabilities (CRPD) – indeed, many NEBs also double up as the 'independent mechanisms' who are expected to disseminate awareness of the CRPD's provisions and monitor its implementation. Furthermore, they are often expected to play an active role in promoting greater equality of opportunity for disadvantaged groups, and in helping to break down the barriers that contribute to their economic and social marginalisation. This is particularly true of 'promotion-type' bodies, which at times come to be viewed as 'champions' of particular marginalised groups.

NEBs also interact with both public and private actors in performing their functions. In particular, they tend to play an especially active role in combating discrimination in the sphere of employment and occupation, reflecting the development of national and EU law in that context. This means they tend to engage closely with employers, trade unions and other leading actors in the labour market, while also dealing with public and private bodies involved in the provision of goods and services.

The work of NEBs also tends to be characterised by a close engagement with the complex provisions of anti-discrimination legislation and other technical areas of policy and practice which affect marginalised groups who are defined by their race, gender or other protected characteristics. They often focus on achieving incremental

progress towards a more equal society, and their success tends to be measured in terms of positive outcomes in court cases, gradually growing awareness and a heightened profile for issues relating specifically to discrimination and equality concerns.

NEBs often display strong independence in how they engage with public and private actors. They benefit in this respect from the support of Equinet, and the protection afforded by the relevant provisions of the EU race and gender equality directives. It remains the case that the existence of 'hierarchies' between the different equality grounds in EU anti-discrimination law means that there is no formal obligation on EU member states to ensure that NEBs are given a wide-ranging mandate that extends beyond race and gender discrimination. In addition, the requirements of the race and gender equality directives in respect of the independence of NEBs and their operational effectiveness are limited, especially when compared to the standards set out in the UN Paris Principles. The Directives provide that NEBs are to enjoy a high level of functional independence when it comes to providing independent advice to victims of discrimination and publishing independent surveys and research: however, the Directives do not require that the NEBs themselves enjoy an independent status, even though research published by Equinet has noted that 'equality bodies' of the concept of independence are closer to the definitions of the… Paris Principles than to the independence provisions within the various EU Directives' (Equinet, 2008, p. 8; also Holtmaat, 2007).

The European Commission has proposed the adoption of a new directive which would require states to extend the mandate of NEBs to cover the other non-discrimination grounds recognised in EU law, as well as race and gender. The Commission also proposed that the recitals to this directive could contain a provision stating that NEBs 'should operate in a manner consistent with the UN Paris Principles.'[14] This followed a European Parliament resolution of 20 May 2008 on progress made on equal opportunities and non-discrimination in the EU, which recommended that European Commission establish standards against which to monitor and ensure the effectiveness and independence of those bodies. However, the Commission's proposal appears to have attracted little political support within the EU Council of Ministers.

Other European bodies have also recommended that states should take steps to ensure that NEBs enjoy guarantees of independence and operational efficiency that are consistent with the requirements of the Paris Principles. For example, the EU Agency for Fundamental Rights (FRA) has recommended that states should aim to ensure that NEBs are able to function in a manner compatible with the Paris Principles, at least 'where no NHRI exists' (FRA, 2010, p. 9). A 2011 opinion of the Council of Europe Commissioner for Human Rights on national structures for promoting equality also articulated standards regarding mandate and independence which echo the Paris

[14] See Proposal for a Council Directive of 2 July 2008 on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426 final, 2 July 2008, recital 28, which states that '[i]n exercising their powers and fulfilling their responsibilities under this Directive, these bodies should operate in a manner consistent with the United Nations Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights'.

Principles.[15] Similarly, General Policy Recommendation 2 of the European Commission on Racism and Intolerance (ECRI) on Specialised Bodies to Combat Racism, Xenophobia, Anti-Semitism and Intolerance at National Level sets out specific standards regarding independence and effectiveness which resemble those set out in the Paris Principles.[16]

As a result, it is clear that strong support exists at the European level for the notion that NEBs should enjoy similar guarantees relating to their independence and operational effectiveness as are set out by the Paris Principles in respect of NHRIs. However, these views do not always receive an echo at national level, where certain NEBs have been subject to political pressure, budgetary cuts and government interference in the process of appointing office holders and members of staff.

1.3 National Human Rights Institutions

NHRIs are expected to play a role in bridging the 'implementation gap' between international human rights law and national law, policy and practice, by monitoring how rights are respected, publishing research, highlighting problem areas and recommending appropriate reforms (Kjaerum, 2003; OHCHR, 2010; FRA, 2012b). There are fewer NHRIs (17) than NEBs (36) in the EU, and the two types of body often have very different mandates, powers and functions. The context in which both bodies operate can also be very different, for reasons which relate to their origins and mode of functioning.

The concept of human rights institutions was first discussed by the Economic and Social Council of the United Nations in 1946, two years before the Universal Declaration on Human Rights of 1948, while the first prototype human rights institute in Europe was established in France in 1947 (OHCHR, 2010). However, several decades passed before national human rights institutions (NHRIs) began to become a feature of the European and international human rights architecture. The impetus for the establishment of NHRIs in Europe, as elsewhere in the world, came principally from developments in the international sphere, rather than from EU law or other European regional initiatives.

In 1991 a workshop in Paris, convened by the UN Commission on Human Rights, drew up a set of 'principles related to the status of mandate of national human rights institutions', commonly known and already referred to in this report as the Paris Principles. The Principles are a framework of standards that are designed to serve as a template for states in establishing NHRI and conferring powers and functions upon them (OHCHR, 2010). FRA has identified the six main criteria of a successful NHRI, as set out by the Principles (FRA, 2012b):

[15] Council of Europe (2011) *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, 21 March 2011, CommDH(2011)2, available at https://wcd.coe.int/ViewDoc.jsp?id=1761031 (last accessed 8 October 2013).

[16] ECRI General Policy Recommendation No 2 on Specialised Bodies to Combat Racism, Xenophobia and Anti-Semitism at National Level, 13 June 1997, CRI(97)36, available at http://www.coe.int/t/dghl/monitoring/ecri/activities/gpr/en/recommendation_n2/Rec02en.pdf (last accessed 8 October 2013).

- A mandate 'as broad as possible', based on universal human rights standards and including the dual responsibility to both promote and protect human rights, covering all human rights;
- Independence from government;
- Independence guaranteed by constitution or legislation;
- Adequate powers of investigation;
- Pluralism including through membership and/or effective cooperation;
- Adequate human and financial resources.

The Paris Principles are included in full in Annex B to this report.

The World Conference on Human Rights in Vienna in 1993 formally endorsed the Paris Principles and consolidated the developing global network of national human rights institutions, which subsequently became the International Coordinating Committee of National Human Rights Institutions (ICC). The UN General Assembly also endorsed the Paris Principles in 1994, recognising their status as 'best practice' international standards.[17] In the wake of these endorsements, many states went ahead and established NHRIs whose mandate, powers and functions are modelled on the requirements of the Paris Principles (Pohjolainen, 2007; Pegram, 2010).

The ICC subsequently established an accreditation process, whereby NHRIs are invited to participate in a peer-led review conducted by the ICC sub-committee on accreditation, which assesses the extent to which their mandate, status, powers and functions comply with the Paris Principles.[18] Following this review, an NHRI can obtain three types of accreditation status:

- ***A status: fully in compliance with each of the Paris Principles***
  A-status NHRIs are entitled to vote and to nominate office holders as part of the proceedings of the ICC or its regional groups and are accorded speaking rights and seating privileges during human rights review procedures conducted by the ICC or UN human rights forums.
- ***B status – not fully in compliance with each of the Paris Principles or insufficient information has been provided to make a determination***
  B-status NHRIs have the right to participate as observers in open meetings and workshops of the ICC, but they cannot vote.
- ***C status: not in compliance with the Paris Principles***
  C-status NHRIs may, with the consent of the ICC, also participate in meetings or workshops as observers, but they cannot vote and have no rights or privileges with the ICC network or in UN rights forums.

This accreditation process has the advantage of ensuring that the independence and operational capacity of NHRIs are subject to an external assessment and not just left to be determined by national law. This helps to put pressure on states to conform to the requirements of the Paris Principles and insulates NHRIs to some degree against domestic political pressures.

[17] GA Res. A/RES/48/134, 4 March 1994.
[18] For further detail, see the material available at the ICC's website on accreditation, which is accessible at http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx (last accessed on 5 October 2013).

Pegram (2010) notes how the elaboration and adoption of the Paris Principles had a profound effect on the number of NHRIs, both internationally and in the EU. In 1990, it is estimated that twenty NHRIs existed across the globe. This figure had risen to approximately 108 active NHRIs by 2011. In the EU, only a handful of human rights institutions existed prior to 1993, namely in France, Spain, Austria, Denmark and (pre-EU accession) Poland. Now, there are 17 ICC-accredited NHRIs in the EU – 12 with 'A' status, 4 with 'B' status and 1 with 'C' status.[19]

A series of further developments over the last decade have created new incentives for States to establish NHRIs. In 2005, the UN Commission on Human Rights (now the UN Human Rights Council) re-affirmed the importance of establishing NHRIs which are consistent with the Paris Principles, and by way of incentive gave special rights to 'A' status institutions to participate in its proceedings. It also reaffirmed the role of the ICC.[20] To assist states in establishing NHRIs, the UN Office for the High Commissioner on Human Rights also set up a National Institutions and Regional Mechanisms Section within its institutional structure**.** Subsequently, a series of resolutions by the UN Human Rights Council have reaffirmed the importance of the role played by NRHIs at both member state level and within the UN system, encouraged member states which have not established an NHRI to do so, and underlined the importance of ensuring that NHRIs enjoy both independence and a broad mandate that extends to cover the area of business and human rights.[21]

Furthermore, a number of UN human rights treaties, including in particular the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) and the Convention on the Rights of Persons with Disabilities (CRPD), require state parties to designate national institutional mechanisms to promote and monitor compliance with the provisions of the relevant treaty, and (in the case of the CPRD) to give due consideration to the Paris Principles in so doing.[22] In addition, several UN treaty monitoring bodies, including the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of the Child, have called for states to establish bodies in compliance with the Paris Principles and emphasised the important role that independent monitoring bodies play in enhancing respect for human rights (Müller and Seidensticker, 2007). The Universal Periodic Review process which began in 2006, which involves a review by the UN Human Rights Council of the human rights records of all UN member states, has also spotlighted the existence (or not) of NHRIs by virtue of the prominent role they are accorded in the review process (FRA, 2012b).

In the European context, the Council of Europe has also begun to encourage the development of NHRIs. In 1997, a recommendation of the Committee of Ministers to Member States promoted the establishment of Paris Principles-compliant independent

[19] 'A' status institutions are in Denmark, France, Germany, Greece, Ireland, Luxembourg, Poland, Portugal, Spain, United Kingdom (with an NHRI in its constituent countries: Great Britain, Northern Ireland and Scotland), 'B' status institutions are in Austria, Belgium, Slovakia and Slovenia and there is 1 'C' status institution in Romania.
[20] E/CN.4/RES/2005/74 E/CN.4/RES/2005/74, 20 April 2005.
[21] UN Human Rights Council Twentieth Session Agenda Item 8, *Follow-up and Implementation of the Vienna Declaration and Programme of Action, National Institutions for the Promotion and Protection of Human Rights*, A/HRC/20/L.15, 9 June 2012.
[22] See e.g. Article 33(2) of the CPRD.

national institutions for the promotion and protection of human rights.[23] The Brighton Declaration in 2011 encourages States Parties to ensure effective implementation of the European Convention on Human Rights at national level, including by considering 'the establishment, if they have not already done so, of an independent National Human Rights Institution.'[24] The Council of Europe Human Rights Commissioner also now actively cooperates with European NHRIs, while the Organisation for Security and Cooperation in Europe has also actively promoted the establishment of NHRIs (FRA, 2012b).

These developments at international level are encouraging even more European states to establish NHRIs. The country studies prepared as part of this research project have identified the desire of states to be seen to comply with emerging international best practice in this regard as an important factor behind recent moves to establish NHRIs in the Netherlands and Belgium.[25]

In contrast, the institutions of the European Union have only relatively recently begun to engage with and encourage the development of NHRIs (as distinct from NEBs) in member states (de Beco, 2007). The European Parliament has encouraged the development and strengthening of NHRIs in various resolutions regarding the fundamental rights architecture of the EU.[26] The FRA is beginning to play a role in creating a platform for NHRIs within the EU and has published a series of reports to encourage their establishment by EU member states (FRA, 2012b). It has suggested that:

> Given the consequences of the Lisbon Treaty, particularly the legally binding nature of the EU Charter of Fundamental Rights and the upcoming EU accession to the ECHR, the EU has made the implementation of human rights at the country level a priority area for action. NHRIs play a key role in such implementation provided they are fully independent, equipped with a broad human rights mandate and in a close dialogue with the many different institutions in EU Member States that are called upon to address fundamental rights issues. By establishing and maintaining effective NHRIs in all EU Member States, the capacity, and indeed quality, of fundamental rights can be improved across the whole EU. Moreover, NHRIs can help Member States in delivering information on rights deriving from EU law and thereby contribute to raising awareness about the contribution of the EU level to the overall fundamental rights landscape (FRA, 2012b, p. 29).

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[23] Committee of Ministers, Recommendation No. R(97)14, 30 September 1997.
[24] Council of Europe (2011) *High Level Conference on the Future of the European Court of Human Rights – Brighton Declaration*, available at http://hub.coe.int/20120419-brighton-declaration (last accessed 10 August 2013).
[25] A/HRC/8/3113 May 2008.
[26] For example, paragraph 16 of the European Parliament Resolution of 14 January 2009 on the situation of fundamental rights in the European Union 2004-2008 (2007/2145(INI) 'calls on the Member States to take measures to endow the national human rights institutions set up under the United Nations "Paris Principles" with independent status vis-à-vis the executive and sufficient financial resources, taking account, in particular, of the fact that one of these bodies' tasks is to review human rights policies with the aim of preventing failings and suggesting improvements, on the understanding that effectiveness is measured primarily by the way in which problems are prevented rather than simply resolved'; and 'urges those Member States which have not yet done so to set up the above-mentioned national human rights institutions.'

Nevertheless, all the country studies prepared for this project highlighted that the NHRIs surveyed tend to remain more strongly 'aligned' towards the UN and the Council of Europe than to the EU – in the sense that their establishment can at least in part be attributed to the influence of the Paris Principles and other UN standards, and also because their promotional work is usually focused on encouraging compliance with UN and Council of Europe human rights treaty commitments. The EU Charter of Fundamental Rights is becoming a more significant reference point, but in general NHRIs are primarily concerned with securing compliance with international human rights standards.

As with national equality bodies, existing NHRIs in the European Union are diverse in size, shape and function. The FRA notes that 'the main models of NHRIs, typically used to depict the wide spectrum of existing bodies, include: commissions, ombudsperson institutions and institutes or centres' (FRA, 2012b, p. 19). It goes on to categorise the NHRIs in the EU as follows: 'seven are commissions, located in five Member States, three are ombudsperson institutions and two are institutes. Of the seven B-status NHRIs located in seven EU Member States, five are ombudsperson institutions, one is a centre and the remaining two one is a commission. The sole C-status NHRI at present in the EU is an institute.'

The FRA report (FRA, 2012b) also notes that 'the A-status NHRIs in France, Greece and Luxembourg are consultative or advisory commissions which are particularly active in raising awareness and providing recommendations to government. In contrast, commissions in Ireland, Great Britain, Northern Ireland and Scotland have a broader set of powers - beyond advising they also carry out investigations or strategic litigation. Institutes, such as in Denmark and Germany, generally have a strong scientific foundation and focus on providing advice to government and parliament on policies and legislation as well as monitoring and providing human rights education. Ombudsperson institutions are typically single-member institutions, appointed by parliament, which deal mainly with individual legal protection, focusing on handling maladministration complaints. Fully accredited ombudsperson institutions currently exist in Poland, Portugal and Spain.'

European NHRIs thus can perform either promotional/advocacy or tribunal/adjudicatory functions, as do NEBs. However, most of them are engaged primarily in promotional/advocacy work, in particular in the provision of expert advice and recommendations to public bodies on how best to comply with their international and European human rights commitments. In contrast, with the exception of the ombudsman-style bodies in Poland, Portugal and Spain, most NHRIs tend not to play an active role in resolving individual human rights claims. Of the EU's 12 'A' accredited NHRIs, only the human rights commissions in Ireland and Northern Ireland have powers to support freestanding cases under human rights law – powers which have been used very sparingly (FRA, 2010).

When it comes to questions of independence and status, the provisions of the Paris Principles combined with the existence of the ICC accreditation system ensures that NHRIs enjoy a considerable degree of formal independence and freedom of action. However, the FRA has identified the existence of a number of challenges faced by European NHRIs: In general, these include a lack of political support; a high level of

government influence in the appointment processes, in the NHRI's activities, or its resource allocation; as well as a weak protection mandate resulting in weakened credibility (FRA, 2010). It might also be difficult for NHRIs to maintain a cooperative relationship with the government when ensuring the implementation of its recommendations. In addition, difficulties exist with the engagement of NHRIs at the international level. According to the recent OHCHR survey of NHRIs, global engagement with international and regional human rights mechanisms – particularly in following-up on recommendations – remains 'significantly underdeveloped' and reflects 'limited familiarity with these systems' (OHCHR, 2010).

1.4 Natural Bedfellows? Comparing the Role and Functions of NEBs and NHRIs

In general, NEBs and NHRIs have much in common, and could be seen to be natural bedfellows. They share a similar purpose: both types of body are expected to promote respect for fundamental rights, with NEB focusing on the right to equality and non-discrimination and NHRIs on a broader human rights remit. Both are also expected to play an independent role in helping to build up a national culture of respect for human dignity and equality of status.

Their powers and functions also often overlap. In particular, both types of body are expected to monitor and report on matters that come within the scope of their respective remits. A diverse range of issues, ranging from same-sex marriage to the treatment of ethnic minorities by police, come within both their remits. There also exists a reasonable degree of congruence between the international standards that apply to both NEBs and NHRIs, i.e. the requirements of the EU race and gender equality directives and the Paris Principles. On the more negative side of things, NEBs and NHRIs also face similar threats to their independence and operational capacities and are regularly the subject of political and media criticism.

However, it is clear that the 'equality functions' generally associated with and performed by NEBs differ in certain important respects from the 'human rights functions' generally associated with and performed by NHRIs. These differences are significant, as they indicate the existence of clear distinctions between the conventional mode of functioning of NEBs and that of NHRIs.

To start with, the mandate of NHRIs usually extends across the full range of international human rights standards, while the mandate of NEBs is generally confined to promoting compliance with equality/non-discrimination standards. NHRIs also tend to be 'aligned' towards the UN and the Council of Europe and focused on international human rights standards: one of their core functions is to act as a bridge between the national level and the international human rights system, through for example promoting the ratification of international human rights treaties, monitoring and reporting on the implementation of treaty commitments, and participating in regional and international fora. NEBs by comparison tend to have a more limited role outside of their domestic context: they are primarily focused on securing compliance with national and EU anti-discrimination law, even though some NEBs make regular reference to Council of Europe and UN legal standards in their promotional and enforcement work.

Differences also exist between the 'orientation' of the work of equality and human rights bodies. NHRIs usually focus on providing expert advice and recommendations to public bodies, and it is not common for them to support individual human rights claims. They also tend to have limited direct involvement with private and non-state actors, reflecting the predominantly 'vertical' nature of human rights obligations in international human rights law (i.e. they primarily relate to the relationship between the individual and the state, rather than to 'horizontal' relationships between private individuals). While some European NHRIs are becoming more involved in encouraging private businesses to take greater account of human rights standards, it is not common for them to engage directly with private bodies. In contrast, NEBs are often closely involved with individual complaints of discrimination.[27] They also regularly engage with both public and private sector bodies, both through their promotional and enforcement work: in particular, NEBs often play an active role in ensuring that private sector employers and service providers comply with anti-discrimination law.

When it comes to the issue of independence, NHRIs benefit from the guarantee set out in the Paris Principles. In contrast, the provisions of the EU race and gender equality directives set out more limited guarantees of independence, as discussed above. As a result, NEBs can enjoy fewer formal guarantees of independence than do NHRIs. Furthermore, the ICC accreditation process gives limited protection to NEBs whose mandate is limited to equality and non-discrimination: such bodies are ineligible to qualify for 'A' status, as their remit will be insufficiently broad to qualify as a 'full' NHRI, and therefore EU member states do not always face the same pressure to provide formal guarantees of the independence of NEBs as they do in relation to NHRIs.[28]

Turning to their 'external' relationships with stakeholders, NEBs and NHRIs often engage with different 'communities of interest', to borrow a phrase coined by Professor Rikki Holtmaat in the country report for the Netherlands – the civil society organisations, lawyers, academics, civil service units and other interested parties that are closely involved with equality and non-discrimination issues often differ from those who are involved in other areas of human rights.[29] The responsibility for handling equality and human rights issues is also often handed over to different government departments and state agencies. This means that NEBs and NHRIs must often engage with different stakeholders in different ways.

In addition, NEBs and NHRIs can also face different obstacles in giving effect to their functions – for example, national anti-discrimination legal standards may be better

[27] For example, the 2010 study prepared for the European Commission into the functioning of equality bodies study concluded that their 'resources seem to be mainly allocated to enforcing legislation by providing assistance or by investigating and hearing cases of discrimination. Conducting independent surveys, publishing independent reports and making recommendations seem to form a smaller part of the everyday work of equality bodies' (Ammer et al, 2010, p. 9).

