

NAME OF THE EQUALITY BODY: COMMISSIONER FOR FUNDAMENTAL RIGHTS,
HUNGARY

SURVEY QUESTIONNAIRE

The Equinet work plan for 2012 commits to producing and publishing an examination of any current difficulties being experienced by equality bodies. The purpose of this examination is to:

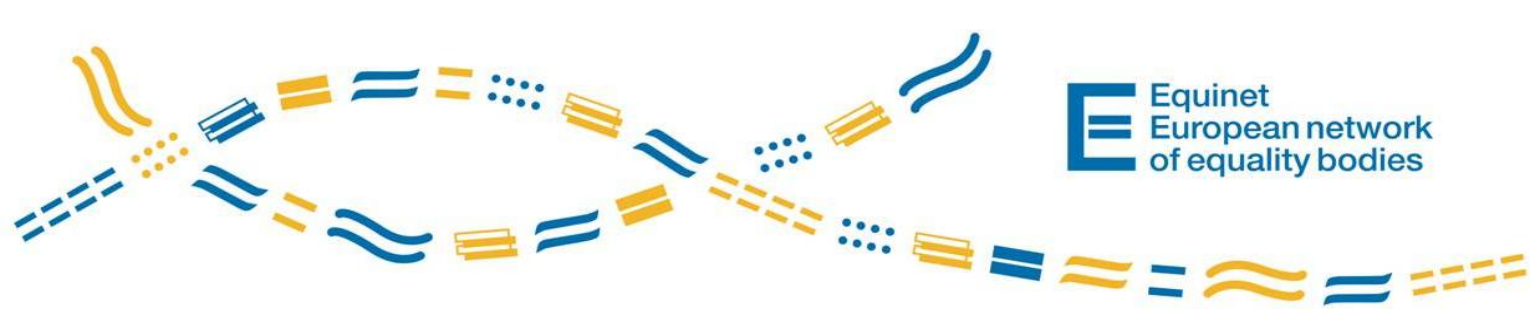
- Further develop the case for standards for equality bodies.
- Point to the themes that need to be taken up in such standards.

Equality bodies are established in compliance with the EU equal treatment Directives which establish minimum standards for these bodies. They have an important potential to enhance the situation of individuals experiencing discrimination, to support organizational performance through good equality practice, and to contribute to societal well-being by enabling a valuing of equality and non-discrimination. This potential has a particular value in the current context of financial, economic and democratic crisis.

This context of crisis however also contributes to a challenging context for equality bodies. Increased levels of discrimination can increase the demand on equality bodies. Funding cutbacks can limit their potential and effectiveness and their independence can be curtailed. It is important to track any such developments to ensure equality bodies can achieve their potential and make a contribution to the emergence of Europe from crisis and to protect the work and integrity of equality bodies.

Research published in October 2010 by the European Commission, *Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC* and the recent *Opinion of the Commissioner for Human Rights on National Structures for Promoting Equality*, published by the Council of Europe provide the framework for this perspective.

These suggest the need to address two dimensions - How equality bodies implement their functions and the conditions created for equality bodies to do so. They establish effectiveness and independence as the two core indicators against which to explore these two dimensions.



THE SURVEY IS CONFIDENTIAL AND THE MATERIAL YOU PROVIDE WILL NOT BE MADE AVAILABLE TO ANY OTHER PERSON THAN THE TEAM PREPARING THE OPINION. THE MATERIAL IN THE PERSPECTIVE WILL NOT BE ATTRIBUTED TO ANY SPECIFIC BODY.

A number of the questions are open questions. These only require brief answers of maximum three sentences in length.

I. INTRODUCTION TO THE INSTITUTION OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS IN HUNGARY

The first written Constitution of the Republic of Hungary was adopted in 1949, and later comprehensively amended in 1989. Hungary was the only former communist country in Eastern Europe that did not adopt an entirely new basic law after the fall of Communism. As a result of the parliamentary elections held in April 2010, a new centre-right government came to power with a stunning two-thirds majority in Parliament with the promise of introducing constitutional changes. After the formation of the new Parliament, an ad-hoc committee was established for the preparation of the new Constitution in June 2010. The new Fundamental Law was adopted on 18th April 2011 and entered into force on 1st January 2012.

