

# Bridging the Divide?

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

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### 1. Introduction

National equality bodies (NEBs) and national human rights institutions (NHRIs) play important roles in promoting respect for human dignity and fundamental rights in many European states. Both types of body engage in similar activities, perform similar functions, have similar legal powers and seek to achieve similar objectives. However, in the majority of member states of the EU, NEBs and NHRIs are separate institutions which perform different functions. As of 2019, of the EU’s 41 national equality bodies and 27 accredited national human rights institutions, only 14 institutions fell into both categories, ie could be classified as being both a NEB and a NHRI: furthermore, of those 14 institutions, only 7 could be regarded as ‘full’ NHRIs.<sup>1</sup>

This reflects the existence of a broader conceptual divide between ‘equality’ and ‘human rights’ in legal, political and regulatory discourses across Europe.<sup>2</sup> Even though equality is a fundamental human right, it is common for non-discrimination and equal treatment issues to be separated out from the broader human rights agenda and treated as a dis-

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1 These are the Croatian and Latvian Ombudsman institutions, the Danish Institute for Human Rights, the British Equality and Human Rights Commission, the Irish Human Rights and Equality Commission, the Netherlands Institute for Human Rights, and the Polish Commissioner for Human Rights: all qualify as fully accredited ‘A’ status NHRIs according to the classification system used by the International Co-ordinating Committee of National Human Rights Institutions (ICC). The other seven, the Austrian Ombudsman Board, the Cypriot Commissioner for Administration and Human Rights, the Belgian Interfederal Centre for Equal Opportunity and the Fight against Racism and Discrimination, the Bulgarian Commission for Protection Against Discrimination, the Slovak National Centre for Human Rights, and the Swedish Equality Ombudsman, qualify as having ‘B’ status. For this classification system, see EU Fundamental Rights Agency, *National Human Rights Institutions in the EU Member States – Strengthening the fundamental rights architecture in the EU* (Luxembourg, Publications Office of the European Union, 2010).

2 The term ‘equality’ is used to denote the principle that individuals and groups should not be subject to discrimination on irrational or unjustified grounds (more commonly known as the ‘principle of equal treatment’, a term that is used in particular by the Court of Justice of the EU in such cases as Case C-144/04, *Mangold v Helm* [2005] ECR I-9981), and the framework of national and EU anti-discrimination legislation that has been drawn up to give effect to this principle. In contrast, the term ‘human rights’ will be used to refer to the framework of legal standards set out in regional and international human rights law treaty instruments, such as the UN Covenant on Civil and Political Rights and the European Convention on Human Rights.

tinct and self-contained area of concern. This practice of distinguishing between 'equality' and 'human rights' issues can be detected in law and policy: it is also reflected in the attitudes and activities of national governments, European institutions and civil society bodies across the EU.

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

The emergence of this new hybrid model of institution – an integrated equality/human rights body – is a relatively new development in the EU. However, it has received little attention in the academic literature or in official reports. This gap is unfortunate, as the establishment of these new integrated institutions represents an ambitious and interesting attempt to 'bridge the divide' between equality and human rights. The challenges they face in giving effect to their integrated equality/human rights mandates tells us something about the extent of this divide.

## 2. National Equality Bodies and Human Rights Institutions in the European Union

There is no single standard model of a NEB, or of a NHRI: considerable variations exist between the power, functions, mandates and operational practices of the NEBs within the EU, and the same is true for European NHRIs.<sup>3</sup> However, it is possible to compare and contrast the key characteristics of both types of bodies.

