

Statistics on Discrimination and Database on Complaints A contribution from national equality bodies

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Contents

Introduction

p 5

Chapter 1

Legislative context | p 7

1. Data protection legislation | p 7
2. Legislation requiring data collection | p 9
3. Legislation requiring data collection on complaints lodged | p 11

Chapter 2

Data collection on complaints by equality bodies | p 13

1. Information collected | p 13
2. Access to the data system | p 17
3. Data collection system | p 19
4. Collaboration with other stakeholders | p 20
5. Reporting | p 21

Chapter 3

Other data sources used by equality bodies | p 23

Conclusion and way forward

p 24

Appendix I

Data collection survey questionnaire | p 27

Appendix II

Grounds of discrimination falling under the scope of the national equality bodies mentioned in the report | p 34

Appendix III

Examples of tables presenting internal statistics on complaints | p 37

Appendix IV

Data protection legislation of the national equality bodies' panel | p 38

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Introduction

Equinet's Working Group on Promotion of Equality was created at the end of 2006 to share expertise between Equinet members on policies and procedures to promote equality and prevent discrimination, and exchange good practices and ideas in the field of equal treatment.

In 2008 the Working Group finalised a working document "Promoting Equality, Overview of positive measures used by national equality bodies". One of the main outcomes of this study was that most national equality bodies recommended supporting internal and external data collection with regard to unequal treatment which affects the groups targeted by the protection of anti-discrimination laws. National equality bodies use this data in order to improve the quality of their legal action, to enable positive action or the promotion of equal treatment and to evaluate the real impact of equality strategies at the national level.

Furthermore, data on complaints received is a milestone in the more general discussion about equality data, involving collection of official statistics, research investigations and surveys, monitoring, etc.

This subject is not entirely oriented towards the promotion of equal treatment and has a lot to do with the legal work of national equality bodies. Nevertheless, the Working Group on Promotion of Equality has considered that further analysis on this issue was a priority. Indeed, strategic planning for Promotion of Equality mostly draws on the results of legal work; individual complaints may sometimes uncover recurring or specific discriminatory practices in a particular field they serve as warning signs, encouraging equality bodies to implement prevention and awareness policies and to develop programmes to promote and support good practices in certain areas and/or for specific target groups and social categories.

The aim of this project is therefore twofold:

- The identification of the methods and techniques used by the national equality bodies to collect, process and disseminate internal data on individual complaints lodged.
- The identification of the methods and techniques adopted by national equality bodies to make use of other statistics or studies in order to support evidence of discrimination in the treatment of individual cases, and enrich their quantitative and qualitative knowledge of discrimination.

In the short term, the working group wishes to assess whether a tool could be introduced by Equinet to "develop a system for gathering information on complaints handled by national equality bodies" in a comparative perspective as recommended by the European Commission in its Communication of the 2nd of July 2008¹.

In July 2009, all members of Equinet were sent a 10 page questionnaire called "Data collection survey" that included questions regarding the national legislation on collection of

¹ On 2nd July 2008, the European Commission submitted a Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions to emphasise the need to quantify discrimination and to carry out progress assessment:

"Accurate data is essential for assessing the scale and nature of discrimination suffered and for designing, adapting, monitoring and evaluating policies. There is considerable demand for data on all grounds of discrimination. Available data varies considerably by ground and by Member State, which makes comparability of data difficult if not impossible. Legislation on privacy and data protection lay down criteria for collecting and processing data. Broadly speaking, the European public is willing to provide personal information anonymously in censuses with a view to combating discrimination. The Commission is exploring the possibilities of:

- (i) *collecting statistics regularly on the scale and impact of discrimination in conjunction with the Member States' statistical authorities under the Community Statistical Programme, in particular on grounds of racial and ethnic origin, religion/belief and sexual orientation, where there is still a lack of information, and*
- (ii) *setting up an EU-survey module on discrimination. **It is also working closely with Equinet to develop a system for gathering information on complaints handled by national equality bodies.**"*

data and sensitive data, internal procedures for collecting, processing and exploiting internal data on complaints, data collection as supporting evidence of discrimination², data collection for monitoring, collected data and promotion of equality (see Appendix I). The Working Group received answers from 17 national equality bodies from Austria, Spain (the Basque Country), Belgium, Croatia, Denmark, Finland, France, Greece, Hungary (the Commissioner for Ethnic Minority and the national equality body), the Netherlands, Northern Ireland, Norway, Romania, Sweden and the United Kingdom.

This synthesis is a first effort to identify internal data collection practices by national equality bodies. It is essential to emphasise that this report does not offer a comprehensive and in-depth analysis of national equality bodies practices in the field of data collection processing. Only half of the national equality bodies answered the questionnaire. Some national equality bodies are not competent for all grounds of discrimination prohibited by their national law, which meant that we were unable to give complete and comparable information on the practices of national equality bodies. There are also cases, such as the Swedish Ombudsman, where the institution has been in a transitional period (that permitted the merging of former specialised Ombudsmen), and cannot always be specific about the way data collection is to be organised. In others cases, like for the British Commission, the institution only provides support to strategic cases.

The questionnaire itself allows practical information and objectives pursued without technical and procedural detail on information systems.

The outcome of our analysis is presented in three parts: the legislation in relation to the authorisation for national equality bodies to use data collection for the purpose of anti-discrimination activities (I), the collection, processing and exploitation of statistical data on complaints received by national equality bodies (II), and the role of collected data in support of the promotion of equal treatment and communication activities.

On behalf of the Working Group on Promotion of Equality, we would like to thank all who contributed to this report, in particular the Working Group Members, and the Equinet Board and Secretariat for their time and support in enriching this analysis with their knowledge and insight.

Néphéli Yatropoulos-Mantzari and Martin Clément
Moderators – Equinet Working Group on Promotion of Equality

² The information related to this part of the questionnaire, very legally oriented, but insufficient for the drafting of a real chapter on the issue, was not exploited.

Chapter 1

Legislative context

1. Data protection legislation

The need to carry out statistical observations in order to identify and measure unequal treatment affecting groups protected by discrimination law and the prohibition set out in data protection laws are two requirements that need to be balanced.

It was important that an investigation into the use of statistical data by European Equality Bodies questions potential “barriers” introduced by data protection European legislation from both a legal standpoint and the perspective of the promotion of equal treatment³.

The European personal data protection regime, which determines the legal framework⁴ that governs the collection and processing of data of a personal nature within Member States, is specifically defined by the Council of Europe's Convention ETS 108 "for the protection of individuals with regard to automatic processing of personal data" (1981) and the European Directive 95/46/CE “on the protection of individuals with regard to the processing of personal data and on the free movement of such data”.

These norms concern “personal data”⁵; they define general requirement and also specific conditions for gathering "special categories of data" that requires special protection⁶.

These special categories of data⁷ (which we will call "sensitive data") include data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, health or sex life which all relate to information covered by discrimination law.

Therefore the first series of questions of this survey focus on the general prohibition regarding the collection of “sensitive data” in national data protection legislation and ask to identify the exceptions to this principle provided by national legislation.

Unsurprisingly, all the bodies on the panel answered affirmatively and specified the relevant legal provisions transposing the principles of Convention EST 108 and Directive 95/46/CE into national law and providing for such exception.

³ This concern is not a new one. It has already been underlined by the European Commission against Racism and Intolerance which, in 2007, produced a report surveying the legal framework and governmental practice for gathering ethnic data in the Member States of the European Council to underpin its recommendations on the need to gather such data to draw up policies for tackling racial discrimination and promoting equality. See: Simon P., *“Ethnic” statistics and data protection in the Council of Europe countries, Study Report*, October 2007, ECRI - Council of Europe, available at <http://www.coe.int>. See also, Ringelheim J., *Processing data on racial or ethnic origin for antidiscrimination policies: how to reconcile the promotion of equality with the right to privacy?*, Center for Human Right and Global Justice Working Paper N°13, 2007/ Jean Monnet Working Paper 08/06, available at www.chrgi.org and www.JeanMonnetProgram.org.

⁴ See also, ECHR, Section I, art. 8:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

⁵ Defined under Directive 95/46/EC as “any information relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity”.