[28] This point was emphasised by a number of contributors to the conference organised as part of this study on 15th March 2013, who suggested that the emphasis placed by the ICC and states on the importance of 'A' status created a risk that issues of independence relating to NEBs who were ineligible for this status could be overlooked or downplayed.

[29] All the country reports prepared for this study confirmed that the make-up of the 'communities of interest' engaged with equality issues and those engaged with wider human rights concerns often differs: see the discussion in Part IV below for further analysis of this point.

developed and more elaborated than that country's human rights laws (or vice-versa), while the 'equality agenda' associated with NEBs may face greater political and media hostility than the 'human rights agenda' associated with NHRIs (or again vice-versa).[30] As a consequence, different promotional and enforcement strategies may have to be used to give effect to equality and human rights functions, along with different legal and policy tools.

Furthermore, the 'group' focus of much of the work of NEBs is not always duplicated in the activities of NHRIs, who are charged with monitoring compliance with international human rights standards which are often framed and interpreted in individualist terms: in addition, the principles of collective solidarity that underpin some of the elements of anti-discrimination law (and in particular the prohibition on indirect discrimination) do not always find an echo in human rights law, which is often focused on protecting individual freedom. This can mean that the group orientation of much of the work of NEBs is not always reflected in the functioning of NHRIs, who tend to be less likely to be viewed as 'champions' of particular groups (O'Cinneide, 2002).

Many of these distinctions are a manner of emphasis and degree. The diverse range of NEBs and NHRIs also means that it is difficult to make hard and fast generalisations about either type of body: the differences outlined above between how many NEBs and NHRIs function do not necessarily apply in respect of each and every institution in the EU.

For example, some NEBs engaged with the provisions of the UN non-discrimination conventions, especially now that many NEBs have been designated as national points of reference for the purposes of the CPRD, while some NHRIs are very active in providing assistance to individual victims of alleged human rights abuses. Similarly, NEBs often deal with highly individual claim of discrimination that have little or no 'group solidarity' dimension, while NHRIs are often very active in protecting the rights of vulnerable groups such as asylum-seekers, members of ethnic minorities or prisoners.

However, in general, the mode of functioning of NEBs and NHRIs can differ in several important respects. As discussed further below in Part IV, these differences in turn reflect the existence of the broader conceptual divide between equality and human rights that has become embedded in legal, political and regulatory discourses across Europe. NEBs and NHRIs have much in common: however, the differences between them are also significant.

[30] In Britain, for example, equality issues often generate less controversy than human rights issues, while anti-discrimination law has been part of the UK legal system for longer than human rights law. As a result, liking equality and human rights functions within the framework of the integrated Equality and Human Rights Commission has been viewed as a way of ensuring that the human rights element of the Commission's mandate benefits from its more established equality remit: see the UK country report for further detail, and the reports of the parliamentary Joint Committee on Human Rights that relate to the establishment and functioning of the Commission (JCHR, 2003; JCHR, 2010).

2 THE MOVE TOWARDS INTEGRATION

This Part examines how certain EU member states have recently taken steps to integrate the functions of NEBs and NHRIs within the remit of a single institution. It summarises how this process has unfolded in Belgium, Denmark, Ireland, the Netherlands and the UK (with specific reference to developments in Britain), and analyses the factors that are driving this trend towards integration.

2.1 The Integration Trend

In recent years, a trend can be detected across Europe for institutions concerned with equality and human rights to be merged together into a single integrated body, or for new institutions to be established which combine the functions associated with both NEBs and NHRIs. Carver (2011) has noted that this process of integration can at times involve the merger of different equality bodies within a single institutional framework, as happened in Sweden in 2008 when legislation replaced four specialised ombudsman institutions specialising in different aspects of anti-discrimination with a single Equality Ombudsman. However, he also notes that new 'hybrid' institutions are also being established which perform the functions of both NEBs and NHRIs. This trend has accelerated in recent years. Several EU member states have now established such integrated bodies, and several more are giving serious consideration to following suit.

Until recently, the only institution in the EU that was classified as being both a NEB for the purposes of the EU race and gender equality directives and an 'A status' ICC-accredited NHRI was the Danish Institute for Human Rights (DIHR). Formerly an institute with an exclusive focus on human rights, the Danish Institute had been designated as the national equality body for the purposes of Directive 2000/78/EC in 2002 when it had taken over the functions of the Board of Ethnic Equality. (See below for more detail on this.) However, a second integrated body, the British Equality and Human Rights Commission (EHRC), subsequently came into existence in December 2007 having been established by the Equality Act 2006. The Polish Ombudsman was designated as the Polish NEB in 2010, having already been an 'A' ICC-accredited NHRI.

Now, a fourth such body has recently been established, namely the new Netherlands Institute for Human Rights (NIHR) into which the Dutch Equal Treatment Commission has been incorporated. In Belgium, reforms are planned which will establish an 'arc-institution' that will being a number of different bodies within a single overarching institutional framework which will be eligible for 'A' accredited status with the ICC. In Ireland, pending legislation will merge the Human Rights Commission and the Equality Authority into a new integrated Human Rights and Equality Commission.

Other forms of integration are also taking place elsewhere. In France, the Equal Opportunities and Anti-Discrimination Commission - *Haute Autorité de Lutte contre les Discriminations et pour l'Egalité* (HALDE) - was not merged with the national human rights body, the Consultative National Committee of Human Rights

(*Commission Nationale Consultative des Droits de l'Homme* – CNCDH). Instead, it was recently integrated into the framework of a new ombudsman institution, the Defender of Rights (*Défenseur des Droits*). However, as the *Défenseur des Droits* has a wide-ranging mandate focused upon the defense of citizen rights, and performs promotional and enforcement functions in respect of human rights that are similar and at times identical in many respects to those performed by 'official' NHRIs in other European states, this merger can be seen as representing the establishment of yet another hybrid institution charged with performing both equality and human rights related functions. Furthermore, discussions are also underway in Croatia, Slovenia and a number of other EU states about the possibility of bringing national human rights and equality bodies together under one roof, or at least achieving greater 'functional co-ordination' in Carver's phrase between their various activities (Carver, 2011).

Hybrid equality/human rights institutions have thus become part of the European regulatory landscape, and their number may grow further over the next few years. Many of these new hybrid institutions have been formed by the merger of some of the most prominent, best-funded and longest-established NEBs and NHRIs in the EU, such as the Dutch Equal Treatment Commission, the British Commission for Racial Equality, and the Irish Human Rights Commission and Equality Authority. As a result, this integration trend deserves close attention.

As discussed in the introduction, this study concentrates upon developments in five EU member states, where integrated bodies have been or are in the course of being established: Belgium, Denmark, Ireland, the Netherlands and the UK (with specific reference to Britain). What follows is a summary of the material contained in the country reports prepared for this study: if the reader seeks further detail, she is referred to the relevant country report(s), which are available on the website of this research project and also can be obtained directly from the authors of this report.

2.2 Overview of Developments at National Level

Belgium

Belgium presently has several bodies that carry out equality and human rights functions. They include the Centre for Equal Opportunities and Opposition to Racism (which has recently been designated as Belgium's 'independent mechanism' to promote, protect and monitor the implementation of the UN CPRD and has the role of ensuring respect for the basic right of foreign nationals), the Institute for Equality of Women and Men, the National Commission on the Rights of the Child, the Commission for the Protection of Privacy, the Standing Policy Monitoring Committee and the Federal Ombudsman.

However, no 'A status' NHRI exists with a general human rights promotion mandate, in contrast to all of Belgium's neighboring states. This has generated pressure for such an institution to be set up, in order that Belgium will be seen to comply with the best practice standards set out in the Paris Principles. Discussions at governmental level in this regard have been underway for more than a decade, which have been complicated by the need to ensure that any such established NHRI would have the capacity to deal with issues coming within the competency of both the federal and regional

governments that operate within the framework of Belgium's complex constitutional system.

Several proposals to establish such a NHRI were initially discussed in 2006. However, the project was reactivated in 2011, when the Belgian government agreed to implement a recommendation to set up such an NHRI during its participation in the Universal Periodic Review process before the UN Human Rights Council. Subsequently, the federal and regional governments agreed to establish a NHRI by 30 June 2013, which would take the form of an 'arc-institution' to be set up through a 'cooperation agreement' between the different bodies currently exercising equality and human rights functions. It is proposed that the Centre for Equal Opportunities and Opposition to Racism, the Institute for Equality of Women and Men and the new Federal Centre for Migration Monitoring, Protecting the Basic Rights of Foreigners and Combating Human Trafficking will come together within the framework of this 'arc-institution', with the other bodies closely cooperating with the new integrated body.

However, it remains unclear for now how this integration process is going to proceed. Uncertainty also surrounds the question of what composition, powers and functions will this new body possess. The Belgian country report prepared for this study notes that '[t]he main question, which is how the arc-institution will carry out its double [equality and human rights] function, has…simply not been addressed'.

Many interviewees nevertheless welcomed the prospect of an integrated body, taking the view that '[i]nternational human rights law can expand the horizon of anti-discrimination law…and complement the working methods of equality bodies', as well as bringing a 'new dimension' to the often very 'technical' business of implementing anti-discrimination law. Some also considered that integrating the functions of equality bodies and NRHI would 'increase the chances of complementarity between human rights and non-discrimination approaches' and help 'facilitate the sharing of expertise' between the very distinct and differentiated equality and human rights communities. However, others expressed concern that an integrated body would lack a clear focus, and feared that 'incorporating the equality bodies into an NHRI would create competition for resources, difficulties in prioritisation and conflicts of interest'. There was general agreement that questions of resources, organizational structure, public profile and strategy would inevitably loom large when the 'arc-institution' was established.

Denmark

The Danish Institute for Human Rights (DIHR) was initially established as the Danish Centre for Human Rights by a parliamentary decision in 1987. The Centre had functioned as an independent and autonomous NHRI, while a separate Board of Ethnic Equality had been established in 1993 to promote equality of opportunity for all ethnic groups in Danish society. Subsequently, in 2002, the DIHR was formally constituted by the Act on the Establishment of the Danish Institute for International Studies and Human Rights (Act No. 411 of 6 June 2002). At the same time, it was

designated as the national NEB for the purposes of Directive 2000/78/EC and took over the functions of the Board of Ethnic Equality.[31]

This merger took place against the background of a hostile political environment. The right-wing and anti-immigration Danish People's Party, which was at the time supporting the then minority government in Parliament, had sought to close down the Centre. However, following strong domestic and international criticism of this proposal, the merger of the centre with the Board for Ethnic Equality and other institutions went ahead as a partial concession to the People's Party: it was presented as an alternative cost-cutting and rationalising measure, and implemented at a relatively fast pace.

Subsequently, the DIHR become the national equality body for the purposes of gender equality in line with the provisions of Directive 2006/54/EC.[32] In the same year it was also designated as Denmark's 'independent mechanism' to promote, protect and monitor the implementation of the UN Convention on the Rights of Persons with Disabilities. In 2009, the Board of Equal Treatment was established to perform a tribunal-style role in respect of discrimination complaint, but the DIHR retained responsibility for promoting respect for equal treatment (specifically in relation to the grounds of race and gender, but also in relation to other equality grounds via the horizontal effect of the human right to equality and non-discrimination) and providing assistance to individual victims of discrimination.

The DIHR thus performs a mixture of equality and human rights functions. Having already been established as one of the most prominent European NHRIs before the merger, the Institute faced some challenges in integrating its new equality functions. The country report prepared for this study notes that '[i]n Denmark, human rights and non-discrimination are considered as two different if parallel systems', while the DIHR 'can still be characterized as having a mixed approach to the implementation of its dual mandate'. The report also notes that merger has 'resulted in tensions and a clash of traditions and approaches that may have undermined the effectiveness of the equality work of DIHR in the first years' after its establishment: the 'promotion of ethnic equality did not seem to be given sufficient emphasis', especially as regards budget expenditure, the publication of expert reports and the provision of assistance to individual victims of discrimination, and the equality mandate of the DIHR in general has been somewhat lacking in visibility.

However, the country report also notes that '[o]ver the years, DIHR has experienced a number of gains from the merger and from the holding of a dual mandate' – in particular an interviewee is quoted as saying that '[t]he work on human rights becomes more concrete with the integration of the equality perspective…At the same

[31] The Danish Board of Equal Treatment, which was established in January 2009 is an independent and autonomous quasi-judicial body tasked with issuing decisions in cases of individual complaints of discrimination. It is a tribunal-style NEB which deals with complaints of discrimination on account of gender, race and ethnic origin, religion and belief, political opinion, sexual orientation, disability and national, social or ethnic origin. It does not have powers to generally promote equal treatment and it has not been officially designated as a NEB.

[32] Act no. 182 of 8 March 2011. See https://www.retsinformation.dk/forms/R0710.aspx?id=136126 (last accessed 10 August 2013).

time, the work on equality becomes much easier with the integration of the [less politically controversial] human rights perspective.'

Ireland

In Ireland, the existing Equality Authority (EA) and the Human Rights Commission (IHRC) are to be merged into a new Irish Human Rights and Equality Commission (IHREC). This new integrated body is intended to be Ireland's designated NEB for the purposes of the EU race and gender equality directives and also to qualify for 'A' ICC- accredited status as a NHRI conforming to the requirements of the Paris Principles.

The Equality Authority (EA) was created by legislation under the Employment Equality Act in 1999.[33] Its mandate extends across the full range of EU non-discrimination grounds, and the Authority has played a very significant role in promoting and enforcing compliance with Irish and EU anti-discrimination law – however, it has faced considerable political hostility as a result. The Irish Human Rights Commission (IHRC) was established in 2000 partially as a result of the Good Friday Agreement and its stipulation that a parity of human rights protection should apply north and south of the Irish border,[34] and partially also in response to encouragement from the United Nations and the then incumbent High Commissioner for Human Rights, former Irish President Mary Robinson. The IHRC has worked effectively at the at the international level, in particular in how it has engaged with the UN treaty bodies, and has engaged extensively with a range of domestic human rights-related issues – however, as noted by the country report prepared for this study, its performance at the domestic level is viewed in some quarters as a little underwhelming, and like the EA it has been subject to a degree of political interference.

Proposals to merge the two bodies with three other bodies, the Data Protection Commissioner, the National Disability Authority, and the Equality Tribunal first emerged in 2008 as part of a radical rationalisation of state agencies directed towards reducing public expenditure in the wake of the 2007 economic crisis.[35] These plans were shelved, but the EA and IHRC were subject to sweeping budget cuts of 43% and 32% respectively.[36] In response, the President of the IHRC noted in 2009 that the cuts had 'seriously hampered' the Commission 'in performing its statutory functions',[37] while the CEO of the EA, Niall Crowley, resigned in protest alleging that the cuts meant that the EA could not 'operate to even a minimal level'.[38]

This backdrop has helped to create a climate of suspicion around the merger process, and generated fears that the new body will be a watered-down version of its

[33] Employment Equality Act 1998, section 39-105.
[34] The Belfast Agreement requires the Irish Government to ensure 'at least an equivalent level of protection of human rights as will pertain in Northern Ireland': see the Multi-Party Peace Agreement (the 'Belfast'/'Good Friday' Agreement), *Rights, Safeguards and Equality of Opportunity*, para. 9.
[35] *Irish Times*, 'State plans merger of five bodies instead of just three', 20 August 2008. The Equality Tribunal is a tribunal-style adjudicative body which makes determinations in individual discrimination cases.
[36] *Irish Times*, 'Human rights body says 24% cut makes it unworkable', 5 November 2008.
[37] IHRC Annual Report 2009 Launch, 9 July 2009.
[38] *Irish Times*, 'Equality Authority chief resigns over budget cutbacks', 12 December 2008.

predecessors. Some interviewees also expressed concern about the potentially limited scope of the equality mandate to be conferred upon the new body, and suggested that there was a real risk that it would fail to maintain a strong focus on enforcing compliance with anti-discrimination law. However, upon reviving plans to merge the two bodies in September 2011, the Justice Minister Alan Shatter TD asserted that a 'more streamlined body will be able more effectively, efficiently and cohesively to champion human rights'.[39] Some interviewees also welcomed the new commission as an opportunity to 'start over' and to vitalise the equality and human rights agenda.

The process of establishing the new IHREC is well underway. A Working Group comprised of former and current commissioners of the EA and IHRC, a senior civil servant, a ministerial advisor and an independent chair was established to consider how this process of integration should proceed, which after an extended consultative process reported in April 2012. Subsequently, 'Heads of Bill' were published in June 2012 which gave a foretaste of the legislation that will establish this new integrated body and its proposed mandate, powers and functions. The parliamentary Committee on Justice, Defence and Equality was then invited to comment on these proposals, and the commissioners who will have responsibility for overseeing the establishment and functioning of the new body have recently been appointed in April 2014.

The Netherlands

On 2 October 2012, the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens* – NIHR for the purposes of this paper) opened for business. This integrated institution has a wide-ranging equality and human rights remit, and was established principally out of a desire to ensure that the Netherlands would have an institution capable of acquiring 'A' ICC-accredited status in line with the Paris Principles.

The NIHR has absorbed the previously established Equal Treatment Commission (ETC), which had been originally established in 1994. The ETC functioned as a tribunal-style NEB, heating individual complaints about unequal treatment brought under national anti-discrimination law. The provisions of the General Equal Treatment Act (GETA) via which the ETC was established were repealed by the NIHR Act, which provides the new body with broad powers to promote and protect human rights.[40] A section of the Institute will continue to function as a tribunal and adjudicate individual complaints of discrimination. The NIHR Act provided that all the Commissioners and staff members of the ETC would continue to be employed by the NIHR, which is widely viewed as a successor body to the ETC.

The NIHR emerged out of a long process of deliberation and consultation about whether and how to establish a Dutch NHRI. Between 1999 and 2009, several 'models' for such an institute were proposed and debated. However, in 2009, a decision appears to have been suddenly made to proceed with the establishment of the NIHR: after some political debate, it was decided not to create a completely new National Institute or National Commission on Human Rights, as had previously been

[39] *Irish Times*, 'Minister announces details of merged human rights body', 10 September 2011.
[40] Act of 24 November 2011 containing the establishment of the Netherlands Institute for Human Rights. (*Wet van 24 november 2011, houdende de oprichting van het College voor de rechten van de mens (Wet College voor de rechten van de mens)*); Staatsblad 2011, 573.

one of the proposed options, but rather to incorporate the ETC into the newly established NIHR. As the country report notes, several interviewees suggested that this decision was influenced by a desire to avoid a proliferation of equality and human rights bodies, and also from a desire to limit expenditure on the new body in straitened budgetary conditions: in the eyes of some, the process lacked transparency.

It remains to be seen how the new integrated body will give effect to its equality and human rights functions. The country report identified a number of challenges that face the NIHR in this respect, which include a perceived lack of human rights expertise on the part of NIHR staff who previously worked for the ETC and the very different 'communities of interest' who are engaged with equality and human rights issues respectively in the Netherlands. The report also noted that the NIHR would have to find a way of combining its impartial adjudicative role in respect of individual discrimination complaint with the promotional role it was expected to play in respect of the human rights elements of it mandate.

The report also indicates what the NIHR may be required to do to overcome these challenges:

> In the first place, the NIHR needs to find ways to overcome the possible negative effects / obstacles that could result from the fact that it has a commission structure. [This 'inheritance' from the ETC means that the NIHR has a leadership structure potentially better suited to performing tribunal-style adjudicative functions rather than directing potentially controversial promotional work in respect of human rights human rights.] Secondly, the NIHR needs to execute its tasks as regards dealing with complaints about discrimination in a more efficient way in order to have sufficient time for the task of promotion and protection of human rights in general; at the same time it needs to safeguard that expertise and knowledge about equal treatment legislation (including EU law) will be maintained on a high level. [Thirdly], this [dual] function means that it should…keep a (difficult) balance between 'jumping at every occasion' to express its condemnation of particular practices and keeping too much distance from what is going on in the country. In the fourth place the NIHR needs to invest time and resources in identifying good practices from long-term established NIHRs in other countries and to develop methodologies that may enhance its effectiveness. In the fifth place, the NIHR needs to establish and consolidate its role in the establishment of 'a fundamental rights culture' by strengthening its relationships with all stakeholders in the field of promotion and protection of human rights…Finally, the NIHR needs to find a balance between clearly filling gaps in the human rights landscape and fulfilling a coordinative role on the one hand, and taking away functions and money from existing organisations on the other hand.

The country report also noted that the speed with which the NIHR was established meant that some of the problematic 'legacy' aspects of its structural and operational inheritance from the ETC had not been thought through in full, and also that '[m]uch

more work / thinking and theorising about equality, non-discrimination and human rights protection in general appears to be necessary'.[41]

United Kingdom (with specific reference to Britain)

The United Kingdom has four separate and distinct statutory bodies engaged in the protection and promotion of equality and human rights. These are the Equality and Human Rights Commission for England, Wales and Scotland (EHRC), the Scottish Human Rights Commission (SHRC), the Equality Commission for Northern Ireland (ECNI) and the Northern Ireland Human Rights Commission (NIHRC). The EHRC has responsibility for promoting equal opportunity and enforcing compliance with anti-discrimination law in Britain, with the ECNI laying a similar role in Northern Ireland. The EHRC also has responsibility for promoting respect for human rights throughout Britain, except in relation to Scottish devolved functions where the SHRC is the relevant human rights body: in Northern Ireland, this role is played by the NIHRC. Special arrangements were put in place at the ICC to allow the EHRC, SHRC and the NIHRC to secure 'A' accredited status as NHRIs, on condition that the bodies actively cooperated with one another to represent the UK as a whole. The EHRC and the ECNI are the designated NEBs for the purpose of the EU race and gender equality directives.