### 2.1. National Equality Bodies (NEBs)

All EU member states are legally obliged to establish NEBs by virtue of the provisions of Article 13 of Directive 2000/43/EC (the 'Race Equality Directive') and Article 20 of Directive 2006/54/EC (the 'Recast Gender Equality Directive'), whereby EU member states are obliged to designate public bodies to promote equal treatment on grounds of race and gender, provide 'independent assistance' to victims of discrimination, and to publish independent surveys and reports on related issues. There are now forty-one NEBs in the EU, with several states having more than one such body.<sup>4</sup>

The functions of most NEBs extend beyond race and gender equality, even though EU law does not require this: it is now common for EU member states to give NEBs established in line with the requirements of Directives 2000/43/EC and 2006/54/EC wider

3 See in general N. Crowther and C. O'Cinneide, *Bridging the Divide? Integrating the Functions of National Equality Bodies and National Human Rights Institutions in the European Union* (London: UCL, 2013), available online at [ucl.ac.uk/laws/bridging-the-divide](http://ucl.ac.uk/laws/bridging-the-divide).

4 See the full list of NEBs on the website of the European Network of Equality Bodies (Equinet) – [equineteurope.org](http://equineteurope.org).

responsibilities to combat discrimination across the main non-discrimination grounds covered by EU law, ie age, disability, race, religion or belief, sex, and sexual orientation.<sup>5</sup> Some NEBs have powers and functions that go beyond this. However, their activity tends to be primarily focused on securing compliance with the requirements of national and EU anti-discrimination law.<sup>6</sup> Some also engage with the provisions of UN and Council of Europe human rights instruments, in particular with the provisions of international human rights treaties that focus on discrimination issues such as the UN Convention on the Rights of Persons with Disabilities (CRPD). However, national and EU anti-discrimination law remains the primary frame of reference for much of their activities.<sup>7</sup>

NEBs tend to play an especially active role in combating discrimination in the sphere of employment and occupation, reflecting the extensive development of national and EU law in that context. This means they engage closely with employers, trade unions and other private and non-state actors in addition to public bodies: their work straddles the public/private divide. Their promotional activities often focus on forms of unequal treatment that particularly affect specific disadvantaged groups, such as women, persons with disabilities and ethnic minorities.<sup>8</sup>

There are two principal types of equality bodies: (i) predominantly tribunal-type equality bodies, who spend the bulk of their time and resources hearing, investigating and determining individual cases of discrimination, and (ii) predominantly promotion-type equality bodies who focus on promotional, advocacy and campaigning work and the provision of legal assistance to victims of discrimination. There is no formal requirement that either type of NEB be an independent body, functioning free of government control, even though both the European Commission and the European Commission against Racism and Intolerance have produced guidelines emphasising the importance of independence in performing certain key functions of NEBs<sup>9</sup> (The situation is different with NHRIs as a result of the impact of the UN Paris Principles, as discussed below.) However, both types of NEBs generally operate with a high degree of functional independence from national government control.<sup>10</sup> They also benefit from the requirement set out in Directives 2000/43/EC and 2006/54/EC that they be able to provide ‘independent assistance’ to victims of discrimination.

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5 See in general T. Kádár, ‘Equality bodies: A European Phenomenon’ (2018) 18(2-3) *International Journal of Discrimination and the Law* 144-62.

6 M. Ammer et al, *Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* (Brussels: European Commission, 2010).

7 Ibid.

8 See Crowther and O’Cinneide, n 3 above.

9 European Commission, *Recommendation on Standards for Equality Bodies*, C(2018) 3850 final, available at [https://ec.europa.eu/info/sites/info/files/2\\_en\\_act\\_part1\\_v4.pdf](https://ec.europa.eu/info/sites/info/files/2_en_act_part1_v4.pdf); European Commission against Racism and Intolerance, *General Policy Recommendation N°2 Revised on Equality Bodies to Combat Racism and Intolerance at National Level*, adopted on 13 June 1997 and revised on 7 December 2017, available at <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/recommendation-no.2>.

10 K. Yesilkagit, *Between Impartiality and Responsiveness: Equality Bodies and Practices of Independence* (Brussels: Equinet, 2008).

