

# Understanding a Public Body's Intervention in the field of Antidiscrimination in Times of Shifting Political Priorities

By Lisa Wewerka

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Supervisor: Andrea Krizsan

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## Declaration

I hereby declare that no parts of the thesis have been accepted for any other degrees in any other institution. This thesis contains no material previously written and / or published by another person, except where appropriate acknowledgment is made in the form of bibliographical reference.

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Lisa Wewerka

Budapest, Hungary, 03.05.2017

## Abstract

This dissertation investigates changes in the interventions of public bodies in the field of antidiscrimination in Austria, Hungary and Ireland to reveal why they evolved in different directions although they shared similar responsibilities. I look into all type of changes in their interventions such as their legal support, promotional work and advice to the government. By studying these changes in intervention, I address open questions in the literature relevant for scholars interested in regulation and equality institutions regarding the influence of policymakers, non-state actors and past policy commitments on changes in the interventions of public bodies.

I elaborate on a new approach to study changes in a public body's intervention by integrating different logics of action proposed by neo-institutionalist approaches and resource dependency theory. Previous approaches assume that bodies either follow their material interests or do not change their intervention because of their organizational culture defining appropriate intervention. I integrate these logics in a framework and assume that while material interests trigger changes, ideas and norms influence the direction of the subsequent changes. I theorize that change is triggered by policymakers impacting the material interest of the bodies. Yet, policymakers have limited control over the direction of the changes, as non-state actors or past policy commitments can impact the ideas and norms of the bodies affecting the changes in their intervention.

I use a qualitative methodology to study changes in the bodies' interventions through in-depth case studies and controlled comparisons. I selected the Hungarian and Irish antidiscrimination bodies for the analysis, as they experienced similar interferences by policymakers between 2008 and 2011 when the political priorities of their government shifted. Yet their interventions changed differently underlining the need to focus attention on the influence of non-state actors and past policy commitments. The Austrian body, on the contrary was an interesting case to include in the research, as it did not experience any interferences by policymakers, but also changed its intervention incrementally.

The major findings, summarized in a model, demonstrate that the control of policymakers over a public body's intervention in fields like antidiscrimination is mediated by strong non-state actors and past policy commitments, and increases with the severity of their interference. I show that the exchange of staff had a stronger destabilizing effect than changes in the budgets of the bodies.

Moreover, the analysis shows that strong non-state actors and past policy commitments influenced the direction of the changes in the public bodies' interventions depending on the severity of the interference of policymakers. If the body, like in the case of Ireland, is challenged but not completely destabilized by policymakers, strong non-state actors influence changes in its intervention. Different from that, policymakers' interferences changing a body's budget and staff, make a body more likely to adapt its intervention to past policy commitments and the agenda of the policymakers, as in the case of the Hungarian body. We learnt from the Austrian case that strong non-state actors are likely to continue to influence a body's intervention when it has stable routines.

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# Table of Content

Acknowledgements .....	5
Table of Content.....	6
Table of Figures .....	9
List of Abbreviations.....	10
Key Conventions, Directives, Laws and Treaties in the field of Antidiscrimination .....	10
Chapter 1: Championing Antidiscrimination through Public Expert Bodies.....	13
1.1 Changes in the Antidiscrimination Bodies’ Interventions in Europe.....	16
1.2 Existing Explanations in the Literature .....	18
1.3 Why we should study Changes in the Antidiscrimination Bodies’ Interventions.....	21
1.4 Research Design.....	23
1.5 Structure of the Dissertation.....	25
Chapter 2: The Literature and the Analytical Framework .....	29
2.1 Locating Antidiscrimination Bodies in the Existing Literature .....	31
2.2 Three central Arguments in the Regulation and Equality Institutions’ Literature .....	34
2.2.1 The Influence of Policymakers on Agencies.....	35
2.2.2 The Influence of Civil Society and Interest Groups on Agencies.....	38
2.2.3 The Influence of Path Dependence in the form of Past Policy Commitments on Agencies .....	42
2.2.4 Concluding Remarks on the identified Arguments in the Literature .....	45
2.3 Integrating the Existing Explanations in my Analytical Framework .....	46
2.3.1 The Impact of New Political Demands on an Agency’s Intervention.....	51
2.3.2 The Influence of Strong Non-State Actors and Past Policy Commitments on Changes in an Agency’s Intervention in the aftermath of New Political Demands .....	55
2.4 Concluding Remarks on the Analytical Framework.....	60
Chapter 3: The Research Design and Methods .....	61
3.1 Operationalizing the Analytical Framework.....	62
3.1.1 Changes in an Agency’s Intervention measured through its Scope of Equality Promotion .....	62
3.1.2 New Political Demands: Changes in an Agency’s Budget or Staff and Changes and Challenges to the Use of its Competences .....	67
3.1.3 Cooperation, Reorientation and Retreat: Changes in An Agency’s Intervention in the Aftermath of New Political Demands .....	68
3.2 The Scope of the Study and the Universe of Cases.....	70
3.3 Controlled Comparisons and In-Depth Case Studies.....	73

3.4 Time Frame of the Analysis .....	79
3.5 Data Collection.....	79
3.6 Data Analysis .....	81
3.7 Concluding Remarks on the Research Design and Methods .....	82
Chapter 4: The Evolution of Antidiscrimination as a Policy Field in Europe and the Creation of the Antidiscrimination Agencies .....	83
4.1 The Austrian Agency's Capacity and Limitations to intervene against Discrimination .....	86
4.2 The Hungarian Agency's Capacity and Limitations to intervene against Discrimination...	92
4.3 The Irish Agency's Capacity and Limitations to intervene against Discrimination .....	98
4.4 Concluding Remarks on the Agencies' Capacity to intervene in the field .....	103
Chapter 5: Changes in the Agencies' Scope of Equality Promotion.....	105
5.1 The Changes in the Austrian Ombud for Equal Treatment's Scope of Equality Promotion .....	106
5.1.1 The Austrian Agency's Substantial Legal Support .....	107
5.1.2 The Austrian Agency's Research .....	111
5.1.3 The Austrian Agency's Promotional Work.....	113
5.1.4 The Austrian Agency's Advice to the Administration.....	116
5.1.5 Concluding Remarks on the Austrian case .....	117
5.2 The Changes in the Hungarian Equal Treatment Authority's Scope of Equality Promotion .....	118
5.2.1 The Hungarian Agency's Substantial Legal Support .....	119
5.2.2 The Hungarian Agency's Research.....	122
5.2.3 The Hungarian Agency's Promotional Work.....	124
5.2.4 The Hungarian Agency's Advice to the Administration.....	127
5.2.5 Concluding Remarks on the Hungarian case .....	129
5.3 The Changes in the Irish Equality Authority's Scope of Equality Promotion .....	129
5.3.1 The Irish Agency's Substantial Legal Support .....	130
5.3.2 The Irish Agency's Research .....	132
5.3.3 The Irish Agency's Promotional Work .....	134
5.3.4 The Irish Agency's Advice to the Administration .....	137
5.3.5 Concluding Remarks on the Irish case .....	138
5.4 Comparing the Changes in the Agencies' Scope of Equality Promotion .....	138
Chapter 6: The Impact of New Political Demands on Agencies.....	142
6.1 The Impact of New Political Demands on an Agency .....	144

6.1.1 The Events that preceded New Political Demands on the Hungarian and Irish Agencies .....	144
6.1.2 The Impact of New Political Demands on the Hungarian Agency and its Intervention .....	148
6.1.3 The Impact of New Political Demands on the Irish Agency and its Intervention .....	157
6.1.4 Concluding Remarks on the Hungarian and Irish cases.....	163
6.2 Political Negligence of the Austrian Agency .....	164
6.3 Concluding Remarks on the Impact of New Political Demands on Agencies.....	170
Chapter 7: The Agencies' Professional Community and Past Policy Commitments in the Field of Antidiscrimination in Austria, Hungary and Ireland.....	173
7.1 Austrian Actors and Past Policy Commitments in the field of Antidiscrimination and Equality .....	175
7.1.1 Austrian Antidiscrimination and Equality Institutions and Policies .....	175
7.1.2 Austria's Special Case of Disability Policy .....	180
7.1.3 Austrian Non-State Actors in the field of Antidiscrimination and Equality .....	182
7.1.4 Concluding Remarks on Austrian Antidiscrimination Politics .....	188
7.2 Hungarian Actors and Past Policy Commitments in the field of Antidiscrimination and Equality .....	189
7.2.1 Hungarian Antidiscrimination and Equality Institutions and Policies .....	189
7.2.2 Hungarian Non-State Actors in the field of Antidiscrimination .....	196
7.2.3 Concluding Remarks on Hungarian Antidiscrimination Politics .....	201
7.3 Irish Actors and Past Policy Commitments in the field of Antidiscrimination and Equality .....	202
7.3.1 Irish Antidiscrimination and Equality Institutions and Policies.....	202
7.3.2 Irish Non-State Actors in the field of Equality and Antidiscrimination .....	209
7.3.3 Concluding Remarks on Irish Antidiscrimination Politics .....	214
7.4 Concluding Remarks on the Potential Influence of Past Policy Commitments and Strong Non-State Actors on the Austrian, Hungarian and Irish Agencies .....	214
Chapter 8: The Influence of Strong Non-State Actors and Past Policy Commitments on Antidiscrimination Agencies before and after their Exposure to New Political Demands .....	217
8.1 The Influence of Strong Non-State Actors and Past Policy Commitments on an Agency's Intervention in the Aftermath of New Political Demands.....	219
8.1.1 The Influence of Past Policy Commitments and Strong Non-State Actors on the Hungarian Agency's Intervention before and after its Exposure to New Political Demands .....	220
8.1.2 The Influence of strong Non-State Actors and Past Policy Commitments on Changes in the Irish Agency's Intervention before and after its Exposure to New Political Demands .....	229



8.2 The Influence of Strong Non-State Actors and Past Policy Commitments on an Agency's Intervention in the Absence of New Political Demands .....	235
8.3 Concluding Remarks on the Impact of Strong Non-State Actors and Past Policy Commitments on the Agencies' Interventions .....	242
Chapter 9: Conclusion .....	246
Appendix A: Analyzed Austrian Documents in Chapter 5 .....	265
Appendix B: Analyzed Hungarian Documents in Chapter 5 .....	267
Appendix C: Analyzed Irish Documents in Chapter 5.....	270
Appendix D: Contingency tables used to study the Austrian agency's substantial legal support	272
Appendix E: Tables used to study the Hungarian agency's substantial legal support.....	276
Appendix F: Contingency tables used to study the Irish agency's substantial legal support.....	279
Appendix G: Institutional Affiliations of the Interviewed Elite and Experts .....	283
References .....	284

## Table of Figures

Figure 1: Arguments in the Regulation and Equality Institutions' Literature.....	46
Figure 2: The Main Activities of the Antidiscrimination Bodies.....	63
Figure 3: New Political Demands on the Austrian, Hungarian and Irish Antidiscrimination Bodies .....	75
Figure 4: Contextual and Control Variables for the Analysis .....	76
Figure 5: Ranking of the Type of Discrimination most likely to receive the Austrian Agency's Substantial Legal Support per Year .....	107
Figure 6: Most frequently addressed Types of Discrimination by the Hungarian Antidiscrimination Body's Decisions per Year .....	119
Figure 7: Ranking of the Type of Discrimination most likely to receive the Irish Agency's Substantial Legal Support per Year .....	130
Figure 8: The Influence of Policymakers, Strong Non-State Actors and Past Policy Commitments on Changes in an Agency's Scope of Equality Promotion .....	253

## List of Abbreviations

CEDAW	Convention on the Elimination of Discrimination Against Women
CEO	Chief Executive Officer
ECRI	European Commission against Racism and Intolerance
EIGE	European Institute for Gender Equality
EQUINET	European Network of Equality Bodies
ETA	Equal Treatment Authority
EU	European Union
FKGP	Független Kiszgazda-, Földmunkás- és Polgári Párt
FPÖ	Freiheitliche Partei Österreichs
FRA	Fundamental Rights Agency
KDNP	Kereszténydemokrata Néppárt
LGBT	Lesbian Gay Bisexual Transsexual
LIM	Ludwig Boltzmann Gesellschaft
MDF	Magyar Demokrata Fórum
Minorities' Ombudsman	Parliamentary Commissioner for National and Ethnic Minorities' Rights
NGO	Non-Governmental Organization
NWCI	National Women's Council for Ireland
ÖVP	Österreichische Volkspartei
SPÖ	Sozialdemokratische Partei Österreichs
TAMOP	Társadalmi Megújulás Operatív Program
US	United States

## Key Conventions, Directives, Laws and Treaties in the field of Antidiscrimination

### *Key Council Directives dealing with Antidiscrimination*

Equal Pay Directive 75/117/EEC

Equal Treatment Directive 76/207/EEC (amended in 2002: 2002/73/EC)

Burden of Proof Directive 97/80/EC  
Race Equality Directive 2000/43/EC  
Equality Framework Directive 2000/78/EC  
Equal Treatment in Goods and Services Directive 2004/113/EC  
Recast Directive 2006/54/EC  
Council Directive 2010/41/EC (equal treatment in self-employment)

*Key International Conventions dealing with Antidiscrimination*

Convention on the Elimination of All Forms of Racial Discrimination  
Convention on the Elimination of Discrimination Against Women  
Convention on the Rights of the Child  
Convention on the Rights of Persons with Disabilities  
European Convention on Human Rights  
ILO Convention No. 111 on Discrimination

*Key Austrian Antidiscrimination Legislation*

Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment-*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft* GBK/GAW-Gesetz, StF: BGBl. Nr. 108/1979 as amended by BGBl. Nr. 410/1990, BGBl. I Nr. 66/2004, BGBl. I no. 98/2008 and BGBl. I no. 7/2011

Federal Equal Treatment Act - *Bundesgesetz über die Gleichbehandlung im Bereich des Bundes (Bundes-Gleichbehandlungsgesetz–B-GlBG)*, StF: BGBl. Nr. 100/1993 (subsequent amendments)

Equal Treatment Act - (*Bundesgesetz über die Gleichbehandlung / Gleichbehandlungsgesetz / GlBG*), BGBl. I no. 66/2004 as amended by BGBl. I no. 7/2011

Civil Partnership Act - *Bundesgesetz über die eingetragene Partnerschaft (Eingetragene Partnerschaft-Gesetz - EPG)*, StF: BGBl. I Nr. 135/2009

Act on the Employment of People with Disabilities - *Behinderteneinstellungsgesetz*, BGBl. Nr. 22/1970 (subsequent amendments)

Federal Disability Equality Act - *Behindertengleichstellungsgesetz*, BGBl. Nr. 82/2005 (subsequent amendments)

### *Key Hungarian Antidiscrimination Legislation*

Fundamental Law of Hungary (Article XV)

Act IV of 1957 on the Civil Code (Art's 75, 76 and 84)

Act XXII of 1992 on the Labour Code

Act LXXIX of 1993 on Public Education

Act XXVI of 1998 on the Rights of Persons with Disabilities and the Guaranteeing of their Equal Opportunities

Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities (subsequent amendments)

Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Provisions of its Proceedings

Act CXI of 2011 on the Commissioner for Fundamental Rights

### *Key Irish Antidiscrimination Legislation*

Anti-Discrimination (Pay) Act of 1974 (subsequent amendments)

Unfair Dismissals Act 1977 (subsequent amendments)

Employment Equality Act 1998

Equal Status Act 2000

Intoxicating Liquor Act 2003

Equality Act 2004 (subsequent amendments)

The Social Welfare (Miscellaneous Provisions) Act 2004 (subsequent amendments)

## **Chapter 1: Championing Antidiscrimination through Public Expert Bodies**

Discrimination and inequality have become crucial policy concerns for politicians in Europe, especially in the last thirty years. A strong push to establish antidiscrimination as a new policy field in many European countries came from the European Union through the adoption of various supranational laws and policies in the late 90s and early 2000s combating the discrimination of ethnic and religious minorities, disabled people, Lesbian Gay Bisexual Transsexual (LGBT) people, senior citizens and women (cf. Guiraudon 2007). European policymakers even made the designation of specialized expert and enforcement bodies to support the implementation of antidiscrimination provisions dealing with women and ethnic minorities mandatory in all member states of the European Union (cf. European Communities 2000; 2002). We witnessed substantial legal developments in the field of antidiscrimination in Europe since the 1990s.

As a newly emerging policy field, the meaning of antidiscrimination necessitated interpretation in many EU member states. The member states conceptualized individual or systematic exclusion from equal participation in a society in different ways in the past. They addressed this phenomenon as inequality, unequal treatment or unequal opportunities in their laws and policies. De Witte (2010), studying the meaning of antidiscrimination, showed that it emerged as a new rights-based approach focused on the individual claiming and enforcing her individual rights for an equal participation in society.

Antidiscrimination bodies were invested with the competences to investigate discrimination complaints, to conduct research and to provide advice to their governments to promote the enforcement of antidiscrimination policies and support individuals claiming their rights (cf. De

Witte 2012, 6; Holtmaat 2006, 14). By focusing their intervention on certain groups and sectors, antidiscrimination bodies began to make sense of the existing antidiscrimination policies and guided policy developments on antidiscrimination.