The UK study focused on the EHRC on the basis that it was the only body in the UK which presently integrates the functions commonly performed by NEBs and NHRIs. The EHRC was established by the Equality Act 2006[42] and opened for business in October 2007. It replaced three separate and well-established anti-discrimination bodies, which were focused upon race, gender and disability respectively - the Commission for Racial Equality (CRE), the Equal Opportunities Commission (EOC) and the Disability Rights Commission (DRC). The new body also assumed responsibility for promoting and enforcing equality in relation to age, religion and belief, sexual orientation and other associated non-discrimination grounds. It also was given the function of promoting respect for human rights as well as good relations between different social groups, and is also part of the UK's 'independent mechanism' under Article 33(2) of UNCRPD alongside the other UK equality and human rights bodies.

The original spur for institutional reform in Britain came from the enactment in 2000 of the EU Framework Equality Directive 2000/78/EC, which required the UK along with other EU member states to extent protection against discrimination to cover the rounds of age, disability, religion or belief and sexual orientation. In response, the then UK government proposed that a single NEB should replace the three existing equality commissions with their separate and ground-specific remits. As noted by the British country report, the incorporation of human rights into the plans for the new body came later, in response to pressure exerted by human rights campaigners who had recognised that the establishment of an integrated body was the most realistic way to ensure that a NHRI would come into being in Britain.

[41] For further analysis, see Goldschmidt, 2012.
[42] Equality Act 2006, available at http://www.legislation.gov.uk/ukpga/2006/3/contents (last accessed 10 October 2013).

Initial proposals positioned human rights as largely ancillary to the proposed body's equality remit. However, following the deliberations in 2004-05 of a Task Force composed of civil servants, academics and representatives of the existing equality commission and leading NGOs, human rights came to play a more central role in the vision for the new body (Spencer, 2008). The Equality Act 2006 conferred a wide range of promotional and investigative powers and functions upon the EHRC in respect of human rights, with the significant proviso that the new Commission was only permitted to provide support to individuals alleging a breach of anti-discrimination law and not human rights law (O'Cinneide, 2007).

The integration of human rights functions within the remit of the new body received a warm welcome from many civil society groups. As discussed in the country report, human rights were viewed as a type of 'glue' which could hold together the different equality components of the EHRC's mandate and give a conceptual unity to its work. However, with the exception of some notable areas of its work programme, the Commission has at times found it difficult to link together its work on equality and human rights, as discussed further below in Part IV.

Following the change of government that took place in the UK in the aftermath of the 2010 General Election, the EHRC was included in a review of public bodies which considered whether they should be abolished, absorbed into central government or be subject to 'radical reform' (under the political rubric of 'a bonfire of the quangos'). The British report notes that the government's initial proposals for reform of the EHRC showed little regard for its human rights remit or its NHRI status, which only received real attention following the interventions of the ICC and the UN High Commissioner for Human Rights who expressed concerns regarding proposals to limit the Commission's financial and operational autonomy. Further the proposals appeared to regard the Commission's duties and powers in relation to human rights, equality and good relations as distinct and separate areas of activity rather than part of a whole – for example, a proposal to repeal the Commission's 'general duty' (effectively a purpose clause: see Part V below) would arguably have delinked the equality and human rights elements of the Commission's mandate, and forced it to abandon a holistic approach to its remit in favour of a much more compartmentalised strategy. This proposal was defeated in the House of Lords and subsequently abandoned by the Government.[43] However, the UK government is at the time of writing implementing reforms to the EHRC which are designed to focus the Commission's work on what the Government considers to be 'its core roles as a national expert on equality and human rights and a strategic enforcer of the law and guardian of legal rights' (Home Office, 2012). This includes repealing its duty to promote good relations, its power to provide conciliation, and reforming its duties with respect to monitoring progress. The Commission is also the object of significant budget cuts. It therefore remains to be seen how the EHRC will chose to link together the equality and human rights elements of its mandate in the new political climate.

2.3 The Process of Integration

[43] See N. Crowther, 'Government U-turn on EHRC's General Duty', available at http://ukhumanrightsblog.com/2013/04/29/government-u-turn-on-ehrcs-general-duty-neil-crowther/ (last accessed 1 September 2013).

The above analysis of how the integration process has proceeded or is proceeding in several different EU member states illustrates the diverse nature of NEBs and NHRIs across Europe, and the different forms that integration can take. From the country studies, one can see that integration was or is planned to be achieved via assigning new responsibilities to an existing institution (e.g. Denmark, Poland), by incorporating existing institutions within a new overarching body (e.g. Belgium) or by creating an entirely new body, albeit drawing upon the staff and resources of existing bodies (e.g. Britain, France, Ireland, the Netherlands).

Furthermore, the nature of integrated bodies differs. Some bodies have a broad equality mandate that extends across all the different equality grounds in addition to a human rights remit (e.g. France, Ireland, the Netherlands, Britain), or address equal treatment only in respect of particular grounds such as race, gender or disability (e.. Denmark). In some countries, the integration process involves not only the bringing together of equality and human rights within a single mandate, but also the integration of functions relating to different areas of equality which previously were exercised by standalone ground-specific equality bodies institutions. This was the case in Britain, for example, where as noted above the EHRC replaced three anti-discrimination bodies focused on race, gender and disability. Similarly, in Ireland the Equality Authority, which will be merged with the Human Rights Commission, itself replaced a standalone gender equality body, as did HALDE in France before its integration into the 'Defender of Rights'.

The new integrated bodies also vary from each other in respect of their powers, functions and organisational structure. Using the categories set out in the 2010 EU study of NEBs, existing or planned bodies in Britain, Denmark, Ireland and Belgium can be described as 'predominantly promotion-type' bodies, with the bodies in France, the Netherlands and Poland being 'predominantly tribunal type bodies'. Using the categorisation of the 2011 FRA study of NHRIs, existing or planned bodies in Britain, the Netherlands, Ireland and Belgium are 'commissions', the Danish body is an 'institute', whereas the French and Polish bodies are 'ombudsmen'. Furthermore, some of the integrated bodies have established separate units within their organisational structures which have responsibility for dealing with specific elements of their remit (e.g. Denmark, France, Netherlands), while other bodies have a fully integrated internal structure (Britain).

However, despite all these differences, certain common features of the integration process can be identified. In all the countries surveyed for this study, the integration process has generated a degree of tension and controversy, with NGOs in particular often expressing fear that the new bodies would not be able to maintain a sustained focus on all the different elements of their mandate. Considerable uncertainty appears to exist as to how equality and human rights functions should be linked together, even though there is relatively broad support in the abstract for the notion that human rights and equality can 'fit' together at the conceptual level. In general, it appears as if integrated bodies and their linked communities of interest are only beginning to engage in depth with the issues thrown up by the linking together of their equality and human rights functions.

Furthermore, it is also clear that policymakers are also struggling with these issues, and that the integration process is generally not being driven by a distinctive or

coherent vision of the relationship between equality and human rights. A survey of the country reports prepared for this study makes it possible to identify the range of motivations which have led states to combine the functions of national equality bodies and national human rights institutions. These include the desire to rationalise or streamline public bodies, to respond to domestic or international pressure to establish NHRIs with 'A' ICC-accredited NHRI status, and/or to reform existing institutions – for example, all these factors are in play in the cases of Belgium, Denmark, Ireland, the Netherlands and the UK. However, the study did not find any concrete examples of a government being directly motivated to create a combined equality and human rights body because it had concluded on the basis of a comprehensive evidence analysis that an integrated approach to equal treatment and human rights was inherently preferable. At best, as in the UK, Ireland and the Netherlands, policymakers have taken the view that natural synergies existed between equality and human rights which could be effectively developed within the framework of an integrated body, and automatically assumed in the words of the Belgian report that 'establishing an NHRI with A status is….impossible without taking existing bodies into account and creating institutional linkages with them. Duplication should be avoided and cooperation between these bodies facilitated.'

The study also found little evidence of sustained debate or discussion regarding the practical challenges of integrating the functions of NEBs and NHRIs within a single body. Debate has tended to focus overwhelmingly upon matters of organisational structure and on the duties and powers of the integrated institutions, rather than on how equality and human rights functions can be effectively combined together in practice.

For example, the Netherlands country report concludes that:

> …compared to the more technical, procedural or organisational aspects of the process, this part (the substantive questions regarding integration) was (and still is) very underdeveloped. It was acknowledged (mostly only after being asked about this issue) by most interviewees that 'of course' non-discrimination is part of the human rights normative framework, but there was hardly any elaboration of what this might mean for the practice of the NIHR's work.

Similarly the Belgian study concluded that:

> The merger of the human rights and equality agenda has not been examined so far. Because the focus is on structure, discussions on the issue have been left aside for the moment. The main question, which is how the arc-institution will carry out its double function, has therefore simply not been addressed.

The Irish study found that:

> [O]ne conspicuous deficit in the Working Group report was in-depth discussion of how to integrate equality and human rights concepts. The fundamental compatibility of these related but distinct concepts was not probed in a substantial manner, the focus falling instead on the practical task of fusing structures.

In Britain, Spencer (2005) writing about the establishment of the EHRC noted that 'activists and policy makers working on equality and human rights (had) only recently began to think through the implications of bringing together these apparently separate bodies of work. Yet the debate on institutional arrangements could not be put on hold.'

In general, questions regarding *how* new integrated bodies should integrate their equality and human rights functions do not appear to have been analysed in detail. The pros and cons of integration, and the challenges it presents, have by and large not been discussed in detail.

3 THE POTENTIAL ADVANTAGES OF INTEGRATION

This Part explores the potential advantages of integration. In particular, it analyses how integrated bodies may benefit from the manner in which their remit 'bridges the divide' between equality and human rights, on account of the synergies and operational efficiencies that may be generated from their combined mandate.

3.1 Conceptual Coherence: The Common Foundations of Equality and Human Rights

The right to equality and non-discrimination is an integral element of the wider framework of human rights law. Article 2 of the Universal Declaration of Human Rights 1948, Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 2(2) of the International Covenant on Economic, Social and Cultural Rights all state that that the right to non-discrimination is a core human right, while the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Elimination of Racial Discrimination (CERD) and the UN Convention on the Rights of Persons With Disabilities (CRPD) give specific content to this general right to equal treatment. The UN human rights treaty bodies have also repeatedly emphasised the fundamental nature of the right to non-discrimination and its importance in protecting human dignity and the autonomy and well-being of individuals.[44]

European human rights law also recognises the existence of a fundamental right to equality and non-discrimination. Article 14 of the European Convention on Human Rights contains a truncated equality right which nevertheless guarantees non-discrimination in the enjoyment of Convention rights, while Protocol 12 ECHR makes provision for a 'free-standing' equality right providing for non-discrimination in respect of legal rights and obligations (O'Connell, 2009). Various other Council of Europe mechanisms are directed toward protecting various aspects of the right to equality and non-discrimination, such as Framework Convention for the Protection of National Minorities and the work of the European Commission against Racism and Intolerance (ECRI). Articles 20, 21 and 23 of the EU Charter of Fundamental Rights also recognises the existence of a similar right to equality and non-discrimination which binds the EU institutions and member states giving effect to the provisions of EU law.

Most national constitutions across the democratic world also treat equality and non-discrimination as a fundamental right.[45] Prominent moral and legal theorists have also argued that the concept of human rights is ultimately based on the principle that all individuals should be treated as possessing equal status, individual autonomy and a shared human dignity (Dworkin, 2000; Sen, 2009).

[44] See e.g. UN Human Rights Committee, General Comment 18, Non-discrimination (Thirty-seventh session, 1989), U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994).
[45] See e.g. Article 1 of the French Constitution of 1958, Article 3 of the German Basic Law, Section 15 of the Canadian Charter of Fundamental Rights and Freedoms, Section 9 of the South African Constitution, Articles 14-17 of the Indian Constitution and the Equal Protection Clause of the 14th Amendment to the US Constitution.

Furthermore, national and EU anti-discrimination legislation is designed in part to give effect to this individual right to equality and non-discrimination. Thus, for example, the recitals to the EU Race Equality and Framework Equality Directives both state that '[t[he right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights' and go on to refer to the ECHR and the major UN human rights treaties.[46]

National courts and the Court of Justice of the EU (CJEU) also regularly interpret anti-discrimination legislation by reference to human rights, such as Article 14 ECHR or Article 21 of the EU Charter of Fundamental Rights.[47] Indeed, the CJEU in *Mangold v Helm* took the view that the specific anti-discrimination provisions contained in the Race Equality and Employment Equality Directives of 200048 represented a specific manifestation of an underlying general principle of non-discrimination, which constituted a fundamental norm of EU law.[49]

In other words, non-dicrimination and equality of treatment are core human rights values, while anti-discimination law can be seen as part of a wider framework of laws that protect basic rights. As a result, when NEBs promote awareness of best practice in espect of equality of oppotunity and enforce compliance with anti-discrimination law, they are helping to ensure greater respect for human rights.

Futhermore, the equality functions associated with NEBs have much in common with the more general human rights functions associated with NHRIs, notwithstanding the differences between them discussed in Part I of this paper. Both sets of functions are ultimately orientated towards protecting human dignity, which is widely regarded as providing a foundation for human rights standards at large and the principle of equal treatment in particular (Réaume, 2005; Fredman, 2008).

The work of NEBs and NHRIs thus shares a common conceptual foundation, notwithstanding the variations that exist between how both sets of bodies go about their work and the existence of the divide between the spheres of equality and human rights activism. In turn, this suggests that the principle of human dignity can also provide a firm foundation for the combined mandate of integrated bodies (Spencer, 2005).

3.2 The Potential for Synergy between Equality and Human Rights Functions

Furthermore, many forms of discriminatory treatment arise out of or are linked to infringements of other human rights, while infringements of other rights such as freedom of expression or the right to a fair trial also often have a discriminatory component. This means that any comprehensive attempt to address issues of discrimination and inequality must also engage with the other human rights issues that

[46] See Directive 2000/43/EC, Recital No. 3; Directive 2000/78/EC, Recital No. 4.
[47] See e.g. Case C-555/07, *Kücükdeveci v Swedex GmbH & Co KG*, [2010] ECR I-365.
[48] Council Directive (EC) 2000/43 implementing the principle of equal treatment irrespective of racial or ethnic origin, [2000] OJ L 180/22; Council Directive (EC) 2000/78 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.
[49] Case C-144/04, *Mangold v Helm* [2005] ECR I-9981.

play a role in creating the injustices in question, while attempts to promote respect for human rights in general must take account of equality and non-discrimination concerns (Spencer and Bynoe, 1998). In Britain, the parliamentary Joint Committee on Human Rights commented back in 2003 that there was a 'considerable degree of congruence between the work required for the promotion of equality and that required for the promotion and protection of human rights' (JCHR, 2003).

As a result, NEBs often find themselves dealing with a range of human rights issues that extend beyond breaches of anti-discrimination law: for example, they are often called upon to engage with questions relating to the housing rights of Roma and other minorities. Similarly, NHRIs often have to address issues relating to the differential treatment of particular social groups: for example, state surveillance and anti-terrorism measures are often directed towards members of minority ethnic or religious groups. The overlap between equality and wider human rights is particularly strong when it comes to the rights of persons with disabilities, where issues of non-discrimination tend to be closely intertwined with breaches of other rights (Stein, 2007).

However, NEBs and NHRIs may at times lack the expertise, legal mandate or the necessary powers and functions to deal with issues that go beyond their core remit. For example, NEBs may not have the power to support individuals from disadvantaged minorities whose human rights may have been violated but where no breach of anti-discrimination legislation as such has taken place, while conversely NHRIs may lack the expertise to deal with complex indirect discrimination claims involving multiple groups of claimants or be unable to lend direct support to individuals who are seeking concrete legal remedies for specific wrongs. This may unduly truncate the ability of both NEBs and NHRIs to give full effect to their mandates (O'Cinneide, 2002).

In contrast, integrated bodies which combine the functions usually performed by NEBs and NHRIs may be well-placed to play an active promotional and enforcement role across the full spectrum of human rights, in a way that is not unduly confined by the existence of artificial distinctions between equality values and other human rights concerns (Spencer and Bynoe, 1998; Spencer, 2005). Many interviewees in countries where the development of a combined institution is currently underway have welcomed the possibility of an integrated body on precisely these grounds. In particular, some interviewees have taken the view that an integrated body would be develop a more expansive approach to equality concerns than NEBs have been able to adopt under existing national and EU anti-discrimination law, on the basis that there are certain situations where an integrated body might be better able to respond to certain types of rights violations linked to equality issues than would a NEB acting in isolation.

For example, in the UK, one of the EHRC's predecessor bodies, the Commission for Racial Equality, found its investigation into the alleged ill-treatment of black juvenile detainees hampered by the fact that the ill-treatment was a general phenomenon applied across the board to all detainees, irrespective of their ethnicity: this made it difficult to argue that race discrimination was at the heart of the issue (as distinct from inhuman and degrading treatment), which in turn limited the Commission's ability to intervene. In contrast, the integrated body that replaced it, the EHRC, was able to

bring both anti-discrimination law and the requirements of Article 3 ECHR to bear in its investigation into the use of force against young men being held in detention.[50]

The Belgian country report notes that the proposed integrated body is similarly seen as having the potential to engage with a range of human right issues affecting minorities and other disadvantaged groups which have fallen outside the existing remit of the national NEB. In the Netherlands, commentators have suggested that the incorporation of the Equal Treatment Commission within a wider human rights body may enable it to develop new ways of identifying violations of the non-discrimination principle by reference to the wider framework of human rights protection rather than being confined within the relatively narrow confines of national and EU equal treatment law (Goldschmidt, 2012).

The beneficial relationship between human rights and equality aspects of an integrated body's mandate could also work the other way, i.e. to the benefit of the wider spectrum of human rights issues. In Denmark, the country report notes that the perception exists that 'work on human rights becomes more concrete with the integration of the equality perspective…equality makes human rights more practical'. In Ireland, the proposed new integrated body is seen by some (but certainly not all) stakeholders as representing an opportunity to reinvigorate the human rights aspect of its mandate.

Furthermore, the 'bridge' created by the bringing together of equality and human rights functions under one institutional roof has the potential to give rise to new synergies between and across both elements of the new body's mandate. For example, the British country study has identified a number of instances when the EHRC's integrated mandate enabled the Commission to combine its equality and human rights remit to good effect:

> ***Use of stop and search powers*:** the use of 'stop and search' powers by the police has atrracted controversy in England because of the disproportionate extent to which it was used against young black men. However, the EHRC's wider human right remit allowed it to raise issues regarding the extent to which these powers complied with the requirements of Articles 5, 8 and 14 of the ECHR. As a result, the Commission was able to link the 'equality' issue of the disproportionate use of such powers against black men to wider concerns about its impact on individual liberty.[51]
>
> ***Religion and belief:*** in the cases of *Eweida* and *Ladele* which concerned complex issues of religious discrimination that raised difficult isues in relation both to national and EU anti-discrimination law and also to Articles 9 (freedom of religion) and 14 (non-discrimination) ECHR, the Commission was able to enage effectively with both aspects of the case in formulating its

[50] See the submission presented by the EHRC to the UN Committee Against Torture, *List of Issues on the UK's 5th Periodic Report*, August 2012, available at http://www.equalityhumanrights.com.
[51] For more detail, see the material at http://www.equalityhumanrights.com/hafan/canolfan-cyfryngau/2010/gorffennaf/commission-response-to-stricter-stop-and-search-conditions-announced-by-the-home-office/ (last accessed 10 September 2013).

legal intervention before the European Court of Huamn Rights and its public stance on the issues at stake.[52]

Human rights of older people receiving care at home: The Commission's inquiry into the quality of protection of human rights of older people receiving care in their own homes was able to explore the relationship between institutionalised ageism and risks to human rights in the social care system in England, making recommendations relating both to obligations arising from both the Human Rights Act and the Equality Act, as well as recommendations for legislative reform and practice development. The arena of health and social care has generally provided perhaps the most productive forum in which the EHRC has been able to adopt an integrated approach to equality and human rights, through it work with the Care Quality Commission and other bodies.[53]

Promoting, protecting and monitoring implementation of UN human rights treaties: The Commission's integrated mandate places it in a particularly strong position both domestically and internationally with respect to its role in promoting, protecting and monitoring the UK's ratification and implementation of international human rights treaties, including in particular the UN Convention on the Rights of Persons with Disabilities (CRPD), the UN Convention on the Elimination of Racial Discrimination (CERD) and the UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The Commission is able to carry out the functions of a NHRI in promoting and monitoring implementation of the provisions of these treaties by public authorities, while also simultaneously highlighting their equality dimension.[54]

Interviewees from a number of the surveyed states drew particular attention to the synergies that could be developed between an integrated body's work in the fields of non-discrimination and socio-economic rights. It was suggested that this could supply a 'missing dimension' to the equality agenda, on the basis that may forms of structural inequalities were ultimately linked to a failure on the part of public authorities to give effect to their obligations under the UN International Covenant on Social, Economic and Cultural Rights, the European Social Charter and other socio-economic rights instruments. The work of the EHRC on social care might provide some indication of how an integrated work programme might develop in this regard.