⁶ Note that data collected on an anonymous base (or once they are made anonymous) do not fall under personal data protection rules.

⁷ “Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.” (ETS convention 108 Article 6 - Special categories of data);

“Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life” (Directive 95/46/CE Article 8 - The processing of special categories of data).

If some national equality bodies point precisely to exceptions to the ban on processing "sensitive data" provided for by their national laws on personal data protection, on the whole these exceptions follow the framework set out by article 8 of Directive 95/46/CE⁸ (see appendix IV). Some of those exceptions are relevant in regard to the national equality bodies' activities⁹.

Indeed, the processing of sensitive data is permitted amongst others, where:

- [It] is necessary for the purposes of carrying out the obligations and specific rights of the controller in the field of employment law insofar as it is authorised by national law providing for adequate safeguards¹⁰.
- [It] is necessary for the establishment, exercise or defence of legal claims¹¹.

The first exception opens the possibility to cover the monitoring of implementation of anti-discrimination rules in the working environment. For example, Labour laws could provide for obligation to implement a monitoring system in order to control the application of anti-discrimination legislation and to measure their effectiveness¹².

The second requirement is likely to be used in the case of activities by national equality bodies processing claims as a kind of "defence of legal rights". Its transposition in national law was cited by all national equality bodies which provided details regarding the national legal system covering the gathering of sensitive data.

Furthermore, an equality body might gather statistical data with the aim of establishing the existence of direct or indirect discrimination on one of the prohibited grounds. To this end, it might collect data on other individuals in order to carry out a comparative analysis of how claimants are treated.

The legitimacy of national equality bodies in this regard results from its function relating to assistance to victims defined by EU Directives 2000/43 and 2002/73 that impose the designation of a "body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin" whose competence includes "providing independent assistance to victims of discrimination in pursuing their complaints about discrimination".

Following on the lessons learned from the European Court of Justice (ECJ) jurisprudence, paragraph 15 of the Directive 2000/43 states that "the appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence".

The very concept of indirect discrimination is notoriously based on the use of quantitative data as a way of showing the negative impact of a seemingly neutral measure according to a prohibited ground of discrimination.

⁸ Directive 95/46/CE, article 8

⁹ Note that the prohibition of processing sensitive data does not apply where the data subject has given his explicit consent to the processing of those data, Directive 95/46/CE, article 8(2)(a).

¹⁰ Directive 95/46/CE, article 8(2)(b)

¹¹ Directive 95/46/CE, article 8(2)(e)

¹² In addition, article 8(4) of Directive 95/43/CE relating to the public interest motive is likely to provide an operational framework allowing the gathering of sensitive data where this is required to promote equality and combat discrimination. Article 8(4) of Directive 95/43/CE defines also appropriate and specific safeguards to protect basic rights and the private lives of individuals, as covering scientific research and public statistics, particularly to allow the gathering and recording of data in population records or censuses. This point is of interest to equality bodies as many undertake research responsibilities (Austria, France, Finland and Greece). Sweden drew attention to this exception but it is de facto transposed in the national law of Member States.

2. Legislation requiring data collection

We asked national equality bodies about the existence of legislative provisions or regulations imposing the collection of data with regard to groups protected by anti-discrimination law.

35% of the panel mentioned the existence of such legislation: Belgium, Croatia, Finland, Northern Ireland, Romania and the United Kingdom. Their legal texts (except for Romania¹³ and Croatia¹⁴) are related to anti-discrimination legislation.

Other legislations mentioned contain general measures on statistical data that allow information on the situation of groups protected by anti-discrimination law to be gathered, for example in the areas of employment or the public sector.

For some Member States, such legislation is intended to impose positive duties related to grounds of prohibited discrimination linked to sensitive data (e.g. race) upon public authorities and private companies. The national equality body may then be competent to assist with the implementation process and the monitoring of a given institution's compliance with these duties. The British Commission for Equality and Human Rights and the Equality Commission for Northern Ireland have binding powers to ensure that positive duties imposed upon the public and private sectors are complied with. The lengthy experience of the Northern Ireland and British Commissions with positive duties is noteworthy.

The **Belgian** Anti-Discrimination Law of 10 May 2007 specifies that:

Art. 28 paragraph 3:

Facts allowing the presumption of the existence of indirect discrimination on prohibited grounds include, but are not limited to:

- 1° general statistics about the situation of the group to which the victim of discrimination belongs or general knowledge or
- 2° the use of criteria that is intrinsically suspicious or
- 3° basic statistical material that shows unfavourable treatment.

In **Belgium**, the Act of the 15th of February 1993 pertaining to the creation of the Centre for Equal Opportunity also provides for monitoring. It specifies that:

Art. 3

The Centre is completely independent in the fulfilment of its task.

The Centre is qualified to:

- 1° conduct any studies and research necessary for the completion of its task;
 - 2° address advices and recommendations to the government as to improve the regulations, applying article 2 of this law;
 - 3° direct recommendations to the government, individuals or organisations in reference to the results of the studies and researches mentioned in 1°;
- (...)
- 9° obtain and publicise statistical data, and decisions from case law that are useful for the evaluation of the application of the aforementioned Act of 30 July 1981 and of the Act of 25 February 2003 to fight discrimination and for the amendment of the law of 15 February 1993 for the establishment of a centre for equal opportunities and for opposition to racism, whereby the parties involved cannot be identified.

In **Finland**, according to the Act on the Ombudsman for Minorities and the Discrimination Board (660/2001) Section 2 paras. 4-6, the Ombudsman's duties are the following: to carry out or contract somebody to carry out independent reports on issues relating to ethnic discrimination; to report on the achievement of equality of different ethnic groups and on the

¹³ References provided by Romania relate to the exceptions provided for by Law no. 677/2001 for the Protection of Persons concerning the Processing of Personal Data and Free Circulation of Such Data, including that provided for in the area of health, but does not mention legal texts allowing such treatment.

¹⁴ The reference given by Croatia is an answer to question 13 of the questionnaire.

circumstances and status in society of different ethnic groups; to provide information on discrimination based on ethnic origin.

Between 2003 and 2008, an Advisory Board for Minority Issues was created by a government Decree. This Decree defines the duties of the Advisory Board as "to submit proposals for and issue opinions on developing the supervision and monitoring of ethnic non-discrimination and safeguarding the status and rights of foreigners; and to develop co-operation between public authorities and organisations in issues related to the supervision and monitoring of non-discrimination and the prevention of discrimination". A new board was appointed by the government for 1st December 2008 – 30th November 2011.

In **the United Kingdom**, a special mention is made of equality objectives in the list of exemptions to the data protection law. In the United Kingdom, article 3 of the 1998 Data Protection Act stipulates that the processing of sensitive personal data is authorised provided it:

- (a) concerns sensitive personal data relating to racial or ethnic origin;
- (b) is necessary to establish or monitor the existence or absence of equality of opportunity or treatment between individuals of different racial or ethnic origin, with a view to promoting or upholding equality; and
- (c) is carried out with respect for the rights and freedoms of the individuals concerned.

The Race Relations (Amendment) Act 2000 places a general duty on specific public authorities to work towards the elimination of unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups. As employers they are required to monitor their workforce and employment practices in order to ensure that the procedures and practices are fair, so that the public sector can better reflect the society that it serves.

The Netherlands mentioned that between 1998 and 2004, the 1998 SAMEN Act, explicitly called for the monitoring of minorities in prospect of the participation of ethnic minorities in society by publishing the numbers of members of minorities in companies of more than 35 employees.

Article 18 of the Dutch Data Protection Act of 2000 authorises the processing of data relating to the origin of individuals in the following cases:

- 2^o: the data only relates to the country of birth of the data subjects, their parents or grandparents or to other criteria laid down by law, allowing an objective determination whether a person belongs to a minority group as referred to under (b).

In **Northern Ireland**, the 1999 FETO (Fair Employment and Treatment Order) Law introduces a legal requirement for the Equality Commission of Northern Ireland to monitor the indicator of religion/belief in the employment sector. All employers must complete monitoring returns and give details on the community background (the Protestant or the Roman Catholic community), sex and occupational classification of their workforce. "In addition large private sector employers (those with more than 250 employees, full and part-time) and all public sector employees must provide details of promotees and leavers."