In their role as promoters of antidiscrimination, these bodies are not free from influence. For instance, they were created in countries with different past policy commitments in promoting the rights of women, ethnic minorities, disabled people, senior citizens or LGBT people (cf. Bell 2002). While some countries problematized the unequal treatment of women in employment from early on, others did not designate any institutions to support them or adopt any provisions to fight their unequal treatment prior to the adoption of the aforementioned EU policies. Moreover, apart from past policy commitments, the strength and the target of individual non-state actors in civil society supporting and lobbying for developments in antidiscrimination varies from country to country. While some countries have strong civil society organizations fighting against the discrimination of LGBT people, others do not have such strong organizations in place. These differences supposedly affect antidiscrimination bodies.

Apart from this influence, antidiscrimination bodies can also operate under governments, which are more or less willing to advance an antidiscrimination agenda, interfering in the work of the bodies (cf. Crowley 2010; Dimitrova and Rhinard 2005; Kádár 2012; Sedelmeier 2009; van der Vleuten 2005). Like many public bodies, antidiscrimination bodies are dependent on their government's administration. Policymakers can exercise their influence by changing their budgets and staff or by challenging the use of their competences as promoters of antidiscrimination. For instance, the Hungarian and Irish antidiscrimination bodies experienced significant cuts in their resources in the wake of the Hungarian elections and the 2008 financial

crisis (cf. Kádár 2012; O'Farrell 2012). This affected the bodies in their role as promoters of antidiscrimination.

Although it is clear that the antidiscrimination bodies need to adapt their activities to these various influences (cf. Gilad 2008), their effect on a body's role as a promoter of antidiscrimination needs a more systematic investigation. As pointed out, antidiscrimination bodies are exposed to different influences. Moreover, the data shows that changes in a body's resources, staff or competences affects antidiscrimination bodies in Europe differently (i.e. Ammer, et al. 2010; EQUINET 2011a; 2011b; Holtmaat 2006; International Labour Office 2011). McAllister (2010) showed in his study of agencies that agencies experiencing political influence chose different enforcement styles of their mandates. While public bodies, like antidiscrimination bodies, are susceptible to experience changes in their budgets, staff or competences at times or influences from their environment, we do not know how this interference causes actual changes in their intervention in a policy field.

We cannot draw any far-reaching conclusions with regard to the effect of these influences. For instance, although the Irish agency experienced cuts in its resources, its scope of intervention remained relatively broad between 2008 and 2011. Understanding how policymakers, past policy commitments or non-state actors influence and drive changes in the intervention of public bodies, like antidiscrimination bodies, is the aim of this research.

## 1.1 Changes in the Antidiscrimination Bodies' Interventions in Europe

More than half of the antidiscrimination bodies in EU Europe have broad mandates and are not only responsible for tackling the discrimination of women and ethnic minorities, but also senior citizens, disabled people, LGBT people and religious minorities in sectors as diverse as employment or access to services (cf. Chopin and Gounari 2009). Antidiscrimination bodies have a comparably broad mandate covering many groups and sectors. Unsurprisingly, reports show that antidiscrimination bodies use their competences to target individual groups and support the implementation of antidiscrimination provisions differently. Moreover, they change the way they intervene in the field in different directions over time (i.e. Ammer, et al. 2010; EQUINET 2011a; 2011b; Holtmaat 2006; International Labour Office 2011).

Looking at the antidiscrimination bodies' activities combating the discrimination of senior citizens in EU Europe, an EQUINET report (2011b) shows that the bodies adopted different approaches to enforce the relevant provisions. While some bodies like the Irish Equality Authority explicitly targeted age discrimination, others like the Hungarian Equal Treatment Authority addressed age discrimination only occasionally in its activities. Importantly, age-related equality concerns became less prominent in the work of the Irish body in the wake of the financial crisis. We find that the discrimination of senior citizens emerged and vanished as an area of intervention for antidiscrimination bodies in a short period. Moreover, the change in the Irish body's intervention is counterintuitive, as Europe's population is ageing and senior citizens older than 50 were significantly affected by discrimination on the labor market. A survey by Eurobarometer (2012) also shows that European citizens believed that the crisis caused more discrimination of senior citizens on the labor market. There was salience and demand for the body's intervention.



Another report, this time issued by the European Network of Legal Experts in the non-discrimination field, evaluated the activities of antidiscrimination bodies fighting racial discrimination. This report showed that some antidiscrimination bodies in Europe are more active in *inter alia* conducting research on racial discrimination than others (cf. Holtmaat 2006). Some bodies, like the Hungarian or Austrian, only started to conduct research on ethnic discrimination after the publication of this report. Others did not include any research on ethnic discrimination in their activities. Since European societies experience an ever increasing ethnic diversity of their populations giving much ground and salience for researching the actual integration or exclusion of ethnic minorities from the labor market (cf. EUROSTAT n.y.-b), it is counterintuitive that some bodies did not address ethnic discrimination in their research.

While reports evaluating the activities of antidiscrimination bodies in Europe are rather few (i.e. Crowley 2013; EQUINET 2011b; Holtmaat 2006), the available ones published by organizations and research institutes find considerable variation and changes in the antidiscrimination bodies' interventions over time. Understanding these changes is crucial to understanding what drives these bodies. Variation and changes in their intervention can lead to the integration or omission of policy issues from the agenda and attention of policymakers, since these bodies can be crucial promoters of antidiscrimination.

## 1.2 Existing Explanations in the Literature

The examination of reports indicated that antidiscrimination bodies in Europe change their interventions over time. These changes affect the way these bodies support the enforcement of antidiscrimination. The question emerges *why some bodies change their intervention to omit areas and sectors from their intervention while others do not*.

Contributions relevant for explaining these changes first point towards the significant influence of policymakers on institutions like antidiscrimination bodies. If a public body lacks independence, policymakers can cut budgets, change competences or dismiss staff, which gives them considerable power to interfere in the activities of public bodies (i.e. Bell 2008; Carpenter 1996; Cormack and Niessen 2005; Epstein and O'Halloran 1994; Gilardi 2008; Koop 2011; Macey 1992; May, et al. 2008). If a body's capacity is decreased, it cannot implement its mandate as planned.

Although policymakers have the power to interfere in an antidiscrimination body's intervention if the bodies are not independent, it would be limited to understand these bodies as entirely dependent on policymakers (cf. Epstein and O'Halloran 1994; Maggetti and Verhoest 2014). Antidiscrimination bodies have mandates giving them discretion to intervene in a policy field and to act as promoters of antidiscrimination. In addition, past policy commitments and the plurality of actors and interests located and operating in the antidiscrimination body's environment makes it unlikely that the body is under the sole influence and control of policymakers.

Alternative explanations in the literature proposing arguments on what influences public bodies in their activities point towards the effect of path dependence on institutions. Scholars writing about the influence of path dependence feared that antidiscrimination bodies with broad mandates

were more likely to address historically salient policy issues in their intervention than new concerns (i.e. Bell 2002; Cormack and Niessen 2005). Antidiscrimination bodies, in this sense, were perceived to be under the influence of past policy commitments in the field of equality politics (cf. Alonso 2009; Bell 2002; Krizsán 2012; Squires 2009; Verloo, et al. 2012). They were likely to embrace issues that were problematized in the past.

Apart from past policy commitments, researchers studying institutions like antidiscrimination bodies also argue that non-state actors influence the activities of public bodies (cf. McBride Stetson and Mazur 2000; Woodward 2003). They do so through their exchange and networking with the bodies. While the literature is unclear about how it affects the public body and under which circumstances it happens, antidiscrimination bodies are likely to experience this influence when they implement and plan their activities. Accordingly, research also needs to study the influence of non-state actors in addition to policymakers and past policy commitments in order to understand what drives changes in the way public bodies intervene in the field (cf. Carpenter and Moss 2013b; Gilad 2008; Schneiberg and Bartley 2008).

Although this brief examination of the literature showed that the influence of policymakers, non-state actors, and past policy commitments on public bodies has received scholarly attention, studies trying to understand what drives actual changes in the way a public body intervenes in the field are limited (cf. Gilad 2008; Maggetti and Verhoest 2014). The literature on agencies and equality institutions features many contributions talking about capture, the responsiveness and independence of agencies from policymakers, and the public bodies' close interactions with non-state actors (i.e. Bell 2008; Cormack and Niessen 2005; Epstein and O'Halloran 1994; Gilardi 2008; Koop 2011; Macey 1992; McBride Stetson and Mazur 2000; Stigler 1971). Some researchers even extended their analysis to the role of leadership (i.e. Boin and Christensen 2008;

Carver 2011; Joaquin 2009; McBride Stetson and Mazur 2000; Spencer and Harvey 2013; Yesilkagit 2004) and proposed that effective leadership can safeguard a public body against the influence of policymakers or other actors. Yet, findings are inconclusive.

We can only understand what drives a body to change its intervention by amending our research approach. Based on the literature, one can assume that policymakers are the central actors to pose new political demands on the bodies, as they can change their budgets and staff or challenge their competences (cf. Holtmaat 2006). Resources are central to a body's rationale for action, since it wants to survive and it wants to have discretion to intervene in a policy field (cf. Hall 2010; Scott 2003). Policymakers, in this sense, have significant powers to destabilize a public body in its intervention and cause changes in its intervention. This destabilization, however, does not explain the direction of the changes in a public body's intervention, as shown by data and the aforementioned antidiscrimination bodies' studies addressing policymakers' influence. While a body's strategic decisions are based on its material interests of survival and autonomy, they are also connected to ideas and norms about its role as a promoter of antidiscrimination (cf. May, et al. 2008; Yesilkagit 2004). Therefore, the body might deal with the interference of policymakers in unexpected ways.

The literature shows that the public bodies are likely to reach out to their environment to seek support and to plan and continue its intervention (cf. Gilad 2008). The environment can communicate new ideas and norms about areas and modes of intervention to the body that can become part of the body's activities (cf. Woodward 2003). These ideas can also come from past policy commitments incentivizing the bodies to follow existing paths to promote antidiscrimination in the field. Since this needs further research, I develop an analytical approach

adapted to studying the influence of policymakers, non-state actors and past policy commitments in a systematic way in the next chapter.

### **1.3 Why we should study Changes in the Antidiscrimination Bodies' Interventions**

Antidiscrimination is a good field to study changes in the intervention of public bodies in the wake of new political demands, as antidiscrimination bodies have to interpret and promote a mix of policies in a newly emerging policy field. Many antidiscrimination bodies have broad mandates covering different sectors and different target groups such as ethnic minorities, LGBT people, senior citizens or women. Changes in their intervention should be easy to detect (cf. Mazmanian and Sabatier 1989; O'Cinneide 2002). Moreover, as promoters in a newly emerging policy field, they face uncertainties and political struggles over the meaning of antidiscrimination and how it should be combatted (cf. Bell 2008). They are continuously exposed to new demands from policymakers, non-state actors and past policy commitments. They offer excellent cases to study why public bodies change their intervention in a given policy field.

Understanding what actually drives changes in a public body's intervention is crucial, as we recently witnessed a period of political interferences in the budgets, staff or competences of public bodies operating at arm's length from the government in policy fields as diverse as antidiscrimination, research grants management, employment, environment or agrifishing in countries like Germany (cf. Euronews 2015), Hungary (cf. Váradi and Kertész 2014), Ireland (cf. Crowley 2010), Denmark (cf. Danish Ministry of Environment and Food n.y.) or the United Kingdom (cf. Unison n.y.). While we know how to detect these interferences, it is unclear how

these public bodies will react to them in their intervention. Scholars like McAllister (2010) showed that bodies adopt different enforcement styles in response to policymakers' interference.

Explaining how public bodies, responsible for the interpretation, promotion, implementation or enforcement of policies, change their intervention is essential for effective policy implementation. Institutions, like antidiscrimination bodies, can play an important role in proposing and guiding changes in a policy field. Since they are exposed to various kinds of influences and new demands, this necessitates a systematic study of their reaction.

Studying changes in the antidiscrimination bodies' interventions talks to a variety of arguments in the literature. Since the bodies experience some level of dependence on their parent ministries (cf. Chopin and Gounari 2009), this research offers new insights to scholars in the regulation literature on the actual influence of policymakers. Moreover, it also makes a contribution to the equality institutions' literature about the way public bodies promoting antidiscrimination, and in the larger sense equality, react to new demands and interact with their environment, which is a central area of research interest of these studies. I show how civil society, interest groups, policymakers and path dependence, conceptualized as past policy commitments, actually influence changes in a public body's intervention.

The creation of public bodies, like antidiscrimination bodies, under some level of political control in a multi-actor environment is a widespread phenomenon, not limited to the field of antidiscrimination. We have witnessed the creation of public bodies with different levels of independence from the administration and the outsourcing of responsibilities for public service delivery in the recent past (cf. Black 2002; Hood 1991; Levi-Faur 2011a; Lodge and Wegrich 2012, 2f; Majone 1999, 1ff; Schneiberg and Bartley 2008). The study of antidiscrimination bodies helps us to understand how these institutions change their intervention when

policymakers, non-state actors or past policy commitments might influence them. The findings complement the regulation and equality institutions' literature by offering insights on why antidiscrimination bodies change their intervention differently.

## **1.4 Research Design**

Since my research is essentially interested in understanding why public bodies, like antidiscrimination bodies, change their interventions, I first look at the influence of policymakers on these bodies. I limited my cases to antidiscrimination bodies in Europe, as developments in the field of antidiscrimination are comparable in Europe and obligations and responsibilities of the bodies are similar (cf. De Witte 2012). Arguably European governments and antidiscrimination bodies were exposed to similar ideas, trends and demands in the field of antidiscrimination between 2008 and 2011.

I found two exemplary antidiscrimination bodies in the EU similar in organizational structure and duties, which experienced significant budget cuts and the replacement of staff members during the period of investigation allowing me to study the influence of policymakers in comparison. These are the Irish Equality Authority (cf. Crowley 2010) and the Hungarian Equal Treatment Authority (cf. Kádár 2012). My dissertation, therefore, examines changes in their interventions between 2008 and 2011.

Yet, I also selected the Austrian Ombud for Equal Treatment for the study, as it did not experience significant changes in its resources, staff and competences after its reform in 2004 (cf. Austrian National Council 2004, 222ff). While the Hungarian and Irish bodies experienced interferences by policymakers in their budgets and staff and challenges to the use of their

competences, the Austrian body experienced no such interferences. If policymakers are the only actors influencing a public body's intervention, there should be no change in the Austrian body's intervention.

Since the examination of the literature, however, showed that a public body's intervention also changes over time without interferences of policymakers, I examine further influences on the antidiscrimination bodies via the analysis of documents and interviews. I investigate how the bodies dealt with the interference of policymakers in addition to the influence of non-state actors and past policy commitments, potentially incentivizing changes in their intervention. The Austrian case is crucial to study the impact of strong non-state actors on antidiscrimination bodies, as the body's organizational structure gave no direct access to non-state actors making their influence unlikely. Some bodies provided this access through advisory boards. If non-state actors influence the Austrian body, this should show in the data analysis, particularly if the agency intervenes against ethnic discrimination where civil society was strong. Moreover, the designation of the body, studied in Chapter 4, will show that its organizational structure is strongly influenced by past policy commitments in the field of gender equality (cf. Sauer 2007), as it has a separate and strong unit dealing with the discrimination of women. Past policy commitments should influence the body's intervention.

The comparison of the Hungarian and Irish cases, in turn, shows how non-state actors and past policy commitments influenced changes in the bodies' interventions after they were exposed to the influence of policymakers. By granting access to non-state actors through their advisory boards, examined in Chapter 4, the influence of non-state actors is more likely. Moreover, since civil society and interest groups dedicated to increasing the awareness about ethnic, as well as LGBT and disability discrimination are strong in Ireland and Hungary, they should influence the



intervention of the two antidiscrimination bodies in a similar direction. Different from the Austrian antidiscrimination body, past policy commitments were not ingrained in the organizational structures of the bodies. Chapter 7 shows that the Hungarian antidiscrimination body was located in a country where policymakers put emphasis on the advancement of the equal treatment of Roma (cf. Krizsán 2000; Sauer 2007), while the Irish one inherited a legacy focusing on the promotion of the equal treatment of diverse groups in public programs, policies, institutions and law (cf. Barry and Controy 2012, 17f). This difference should show in the bodies' interventions if past policy commitments explain changes in an antidiscrimination body's intervention.

This brief outline of the research design of my thesis shows how I study changes in a body's intervention. I examine them in-depth, through the method of process tracing, to understand the influence of policymakers on changes in the Austrian, Hungarian and Irish bodies' interventions controlling for the direction of their influence and studying the effect of past policy commitments and non-state actors on the bodies.

## **1.5 Structure of the Dissertation**

My dissertation continues with a more detailed examination of the relevant literature to capture the current state-of-the art and to develop the analytical framework for studying changes in an antidiscrimination body's intervention. I scrutinize the arguments in the equality institutions and regulation literature and integrate them in my framework outlining an antidiscrimination body's rationale for action in Chapter 2. The chapter is followed by a brief methodological chapter explaining the research design of my thesis and the applied methods.

Subsequent to these theoretical and methodological considerations, I examine and describe how antidiscrimination emerged as a new policy field in Chapter 4. I particularly focus on the designation and creation of the antidiscrimination bodies as promoters of antidiscrimination in Austria, Hungary and Ireland. For this purpose, I describe and compare their mandates and organizational structures to understand how and in which way the bodies can change their intervention.