3.3 The Operational Advantages of Integration

Integrated bodies are also potentially better able to develop a linked approach to equality and human rights function by bringing staff together within a shared roof, streamlining administrative functions, avoiding duplication of effort and resources, enabling the development of shared expertise and providing a single focus point for

[52] For more detail, see the material at http://www.equalityhumanrights.com/news/2011/september/commission-submits-intervention-on-religious-discrimination-in-the-wo/ (last accessed 10 September 2013).
[53] For more detail, see the material at http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/ (last accessed 10 September 2013).
[54] See http://www.equalityhumanrights.com/human-rights/our-human-rights-work/international-framework/ (last accessed 10 September 2013).

the general public (O'Cinneide, 2002; Spencer and Bynoe, 1998; Kjearum, 2013). In a survey carried out by Equinet in 2011, bodies which already hold an integrated mandate reported the following gains (Equinet, 2011):

- 'The equality dimension of the integrated body's mandate is able to benefit from the protection of international standards such as the Paris Principles that have been developed for national human rights instruments and institutions;
- The integrated body is able to move beyond the limitations of equality legislation with its defined grounds and its requirement for a comparator to prove discrimination;
- Its voice and influence can be strengthened due to its dual mandate;
- Its ability to adequately address situations that involve an interaction of both discrimination and human rights violations is enhanced;
- It can achieve cost reductions and enable it to use its resources in a more effective manner; and
- Securing a simplicity from a citizen perspective once there is only a single institution to be approached (Equinet, 2011, p. 11).'

An integrated body may also be well-placed to bring together public authorities and civil society organisations operating in different areas coming within its broad remit, and to help encourage the development of a comprehensive and co-ordinated approach to the promotion of equality and human rights. The FRA has drawn attention to the potential strengths of integrated bodies in this regard: '[th]ere is a clear need to adopt a more comprehensive approach to human rights at the national level, with efforts and resources focused on key institutions, such as a visible and effective overarching NHRI in each Member State…that can ensure that all issues are addressed by some entity, that gaps are covered and that human and fundamental rights are given due attention in their entirety' (FRA, 2010, p. 14).

By way of illustration of how an integrated body may help bring about a more comprehensive and co-ordinated approach to equality and human rights issues, Harvey and Spencer (2012) suggest that the establishment of an integrated body in the form of the EHRC helped to draw attention to the existence of incoherent distinctions between various aspects of British anti-discrimination law, which were subsequently reformed by the Equality Act 2010. As they put it, '[m]erger of the equality grounds within the EHRC…proved the catalyst for securing harmonisation of equality legislation through the 2006 and 2010 Equality Acts, an untenable hierarchy of levels of protection for different sections of society being politically exposed by the juxtaposition of issues in one body' (Harvey and Spencer, 2012, p. 1661).

3.4 Delivering on Potential

In general, it thus appears as if integrated bodies have the potential to develop useful synergies between the human rights and equality aspects of their mandate. This conclusion is reinforced by the long experience of the integrated commissions in Canada and Australia, which since the 1970s have found effective ways to combine their promotional and enforcement functions in the non-discrimination field with a wide-ranging human rights mandate (Spencer and Bynoe, 1998; O'Cinneide, 2002).

However, the effectiveness of any integrated body will depend on whether such bodies are able to harness the potential inherent in the common conceptual framework that unites equality and human rights opportunities, and how they respond to the internal and external factors that may complicate this task.[55] Much will also depend on whether such bodies can get to grips with some of the challenges which arise from the integration of equality and human rights functions within a single organisation. These represent as it were the 'shadow side' of the positive potential of the integration process, as discussed in the next part of this paper.

[55] Much in particular will depend on whether internal conditions relating to organisational culture and external political and economic conditions are such so as to enable integrated bodies to realise the potential benefits of an integrated approach. See Harvey and Spencer, 2012.

4 THE CHALLENGES OF INTEGRATION

The integration of equality and human functions within the remit of a single body gives rise to a variety of different challenges, which overlap with but in certain respects are distinct from the challenges that NEBs and NHRIs face in general as part of their day-to-day functioning. Many of these challenges arise out of the differences that exist between the roles, functions, powers and activities of NEBs and NHRIs: integrated bodies may find it difficult to blend together these different modes of functioning within an effective and coherent work agenda. In addition, the specialist knowledge and skills used by NEBs and NHRIs in their work can be difficult to accommodate within a single organisational structure, while integrated bodies can struggle to establish close relationships with the various 'communities of interest' with whom they are expected to engage. Integrated bodies may also face distinctive problems when it comes to maximising their independence from political pressure and governmental influence. These challenges, which can ultimately all be traced back to the existence of the equality/human rights divide, are analysed in detail in the following pages.

4.1 Role, Purpose and Priorities

To start with, integrated bodies may face particular difficulties in defining their role, purpose and priorities. Their remit is often very wide, extending across the full range of human rights recognised in international human right law as well as across the different equality grounds set out in national and EU anti-discrimination law. This means that integrated bodies must often pick and choose which areas to focus on in depth, in particular when they make use of their promotional or investigatory powers.

For example, an integrated body might decide to focus its promotional work on issues which it considers to give rise to particularly serious or pressing concerns from an equality and/or human rights perspective, or alternatively it might choose to maintain a steady and incremental focus on a variety of distinct issues relating to different elements of its mandate, or to concentrate upon issues which involve an overlap of equality and wider human rights concerns (e.g. the treatment of migrant workers or persons with disabilities).

Making such choices will inevitably require integrated bodies to assess how best to use their resources and maximise their impact: it will also require them to make difficult decisions about what elements of their mandate to prioritise and which to de-emphasise, especially since in the current climate of austerity their resources are likely to be limited.

Selecting strategic priorities in this manner poses challenges for all NEBs and NHRIs: it is one reason why Harvey and Spencer (2012) identify effective leadership as a crucial factor in determining the effectiveness of such bodies. However, the problem is amplified in the case of integrated bodies, given the breadth and diversity of their mandates and the potential that exists for fault-lines to be exposed between the equality and human rights elements of their mandates.

All the country reports prepared for this study highlighted the difficulties that integrated bodies face in developing a work programme that extends across the full breadth and diversity of their combined equality and human rights mandate. In particular, many interviewees expressed concern that one element of an integrated mandate may end up obscuring other elements – its equality functions may become viewed as being more important than it human rights functions, or vice versa. Equinet in 2011 noted that concerns existed that '[t]he balance of resources and the definition of organisational priorities are complex tasks. Some importance is attached to ensuring that both mandates are treated equally' (Equinet, 2011).

Some interviewees also suggested that integrated bodies may find it hard to identify which elements of its remit should receive priority attention. Fears were expressed that such bodies would end up becoming detached from the various equality and human rights 'communities of interest' and lose sight of the perspectives and needs of particular disadvantaged groups. In the eyes of several interviewees, the wide-ranging remit of integrated bodies also meant that they might be tempted to adopt abstract, 'one size fits all' cross-cutting approaches to the different elements of their mandate, and also could become 'bloated', bureaucratic and detached from the realities of 'lived' discrimination and other forms of human rights abuses.

Integrated bodies may also find it hard to combine the group focus of much of the work of NEBs with the more individualistic orientation of human rights law. As previously discussed in Part I above, NEBs are often expected to focus on the needs of particular disadvantaged groups who face particular problems of discrimination and inequality of treatment, such as persons with disabilities, women and members of the Roma and other minority ethnic groups. In contrast, NHRIs are expected to play a role in protecting the rights of all individuals, irrespective of their group affiliation. Reconciling the differing focus of NEBs and NHRIs in this respect may be difficult: integrated bodies may find it difficult both to focus on the needs of particular groups and also to engage with the full spectrum of individual rights. Equinet have also identified this as a significant challenge for integrated bodies: '[t]hese tensions can build on perceptions of equality as related to the group and solidarity and of human rights as related to the individual and freedom' (Equinet, 2011).

If they have been established by the merger, absorption or replacement of previously existing NEBs and/or NHRIs, integrated bodies may also struggle to balance the established expectations of particular 'communities of interest' who have formed a close connection with the practices of their predecessor bodies with the need to develop new practices in respect of the 'new' elements of their enlarged mandate. They may be expected to carry on their work of their predecessor bodies, but also may be required to develop new modes of functioning. Balancing these competing pressures can be difficult (Harvey and Spencer, 2012).

All of the country reports prepared for this study make it clear that uncertainty exists as to how iterated bodies should define their role, purpose and priorities in relation to the equality and human rights elements of their mandate. In every state surveyed, interviewees noted that no real consensus existed as to how such bodies should balance the different elements of their remit. All the country reports also noted that it was unclear whether integrated bodies should carry on the work of their predecessor

bodies, or strike out on their own, while noting the importance of the 'legacy' effect in potentially shaping their work programmes.

Thus, the Dutch report suggests that new Netherlands Institute for Human Rights (NIHR) may face difficulties in developing a comprehensive work strategy that covers both the equality and human rights elements of its remit, especially as most of the membership of its board, its staff and its resources have been inherited from its predecessor organisation, the Equal Treatment Commission (ETC), and it remains responsible for adjudicating equal treatment complaints in line with the established practice of the former Commission. Several interviewees suggested that the extent of the NIHR's 'inheritance' from the ETC may make it difficult for it to devote sufficient time, manpower and resources to human rights activity which bears little connection with the specific concerns of anti-discrimination law.

In Denmark, one interviewee commented in relation to the Danish Institute for Human Rights (DIHR) that: 'In the beginning within the institute, the importance of the national equality work was not taken for granted – it constantly had to be argued for'. The country report notes that in the period from 2003 to 2009, the DIHR engaged in few activities relating to the equal treatment of ethnic minorities that went beyond the individual compliant support role played by the Complaints Committee for Ethnic Equal Treatment, and suggests that the number of publications produced in respect of discrimination and the equal treatment of ethnic minorities drastically declined in comparison with the number of publications issued previously by the abolished Board for Ethnic Equality. This created the perception in certain quarters that the DIHR's equality remit was viewed as being intrinsically less important than its human rights functions.

The British country report suggests that the equality-focused inheritance of the British EHRC meant that the Commission struggled initially to develop its work agenda in respect of its human rights functions. The ex-Chief Executive of the Disability Rights Commission Bob Niven, writing in 2008, suggested that 'the EHRC may well need considerable time before adopting a fully-fledged strategy on human rights' (Niven, 2008). This prediction largely came to pass. The EHRC began life just as its Chair, Trevor Phillips, finalised a comprehensive 'Equalities Review' on behalf of the UK government. The review did not explore human rights specifically: as noted again by Niven (2008), the Equalities Review 'seems set to have an appreciable influence on the EHRC's strategy on equality and diversity…[b]ut fully constructed jumping-off points are less obvious for the Commission's other two duties, on human rights and good relations.' Despite the Commission itself establishing a 'Human Rights Inquiry' in 2008, a review of the Commission's performance by the UK's Joint Parliamentary Committee on Human Rights two years into the organisations life (2009) concluded that 'in our view, the Commission is not yet fulfilling the human rights mandate set out in the Equality Act.'

The EHRC has taken some steps to redress this balance: even though its overall resources have been depleted significantly since 2010, the share of resources committed to human rights activity has increased. However, the Commission is still attempting to develop a truly integrated work programme that achieves an effective and coherent balance between its equality and human rights functions, and to establish its role, purpose and priorities in relation to both elements of its mandate.

Furthermore, as the British country report notes, the EHRC has also faced some criticism for failing to carry forward some of the work practices, initiatives and outreach strategies developed by its predecessor equality bodies, and also for not 'standing up' sufficiently for the needs of specific disadvantaged groups. In other words, the Commission's choice of priorities has faced criticism from several different perspectives - this illustrates how difficult it can be for integrated bodies to determine their role, purpose and priorities and satisfy the various communities of interest with whom they have to engage.

4.2 Powers, Functions and Mode of Operation

Integrated bodies may also have to make difficult strategic choices about how to use their powers and make use of their (inevitably limited) resources. Like NEBs and NHRIs, integrated bodies need to develop a work programme and establish a cohesive, effective and coherent mode of functioning that reflects the organisation's role, purpose, mandate and strategic priorities (O'Cinneide, 2007). However, this can be a challenging process, not least because of the differences that exist between the different modes of functioning associated with NEBS and NHRIs described in Part I above, and the need for integrated bodies to blend elements of both their work programmes together into a unified operating practice.

In particular, it can be difficult for integrated bodies to strike a workable balance between their promotional and adjudicatory/enforcement roles: often, the equality and human rights elements of their mandate may 'tug' integrated bodies in different directions in this respect. As discussed in Part I, as a general rule of thumb NEBs often tend to prioritise providing assistance to individuals and enforcing compliance with anti-discrimination law, whereas NHRIs tend to focus on monitoring and reporting. Both types of body can struggle to balance the promotional and adjudicatory/enforcement aspects of their remit (Harvey and Spencer, 2012). However, integrated bodies may face particular difficulties in striking a balance between their promotional and adjudicatory/enforcement roles over and above the challenges more generally faced by NEBs and NHRIs in this regard: integrated bodies must not alone link together their promotional and adjudicatory/enforcement work in an effective manner, but also must ensure that the balance they strike between these different functions works well for both the equality and human rights aspects of their remit (O'Cinneide, 2007).

Integrated bodies may face particular difficulties when an asymmetry exists between the promotional and adjudicatory/enforcement roles they are expected to play in respect of the equality and human rights elements of their mandate, or when some of their powers can only be exercised in relation to one of these elements and not the other. Such imbalances may cause divergences to open up between its work relating to equality and human rights, and make it difficult for an integrated body to develop effective synergies between the different elements of its remit (Equinet, 2011).

Furthermore, integrated bodies may have to cope with established expectations as to how equality and human rights bodies should give effect to the promotional and adjudicatory/enforcement aspects of their remit. As is the case with identifying its role, purpose and priorities, any decision to depart from the mode of functioning of its

predecessor bodies may damage relations between an integrated body and the relevant 'communities of interest' and expose it to allegations that it is neglecting or downplaying a specific element of its mandate.

These tensions are well illustrated by the example of Ireland. As the country report notes, the Irish Equality Authority (EA) had placed considerable emphasis upon the legal enforcement of equality legislation, before being subject to sweeping budget cuts. In contrast, the Irish Human Rights Commission (IHRC) – although it possessed the ability to bring legal enforcement action in its own name - never initiated a case in its own right: instead, it focused upon making *amicus curiae* interventions before the courts and publishing expert legal opinions on contested issues of human rights law and policy.[56] Now that the two bodies are being merged together into the new Irish Human Rights and Equality Commission (IHREC), some equality advocates have expressed concern that the EA's emphasis on legal enforcement will not be carried forward after the new body is established. In principle, there is much to be gained from combining the practices and traditions of the two predecessor bodies within one institution. However, as Niall Crowley, former CEO of the EA, reflected: '[t]he EA always saw itself as a social change agent, the IHRC much more as an expert adjudicator'.[57] The challenge will be to reconcile these visions of the IHREC as an 'expert body' versus 'change agent' into a coherent programme of action.

The Dutch report has also highlighted that concern exists as to how the new Netherlands Institute for Human Rights (NIHR) will combine its established and clearly delineated adjudicatory/enforcement role in respect of equality (as played by its predecessor body, the Equal Treatment Commission) with the more diffuse advocacy/promotional role it has been given in respect of human rights.[58] The former Equal Treatment Commission (ETC) had faced some criticism for allowing the task of adjudicating complaints under equal treatment law to consume the greatest part of its time and resources, to the detriment of other tasks like providing advice, running information campaigns for the general public, publishing research into structural discrimination, and engaging in advocacy work: it remains to be seen whether the NIHR's promotional role in respect of human rights will be overshadowed by its established enforcement role of the NIHR in respect of discrimination (Goldschmidt, 2012).

In Denmark, concern has been expressed that the Danish Institute for Human Rights (DIHR)'s enforcement role in respect of anti-discrimination law has been obscured at

[56] In part, as discussed in the Irish country report, this appears to have been the result of a strategic choice to focus more on its promotional role rather than engaging in high-risk legal enforcement action which could involve incurring serious financial cost. Furthermore, litigation is not always a suitable way to encourage greater compliance with the full range of human rights standards, especially as many international human rights norms are not legally enforceable in Irish law (such as socio-economic rights).

[57] Niall Crowley, former CEO of the EA, in interview with Thomas Pegram, 11 October 2012

[58] As noted by the Dutch country report, the NIHR was not given the legal power to request a court to rule that conduct has infringed human rights standards: it can only make such a request in respect of anti-discrimination law. The report indicates that the main reason why this power was not extended to the wider human rights remit was that the government was concerned that it open the way for the NIHR to become engaged with individual complaints about human rights violations. An amendment to the bill establishing the NIHR was submitted in the Second Chamber of the Dutch Parliament to include this power, but it did not receive majority support. (*Tweede Kamer* 2011-2012, 32 467 nr.19; rejected on 19 April 2011.)

times by its high-profile and well-established promotional role in respect of human rights. The Danish study notes that 'traditionally like the other Scandinavian human rights institutions, the [Danish Institute for Human Rights] has not been very proactive in bringing individual cases or test cases of human rights violations to courts…[and] does not have a profile as a complaint- and advisory body for citizens…'

In the UK, the Equality and Human Rights Commission (EHRC) is empowered to provide legal assistance to individuals regarding complaints of discrimination under equal treatment law, but cannot provide such legal assistance when it comes to 'freestanding' human rights cases (i.e. human rights cases which do not involve a claim relating to national or EU anti-discrimination law) (O'Cinneide, 2007). This largely confines the enforcement role of the Commission to the equality element of its mandate, while its work programme in respect of wider human rights issues is inevitably orientated towards promotional functions. The Commission has made good use of its 'cross-cutting' inquiry and investigative powers, as well as its legal ability to intervene in court cases and initiate judicial review proceedings that relate to both equality and human rights issues – in particular, it conducted a major inquiry into social care provision. However, the asymmetry that exists between its enforcement orientation in relation to equality and its promotional orientation in relation to human rights has made it difficult for the EHRC to develop a fully integrated approach to its combined remit. A mismatch has at times developed between its work in the equality and human rights field: for example, the Commission in 2013 published new guidance on public procurement for public authorities which focused on the equality duties of public authorities under the Equality Act 2010 and contained little or nothing relating to their human rights duties.[59] The EHRC has argued that the absence of such a power to support individual human rights complaints has undermined its capacity to build respect for and promote understanding of human rights: '[t]he absence of capability to support individual cases pursued by ordinary people has undermined any effort to demonstrate the real everyday value of human rights in protecting the dignity of the individual' (EHRC, 2011).

Problems may also arise out of the differences that can exist between how NEBs and NHRIs 'align' their work programmes, and the potentially conflicting expectations that this can generate about how an integrated body should function. For example, as noted in Part I above, NHRIs primarily focus on monitoring and providing guidance to public bodies, while NEBs also focus on bodies operating in the private and voluntary sectors: integrated bodies may thus need to develop work practices that engage with all three sectors of activity, or risk neglecting elements of their mandate. In Poland, the Polish Ombudsman is both an 'A' accredited NHRI and a NEB, but is only empowered to make findings of maladministration in respect of alleged equality and human rights abuses by public authorities and not by private entities. This means that the Ombudsman is only able to offer information and other 'signposting' services to individuals who have experienced discrimination or other abuses of their human rights at the hands of non-state actors, which limits his capacity to discharge many of the functions conventionally performed by NEBs.

[59] EHRC (2013) *Buying Better Outcomes – Mainstreaming equality considerations into procurement: A guide for public authorities in England*, available at http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/buying_better_outcomes_final.pdf (last accessed 10 October 2013).

Integrated bodies may also struggle to balance the focus on UN and Council of Europe human rights treaties, standards and mechanisms associated with NHRIs with the national/EU focus of NEBs. Given the increasing pressure on equality and human rights bodies to be seen to deliver 'value for money' in the current straitened fiscal climate, activities with less immediate or obviously tangible results – such as engagement with treaty monitoring processes - may struggle to attract resources and attention in integrated bodies where a focus on national/EU law and policy may yield more immediate and tangible returns.

Furthermore, integrated bodies can also face particular difficulties in circumstances where they are expected to function both as an active and engaged agent of social transformation and as an enforcement and regulatory agency charged with securing compliance with established equality and human rights standards. Again, this is a problem that also affects both NEBs and NHRIs – if an equality or human rights body is expected to play a proactive campaigning role directed towards achieving social change and also to function as an impartial and detached regulator applying the law in a neutral fashion, then they can find it difficult to reconcile these two functions (O'Cinneide, 2002; Harvey and Spencer, 2012). However, these tensions can be particularly pronounced in the case of integrated bodies, especially where an integrated body is expected to play different roles in relation to its equality and human rights functions: once again, this can cause damaging imbalances to open up between the different elements of its mandate, and hinder the development of effective synergies between its equality and human rights functions (Equinet, 2011).

For example, in the Netherlands, the NIHR is expected to both carry on the impartial adjudicatory functions of its predecessor, the ETC, while also playing an advocacy role in relation to both equality and human rights. As yet, it is not clear how the new body will combine these functions, or how willing it will be to intervene in contested issues of law and policy relating to its human rights role. Some interviewees expressed concern that the authority of the equal treatment section of the NIHR could suffer from their co-location with the more 'political' activities of the wider body, and suggested that it would be problematic for the new integrated body to be providing authoritative opinions in respect of discrimination complaints while at the same time voicing potentially controversial opinion regarding alleged human rights violations. However, other interviewees considered that this dual role would not necessarily cause problems if the new body was open and transparent in the exercise of its functions.