In accordance with the Fundamental Law of Hungary, Act CXI of 2011 on the Commissioner for Fundamental Rights was adopted as well, which created a unified ombudsman system. According to Article 30 of the Fundamental Law, the Commissioner for Fundamental Rights is an organ comprising a single person who shall be nominated by the President of the Republic and elected by Parliament to carry out activities guaranteeing the protection of fundamental rights.

According to the provisions of the Fundamental Law, the name of the institution also changed from Parliamentary Commissioner for Civil Rights to Commissioner for Fundamental Rights. The provisions strongly affect the organizational structure of the ombudsman system, since Parliament elects only one ombudsman and this person will be empowered to propose his/her own deputies (also elected by the Parliament). The offices of the special ombudsmen (parliamentary commissioners for the rights of national/ethnic minorities and for the interests of future generations) were integrated into the office of the general ombudsman.

The new Act preserved the achievements in the field of the Ombudsman's protection of rights, but at the same time it sought to provide solutions to the problems which have arisen in the course of judicial practice in recent decades. According to the Act, the Commissioner has the right to launch special proceedings related to organizations which are not public organs (e.g., companies, banks, social organizations). Moreover, the new regulation leads to an increased protection of rights, due to a more effective commissioner system and a broadening of the General Ombudsman's mandate.

Part One - Introduction

1. Could you identify the nature of your equality body by ticking and providing any requested detail in the appropriate boxes:

Promotional Type Body ¹	
Tribunal Type Body ²	
Part of a Government Department or Ministry (please specify)	
Within a statutory body with broader responsibilities such as an NHRI or Ombudsman etc (please specify)	+ Ombudsman
Stand alone equality body	
Other (please give detail)	

2. What would you identify as the three key impacts achieved by your equality body over the past five years?

See answer to question 7

Part Two - Change in the Demand on and Provision by Equality Bodies

3. How has demand for and provision of the services of your equality body changed over the past five years?

	2011	2010	2009	2008	2007
No. of information queries dealt with					
No. of legal cases supported before court or tribunal	---	---	---	---	---

¹ Equality bodies that spend the bulk of their time and resources on supporting good practice, raising awareness of rights, developing a knowledge base on equality and providing legal advice and assistance to victims of discrimination.

² Equality bodies that spend the bulk of their time and resources on hearing, investigating and deciding on individual instances of discrimination brought before them.

No. of cases heard or decided (if tribunal type body)	---	---	---	---	---
No. of survey or research reports published					
No. of significant awareness campaigns initiated					
No. of initiatives developed to support good practice by employers and service providers (eg. training, guidance materials, joint projects with stakeholders)					
No. of proposed pieces of legislation that the body was consulted on.	No separate statistical data is available concerning cases of equality				

4. What are the reasons for any significant (greater than 10%) changes in:

- a. No. of Inquiries
- b. No. of Cases Supported
- c. No. of Cases Heard
- d. No. of survey/research reports
- e. No. of awareness campaigns

- f. No. of good practice initiatives
 - g. No. of proposed pieces of legislation consulted on
5. Is there any change in the most prominent grounds that are coming forward with complaints of discrimination over the past five years?

Part Three – Change in the Conditions Created for Equality Bodies

Structure

6. What is the legal structure of your equality body?

Commissioner for Fundamental Rights, elected by Parliament and accountable to the Parliament

7. Has there been any change in this situation over the past five years (eg. merger with another body, change in legal status etc.)? If so, how and why has it changed?