I then measure and examine the changes in the Austrian, Hungarian and Irish antidiscrimination bodies' interventions, their so-called scope of equality promotion, between 2008 and 2011 in Chapter 5. I analyze and compare changes in their counselling of alleged victims of discrimination, research, promotional work and advice to the government. At the end, I compare the changes in the Austrian, Hungarian and Irish antidiscrimination bodies' activities.

Chapter 6 analyzes the influence of policymakers, through budget cuts, the appointment of new staff, or challenges to a body's intervention, on changes in the antidiscrimination bodies' interventions. I conceptualize the interference of policymakers as new political demands. I first briefly discuss the context in which these new political demands emerged in Hungary and Ireland. Second, I investigate their influence on the Hungarian body's activities in 2010 and the Irish body's activities after the beginning of the financial crisis. In order to truly understand the impact of policymakers on the antidiscrimination bodies' activities, I subsequently study the effect of the absence of new political demands in the Austrian case. The Austrian body only experienced changes in its budget, staff and competences in 2004. Including the Austrian body in the comparison shows the actual effects of new political demands on an antidiscrimination body. The case studies show that new political demands destabilized existing preferences and the way the bodies implemented their mandates in Hungary and Ireland. The case of the Austrian body

demonstrates that policymakers did not want the agency to engage in areas other than related to women.

Having studied the effect of policymakers, Chapter 7 investigates the context in which the antidiscrimination bodies dealt with new political demands or unfavorable conditions for the antidiscrimination bodies to embrace their mandates. I trace existing actors, policies and laws over time to conceptualize the environment in which antidiscrimination bodies are embedded. While the Austrian and Hungarian governments focused on single groups in advancing equality in the past, the Irish government implemented a multi-ground approach from early on. This means that the governments in Austria and Hungary only supported equality policies and institutions targeting single groups such as ethnic minorities or women in the past, different from Ireland. The chapter also shows the strength of non-state actors in the field of antidiscrimination and equality. While Hungary's and Ireland's non-state actors are strong in the field of ethnic minority, disability and LGBT rights, they are weak in enforcing women's rights. In contrast, Austrian non-state actors are strong in the field of women's and ethnic minority rights. By studying the context in which the antidiscrimination bodies operate, the chapter informs the analysis about the direction of their potential influence on the bodies when they are exposed to new political demands or unfavorable circumstances for the bodies to implement their mandates.

Chapter 8 studies why the intervention of the three antidiscrimination bodies changed taking the influence of the bodies' environment into account. While the Hungarian body was reluctant to cooperate with non-state actors after the change in government in 2010, they had a significant effect before 2010. It integrated accepted notions about discrimination of its professional community on the EU level in its intervention. Different from that, the Austrian and the Irish body continuously cooperated with strong non-state actors to increase their resources and

expertise. These cooperations and joint initiatives led to the exchange of ideas, which were partially integrated in the bodies' interventions extending their scope of equality promotion. The chapter shows that past policy commitments only substantially influenced changes in the Hungarian antidiscrimination body's intervention.

In my conclusion, I offer a model and explanation why the antidiscrimination bodies changed their intervention. My model shows how strong non-state actors and policymakers influence public bodies in the field of antidiscrimination. By doing so, my research also indicates that these influences have considerable consequences for the pro-activeness of the antidiscrimination bodies in implementing their mandate. My conclusion shows what can be learnt from the study of the three selected antidiscrimination bodies to explain changes in the activities of public bodies with weak powers and dependent on the government operating in newly emerging policy fields.

## Chapter 2: The Literature and the Analytical Framework

Antidiscrimination bodies support the implementation of antidiscrimination policies through the legal counseling of individuals, research, promotional work and their advice to the government. The bodies engage in these activities in a policy field where many different actors and past policy commitments exist, which can influence the way they carry out their activities as promoters of antidiscrimination.

I identified three arguments in the literature on regulation and equality institutions <sup>1</sup> helping to explain changes in the way institutions, like antidiscrimination bodies, implement their activities. Scholars proposed that past policy commitments (i.e. Alonso, et al. 2012; Bianculli, et al. 2013; Krizsán and Zentai 2012; Squires 2009; Verloo, et al. 2012; Walby, et al. 2012; Yesilkagit and Christensen 2010), policymakers, and non-state actors <sup>2</sup> (i.e. Bell 2008; Cormack and Niessen 2005; Epstein and O'Halloran 1994; Gilad 2008; Gilardi 2008; Koop 2011; Macey 1992; McBride Stetson and Mazur 2000) affect changes in an institution's activities. While the literature on equality institutions explains how existing equality policies, laws and institutions influence new equality institutions in the implementation of their mission, the regulation literature provides more sophisticated theories and conceptualizations on the influence of policymakers and interest groups on public bodies causing changes in their intervention.

Although the literature helps to understand the influence of past policy commitments, policymakers and non-state actors on the way an institution implements its mandate, much of the

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<sup>1</sup> The term 'equality institutions' is used for institutions that have the concrete aim to advance the equality for a particular group of individuals in society.

<sup>2</sup> Non-state actors are organizations or institutions, which are created to support, represent and lobby for the interests of a group of individuals in society.

current literature has a limited understanding of the institution itself (cf. Maggetti and Verhoest 2014). The explanations are rather focused on the external influences on the institution. Yet, an institution's activities are also based on routines and norms about appropriate intervention. Yesilkagit (2004) shows that the organizational culture plays a crucial role as a filter of political demands in his case study of independent administrative bodies in the Netherlands. Gilad (2008) found that an organizational culture, in turn, is influenced by an institution's exchange with its environment. Because of the limited scope of existing studies, it remains unclear how these findings apply in other research contexts.

I, therefore, propose an analytical framework in this chapter, which analyzes changes in an antidiscrimination body's intervention by studying how an antidiscrimination body takes strategic decisions based on new political demands, its own material interests, routines and norms. This perspective helps me to understand changes in the way a public body implements its mandate and how past policy commitments, policymakers and non-state actors actually influence changes in a public body's intervention in a given policy field.

The chapter continues as follows. I first identify an adequate definition for studying antidiscrimination bodies. This is followed by an examination of the three central arguments in the regulation and equality institutions' literature explaining changes in a public body's intervention. After the examination of the literature, the chapter outlines my analytical framework, which amends and integrates the existing explanations. I explain how policymakers affect an antidiscrimination body's scope of intervention through changes in its budget and staff or challenges to the use of its competences affecting its material interests and routines. Second, I show how non-state actors and past policy commitments potentially influence an antidiscrimination body's intervention when it deals with new political demands or unfavorable

political circumstances. These influences explain changes in an antidiscrimination body's intervention in the policy field.

## **2.1 Locating Antidiscrimination Bodies in the Existing Literature**

The first challenge for studying antidiscrimination bodies and changes in their intervention is to define the nature of these institutions. It is possible to look at them from the disciplinary perspective of scholars working in the field of law, public policy and political science. While legal scholars defined institutions like antidiscrimination bodies as law enforcement bodies or Ombudsman institutions, public policy or political science scholars studied them as agencies or equality bodies. Some of these definitions arguably do a better job of preparing the analysis for studying the changes in their intervention than others.

Applying a classical Ombudsman definition to antidiscrimination bodies provided by Drewry (2009) defines antidiscrimination bodies as public institutions, which handle individual complaints and publish reports about maladministration (p.5). While some of these functions are also delegated to antidiscrimination bodies (cf. European Communities 2000), data shows that antidiscrimination bodies frequently intervene in areas outside the maladministration of public institutions. One might even argue that some antidiscrimination bodies avoid interfering in the public sector to circumvent conflicts with the public administration. (See Chapter 5 for more information on the implementation activities of antidiscrimination bodies.) More importantly, most antidiscrimination bodies are affiliated with a ministry, which can interfere in its activities (cf. Ammer, et al. 2010). The classical Ombudsman model does not address this lack of independence of antidiscrimination bodies from the public administration and their interventions

in the private sector, which, however, is central to understanding changes in an antidiscrimination body's intervention in the field.

The Executive Ombudsman model offers, on first sight, a more suitable definition for antidiscrimination bodies. In this model, researchers like Abedin (2011) address the problem that dealing with public maladministration becomes tricky when the Ombudsman is appointed by a member of the executive branch (p.11f). While this is important for understanding influences on the way an antidiscrimination body implements its mandate in the public sector, the model again does not cover the antidiscrimination body's role in supporting policy implementation outside the public sector.

Definitions and models which are more adequate in capturing the nature of antidiscrimination bodies are found in the regulation literature (i.e. Bianculli, et al. 2013, 10; Laegreid, et al. 2008; Maggetti 2009; Majone 1997, 4; Pollitt, et al. 2004). While their definitions of agencies remain sensitive to the antidiscrimination body's lack of autonomy from the public administration, they also extend the scope of action beyond public maladministration. Pollitt et al. (2004) define an agency as an institution, which has (amendable) statutory powers, and is dependent on its parent ministry in terms of its budget (p.10). While the definition is sensitive to the embeddedness of agencies in the public administration, it also captures the antidiscrimination bodies' capacity to carry out activities independently from the public administration in the private and public sector due to its statutory powers.

This suitable definition for the study of antidiscrimination bodies was also used implicitly by scholars in the equality institutions' literature. Bell (2008), Carver (2011), McBride-Stetson and Mazur (2000) or McEwen's (1997c) edited volume apply this definition in an implicit way to study antidiscrimination or human rights bodies by referring to the institutions' dependence on



policymakers and their discretion to intervene in the public and private sector. The regulation literature, in this sense, offers a more standardized conceptualization for the study of antidiscrimination bodies.

Although the ‘agency’ definition is suitable for understanding and conceptualizing influences on an antidiscrimination body’s intervention, researchers have mostly used this definition to study agencies with comparably strong regulatory competences *inter alia* in the financial sector (i.e. Gilad 2008; Gilardi 2008; Yesilkagit 2004). Strong regulatory competences imply that an agency has the power to set standards like in the case of central banks. Apart from that, antidiscrimination bodies are agencies with soft regulatory competences to alter the behavior of individuals and organizations. They mainly offer support to victims of discrimination through the legal counselling of individuals, research, and advice to their governments (cf. Ammer, et al. 2010).

Directing attention to agencies with less independence and weaker regulatory powers, however, also provides these scholars with new insights on the impact of past policy commitments, policymakers or non-state actors on changes in an agency’s intervention. Studying agencies, like antidiscrimination bodies, helps us to understand how agencies actually react to them in cases where their influence is supposed to be strong.

Concluding from the examination of the potential ways to conceptualize antidiscrimination bodies, the literature on regulation offers the most promising way to study antidiscrimination bodies. The regulation literature captures the agency’s dependence on its parent ministry, but also its discretion in the way it intervenes in the public and private sectors. My research, therefore, understands antidiscrimination bodies as agencies with weak regulatory competences dependent on their parent ministries but with some level of discretion to intervene in a policy field. Since

policymakers are not the only actors influencing the agencies, I examine in the following sections the scholarly contributions in the literature on regulation and equality institutions conceptualizing the influences of past policy commitments and non-state actors on antidiscrimination agencies.

## **2.2 Three central Arguments in the Regulation and Equality Institutions' Literature**

The subsequent examination assesses the arguments in the regulation and equality institutions' literature for their explanatory power to understand changes in the way a public body, like an antidiscrimination body, implements its mandate. Scholars in these two literatures claim that past policy commitments, policymakers and non-state actors influence institutions like antidiscrimination bodies. I argue that while these explanations capture in a parsimonious way the influence of past policy commitments (i.e. Krizsán 2012; Squires 2009; Verloo, et al. 2012; Walby, et al. 2012), non-state actors, and policymakers (i.e. Carpenter and Moss 2013b; Gilardi 2008; Koop 2011; Stigler 1971), the risk of oversimplifying an agency's rationale for action is prevalent. Yesilkagit (2004) and Gilad (2008) showed that an agency's strategic decisions to change its intervention are based not only on external demands, but also on its routines and priorities. Institutions change their intervention based on external influences, but also take into account their material interests, routines and norms.

Since my analytical framework builds on the existing literature to conceptualize changes in an agency's intervention, I first introduce and examine the three central explanations in the literature. For this purpose, I review policymakers' tools, like an agency's budget, to exercise control over the agency's activities, as proposed by scholars like Carpenter (1996, 283). Moreover, I conceptualize the potential impact of past policy commitments and non-state actors on changes in an agency's intervention, as proposed by the literature. Second, I theorize how

these factors in combination with one another influence an agency's rationale for action and potentially causes changes in an agency's intervention in the field. I develop hypotheses for the empirical investigation in each section of my analytical framework.

### ***2.2.1 The Influence of Policymakers on Agencies***

Research shows that a lack of independence in funding, staff and competences affected antidiscrimination bodies in the past (i.e. Bell 2008; Carver 2011; MacEwen 1997a; Yesilkagit and Snijders 2008). Apart from the thematic literature, this impact was also extensively addressed by the regulation literature from a broader theoretical perspective (i.e. Carpenter 1996; Epstein and O'Halloran 1994; Gilardi 2008; 2002; Joaquin 2009; Koop 2011; Macey 1992; Maggetti 2007; May, et al. 2008; McAllister 2010; Peltzman, et al. 1989; Spencer and Harvey 2013; Stigler 1971; Yesilkagit 2004).<sup>3</sup> I examine their claims in the following.

Scholars in the regulation literature addressed many problems related to a lack of independence of agencies and came to different conclusions. Some of them investigated the circumstances in which agencies are more likely to experience political interference. Epstein and O'Halloran (1994) and Koop (2011) propose that agencies are less independent when they deal with politically salient issues. Policymakers, in this sense, maintain formal control over the agencies in order to guarantee that the agencies remain responsive to their demands. Macey (1992) also

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<sup>3</sup> Scholars in the field of regulation mainly became interested in agencies and their role in policymaking in the wake of what Majone coined the "rise of the regulatory state". Majone (1997; 1999) claims that *inter alia* due to the influence of the European Union, new forms of regulation replaced traditional types of regulation associated with centralized policymaking and implementation. The so-called rise of the regulatory state led to the increased use of agencies for policy implementation (cf. Gilardi 2008; Levi-Faur 2011b; Pollitt, et al. 2004). Many semi-autonomous agencies were created, particularly in the 1980s (cf. Van Thiel 2012, 18). These agencies were supposed to provide specialized expertise on specific policy issues removed from the immediate influence of politicians (cf. Laegreid, et al. 2008).

argues that policymakers chose organizational structures for agencies which allow them to exercise control over the agency. Yet, Gilardi (2002), studying the variation in independence of agencies, and Maggetti (2007), investigating the relationship between formal and informal independence of agencies, state that the actual level of independence of agencies does not depend on their formal mandate.

While my research does not try to assess the actual independence of the antidiscrimination bodies, I take from this literature that policymakers can significantly impact an agency's intervention in a policy field when the agency is not independent. Mc Allister (2010) shows that agencies can be intimidated by policymakers in the way they enforce their mandates. Epstein and O'Halloran (1994) showed that policymakers can oblige an agency to report or consult with the administration before carrying out its activities, which interferes in the way it implements its mandate. Scholars have convincingly argued and demonstrated in their research that policymakers influence and steer agencies via changes in staffing, budget, regulatory competences or obligations to the government or parliament or challenges to the use of their competences (cf. Bell 2008; Carpenter 1996; Carver 2011, 9; Epstein and O'Halloran 1994; Gilardi 2008; Joaquin 2009; Kickert 2001; May, et al. 2008; O'Cinneide 2002; Spencer and Harvey 2013; Yesilkagit 2004).

While some scholars claim that agencies are influenced or controlled by budget cuts, Joaquin (2009) and Spencer and Harvey (2013) show that policymakers can exercise political control over agencies by replacing an agency's staff or leadership. Accordingly, by exchanging the person in charge of the agency, policymakers hope to change the agency's interpretation of its mandate and duties (cf. Wilson 1992). Mazur (2005) claims that a feminist leadership is crucial for equality institutions to implement their mandates in a more progressive way enhancing the equal

treatment of women. McBride-Stetson and Mazur (2000) and Spencer and Harvey (2013) confirm that the type of leadership in equality institutions defined whether the institution implemented a progressive agenda. Moreover, they also show that the replacement of staff can lead to problems for the agency, as it needs to build new knowledge. Therefore, if a body loses its staff, it also loses part of its expertise.

Building on this literature, I conceptualize changes in an agency's budget and staff and challenges to the use of its competences as means of policymakers to signal new political demands to an agency. New political demands are expressed when the preferences of policymakers differ from the ones of the agency or the institutional designers of the agencies. Policymakers problematize new issues. As argued by Epstein and O'Halloran (1994), new political demands can create incoherencies for the agency in the way it organizes and implements its activities. They can challenge the way an agency implements its mandate and incentivize changes in its intervention.

Yet, conceptualizing changes in an agency's intervention as only triggered by policymakers' interference is too trivial. Carpenter (1996) shows that new political demands signaled through changes in an agency's budget may not lead to an immediate response of the agency, although they threaten its autonomy. Researchers like Joaquin (2009) and May et al (2008) also argued that agencies do not necessarily respond to new political demands in predictable ways. Although research focusing on the independence and responsiveness of public bodies predicted a considerable impact of policymakers on agencies, the direction of this impact on the way agencies actually change their intervention remains unclear. We can only assume based on research conducted on policymakers' influence that changes in an agency's budget, staff or

competences also lead to changes in its intervention. A more sophisticated understanding of the effect of new political demands on an agency's intervention is needed.