In **Romania**, the governmental ordinance n°137/2000 for preventing and combating all forms of discrimination introduced a legal duty to carry out monitoring. The National Council Combating Discrimination is in charge of this monitoring which is carried out for all grounds and all areas of discrimination.

Other national equality bodies are competent for monitoring other public authorities in terms of gender equality (non-sensitive data).

The **Belgian** Institute for Gender Equality is in charge of gender monitoring in the same areas as the Centre for Equal Opportunity and Against Racism (Law of the 16th of December 2002).

Such legal provisions also exist in **Norway** in the Gender Equality Act. The Equality and Anti-Discrimination Ombudsman carries out monitoring on gender in employment.

In **Greece**, Law 3488/2006 gives the Ombudsman a specific mandate to monitor the implementation of gender equality. According to this legislation, the Labour Inspectorate is required to submit monitoring relating to gender discrimination cases in the private employment sector returns to the Ombudsman.

In most of other EU countries, the law does not include a legal requirement to carry out monitoring in the anti-discrimination field.

3. Legislation requiring data collection on complaints lodged

All national equality bodies that answered the questionnaire collect data on claims addressed to them even if there is no legal requirement to do so.¹⁵ It is a standard practice among national equality bodies. In general, a majority of them, if not all of them at the moment, collect and process internal data as they publish statistics describing complaints they receive and process in their annual reports.

In **Croatia**, Article 12 Paragraph 2 Subparagraph 7 of the Anti-discrimination Act imposes:

Within the scope of his/her work, the Ombudsman shall
7. Collect and analyse statistical data on discrimination cases.

Paragraph 14 of the Anti-discrimination Act prescribes:

(1) All judicial bodies shall keep records of court cases related to discrimination and of discrimination grounds for conducting the proceedings, and submit them to the ministry competent for judicial affairs.

(2) Special ombudsmen shall keep records of discrimination cases falling within their competence.

(3) The ministry competent for judicial affairs and the special ombudsmen referred to in paragraph 2 of this Article shall submit records and statistical data on court cases related to discrimination to the Ombudsman by 1 February for the previous calendar year.

(4) The Ombudsman and special ombudsmen shall classify by gender all the records of discrimination cases falling within their competence

In **Belgium**, such a requirement is set out in the law of 15th of February 1993 pertaining to the creation of the Centre for Equal Opportunity:

Art. 3 Paragraph 9

The Centre is authorised to collect and publish anonymous statistical data and judicial decisions that are useful for the evaluation of the law of 30 July 1981 referred above and the law modified the law of 15 February 1993 pertaining to the creation of the Centre for Equal Opportunity;

¹⁵ Only 47% of the panel mentioned a legal requirement on this specific collection of data.

Art. 4

The minister of justice communicates to the Centre annually, judicial statistics relating to the application of the law of 30 July 1981 and 15 February 1993 referred above, as well as judicial decisions taken in application of the above-mentioned legislation, without possibility of identifying the parties involved.

In **Spain**, the **Basque** equality body collects data on behalf of the Basque Government. (cf. Decree n° 119/2006 of 13th of June 2006).

In **Finland**, all authorities¹⁶ are required to register/record/archive in and out-going documents according to the Archive Act (Arkistolaki, 831/1999, chapter 3 section 6). Yet, this database/register does not contain very detailed information. However, the data system is quite new and will be extended to other uses.

In addition to this official register and the archive, the Finnish office also uses a more detailed internal register for filing complaints. In this register, in addition to the written complaints received, all incoming phone calls are registered. This register/database is further detailed and acts as a working tool.

In other countries like **Norway**, the requirement to collect data is not imposed by Parliament but by the government.

¹⁶ Annual report 2008 Ombudsman for Minorities of Finland, p. 29

Chapter 2

Data collection on complaints by equality bodies

The aim of this chapter, without being exhaustive, is to grasp the level and availability of information collected from the complaints received. Through the questions raised in the questionnaire in the part related to statistical data on complaints, the idea was to evaluate what was the “raw” material available after registration of complaints: (1) the information collected, (2) the type of access to the data system, (3) the collection system, (4) the possible collaboration with other stakeholders and (5) the reporting on these data.

1. Information collected

Complaint ground and field of discrimination

The first piece of information provided is related to the ground and the area/field of discrimination with 100% of positive answers from the questionnaire. This information is very useful in achieving the objective stated in the introduction, which is to evaluate whether a tool could be introduced by Equinet to “develop a system for gathering information on complaints handled by national equality bodies in a comparative perspective”.

As for the grounds, the number of grounds shown in the internal statistics clearly reflects each national equality body's field of competence (see Annex II).

Harassment cases are also registered separately in a number of institutions. Complaints that do not fall within the field of competence of national equality bodies are also systematically recorded. A significant percentage of national equality bodies (56%) can also provide information on multiple discrimination (Denmark, Finland, France, Greece, Netherlands, Northern Ireland, Norway, Romania, United Kingdom and Belgium).

Many national equality bodies also record the percentage of complaints that do not fall within their scope of competence; a majority of them also record cases where there is a lack of evidence.

Profile of the plaintiff

A great majority of national equality bodies, 94% in this study, also collect information on plaintiffs. Having the opportunity to record information on the type of individuals lodging complaints on discrimination is useful. Among other things, it allows the identification of “missing groups” who are known to be protected groups but who have to be targeted by the body's communication strategy in order to gain access to the available information on discrimination.

More generally, this data gives information relating to access to rights. National equality bodies could then consider the possibility to organise campaigns in order to reach their “missing” public.

In fact, the “standard information” national equality bodies can collect regarding the plaintiff is: sex and address. The latter gives a geographical coverage of complaints filed. For the need of further sociological research, the level of income, the professional status or level of education would be of major utility.

The general information on complainants is as follows:

	Yes	No	Total
Age	38%	62%	100%
Gender	81%	19%	100%
Ethnic or Racial origin	31%	69%	100%
Geographic	44%	56%	100%
Nationality	50%	50%	100%
Place of birth of parents	0%	100%	100%
Ancestry	0%	100%	100%
Disability	19%	81%	100%
Occupation	19%	81%	100%
Outcome	0%	100%	100%
Education	13%	87%	100%
Place of residence	75%	25%	100%
Other	13%	87%	100%

In **Denmark**, information is not collected unless the plaintiff gives the information on his or her own initiative. If so, this data cannot be found by any other means than going through all cases manually. This seems to be also the case for other national equality bodies.

Northern Ireland requests information from plaintiffs however not all plaintiffs provide all information requested.

In **Finland**, information about the plaintiff's personal profile is not requested if unnecessary for the case, but recorded if known. It is always possible to put instead of a certain box "not known". For example on age the alternatives are "under 18", "18-65", "over 65", "not known". In Finland, all contacts are recorded: incoming and outgoing phone calls, e-mails, letters, meetings, notes on what has been discussed or agreed /with whom, etc is recorded in a free space, etc.

The **Basque** equality body also records language (Spanish or Basque language).

The **Hungarian** ETA collects information on geographical origin, gender of complainant, type of person/organisation according to the Equal Treatment Act Para 4.

In **Norway**, for each complaint two electronic forms are filed for statistical and retrieval purposes:

- One form that describes the case, plaintiff and defendant: there is a total of 66 questions. The forms use branching based on grounds of discrimination and areas/fields of discrimination, so that only relevant questions are shown (i.e. only a disability case has disability questions and only employment cases have questions about employment), of which usually around 20 are shown and answered.
- The second form, which contains questions concerning the opinion reached by the Body, is filled after the case is closed.

The **Norwegian** national equality body tries, when drafting its questions and categories, to follow international classifications or legal provisions where possible. These forms are distributed through a web application (Select Survey).

The Norwegian national equality body registers several criteria, directly connected to the grounds for discrimination relevant to the case. Thus, ethnicity is recorded only if it is a complaint on ethnic discrimination; age is filed only if it is a complaint about age discrimination. Gender and geography are the only individual characteristics that are recorded for all cases. The content of a plaintiff's files is recorded but files are stored in a separate

system. The particular disability of a plaintiff is never filed but what is recorded is the disabilities that were not accommodated.

