

EXECUTIVE SUMMARY

BRIDGING THE DIVIDE? Integrating the Functions of National Equality Bodies and National Human Rights Institutions in the European Union

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Drawing on six country studies carried out by
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Executive Summary

INTRODUCTION

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

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

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

As a result, valuable lessons may be learnt from how this integration process has unfolded. In particular, this experience may yield useful insights for states considering whether to proceed with integrated NEBs and NHRIs in the future, for newly integrated bodies exploring how to implement their new combined mandate, and for European and international bodies and civil society organisations responding to integration.

It may also provide guidance as to how effective functional co-ordination can be achieved between NEBs and NHRIs which remain separate and independent institutions but nevertheless wish to work more closely together. Light may also be shed on how the gap between equality and human rights can be bridged in other contexts, including in the work of public authorities and civil society activism.

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

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

NATIONAL EQUALITY BODIES AND HUMAN RIGHTS INSTITUTIONS IN THE EUROPEAN UNION

The Diverse Range of NEBs and NHRIs in the European Union

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

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

National Equality Bodies (NEBs)

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

Both types of NEBs are primarily focused on securing compliance with the requirements of national and EU anti-discrimination law, although some also engage with the provisions of UN and Council of Europe human rights instruments, and in particular with the provisions of non-discrimination instruments such as the UN Convention on the Rights of Persons with Disabilities (CRPD). The development of national and EU anti-discrimination law, and in particular the expansion of EU equal treatment law since 2000, has exercised a major influence on the establishment and evolution of NEBs and remains the primary frame of reference for much of their activities.

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

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

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

National Human Rights Institutions (NHRIs)

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

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

These developments at international level are encouraging even more European states to establish NHRIs. Furthermore, the International Coordinating Committee of National Human Rights Institutions (ICC) operates an accreditation system, whereby NHRIs participate in a peer-led review conducted by the ICC sub-committee on accreditation which assesses the extent to which their attributes comply with the Paris Principles. European states often face

pressure to ensure that their NHRIs obtain an ‘A status’ accreditation, meaning that they fully conform to the requirements of the Principles. The country studies prepared as part of this research project have identified the desire of states to be seen to comply with emerging international best practice and to obtain ‘A status’ accreditation as an important factor behind recent moves to establish NHRIs in a number of states, including the Netherlands and Belgium.

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

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

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

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

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

NHRIs usually focus on providing expert advice and recommendations to public bodies, and it is not common for them to support individual human rights claims. Of the EU’s 12 ‘A’ accredited NHRIs, only the NHRIs in Ireland and Northern Ireland have powers to support freestanding cases under human rights law – powers which have been used very sparingly

(FRA, 2010). They also tend to have limited direct involvement with private and non-state actors, reflecting the predominantly ‘vertical’ nature of human rights obligations in international human rights law. In contrast, NEBs are often closely involved with individual complaints of discrimination. They also regularly engage with both public and private sector bodies, both through their promotional and enforcement work.

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

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

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

THE MOVE TOWARDS INTEGRATION

The Integration Trend

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

Until recently, the only two institutions in the EU who were classified as being both a NEB for the purposes of the EU race and gender equality directives and an ‘A’ ICC-accredited NHRIs were the Danish Institute for Human Rights (DIHR) and the Polish Ombudsman. However, a third integrated body, the British Equality and Human Rights Commission (EHRC), subsequently came into existence in December 2007 having been established by the

Equality Act 2006. The Polish Ombudsman, which already enjoyed the status of being Poland's NHRI, was designated as a NEB in 2010.

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

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

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

The Process of Integration

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

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

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

THE POTENTIAL ADVANTAGES OF INTEGRATION

Conceptual Coherence: The Common Foundations of Equality and Human Rights

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

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

The Potential for Synergy between Equality and Human Rights Functions

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

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

The Operational Advantages of Integration

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

An integrated body may also be well-placed to bring together public authorities and civil society organisations operating in different areas coming within its broad remit, and to help encourage the development of a comprehensive and co-ordinated approach to the promotion

of equality and human rights. The FRA has drawn attention to the potential strengths of integrated bodies in this regard: '[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' (FRA, 2010).

Delivering on Potential?

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

THE CHALLENGES OF INTEGRATION

Role, Purpose and Priorities

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

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

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

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

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

Powers, Functions and Mode of Operation

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

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

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

The Legal Framework

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

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

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

which may make it more difficult for such bodies to build synergies between different aspects of their work programme.

Independence and Resources

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

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

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

Mergers and Organisational Culture

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

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

Furthermore, other defects in the process of establishing an integrated body can also hinder its subsequent functioning. Setting such a body up can take a substantial period of time.

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

MEETING THE CHALLENGES OF INTEGRATION

This study has identified a range of measures that integrated bodies, national governments, European institution and international organisations can take to address some of the challenges of integration. However, it needs to be emphasised from the outset that there exists no set ‘solution’ to the problems that integration can cause: there is no straightforward ‘path to success’ in establishing integrated bodies.

The Need for Proactive Engagement with the Challenges of Integration

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

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

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

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

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

An effective strategy of dealing with the challenges of integration will also have to be built around a commitment to the importance of equality and human rights principles. Also, the guarantees of independence and operational effectiveness set out in instruments such as the Paris Principles and the provisions of the EU race and gender equality directives need to be central reference points in the development of any strategy concerned with addressing the challenges of integration. Such a strategy will thus need to be *principled and reflect relevant international standards*.

A Clear Statement of Values

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

Objective and Transparent Criteria for Setting Priorities and Evaluating Performance

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

An Integrated Work Programme

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

Common Powers and Functions

Integrated bodies will only be able to generate strong synergies between their equality and human rights functions if their statutory duties and powers make it possible for them to link

together their work in both fields, rather than requiring them to operate in a compartmentalised fashion. As a result, the more an integrated body's equality and human rights powers are 'aligned' with each other, the more freedom of action it will have to work effectively across the full range of its remit.

Staff Training and Expertise

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

An Inclusive Strategy for Engaging with Stakeholders

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

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

The Establishment of a Culture of Genuine Independence

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

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

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

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

A Transparent Process of Establishment

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

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

The Embrace of Difference

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

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

Overview: The Ingredients of a Successful Approach to Integration

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

Furthermore, other actors also have an important role in helping integrated bodies thrive, ranging from national governments and legislatures to the EU institutions, other international bodies and civil society at large. This highlights an important dimension to the challenge of integrating equality and human rights functions: the success of an integration process will in part depend on the extent to which the divide between equality and human rights can be bridged across wider society, not just within the internal structure of a unified equality and human rights body.

CONCLUSION – WIDER LESSONS

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

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

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

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