Since an agency operates in an environment with different actors and institutions representing various interests, an agency does not only experience influence by policymakers. Scholars like Olsen (2010) convincingly argue that agencies are embedded in a larger environment, which can also influence agencies (p.156). The actual effect of changes in an agency's budget or staff or challenges to the use of its competences needs to be studied in a multi-actor environment. Research needs to study how policymakers affect an agency, which builds and maintains relationships with actors and institutions in a complex multi-actor environment (cf. Maggetti 2007; Rommel and Verhoest 2014, 299).

### ***2.2.2 The Influence of Civil Society and Interest Groups on Agencies***

The literature demonstrates that non-state actors like civil society organizations or interest groups can influence public bodies like antidiscrimination bodies with their interests (i.e. Gilad 2008; Maggetti 2007; McBride Stetson and Mazur 2000). The influence of non-state actors leading to the capture of public regulators was among the earliest concerns in the classical regulation literature. Stigler's (1971) famous capture argument is based on the assumption that politicians only regulate and exercise control over an industry when regulation becomes salient. When the salience of the regulatory need and the attention and control of politicians decrease, interest groups capture the regulatory body with their interests and needs. They stop serving the public interest. Therefore, scholars like Peltzman (1989) argued that deregulation can become necessary. The capture argument was tested also in more recent studies, although with mixed results (i.e.

Carpenter and Moss 2013b; Gilad 2008). It remains a central argument in the literature on regulation to understand the influence of strong non-state actors on public regulators.

Applying this argument to antidiscrimination agencies in order to understand changes in their intervention would suggest that the antidiscrimination agencies are likely to change the way they implement their mandates according to policies supported by a dominant non-state actor when policymakers lose their interest in antidiscrimination policy. Different from the situation in the industry sector for which the capture argument was originally developed, antidiscrimination agencies do not regulate specific policy actors.

Non-state actors in the field of antidiscrimination are very different from the ones found in the industry sector, where the capture argument was developed. They are mainly civil society organizations, which give voice and representation to groups and issues like racism or LGBT discrimination. They are located in the space between the state and the economy. As organizations, they do not work on policy issues to gain or increase their own profits but lobby the government to improve the situation for vulnerable groups or provide services to them not offered by the state. They are an important element of democracy, as they allow for more participation of citizens and give representation to their problems and needs (cf. Burstein and Linton 2002; More-Hollerweger, et al. 2014, 16ff). Based on their expertise, they can bring new issues or problems to the attention of policymakers or public bodies.

This difference to interest groups in the industry sector necessitates an amended perspective on their potential influence on the intervention of antidiscrimination agencies. This perspective is offered by the equality institutions' literature. Scholars like Woodward (2003) and Vargas and Wieringa (1998) conceptualized that institutions like antidiscrimination agencies enter into 'triangles of empowerment' or 'velvet triangles' with experts and civil society organizations.

These triangles, guaranteeing access to non-state actors, normally evolve between the staff of public institutions, experts and activists from the non-state sector to advance a shared agenda in a given policy field. Weldon (2002) argues that government agencies can give voice and representation to women's equality issues in policymaking through these triangles. While bureaucrats rely on experts and activists to push the agenda in a progressive direction, experts and activists gain access and voice in policy-making through bureaucrats committed to advancing a shared agenda.

Although Subrahmanian (2004) calls for caution regarding our expectations of the policy impact of these cooperations, research confirms their influence. Walby et.al (2012) demonstrate in their research how civil society groups, lobbying for newly emerging equality concerns, like the ones of ethnic minority women, gained representation and voice of their concerns through these triangles. They were able to influence the agenda of public bodies. Banaszak (2005) and McBride-Stetson and Mazur (2000) also show in their study that bureaucrats and agencies became access points for the women's movement to influence policymaking, as they brought some of their issues to the political agenda.

Different from the aforementioned capture approach, the influence of non-state actors through these triangles does not depend on the absence of political attention, but evolves with the active support of staff in the public administration. These triangles work for the advancement of a common goal shared between civil society organizations, experts and public bodies. Consequently, the scholars in the equality institutions' literature do not problematize the influence of non-state actors through these triangles on policy-making, assuming that they are beneficial to a progressive agenda. It is implied that the public interest is automatically served by exchanging expertise and giving access to non-state actors lobbying for equality. Different from



that, scholars engaging with the aforementioned capture approach addressed the question of whether non-state actors' influence on policy implementation leads to a diversion of policy implementation from the public interest. Research like Carpenter and Moss' (2013a) edited volume addressed these issues and showed that there is need to pay attention to the type of influence non-state actors exercise on agencies. Because of the different constituencies served by non-state actors in the field of antidiscrimination, this is not a problem. Non-state actors in the field of antidiscrimination supposedly serve the public interest and their influence is actively sought after by staff in public institutions.

While the equality institutions' literature helps to conceptualize the exchange between non-state actors and public bodies, we still need a more thorough understanding of how non-state actors actually influence changes in the way an agency intervenes in a policy field. The aforementioned research pointed towards the significant role of individuals within public bodies as gatekeepers giving voice and representation to issues of non-state actors. However, following this assumption, we still do not know how this affects changes in the intervention of antidiscrimination bodies.

We find a variety of non-state actors interacting with antidiscrimination agencies and lobbying for the integration of diverse policy issues in the field of antidiscrimination. Scholars argued that their respective strength in comparison to each other, their access and the political context have implications in terms of whether they can influence policymaking or public institutions (cf. Burstein and Linton 2002; McBride Stetson and Mazur 2000; McVeigh, et al. 2003; Spencer and Harvey 2013). Mc Veigh et al. (2003) showed that the available amount of resources and a favorable political context are important for understanding the actual influence of non-state actors on policymaking on a more general level. McBride-Stetson and Mazur (2000) and Spencer and

Harvey (2013) show that the political context is crucial for whether non-state actors can influence public bodies like antidiscrimination bodies. Research, therefore, needs to study the actual influence of strong non-state actors on changes in an agency's intervention where multiple non-state actors exist.

Scholars like Carpenter (2010) showed that even in cases where the influence of one actor on a certain policy issue is dominant, it is unlikely to remain so over time. The actual position and role of non-state actors in lobbying for policy developments is likely to change over time (p. 829f). This is also confirmed by research of scholars in the equality field. Krizsán (2009) points out that the relationship between equality institutions and the women's movement changes over time (p.13), which means that their influence can be strong in one period and cease at a later point. Even if non-state actors get the chance to influence antidiscrimination bodies, it is unlikely that they continuously dominate their agenda. The influence of strong non-state actors on public bodies like antidiscrimination bodies needs further investigation to understand their impact.

### ***2.2.3 The Influence of Path Dependence in the form of Past Policy Commitments on Agencies***

Besides the influence of policymakers and non-state actors on agencies, the literature also sees past policy commitments in the equality sector as factors that influence antidiscrimination agencies. The state feminism and equality institutions' literature argues that past policy commitments in the form of existing equality policies and administrative structures reproduce new equality institutions (i.e. Alonso, et al. 2012; Bell 2008; McBride and Mazur 2010; Squires 2009; Verloo, et al. 2012; Walby, et al. 2012). Walby et al. (2012) conceptualized governmental policy-making units responsible for equality policy developments, equality laws and the

‘institutionalized consultation mechanisms for civil society’ as substantial representations of past policy commitments in the field of equality influencing subsequent policy developments (p. 448ff).<sup>4</sup>

This argument is based on historical institutionalism. Historical institutionalist scholars like Hall and Taylor (1996, 941) and Mahoney and Thelen (2010, 11) claim that past policy commitments represent resources that influence and constrain decision-making over time. Past policy commitments, in this sense, structure decision-making by assigning resources for the maintenance of existing structures and policies. For instance, when existing institutions assign resources to gender advocates via policy-making units in ministries, these advocates and units are likely to lobby for the integration of women’s equality issues in future policy commitments. Therefore, the representation of women’s equality concerns becomes reinforced over time.

So far, we have learnt from the literature that past policy commitments create expectations for antidiscrimination agencies. This is also confirmed by research. Verloo et al. (2012) show that the way the equality architecture developed in a country impacts how an antidiscrimination agency views its role and intervenes in the field. For instance, LGBT discrimination is unlikely to be promoted by antidiscrimination bodies if it was not a problem in the past addressed through the equality architecture, as pointed out by scholars in the field (i.e. Alonso 2009; Krizsán 2012; Squires 2009; Verloo, et al. 2012). Mortensen and Green-Pedersen (2014) showed that changes in the portfolios of ministries, leading to the inclusion or exclusion of policy issues, demonstrates where the government focuses its attention. If policymakers problematize issues and put them on the political agenda, they create expectations for public bodies and these issues are more likely to

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<sup>4</sup> Consultation mechanisms are councils set up to facilitate the exchange between representatives of the administration and civil society on equality concerns (Krizsán 2012).

be addressed by them. An agency is likely to address issues already problematized through past policy commitments. They incentivize the agency to be active in certain areas of its mandate. Accordingly, agencies are embedded and created in an institutional context that is likely to affect changes in the way an agency intervenes in a given policy field.

Path dependence can also have a direct impact on the agency when its organizational structure mirrors past policy commitments in a given policy field. Yesilkagit and Christensen (2010) showed that the relevant organizational structure of an agency can be strongly influenced by past policy commitments in a policy field, rather than by political circumstances at the time of its creation. Institutions, in this sense, are not necessarily designed in a way that guarantees an effective execution of their mandates, but to mirror past policy commitments.

Yet, agencies' organizational structures do not always have to be influenced by past policy commitments. Research demonstrated that some agencies are created with the actual intention to break from path dependence (cf. Bianculli, et al. 2013; Knill 1998; Meyer-Sahling and Yesilkagit 2011; Peters 2000). Scholars have found that some agencies are created with the purpose of challenging these modes of action and past policy commitments to give new input to policy implementation. This is an alternative perspective and explanation for the sometimes counterintuitive organizational structure of agencies, which does not have to be influenced by past policy commitments.

We can take from this literature that research has not yet provided any conclusive findings as to whether agencies actually follow or break from path dependence in the way they implement their mandates and whether or not the representation of path dependence in their organizational structures has an impact on them. Although we find that antidiscrimination agencies were created precisely with the aim of being promoters of antidiscrimination in a newly emerging policy field,

we have a limited understanding of how they implement their mandates and change their intervention.

One can assume that an agency takes strategic decisions based on its material interests of survival and autonomy embedded in its routines. Furthermore, it takes these decisions in a context where past policy commitments and a variety of non-state actors exist. These assumptions enable me to develop my analytical framework and to examine what actually drives changes in an agency's intervention.

#### ***2.2.4 Concluding Remarks on the identified Arguments in the Literature***

All three identified arguments in the regulation and equality institutions' literature offer crucial insights on what might incentivize an agency to change its intervention. Research concerned with the relationship of an agency with its parent ministry shows how institutions can be influenced by policymakers in their capacity and activities. Yet, to what extent this affects how an agency actually changes its activities remains an open question. Although historical institutionalist approaches offer a fine-grained understanding of the effect of past policy commitments on an institution, the explanations lack precision to explain actual changes in an agency's intervention. In contrast to this, scholars focusing on the influence of non-state-actors assume that a dominant interest group or civil society actor succeeds in influencing or even capturing an agency. This assumption lacks consideration for the varying strength and influence of non-state actors on the agencies. Moreover, all three arguments have in common that the actual effect of policymakers, non-state actors and past policy commitments on the agency remains a black box.

**Figure 1: Arguments in the Regulation and Equality Institutions' Literature**

Literature	Internal Explanations	External Explanations
<b>Regulation Literature</b>	Leadership Organizational culture	Independence from politics Path dependence Interest groups
<b>Equality Institutions' Literature</b>	Equality advocates as gatekeepers Organizational culture Leadership	Civil society organizations Equality architecture Independence from politics

In the following sections, I develop an analytical framework that attempts to deal with the limitations of the aforementioned arguments in the literature. My analytical framework allows for an examination of the impact of actors and past policy commitments on an agency's rationales for action and activities. By allowing for more complex interactions, I am able to explain actual changes in an agency's intervention in a policy field.

## 2.3 Integrating the Existing Explanations in my Analytical Framework

The examination showed that the literature explains changes in an agency's activities by the fact that the antidiscrimination agencies experience interferences of policymakers or are exposed to the influence of non-state actors or past policy commitments (i.e. Carpenter 1996; Epstein and O'Halloran 1994; Macey 1992). While it is clear that these factors have some sort of impact on the agencies, we do not know in which way they actually drive changes in an agency's intervention as a promoter of antidiscrimination. They need to be integrated in a framework that allows for distinguishing between their respective influences on the agencies' interventions.

*Why do some bodies change their intervention to omit areas and sectors from their intervention and others do not?*

In the following sections, I propose an analytical framework, which is sensitive to external influences on an agency and the dynamics within an agency. The few studies looking into these dynamics showed that the interplay between organizational culture and strategic calculation played a crucial role for understanding changes in an agency's intervention when policymakers interfered (cf. Gilad 2008; May, et al. 2008; Yesilkagit 2004). Yesilkagit (2004) showed in his case study of the Netherlands that the organizational culture of independent administrative bodies worked as a filter of changes introduced by policymakers. Furthermore, May et al. (2008) demonstrated, in much detail, how policymakers' demands are filtered through an agency's routines. While agencies are affected by changes in their resources or staff, they are also influenced by their routines and norms about appropriate intervention in the field.

I conceptualize an agency's rationales for action determining changes in its intervention with the help of the neo-institutionalist literature. In a nutshell, the neo-institutionalist literature proposes that an individual or institution is influenced by notions of appropriateness, strategic calculation or path dependence in the way it decides on a certain action in a particular situation (cf. Hall and Taylor 1996; March and Olsen 2004; Powell and DiMaggio 1991; Schulz 2014). Borrowing from rational choice institutionalism and resource dependency theory, I assume that changes in an agency's budget and staff or challenges to the use of its competences lead to uncertainties for the agency regarding its survival and independence, since an agency is not self-sufficient (cf. Friedland and Alford 1991, 197; Scott 2003). Therefore, changes in an agency's resources, staff or expertise are the main instruments of policymakers to pose new political demands on agencies

and challenge an agency's intervention in the field. I conceptualized these interferences as new political demands.

Agencies experience limitations in the way they can react to these new political demands, as they have routines and norms about appropriate intervention in place. These norms and routines form part of its organizational processes (cf. May, et al. 2008; Yesilkagit 2004). March and Olsen (2004) convincingly showed in their theoretical piece on the logic of appropriateness that an agency's behavior is not only based on considerations of survival and independence, but also on norms and routines (p.17). Scholars writing in the organizational literature claim that an organization's vision and core beliefs guide an agency's behavior and activities (i.e. Ravasi and Schultz 2006). Yet, scholars have extensively criticized sociological institutionalist approaches, focusing on organizational processes within organizations, for being too static and not able to analyze changes (cf. Campbell and Pedersen 2001, 11; Hall and Taylor 1996, 954; Mahoney and Thelen 2010, 8ff; Olsen 2010, 37; Powell and DiMaggio 1991, 22ff). Therefore, these approaches are more adept at explaining stability in a body's intervention compared to change (cf. Bell 2008). By assigning a primary role to the agency's strategic, material decision-making, I am able to deal with this shortcoming in the literature without abandoning their insights on the impact of routines and norms.

I work with the concepts of interests and coalitions of interests within the agency to conceptualize decision-making in the agency (cf. Hall 2010, 209 ff; Scott 2003, 324). Interests stand for administrative units or staff within the agency specialized on specific grounds of discrimination. For instance, some people and units in an agency focus on gender discrimination and have expertise in this area. Through their work, they integrate their knowledge in the organizational processes of the agency. They also form relationships with other units and staff in the agency



implementing different parts of the agency's mandate and creating coalitions of interest. Organizational routines evolve in the sense that external demands on the agency are filtered through these units having specific expertise on combating specific types of discrimination, similar to May et al. (2008)'s depiction of routines in US federal agencies.

The initial representation of grounds of discrimination through units within the agencies can be significantly influenced by the chosen organizational structure of the agency, as institutions have 'redistributional consequences' (cf. Hall and Taylor 1996; Mahoney and Thelen 2010). If the agency's designers chose to assign more resources to the representation of particular grounds of discrimination in the agency's organizational structure, these have more resources and a higher standing in relation to others. The organizational structure of the agency, therefore, can mirror past policy commitments in the field and establish a hierarchy of representation of grounds of discrimination within the agency.

Yet, people and units within an agency can also acquire additional resources and standing within the agency through coalitions (cf. Hall 2010). This process establishes a hierarchy of representation of grounds of discrimination within the agency. Strategic decisions to integrate or omit areas of intervention from the agency's activities are filtered through these organizational processes (cf. Gilad 2008; May, et al. 2008; Yesilkagit 2004). For instance, if an antidiscrimination agency receives a sexual harassment case without having any in-house expertise on this issue, it will either build or acquire the expertise to deal with this case or refuse to engage with it. The decision whether to build or acquire expertise is influenced by the represented grounds of discrimination within the agency and their standing, and whether they perceive this new issue as connected to their own interests. If they decide to integrate, the ground

of discrimination becomes represented within the agency. The intervention of the agency changes.