Profile of defendant

A number of countries collect information on the defendant as well (Austria, Norway) which is useful information. Institutions, companies, fields/sector of employment (public or private) or access to goods and services (private and public) where discrimination is particularly damaging can be targeted by national equality bodies in order to carry out, depending on means and objectives: audits, situation testing, equality plans, training, awareness campaigns, etc.

Progress and outcomes

A number of national equality bodies record information on the type of processing that was given to their claims.

In **Hungary**, recommendations to amend legislation, Constitutional Court, Attorney general, disciplinary procedures are also documented.

The **Finnish** national equality body does not collect these categories. The collected information is as follows: "being handled/interim measure"; "guidance"; "statement/report/initiative"; "no measures".

Moreover, the Finnish national equality body also has an interesting practice. It has included a section in its register for the outcome of the case. One possibility is to record the following alternatives: The Ombudsman takes action/transfers to: the discrimination board; court; police; Occupational Safety and Health Inspectorate; Parliamentary Ombudsman or Chancellor of Justice; other.

The **Swedish** national equality body covers the costs of a trial if a case is taken to court. This information is being recorded in its files. The Swedish institution goes even further regarding, for example, information on settlements that includes the undertaking of employers to provide proactive anti-discrimination training for managers.

In **the Netherlands**, the plaintiff does not always inform the national equality bodies of the kind of additional legal action he or she has taken after (s)he has filed a complaint. The Dutch Equal Treatment Commission (CGB) was mainly set up to consider complaints that are lodged and investigates whether the equal treatment law has been violated. In some respects, the Commission is similar to a Tribunal. An important difference is that the CGB seeks out information itself.

The **Greek** Ombudsman also records information on problems related to specific administrative practices.

In "others", **Austria** and **France** also document amicable settlement that occurs after a claim has been filed.

A majority of national equality bodies not only give information about the complaints recorded but also about the resulting cases after they were processed.

	Yes	No	Total
Act as <i>amicus curiae</i>	25%	75%	100%
Represents before Tribunal	38%	62%	100%
Covers cost of trial	31%	69%	100%
Other	37%	63%	100%
Sanction	50%	50%	100%
Penal action	44%	56%	100%
Compensation	50%	50%	100%
Mediation	75%	25%	100%
Recommendation	75%	25%	100%
Other	56%	44%	100%

(For a number of EU countries, there is no category for penal/criminal action since national jurisdiction discrimination law is primarily dealt with under civil proceedings).

It is of first importance to obtain information, not only on the result of the processing of the claims by the national equality body (representation before the tribunals, mediation sanction, recommendation, etc.) but also on this information distributed by ground, field of discrimination, gender of the plaintiff, address of the plaintiff etc.

Time taken

Half of the national equality bodies that answered the questionnaire also record information on the time taken to process a complaint and can inform on average timescale in the general processing of complaints.

This is essential in order to verify the effectiveness of anti-discrimination law to evaluate the performance of the national equality bodies or the shortage of human resources for processing all complaints lodged.

Cross referencing

Most of national equality bodies, 69% of those who responded to the questionnaire have made provisions for launching multiple cross-referencing.

In **Finland**, the register has been modified a few times, so the current version of the register has only been in place since the end of 2008. The register has proven to be difficult to use in cases where, for example, a name is not spelled correctly and the case is not found as a result. Therefore, data is not totally reliable. In the beginning of 2009, the officer manually went through all the cases one by one to get an overview of complaints received which was a time-consuming process.

Northern Ireland records all cases where discrimination is alleged on more than one ground.

In **Norway**, the comprehensive data file has more or less 260 unique variables; however most of them are not always filed in. Only relevant variables are recorded.

The data file contains information on:

- The complaint (grounds of discrimination and area of life, 36 variables including a 30-word), a description of the discrimination event, the disadvantaged gender;
- The plaintiff (type of plaintiff, identity of organisation, professional helper, plaintiff's relationship with victim);
- The victim (age, gender, visible minorities);

- The defendant (individual or institution, gender, age, name of institution, number of employees, industrial classification, type of religious community, type of public body); and
- The opinion of the Norwegian national equality body, the type of discrimination [direct/indirect/harassment, etc], the applicable legislation, reasons for dismissing a case.

All variables can be combined therefore the anonymity of persons cannot be absolutely guaranteed as gender, age, occupation, language and geography can be enough to identify a person.

In **France**, since 2008, the HALDE published in its annual report, statistics regarding grounds, fields and results with respect to claims detailed by the sex of the plaintiff.

2. Access to the data system

Internal access

Generally, there is no regulatory requirement for the national equality bodies to have a dedicated staff to access and process internal data even if not all the staff of the national equality body has access to the system.

Regarding the protection of data collected, 88% of national equality bodies in the study have put in place protected access to the files/system. The access restrictions can vary. To the question “Do the following persons have access to the database in your institution?” the answers are as follows:

	Yes	No	Total
Lawyers	69%	31%	100%
Members of the board	44%	56%	100%
All staff	38%	62%	100%
Sc. Science Researchers	6%	94%	100%
Public authorities	6%	94%	100%
Civil Society	6%	94%	100%
General public	0%	100%	100%
Other	12%	88%	100%
Specific network	19%	81%	100%

In **Belgium**, access rights to the files is defined per service. Depending on the service one is part of, staff might have the right to consult and/or modify the files of their own service or of other services. A staff member has the role of database administrator.

In **Croatia**, the person who is authorised to fill in the register is a staff member of the Anti-Discrimination Unit.

In **Denmark**, only staff members working on individual claims have access to the database.

In **Northern Ireland**, the national equality body has strict data protection rules. Information is provided in tabular form but carefully protect individuals' personal data.

The **Norwegian** national equality body does not have a unique database:

- There is a comprehensive data file with sensitive information, but it contains no names and its access is very limited.
- There is a fully anonymous database, containing only a small selection of variables, which is available for consultation to staff members. It contains ground of discrimination of the complaint, field/area of discrimination, a 30 word description of

the alleged act of discrimination, defendant (person/company/public), and plaintiff (personal/organisation, gender).

- Electronic archives contain all case files and correspondence. Its access is restricted to case workers.
- External researchers receive lists with a selection of cases and a selection of variables pertaining to them but they do not have direct access to the database.

In **the Netherlands**, actions undertaken by the plaintiff prior to his or her complaint are also integrated to the database.

Most of the time, the access to this type of database is not possible for external networks.

External access

The **Belgium** Centre collaborates with a network of local contact points, installed by the Flemish Government. As a consequence, the database system is adapted and open to external partners. The number of regional contact points is growing year after year and the system must be able to integrate new users in a long-term perspective. Contact points have access to the system via the internet so access does not require a software installation. Local contact points only have the right to consult and/or modify their own files. They do not have access to the files of the Centre and vice versa. Other partners do not have access to the database, but can file a claim electronically, which is then registered in the database. One of the main challenges for the Belgium Centre is to secure and coordinate file access with different “gateways” for partners and researchers.

It is interesting to note that **Belgium, the Netherlands and the United Kingdom** have the mandate to create a network with their partners. This explains why their system for lodging claims is constructed to provide access to their network and to allow information sharing.

The question of access to data reveals different realities. In the national equality bodies where the staff has access to the registration of complaints, and the processing of internal data, the available material does not always correspond.

Most of the time, lawyers and/or persons in charge of the first sorting of complaints received are also in charge of the registration of complaints into the system. Then, during the processing of a complaint, it seems natural that lawyers/administrators are in charge of integrating data on the case developments in the system.

It is important to underline that, even if the questionnaire did not give much information on this issue, the available answers showed that, given the importance of the material collected in the system, its exploitation had an obvious interest to diverse members of the staff: management, communication, internal researchers, members of the promotion of equality mission, local correspondents, etc.

It is important to differentiate the particular phases of treatment regarding the information on complaints.

The persons in charge of the registration should be aware of the importance to document the “details” regarding the case, the plaintiff, etc. in order for the institution to have a final accurate, useful and as much as possible detailed information on the sum of complaints received and processed and the output of the claim.

Moreover, it is important to evaluate whether the expectation of the information delivered by the system offers relevant and sufficient information.

3. Data collection system

Computer software

	Dedicated staff	Dedicated software
Yes	56%	94%
No	44%	6%
Total	100%	100%

A large majority of national equality bodies have dedicated software for collecting and processing data.