## 2.2. National Human Rights Institutions (NHRIs)

At present, there are 27 NHRIs in the EU: there is no legal obligation in EU or international law for European states to establish a NHRI, but many have done so to demonstrate their commitment to international human rights standards. 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.<sup>11</sup> As with NEBs, they are diverse in size, shape and function.<sup>12</sup>

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 – unlike NEBs, whose establishment can in many cases be as a result of the requirements of Directives 2000/43/EC and 2006/54/EC as discussed above.<sup>13</sup> The status, powers and functions of NHRIs have been particularly influenced by the UN Paris Principles, which set out certain standards relating to independence, mandate, scope of functions and powers, and the operational effectiveness of national human rights bodies.<sup>14</sup>

Most NHRIs are engaged primarily in promotional and advocacy work. In particular, they often focus on providing expert advice and recommendations to public bodies on how best to comply with their international and European human rights commitments. With the exception of the ombudsman-style NHRIs in states such as Poland, Cyprus, Latvia, Portugal and Spain, NHRIs tend to concentrate less on helping individual victims of discrimination than do most NEBs. In addition, their promotional/enforcement activities also tend to be predominantly focused on the public sector rather than on the private or voluntary sectors.<sup>15</sup>

## 2.3. Natural Bedfellows? Comparing the Role and Functions of NEBs and NHRIs

On an initial comparison, NEBs and NHRIs might seem to have much in common.<sup>16</sup> 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. In addition, the powers and functions of

11 For an excellent analysis of the 'unique' role performed by NHRIs in promoting respect for human rights, see A. Smith, 'The Unique Position of National Human Rights Institutions: A Mixed Blessing?' (2006) 28(4) *Human Rights Quarterly* 904-946.

12 FRA, *National Human Rights Institutions in the EU Member States*, n 1 above, at p 19.

13 T. Pogram, 'Diffusion Across Political Systems: The global spread of national human rights institutions' (2010) 32(3) *Human Rights Quarterly* 729-760; G. De Beco, 'Networks of European National Human Rights Institutions' (2007) 7(2) *Human Rights Law Review* 331-70.

14 See in general FRA, *Handbook on the Establishment and Accreditation of National Human Rights Institutions in the European Union* (Luxembourg: Publications Office of the European Union, 2012).

15 Crowther and O'Conneide, n 3 above.

16 Much of the following discussion is sourced from Crowther and O'Conneide, *ibid.*

NEBs and NHRIs often overlap: in particular, they are expected to carry out similar reporting and promotional functions, and to identify state behaviour which falls short of international standards.

NEBs and NHRIs also often engage with common issues, such as the treatment of minorities by police or the rights of disabled persons to enjoy a dignified existence. On the more negative side of things, NEBs and NHRIs can also face similar threats to their independence and effective functioning, namely government interference with their functioning, inadequate resources and a lack of political support.

However, it is clear that the 'equality functions' generally associated with and performed by NEBs differ in certain respects from the 'human rights functions' generally associated with and performed by NHRIs. The mandate of NHRIs usually extends across the full range of international human rights standards, and their activities are often 'aligned' towards the UN and the Council of Europe and focused on international human rights law. In contrast, the mandate of NEBs is generally limited to promoting respect for the principle of equal treatment, and they remain focused on securing compliance with national and EU anti-discrimination laws.<sup>17</sup>

NHRIs also usually focus on providing expert advice and recommendations to public bodies, and as noted above 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. In contrast, NEBs are often closely involved with individual complaints of discrimination.<sup>18</sup> They also regularly engage with both public and private sector bodies, both through their promotional and enforcement work.

Furthermore, NEBs and NHRIs often engage with what *Rikki Holtmaat* has referred to as different 'communities of interest'.<sup>19</sup> 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.

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

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17 See *Kádár*, n 5 above.

18 See *Ammer et al*, n 6 above, especially at p 9.

19 *Crowther and O'Conneide*, at p 17.

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. Also, the principles of collective solidarity that underpin some of the elements of anti-discrimination law (in particular the norms governing positive action and indirect discrimination) do not always find an echo in human rights law.<sup>20</sup> 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.<sup>21</sup>

### 3. The Equality/Human Rights Divide

These distinctions between the roles of NEBs and NHRIs are interesting in their own right. However, they also serve to highlight the existence of a wider divide between equality and human rights concerns within the EU.