Until 2012 the Parliamentary Commissioner for the Rights of National and Ethnic Minorities was member of Equinet, from this year on it is the Commissioner for Fundamental Rights. There was a division of work between the two former Commissioners. The Commissioner for the Rights of National and Ethnic Minorities was responsible for cases affecting national and ethnic minorities' rights. In other equality related issues the Commissioner for Civil Rights was responsible.

Accountability

8. How is the accountability of your equality body structured:

Form of accountability	Yes/No
Annual report and accounts published	Y
Report to Parliament	Y
Report to Government Department	
Report to Financial Control Institution	Y
Other	

9. Has this structure of accountability changed in any way over the past five years?
If so, how and why has it changed?
No

Appointments

10. How are the Board members or Commissioners of your equality body appointed?

The Commissioner is elected by Parliament.

11. Has this process of appointment changed in any way over the past five years? If so, how and why has it changed?
12. How are the senior staff members in your equality body appointed?

The Commissioner appoints senior staff members.

13. Has this process of appointment changed in any way over the past five years? If so, how and why has this changed?

Resources

14. How has the level of financial resources and staff resources available to your equality body changed over the past five years (if your body operates within a statutory body with wider responsibilities please specify the resources available for the equality work if this is possible, if not please note that the budget refers to a wider range of responsibilities)?

The data below shows the total budget of the former Office which comprised the Office of the Parliamentary Commissioner for Civil Rights, the Office of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, the Office of the Parliamentary Commissioner for Data Protection and Freedom of Information and the Office of the Parliamentary Commissioner for Future Generation (this latter one in office since 2008, most of his staff employed since 2009)

	2011	2010	2009	2008	2007
Total Budget	HUF 1.614 million	HUF 1.584 million	HUF 1.678 million	HUF 1.368 million	HUF 1.379 million
Total Full Time Staff Equivalents	188	186	186	149	145

15. What are the reasons for any significant (greater than 10%) changes in the level of these resources?
16. How do these changes compare to the experience of other public sector bodies in your country (eg the same, worse, better)?

Functions and Powers

17. Could you briefly set out the functions and powers accorded to your equality body?

The Commissioner for Fundamental Rights performs fundamental rights protection activities if the activity or the omission of an authority infringes fundamental rights.

Powers: If the Commissioner for Fundamental Rights comes to the conclusion that the impropriety in relation to a fundamental right does exist, in order to redress it he

- *may address a recommendation to the supervisory organ of the authority subject to inquiry.*

- *may initiate redress of the impropriety by the head of the authority subject to inquiry.*

- *may turn to the Constitutional Court.*

- *may initiate criminal proceedings with the organ authorised to start such proceedings*

- *may propose that the organ authorised to make law modify, repeal or issue the rule of law.*

- *can submit the case to Parliament within the framework of his annual report, and may ask Parliament to inquire into the matter.*

18. Have there been any significant changes in the nature of these functions and powers over the past five years? If so, what changes?