The **Norwegian** national equality body uses SPSS (Statistical Package for the Social Sciences) to collect information from:

- The electronic document archive system (case number, dates, name of caseworker, single ground of discrimination, area of life);
- The forms filled in by caseworkers.

This information is combined with a larger non-nominative data file 6 - 8 times a year. Out of this data file, an anonymous database with a limited number of variables is created and made available to all staff. As long as the large data file does not contain any information that can identify the people involved, the requirements for collecting sensitive data are fulfilled without complicated procedures. The Norwegian national equality body tried to put both case-handling and information collected for statistical purposes into the same searchable database.

Advantages of the system:

- It is fairly easy and quick to implement.
- It is inexpensive.
- One file contains "all" necessary information, making it easy to produce reports that are consistent across all sources.
- Multiplicity of the sources of information enables a possible search for discrepancies that can indicate that a form has not been filed, or that a case is erroneously classified in the document archive.
- Possibility to carry out quality control before information is released as the information is not continuously updated.
- It is possible to base the production of tables and lists on scripts. When the data file is updated, hundreds of pages with tables are produced in the same operation.
- Because the document archive, forms for collecting information and database for searching are separate, it is easier to ensure anonymity, which allows more information to be collected.
- As a large quantity of information is collected, it is possible to produce a wide range of interesting statistical material as the need arises.

Weaknesses of the system:

- Information collection and exploitation being separated, it is sometimes hard for caseworkers to remember if a form has been filed in or not.
- It is difficult to ensure that all forms are filed in as the information exploited is not built into the document handling application.
- Information is not continuously updated. Thus, caseworkers and media do not have information immediately at hand.
- The SPSS scripting system is quite complicated, dealing with multiple sources of data that change over time. Lack of reliability is widespread when multiple sources are used.

In **Spain**, the **Basque** equality body, Defensoria has just started introducing software for the registration of data on claims. Its design is based on the Basque Government's software for citizens' requests.

In the **French** national equality body, the HALDE, the individuals responsible for registering and processing complaints are lawyers. Only lawyers, management staff and researchers of the institution can access the system. The network of the HALDE's local correspondents has also access to Acropolis, the internal database software.

In **Finland**, all staff members have access to both the official register/database for registering in and out-going documents as well as to the internal working tool database. A staff member can be assigned to collect certain information manually from the internal database, if the information needed is not easily available by search mechanisms. The secretary, planner and the person working for the institution undergoing non-military service (assisting functions) take care of the official register/archive.

Sometimes, in structures with a competence that goes beyond discrimination issues, like Ombudsmen/Mediators, institutions for human rights, etc. a general computer system is used for complaints of all types. A category under which complaints for discrimination are filed is generally used and includes all necessary information like grounds, fields, profile of plaintiff, etc.

In the offices of the **Croatian** Ombudsman, one of the employees of the Anti-Discrimination Unit is required to keep a parallel record on individual claims regarding discrimination. Such evidence contains the most important data on each individual case such as: grounds and area of discrimination, sex of person submitting the claim, how the case was resolved and so on.

4. Collaboration with other stakeholders

Broader information on complaints received by other stakeholders is also an issue.

The **Danish** national equality body example is interesting in this regard. The Danish Body no longer handles complaints directly and as a consequence does not process data on complaints. Yet, the Institute still receives them as its role is to assist victims of discrimination.

The Institute is nevertheless currently working on a project to make monitoring of discrimination more secure. It is the aim of the Institute to collect data on discrimination enquiries and cases from relevant stakeholders within the field, such as NGOs, trade unions and public bodies. The Institute aims to do this by developing an online form that these stakeholders have to fill out every time they have had a discrimination enquiry/case. The data is to be anonymous and will automatically be available to extract statistics. The Institute aims to cooperate with as many relevant stakeholders as possible, including by asking them for their comments on a draft form to ensure that the form does not only cover the relevant questions, but is also usable by the key stakeholders in their practice.

An example is that one NGO has suggested that the NGO/trade union/public body not only include data on specific acts of discrimination, but that they also ask the complainant whether he or she has ever abstained from doing something for fear of discrimination.

The **Finnish** national equality body is represented in a working group moderated by the Ministry of Interior, whose aim is to develop a system for the collection of national data on discrimination on different grounds. The goal is to obtain actual, quantitative and objective data on discrimination. The Finnish national equality body is contributing to this work. The idea is that their office, among others, will contribute to gathering information and also gain information through this system.

In **Croatia**, Paragraph 14 of the Anti-discrimination Act prescribes:

(1) All judicial bodies shall keep records of court cases related to discrimination and of discrimination grounds for conducting the proceedings, and submit them to the ministry responsible for judicial affairs.

(3) The ministry responsible for judicial affairs and the special ombudsmen referred to in paragraph 2 of this Article shall submit records and statistical data on court cases related to discrimination to the Ombudsman by 1 February of the following calendar year.

In **Belgium**, the requirement is mentioned in the Discrimination Law of 10 May 2007 (Anti-racism Law of 1981 as amended by the Law of 10 May 2007):

"The Minister of Justice annually communicates to the Centre, Judicial statistics related to the implementation of the Laws of the 30th of July 1981 and 25th of February 2003, together with the judicial decisions taken in order to implement these laws, without the possibility of identifying the parties involved".

Several national equality bodies use the statistics of tribunals where available (Denmark, Belgium, and Northern Ireland). In the UK, complaints of discrimination received by the Employment Tribunal are available on their site:

<http://www.employmenttribunals.gov.uk/Publications/publications.htm>

In **France**, statistics are only available for condemnations of criminal offence of discrimination.

Such a source of information is of primary importance for national equality bodies who can compare their own data on complaints lodged with the ones of the Tribunal and improve their understanding of discrimination as well as their knowledge on statistics on complaints lodged at national level.

Furthermore, many, typically non-profit non-governmental, organisations provide direct services to victims of discrimination. Some organisations have set up telephone hotlines or other means by which they provide advice and assistance to victims of discrimination. These organisations usually keep records of the cases that have been reported to them and of the course of action taken. The advantage of such organisations is that they are often locally-based and are easily accessible, meaning that there is a low threshold for contacting them.

The end purpose is to have as comprehensive and accurate representation of discrimination in society as possible. Collecting and cross-referencing statistical and qualitative information on discrimination is therefore an invaluable source of knowledge and action for national authorities willing to combat discrimination and promote equality.

5. Reporting

Statistics on complaints are generally published in annual reports (88% of the national equality bodies that answered the questionnaire), but in a synthetic and anonymous form. No access to personal data is provided although access to merged statistical data is. The plain text of all decisions issued is also often available on the national equality bodies' websites.

The **Northern Ireland** Body provides some information in its annual reports and also annually publishes a report on settlements and decisions and a press report on individual cases with the plaintiff's authorisation (see Appendix III).

In **Norway**, data is never published. Only some selected statistical tables and lists are published:

- a) An annual report on legal cases (Praksis 2007 and Praksis 2008) contains some tables (Count of Grounds by Year, Count of Area of life by Year, and Area of life by grounds of discrimination by year)
- b) A number of memos on particular topics like discrimination on the grounds of pregnancy and maternity leave can also be published

In **Sweden**, examples of cases and other types of data will be publicised on the national equality body's website. The website is being developed as an additional tool for providing information.

Concerning accessibility of data within the national equality body, and all other government agencies in Sweden, the general rule is that anyone has a right to access government documents. This means that almost all the material produced by the national equality body becomes available to the public. There are a few exceptions where documents are classified as secret.

As for the legal basis, Chapter 2, Article 1 of The Instrument of Government guarantees that all citizens have the right of freedom of information that is, the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others. Specific rules on access are set out in the Freedom of the Press Act, which was first passed in 1766. The current version was adopted in 1949 and amended in 1976. Chapter 2 on the Public Nature of Official Documents, decrees that "every Swedish subject [and resident] shall have free access to official documents". Public authorities must respond immediately to requests for official documents. Requests can be in any form and can be anonymous.