The agency can also counteract competition among represented grounds of discrimination in the agency by implementing an equality mainstreaming strategy which distributes resources and standing equally among the grounds, as pointed out by Verloo (2006). There is no priority setting. Interventions, in this case, take the various interdependencies and effects of interventions on all relevant groups or sectors into account (p. 215). Interventions are planned from a larger perspective, rather than a group-specific one. Represented grounds of discrimination build stable coalitions rather than compete for resources and standing among each other when the agency implements an equality mainstreaming strategy.

In the remaining parts of the chapter, I conceptualize the influence of policymakers, past policy commitments and strong non-state actors on the changes in an agency's intervention. For this purpose, I first conceptualize the impact of new political demands on changes in an agency's intervention. I continue theorizing about the effect of cooperations of the agency with its professional community, but also the effect of past policy commitments in the field on the agency. In this way, I develop an analytical framework, which is sensitive to the dynamics of strategic decision-making, routines and norms within an agency and external influences in order to understand and analyze changes in an agency's intervention.

### ***2.3.1 The Impact of New Political Demands on an Agency's Intervention***

When an agency is not completely independent, policymakers can pose new political demands on the agency through changes in its budget, staff including its leadership, competences or obligations to the government and parliament (cf. Bell 2008; Carpenter 1996; Epstein and O'Halloran 1994; Gilardi 2008; Hanretty and Koop 2012; Kickert 2001; May, et al. 2008; O'Kinneide 2002). O'Kinneide's (2002) research showed that policymakers used budget cuts and the appointment of new staff in the past to pose new political demands on antidiscrimination agencies (p.48). Changes in the agencies' budget and staff affected the agencies' resources and expertise to intervene as promoters of antidiscrimination. They created uncertainties for the agency to plan its activities, and challenged its current way of implementing its mandate.

The previous section showed that grounds of discrimination achieve representation through units or staff members in the agencies. For instance, a unit or staff member has expertise and knowledge about gender discrimination and represents it in the agency. These units or staff members acquire further resources and a better standing within the agency by competing with other units or staff members representing other grounds of discrimination for standing and resources (cf. Crenshaw 1991; Hancock 2007; Holzleithner 2005; Martinez 1993; Verloo 2006). This affects the intervention of the agency, as the outcome of this competition incentivizes the agency to establish priorities in these areas of the agency's mandate.

The competition for resources or standing among staff members or units within the agency affects the agency's strategic intervention and can be explained through Crenshaw's (1991) concept of political intersectionality. She argues that a strategy fighting the discrimination of one group has side effects for other strategies. For instance, policymakers develop a strategy to tackle racism in accessing licensed premises. In order to bring this strategy to success, policymakers

completely focus on eradicating racist behavior. Criticism against wrongdoing of the target group of this strategy in other areas cannot be addressed, as it would endanger the success of the strategy by moving attention to other issues like sexist behavior. This potential neglect of issues leads to competition about the goal of a program or strategy. Advocates for specific grounds of discrimination represented in a public body try to incentivize the agency to use its resources and establish a priority on their issues. While Holzleithner (2005) traces this competition for resources and standing of equality issues in the EU legislation, establishing that gender equality is a central topic to the EU, Carver (2011) applies this argument to the antidiscrimination agencies and states that the representation of grounds of discrimination within an agency “will result in competition for resources and attention to different vulnerable groups” (p. 9).

New political demands on an agency, expressed through changes in its resources, are likely to increase competition among the represented grounds of discrimination in the agency. They fight over the remaining resources and attempt to secure their standing within the agency. This competition and its effects on an agency also explain why we find priority setting and discrepancies in the performance of agencies (cf. Boin and Christensen 2008; De Beco 2011; MacEwen 1997b, 247; O'Cinneide 2002).

*H1: If the government poses new political demands on an agency through budget cuts, the grounds of discrimination represented through organizational units or staff in the agency, compete for resources and weaker ones will lose their representation in the agency's intervention.*

Apart from changes in an agency's resources, competition for resources and standing among units and staff representing expertise on grounds of discrimination is also triggered by changes in an agency's staff. As pointed out by Olsen (2010), the exchange of staff in a public body weakens

the institutional memory of an organization (p. 126; 131). Moreover, it leaves the agency with a potential lack of expertise in certain areas of its mandate. The representation of some grounds of discrimination can be weakened, as the agency needs to build new knowledge and routines if staff is replaced. The exchange of staff, therefore, removes experts on specific grounds of discrimination from the agency, potentially influencing the agency's intervention. For instance, the replacement of staff with expertise on gender equality leads to a lack of knowledge and advocates in this area of the agency's mandate. New staff needs to be trained and the remaining staff members compete over what expertise needs to be represented in the agency. They are likely to favor areas, which have a connection to their own issues.

*H2: If the government poses new political demands on an agency through a change in its staff, the remaining staff or units compete for a better standing and more resources for their policy concerns and weaker ones will lose their representation in the agency's intervention.*

Besides the exchange of staff, the literature specifically points to the central role of leadership for understanding changes in an agency's intervention. While Spencer and Harvey (2013) also showed that the exchange of staff led to a lack of expertise, they also demonstrated that a change in leadership can cause changes in an agency's vision and tone affecting its intervention. In this sense, a change in leadership is likely to affect the competition for resources and standing among grounds of discrimination represented within the agencies impacting its intervention.

*H2a: If the government poses new political demands on an agency through a change in the agency's leadership, the standing and resources of grounds of discrimination supported under the previous leadership are weakened and their representation in the agency's intervention is diminished.*

Policymakers can also interfere in an agency's intervention through challenges to an agency's use of its competences or actual changes to its competences. Changes mean that the agency receives or loses areas of intervention in a sector or with regards to a particular group. In case policymakers change an agency's competences or challenge the agency's use of these competences, strongly represented grounds of discrimination within the agency push the agency to focus on the enforcement of competences related to their issues. This can lead to a neglect of the use of other competences of the agency.

*H3: If the government poses new political demands on the agency through changes in its competences or challenges to the use of its competences, the agency enforces competences related to grounds of discrimination which have more resources and a higher standing in the agency and weaker ones will lose their representation in the agency's intervention.*

Although policymakers can pose new political demands on an agency with the abovementioned effects, they are not deterministic for how an agency changes its activities, as shown by the previous examination of the literature. The agency has options, as it can cooperate with its professional community to support its current activities (cf. Scott 1991, 170) gaining additional expertise or resources to intervene in the sector (cf. Ainsworth 2002; Gilad 2008; Pfeffer and Salancik 1987, 43). In addition, the agency can also reorient itself after accepted notions of interventions represented through past policy commitments in the field. The following sections examine my hypotheses in the light of the influence of strong non-state actors and past policy commitments on an agency's intervention.

### ***2.3.2 The Influence of Strong Non-State Actors and Past Policy Commitments on Changes in an Agency's Intervention in the aftermath of New Political Demands***

Since policymakers can pose new political demands on agencies, they can destabilize them through changes in their budgets or staff and changes or challenges to the use of their competences. Agencies have to react to them. First, I conceptualize the influence of strong non-state actors on an agency dealing with new political demands as the explanation for changes in an agency's intervention. Second, I also theorize about the influence of past policy commitments, examined in the previous sections, as an alternative explanation.

This research is based on the assumption that agencies are not self-sufficient (cf. Scott 2003, 197), and are likely to seek cooperations with their environment to replace a potential lack of resources or expertise. In this process, the agency opens up to the influence of its environment. The professional community in the agency's environment can communicate new ideas about areas and modes of intervention to the agency or even make them a prerequisite for the cooperation with the agency, as shown by research (i.e. Gilad 2008; McBride Stetson and Mazur 2000) and theoretical contributions on institutional change (i.e. Boas 2007; Hall 2010; Schmidt 2008). In order to acquire the additional resources or expertise to intervene in the field, the agency can decide to implement activities in this new area and change its intervention.

I understand the professional community of the agency as composed of civil society organizations, interest groups like labor unions or employers' organizations and other stakeholders, which can offer their support to the agency.<sup>5</sup> These organizations can also be found

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<sup>5</sup> Since diversity issues and grounds of discrimination became a topic in the field of labor relations in the 1980s, as shown by Klarsfeld (2012), also employers' organizations and employees' organizations form part of the agency's professional community (cf. De Witte 2010; Falkner, et al. 2008; Sedelmeier 2009, 9).

on the supranational level, as shown by research in the field (i.e. Amiraux and Guiraudon 2010; De Witte 2012; Krizsán, et al. 2014). For instance, networks on the European level like EQUINET, created for the exchange among antidiscrimination bodies in Europe, provide funds and resources to antidiscrimination agencies. While some civil society groups identify themselves with a human rights agenda lobbying for the advancement of a proactive antidiscrimination agenda, others do not strictly support a human rights agenda and lobby for traditional family values, as proposed by Avdeyeva (2009, 161). The latter group is comprised of religious organizations, sometimes labor unions and organizations with a nationalist agenda, which can compromise a pro-active antidiscrimination agenda.

I assume that cooperations between the agency and strong non-state actors explain changes in an agency's intervention, as scholars propose that agencies deal with new political demands via cooperations with organizations in their professional community (i.e. Maggetti and Verhoest 2014; Pfeffer and Salancik 1987; Rommel and Verhoest 2014). In this sense, agencies are likely to use resources or expertise from their professional community to intervene in the field after their resources were cut or their staff was replaced (cf. Ainsworth 2002; Friedland and Alford 1991, 235ff; Pfeffer and Salancik 1987, 43). These cooperations also have an effect on the agency's intervention, as strong non-state actors can influence agencies to include new areas of intervention.

Cooperations between the agency and strong non-state actors can evolve in different ways. They can follow past alliances in the sense that the agency cooperates with actors that continuously had a close working relationship with the agency (cf. Amiraux and Guiraudon 2010, 1703) or with actors that gain access to the agency ad hoc as outsider organizations (cf. Meyer 2003, 7ff). While it is possible that an agency cooperates with traditional allies, this is not seen as evidence



of the influence of path dependence, as traditional allies have a direct impact on the changes in an agency's intervention, not an indirect one through path dependence. The agency's exchange with its professional community can directly cause an integration of modes or areas of intervention.

When a cooperation is established in an agency's activity, I distinguish between civil society and interest groups as mere spectators or as substantially included in the agency's activities via expertise or resources, as proposed by Fung (2006) studying citizen participation (p. 68f). In my analysis, I focus on substantial cooperations, as they increase the likelihood of a non-state actor to integrate new areas of intervention in the agency's activities (cf. McBride and Mazur 2010; Woodward 2003). While these cooperations can be formalized or informal (cf. Rommel and Verhoest 2014, 298), I study how they subsequently influence changes in an agency's intervention.

The agency's professional community is likely to influence the hypothesized effects of new political demands on the agencies. Agencies allegedly seek the support of their professional communities in the aftermath of new political demands and open up to the influence of non-state actors. If strong non-state actors dealing with antidiscrimination gain access to an agency, they are likely to influence it when it changes its intervention (cf. Amenta, et al. 2010; Burstein and Linton 2002, 386; Fung 2006; McBride Stetson and Mazur 2000; McVeigh, et al. 2003). Strong non-state actors, with their additional resources and expertise, are likely to incentivize the agency to intervene in a certain area in the aftermath of new political demands.

*H4: If a strong non-state actor lobbying for a specific ground of discrimination gains access to the agency and interacts with the agency, the agency will support and integrate its concerns in its intervention.*

My case selection, presented in the next chapter, captures the strength of civil society and interest groups operating in the field of antidiscrimination in order to examine which non-state actors are likely to influence the agencies. I assume that a strong non-state actor influences changes in an agency's intervention by lending its support to staff or units within the agency dealing with a specific ground of discrimination.

Apart from cooperations with non-state actors, the literature proposes an alternative explanation for changes in an agency's intervention claiming that past policy commitments influence changes in an agency's intervention. The literature on equality institutions problematized the influence of path dependence by pointing out that relatively new topics such as LGBT discrimination are likely to receive less attention by antidiscrimination agencies if they were not problematized by policymakers in the past (i.e. Alonso 2009; Krizsán 2012; Squires 2009; Verloo, et al. 2012). The literature claims that institutions are more likely to focus their intervention on areas where problems were already identified and political commitments and expertise exist to deal with these problems rather than invest their resources in comparatively new areas of intervention. Past policy commitments manifested in the organizational structure of the agencies can also influence the agency directly by distributing resources and standing to grounds of discrimination within the agency. The agency is unlikely to ignore these expectations manifested within its organizational structure and environment in its intervention.

Moreover, these past policy commitments in the agency's environment and organizational structure should have a particularly strong impact when the agency is exposed to new political demands. As an alternative explanation to the influence of strong non-state actors, I, therefore, assume that past policy commitments incentivize the agency to change its intervention to follow past policy commitments. Following these expectations in the form of past policy commitments

in its intervention should be less threatening to the agency's survival, as these types of discrimination were problematized in the past.

*H5: If past policy commitments problematizing specific types of discrimination exist, they create incentives for the agency to align its intervention with them, particularly when the agency is destabilized after it received new political demands by policymakers.*

If the government reduces the resources of the agency, grounds of discrimination also represented in the public administration should represent comparably safe areas of intervention for the agency, as these types of discrimination were on the political agenda in the past. The agency focuses on grounds of discrimination connected to past policy commitments representing accepted notions of intervention. My case selection in the next chapter examines the type of past policy commitments represented in an agency's environment to understand the direction of the influence of past policy commitments on an agency's intervention. This is tested as an alternative argument to the influence of strong non-state actors.

Concluding from this section, strong non-state actors or past policy commitments arguably influence changes in an agency's intervention when the agency deals with new political demands. This will be tested in Chapter 8. I will show whether the influence of strong non-state actors or past policy commitments better explains changes in an agency's intervention in the aftermath of new political demands. It demonstrates which argument adds to an explanation to understand changes in an agency's intervention in the sense that the agency focuses its activities on new areas proposed by strong non-state actors or retreats from intervening against the discrimination of specific groups to areas where past policy commitments exist.

## **2.4 Concluding Remarks on the Analytical Framework**

The examination of the literature shows that the existing explanations do not sufficiently explain changes in an agency's intervention when the agency is exposed to new political demands. The literature is mostly concerned with external influences on agencies. Although the sociological institutionalist literature focuses on processes within institutions, it is more adept to explain stability in an agency's intervention, rather than change in its intervention. By using the proposed analytical framework conceptualizing strategic decision-making as a process that is embedded in organizational processes and influenced by an agency's environment, I am able to analyze and understand changes in an agency's intervention once the agency receives new political demands.

## Chapter 3: The Research Design and Methods

This chapter briefly outlines the research design of my thesis starting with the measurement of changes in an agency's intervention. For this purpose, I introduce the concept of the scope of equality promotion. The scope of equality promotion shows in which areas of its mandate an agency is active and how. For the measurement of an agency's scope of equality promotion, I examine published reports and information of the agency on its activities. The scope of equality promotion shows what areas the agencies prioritize in their intervention.

Following the description of the measurement of an agency's scope of equality promotion, I develop and operationalize the variables for the analysis. I show how I conceptualize and measure new political demands and the influence of strong non-state actors and past policy commitments on the agency. I identify the channels of influence on the agencies and in which way actors and past policy commitments can drive changes in an agency's intervention.

After having explained the measurement of my variables, I describe how I compare changes in the Austrian, Hungarian and Irish agencies' interventions and influences on them. I present the information in two tables, which form the basis for my comparison. In addition to controlled comparisons, my analysis is based on in-depth case studies to understand what drives actual changes in my cases.

The second part of this brief methodological chapter explains my method of data analysis and collection. I describe how I analyze and compare influences on the Austrian, Hungarian and Irish agency's intervention, and how I collect the relevant information for the analysis. For this purpose, I go into the specifics of the data analysis, the time frame of my study and the data collection.

### 3.1 Operationalizing the Analytical Framework

The operationalization of my analytical framework starts with the conceptualization of changes in an agency's intervention. I describe the type of agency activity, which is included in my measurement to understand priorities in an agency's intervention. Since our understanding of influences on actual changes in an agency's intervention is limited, I subsequently conceptualize the impact of new political demands on the agencies' interventions in addition to the influence of strong non-state actors and past policy commitments. My analytical framework serves to understand why an agency's scope of equality promotion changes in different ways in response to new political demands.

#### *3.1.1 Changes in an Agency's Intervention measured through its Scope of Equality Promotion*

My research presupposes that agencies, if capable, try to implement their mandates, as defined by their institutional designers (cf. Page 2012). Yet, as shown in the previous chapter, policymakers can pose new political demands on an agency through changes in its budget and staff or changes and challenges to the use of its competences. Since the resources of most agencies are limited to begin with and changes in its resources create uncertainties, agencies have to make strategic decisions regarding the way they implement their mandate (cf. Crowther and O'Cinneide 2013, 38). These strategic decisions cause the agency to change its intervention and to seek new priorities.

In order to capture these changes in the agencies' interventions, I analyze an agency's published information on its activities over a period of four years between 2008 and 2011. Along with Carpenter (2010, 833), my research acknowledges that publications as one form of agency output

cannot give a full account of an agency's activities. Yet, publications function as an indicator to understand where the agency subsequently intervenes as a promoter of antidiscrimination (cf. May, et al. 2008, 524). Therefore, I conceptualize the scope of the agency's reported activities as its scope of equality promotion.