19. What are the reasons for these changes?

Part Four – Change in the operation of Equality Bodies

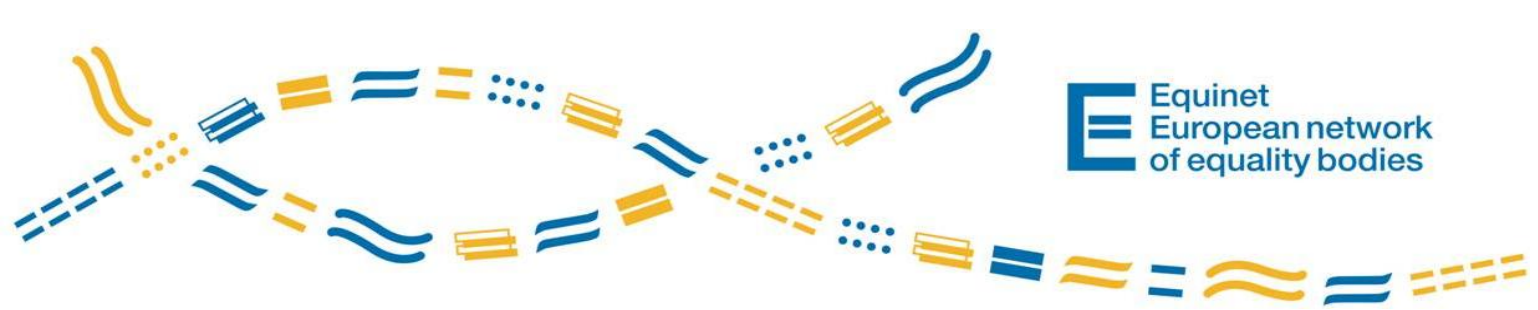
Strategy

20. Does your organization have a:

- Strategic Plan? NO

If so, what is the time period of the current strategy? Has there been a change in this strategy over the past five years? Does this change reflect an increase in activity or some diminution of activity? What are the reasons for this change?

- Communications Strategy?



The basic communication principles of the ombudsman are openness (but not before the conclusion of the investigations while respecting data protection and privacy of private people) and pro-activity (including scientific research and ex officio investigations).

If so, what is the time period of the current strategy? Has there been a change in this strategy over the past five years? Does this change reflect an increase in activity or some diminution of activity? What are the reasons for this change?

- Criteria to guide strategic litigation? NO

If so, when were they introduced? Has there been a change in these criteria over the past five years? Does this change reflect an increase in activity or some diminution of activity? What are the reasons for this change?

Accessibility

21. Does your equality body have any formal regional/local offices? NO

22. Has this situation changed over the past five years? If so, how and why has it changed?

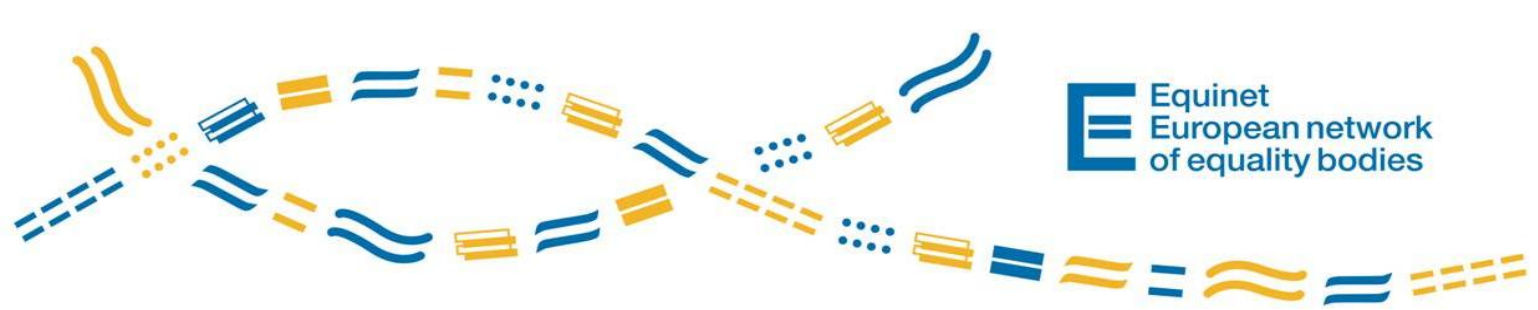
23. Does your equality body have a regional/local presence through cooperation with other individuals (eg lawyers) or organizations? NO

24. Has this situation changed over the past five years? If so, how and why has it changed?

25. Does your organization travel to regional/local areas to hear cases or to provide specific services? YES

26. Has this situation changed over the past five years? If so, how and why has it changed?

27. Does your equality body have any procedures to identify and make adjustments for the diversity of individuals across the various grounds to whom they provide a service (eg translation service, facilitating people with caring responsibilities, adaptation of physical space for access etc.)?



There are no formal procedures and general regulations but in each individual case the Office strives to ensure the same level of services eg. by providing translation.

28. Has this situation changed over the past five years? If so, how and why has it changed?

Stakeholders and Networking

29. Does your equality body have any formal system of engagement with NGOs representing groups that experience inequality?