The **Greek** Ombudsman publishes its statistical information on complaints in its annual reports and the data provided is often commented on and used:

- a) for internal purposes (e.g. knowing and understanding the situation on different grounds, developing a communication policy on grounds where there is a small number of complaints, planning a strategy targeting a specific group and
- b) for external purposes (e.g. analysing the data and presenting it to the relevant authorities, asking for their views or using it when making final recommendations on a case or a report).

In **Spain**, the **Basque** equality body, Defentsoria has designed and developed an *Observatory for Equal Treatment* (of women and men) in electronic format, based on official statistics. This data is available in Spanish and in Basque languages on the web www.euskadi.net/defentsoria "Observatorio de igualdad de trato".

Some examples of publication of internal statistics on complaints are available in the links listed in appendix III.

Chapter 3

Other data sources used by equality bodies

Besides the technical aspect of the processing of statistics on complaints, it is important to emphasise that the access to, and the possibility of exploiting the database on complaints is always a very valuable source of information for the staff members of the equality promotion unit: It gives them the opportunity to continually develop a more sophisticated understanding of discrimination in the field.

Moreover, in order to draft equality promotion policies targeting specific areas or groups, several other types of data on discrimination are used by national equality bodies:

	Yes	No	Total
Population registers	50%	50%	100%
Census	56%	44%	100%
Administrative files	50%	50%	100%
Scientific situation testing	25%	75%	100%
Scientific surveys	75%	25%	100%
Opinion polls	69%	31%	100%
Statistics on individual complaints	88%	12%	100%
Statistics collected by tribunal	44%	56%	100%
Other	0%	100%	100%

The questionnaire did not provide much information on the exploitation of internal data for promotion of equality purpose. It is maybe a question that has not been systematically raised in the different national equality bodies. Nevertheless, this could be a subject for further research.

Conclusion and way forward

The aim of the Working Group on Promotion of Equality for 2009 was mainly to gather information on the level and availability of information collected by national equality bodies from the complaints received.

All the 17 national equality bodies that answered the questionnaire collect data regarding claims addressed to them even if there is no legal obligation to do so. The level of information collected varies considerably from one organisation to the other. A large number of national equality bodies are equipped with dedicated software for registration of data pertaining to claims lodged. Frequently, there is information regarding the grounds and the areas of discrimination. Some of the national equality bodies also have information available on multiple discrimination, harassment, etc.

The questionnaire also made clear that information can be collected on final decision regarding complaints when processed (observation before the courts, representation of plaintiffs before the Tribunal, mediation, recommendation, etc.). A number of national equality bodies collect information on plaintiff's profiles, which also provide a better knowledge of target groups, they are fewer to collect information on defendants' profile.

The "standard information" national equality bodies could collect regarding the plaintiff is: sex and address. Collecting information on the gender of plaintiffs permits to identify whether both sexes are "equally" lodging complaints on the different grounds, whether there are recurring cases in a specific sector of employment, public service or company for women, or for women of foreign origin or for disabled men, etc. Studying the collected information with regard to the address, gives further indications on the regions, districts, neighbourhoods where discrimination can occur or, on the contrary where people are not lodging complaints for not being sufficiently aware of their rights. It would be even more useful to have information on the level of income/social status, level of education of their plaintiffs.

The Eurobarometer 2009 provides information on the educational standard and age of reporting discrimination issues. The more educated are the most well-informed about their rights and are more likely to lodge a complaint if they are discriminated against. It could be an interesting source of information to have the corresponding information at the level of plaintiffs in national equality bodies and Tribunals.

All this information constitutes an interesting sample regarding discrimination issues. Even if not statistically representative; it gives indications on cases regarding specific groups/individuals actually lodging complaints.

This information on discrimination does not give a complete picture as not all individuals discriminated against lodge a complaint with the national equality body for several reasons: lack of information on the institution, mistrust in the institutions, or the assistance they could bring to them, fear of intimidation from perpetrators if reported, discrimination internalized or acceptance of the discrimination as a normal, daily phenomenon, inconvenience/bureaucracy or lack of time, the fact that a victim thinks he/she can handle it alone or with the help of colleagues, family, residence permit problems, language difficulties/insecurities and so forth.¹⁷ But this very "missing" public can be identified, by default, with the use of information on the plaintiffs that actually lodged complaints. Moreover, quantitative data permit to improve the knowledge of the institution in terms of areas/fields of discrimination: sectors, companies, public services were discrimination frequently occur, defendant's profile, grounds of discrimination, recurrent types of claims, multiple discrimination, etc. Regarding qualitative data, the possibility to undertake a full text research with key words in the plaintiff's file is another invaluable source of information.

¹⁷ Statistics on these reasons for not lodging a complaint are available in the 2009 EU-MIDIS European Union Minorities and Discrimination Survey.

This survey conclusions agree with the recommendation n⁵: *The need to develop complaint statistics of the report entitled: "European handbook on equality data. Why and how to build to a national knowledge base on equality and discrimination on the grounds of racial and ethnic origin, religion and belief, disability, age and sexual orientation"*¹⁸.

"Organisations that receive reports of discrimination should develop systematic recording procedures and practices that allow them to ensure the completeness, reliability and usefulness of the data for both administrative and statistical purposes. (...) All organisations should establish mechanisms for analysing and distributing in statistical form the information submitted to them, and should seek ways to allow researchers to use these data for analysing discrimination where appropriate."

National equality bodies must have information resources that are as comprehensive as possible. It is not useful to have a wide range of possible information to be filled in if it is not filled in properly when a complaint is lodged and processed. The aim of such a data file is to give comparative comprehensive information on complaints. It is therefore better to have limited information that is systematically recorded. One of the aims of this study is to demonstrate the added value of practitioners systematically entering information into their system.

The information collected permits improvements in the institutional knowledge on diverse aspects of discrimination and gives a visibility to the potential of national equality bodies. It is valuable in developing further prevention and awareness policies and to develop programmes to promote and support good practice in certain areas and/or for specific target groups and social categories as denial of equal opportunities comes at a high price for those concerned and the society at large. Qualitative and quantitative data is needed for **sensitising** and **awareness-raising** purposes. Scientific evidence on the extent and nature of discrimination can serve as a compelling, factual baseline for national discussion on equality and discrimination.

Conclusions:

- ▶ The non-exhaustive overview (see chapter I) of legal measures relating to data protection and/or laws containing an explicit requirement to gather data for ensuring the observation and effectiveness of non-discrimination law and policies for promoting equality, suggests a need for further reflection on balancing these two requirements.
- ▶ Collecting and cross-referencing statistical and qualitative information on discrimination is an invaluable source of knowledge and action for national authorities willing to combat discrimination and promote equality. It is of primary importance to be in a position for national equality bodies to obtain results of the processing of received claims (representation before the tribunals, mediation sanction, recommendation, etc.) and of the outcome of received complaints, distributed by ground, field of discrimination, information on plaintiff information on defendant, etc.
- ▶ The persons in charge of the registration of data within equality bodies should be aware of the importance to document the "details" regarding the case, the plaintiff, etc. in order for the institution to have final accurate, useful and as much as possible

¹⁸ European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.4, Manuscript completed in November 2006

detailed information on the sum of complaints received and processed and the output of the claim.

- ▶ Half of the national equality bodies that answered the questionnaire also record information on the time taken to process a complaint and can inform on average time-scale in the general processing of complaints. This is essential in order to verify the effectiveness of anti-discrimination law and to evaluate the performance of the national equality bodies or the shortage of human resources for processing all complaints lodged.
- ▶ For each system, it is important to evaluate whether the information delivered by the system is relevant and sufficient.
- ▶ The different EU Member States should foresee collection of data at the level of Tribunals and Courts as well. In those countries where discrimination is a criminal offence, complaints data can be compiled also on the basis of police crime report registers and prosecution registers. Data may also be available on offences that have a discriminatory motive that constitutes an aggravating factor. Such a source of information is of primary importance for an accurate understanding of discrimination and in order to improve the knowledge of stakeholders in the field. The end purpose is to have a comprehensive and accurate representation of discrimination in society as possible. This collection and comparison of data should be promoted and required in future EU regulations and legislation.