As shown in Figure 1, an agency's scope of equality promotion is examined along the three main activities of an antidiscrimination agency listed in EU legislation. This includes its substantial legal support, research, and its advice given to the government (cf. European Communities 2000; 2002). I add a fourth main activity covering the agency's promotional work to these activities to investigate where the agency tried to create awareness through training and information. These four activities were also used as indicators to measure an antidiscrimination agency's activities by other scholars in the field (i.e. Crowley 2013; MacEwen 1997c, 19).<sup>6</sup>

**Figure 2: The Main Activities of the Antidiscrimination Bodies**

Substantial legal support	Research	Promotional work	Advice to the government
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By measuring an agency's scope of equality promotion, I examine whether the agency targets a particular type of discrimination and with what depth of intervention in these activities over a period of four years. Depth of intervention shows how substantially an agency intervenes against a specific type of discrimination. An agency substantially intervenes when it systematically addresses the discrimination of a group in a sector through creating more awareness about a specific problem and ways to remedy the situation. The depth of intervention increases the likelihood that an existing discriminatory behavior is challenged and corrected. For instance, an

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<sup>6</sup> While I analyze the output of the agencies in these four main activities, this study is not a classical evaluation study as defined by Widmer (2006), who presents quality criteria for evaluation research.

activity of an agency has depth of intervention when the agency publishes detailed guidelines for businesses or the government to persuade or guide them to avoid discrimination. While the depth of an agency's activity supposedly increases when a larger group of potential perpetrators is targeted, more specific information is also likely to give clearer guidance to change a discriminatory situation (cf. Mazmanian and Sabatier 1989, 21ff; Zippel 2003, 180). Depth of intervention shows when the agency not only targets but substantially commits to promote antidiscrimination in an area of its mandate.

By analyzing an agency's substantial legal support, I show which cases of alleged discrimination submitted by individuals to the agency receive further support by the agency. An agency can give substantial legal support either in the form of legal representation or by handing down decisions. A few antidiscrimination bodies like the Hungarian body can hand down binding decisions on a discrimination case sanctioning discriminatory behavior (cf. EQUINET n.y.).

Depth of intervention in an agency's substantial legal support is achieved in different ways. An agency can focus on indirect discrimination cases, which require considerable expertise and resources to challenge the discriminatory behavior, as it is more hidden (cf. Krizsán 2004). In indirect discrimination cases, a supposedly neutral criterion such as a dress code is used to disproportionately exclude a group of people from employment, education or other sectors (cf. Holzleithner 2005, 934f). An Austrian legal expert states that indirect discrimination sometimes occurs in situations where the employers are well aware of the legislation but try to avoid complying with the legislation (AT07; 6:8). In addition, an antidiscrimination agency can also achieve depth of intervention by strategically litigating direct discrimination cases. In these cases, the perpetrator clearly identifies a characteristic of a person as the reason for her differential treatment of a potential employee (cf. Holzleithner 2005, 934). The agency, in this case, may



decide to judge or support a substantial amount of cases to increase the awareness about this type of discrimination and that it is not acceptable.

I use contingency tables to identify which groups received substantial legal support by the agencies more frequently. Since the findings are sensitive to slight changes in the data, as the number of cases receiving substantial assistance by the agencies is relatively small, the interpretation of the results faces missing data problems. For instance, adding or removing a gender case from the cases receiving substantial legal support in Austria considerably influences the interpretation of the results. Yet, contingency tables still present the best available instrument to understand the pattern of substantial legal support provided by the agencies to victims of discrimination, as it shows whether groups were supported proportionally by the agencies or they have a strategic focus on groups.

Second, my analysis looks at the research conducted or commissioned by the agencies, as well as the guidelines published by the agencies for businesses and service providers. For instance, agencies can conduct research on the equal pay gap between women and men, or give advice to businesses in the form of recommendations. This means the agency targets this type of discrimination in-depth and establishes a priority on it.

Third, I examine an agency's promotional work, which encompasses the agency's organization and participation in events, conferences, trainings and workshops. I also analyze newsletters, as they work as an outreach instrument of the agencies to inform and create awareness about developments in the field of antidiscrimination. Yet, I do not assign the same promotional value to the issues covered in the newsletters as to direct promotional activities of the agencies such as training. Newsletters are used to gain a fuller picture of how an agency perceives itself and

implements its activities. An agency's promotional work shows where the agency intervenes, but also where it might intervene in the future.

Fourth, I study an agency's advice given to the administration. It shows how the agency embraces its role as a promoter of antidiscrimination indicating areas in need of attention to policymakers. Because of the agency's advice function to the government, it can try to integrate policy issues on the political agenda and create awareness, which also shows considerable depth of intervention in this area.

Since antidiscrimination agencies implement their mandates differently, my measurement does not discriminate against agencies that focus more on research than, for instance, on giving advice to the administration. Scholars like Verloo (2006), O'Cinneide (2002) and Squires (2009, 504), studying antidiscrimination law and bodies, emphasize the necessity of "avoiding an oversimplistic assumption that all types of discrimination are of the same order and, therefore, amenable to the same sort of policy response". For instance, the Dutch Equal Treatment Commission discovered that its decisions on pregnancy discrimination did not have a strong effect on the behavior of employers, as the Dutch agency continuously received cases similar in number and nature. Therefore, by conducting research on the effect of its opinions on employers, the agency changed its strategy to support the enforcement of antidiscrimination provisions (cf. Equal Treatment Commission 2008, 13). The focus of the analysis is placed on priorities in an agency's intervention.

Changes in an agency's intervention are studied through its scope of equality promotion based on its reported activities targeting a specific group or sector over a period of four years. The coverage of one type of discrimination in-depth in one main activity is sufficient to show that the agency intervened in this area of its mandate substantially. Change in an agency's intervention

means that the agency integrates or omits areas and modes of intervention from its activities over the period of investigation.

### ***3.1.2 New Political Demands: Changes in an Agency's Budget or Staff and Changes and Challenges to the Use of its Competences***

The literature review showed that an antidiscrimination agency's scope of equality promotion is likely to be affected by changes in an agency's budget, the replacement of staff, or changes in its competences or obligations to the government or parliament (i.e. Bell 2008; Cormack and Niessen 2005; Gilardi 2008; May, et al. 2008; McBride Stetson and Mazur 2000; O'Cinneide 2002; Spencer and Harvey 2013; Yesilkagit 2004). I conceptualize these changes as new political demands.

I operationalize new political demands as changes in an agency's budget and changes in its staff with expertise in combating discrimination. Policymakers can exchange the leadership of an agency and its expert staff either litigating cases or contributing to the agency's publications. Challenges against an agency's use of its competences are operationalized as direct interferences of policymakers such as formal or informal communications or reported open criticism of policymakers depicting the agency's intervention in a negative light.

The literature proposes that we can expect that the agency receives new political demands by policymakers when political priorities shift. These shifts of political priorities in the field of antidiscrimination are largely assigned to changes in government or the occurrence of some sort of crisis like the financial or economic crises of recent years (cf. Bell 2008; Fung and Wright

2001, 6ff; International Labour Office 2011; MacEwen 1997c, 26; McBride Stetson and Mazur 2000; Sauer 2007; Sedelmeier 2009).

### ***3.1.3 Cooperation, Reorientation and Retreat: Changes in An Agency's Intervention in the Aftermath of New Political Demands***

The examination of the literature showed that new political demands affect an agency's strategic decisions and organizational processes (cf. May, et al. 2008). Existing patterns of decision-making within the agency are challenged and the agency experiences uncertainties regarding the organization of its future intervention. Yet, the literature showed that an agency is not operating in a vacuum. The literature review demonstrated that research identified strong non-state actors and past policy commitments as potential sources of influence on an agency's intervention.

As shown in Chapter 2, Scholars like Pfeffer and Salancik (1987) proposed that agencies deal with new political demands by reaching out to their professional community to gain their support in form of resources, expertise or legitimacy. By reaching out, the agency communicates and cooperates with actors in its professional community. This process of interaction and communication can lead to the integration of areas and modes of intervention in the agency's activities (cf. Woodward 2003). Therefore, actors in its professional community and environment can influence an agency after it received new political demands.

My research design controls for the existence of strong non-state actors and indicates the potential direction of the influence of strong civil society and interest groups on an agency, as it is determined by their individual strength and access (cf. Burstein and Linton 2002; McVeigh, et al. 2003). I establish the strength of non-state actors in the field of antidiscrimination according to

their impact in the field, which is assessed based on reports and publications talking about the activities and the impact of non-state actors. By examining the strength of non-state actors, I conceptualize the direction of their influence on changes in an agency's intervention in the field.

In the analysis, I follow an organization set approach to examine in what way a civil society actor or an interest group participate in the activities of the agencies (cf. Fung 2006, 68f). I study the type of cooperation with external actors in each published activity of the agency and how it impacted the agency's intervention. While some cooperations relied on the agency's funding of external consultancy, some cooperations were initiated by non-state actors offering their resources to enhance the agency's intervention to their areas of interest.

Apart from the influence of non-state actors, my research controls for the direction of the influence of past policy commitments represented in the agency's environment on the agency to test the alternative explanation identified in the literature claiming that agencies are influenced by past policy commitments. In order to understand which type of past policy commitments are represented in an agency's environment, I trace the creation of institutions and the timing of the adoption of policies and programs promoting equality, equal treatment or equal opportunities in Chapter 7, as proposed by scholars in the field (i.e. Krizsán 2012; Squires 2009; Walby, et al. 2012). I control for what type of past policy commitments is represented in the environment of the agency in order to understand how past policy commitments can influence changes in an agency's intervention once it experiences new political demands.

I study the effect of past policy commitments on an agency by examining whether changes in its activities mirror past policy commitments. I search for accepted notions of intervention in the field of antidiscrimination and examine if the agency retreats to these areas of intervention when policymakers pose new political demands on the agencies. In effect, this means that an agency

assigns more resources and priority to combating a type of discrimination, which was problematized by policymakers in the past. Because I also control for the existence of strong non-state actors, I can differentiate between the influence of past policy commitments and strong non-state actors creating salience for intervention in my research.

I test the effects of new political demands by policymakers on changes in an agency's intervention and the influence of past policy commitments and strong non-state actors on the agency after it received new political demands in separate chapters. My analysis helps to understand and explain changes in an agency's intervention once the agency experiences pressure from its policymakers. The two-step analysis demonstrates the significance of the influence of each factor in explaining changes in an agency's intervention.

### **3.2 The Scope of the Study and the Universe of Cases**

I selected four scope conditions informed by previous research to make the antidiscrimination agencies more comparable for the analysis. The four scope conditions for the analysis are a country's EU membership (cf. Chopin and Gounari 2009; MacEwen 1997a), broad mandates of the agencies to target many sectors and groups (cf. Chopin and Gounari 2009; Mazmanian and Sabatier 1989), a country's established experience with public expert bodies in the field of equality or antidiscrimination (cf. Holtmaat 2006), and the overall level of resources available to the agencies at the start of my investigation (cf. Cormack and Niessen 2005; Krizsán 2004; McAllister 2010, 65).

As already outlined in the introduction, the European Union has made the creation of the antidiscrimination agencies mandatory in each member state and has introduced certain minimum

standards for the functions of these agencies. Therefore, a comparison of cases located within the European Union is more suitable than comparing antidiscrimination bodies on a global scale, as the powers and institutional set-ups are similar (cf. MacEwen 1997a). The guidance exercised by the European Union through the aforementioned EU directives offers a kind of control over the duties of the agencies and makes them more comparable. Moreover, the overall legal developments and learning processes in the field of antidiscrimination are supposedly more similar in the member states of the European Union (cf. Chopin and Gounari 2009). The selection of comparator cases within the European Union, therefore, allows for choosing more similar cases, as the European Union has influenced the creation, mandates and evolution of the agencies.

Second, the scope conditions restrict the universe of cases to agencies, which have broad mandates dealing with the discrimination of women, ethnic minorities, LGBT people and so on. Agencies with broad mandates including different target groups and sectors bring more conclusive findings about the changes in an agency's intervention, as discretion is comparably big. Agencies have the discretion to choose and select areas of intervention from their mandates (cf. Mazmanian and Sabatier 1989; O'Cinneide 2002). In order to account for an antidiscrimination body with a broad mandate, the agency has to be responsible for at least three grounds of discrimination. While multiple target groups increase the discretion of an agency in implementing its mandate, it also increases the need for resources and expertise to intervene in the field. This allows for a more conclusive study of changes in an agency's intervention.

Third, the analysis only includes countries that have prior experience with public expert bodies in supporting the implementation of equality or antidiscrimination policies (cf. Holtmaat 2006). Although the Hungarian agency was created as a new institution, the Hungarian administration

already had an Ombudsman institution in place dealing with the rights of ethnic minorities before the creation of the agency (cf. Krizsán 2004; Krizsán, et al. 2014). This scope condition guarantees that discrepancies are not due to the government's lack of experience with agencies or public expert bodies in the field of antidiscrimination.

Fourth, an agency can only operate and implement its mandate if it has sufficient resources to do so (cf. Cormack and Niessen 2005; Krizsán 2004). Resources of the agencies, therefore, should be comparable at the beginning of the analysis, as a lack of resources makes the institutions unable to intervene in the field. In addition to governmental funding for the agency, resources can also be attained through EU funds (cf. Bell 2008; De Witte 2012; Olsen 2010, 67). Because of the substantial financial support of the European Union given to the Hungarian Equal Treatment Authority, the budget of the institution increased during the period of investigation. Only a sufficient amount of resources allowed the agencies to be active promoters of antidiscrimination.

The universe of cases based on these four scope conditions encompasses the antidiscrimination agencies in Austria, Bulgaria, Cyprus, Denmark, France, Germany, Greece, Hungary, Ireland, Lithuania, the Netherlands, Romania and Sweden and the United Kingdom (cf. Chopin and Gounari 2009). By having selected these scope conditions the universe of cases covers most of the agencies which are role model students and prototype examples of effective antidiscrimination agencies in Europe (cf. De Witte 2012). In the next section, I justify why I selected the Austrian, Hungarian and Irish agencies for the analysis.



### 3.3 Controlled Comparisons and In-Depth Case Studies

I used controlled comparisons and in-depth case studies to examine how the agencies changed their interventions in a multi-actor environment when they received new political demands. By using a combination of these two methods, I was able to examine the mechanisms, which led to the changes in the agencies' interventions, while controlling for the direction of the influence and the context in which the changes took place. Through controlled comparisons, I controlled for the absence or presence of factors like the presence of strong non-state actors or past policy commitments supposedly affecting changes in an agency's intervention after it received new political demands. I used controlled comparisons, which correspond to Mill's Method of Agreement and Difference (Beach, Pedersen 2013, 82).<sup>7</sup> The controlled comparisons served, in this sense, for maintaining control over the context in which the changes in the agencies' interventions took place and to make the findings of my case studies more generalizable.

Controlled comparisons as a standalone method would only allow for the superficial confirmation or rejection of explanations about the context in which the changes in the agencies' interventions took place (cf. Gerring 2008, 672f). The use of in-depth case studies and process tracing helped me to identify which sequences of events, decisions and processes actually led to the changes in the agencies' interventions (cf. Bennett and Checkel 2012, 7; Mahoney 2010; Waldner 68f). Case studies also allowed me to understand how a combination of factors incentivized the changes in the agencies' interventions. I reconstructed the causal chains that explained why the agencies omitted areas of intervention after they received new political demands.

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<sup>7</sup> According to this method, two selected cases show the same outcome while the values of the independent variables are different, except for the explanatory variable and vice versa (cf. Gerring 2008, 671ff).

The process tracing applied in this research leaned more towards hypothesis-testing, which means that I relied on the literature as a guidance for key sequences, which allegedly influenced changes in the agencies' interventions (cf. Bennett 2008, 704 f). I was also able to look for variables (cf. George and Bennett 2005, 154) omitted by the literature through studying my cases in-depth (cf. Gerring 2008, 673). The case studies traced the actual impact of the identified explanations on the changes in the agencies' interventions and pointed me in some cases towards alternative explanations (cf. Della Porta 2010). Complementing the individual case studies with controlled comparisons enabled me to study the mechanisms and causal processes in the individual cases, while I maintained control over the context in which the antidiscrimination agencies changed their interventions.

From the universe of cases, I selected the Austrian, Hungarian and Irish antidiscrimination agencies for the study of changes in an agency's intervention, as the Hungarian and Irish agencies were exposed to new political demands during the period of investigation (see Figure 2).<sup>8</sup> In addition to their exposure to new political demands, I also selected these medium-sized antidiscrimination bodies due to feasibility concerns. I defined medium-sized antidiscrimination bodies as institutions with 15 to 50 staff members and a budget of around 2 Million Euro. By introducing this limit to my case selection, I was able to trace changes in the activities of the agencies in more depth.

I included the Austrian case as a control case for the actual influence of new political demands on changes in an agency's intervention, since changes should not occur in this case if only

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<sup>8</sup> New political demands were triggered in Hungary, as a conservative government took office in 2010 (Austrian Federal Chancellery n.y.; Bilefsky 2010; Budge 2008). Moreover, Hungary and Ireland were severely affected by the economic crisis (Barry and Controy 2012; EurActiv 2013; EUROSTAT n.y.-a; n.y.-c). Both countries needed financial assistance and their unemployment rates increased significantly due to the shrinking of their economies.

policymakers cause changes in an agency's intervention. The Austrian agency did not receive new political demands during the period of investigation. The Austrian case helps me to define the circumstances and the direction of the influence of policymakers on agencies. Figure 3 shows how the three antidiscrimination agencies were exposed to new political demands during the period of investigation from 2008 to 2011.