Equality and human rights issues in the EU are usually regulated by two separate if interconnected legal regimes, namely EU anti-discrimination law on the one hand and the jurisprudence of the European Court of Human Rights (ECtHR) on the other. These distinct legal regimes have largely developed along distinct and specific trajectories of their own. In recent years, aspects of these two regimes have begun to converge: for example, *de Búrca* notes how the concepts and provisions of EU anti-discrimination law have begun to shape the growing body of ECtHR case law on discrimination,<sup>22</sup> while as previously noted the Court of Justice of the EU has begun to interpret anti-discrimination legislation by reference to fundamental rights principles, including those set out in the EU Charter of Fundamental Rights.<sup>23</sup> However, despite this gradual convergence, anti-discrimination legislation and human rights law remain largely distinct and self-contained area of legal regulation.<sup>24</sup>

This helps to explain why national legislation, public bodies and civil society tend to treat equality and human rights as largely separate and distinct spheres of concern. This helps to give rise to the distinct and separate 'communities of interest' mentioned above.

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20 European human rights law is showing signs of developing a more group disadvantage-focused approach: see *L. Peroni and A. Timmer*, 'Vulnerable Groups: The promise of an emerging concept in European Human Rights Convention Law' (2013) 11 *International Journal of Constitutional Law* 1056. But, as Gerards has argued, the ECtHR Rights remains reluctant to embrace a group-centred interpretation of Article 14 of the ECHR, and to embrace indirect discrimination analysis: see *J. Gerards*, 'The Discrimination Grounds of Article 14 of the European Convention on Human Rights' (2013) 13(1) *Human Rights Law Review* 99-124.

21 *C. O'Connell*, *A Single Equality Body: Lessons from Aboard* (Manchester: Equal Opportunities Commission, 2002).

22 *G. de Búrca*, 'The Trajectories of European and American Anti-Discrimination Law' (2012) 60(1) *American Journal of Comparative Law* 1-22. See also *R. O'Connell*, 'Cinderella Comes to the Ball: Article 14 and the right to non-discrimination in the ECHR' (2009) 29(2) *Legal Studies* 211-229.

23 See eg Case C-555/07, *Kücükdeveci v Swedex GmbH & Co KG*, ECLI:EU:C:2010:21.

24 *Crowther and O'Connell*, n 3 above.

In addition, it also has generated a fragmented and ‘compartmentalised’ regulatory landscape, with different government departments taking responsibility for equality and human rights.<sup>25</sup>

In general, equality and human rights tend to be viewed as separate spheres of concern. This is amplified by how equality issues are regulated by EU law, while ECHR case-law looms large for human rights issues – meaning that experts in these fields often have different forms of legal expertise. These differences between the functions of NEBs and NHRIs, and the way the former are protected by EU law while the latter come under the umbrella of UN human rights standards, explain why most EU states have separate NEBs and NHRIs.

#### 4. The Move Towards Integration

However, in recent years, some EU member states have merged their NEBs and NHRIs into a single, integrated body – or have established new institutions, which combine the functions associated with both NEBs and NHRIs. These include the Danish Institute for Human Rights (DIHR), the Croatian and Latvian Ombudsman institutions, the Polish Commissioner for Human Rights, the British Equality and Human Rights Commission (EHRC), the Netherlands Institute for Human Rights (NIHR), and the Irish Human Rights and Equality Commission (IHREC). In France, the Equal Opportunities and Anti-Discrimination Commission – *Haute Autorité de Lutte contre les Discriminations et pour l’Égalité* (HALDE) – was integrated in 2011 into the framework of a new ombudsman institution, the Defender of Rights (*Défenseur des Droits*).<sup>26</sup> Furthermore, discussions have taken place in Belgium, Slovenia and a number of other EU states about the possibility of bringing national human rights and equality bodies together under one roof, or at least achieving greater ‘functional co-ordination’ between their various activities.<sup>27</sup>

Hybrid equality/human rights institutions have thus become part of the European regulatory landscape, and their number may grow further over the next few years. However, establishing such hybrid bodies has not always been an easy process. Considerable uncertainty appears to exist as to how equality and human rights functions should be linked together.