In France, analogous concerns have been expressed that the assertive advocacy role formerly played by HALDE in promoting equality of treatment alongside its adjudicatory functions may be watered down following its integration within the institutional framework of the 'Defender of Rights', whose other component elements mainly adopt a 'detached' dispute resolution focus in handling human rights-related cases involving maladministration, data protection and children's rights. This highlights the importance of institutional culture, and the effect it may have on the functioning of bodies having a combined equality and human rights mandate: if different elements of its mandate are discharged in different ways, this may generate tension or uncertainty about how an integrated body should best go about its business.

In Britain, the country report highlights the fact that recent debate regarding reform of the EHRC has centred on the question of whether it should primarily be regarded as an agent of social change or instead as a regulator focused on ensuring compliance with anti-discrimination law and (to a lesser extent) human rights standards. Initial governmental proposals for reform in 2011 were directed towards focusing the Commission's work 'on its core role as an independent equality regulator' (Home Office, 2011). However, the UK government subsequently concluded that the EHRC should not after all be regarded as a regulator on grounds that 'it is neither realistic nor desirable to expect the EHRC to "regulate" every part of society on equality' and that its role in promoting compliance with equality and human rights standards denies it the requisite 'neutrality and impartiality' to assume such a role (Home Office, 2012). The British country report analyses how these shifts have impacted upon the work of the EHRC and again have generated uncertainty as to its status and appropriate role.

4.3 The Legal Framework

Integrated bodies may also face challenges arising out of the legal context in which they function. Equality and human rights issues in the EU are usually regulated by two separate if interconnected legal regimes. This can ensure that promotional and enforcement work in one field becomes 'compartmentalised' and detached from the other: it also means that the staff of integrated bodies may struggle to carry across their expertise into different work areas (Equinet, 2011).

To illustrate the nature of the problem, it is important to remember that national and EU anti-discrimination legislation has developed along a distinct and specific trajectory of its own, often influenced by the need to deal with the group nature of many forms of discrimination and to address specific legal, political and social issues that arise in the context of its implementation. It has evolved into a highly technical regulatory regime that functions in a very distinct and different way from human rights law, which is more individual-focused and relies to a greater degree on the application of broad-brush general principles of law.

Furthermore, national and international human rights law has tended to exert a very limited influence on the development of anti-discrimination law. Thus, for example, Spencer (2005) has noted how the 'international [human rights] dimension had very little impact on the development of the UK's own anti-discrimination legislation' and that 'legislation and practice to address discrimination in employment, goods and services has developed largely in isolation from related human rights concepts.' A similar situation appears to exist in all the countries surveyed for this project, even though the link between equality legislation and background human rights values is often acknowledged at the abstract level.

The same is also true for EU anti-discrimination law. The approach developed by the EU to anti-discrimination has developed mostly in isolation from wider developments in human rights, despite the centrality of equality and non-discrimination values to the overall 'package' of human rights principles, and the grounding of the EU's anti-discrimination directives in the EU's commitment to protecting and promoting the fundamental rights of its citizens. The prohibition of discrimination in the sphere of employment and industrial relations in the EU began with the principle of equal pay

for women and men in Article 119 of the EEC Treaty of 1957 (now Article 157 TFEU). This treaty provision was considered to be essential for the establishment of a common labour market in Europe, to ensure that fair competition between employers in different member states was not distorted by different regulatory standards regarding the principle of equal pay. In contrast, the Treaty of Rome contained no specific provision regarding human rights as such, while European law subsequently developed along predominantly 'market integration' lines and was driven largely by economic and (to a lesser extent) social imperatives (Craig and de Búrca, 2011).

Hence, EU anti-discrimination law does not share much of a common genealogy with the development of equality and non-discrimination norms at the level of national and international human rights law. In recent years, a process of convergence has begun. In the UK, Hepple (2010) has claimed that the Equality Acts of 2006 and 2010 together marked a 'historic shift' towards the recognition of equality as a fundamental human right, which involved the harmonisation and extension of existing anti-discrimination law within the framework of a 'unitary human rights perspective'. At the pan-European level, the EU's ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD), the incorporation of equality and non-discrimination rights within the wider rights provisions of the EU Charter of Fundamental Rights and the EU's impending accession to the European Convention on Human Rights marks the beginning of a potential integration of equality and human rights legal standards. Interestingly, de Búrca notes how the concepts and provisions of EU anti-discrimination law have begun to shape the growing body of European Court of Human Rights case law on discrimination (de Búrca, 2012),[60] while as previously noted the CJEU has begun to interpret anti-discrimination legislation by reference to fundamental rights principles, including those set out in the EU Charter of Fundamental Rights.[61] Similar developments are taking place at national level: domestic courts are increasingly referring to human rights standards in interpreting national and EU anti-discrimination legislation, and vice versa.

However, despite this gradual convergence of equality and human rights standards, anti-discrimination legislation remains a very distinct and self-contained area of legal regulation. National and EU anti-discrimination legislation tends to have a narrower reach than the provisions of human rights law that relate to equal treatment: it usually only applies to specific forms of inequality, with for example EU law only covering discrimination based on six grounds (age, disability, gender, race or ethnicity, religion or belief, and sexual orientation).[62] In contrast, the provisions of human rights law that relate to equality have a broader scope as they are capable of applying to all discrimination based on individual 'status': however, they often provide a lesser level of protection, as objective justification can be a defence to any discrimination claim, and the jurisprudence of the European Court of Human Rights and other courts is often highly underdeveloped in this context (O'Connell, 2009).

[60] See in particular App No. 57325/0, *DH and Others v. Czech Republic*, judgment of the Grand Chamber of the European Court of Human Rights, Nov. 13, 2007, [85][91], [187]; App Nos. 65731/01 and 65900/01, *Stec v. UK*, Judgment of the European Court of Human Rights of Apr. 12, 2006, especially at [58].

[61] See e.g. Case C-555/07, *Kücükdeveci v Swedex GmbH & Co KG*, [2010] ECR I-365.

[62] Article 21 of the Charter of Fundamental Rights provides for an open and more extensive list, the Charter is addressed to the Member States 'only when they are implementing Union law', and it does not extend the field of application of Union law beyond the Union's powers. Accordingly, Article 21 of the Charter cannot by itself create new non-discrimination rights.

National and EU anti-discrimination also has a strong focus on combating group discrimination: as a result, indirect discrimination plays a central role in equality law, while it remains a chronically underdeveloped concept in human rights law. It also has given rise to a complex and sophisticated case-law that remains largely unaffected by developments in human rights law, while some of its provisions have little if any normative counterpart in the wider ream of human rights law: for example, EU age discrimination law is now well-developed, but there exists very little human rights jurisprudence on this topic.

As a result, equality and human rights often remain 'compartmentalised' in separate areas of legal regulation. At the member state level this historical divide has tended to generate entirely separate regulatory regimes for the protection and promotion of equal treatment and for wider human rights. Furthermore, this historic separation is equally reflected in the functioning of national equality bodies, which as discussed in Part I are generally 'aligned' to EU equal treatment law, and national human rights institutions which are largely 'aligned' to international human rights standards and bodies including the UN and Council of Europe. All the country studies prepared for this project highlighted the existence of this difference in focus.

As a result, despite the recent beginnings of a convergence between equality and human rights standards, their historically separate development has ensured that NEBs and NHRIs tend to focus on different legal instruments when it comes to their promotional and enforcement work. Furthermore, NEBs tend to work with the complex regulatory framework provided by anti-discrimination legislation, while NHRIs work with the more abstract and less clearly defined set of norms set out in the ECHR and other human rights instruments.

This would appear to have the potential to complicate the integration of equality and human rights functions within the mandate of a single integrated body. The different histories, concepts and approaches reflected by and embedded in these separate areas of regulation present significant challenges for integrated bodies. In particular, it may hinder the ability of staff to work across the equality/human rights legal divide, as they may lack the legal expertise to work effectively on both sides of the fence. It also ensures that the day-to-day 'equality work' of an integrated body may at times differ from the focus of its 'human rights work', which can limit the extent to which effective synergies can be developed over time. Promotional and enforcement work relating to the group dimension of indirect discrimination, or to the technical requirements of disability access regulations, or to other distinctive elements of anti-discrimination law and practice may have no direct link to promotional and enforcement activities related to human rights law – similarly, aspects of the human rights work of integrated bodies may also have limited 'carry across' into the sphere of non-discrimination.

4.4 The Lack of 'External' Integration of Equality and Human Rights

The historic divergence between equality and human rights standards also appears to have played a role in creating an equality/human rights divide among external stakeholders as well, which can complicate the attempts of integrated bodies to achieve effective synergies between both elements of their mandate. The wider legal, political, governmental and civil society environment in which NEBs and NHRIs

operate often view equality and human rights in a highly 'compartmentalised' manner. Even in those states that have already or which are in the process of creating integrated bodies, national legislation, public bodies and civil society tend to treat equality and human rights as largely separate and distinct spheres of concern.

The country reports prepared for this study have all confirmed the existence of these separate 'communities of expertise', to borrow a phrase from the author of the Dutch report. In all of the countries surveyed, stakeholders focused upon human rights or equal treatment had rarely engaged with one another until the prospect of a combined institution had become a real possibility.

Thus, the Netherlands study concludes that distinct and separate 'communities of interest' have developed in the fields of equality/non-discrimination and human rights, which have yet to establish close links with each other despite the establishment of the new integrated NIHR. All interviewees in the Dutch study agreed that there existed two separate communities of interest and expertise: one interviewee recalled how '[a]t the opening ceremony of the NIHR for the very first time I saw people of these two worlds together in one room'. Furthermore, the report notes that few Dutch legal experts are involved with both anti-discrimination and human rights law: equal treatment legislation has become an area for legal specialists who are more oriented to and connected with EU law than to the ECHR or UN human rights treaties.

In the UK, engagement between these communities of interest remains a relatively recent and under-developed phenomenon. Writing in 2005, Spencer noted how 'when a colleague and I…first proposed in 1998 that a human rights commission be established and that the equality commissions be brought within its umbrella, we met resistance even to the idea that equality is a human rights issue, and institutional fears that equality would, within such an institution, be dwarfed by a vast and controversial human rights agenda' (Spencer, 2005). Similarly, a study by Britain's Audit Commission in 2003 found that few links were made between equalities and human rights legislation by public bodies (Audit Commission, 2003), a view that was subsequently echoed by Niven in his 2008 analysis of the challenges facing the new EHRC (Niven, 2008). The Belgian study also reports that 'the human rights and non-discrimination communities work rather separately and do not communicate'.

This lack of 'external integration' can be a problem for integrated bodies, as highlighted in all of the country reports. It can complicate the integration of equality and human rights functions within the mandate of a single body, as staff members recruited from the equality communities of interest will often have little expertise in wider areas of human rights and vice versa. It also means that integrated bodies will often have to interact in different ways with the various equality and human rights communities of interest, which may make it more difficult for such bodies to build synergies between different aspects of their work programme. It also may make it more difficult for integrated bodies to build up their public profile, and to establish positive relationships with their stakeholders - engaging with such a wide range of different communities of interest can present formidable logistical challenges, and a failure by an integrated bodies to engage constructively with a particular 'community of interest' may undermine its credibility and make it less able to identify specific patterns of violations of equality or human rights principles.

In this respect, it is worth noting that some of the evidence collected from the country reports prepared for this study suggests that integrated bodies may at times struggle to 'reach out' to marginalised communities. As noted above, concerns were expressed in each of the countries surveyed that the wide remit of integrated bodies might dilute their profile and make it difficult for them to establish a close relationship with specific disadvantaged groups, who may feel that their particular needs and perspectives are not sufficiently reflected in the mandate, composition and mode of functioning of hybrid institutions.[63]

Another specific problem which stems from the 'compartmentalisation' of equality and human rights is that government departments are often are concerned with different facets of an integrated body's mandate. Indeed, in Denmark and Britain, integrated bodies come within the field of responsibility of government departments that have a particular interest in only one aspect of the organisation's mandate. This may create a disconnection between their work and the concerns of their primary point of governmental contact. It can also help to create a perception that the integrated body is more orientated towards one element of its mandate than another. Thus, in Denmark, the DIHR comes within the field of responsibility of the Danish Ministry of Foreign Affairs - the Danish study suggests that this arrangement risks sending the signal that the DIHR is and should be primarily concerned with Denmark's international human rights obligations and human rights issues in other countries, rather than with domestic issues. In Britain, the EHRC is sponsored by the Government Equality Office, a nomadic unit which has been located in a number of different government departments over the last few years, while responsibility for domestic human rights policy rests with the Ministry of Justice - again, this may create the impression at least within government that the Commission is primarily concerned with equality rather than wider human rights matters.[64] As Equinet note, '[g]overnment can end up dealing with the body as two bodies under the one roof' (Equinet, 2011, p. 12).

Some new institutional arrangements, such as the creation in 2007 of the FRA may help to break down these barriers which historically existed between the spheres of equality and human rights. Furthermore, increased dialogue has developed between Equinet and the European Group of National Human Rights Institutions, while the provisions of the CRPD in particular are encouraging the establishment of greater linkages between equality and human rights 'communities of expertise'.

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[63] Particular concerns were expressed about the risk that the equality dimension of an integrated body's functions might be obscured if its name gave no indication that it was charged with a specific role in promoting equality of opportunity. One interviewee in the Danish study suggested that the name of the Danish Institute for Human Rights 'sends an important signal that the primary issue for the institute is human rights' and not equality of treatment. Similarly, the Dutch report notes that some interviewees suggested that the absence of any reference to 'equal treatment' in the name of the newly established Netherlands Institute for Human Rights could risk the organisation's visibility as an equality body.

[64] Even though NEBs, NHRIs and integrated bodies all enjoy guarantees of independence, the policy interests of their sponsoring governmental departments may still play a significant role in shaping the relationship between these bodies and national governments, not least because sponsoring departments often act as an interlocutor between equality and human rights bodies and other public authorities. As an interview in the Danish study noted, '[w]e are politically established institutions! If there is something the political system does not want, it is hard for us to succeed no matter how high the quality of our work is.'

However, it appears as if these linkages are still for the most part at an embryonic stage in all the EU member states surveyed for the purposes of this study. Attempts to create harmony or links between the equality and human rights responsibilities of public bodies in the UK, France, the Netherlands, Belgium and Denmark have been very limited. The legislative proposals to establish the Irish Human Rights and Equality Authority indicate that consideration is being given to the imposition of a 'public sector equality and human rights duty' on public authorities, as discussed in the Irish report: this would be an important innovation, but the nature and content of this duty remains unclear for now.[65]

In the UK, the EHRC has attempted to encourage other organisations to develop an integrated approach to equality and human rights issues. For example, the EHRC has a memorandum of understanding with the Care Quality Commission (which regulates health and social care in England) and has worked with the Commission to develop overlapping equality and human rights standards for the purposes of registering and inspecting care providers. It has also commissioned research into the degree of engagement with human rights among equality-focused NGOs.[66] However, in general, the British report suggests that the EHRC has tended to engage with external bodies in the private, public and voluntary sectors in a compartmentalised manner when giving effect to the distinct equality and human rights elements of its mandate.

4.5 Independence and Resources

Another set of challenges arise in respect of the guarantees of independence that should be enjoyed by integrated bodies. Questions of independence loom large in relation to NEBs and NHRIs. Both types of bodies are supposed to function in an independent manner, as outlined in Part I above. However, in practice they are often subject to a degree of political pressure, which usually manifests itself in the form of threats to their resources and interference in the process of appointing board members. In this respect, integrated bodies are no different from any other equality or human rights body – maintaining their independence is a constant challenge, as it is for all NEBs and NHRIs. However, they also face specific and particular challenges in this regard that arise out of their combined mandate.

To start with, it is clear that different views exist as to what 'independence' entails in the context of equality and human rights bodies. A range of views were expressed across the six studies as to what factors were determinative of the independence of

[65] The UK's Joint Parliamentary Committee for Human Rights and the EHRC have both called (unsuccessfully) for a duty to be placed on British public authorities regarding human rights which would be equivalent in effect to the existing public sector equality duty, which requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and to promote good relations. See Joint Committee on Human Rights, 18th Report, 2006/7 Session, *The Human Rights of Older People in Healthcare*, 14 August 2007, HL 156-I/HC 378-I, Ch. 5; EHRC, *Human Rights Inquiry* (London: EHRC, 2009), available at http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-inquiries/our-human-rights-inquiry/ (last accessed 10 October 2013).

[66] EHRC, *Human Rights and Equality in the Voluntary Sector* (London: EHRC, 2010), available at http://www.equalityhumanrights.com/human-rights/human-rights-celebrations/international-human-rights-day-2010/human-rights-and-equality-in-the-voluntary-sector/ (last accessed 10 October 2013).

both separate and integrated equality and human rights bodies, and how these factors might play out in the context of an integrated body. In particular, some interviewees viewed the maintenance of a 'neutral' stance as between different political viewpoints and socio-economic actors as being emblematic of independence. Others considered the perceived willingness of the organisation to 'speak out', i.e. to challenge government policy and to play a prominent role in advocating social change, to be a key attribute of an independent body.

In part, this reflects the differences that exist between equality and human rights bodies such as the Polish Ombudsman or the Dutch ETC that perform largely 'tribunal-style' functions, and those that play a more 'promotional' role such as the EHRC in Britain or the EA and IHRC in Ireland. As discussed previously, 'tribunal-style bodies are expected to be 'neutral' arbitrators who maintain an even-handed stance as between parties to discrimination or human rights complaints. In contrast, 'promotional' bodies are usually expected to play a more activist role. As a result, what qualifies as an indicator of independence may vary according to the functions performed by equality and human rights bodies – both types of body are expected to perform their functions free from government interference, but the form that independent functioning may take in the case of tribunal-style bodies at times varies from the form it takes in relation to predominantly promotional-style bodies.

However, when an equality or human rights body is required to perform elements of both roles, i.e. both to act as an impartial adjudicator and to be an active campaigner for social transformation, then tensions can arise between the 'neutral' and the 'promotional' understandings of independence (O'Cinneide, 2002). If a NEB or NHRI performed both roles treads carefully because they wish to maintain the appearance of being 'even-handed', then this may disappoint civil society activists who wish it to discharge its promotional role in a more outspoken manner and may lead to accusations that the body in question is succumbing to political pressure to 'behave'. Conversely, if a NEB or a NHRI adopts a very activist stance, then it may be subject to accusations that it has abandoned the detachment required of a public body in receipt of taxpayer funds, i.e. that is has lost its 'independence' from other campaigning organisations.

These tensions can become even more acute when an integrated body is expected to function both as an impartial regulator and as an active agent of social change with respect to different elements of its combined mandate. In several of the country reports, the fear was expressed that the different understandings of how such bodies should manifest their independence might struggle to co-exist in integrated bodies.

This fear was particularly expressed in respect of France and the Netherlands, where as discussed above integrated bodies are expected to perform a mixture of adjudicatory and campaigning roles. Some interviewees in both states expressed concern that the new integrated institutions of the *Défenseur de Droit* and the NIHR will choose to manifest their independence through an emphasis on 'even-handedness', and may therefore downplay their promotional element of their remit in relation to equality (in France) and human rights (in the Netherlands). In Ireland, some concern has also been expressed that the more 'even-handed' approach of the IHRC may be difficult to reconcile with the more 'activist' approach of the EA when the new IHREC is established. In other words, the tension between regulatory and

promotional functions that is a recurring theme in the context of equality and human rights bodies may surface again in the context of how integrated bodies choose to manifest and embody their independence, which in turn can again lead to disappointed expectations and a sense of disconnection between such bodies and their associated communities of interest.

The various country studies also noted the need to consider both *de jure* and *de facto* independence, i.e. both the formal guarantees of independence enjoyed by integrated bodies and its actual capacity to act in a manner free from government control. The creation of an integrated body poses particular challenges and opportunities when it comes to both these types of independence: it can be an opportunity to 'level up' *de jure* independence and embed a culture of *de facto* independence, or it can create a risk of 'levelling down'.

As noted in Part I, different standards apply in respect of the *de jure* independence of NEBs and NHRIs. The 'Paris Principles' and other international guidelines relating to the independence of NHRIs from government control are relatively clear and robust, albeit pitched at a high level of generality. They are also backed up by the rigorous accreditation process administered by the ICC. However, in contrast, the EU standards set out in the race and gender equality directives which apply to NEBs are less expansive, requiring only that equality bodies provide 'independent assistance to victims of discrimination and publish independent surveys and research: the 2010 study on equality bodies prepared for the European Commission noted that 'the EU Directives do not explicitly require the body to be independent from the government or any other body; the criteria for determining "independence" are not specified' (Ammer et al, 2010). It should be noted that the country studies prepared for this report suggest that many NEBs enjoy no less *de facto* independence than do 'A'accredited NHRIs in EU member states, based upon key criteria such as legal status, financial independence, accountability arrangements and appointment process. However, in the absence of any equivalent of the Paris Principles or the ICC accreditation process for NEBs which are not also NHRIs, the independent of these bodies is arguably more vulnerable than is the case with NHRIs, at least when it comes to external interference by government.[67]

The establishment of integrated bodies may thus represent an opportunity to 'level up' to the higher level of formal independence required under the UN Paris Principles. For example, in Ireland, the plans for a combined equality and human rights body may give an enhanced supervisory role to the Irish Parliament. However, the opportunity to 'level up' to the best practice standard is not always taken: in Britain, the EHRC was set up in the mould of its predecessors as a non-departmental public body, which places some limits on its operational independence (O'Cinneide, 2007).