**Figure 3: New Political Demands on the Austrian, Hungarian and Irish Antidiscrimination Bodies**

	Budget cut	Staff replacement	Changes in Competences	Direction of the Changes in the Scope of Equality Promotion
Irish agency before 2009 Austrian agency Hungarian agency before 2010	No/Minor	No	No/Minor	Broadening
Irish agency after 2009	Yes	Yes	No	Retreating (but still comparably broad)
Hungarian agency after 2010	Yes	Yes	Minor	Retreating

Figure 3 shows how and when my five cases were exposed to new political demands. I included the Hungarian and Irish agencies as two cases before the exposure to new political demands and as two additional cases after they received new political demands. The Austrian agency is only represented as one case, as it was not exposed to new political demands during the period of investigation.

Since the antidiscrimination agencies are also embedded in a professional community and a larger environment, my research design controls for the direction of their influences. The contextual variables outline the agencies' exposure to past policy commitments in the field of

equality, equal treatment and equal opportunities and the existence of strong civil society and interest groups in the field of antidiscrimination. Figure 4 shows the variation in these variables for my Austrian, Hungarian and Irish cases.

**Figure 4: Contextual and Control Variables for the Analysis**

	Grounds of Discrimination addressed by Past Policy Commitments	Strong Civil Society and Interest Groups (according to ground of discrimination)	EU Member	Broad Mandate of the Agency	Experience with Public Bodies in the field of Anti-discrimination	Resources of the Agency
Austria	Gender Disability	Gender Ethnicity (Disability) LGBT	Yes	Yes	Yes	Medium-sized
Hungary	Ethnicity Disability	Ethnicity Disability LGBT	Yes	Yes	Yes	Medium-sized
Ireland	Multiple	Ethnicity Disability LGBT	Yes	Yes	Yes	Medium-sized

Figure 4 shows that strong non-state actors in the field of antidiscrimination existed in all three countries. Moreover, civil society and interest groups were quite strong in combating ethnic and disability discrimination in all three countries. While Austria has strong employees' organizations helping to enforce women's employment rights, LGBT NGOs are also actively involved and influence developments in the three countries, as further explained in Chapter 7. The influence of strong non-state actors on changes in the agencies' interventions in the aftermath of new political demands is examined in much detail in Chapter 8.

In addition, Figure 4 also shows that the three countries have different past policy commitments in the field of antidiscrimination. While the Austrian and Hungarian policymakers problematized the discrimination of single groups, Irish policymakers problematized the discrimination of many different groups. These differences should influence changes in the agencies' interventions.

My study uses two within-case studies to examine the changes in the Hungarian and Irish agencies' interventions before and after the exposure to new political demands. These two within-case studies allow me to test the impact of new political demands on the agencies while I maintain control over all contextual variables, which is not possible in a cross-country comparison to the same extent. Furthermore, I examine how strong non-state actors and past policy commitments affected changes in the agencies' interventions before and after they received new political demands.

In addition to within-case studies, I also conduct cross-country comparisons. I chose to construct my research design in a way that it presents a strong test to the influence of strong non-state actors making their influence more unlikely. This way I can show whether past policy commitments represent a completely independent influence or strong non-state actors nevertheless play a crucial role in influencing an agency's intervention when the agency needs to deal with new political demands. The cross-country comparison of the Hungarian and Irish cases before and after the exposure to new political demands helps me to understand the actual influence of past policy commitments on the agencies' interventions when they received new political demands. Figure 3 indicates that both agencies omitted areas of intervention after they received new political demands. Figure 4 shows that, different from Hungarian policymakers, Irish policymakers tackled and problematized different and more types of discrimination through policies, institutions and programs in the past. The exercised control in my research design

predicts that the direction of the changes in the agencies' interventions should be affected by these differences in past policy commitments between the two cases.

Moreover, the Austrian case is a crucial comparator and test case of the influence of past policy commitments, as its organizational structure assigns more resources and importance to women's issues.<sup>9</sup> In addition, Figure 4, capturing the past policy commitments in the three countries, shows that Austria and Hungary developed structures and policies to promote the equality of single groups like women in the case of Austria, and the Roma in the case of Hungary in the past. The comparison between the Austrian and Hungarian cases tests how new political demands in combination with strong non-state actors and past policy commitments focused on single groups affected changes in the agencies' interventions.

The comparison of the Austrian and Irish cases also tests how new political demands in combination with strong non-state actors and past policy commitments can explain the changes in the agencies' interventions. The two countries have strong non-state actors lobbying for antidiscrimination, particularly in the field of ethnic minority rights and anti-racism. Yet different from the Austrian-Hungarian comparison, Ireland supported more groups through its past policy commitments in the past. If past policy commitments affect changes in an agency's intervention after they receive new political demands, the differences between the cases should show in the analysis.

A more detailed analysis and explanation of the type of past policy commitments and non-state actors represented in the agencies' environment is provided in Chapter 7. Moreover, I study their influence on changes in the agencies' interventions after having received new political demands

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<sup>9</sup> Yet, the organizational structure as a factor influencing changes in an agency's intervention should not influence changes in the agency's intervention if the research design holds.

in Chapter 8. I use the abovementioned controlled comparisons to study and compare the findings in my cases.

### **3.4 Time Frame of the Analysis**

My research covers a period of four years starting in 2008 and ending in 2011. The International Labour Office (2011) proposed in one of its reports that the 2008 economic crisis led to a shift in political priorities, which caused political interferences in the antidiscrimination agencies' capacity. Therefore, I chose the beginning of the financial crisis as my starting point, since I wanted to capture the effect of new political demands on the agencies triggered by shifting political priorities. In addition, my research covers a four-year period in-depth in order to detect actual changes in the way an agency intervenes in the field of antidiscrimination.

### **3.5 Data Collection**

I collected reports from the agencies, public administrations, and non-state actors, as well as from European and international organizations such as the European Commission against Racism and Intolerance. I analyzed the reports to examine changes in the national policies, programs or institutions, and the agencies' activities over time. The reports are complemented with secondary literature to embed the research in the larger historical and research context. The inclusion of this literature allows me to use and build on previous research in the field of equality institutions and regulation and to make my research relevant to other scholars.

The use of a combination of expert and elite interviews in my research allowed me to acquire a more coherent understanding of the processes and dynamics in the agencies when they received new political demands. I used semi-structured expert and elite interviews to obtain in-depth information on the processes inside and outside the agencies. I approached experts and staff members working in interest groups, civil society, the public administrations and the antidiscrimination agencies to conduct my interviews. I defined experts as individuals with a comprehensive knowledge of the processes and dynamics within a policy sector. In contrast, staff members or the elite are identified by their specialist knowledge and decision-making power within the respective agencies or the public administrations.

I applied purposive and snowball sampling to select my interviewees. Elites were identified via documents and reports in order to guarantee their first-hand knowledge and participation in crucial events connected to the agency (cf. Littig 2009). My selection of experts mostly relied on snowball sampling through the national network of human rights activists. A list of organizations and institutions where the interviewees worked during the period relevant for the investigation is given in Appendix G.

While seven interviews were conducted in the Austrian case, a total of ten interviews were conducted in the Hungarian and Irish cases. Each interview lasted for about one hour and was based on a topic guide. Yet if the interviewees gave additional information on relevant events, I did not interfere in the flow of the interview. The number of interviews depended on the richness of the collected data. Since a large number of staff in the Hungarian and Irish agency was replaced, more interviews were necessary to reconstruct the processes and dynamics within and outside the agencies.



### 3.6 Data Analysis

Since the literature offered explanations to understand the influence new political demands on an agency's scope of equality promotion, my thesis applied process tracing, which leaned more towards hypothesis-testing (cf. Bennett 2008, 704). I used the literature as a guide to validate whether the evidence collected in each case could explain the outcome. The more unlikely it is to find the collected evidence, the more my confidence increased in the explanatory power of my findings. As suggested by Collier (2011, 826ff), my research implemented various hoop tests to increase my confidence in rejecting alternative explanations about changes in an agency's intervention and to test the evidence against what was known about developments in the field of antidiscrimination in Austria, Hungary and Ireland.

Since process tracing lacks systematization (cf. *ibid.* 823), a short example drawn from my Hungarian case study shows how I implemented process tracing. The data analysis shows that the Hungarian Equal Treatment Authority addressed disability, ethnic, gender and LGBT discrimination in its activities in 2010. This is surprising, as the case study shows that the agency received new political demands in 2010 and the Hungarian government opposed enhancing LGBT rights. Moreover, past policy commitments neglected LGBT discrimination in the past and civil society, although strong, had no direct access to the agency. We would not expect to find LGBT discrimination as a target of the agency's intervention. The inclusion of LGBT discrimination in the agency's intervention is counterintuitive.

Yet, the examination of the literature proposed that strong non-state actors can gain access to an agency granting them influence on its intervention when the agency wants to acquire additional resources. The analysis of the collected evidence in form of elite and expert interviews in the Hungarian case showed that LGBT issues became covered in the agency's intervention because

of strong non-state actors, helping the agency to gain additional funding, integrated this issue on the agency's research agenda. The evidence shows that we can have a strong confidence in this finding.

While I transcribed the collected evidence from interviews without any software programs, I used directed qualitative content analysis and the software program Atlas.ti for the analysis of the interview data. Directed qualitative content analysis means that I used codes, which I borrowed from the literature to analyze the interview data (cf. Zhang and Wildemuth 2009). Yet, I also derived new codes inductively from the data. Atlas.ti proved particularly helpful in the systematization of the coding of the interview material across cases, as I was able to crosscheck the information contained within the codes. The systematic analysis of the interview data via the Atlas.ti software enabled a more consistent and coherent analysis of influences on the changes in the agencies' interventions.

### **3.7 Concluding Remarks on the Research Design and Methods**

This brief methodological chapter outlined the operationalization of my analytical framework, and the application of my methods. I explained the measurement of changes in an agency's intervention, the so-called scope of equality promotion. Moreover, I operationalized the contextual and 'new political demands' variables. The selection of my methods underlines the qualitative nature of my research design, which allows me to analyze changes in the agencies' interventions in-depth.

## **Chapter 4: The Evolution of Antidiscrimination as a Policy Field in Europe and the Creation of the Antidiscrimination Agencies**

Antidiscrimination first emerged as a policy concern on the European political agenda to promote the mobility of people within the European Union in the 1970s. These policies were followed by more comprehensive laws and strategies later in the late 1990s. While the EU adopted two Council directives dealing with the equal treatment of women and men in employment and pay in the 1970s (cf. De Witte 2010, 1718ff), it only started to adopt more comprehensive and far reaching laws in the 1990s. Apart from laws, European policymakers adopted action programs, recommendations and framework strategies to promote antidiscrimination. For instance, the EQUAL initiative (2001-2008) supported many projects dealing with antidiscrimination in the EU member states (cf. Amiraux and Guiraudon 2010, 1695). Importantly, the Article 13 of the EU Treaty of Amsterdam, which came into force in 1999, introduced antidiscrimination as a legal principle on the EU treaty level and prohibited discrimination on various grounds such as age, sexual orientation and others.

Since the Article 13 left the EU member states with considerable discretion to interpret this new legislation aimed at the protection of various groups against discrimination (cf. *ibid.* 1691 ff), antidiscrimination as a new legal concept and policy field was ambiguous and needed further interpretation. Although many member states had legislation dealing with the discrimination of some of the groups covered by this new EU legislation in place, many of them had no comprehensive antidiscrimination policy dealing with many different groups. For instance, Austria dealt with women's equal treatment from early on and designated public bodies to support women's equal treatment, like the Swedish, Dutch and Irish administrations (cf. Bell

2003a; De Witte 2012, 2; EQUINET 2012b; Goldschmidt and Goncalves 1997, 143). Yet, this legislation initially did not extend to groups other than women.

In addition, some member states were also experienced in the fight against ethnic discrimination. Prior to the European Union's promotion of antidiscrimination, the Belgian, British and Hungarian governments already had public bodies in place to advocate against ethnic discrimination (cf. Krizsán 2000; Squires 2009; Verloo, et al. 2012). The United Kingdom designated its body as early as in the 1970s (cf. De Witte 2012, 2ff). Countries like Ireland or the Netherlands even developed a more comprehensive antidiscrimination agenda and infrastructure covering many groups in the 1990s (cf. EQUINET 2012a; Goldschmidt and Goncalves 1997, 143). Yet these are mere exceptions. For many member states LGBT people, senior citizens and religious minorities were completely new target groups in the field of antidiscrimination (cf. Bell 2008, 36). A comprehensive antidiscrimination agenda was missing. Antidiscrimination policy as a rights-based approach for individuals was new and needed further interpretation.

Some member states also had to completely change their approach on how to improve the situation of groups targeted by the EU legislation. For instance, many governments had laws in place to compensate disabled people for their impairments. Different from an antidiscrimination approach, they were not entitled to claim access and participation in employment or other areas through these policies (cf. Bielefeldt 2009, 4). Antidiscrimination as a rights-based approach changed this and member states had to adapt their existing policies to the new legislation.

European policymakers adopted the Council directives 2000/43/EC and 2000/78/EC and amended the Council directive 76/207/EEC in the 2000s to support EU member states in their interpretation of this new antidiscrimination legislation. The directives promoted the antidiscrimination of groups as diverse as disabled people, women, ethnic and religious

minorities, LGBT people and senior citizens. Yet, the duty to designate public bodies to promote the enforcement of these provisions was only included in the Council directives 2000/43/EC and the 2002/73/EC<sup>10</sup> dealing with ethnic and gender discrimination (cf. Bell 2008, 40).

Although the bodies only needed to address gender and ethnic discrimination, most member states extended their mandates to cover LGBT people, disabled people and religious minorities (cf. Chopin and Gounari 2009). While these groups are protected against discrimination by the Council directive 2000/78/EC, there is no obligation to include their protection in the mandates of the antidiscrimination bodies. Yet, by including these duties, the antidiscrimination bodies could extend their legal counseling to alleged victims of discrimination on these grounds and address their discrimination in their research and advice to the government. The bodies had to support the implementation of the aforementioned provisions for a more comprehensive group of potential victims of discrimination (cf. De Witte 2012, 10). The duties of the bodies were again extended by the directives 2004/113/EC and 2010/41/EC, which protect women against discrimination in the provision of goods and services and self-employment. We find that antidiscrimination bodies have broad mandates with the possibility to support the enforcement of antidiscrimination provisions in different areas and for different groups. Yet, apart from these laws and policies, it remains unclear how these bodies embraced their extended mandates.

The introduction showed that antidiscrimination emerged as a comprehensive policy field on the European level in the 1990s. The various laws and policies also included the duty to designate enforcement bodies for the promotion of these policies. The following sections investigate how and in which format Austrian, Hungarian and Irish policymakers created these bodies to promote

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<sup>10</sup> Later amended through the so-called Recast Directive 2006/54/EC replacing the Council Directives 76/207/EEC, 86/378/EEC, 5/117/EEC and 97/80/EC (cf. European Communities 2006).

antidiscrimination. I study and compare their competences and organizational structures to understand how they can potentially address antidiscrimination. This examination lays the groundwork for the analysis of changes in their intervention, as it shows how these agencies can act and how they can be exposed to interferences in their intervention in Austria, Hungary and Ireland.

#### **4.1 The Austrian Agency's Capacity and Limitations to intervene against Discrimination**

The Austrian antidiscrimination agency was created in 2004 out of the previous gender equality body established in 1991 by an amendment of the Equal Treatment Act, BGBl Nr. 410/1990. The newly reformed antidiscrimination agency was made responsible for supporting the enforcement of antidiscrimination provisions concerning women, ethnic and religious minorities, senior citizens and LGBT people in employment. These competences were amended subsequently to extend its mandate to fight women's discrimination in access to goods and services and housing, as defined by the amended BGBl. Nr. 98/2008. Its duties to ethnic minorities already included these provisions since 2004, which even extend to education and social protection. By reforming and creating the antidiscrimination agency, Austrian policymakers established a hierarchy of protection against discrimination with gender and ethnicity at the top.

According to its powers, the Austrian antidiscrimination agency can support the aforementioned groups through its legal counselling, its promotional work, by conducting research, or by providing advice to the government. The antidiscrimination agency did not receive the duty to deal with disability discrimination, as these competences were given to the Federal Social Office

and its regional representations (cf. EQUINET 2012b). Disability cases have to undergo a mandatory conciliation procedure at these offices (cf. ZARA – Zivilcourage und Anti-Rassismus-Arbeit 2008, 28). The antidiscrimination agency cannot enforce disability rights, but promote the antidiscrimination of ethnic or religious minorities, senior citizens, women and LGBT people.