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25 For discussion of this in the specific context of the UK, see R. Niven, ‘The EHRC: Transformational, Progressively Incremental or a Disappointment?’ (2008) 79(1) *The Political Quarterly* 17–26.

26 The *Défenseur des Droits* is not the official French NHRI. However, as it performs promotional and enforcement functions in respect of human rights that are similar to those performed by ‘official’ NHRIs in other European states, this merger can be seen as representing the establishment of yet another hybrid equality and human rights institution.

27 R. Carver, ‘One NHRI or Many? How Many Institutions Does It Take to Protect Human Rights? – Lessons from the European Experience’ (2011) 3 *Journal of Human Rights Practice* 1–24.

## 5. The Potential and Challenges of Integration

It is possible to identify certain advantages that integrated equality and human rights bodies may have, that separate such bodies would lack. There is potential for developing greater synergy between equality and human rights: the distinction that currently exists between them is artificially wide. Integrated bodies may be able to take advantage of these synergies – and in so doing help to ‘bridge the divide’ between equality and human rights. However, there also exist considerable challenges to be overcome before such integrated bodies can function well.

### 5.1. The Potential of Integrated Bodies

The right to equality and non-discrimination is an integral element of the wider framework of international and European human rights law, as reflected for example in the provisions of Article 14 of the European Convention on Human Rights and Articles 20, 21 and 23 of the EU Charter of Fundamental Rights. Furthermore, national and EU anti-discrimination legislation has been expressly framed and interpreted with a view to giving effect to this fundamental right to equality and non-discrimination.<sup>28</sup> Also, both the equality functions associated with NEBs and the more general human rights functions associated with NHRIs share a common conceptual foundation in the form of the principle of human dignity.<sup>29</sup>

Furthermore, many forms of discriminatory treatment arise out of or are linked to infringements of other human rights, while infringements of other rights such as freedom of expression or the right to a fair trial also often have a discriminatory component. This means that any comprehensive attempt to address issues of discrimination and inequality must also engage with the other human rights issues that play a role in creating the injustices in question, while attempts to promote respect for human rights in general must also take account of equality and non-discrimination concerns.<sup>30</sup> In Britain, the Parliamentary Joint Committee on Human Rights commented back in 2003 that there was a ‘considerable degree of congruence between the work required for the promotion of equality and that required for the promotion and protection of human rights’.<sup>31</sup>

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

28 See eg Case C-555/07, *Kücükdeveci v Swedex GmbH & Co KG*.

29 S. Spencer, ‘Partner Rediscovered: Human rights and equality in the UK’, in C. Harvey (ed) *Human Rights in the Community* (Oxford: Hart Publishing, 2005), 29-41. S. Fredman, *Human Rights Transformed: Positive Rights and Positive Duties* (Oxford: Oxford University Press, 2008).

30 See C. Harvey and S. Spencer, ‘Advancing Human Rights and Equality: Assessing the Role of Commissions in the UK and Ireland’ (2012) 35 *Fordham International Law Journal* 1615-1689.

31 UK Joint Committee on Human Rights, *The Case for a Human Rights Commission*, 6th Report of the 2002–03 Session, HL 67/HC 489.



the development of shared expertise and providing a single focus point for the general public.<sup>32</sup> An integrated body may also be well-placed to bring together public authorities and civil society organisations operating in different areas coming within its broad remit, and to help encourage the development of a comprehensive and co-ordinated approach to the promotion of equality and human rights.

Integrated bodies combining the functions usually performed by NEBs and NHRIs may therefore be able to play an active promotional and enforcement role across the full spectrum of human rights, in a way that is not confined by the existence of artificial distinctions between equality principles and other human rights. Furthermore, the 'bridge' created by the bringing together of equality and human rights functions under one institutional roof has the potential to give rise to new synergies between both sides of this divide.<sup>33</sup>

The EU Fundamental Rights Agency (FRA) has drawn attention to the potential strengths of integrated bodies in this regard: '[t]here is a clear need to adopt a more comprehensive approach to human rights at the national level, with efforts and resources focused on key institutions, such as a visible and effective overarching NHRI in each Member State [...] that can ensure that all issues are addressed by some entity, that gaps are covered and that human and fundamental rights are given due attention in their entirety'.<sup>34</sup>

## 5.2. The Challenges of Integration

However, integration also brings risk. It has the potential to generate many challenges, which arise out of the gap that currently exists between equality and human rights functions. If these challenges are not addressed, they may stunt the functioning of an integrated body.

