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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).