All national equality bodies inform the area and ground of discrimination of claims that were received. This information is very useful in achieving the objective stated in the introduction which is to evaluate whether a tool could be introduced by Equinet to *“develop a system for gathering information on complaints handled by national equality bodies in a comparative perspective”* as it was recommended by the European Commission in its Communication on the 2nd of July 2009. A comparative database on complaints would have an undeniable added value. There are no comparative data on discrimination cases legally identified as such at the level of EU. The only available information at a comparative level relates to perceptions of discrimination (cf. diverse studies and opinions polls as the Eurobarometer, EU MIDIS studies published by the Fundamental Rights Agency on experiences of discrimination).

Furthermore, the present study offers us a limited perspective on national equality bodies' practice in terms of capture, processing and exploitation of data on complaints. The aim of this report was not to make an evaluation of best practices in the field, but to bring the issue for discussion and further study.

This could definitely be the object of a future study launched at EU level in order to build on, complete and extend this first overview. One of the targets of such a research could be to support the development of a model of capture and processing of data on complaints and their statistical exploitation by national equality bodies.

Appendix I: Data collection survey questionnaire

Introduction to the questionnaire

Equinet's Working Group on Promotion of Equality was created in 2006 with the aim of sharing expertise between Equinet members on policies and procedures to promote equality and prevent discrimination, as well as exchanging good practices and ideas in the field of equal treatment.

In 2008, the working group finalised a working document "Promoting Equality, Overview of positive measures used by national equality bodies". One of the main outcomes of this study was that most national equality bodies recommended supporting internal and external data collection with regard to unequal treatment which affects the groups targeted by the protection of anti-discriminations laws. National equality bodies use this data in order to improve the quality of their legal action, to enable positive action or equality promotion and to evaluate the real impact of equality strategies at the national level. The Working Group on the Promotion of Equality has therefore made it a priority to conduct further analysis on this issue in order to:

- identify national equality bodies' strategies in the collection, processing and use of internal and external quantitative and qualitative data;
- evaluate if a tool could be carried out by Equinet in order to "develop a system for gathering information on complaints handled by national equality bodies" in a comparative perspective as it was recommended by the European Commission in its Communication on the 2nd of July 2009¹⁹.

The aim of the questionnaire below is therefore threefold:

- Identification of the methods and techniques used by the National equality bodies in order to collect process and disseminate internal data on individual claims lodged;
- Identification of the methods and techniques adopted by the national equality bodies to make use of statistics or studies in order to support evidence of discrimination in the treatment of individual cases;
- Identification of the methods and techniques used by the national equality bodies to collect process and disseminate statistical internal and external data (with regard to unequal treatment which affects the groups targeted by the protection of anti-discriminations laws) for diagnosis and positive action purpose.

A - National Equality Body

1. Country:
.....
2. Name of the organisation:
3. Name of the staff member who completed this questionnaire
.....
4. Respondent's Unit/Department:
.....
5. Telephone number:
6. Email:
7. Date of the
completion.....

¹⁹ In the Basque Country, the Ombudsman Defensoria provides services for women and men with regard direct or indirect sex discriminations in the private sector. Sex discrimination complaints related to the public sector are sent to the Basque Country Human Rights Ombud (Ararteko).

B- Legislation

8. Which of the following grounds of discrimination fall under the jurisdiction of your organisation?

- Age
- Ethnic or racial origin
- Gender
- Disability
- Religion or beliefs
- Sexual orientation
- other grounds (please specify):
-
-
-

The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe and the European Directive 95/46/CE on the protection of individuals with regard to the processing of personal data and on the free movement of such data contain the articles which define categories of sensitive data and specify the conditions for their collection.

9. Is there a general principle or rule prohibiting the collection of “sensitive data” in your national law that sets out the framework for, and the limits of, collection of personal data in the electronic form, including statistical data?
yes no

10. Providing that such a principle exists, are there exceptions to this rule? Specify for which type(s) of data and which ground(s).

(Please provide the reference of the corresponding legal text)
.....
.....
.....
.....

11. Are there any legislative provisions or regulations imposing the collection of data with regard to groups protected by anti-discrimination law?
yes no

12. If so, to which type(s) of data and which ground(s) do they apply? (Please provide the relevant legal text or regulation)

.....
.....
.....
.....

C - Data regarding individual claims lodged

A large number of national equality bodies use computer systems which enable them to register claims lodged, in their electronic data bases. The systems in question could vary in functions and the scope of information registered. Data collected on claims lodged may include information regarding different types of claims (grounds, areas), their treatment and the profile of the plaintiffs.

C.1 - STATISTICAL DATA COLLECTION

13. a- Is there a legal obligation to collect data regarding claims addressed to your organisation?

yes no

b- If so, please provide the relevant legal text(s)

.....

c- If not, does your organisation collect those data without having any legal obligation to do so

yes no

14. Are there staff members or a special unit in your organisation that is specifically assigned to the task of data collection?

yes no

15. Is your organisation equipped with a dedicated computer system (software) for the registration of data pertaining to claims lodged?

yes no

C.2- STATISTICAL DATA OUTPUT

16. Is information regarding the following issues (listed below) is provided through data collection? (Please check corresponding box(es) :

- Grounds of discrimination (list)
- Areas of discrimination (employment, housing, goods and services, etc.)
- Multiple grounds of discrimination
- Number (and/or percentage) of claims on harassment
- Number (and/or percentage) of claims outside the scope of competence of the National Equality Body
- Number (and/or percentage) of file closed for lack of evidence
- Number (and/or percentage) of claims which led to legal action:

17. If yes, does it enable the National Equality Body to identify cases in which:

- The National Equality Body presents its observations before the court acting as *amicus curiae*?
- The National Equality Body represents a plaintiff before the Tribunal?
- The National Equality Body covers the costs of trial?
- Other (please specify).....

Number (and/or percentage) of claims lodged (by ground and/or area) which led to legal action, resulting in:

- Sanction
- Penal action
- Compensation
- Mediation
- Recommendation
- Other (please specify):

.....

.....
.....

Average delay for the treatment of claims lodged (by ground and/or area)

Profile of the plaintiffs

Regarding which type of information? (listed below)

- Age
- Sex
- Ethnic and racial origin
- Geographic origin
- Nationality
- Place of birth of the parents
- Ancestry
- Disability
- Occupation/Profession
- Level of income
- Level of education
- Place of residence (geographic origin)
- Other (please specify):

.....
.....
.....

Content of the plaintiff's file

Other (please specify):

.....
.....
.....

18. a - Is it possible for your organisation to carry out multi-ground research based on the collected data (i.e. in order to identify cases referring to a relevant ground of discrimination at a given period of time, for an area of discrimination and a specific profile)?

yes no

b - If yes, specify the accuracy it allows (give examples)

.....
.....
.....

19. Is the access to these data technically protected?

yes no

20. Who at your organisation has access to the data base?

- Lawyers (of internal staff)
- Members of the board and the management
- All staff members of the National Equality Body
- Social sciences researchers
- Public authorities
- Representatives of the civil society
- General public
- Other (specify):

.....
.....
.....

21. Are those data accessible for the other parties through specific networks?
 yes no

22. Are these data publicised by your NATIONAL EQUALITY BODY (please give examples)
 yes no

.....

D- Data collection and evidence of discrimination

Using statistical data with regard to both, individual cases and indirect or systemic discrimination, may turn out to be a determining factor in establishing an inference of discrimination. Those data may provide material for formulating charges during legal investigation.

23. Is your organisation empowered to investigate claims lodged by requesting information (including statistics) from the respondent (s)?
 yes no

24. a- Do you have a legal opportunity to support the case with statistical data or studies as elements of circumstantial evidence?
 yes no

b- If yes, please specify the sources of the data used:

Ground	Population registers	Censuses	Administrative files	Judicial situation testing	Surveys	Opinion polls	Others (please specify):
Age	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sex/gender	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Race/ethnic origin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Religion or beliefs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Disability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sexual orientation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

In order to prove inequality in treatment, it is necessary to create comparative statistical tables which make the groups constituted on the basis of forbidden characteristics clearly visible. Secondly, it is compulsory to measure statistical gaps or differences between the group under study and the reference group and to demonstrate substantial and significant character and the order of magnitude of those gaps using the relevant indicators.