A Civil Advisory Body with academics, experts assists the work of the Commissioner sharing their expertise and advising the Commissioner.

In 2008 project work was introduced by the Parliamentary Commissioner for Civil Rights. NGO-s are invited and participate in projects which fall into their sphere of activity.

30. Has this situation changed over the past five years? If so, how and why has it changed?

31. Does your equality body have any formal system of engagement with social partners organizations?

See answer to question 29.

32. Has this situation changed over the past five years? If so, how and why has it changed?

33. Does your equality body have any formal system of engagement with other statutory institutions with responsibilities in the field of human rights?

There is no formal system of engagement. It is rather a case by case co-operation.

34. Has this situation changed over the past five years? If so, how and why has it changed?

35. Does your equality body network with equality bodies in other jurisdictions?

Not on a regular basis but case by case.

36. Has this situation changed over the past five years? If so, how and why has it changed?

Part Five - Standards

37. What EU/international standards do you consider as having relevance to equality bodies? Please tick:

UN Paris Principles	+
ECRI General Policy Recommendation No. 2	+
Opinion of CoE Commissioner for Human Rights on National Structures for Promoting Equality	+
Other (please specify)	

38. Have you made use of or called on these standards in any way in the work of your equality body?

39. What areas should the further development of EU/international standards focus on?

The extension of the ban on discrimination and unification of standards on diverse grounds of discrimination would be welcome.

Part Six - Summary

See the Introduction to the Institution of the Commissioner for Fundamental Rights explanation.

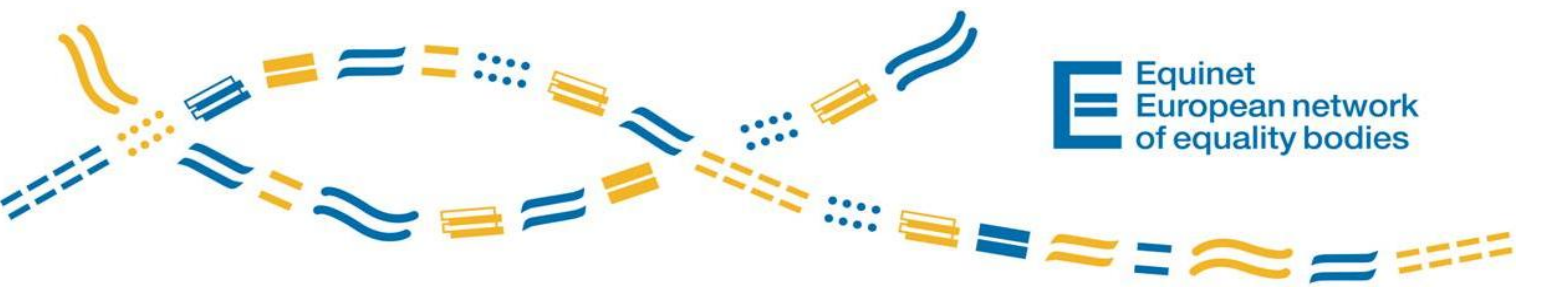
40. Do you think that the potential of your equality body has changed over the past five years? If so, how and why has it changed?

41. Do you think that the independence of your equality body has changed over the past five years? If so, how and why has it changed?

42. Do you think that the effectiveness of your equality body has changed over the past five years? If so, how and why has it changed?

43. Do you think the political or societal discourse on equality has changed during the past five years? If so, briefly state how and why it has changed.

Yes, it has. The reason is quite simple: economic crisis, shrinking resources, less income. The times of financial crisis favour extremist ideologies and tendencies of scapegoating the most vulnerable groups for economic difficulties. The reactions of the State are often dysfunctional: the State tends to leave citizens alone by cutting social transfers.



In compensation, the concept of public order becomes central and tendencies of criminalization prevail. (extract from the summary of the Project on the “Losers of the Crisis - in the Captivity of the Legal Regulations”)