[67] Perhaps as a result, a many equality bodies in Europe remain subject to formal supervision by a government minister or department of state for how they spend their funds, notwithstanding the concerns in relation to this type of arrangement that have been expressed by the COE Commissioner for Human Rights. See Council of Europe (2011) *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, 21 March 2011, CommDH(2011)2, available at https://wcd.coe.int/ViewDoc.jsp?id=1761031 (last accessed 8 October 2013).

When it comes to *de facto* independence, the situation is similar. The creation of an integrated body may create an opportunity to establish a new culture of robust independence or reinforce existing good practice, or it can produce a less positive outcome. In Ireland, for example, the IHRC enjoys greater formal independence than the EA, yet the latter is viewed by many stakeholders as having been more assertive in challenging government policy: some concern has been expressed that this culture of active independence, which has already generated a hostile political response, may be further diluted when the EA is merged into the new body.

Issues of resource allocation also loom large in this respect. If integrated bodies are established but not given sufficient resources to develop a work programme in respect of both the equality and human rights elements of their mandate, then this will prevent them from giving full effect to their remit and further complicate the task of identifying their work priorities: in essence, it will require a hybrid body to decide which of its statutory functions should be neglected. If an integrated body is formed by additional equality and/or human rights functions being conferred upon an existing NEB or NHRI, but this grant of additional functions is not accompanied by a grant of additional resources, then particular problems may arise: this may cripple the integrated body's ability to develop a work programme that covers its new remit. In Poland, the Polish Ombudsman was not granted extra resources when his functions were extended to cover equality and non-discrimination, which has been the subject of criticism.[68] Interviewees in Belgium and Ireland, where the process of establishing an integrated body is still on-going, have expressed concern that inadequate resources will be devoted to the new bodies.

4.6 Mergers and Organisational Culture

A final set of challenges arise out of the process of establishing an integrated body and getting it up and running as an effective organisation. Some states surveyed for this report have merged or are in the course of merging an existing equality body together with a human rights institution, as was/is the case with Denmark, Ireland and France (albeit, as previously noted, the French merger does not involve a NHRI as such). Others have assigned the role of a NHRI to an existing NEB, as is the case in Belgium and the Netherlands (or vice versa, as occurred in Poland), or have established a new integrated body which was replaced and absorbed a number of predecessor bodies who performed strand-specific equality functions, as is the case in Britain with the EHRC. However, irrespective of how integrated bodies are established, the previous institutional arrangements that were in place appear to cast a long shadow.

The manner in which the 'legacy effect' of predecessor bodies can shape expectations about the role, purpose, priorities and work programme of a new integrated body and influence its relationship with its diverse range of stakeholders has already been discussed above. New bodies inherit stakeholder relationships – and expectations –

[68] See e.g. the report of the *rapporteur* for the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, Mr Jorge Xuclà, 'Strengthening the Institution of Ombudsman in Europe', Doc. 12639, 24 June 2011, available at http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19786&Language=EN (last accessed 10 October 2013).

from their predecessors, and how they manage this legacy can have a considerable bearing on their effectiveness and credibility.

For example, Niven writing in 2008 noted that the newly established EHRC in Britain would be expected to focus primarily on carrying forward the work of its predecessor commissions in combating group-based discrimination (Niven, 2008, p. 23):

> the great bulk of relevant interest groups and stakeholder organisations will remain group-based….[and] may prefer an EHRC with whom members of the group can readily identify. They will certainly want the EHRC to operate programmes and services that, however presented, bring tangible benefits to those whom the organisation represents.

As noted above, the British country report suggests that the expectation that the Commission should remain primarily focused on its equality remit may have contributed to the slow development of its human rights agenda. However, the pressure of existing expectations also appears to have exposed the Commission to criticism on the equality front. The EHRC did not carry forward some elements of the work programme of its predecessors: for example, it placed less emphasis on supporting individual discrimination claims and encouraging good community relations at local level than some of its predecessor bodies had done in the past. Instead, after the interregnum of its establishment, the Commission chose to emphasise other elements of its equality remit - this caused some resentment among certain stakeholders, and created the impression in some quarters (and in particular among many staff of the former Commission for Racial Equality) that the new body had moved too quickly to sever links with the legacy of its predecessor bodies.

The experience of the EHRC thus confirms the point made by Harvey and Spencer (2012) that merger processes inevitably bring tensions in their wake that can prove divisive, and that the pressure of established expectations can cause considerable difficulties for newly established equality and human rights bodies. They quote one participant in their research as saying that '[t]he problem with "mergers" as a process is that they cause competition to retain the features of the previous bodies, and this overwhelms thinking which has gone into the new one. Subsequently, those who move across, and the stakeholders of the previous bodies, look for evidence of the old body within the new, or make that their benchmark'.

Furthermore, Harvey and Spencer (2012, 1654) also highlight the problems of organisational culture and staff expertise that may arise from a merger process. The staff of merged bodies 'may have had little prior experience of working in partnership': there also may be 'differing institutional cultures, staffing practices, and staff and commissioner profiles'. New bodies may lack the budget to hire staff with skills relating to new areas of responsibilities, especially if they inherit many staff from the predecessor bodies as has been the case with the EHRC and the new Netherlands Institute for Human Rights,[69] and is likely to be the case with the new Belgian and Irish integrated bodies. In addition, as Spencer (2005) has noted, the

[69] The Dutch report notes that one of the most significant fears expressed by human rights activists about the future functioning of the NIHR is the fact that the majority of the Board and staff of the new body come from the Equal Treatment Commission, with most having been trained as lawyers and specialising in national and EU anti-discrimination law.

existence of separate equality and human rights communities of interest means that the staff and board members of a new commission may have had little opportunity to engage with each other before the establishment of the new body.

All of this means that there is a risk that the staff of newly established bodies may struggle with the demands of developing a work programme that extends across the wide remit of integrated bodies. Harvey and Spencer (2012, p. 1655) quote another contributor to their study who had worked in a merged body as saying that '[p]eople locked themselves into the areas of their comfort zones…new concepts, like age and sexual orientation, didn't get a hearing. It was a continuation of the old, and of old bad habits'. The Danish study similarly noted that staff working within the Danish Institute for Human Rights who specialised in human rights often were lacking in knowledge about anti-discrimination law, while equality specialists were often in turn not very engaged with human rights. Such distinctions can hinder the development of a unified organisational culture, and limit the operational flexibility of integrated bodies (Equinet, 2011).

Furthermore, other defects in the process of establishing an integrated body can also hinder its subsequent functioning. Setting such a body up can take a substantial period of time, especially when existing equality and human rights commissions are being merged together into the new organisation. New board members or staff may have to be recruited, while the transfer of personnel and resources from predecessor bodies to the new integrated body can be a long-drawn out process. While the new body is being established, staff in the predecessor bodies may be unsure about their own personal future and uncertain about how to carry forward their work agenda. Stakeholders may also be uncertain about the future aims, priorities and work programme of the new body, and may become disengaged if its establishment turns into a long-drawn-out process.

For example, the Irish report notes that the process of merging the existing Equality Authority and Human Rights Commission into the new Irish Equality and Human Rights Commission has been extended over a relatively long period of time. This has created uncertainty among staff in the existing commissions and resulted in a scaling-down of their activity, as evidenced by a fall in the number of individual cases supported by both bodies since the merger process commenced.[70] The report also notes that '[a]lthough personnel at all levels have made efforts to reach out to their counterparts in the other body, the process of knowledge-exchange remained largely informal until early 2013', and suggests that this may impair the speedy development of an integrated organisational culture when the new commission finally starts its work.

Furthermore, when the integrated body finally opens for business, any delays in filling key posts or in getting its work programme up and running may cause discontent among staff and stakeholders. If measures are not taken to create a unified organisational culture, there is also a risk that the staff of the new body may fall back into the 'comfort zone' of their previous work practice, as outlined above. A 'slow start' may also cause stakeholders to become detached from the new body, and confirm the scepticism of those who opposed its establishment. However, an

[70] *Irish Times* 'Big Fall in Equality and Human Rights-related Cases', 24th September 2013.

excessively rushed transition also poses risks: it risks causing alienation and discontent, and may give the impression that the new body is keen to cut ties with the legacy of its predecessor bodies.

The British country report notes that the process of establishing the EHRC involved no systematic 'change management' process for staff with respect to their new roles and responsibilities. Indeed, significant numbers of staff spent many months at the new body without being matched to new roles at all, while delays in filling key pots hindered the development of the new body's work programme. In contrast, the Danish country report suggests that the establishment of the DIHR could have benefited from a more gradual pace of implementation, while a contributor to the Equinet study on linking together the work of NEBs and NHRIs noted that a more gradual evolution in Denmark 'from mutual exchange between the equality body and the human rights body to joint action, to joint planning to the actual merger would have been beneficial' (Equinet, 2011). In the Netherlands, the establishment of the NIHR has not resolved uncertainties about how the new body should discharge it human rights functions, while in France the relationship between HALDE and other constituent elements of the new institution of the *Défenseur de Droit* appears to be still a work in progress.

In general, Harvey and Spencer (2012, p. 1654) suggest that a badly managed merger (which they define as involving situations 'characterized as dissolution or replacement or as the bringing together of existing bodies') can both '[reinforce] the concerns of those who resisted merger and [fail] to meet the expectations of those who supported it. Managing established expectations and the 'legacy effect' of predecessor bodies poses serious challenges, as does the process of merger itself (Niven, 2008).

4.7 Overview: Facing the Challenges of Integration

Bringing together the functions of NEBs and NHRIs within the framework of an integrated body can therefore be a challenging process. The divide that exists between the spheres of equality and human rights may to some extent be a historical artefact, the legacy of several decades of differential legal, political and regulatory evolution: however, it nevertheless exists, and bridging this divide through the establishment of integrated bodies is not always a straightforward process.

Any attempt to address the challenges of integration also needs to take into account the fears, concerns and uncertainties that can be generated by the merger of equality and human rights functions within a single institutional framework. In every country surveyed for this study, fears were expressed that integration might come at the expense of specific aspects of the mandate of the new body.

Harvey and Spencer (2012, 1663-4) noted that these fears and suspicions cannot be ignored, quoting for example one interviewee who commented with reference to the integration process currently underway in Ireland that '[w]ithin civil society there are fears and on-going perceptions of a hierarchy of priority, fear of agendas being diverted, fear that equality might be one minor value in wider human rights.' Furthermore, many interviewees expressed doubt about the effectiveness of integrated bodies. For example, one member of this study's advisory group asked: 'do such

different functions benefit by being brought together, or do they just end up getting in each other's way?'

In general, there is a need during any integration process to take these fears and concerns on board, and to take active steps to meet the challenges posed by integration. Bridging the gap between equality and human rights can be a more complex process than it might first appear.

5 MEETING THE CHALLENGES OF INTEGRATION

This study has identified a range of measures that integrated bodies, national governments, European institution and international organisations can take to address some of the challenges identified above in the previous part of this paper. In what follows, reference is again made to the experience of established integrated bodies in states such as Denmark, France, the Netherlands, the UK and further afield, along with the lessons that have been learnt so far from the integration process which is currently underway in states such as Belgium and Ireland.

It needs to be emphasised from the outset that there exists no set 'solution' to the problems that integration can cause. The diverse nature of the institutional arrangements that exist across the EU in respect of equality and human rights bodies and the different economic, social and political contexts in which they operate ensures that is not possible to identify a straightforward 'path to success' in establishing integrated bodies. This study aims to provide guidance as to how certain of the key challenges of integration can be met and the effectiveness of integrated bodies be enhanced: it does not set out to provide a comprehensive check-list of what integrated bodies must do to meet reach and every one of their objectives.

5.1 The Need for Proactive Engagement with the Challenges of Integration

Equality and human rights share a common conceptual foundation and can mesh well together, as discussed above. However, this should not obscure the problems that can be generated by attempts to integrate the functions of a NEB and a NHRI within the remit of a single body. Both the potential upside and downside of integration needs to be acknowledged – otherwise, the challenges of linking equality and human rights functions within a single institutional framework may be glossed over, which in turn may generate disappointed expectations and hostile reactions further down the line.

In every one of the states surveyed, interviewees suggested that insufficient attention had been paid to the challenges posed by integration. In particular, the county reports from Denmark, the Netherlands and Ireland indicated that the integration process could have benefited from more detailed discussion about how to bring equality and human rights functions together under one roof.

The need for active management of the transition process was also highlighted. As the Irish study notes, '[t]he merger of two distinct organisational cultures will take great care and skill. The assumption appears to be that this task will fall largely on the shoulders of the incoming CEO of the IHREC…However, the practical task of facilitating integration of a diverse workforce, distinct mandates and pooled resources should be more proactively managed from the outset.'

In general, it is clear that the challenges of integration need to be acknowledged and addressed through some form of proactive 'change management' strategy. Priority needs to be accorded to managing stakeholder expectations, deciding what new work practices need to be developed, and dealing with the 'legacy effect'. There is also a need for careful consideration to be given to the role, purpose and priorities of the

new body and what powers, functions, resources and guarantees of independence it needs to maximise its effectiveness.

This type of proactive 'change management strategy' can involve *internal* measures relating to the staff, structure and internal functioning of an integrated body. For example, staff should be trained in the new competencies they will require, and be encouraged to work outside their previous 'silos' of expertise. As the Danish study notes, '[t]raining and awareness is crucial before integrating. The aim is to create a common language and understanding.' It can also involve *external* initiatives directed towards establishing good links with the diverse communities of interest that an integrated body has to engage with, and ensuring that they are consulted as regards the formation, functioning and composition of any new body.

If a change management strategy is going to be effective, other bodies will also need to be involved in addition to the integrated body itself. Indeed, several interviewees emphasised the importance of adopting a *co-ordinated* approach to the problems of integration. An integrated body cannot by itself overcome all the challenges that arise out of the linking of equality and human rights functions together. Other actors have a role to play, including national governments and legislatures and civil society at large. (As discussed below, the EU institutions and international organisations such as the UN and Council of Europe can also make a positive contribution in this respect.)

Furthermore, any serious attempt to come to grips with the challenges of integration should be *comprehensive*, i.e. there should be a sustained attempt to address the various obstacles to successful integration in an integrated manner. National governments should aim to work together with the board and staff of integrated bodies and their predecessor bodies to identify and address any obstacles that may prevent effective synergies developing between its equality and human rights functions.

There is also a need for *transparency* and *consultation* in this context. The establishment of an integrated body can generate a complex mixture of fears, assumptions and expectations which as discussed above can impede its subsequent development. Furthermore, difficult decisions will inevitably need to be made as regards the role, purpose and priorities of the new body and how it will carry out its functions across its wide remit, which have the potential to alienate certain communities of interest. However, if these issues are openly discussed and all the relevant stakeholders are included in the conversation, this may help assuage some of the criticism that integrated bodies may attract. Not every interested party will agree with how an integrated body chooses to give effect to its mandate, even if they have been consulted on the matter – but if the decision-making process has been transparent and open to external feedback, then this may prevent a wide disconnect opening up between the integrated body and its critics.

The evidence suggests that it is particularly important that the potential pitfalls of integration are addressed during the process of establishing integrated bodies. This is particularly the case when a merger of existing bodies is involved – this can be a 'traumatic' event, as discussed in detail above, and the Danish and British country reports indicate that tensions that develop during the merger process can continue to affect how integrated bodies are perceived by particular communities of interest for

some time to come. However, the challenges of integration do not disappear once an integrated body is established and up and running. New tensions can develop over time between different elements of their mandate, while the manner in which integrated bodies seek to achieve synergies between their equality and human rights functions can grow stale or outmoded.

As a result, the need for a proactive strategic approach to managing the challenges of integration is not just confined to the initial stages of the establishment of an integrated body. It may be necessary for integrated bodies to continuously reassess their policies, priorities and work practices, to ensure that they are maximising their potential.

Integration strategies may thus have to be kept under *continuous review*. This does not mean that integrated bodies need to engage in endlessly protracted processes of self-criticism. However, if they are to maximise their potential, then the challenges of merging equality and human rights functions within the remit of a single institution need to be addressed both at its time of establishment and also throughout the course of its development.

For example, the British report explores how the EHRC has adjusted its priorities, working practices and internal structures in response to some external criticism, and has continued to keep its mode of operation under review. In 2009 it created a senior post of 'Human Rights Programme Director' and allocated resource to create a small team, the task of which was to develop and implement a specific human rights strategy. The strategy included efforts both to embed human rights in existing or planned equality focused activities – such as the Commission's work on the use of stop and search powers by the police - where appropriate, and to propose and establish a programme of human rights focused activities, such as the Commission's inquiry into the human rights of older people receiving care in their own homes. It has since sought to create bridges between hitherto separated areas of activity, such as in relation to its duty to develop indicators and report on Britain's progress in relation to equality and human rights.

This process also needs to take into account the nature and purpose of equality and human rights bodies. All the country reports noted that strong expectations existed among civil society that integrated bodies should continue to play a leading role in protecting individuals against discrimination and breaches of their fundamental rights. This is both their key function and their *raison d'etre*. As a result, any meaningful attempt to engage with the challenges of integration will need to give due weight to the importance of ensuring that integrated bodies continue to perform this role in an effective manner. In other words, it will have to be *purposive*.

An effective strategy of dealing with the challenges of integration will also have to be built around a commitment to the importance of equality and human rights principles. In every country surveyed for this study, fears exist that integration could serve as a Trojan Horse through which the effectiveness, resources and *de facto* independence of equality and human rights bodies will be substantially diluted. Many interviewees suggested that these fears can sour the atmosphere and add greatly to the challenges of integration. Several also took the view that they reflected legitimate concern about the real intention of governments in establishing integrated bodies, especially in countries

such as Denmark and Ireland where high levels of political hostility had been directed towards one or more of the relevant predecessor bodies. These concerns need to be address as part of any 'change management' process.

As a result, the guarantees of independence and operational effectiveness set out in instruments such as the Paris Principles and the provisions of the EU race and gender equality directives need to be central reference points in the development of any strategy concerned with addressing the challenges of integration. Such a strategy will thus need to be *principled and reflect relevant international standards*, in particular the requirements of the Paris Principles which apply to all bodies aspiring to NHRI status.

5.2 A Clear Statement of Values

Many interviewees have also suggested that integrated bodies would benefit from a clear articulation of the new organisation's goals, values and approach, which might help to clarify its priorities and give some direction as to how it should engage with its wide remit. Such a strategic compass could be provided by legislation or by some other authoritative reference point, and it could guide integrated bodies in deciding how to allocate resources, use their powers and link their equality and human rights functions together in a coherent set of work practices.

As the British country report outlines, the Task Force established to develop proposals for the establishment of the EHRC set out a vision, principles and values for the proposed body which was intended to provide a conceptual foundation for the development of an integrated approach to equality and human rights. It suggested that 'everyone must be treated with respect for their dignity, autonomy and equal worth, be enabled to participate in society and have the opportunity to fulfil their potential', and went on to say that 'human rights and equality are inseparable and complimentary…[a] new vision has developed which positions human rights as common standards for the whole of society, and the communities and groups within it, alongside the fundamental rights of the individual protected in law'. The Task Force also took the view that bringing together human rights and equality in the CEHR reflected a vision based on 'the common value of respect for the dignity and worth of each person' and argued that 'the inclusive nature of human rights reinforces the concept of equality as relevant to all and not a minority concern.'[71]

This conceptual approach was given legislative expression in s. 3 of the Equality Act 2006, which imposes a 'general duty' on the EHRC to

> exercise its functions with a view to encouraging and supporting the development of a society in which:
>
> (a) people's ability to achieve their potential is not limited by prejudice or discrimination,
> (b) there is respect for and protection of each individual's human rights,
> (c) there is respect for the dignity and worth of each individual,

[71] The papers produced for and by the Task Force are on file with the authors of this report: Colm O'Cinneide was a member of this body.

(d) each individual has an equal opportunity to participate in society,
(e) and there is mutual respect between groups based on understanding and valuing of diversity and on shared respect for equality and human rights.

As the British report indicates, the requirements of this innovative 'general duty' helped to give some steer to the EHRC in setting its priorities and exercising its powers and functions after its initial establishment. It has however been criticised for having little in the way of tangible legal substance. The UK coalition government tried to repeal the duty in 2013, arguing that it 'has has no specific legal purpose and does not help to clarify the precise functions that the EHRC is required to carry out.' I contrast, Professor Bob Hepple QC, a leading expert in equality law, argued that such repeal would undermine 'the historic reunification of equality and human rights law which was achieved in the Acts of 2006 and 2010' (Hepple, 2012). In the end, the government was defeated in the House of Lords on two occasions on this issue, and the general duty was retained.

The legislation establishing the Netherlands Institute for Human Rights (NIHR) also defines the purpose of the new body, albeit in more functional statutory language than is used in the UK legislation. Article 1(3) of the NIHR Act states that the purpose of the new body is 'to protect human rights, including the right to equal treatment, in the Netherlands, to increase awareness of these rights and to promote their observance'. The significance of this wording is that equal treatment is described as coming within the broad category umbrella of human rights, and the NIHR is directed to play a protective and promotional role across the full spectrum of rights.