25. a- Are there any precedents from national jurisdictions with regard to the requirements for a gap to be held significant and thereby contributing to the evidence of discrimination? (References ILO and European Court of Justice?)
 yes no

b- If yes, please specify:

.....

E- Data collection and Monitoring

Monitoring is a set of procedures used by an organisation in order to assess the impact its policies and practices have over the groups protected by the anti-discrimination laws. This refers to situations in which organisations collect data concerning the distribution of certain characteristics (i.e. age and/or ethnic origin) among its staff members in order to remedy disproportionate representation and corresponding imbalance in the representation of discriminated groups.

This kind of monitoring may be foreseen by the law (in which case the data is collected in a systematic way). The data collected in this way is subject to statistical processing (aggregation) carried out by a specialised body. This kind of procedure allows the identification of disproportionate representation of certain groups not only within a single company but also within the entire sector.

26. Does the law in your country foresee legal obligations or provisions to carry out monitoring of the situation of groups under the protection of anti-discrimination laws?

Yes no

27. If yes,

a- is your National Equality Body in charge on this monitoring?

Yes no

b- please complete the table below:

Ground	Area of discrimination (employment, education...)	Bodies who must complete monitoring returns (NATIONAL EQUALITY BODIES, companies, ministries...)	Structure in charge of monitoring	Law of reference
Age				
Sex/gender				
Race/ethnic origin				
Religion or beliefs				
Disability				
Sexual orientation				

F- Data Collection and promotion of Equality

Most national equality bodies, created to meet the requirements of EU directives regarding anti-discrimination and the promotion of equal treatment, have set up concrete strategies in order to promote equality and prevent discrimination. Promotion of equality policies tend to develop in order to prevent discrimination from occurring and to support action necessary to

achieve full equality in practice. In this perspective, the knowledge of discriminatory practices, and consequently the access to quantitative and qualitative data are necessary.

28. In order to draw policies of promotion of Equality targeted to specific areas or groups, which type of data on discrimination do you mostly use?

Grounds	Age	Gender	race / ethnic origin	Disability	Sexual orientation	Religion / beliefs
Statistics on individual complaints lodged	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scientific situation tests	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Population registers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Censuses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Administrative files	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scientific surveys	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Opinion polls	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Statistics collected by the Tribunals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other(s), please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

29. Do you use in your communication strategy the outcome of surveys on peoples' attitudes towards and experiences of discrimination to draw strategies on promotion?
 yes no

30. Additional remarks

.....

Appendix II: Grounds of discrimination falling under the scope of the National Equality Bodies

Country	Organisation	Grounds prohibited by EU law	Other grounds prohibited by national law
Finland	<i>Ombudsman for Minorities</i>	-Ethnic origin	
Spain - Basque region	<i>Defensoria para la Igualdad de Mujeres y de Hombres</i>	-Gender	
Belgium	<i>Centre for Equal Opportunity and Opposition to Racism</i>	-Age -Ethnic or racial origin -Disability -Religion or beliefs -Sexual orientation	-Physical or genetic characteristic -Actual or future health conditions -Political conviction -Social class -Marital status -Fortune -Nationality
Hungary	<i>Equal Treatment Authority</i>	-Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation	-Colour -Nationality -Mother tongue -State of health -Political or other opinion -Family status -Motherhood pregnancy or fatherhood -Sexual identity -Social origin - Financial status -Part-time nature or definite term of the employment relationship -Membership of an organisation representing employees' interests -Other status, attribute or characteristics
Hungary	<i>Parliamentary Commissioner for the Rights of National and Ethnic Minorities</i>	-Ethnic or racial origin	-Other grounds belonging to the Hungarian Law

Greece	<i>Greek Ombudsman</i>	-Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation	
Romania	<i>National Council for Combating Discrimination</i>	-Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation	-Nationality -Language -Non-contagious chronic disease -HIV infection -Disfavoured category
Northern Ireland	<i>Equality Commission for NI</i>	-Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation	
Sweden	<i>Swedish Equality Ombudsman</i>	-Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation	-Transgender identity or expression
Norway	<i>Equality and Anti-Discrimination Ombud</i>	-Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation	-Political views -Membership in labour union -Language
Denmark	<i>Danish Institute for Human Rights</i>	-Ethnic or racial origin	
Austria	<i>Ombud for Equal Treatment</i>	-Age -Ethnic or racial origin -Gender -Religion or beliefs -Sexual orientation	
United Kingdom	<i>Equality and Human Rights Commission</i>	-Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation	-Transgender/ gender identity

Croatia	<i>Office of the Ombudsman</i>	<ul style="list-style-type: none"> -Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation 	<ul style="list-style-type: none"> -Language -Political or other belief -National or social origin -Assets -Trade union membership -Education -Social status -Marital or family status -Health status -Genetic heritage -Gender identity
Netherlands	<i>Dutch Equal Treatment Commission (CGB)</i>	<ul style="list-style-type: none"> -Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation 	<ul style="list-style-type: none"> -Nationality -Marital status -Political orientation -Philosophical orientation -Fixed-term and temporary contracts, working hours
France	<i>High French Commission for Equal Opportunity and Anti-Discrimination</i>	<ul style="list-style-type: none"> -Age -Ethnic or racial origin -Gender -Disability -Religion or beliefs -Sexual orientation 	<ul style="list-style-type: none"> -Political opinion -Health status -Pregnancy -Physical appearance -Family status -Union activity

Appendix III: Examples of tables presenting internal statistics on complaints

Links to National Equality Bodies websites

▶ **Belgium**

http://www.diversite.be/?action=publicatie_detail&id=106&them a=2

▶ **Croatia**

<http://www.ombudsman.hr/en/annual-report/119-annual-report-for-2008.html>

▶ **Finland**

[http://www.ofm.fi/intermin/vvt/home.nsf/files/VV2008_englanti/\\$file/VV2008_englanti.pdf](http://www.ofm.fi/intermin/vvt/home.nsf/files/VV2008_englanti/$file/VV2008_englanti.pdf)

▶ **France**

http://www.halde.fr/IMG/pdf/RA_UK_version_integrale.pdf

▶ **Greece**

http://www.synigoros.gr/pdf_01/ann_report.pdf

▶ **Hungary**

<http://www.kisebbsegiombudsman.hu/data/files/144644490.pdf>

▶ **Netherlands**

http://cqb.nl/webfm_send/488

▶ **Basque country**

http://www.ejgv.euskadi.net/r53-2291/es/contenidos/informacion/publicaciones_informes_anuales/es_publicis/adjuntos/Informe%20anual%20castellano.pdf

▶ **Northern Ireland**

<http://www.equalityni.org/archive/pdf/Decisionsandsettlements0708.pdf>

Appendix IV: Data Protection legislation of the National Equality Bodies' panel

Austria	Federal Act concerning the Protection of Personal Data, (Datenschutzgesetz 2000)
Belgium	Law of 8 December 1992 on the protection of privacy in relation to the processing of personal data (Privacy Law or Data Protection Act)
	Royal Decree of 13 February 2001 implementing the Law of 8 December 1992 on the protection of privacy in relation to the processing of personal data
Croatia	The Act on Personal Data Protection (Official Gazette, No. 103/03)
	The Regulation on the method of maintaining records on personal data filing system and the form such records should take (Official Gazette, No. 105/04)
Denmark	Act no. 429 of 31. May 2000 on Processing of Personal Data section 7
Finland	Personal Data Act (523/1999)
France	Law n°78-17 of 6 January 1978 on information technology, records and freedoms (version consolidated on 14 May 2009), article 8.
Greece	Law No. 2472 on the Protection of individuals with regard to the processing of Personal Data, 1997
Hungary	Act LXIII of 1992 on the Protection of Personal Data and the Disclosure of Information of Public Interest
Netherlands	The Dutch Personal Data Protection Act
Norway	Act of 14 April 2000 No. 31 relating to the processing of personal data (Personal Data Act)
Romania	Law no 677/2001 on protection of persons with respect to the processing personal data and the free movement of this data – art. 7
Spain - Basque region	Ley Orgánica 15/1999, de 13 de diciembre, de Protección de Datos de Carácter Personal
Sweden	§§ 10-19 of the Swedish Personal Data Act (1998:204).
United Kingdom	Data Protection Act 1998

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