To start with, integrated bodies may face particular difficulties in defining their role, purpose and priorities. Their remit will inevitably be very wide, extending across the full range of human rights recognised in international human right law as well as across the different equality grounds set out in national and EU anti-discrimination law. This means that integrated bodies must often pick and choose which areas to focus on in depth. Making such choices will inevitably require integrated bodies to make difficult decisions about what elements of their mandate to prioritise and which to de-emphasise.<sup>35</sup>

Furthermore, integrated bodies must be seen to be engaged with both elements of their remit if they wish to maintain a constructive relationship with the different equality and

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32 See the views of integrated bodies as to how their effectiveness had benefited from having an integrated mandate as surveyed by Equinet in 2011: Equinet, *Equality Bodies and National Human Rights Institutions: Making the Link to Maximise Impact* (Brussels: Equinet, 2011).

33 Ibid.

34 FRA, *National Human Rights Institutions*, at fn 2 above, p 14.

35 Ibid.

human rights 'communities of interest'.<sup>36</sup> There is a danger that integrated bodies could lose sight of the perspectives and needs of particular disadvantaged groups, or disappoint expectations that they should function in a particular manner.<sup>37</sup> They might also find it hard to combine the group focus of much of the work of NEBs with the more individualistic orientation of human rights law.

This lack of 'external integration' can also be a problem for the internal functioning of integrated bodies. It can complicate the merging of equality and human rights functions within the work of a single body, as staff members recruited from the equality communities of interest may often have little expertise in wider areas of human rights and vice versa.<sup>38</sup> It also means that integrated bodies will often have to interact in different ways with the various equality and human rights communities of interest, which may make it more difficult for such bodies to build synergies between different aspects of their work programme. Furthermore, it may complicate relations with public authorities: as Equinet note, '[g]overnment can end up dealing with the body as two bodies under the one roof'<sup>39</sup>. Issues of resource allocation also loom large in this respect. If integrated bodies are established but not given sufficient resources to develop a work programme in respect of both the equality and human rights elements of their mandate, then this will prevent them from giving full effect to their remit. For example, in Poland, the Polish Ombudsman was not granted extra resources when his functions were extended to cover equality and non-discrimination, which was the subject of strong criticism.<sup>40</sup>

## 6. Facing up to the Challenges of Integration

Bringing together the functions of NEBs and NHRIs within the framework of an integrated body can therefore be a challenging process. Evidence from every country in which an integrated body has been established indicates that these concerns are real.<sup>41</sup> Bridging the divide between equality and human rights can be a difficult process. However, experience also suggests that it is possible to identify certain steps that may help to address these challenges of integration.

To start with, any attempt to address the challenges of integration needs to take into account the fears, concerns and uncertainties that may be generated by merging equality

36 See Equinet, *Making the Link to Maximise Impact*, at n 35 above. C. O'Conneide, 'The Commission For Equality And Human Rights: A New Institution For New And Uncertain Times' (2007) 36(2) *Industrial Law Journal* 141-162.

37 Harvey and Spencer highlight the risks posed by such 'established expectations': see 'Advancing Human Rights and Equality', at n 33 above.

38 Ibid, at pp 1654-5.

39 Equinet, *Making the Link to Maximise Impact*, at n 35 above, p 12.

40 See eg the report of the *rappporteur* for the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, Mr Jorge Xuclà, 'Strengthening the Institution of Ombudsman in Europe', Doc 12639, 24 June 2011, available at <https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=19786&lang=en> (last accessed 20 April 2019).