In Ireland, the Working Group established to advise on the establishment of an integrated body identified human dignity as a core value that underpinned both the principle of equal treatment and the idea of human rights. It also recommended that a purpose clause similar to the 'general duty' imposed on the EHRC in Britain should be included in the legislation establishing the new body, worded as follows (Working Group, 2012):

> The purpose of the Irish Equality and Human Rights Commission is to protect and promote human rights and equality, to encourage the development of a culture of respect for human rights, equality and inter-cultural understanding in Ireland, to work towards the elimination of human rights abuses and discrimination and other prohibited conduct, while respecting diversity and the freedom and dignity of the individual and, in that regard, to provide practical assistance to persons to help them vindicate their rights.'

The Working Group also recommended that the following definition of 'dignity' should animate the work of the IHREC across the full extent of it remit, and consideration should be given to including it in the legislation setting up the new body: '"dignity" means that each person has (a) equal intrinsic value and a fundamental interest in living a worthwhile life; and (b) a special entitlement to realise a life that is worthwhile and authentic consistent with others having a similar entitlement.'

In Denmark, the legislation establishing the Danish Institute for Human Rights (DIHR) confers different functions on the new body in respect of equality and human rights but does not integrate these differing functions within an overarching general mandate. In general, the Danish country report suggests that the integration process in Denmark has lacked conceptual clarity. The report notes that '[f]or a successful integration of equality and human rights bodies, the ambition and strategy of the merger must be clear. If the objective of the merger is well defined, the subsequent integration process between the institutions and their different spheres of expertise will be less complicated. In 2002 the objective of the merger of The Board for Ethnic Equality and the Centre for Human Rights was not clear. The reasons for the merger were basically domestic policy, horse-trading and a public opinion being sceptical against ethnic minorities. On that background it is not difficult to understand, that the equality mandate of DIHR was less visible for the first 10 years after the merger.'

There is therefore a considerable body of opinion which considers it beneficial for legislation to provide a clear statement of the purpose, goals and ambitions to be pursued by integrated bodies. Such statements provide the staff and board members of integrated bodies with a point of reference when it comes to identifying priorities and establishing their work programme. It may also help to provide some conceptual clarity as to the underlying values that should guide their response to the challenges of integration.

Some interviewees expressed scepticism about whether legislative formulae could 'solve' the problem of integrating equality and human rights functions within the remit of a single body, suggesting that concepts such as 'dignity' were too vague and imprecise to 'paper over' the challenges posed by integration. There appears to be some force to this argument: the wording of provisions such as s. 3 of the UK Equality Act 2006 is open to multiple different interpretations and provides little if any explicit guidance to integrated bodies struggling to decide their priorities or establish an effective work programme.

However, other interviewees expressed the view that such formulae nevertheless served a useful purpose, in that they encouraged staff and board members of integrated bodies along with their diverse communities of interest to engage with each other using a 'common conceptual language', to quote one UK expert. There may certainly be some advantage in emphasising the interconnectedness of equality and human rights values in the legislation which establishes integrated bodies: this may help to smooth over some of the tensions that can exist between the different communities of interest, and focus attention on what unites them rather than what divides them.

5.3 Objective and Transparent Criteria for Setting Priorities and Evaluating Performance

Integrated bodies may also find it useful to draw up and publish a list of objective criteria for identifying their strategic priorities. This may help them to cope with the width of their remit, which inevitably means that there is a need to select specific equality and human rights issues on which to focus. It may also assist in establishing the *bona fides* of an integrated body amongst its diverse range of stakeholders: if it can demonstrate that it selected its priority work areas by reference to objective

criteria, then this may partially assuage any backlash from particular communities of interest who may feel that 'their' area of equality or human rights is being unfairly passed over. Similarly, integrated bodies might also benefit from drawing up a list of performance indicators to assess whether they are making the most effective use of their powers and functions. Again, this may both improve internal decision-making and give reassurance to stakeholders who may be feeling overlooked or marginalised by the new body.

In Ireland, the Working Group established to provide expert advice on the establishment of the new IHREC was expressly requested to advise on 'what would be the best practice for the IHREC in devising specific objectives and...performance indicators' (Working Group, 2012). In response, the Working Group proposed the development of a performance framework based around the following questions:

- What kind of society are we trying to achieve?
- How do vulnerable and marginalised groups regard the Commission?
- How has it improved people's lives and what has it done to eliminate discrimination and promote equality and inclusion?
- What has the Commission put in place or removed to allow, and indeed encourage, each person to flourish with the greatest degree of freedom without impinging on the dignity and worth of any other individual?
- What impact has the Commission had on public opinion, in terms both of public awareness of its work and support for human rights and equality?
- Has the Commission had sufficient regard for individual liberty in its decision-making?

Other 'organising principles' such as securing equal recognition or vindicating human dignity could similarly serve as reference points by which priorities might be identified, progress monitored, impact measured and stakeholder relationships defined. The EHRC in Britain has drawn upon the 'capabilities approach' associated with the work of Amartya Sen and Martha Nussbaum in defining its objectives in relation to the equality part of its remit, in particular in developing its measurement framework for analysing the state of inequality in British society, building on work carried out as part of a Cabinet Office-sponsored Equalities Review in 2007.[72] It has also based its approach to measuring compliance with human rights standards upon the best practice recommendations published by the UN Office for the High Commissioner on Human Rights, which in turn has provided an evidence base which the Commission has drawn upon in selecting its strategic work priorities.[73]

5.4 An Integrated Work Programme

Furthermore, in identifying their priorities and drawing up their work programmes, integrated bodies may want to give serious consideration to integrating equal treatment principles into every aspect of their activities, thereby maximising the potential for synergy to develop between their human rights and equality mandates.

[72] EHRC, *Equality Measurement Framework* (London: EHRC, 2012), available at http://www.equalityhumanrights.com/key-projects/equality-measurement-framework/ 9last accessed 10October 2013).
[73] See e.g. EHRC, *Strategic Plan* 2012-15, available at http://www.equalityhumanrights.com/about-us/vision-and-mission/strategic-plan-2012-2015/ (last accessed 10 October 2013).

Similarly, factoring in human rights considerations into their anti-discrimination work may also enhance their capacity to deal with persisting forms of inequality, and help to bridge the divide between the work practices associated with NEBs and NHRIs. An interviewee in the Danish study commented that '[i]n a fully integrated institution, equal treatment should be incorporated into all human rights projects and vice versa….Human rights, non-discrimination and equality cut across all areas.'

For an example of how a conscious effort to link together equal treatment and wider human rights considerations might help to dissolve some of the traditional distinctions between these two fields of activity, take the issue of business and human rights. As discussed above in Parts I and IV, anti-discrimination law has historically been primarily focused on regulating private employers and service providers, while human rights norms are generally concerned with regulating the behaviour of public bodies. However, the development at international level of the 'corporate social responsibility' agenda, combined with the development of the notion of positive obligations in the case-law of the ECHR and national courts, has expanded the reach of human rights standards relating to the private sector.[74] In the UK, the EHRC and the Northern Irish Human Rights Commission have investigated the treatment of older people by private sector care providers, while the EHRC has recently published guidance on business and human rights.[75] The Danish Institute of Human Rights has done some ground-breaking work on the human rights responsibilities of private businesses and employers, pursuing implementation of the 'Ruggie Principles' on business and human rights.[76]

This suggests that room exists for integrated bodies to conduct more enforcement and promotional work relating to the human rights obligations of private and non-state actors. This work could complement, reinforce and build upon the regulatory impact of anti-discrimination law in the private sector. The synergy that could be generated in this way between equality and human rights standards could prove to be especially promising when it comes to the treatment of persons with disabilities, older people and other groups who are regularly subject to disadvantage in accessing employment and services. Integrated bodies could use the new emerging human rights standards in this field to encourage businesses – such as those providing health or social care services - to go beyond their explicit obligations under anti-discrimination law.

5.5 Common Powers and Functions

However, integrated bodies will only be able to generate strong synergies between their equality and human rights functions if their statutory duties and powers make it possible for them to link together their work in both fields, rather than requiring them to operate in a compartmentalised fashion. As discussed in Part IV above, imbalances between an integrated body's equality and human rights powers may hinder attempts

[74] As the British country report notes, the Task Force established to advise on the establishment of the EHRC recommended that the Commission be empowered to promote 'good practice to employers and service providers: good human rights practice would also be promoted to private sector contractors via public authorities.

[75] EHRC, *A Guide to Business and Human Rights* (London: EHRC, 2013), available at http://www.equalityhumanrights.com/advice-and-guidance/here-for-business/human-rights-matter-to-business/ (last accessed 10 October 2013).

[76] See e.g. the material at www.humanrightsbusiness.org/ (last accessed 11 October 2013).

to develop an integrated work programme, and 'tilt' its focus towards one particular element of its remit. As a result, the more an integrated body's equality and human rights powers are 'aligned' with each other, the more freedom of action it will have to work effectively across the full range of its remit. It is also important that an integrated body's powers are not unduly restricted by narrow definitions of their scope and ambit: the greater the freedom of action it enjoys, the better its ability to effectively engage with both elements of its remit.

In Britain, the Task Force established to advise on the establishment of the EHRC recommended that the new Commission's equality and human rights powers should be framed in broad terms and apply equally across the full range of its remit unless special reasons existed as to why they should be limited in a particular area. In response to these recommendations, the Equality Act 2006 which established the Commission made provision for its equality-related powers to cover to full the full scope of the equality grounds set out in UK law, while it was also given the power to promote respect for the full spectrum of human rights. However, its enforcement powers in relation to the equality element of its remit are wider in scope than those that apply to human rights (O'Cinneide, 2007; Harvey and Spencer, 2012).[77] As discussed above in Part IV, this has been identified as an impediment to the development of a fully integrated work programme. For example, the Task Force envisaged that the EHRC would take an integrated approach to 'promoting mainstreaming of equality and human rights in the public sector where there are clear synergies between work in these two areas and scope for joint delivery': however, in practice, the asymmetry that exists between the Commission's powers in relation to the equality duties imposed on public authorities and its more limited powers in relation to their human rights obligations – coupled with the differences in the obligations imposed on public authorities by the Equality Act 2010 and the Human Rights Act 1998 - has frustrated the development of such an integrated approach, as discussed in further detail in the British report.

In the Netherlands, the mandate of the new NIHR is very wide: it includes all human rights that are part of the Dutch legal order, which covers all fundamental rights that are incorporated in the Constitution of the Kingdom of The Netherlands, as well as in international and regional human rights treaties and European Union Directives.[78] The mandate also includes soft law like rules, recommendations, directives and guidelines of various international organisations. In contrast, the mandate of the former Equal Treatment Commission only stretched to the equal treatment legislation. However, as the Dutch report indicates, it is unclear whether the new body, in discharging its duties to protect and promote equal treatment is empowered to work beyond the confines of existing Dutch law – in other words, a disjoint appears to exist in relation to the NIHR's promotional powers in relation to equality and human rights, which may pose problems when it comes to developing an integrated approach.

[77] The UK government resisted giving the EHRC powers to provide assistance to individuals in freestanding human rights cases: see O'Cinneide, 2007. However, as the UK report makes clear, the EHRC is able to intervene in human rights cases to clarify the scope of various provisions of human rights law, and can also support cases involving a claim brought under s. 7 of the Human Rights Act 1998 which also involve a claim brought under the provisions of UK anti-discrimination law.

[78] The Dutch legal system is monist; after ratification international treaties become part of the legal order and provisions therein can be invoked in court proceedings, provided that they are sufficiently clear and precise to be applied by a court (Article 93 and 94 of the Constitution.)

The Irish report notes that efforts are being made to establish parity of duties and powers in respect of both the equality and human rights elements of the new IHREC's mandate, and also to impose a combined equality and human rights duty on public authorities. However, as already discussed in Part IV above, the initial legislative proposals contained in the 'Heads of Bill' published by the Irish government have been criticised on the basis that they appear to limit the scope of the new body's enforcement powers by defining 'equality' and 'human rights' in relatively narrow terms.

Summarising these developments, it appears as if a wide consensus exists that integrated bodies should have (i) an extensive set of powers that should (ii) be capable of being applied evenly as far as possible across the full range of their mandates. However, in practice, legislation establishing integrated bodies often limits the reach of their enforcement powers in particular. This risks hobbling the development of a truly integrated work programme that would straddle both the equality and human rights elements of their mandate.

5.6 Staff Training and Expertise

Many interviewees also emphasised the importance of the staff and board of integrated bodies having a comprehensive and well-developed understanding of both equality and human rights concepts. To achieve this, they suggested that newly integrated bodies should conduct a detailed survey of (inherited) staff capabilities, and set up a personnel development programme to ensure that all their staff members have the skills, understanding and expertise to play an effective role in implementing the wide remit of the new organisation. This would involve training in both anti-discrimination and human rights law, and exposure to the perspectives of the diverse communities of interest with which they will have to deal.

In this respect, Goldschmidt (2012, p. 49) has commented as follows in relation to the establishment of the Dutch NIHR:

> In order to realise fully this opportunity, it is essential that the members and staff of the NIHR have (i) profound expertise, experience and authority in the fields of both human rights and non-discrimination, (ii) a solid basis in civil society, either because they have experience in civil society organisations or because they have already established good relations with, and have a strong reputation among, such organisations, and (iii) good working relations with, in particular, human rights NGOs.

Similar comments could be made in respect of any integrated body.

5.7 An Inclusive Strategy for Engaging with Stakeholders

Integrated bodies also need to address the challenges posed by the manner in which equality and human rights are treated as largely separate and distinct spheres of concern by many governments, NGOs and civil society at large. They also will need to find ways of engaging with their diverse communities of interest, and to bridge the

gaps between the different equality and human rights communities that exist in every one of the countries surveyed for this study.

To do so, integrated bodies will need to develop innovative ways of reaching out to these different communities of interest and to maintain a sustainable level of engagement across the width of their remit. Many interviewees emphasised that transparency in decision-making processes, in particular when it comes to setting priorities, will be an important element of any outreach programme. Integrated bodies may also want to encourage different communities of interest to come together, share perspectives and engage more closely together. This could be achieved by establishing consultative fora that bring together a range of stakeholders, or by staging research-led conferences and other events that focus on issues of common concern.

Integrated bodies may also wish to encourage public authorities, private sector bodies and civil society groups to bring together equality and human rights perspectives in their own work, and to escape the 'silos' of compartmentalised thinking that exist in every state surveyed as part of this study. Again, this may be partially achieved through the staging of events that focus on a theme that cuts across the equality/human rights distinction, or by the use of an integrated body's investigative, promotional and/or research functions to highlight issues that give rise to both non-discrimination and wider human rights concerns and to bring together relevant actors in search of a common solution. For example, in Britain, the EHRC in 2010 launched an inquiry into the protection and promotion of the human rights of older people who received care in their own homes: the advisory group established to assist in the inquiry included representatives from government, NGOs, care providers and regulators, and the final report of the inquiry drew attention to the intersection of human rights and age discrimination concerns in this context.[79]

Several interviewees also highlighted the importance of integrated bodies working closely together with ombudsmen and other public bodies who perform regulatory functions relating to the protection of citizens rights, if such bodies are not already part of the institutional framework of the integrated body (as is the case in France and Poland).[80] This could lead to the development of useful synergies, and also encourage such bodies to make use of an integrated approach in their work.[81]

In addition, national governments and legislatures have a role to play in this regard a well, along with the EU institutions. The opportunity of integration should be harnessed to foster dialogue across the various equality and human rights communities of interest, especially through the bringing together of civil society organisations in common consultative fora. The approach the European Commission has adopted with respect to engagement with civil society in respect of the UNCRPD provides a positive example of how such dialogue might develop, as do recent

[79] For further detail, see http://www.equalityhumanrights.com/legal-and-policy/inquiries-and-assessments/inquiry-into-home-care-of-older-people/ (last accessed 10 October 2013).
[80] For a thought-provoking analysis of how ombudsmen can vindicate human rights, see O'Brien, 2009. See also Reif, 2004.
[81] In Britain, the EHRC has worked together with the Care Quality Commission to produce equality and human rights guidance for inspectors and registration assessors monitoring the standard of social care provided to older persons: see http://www.equalityhumanrights.com/key-projects/care-and-support/guidance-for-care-quality-commission-inspectors/ (last accessed 10 October 2013).

attempts by the FRA to bring together equality and human rights bodies and civil society organisations from across Europe.[82]

5.8 The Establishment of a Culture of Genuine Independence

As discussed in Part IV above, integration presents both opportunities and risks in relation to the independent functioning of integrated bodies. It offers an opportunity to strengthen their *de jure* independence and also to enhance their *de facto* autonomy from governmental interference. However, the risk also exists that a process of integration that is backed by insufficient resources, or which is characterised by tension between different understandings of how independence should be manifested, may in effect dilute the effective autonomy of integrated bodies. It may also contribute to stakeholder dissatisfaction and create a problematic relationship with the national government.

As a result, it is not surprising that issues of independence have proved or are proving to be central in relation to debates regarding integration in most of the countries covered in this study. Given the fundamental importance of this issue to the effective functioning of equality and human rights bodies in general, it is a question which merits prioritisation in the establishment of integrated institutions.

EU states appear to be increasingly interested in establishing bodies which are amenable to achieving ICC 'A'-accredited status as national human rights institutions, to enhance their international credibility. As a result, the Paris Principles are providing to be an important reference point in the establishment of integrated bodies in most of the countries surveyed for this study, in addition to becoming an important reference point in the evolving framework of European human rights standards relating to NEBs.

This is an encouraging development, as the Principles represent an international best practice standard. The more that states take active steps to reinforce the *de jure* and *de facto* independence of integrated bodies in line with their provisions, the more that the new bodies will be able to function in a genuinely autonomous manner, free from the shadow of governmental control. There existed a general consensus among persons interviewed for this study that integrated bodies should as a baseline minimum enjoy the status and independence prescribed in the Paris Principles including in accordance with best practice be accountable to Parliament's rather than to governments. Several interviewees particularly emphasised the importance of the aspects of the Principles that relate to the need for the composition of the board members of a national institution to reflect the 'pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights' - in their view, this requirement of 'pluralist representation' was particularly important in the case of

[82] The FRA has for example brought together representatives from NEBs, NHRIs and national ombudsman institutions, together with members of their respective networks, at a conference in October 2013 organised jointly by FRA, the Council of Europe, the European Network of Equality Bodies (Equinet) and the European Network of National Human Rights Institutions – see http://fra.europa.eu/en/event/2013/strengthening-fundamental-rights-protection-together-changing-human-rights-landscape (last accessed 7 October 2013).

integrated bodies, given their wide remit and the need to maintain a connection with the perspectives of related communities of interest.[83]

However, there is a danger involved in relying solely upon the Paris Principles as a baseline set of minimum standards in this context. Although the Principles provide a helpful guide to the constitutive dimensions of independence which can be applied to a range of different types of body, they were not drawn up with the specific role and functions of bodies with an equality remit in mind. A 2012 survey of NEBs in the EU conducted by Equinet found that twenty four equality bodies reported that the Paris Principles along with other international and regional standards were relevant for their work. However, the survey also found that:

> Nineteen equality bodies highlighted the need for further international and European Union standards in the field of equality. These suggestions related to enhancing both the protection afforded to those who experience discrimination and the safeguards established for the work and potential of the equality bodies themselves. The need for standards to safeguard equality bodies is expressed in terms of protecting both their independence and their effectiveness. However particular gaps are identified in terms of standards that apply specifically to equality bodies and standards that deal thoroughly with the issues of effectiveness. The need for mechanisms of accreditation, monitoring and enforcement of the provisions of these standards was also highlighted (Equinet, 2011).

These survey findings appear to suggest that the very general provisions of the Paris Principles may be lacking in detail and hence in concrete application when it comes to the equality element of the remit of integrated bodies (and indeed that of freestanding NEBs as well).

This indicates that there is a need for the EU institutions, including FRA, to consider setting out more detailed standards regarding the independence and effective performance of the mandate of NEBs, including integrated bodies: the proposed 'horizontal' Equal Treatment Directive contains a reference to the Paris Principles, but it might be useful if additional norms were developed which provided more specific guidance in relation to the functions of NEBs, especially with regard to the 'independent' support they are expected to provide to victims and the resources that should be devoted to this function. The ICC may also wish to consider developing criteria to assess whether NHRIs seeking 'A' accredited status who also have an equality remit have the resources and operational independence to be able to give effect to this element of their mandate.

However, the challenges posed by integration that relate to the independent functioning of hybrid bodies will not be solved by relying solely on formal guarantees

[83] The FRA (2010) summarises these requirements as follows: 'In order to ensure the effective functioning of an NHRI, the Paris Principles require that an NHRI is based on a binding legislative act securing the existence, pluralistic composition and competence of the institution. The Principles aim to secure the institution's independence through pluralism in the composition of its board, adequate resources (possession of its own staff and premises as well as freedom from financial control) and a stable mandate (e.g. appointment of members by an official act establishing the specific duration of their mandate).'

of independence. Negotiating the complex relationship between equality and human rights bodies and government is a difficult process. As Spencer and Harvey (2012) note, '[t]here are nuances in such relationships for which it is difficult to make provision in legislation; a fine line, for instance, between a regulatory body that appropriately advises on the course of action government should take and one that actively campaigns against the government's position. Relationships also depend on personalities, for which legislation cannot prescribe…' As they suggest, robust guarantees of independence may help in navigating these treacherous waters. However, in the final analysis, strong leadership, transparent decision-making processes, open discussion of what independence involves and clear sense of an organisation's role, purpose and strategic priorities are all essential pre-conditions for an integrated body to enjoy meaningful independence (Pegram, 2011).

Furthermore, when an integrated body is formed by the merger of previously existing bodies, there is a very strong likelihood that the predecessor bodies may have developed subtly different understandings of their independent status. These differences need to be openly discussed and reconciled where possible. If this is not done, then it may create disappointed expectations among related communities of interest, and generate internal tension within the new body. Once again, good leadership, transparent discussion and a clear focus on organisational priorities will be needed to make this process work.

Finally, the issue of resources is also key. Integrated bodies will struggle to cope with their wide remit if they do not have adequate financial, human and technical resources to develop a work programme that engages adequately with both their equality and wider human rights responsibilities. National governments need to provide integrated bodies with the resources they need to do their job, and to recognise that an effective integrated work agenda cannot be developed on the cheap: as this study illustrates, linking together equality and human rights is a complex process that involves more than a simple doubling-up of functions.

5.9 A Transparent Process of Establishment

As discussed above, all the country studies highlighted that it was particularly important that the challenges of integration, and in particular the tensions that can arise from merger processes, are properly addressed during the process of establishing integrated bodies. Interviewees from all the surveyed countries emphasised the need for wide-ranging consultation with stakeholders during the entire period during which the establishment of an integrated body is being contemplated, planned and subsequently implemented. They also stressed the importance of transparency, while emphasising the dangers of an overly-rushed or overly-secretive process.

The Netherlands study notes how the process of establishing the NIHR possessed many features of so-called 'coordinative discourse coalition', in which various stakeholders from different backgrounds participate in constructing a policy change or new institution. Such a 'discourse coalition is mostly inward looking and seeking internal consensus, and can be contrasted with a more politically oriented 'communicative discourse coalition' which aims to inform and involve 'outsiders' and the public at large in the debate surrounding the policy change in question. Many human rights NGOs and equal treatment bodies were not represented in the

Consortium formed to discuss the establishment of the new body or in the working group ('sounding board group') that was formed by the management of the predecessor body, the ETC, to guide the process of integration. The country study notes that this appears to have generated some uncertainty about the merger process and the remit of the new body, in particular as regards the relationship between its equal treatment and human rights functions. It also suggests that the lack of wide civil society involvement in the establishment of the NIHR may prove to be a hindrance in the future, as it may have stunted the development of a sense of ownership and involvement in the work of the new body.

Similar problems seem to have arisen in all the states surveyed. In Denmark, the Netherlands and France, the decision to establish an integrated body seems to have been taken quickly as a result of background political considerations, and the speed and internal nature of much of the iteration process left many civil society organisations feeling excluded. In Belgium, Ireland and the UK, the process of establishment was more long-drawn-out, but again concerns have been expressed about aspects of the process being uncertain or non-transparent. Furthermore, in Ireland, the slow pace of this process has generated uncertainty among the staff of existing commissions and as noted above appears to have contributed along with budget cuts to a sharp drop in the numbers of cases being supported by the IHRC and the EA.

Having said that, there are elements of good practice that can be identified that indicate how some of the challenges of integration can be addressed during the process of establishing an integrated body. For example, the Task Force established by the UK Government in 2004 to consider the composition, powers, functions and future work practices of the future Equality and Human Rights Commission, which was composed of representatives of the various communities of interest involved along with staff of the then existing equality commissions and academic experts, is an example of the type of consultative process that may be effective in this context. The British report notes that several interviewees expressed the view that the discussions that took place within the framework of the Task Force were not fully factored into subsequent policy developments: however, its establishment did permit a wide range of different views and perspectives to be articulated and fed into the integration process.

Similarly, as the Irish report notes, the Working Group established by the Irish government to advise on the merger of the Equality Authority and Irish Human Rights Commission again enabled the views of different communities of interest to be fed into the policy-making process. It also provided expert analysis of the key principles that should underpin the establishment of the new Irish Human Rights and Equality Commission (IHREC). Subsequently, the Minister in charge of the process chose to issue a 'Heads of Bill' which provided for the opportunity for consultation with domestic and international stakeholders regarding each proposed clause or 'head' of the legislation that would establish the new body, which was accompanied by a detailed explanatory note. In addition, the Minister requested that the Oireachtas (parliamentary) Committee on Justice, Defence and Equality examine the Bill and undertake a separate consultation process. Finally, the Minister proactively sought the view of international agencies as well, personally meeting with UN officials to

discuss whether these proposals for the establishment of the IHREC complied with international standards.

The Irish process in particular is an example of the type of 'communicative discourse'-orientated process that is possible in this context. It involved consultation at several stages of the process, and the publication of initial proposals with a view to involving civil society in the debate around the creation of the new body. Furthermore, members of the new commission have been selected well in advance of the new body being established, which will enable them to guide the integration process from the moment the new body is up and running.

In general, the process of creation of integrated bodies provides a significant opportunity to seek to reconcile these potential tensions and to foster greater consensus regarding the purpose and methods of operation of the new or reformed body. There are examples of good practice which indicate how this can and should be done. A good process is not a panacea for all the difficulties that integrated bodies can face: however, it can ensure that they have a good start.

5.10 The Embrace of Difference

A final ingredient to any successful response to the challenge posed by integration seems to be a willingness on the part of the board and staff of an integrated body to recognise and embrace the differences that exist between the different equality grounds and the various categories of human rights that come within its mandate. Many interviewees emphasised that different approaches were needed to deal with different equality and human rights issues, and that an integrated body should not adopt a 'one size fit all' work programme that disregards the specific issues generated by specific elements of its remit.

In other words, an integrated work programme is not the same as a uniform work programme. An integrated body will have to develop distinct strategies in respect of certain areas of its work, such as disability rights and children's rights, which may have limited overlap with other areas of its work. Its approach to these specific elements of its mandate can be informed by a transversal commitment to linking equality and human rights. However, it will also need to take into account the particular characteristics of the specific area of equality or human rights at issue. An integrated body must thus recognise the diversity of its remit while also aiming to create synergies between different aspects of its work as part of an integrated work programme.

Some integrated bodies have attempted to strike a good working balance between diversity and integration by establishing specialised internal units within their organisation which are charged with ensuring that the organisation as a whole maintains a focus on particular aspects of their remit (Equinet, 2011). In Britain, the Equality Act 2006 that established the EHRC provided that its functions that relate directly to 'disability matters' would be exercised for a renewable fixed-term period by a Disability Committee, at least half of whose members (including the chair) must be persons with disabilities: the Commission must also consult with it in relation to its exercise of other powers and functions in respect of matters that affect persons with

disabilities.[84] The functioning of the Disability Committee was recently the subject of a mandatory independent review, which concluded that a 'compelling' case existed for the Committee to be retained, but noted that it had been always 'hard-wired in' to the functioning of the EHRC at large and suggested that it should be reconstituted as a strategic advisory group.[85] A separate unit exists within the NIHR which takes responsibility for its tribunal-style functions in relation to equal treatment claims. Outside of the EU, the Australian Human Rights and Equal Opportunities Commission is composed of individual commissioners who have specific responsibility for distinct elements of its mandate (O'Cinneide, 2002).

However, other integrated bodies have chosen not to establish separate internal units covering specific elements of their remit and instead have opted for an integrated internal structure, as is the Canadian Human Rights Commission and the EHRC (with the exception of its Disability Committee). In general, the available evidence suggests that the internal structure of an integrated body does not have a decisive impact on its ability to combine an integrated approach with a specific focus on particular equality and human rights issues (O'Cinneide, 2002). What does appear to be important is that recurring factor, good leadership, the existence of good channels of communication with a diverse range of communities of interest, and a genuine commitment on the part of the staff and board members of an integrated body to embracing the different aspects of its remit.

5.11 Overview: The Ingredients of a Successful Approach to Integration

There exists no set 'solution' to the problems that integration can cause. However, as discussed in detail in this Part, it appears as if the challenges of integration can be addressed at least in part through a proactive, co-ordinated, comprehensive, transparent, consultative, continuous, purposive and principled process of 'change management', which gives careful consideration to how equality and human rights functions should be linked together within the functioning of an integrated body.

There are also benefits in such bodies having a clear statement of values, objective and transparent criteria for setting priorities and evaluating their performance, an integrated work programme, a common set of powers and functions extending across their full remit, suitably trained staff, an inclusive strategy for dealing with stakeholders, adequate guarantees of independence, a transparent and consultative process of establishment and a readiness to embrace the diversity of its mandate. However, at the end of the day, the leadership, staffing and organisational culture of integrated bodies will be a key factor in shaping their capacity to respond positively to challenges of integration (Pegram, 2011; Harvey and Spencer, 2012).

Other actors also have an important role in helping integrated bodies thrive, ranging from national governments and legislatures to the EU institutions, other international bodies and civil society at large. Their role goes beyond establishing the legislative

[84] The legislation provided that other specialist committees could be established within the overall framework of the EHRC's institutional structure: to date, no other such committees have been set up.
[85] *Independent Review of the Equality and Human Rights Commission's Statutory Disability Committee* (London: EHRC, 2013), available at http://www.equalityhumanrights.com/about-us/the-commissioners/disability-committee/independent-review-of-the-disability-committee/ (last accessed 5th October 2013).

framework within which an integrated body can function. Integrated bodies will struggle to have an impact in a fragmented legal, political and regulatory landscape where equality and human rights are treated as coming within separate silos: in contrast, the effectiveness of such bodies may be greatly enhanced if other public bodies along with civil society also adopt an integrated approach. As discussed above, the role of ombudsman and other bodies charged with protecting rights may be particularly important in this respect.

CONCLUSION

Once again, it is worth emphasising that NEBs and NHRIs have much in common. They both engage in activity that promotes respect for human rights and individual dignity. Furthermore, NEBs and NHRIs often engage in similar activities, perform similar functions, have similar legal powers and seek to achieve similar objectives. However, the equality functions generally performed by NEBs differ in some important respects from the human rights functions generally performed by NHRIs. These differences reflect the reality that a divide exists between the spheres of equality and human rights in legal, political and regulatory discourses across Europe. This poses inevitable challenges for any attempt to combine these functions within the remit of a single integrated institution.

Establishing integrated bodies which combine the functions of NEBs and NHRIs has the potential to generate new synergies between the different elements of their remit. However, this potential may remain unfulfilled if the challenges of integration are not adequately addressed. Proactive steps need to be taken to bridge the gap that exists between the spheres of equality and human rights, which is all too often glossed over in discussions of integration.

This study has drawn on experience from a number of EU member states to help identify the challenges of integration. It has also identified some of the steps that integrated bodies, national governments, the EU institutions and other bodies can take to respond successfully to these challenges. There is no straightforward 'path to success' in establishing integrated bodies: other factors such as leadership, organisational culture, the availability of adequate resources and the background socio-economic and political context will inevitably play a key role in determining the effectiveness of an integrated institution. However, the adoption of a proactive approach to meeting the challenges of integration as outlined above may help an integrated body bridge the divide between its equality and human rights functions.

The lessons that can be drawn from the integration processes analysed in this report can be applied in other contexts. For example, they can provide some guidance as to how effective functional co-ordination can be achieved between freestanding NEBs and NHRIs which wish to work more closely together, supplementing the useful work already produced by Equinet on this topic (Equinet, 2011). The discussion above of the importance of identifying common values, designing a genuinely integrated work programme, devising an inclusive approach to engaging with stakeholders, and acknowledging the differences that exist between equality and human rights approaches is very relevant to situations where NEBs and NHRIs attempt to devise joint strategies or otherwise seek to strengthen their working relationship.

The conclusions of this study also provide some indication as to how the gap between equality and human rights can be bridged in other contexts, including in the work of public authorities and the activism of civil society. In particular, a focus on common values, inclusivity and the development of genuinely integrated work programmes may help to break down some of the barriers that make it difficult to adopt a unified approach to equality and human rights issues.

Integrated bodies are often well-placed to play a useful role in this regard, by encouraging the development of a comprehensive approach to equality and human rights and helping to break down some of the 'silos' that help to create the current fragmented system of rights protection in the EU. However, the diverse powers and functions of NEBs and NHRIs across the EU and the differing roles they often play in the political and legal systems of its member states make it very difficult to reach any hard and fast conclusions about what might constitute the 'best' form of institutional structure in this context. In certain circumstances, the integration process may also risk destabilising existing arrangements for limited gain, especially if the challenges of integration are not addressed: integration does not necessarily represent an 'easy' or 'cost-free' process.[86] As a result, there needs to be discussion before, during and after a process of integration as to how and whether the linking of equality and human rights functions can enhance protection against discrimination and respect for fundamental rights.

This study is intended to help provoke fresh thinking in this respect, and to highlight the challenges and opportunities generated by this process. Equality and human rights share common conceptual foundations: however, the differences that exist between their respective historical development, legal frameworks, communities of interest and value orientations should be acknowledged. Equality and human rights may be different dialects of a common language, but mutual comprehension should not always be assumed.

[86] Furthermore, as the Council of Europe Commissioner for Human Rights emphasised in his opinion on national structures for promoting equality (2011), '[i]t is important that there is sufficient common ground between the bodies before a national structure for promoting equality is embedded within another body. The determining factor for such an approach must be that it makes the combating of discrimination and the promotion of equality more effective.'

APPENDIX A – COMPARING THE EU STANDARDS APPLYING IN RESPECT OF NATIONAL EQUALITY BODIES AND THE UN STANDARDS APPLYING TO NATIONAL HUMAN RIGHTS INSTITUTIONS

The commonalities and differences between the standards applying to NEBs and NHRIs are set out in the table below:

	National Equality Bodies	**National Human Rights Institutions**
Relevant standards	European Union Directives 2000/43/EC, 2004/113/EC and 2006/54/EC	Paris Principles
Mandate	Promotion of equal treatment on the grounds of gender and of racial or ethnic origin 'may form part of agencies charged at national level with the defence of human rights or the safeguard of individuals' rights'	A national institution shall be vested with competence to promote and protect human rights and shall have as broad a mandate as possible
Monitoring	Conduct independent surveys concerning discrimination	Monitor human rights, including the compliance of existing or proposed legislation, emerging situations where human rights are being violated or placed at risk and the overall 'national situation'
Providing advice and making recommendations	Publish independent reports & making recommendations on any issue relating to such discrimination	Freely publishing opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights
Promote the implementation of international law & ratification of international treaties	Not an explicit part of the mandate of national equality bodies under the Directives	To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation and to

		encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation
To participate in treaty monitoring processes and to cooperate regionally and internationally	Treaty monitoring is not an explicit requirement of the mandate of national equality bodies. The Gender Equality Directive (recast) (2006/54/EC) includes the following competence: 'at the appropriate level exchanging available information with corresponding European bodies such as any future European Institute for Gender Equality'.	To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence; To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
Providing assistance to individuals	Provide independent assistance to victims of discrimination	A national institution may be authorized to hear and consider complaints and petitions concerning individual situations.
Education and awareness raising	No explicit requirement to raise awareness but considered to be implied by the duty to provide assistance	To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles; To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs
Status	Required to be able to conduct independent	The Paris Principles set out detailed requirements

	surveys, publish independent reports and provide independent assistance to victims of discrimination	designed to ensure NHRI's as bodies are independent from the government including plurality in the composition of the Board and staff, adequate infrastructure and funding, control over its own budget and a mandate established in law.

APPENDIX B – THE UN PARIS PRINCIPLES

A/RES/48/134 - National Institutions for the Promotion and Protection of Human rights

The UN General Assembly, 85th plenary meeting, 20 December 1993 :

Recalling the relevant resolutions concerning national institutions for the protection and promotion of human rights, notably its resolutions 41/129 of 4 December 1986 and 46/124 of 17 December 1991 and Commission on Human Rights resolutions 1987/40 of 10 March 1987, 1988/72 of 10 March 1988, 1989/52 of 7 March 1989, 1990/73 of 7 March 1990, 1991/27 of 5 March 1991 and 1992/54 of 3 March 1992, and taking note of Commission resolution 1993/55 of 9 March 1993,

Emphasizing the importance of the Universal Declaration of Human Rights, the International Covenants on Human Rights and other international instruments for promoting respect for and observance of human rights and fundamental freedoms,

Affirming that priority should be accorded to the development of appropriate arrangements at the national level to ensure the effective implementation of international human rights standards,

Convinced of the significant role that institutions at the national level can play in promoting and protecting human rights and fundamental freedoms and in developing and enhancing public awareness of those rights and freedoms,

Recognizing that the United Nations can play a catalytic role in assisting the development of national institutions by acting as a clearing-house for the exchange of information and experience,

Mindful in this regard of the guidelines on the structure and functioning of national and local institutions for the promotion and protection of human rights endorsed by the General Assembly in its resolution 33/46 of 14 December 1978,

Welcoming the growing interest shown worldwide in the creation and strengthening of national institutions, expressed during the Regional Meeting for Africa of the World Conference on Human Rights, held at Tunis from 2 to 6 November 1992, the Regional Meeting for Latin America and the Caribbean, held at San Jose from 18 to 22 January 1993, the Regional Meeting for Asia, held at Bangkok from 29 March to 2 April 1993, the Commonwealth Workshop on National Human Rights Institutions, held at Ottawa from 30 September to 2 October 1992 and the Workshop for the Asia and Pacific Region on Human Rights Issues, held at Jakarta from 26 to 28 January 1993, and manifested in the decisions announced recently by several Member States to establish national institutions for the promotion and protection of human rights,

Bearing in mind the Vienna Declaration and Programme of Action, in which the World Conference on Human Rights reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information and in education in human rights,

Noting the diverse approaches adopted throughout the world for the promotion and protection of human rights at the national level, emphasizing the universality, indivisibility and interdependence of all human rights, and emphasizing and recognizing the value of such approaches to promoting universal respect for and observance of human rights and fundamental freedoms,

1. Takes note with satisfaction of the updated report of the Secretary-General, prepared in accordance with General Assembly resolution 46/124 of 17 December 1991;

2. Reaffirms the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership and their independence;

3. Encourages Member States to establish or, where they already exist, to strengthen national institutions for the promotion and protection of human rights and to incorporate those elements in national development plans;

4. Encourages national institutions for the promotion and protection of human rights established by Member States to prevent and combat all violations of human rights as enumerated in the Vienna Declaration and Programme of Action and relevant international instruments;

5. Requests the Centre for Human Rights of the Secretariat to continue its efforts to enhance cooperation between the United Nations and national institutions, particularly in the field of advisory services and technical assistance and of information and education, including within the framework of the World Public Information Campaign for Human Rights;

6. Also requests the Centre for Human Rights to establish, upon the request of States concerned, United Nations centres for human rights documentation and training and to do so on the basis of established procedures for the use of available resources within the United Nations Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights;

7. Requests the Secretary-General to respond favourably to requests from Member States for assistance in the establishment and strengthening of national institutions for the promotion and protection of human rights as part of the programme of advisory services and technical cooperation in the field of human rights, as well as national centres for human rights documentation and training;

8. Encourages all Member States to take appropriate steps to promote the exchange of information and experience concerning the establishment and effective operation of such national institutions;

9. Affirms the role of national institutions as agencies for the dissemination of human rights materials and for other public information activities, prepared or organized under the auspices of the United Nations;

10. Welcomes the organization under the auspices of the Centre for Human Rights of a follow-up meeting at Tunis in December 1993 with a view, in particular, to examining ways and means of promoting technical assistance for the cooperation and

strengthening of national institutions and to continuing to examine all issues relating to the question of national institutions;

11. Welcomes also the Principles relating to the status of national institutions, annexed to the present resolution;

12. Encourages the establishment and strengthening of national institutions having regard to those principles and recognizing that it is the right of each State to choose the framework that is best suited to its particular needs at the national level;

13. Requests the Secretary-General to report to the General Assembly at its fiftieth session on the implementation of the present resolution.

ANNEX - Principles Relating to the Status of National Institutions

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, inter alia, have the following responsibilities:

(a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

(b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;

(e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

(f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

(a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

(b) Trends in philosophical or religious thought;

(c) Universities and qualified experts;

(d) Parliaments;

(e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

(a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

(b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

(c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

(d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

APPENDIX C – RELEVANT PROVISIONS OF THE EU RACE AND GENDER EQUALITY DIRECTIVES

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the 'race equality Directive')

Recitals:

…

(24) Protection 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 for the victims.

(25) This Directive lays down minimum requirements, thus giving the Member States the option of introducing or maintaining more favourable provisions. The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.

…

General Provisions:

BODIES FOR THE PROMOTION OF EQUAL TREATMENT

Article 13

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 competences 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.

Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (the 'Recast Gender Equality Directive Directive)

Recitals:

…

(31) With a view to further improving the level of protection offered by this Directive, associations, organisations and other legal entities should also be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of a complainant, without prejudice to national rules of procedure concerning representation and defence.

…

General Provisions:

PROMOTION OF EQUAL TRETAMENT - DIALOGUE

Article 20

Equality bodies

1. Member States shall designate and make the necessary arrangements for a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex. These bodies may form part of agencies with responsibility at national level for the defence of human rights or the safeguard of individuals' rights.

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

(a) without prejudice to the right of victims and of associations, organisations or other legal entities referred to in Article 17(2), providing independent assistance to victims of discrimination in pursuing their complaints about discrimination;

(b) conducting independent surveys concerning discrimination;

(c) publishing independent reports and making recommendations on any issue relating to such discrimination;

(d) at the appropriate level exchanging available information with corresponding European bodies such as any future European Institute for Gender Equality.

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