41 See the detailed country studies cited in Crowther and O'Conneide, n. 3 above.

and human rights functions within a single institutional framework. *Harvey and Spencer* have argued these fears and suspicions cannot be ignored. They quote one interviewee who commented with reference to the Irish process of integration that '[w]ithin civil society there are fears and on-going perceptions of a hierarchy of priority, fear of agendas being diverted, fear that equality might be one minor value in wider human rights.'<sup>42</sup>

There is therefore a need to adopt a transparent, co-ordinated and comprehensive approach to the problems of integration, which is the subject of open debate, consultation and discussion. In this regard, it may be helpful for integrated bodies to set out a clear statement of their goals. An example of such a statement of values would be the general duty to help secure a more just, equal and rights –friendly society imposed by section 3 of the Equality Act 2006 on the new formed Equality and Human Rights Commission in Britain.

Furthermore, in identifying their work priorities and drawing up their work programmes, integrated bodies should consider integrating equal treatment principles into every aspect of their activities, thereby maximising the potential for synergy to develop between their human rights and equality mandates. Similarly, factoring in human rights considerations into their anti-discrimination work may also enhance their capacity to deal with persisting forms of inequality. A Danish interviewee has commented that '[i]n a fully integrated institution, equal treatment should be incorporated into all human rights projects and vice versa [...]. Human rights, non-discrimination and equality cut across all areas.'<sup>43</sup>

Integrated bodies also need to address the challenges posed by the manner in which equality and human rights are treated as largely separate and distinct spheres of concern by many governments, European institutions and civil society at large. They will need to find ways of engaging with their diverse communities of interest, and to bridge the gaps between the different equality and human rights communities. Integrated bodies may also wish to encourage public authorities, private sector bodies and civil society groups to bring together equality and human rights perspectives in their own work, and to escape the 'silos' of compartmentalised thinking that exists across Europe in this regard.

The issue of resources is also key. National governments need to provide integrated bodies with the resources they need to do their job, and to recognise that an effective integrated work agenda cannot be developed on the cheap. Linking together equality and human rights is a complex process that involves more than a simple doubling-up of functions.

Finally, it is also clear that an integrated body cannot adopt a 'one size fits all' work programme that disregards the specific issues generated by specific elements of its remit. An

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42 *Harvey and Spencer*, 'Advancing Human Rights and Equality', at n. 33 above, 1663-4.

43 *Crowther and O'Conneide*, n. 3 above, at p. 65.

integrated body will have to develop distinct strategies in respect of certain areas of its work, such as disability rights and children's rights, even if its approach to these specific elements of its mandate is informed by a transversal commitment to linking equality and human rights. Good leadership, the existence of good channels of communication with a diverse range of communities of interest, and a genuine commitment on the part of the staff and board members of an integrated body to embracing the different aspects of its remit will all be necessary in this regard.

## 7. Conclusion

Once again, it is worth emphasising that NEBs and NHRIs have much in common. However, the equality functions generally performed by NEBs differ in some important respects from the human rights functions generally performed by NHRIs. These differences reflect the reality that a divide exists between the spheres of equality and human rights in legal, political and regulatory discourses across Europe. Equality and human rights share common conceptual foundations: however, the differences that exist between their respective historical development, legal frameworks, and communities of interest and value orientations need to be acknowledged. Equality and human rights may be different dialects of a common language, but mutual comprehension should not always be assumed.

This poses inevitable challenges for any attempt to establish integrated bodies which combine the functions of NEBs and NHRIs. Such bodies have the potential to develop new synergies between the different elements of their mandate. However, this potential may remain unfulfilled if the challenges of integration are not adequately addressed.<sup>44</sup> Careful consideration must be given to finding ways to 'bridging the divide' between equality and human rights approaches.<sup>45</sup>

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44 See *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, 21 March 2011, CommDH (2011)2, available at [wcd.coe.int/ViewDoc.jsp?id=1761031](http://wcd.coe.int/ViewDoc.jsp?id=1761031) (last accessed 20 April 2019).

45 See in general *Harvey and Spencer*, 'Advancing Human Rights and Equality', at n 33 above.