In its legal counselling, henceforth called its substantial legal support, the agency can provide information or mediation (AT02; 2:31) or start a procedure before the Equal Treatment Commission (henceforth: the Commission) in the name of someone, who claims to have experienced discrimination. The Commission itself is a separate body filled with experts from the Austrian public administration and social partners (cf. Austrian Equal Treatment Commission n.y.). It gives its expert opinion on alleged discrimination cases, which, however, is not binding and does not force the perpetrator to end the discrimination. The body cannot force the perpetrator to compensate the victim for the experienced discrimination. Although its opinions are not binding, bringing cases to the Commission is the final step of legal support the agency can offer to alleged victims of discrimination, as the agency does not have the competences to directly represent alleged victims of discrimination at courts (cf. EQUINET 2012b; Schindlauer 2012, 72 f).

Although limited in sanctions, the expert opinions of the Commission, however, help the agency to support victims in understanding whether they have experienced discrimination free of charge, and raise awareness about discrimination (cf. Austrian Ombud for Equal Treatment 2010, 23). Knowing whether a case has chances of success can be a crucial, as an alleged victim of discrimination faces the risk of high legal costs if he or she loses the case at court (cf. Frey 2005,

65).<sup>11</sup> Moreover, judges in subsequent court procedures need to take the Commission's opinion into consideration when declaring their judgement (cf. Schindlauer 2012, 73).

The agency also publishes the Commission's opinions on its website routinely to inform and educate employers, stakeholders and employees in the private sector on discrimination. The agency informs them about the nature and level of discrimination through supporting cases in front of the Commission and publishing them. They help individuals, stakeholders and policymakers to recognize discriminatory behavior in a given sector. The agency can actively guide this awareness raising by supporting and bringing cases to the Commission. Yet, it can only do so if the discrimination falls within its duties. The agency can give support to women and ethnic minorities in more sectors compared to groups like LGBT people, as its powers are limited. The agency has more powers to support women and ethnic minorities to fight their discrimination.

Policymakers further reinforced this hierarchy with gender and ethnicity at the top in 2011. Having only weak enforcement powers also in other areas, the agency has the right to participate in the Commission's meetings, investigate discrimination in a business on site with the authorization of the Commission, and ask for written statements of accused perpetrators in alleged discrimination cases in addition to supporting cases. In 2011, policymakers slightly extended the powers of the agency to combat the discrimination of women. Since 2011, the agency can also ask social insurances to provide data on the salaries of employees in order to investigate a case of unequal pay, as defined by BGBl. I Nr. 7/2011. Policymakers extended the

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<sup>11</sup> Specifically in areas where the interpretation of the law is under-developed and the outcome of the case is uncertain, this procedure can help individuals to obtain information and an official opinion by an expert body to see whether the case can be won in front of a court.



agency's powers to protect women against discrimination, as equal pay cases are mainly framed as women's concerns in Austria in 2011.

Looking at its organizational structure, the agency has four regional offices in addition to its main office in Vienna, which were established between 2000 and 2002 (cf. Austrian Government 2004, 18), to support the agency in different locations and deal with gender discrimination. As defined by Article 2 of the BGBl. I Nr. 7/2011, the competences of the regional offices do not include areas of action other than gender discrimination. This is further evidence that the agency had more opportunities to combat the discrimination of women than the discrimination of other groups.

The interview data confirm and show that the agency's origin in the field of gender equality left its imprinting on the Austrian agency. Resources to fight gender discrimination are, in comparison, more extensive. This is partly due to the fact that the Austrian policymakers reformed the existing gender body in 2004 by adding two organizational units to the agency's main office in Vienna. The office subsequently consisted of the previous gender unit, with an extended mandate to cover the multiple discrimination of women (gender+ discrimination) in employment, one new organizational unit dealing with gender and ethnic discrimination outside employment, and another new one for age, ethnic, LGBT and religious discrimination in employment. The previous gender equality body became a separate unit in the reformed agency (cf. Austrian Ombud for Equal Treatment n.y.).

While each of these three separate organizational units received a manager, who also is the legal expert or Ombuds(wo)man in this area of the law,<sup>12</sup> the previous director of the gender equality body became the director of the agency (cf. *ibid*). The choice of leadership and integration of the new competences and organizational units in the main office of the Austrian antidiscrimination body naturally led to uncertainties concerning the relationship between gender and the agency's new duties in the field of age, ethnic, religious and LGBT discrimination, as indicated by an Austrian expert.

The Ombud for Equal Treatment in Austria yet had its origin in the field of gender, which was relatively well developed, at least in terms of staff, and then they added the other parts which principally had no staff.”

(AT05; 4:3)

Since the agency's expertise and resources were solely used to combat the discrimination of women in the past, the integration of the new competences raised the issue of how the resources should be redistributed among the new organizational units. Since the previous head of the gender equality body became the director of the agency, she was responsible for managing the reform of the agency (cf. Austrian Ombud for Equal Treatment n.y.). The gender unit was in a strong position to organize the reform of the agency.

The process of how the agency made sense of its new duties was relatively untouched by political interference. The Austrian Chancellor only had the powers to appoint and dismiss the director of the Austrian Ombud for Equal Treatment (cf. EQUINET 2012b). Therefore, the input of policymakers ended after the reform of the agency was put in motion. Until 2011, the Austrian equal treatment law guaranteed that the managers of the agency remained independent (cf.

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<sup>12</sup> Each manager or Ombud(wo)man of the agency is supported by assistants, who work as first contacts for the public. After the first contact with the assistants, potential cases are forwarded to the legal experts and counsellors (AT01; 2:3).

Austrian Government 2008, 26 f). Only with the amendment of the equal treatment legislation, Article 2 of the BGBl. I Nr. 7/2011 in 2011, did the Chancellor obtain the right to information concerning the management of the agency.

Moreover, the Federal Chancellery only indirectly influenced processes after the agency's reform in 2004 by assigning its budget and by hiring its new staff, who automatically became public servants. The Ministry for Women's Concerns located in the Federal Chancellery was responsible for the agency throughout the period of investigation, according to Article 2 of the amended Equal Treatment Act, BGBl. I Nr. 98/2008 and its EQUINET profile (2012b). Although the agency never had the right to employ its own staff, one of the interviewed managers pointed out that the agency's management was informally involved in the selection of staff in the past (2:20). A report (2012), assessing the situation of the agency shows that policymakers considerably impacted the agency, as it was kept on a limited budget making it difficult for the agency to embrace its new duties (p.90).

Moreover, the affiliation with the Ministry for Women's Concerns indirectly reinforced the centrality of the discrimination of women for the agency's work. A lawyer of the agency specialized on discrimination other than gender describes the agency's affiliation with the Ministry for Women's Concerns as a historical legacy rather than a necessary connection to promote antidiscrimination, as shown by the following quote.

“Yes, at the moment we are part of the women's unit because it historically evolved in this way. (...) We do not really fit in the women's unit anymore in the meantime because we also have grounds of discrimination other than gender, but it evolved in this way.”

(2:75)

Another interviewee working in the Ministry for Women's Concerns is more outspoken and describes the challenges faced by the agency because of its affiliation.

“The Minister for Women frames everything along gender, and that is not right. (...) I think it was their ambition [of the agency staff] to abandon the gender focus, which is surely still the strongest. (...) They wanted to position themselves broader.”

(11:14)

The critical remarks of the agency’s staff member and the public servant on the agency’s ministerial affiliation and the examination show that the agency had a strong organizational and historical disposition to prioritize the discrimination of women in its work. The examination showed that the unit dealing with gender discrimination had a central position within the Austrian agency. Chapter 5 will show how this priority given to women’s discrimination in the powers and organizational structure of the agency affected its intervention and changes therein. Women’s concerns have a strong representation within the agency and are likely to dominate the agenda.

## **4.2 The Hungarian Agency’s Capacity and Limitations to intervene against Discrimination**

Although it was debated whether the new Hungarian antidiscrimination agency should be created out of the existing Ombud for Minorities in Hungary, the Hungarian government decided to create a new antidiscrimination agency in 2005 (HU03; 4:37). The Minorities’ Ombudsman, in existence since 1995, heard complaints and started ex officio procedures in alleged discrimination cases in the public sector in the past (cf. Parliamentary Commissioners’ Office 2008, 5). Although it was not able to provide support to victims of discrimination nor sanction discrimination (cf. Kádár and Farkas 2003, 5), it created awareness by informing public institutions about the discrimination of ethnic minorities in private entities (cf. Bozoki and Simon 2006, 164). Moreover, it presented its annual report in parliament and worked with parliamentary committees and civil society (cf. Parliamentary Commissioners’ Office 2008, 9ff). There was

considerable expertise on combating ethnic discrimination represented through this body. Nevertheless, a new agency was created in 2005 responsible for combating the discrimination on seven-teen grounds of discrimination among them age, gender, ethnicity, religion, disability and sexual orientation in sectors such as employment, education, housing, social protection and access to goods and services by the Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities.

According to the Act CXXV of 2003, the agency can support the enforcement of these provisions through its legal support, research, promotional work and advice to the government. In its legal support to alleged victims of discrimination, the new antidiscrimination agency received the powers investigate discrimination complaints, publish its binding decisions on its website, impose a fine or mediate binding settlements (cf. EQUINET n.y.). Using its powers, the agency starts its investigation when an individual submits an enquiry to the agency. The legal investigation is completed by a decision on the alleged discrimination, a dismissal of the case or a settlement between the two parties (cf. Kádár 2012, 113).

Since the agency has to take its decision within a maximum period of seventy-five days according to Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Rules of its Procedure, the agency is comparably quick and efficient. Labor courts can take up to two years before handing down a decision (cf. Causse 2008, 84). Moreover, the agency's decisions hold no legal costs for the alleged victim of discrimination. Yet, only courts have the power to assign compensation to victims and to repeal the agency's decisions (cf. EQUINET n.y.). While the agency can impose a fine, it goes to the budget of the agency and not to the victim according to Article 14 of the Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Provisions of its Proceedings. Since a legal expert states that a victim

of discrimination is more likely to receive compensation at court if discrimination was already established by the agency (HU01, 2:7), the procedure of the agency still has merit. Moreover, the agency has the power to order the termination of the discrimination and to publish its binding decision on its website (cf. Kádár 2012, 137).

Apart from its support to individuals, the agency was also given the powers to address discrimination systematically by bringing *actio popularis* cases and starting *ex officio* procedures (cf. EQUINET n.y.). Moreover, it was also enabled to support other public bodies if their decisions on discrimination cases were challenged. For instance, the Minorities' Ombudsman can investigate cases of ethnic discrimination in the public sector (cf. Kádár 2012, 130) and ask the agency for its support. The newly created agency operated in an environment where some of its competences were shared with other bodies, but it did not impact on the agency's own powers.

Like its powers, the agency's organizational structure shows no trace of path dependence in the field of ethnic minority rights, as it does not assign more resources to specific grounds of discrimination. The only formal division within the agency is function-specific. It is formally divided into a legal department for discrimination complaints, a finance department, a secretariat and a research unit since 2009 (cf. Hodasz and Scullion 2007, 6; HU04; 05:07). The agency used the more than three million Euros in financial support from the European Social Fund and the Hungarian government, called the TAMOP project, assigned for a period of four years (cf. Kádár 2012, 132ff) to create a research unit, to offer training and to achieve some level of regional representation apart from its main office in Budapest through the establishment of equality referees in each Hungarian county in the period between 2009 and 2011. Like the organizational units of the agency, these referees were not specialized on specific grounds of discrimination (cf. Pánczél 2014, 66).

The lack of specialization according to areas of expertise within the agency is exemplified through the organization of expertise in its legal department. The interview data shows that the manager of the legal department assigned discrimination cases to legal officers in the agency at her discretion. There was no specialization of legal officers on particular types of discrimination such as age discrimination within the agency (HU04; 5:1). The agency did not privilege the accumulation of expertise on particular grounds of discrimination in its organizational structure nor in its legal work. While a twinning report (2007) shows that there was an informal division of labor within the agency's legal department, it was again function-specific. Lawyers were responsible for different duties such as the representation in parliamentary committees, the drafting of international reports, the representation in international and transnational networks and the exchange with the regional Houses of Equal Opportunities (p. 7).

The management of the agency was headed by a president, who could be removed by the Prime Minister at any given time to appoint a new one after a joint recommendation for the position by the Minister of Justice and the Minister of Social Affairs and Labor according to Article 2 of the Government Decree 362/2004 on the Equal Treatment Authority and the Detailed Provisions of its Proceedings.<sup>13</sup> While the president of the agency was directly in charge of the TAMOP project (cf. E01), the legal and finance departments had separate managers. Different from the Austrian case, the head of the Minorities' Ombudsman was not appointed as the new leader of the antidiscrimination agency. Yet, the first president of the agency had prior work experience in managing legal support services for Roma and was not appointed when a Fidesz-led government was in office (cf. Hungarian Business Leaders Forum 2010, 26). The Prime Minister's powers to

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<sup>13</sup> The appointment procedure of the head of the agency was changed in 2011 by Article 35 of the amended Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities transferring the actual appointment to the Hungarian President after the sole recommendation of the Prime Minister.

remove the agency's president give the administration ample opportunities to interfere in the agency. For this reason, the 2009 ECRI report depicts the agency as under "ministerial direction" (p. 19).

While the president of the agency also exercised employer's rights over the agency's staff, according to Article 2 of the Government Decree 362/2004, this function was limited by the agency's budget. The budget of the agency consisted of three different funding streams throughout the period of investigation. While part of the agency's resources came from the budget assigned by its parent ministry, as defined by Article 34 of the Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities, the agency was also able to keep half of the revenues gained from fines until 2009, as regulated by Article 14/A of the Government Decree 362/2004. Since October 2009, however, the legal officers of the agency were "obliged to try to forge a friendly settlement among the parties" (Kádár 2012, 116f).<sup>14</sup> The third funding stream was the aforementioned EU funding implemented through the TAMOP project. We find that the agency's funding opportunities became more limited over the period of investigation.

In addition, the management of the agency also consisted of an advisory board filled with experts representing and providing their specific expertise on discrimination from the non-state sector to the agency until 2012 (cf. *ibid.* 133).<sup>15</sup> According to Article 17/C of the original Act CXXV of 2003 on Equal Treatment and the Promotion of the Equality of Opportunities, NGOs were involved in the appointment procedure of the board members, as they could recommend experts to the Ministers who were responsible for proposing candidates to the Prime Minister. While

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<sup>14</sup> The agency's practice shows that it imposed fines between €1000 and €17000 during (cf. *ibid.*; p.129).

<sup>15</sup> I do not consider the agency's advisory board as its staff members.



expertise on Roma, children's, and disability rights enforcement became well represented on the board through the appointments,<sup>16</sup> mirroring the strength of civil society in these areas as will be shown in Chapter 7, expertise on gender equality was not well represented by the professional background of the board members. We find that the advisory board led to the representation of expertise on specific grounds of discrimination in the agency.

The analysis of the Hungarian agency's competences and organizational structure shows that the agency does not give priority to specific grounds of discrimination. While the head of the agency has considerable discretion over the agency's management, there is no compartmentalization of expertise or power within the agency. The powers of the agency's president are only limited by the Prime Minister. The agency significantly depended on the Hungarian administration concerning its budget and staff. The only trace of expertise on specific grounds is found through board members, and the professional background of the president of the agency. Chapter 5 shows how this affected the agency's intervention and changes therein. As it stands, the organizational structure of the agency provides ample opportunities for grounds of discrimination to compete for resources and standing within the agency, as it is not pre-determined by policymakers.

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<sup>16</sup> The advisory board members were Dr. Maria Herczog; (Sociology lecturer and activist for the rights of the child); Dr. Thomas Gyulavári; (Professor in labor law; interested in age and disability discrimination); Dr. György Szigeti (Attorney); Dr. Jozsef Karpati; (interested in national and ethnic minority rights); Dr. Andras Kristof Kadar; (worked for the Hungarian Helsinki Committee on Roma rights); Dr. Lilla Farkas; (worked for the Chance for Children Foundation and the Hungarian Helsinki Committee) and Dr. Bernadett Somody (Researcher on fundamental rights).

### 4.3 The Irish Agency's Capacity and Limitations to intervene against Discrimination

The Irish Equality Authority was created out of the existing Employment Equality Authority in 1999 by the Employment Equality Act of 1998, which expanded its duties from women to ethnic and religious minorities, Travellers, disabled and LGBT people and senior citizens. Since its reform the agency also deals with the unequal treatment of individuals based on their marital and family status (cf. Armstrong, et al. 2008, 58; EQUINET 2012a). The previous gender equality body, the Employment Equality Authority, only had the responsibility to deal with women and to oversee the implementation of the Equal Pay and Employment Equality legislation. It was rather short on resources and staff (cf. Good 2001, 216ff). With the creation of the Equality Authority in 1999, Ireland got an antidiscrimination body with the duties to help various disadvantaged groups to fight against discrimination (cf. Bell 2008, 40). The new antidiscrimination agency was made responsible to support women, ethnic and religious minorities, senior citizens, disabled and LGBT people to combat their discrimination in employment, education, housing, social protection, access to goods and services and discriminatory advertising (cf. EQUINET 2012a) without establishing a priority on one group.

Different from the Austrian agency, the Irish agency's gender origin was abolished with its reform. The previous head of the agency did not become the leader of the new agency. Moreover, the organizational structure of the Equality Authority is divided according to functions not areas of expertise (cf. Crowley 2010, 7f). The agency has six specialized units divided in legal service, a development section responsible for the agency's practical support to organizations, a communications section, an administration section, a research section and an equality mainstreaming unit. The agency had no regional offices, although it achieved some regional representation through cooperations with the Irish public service in the regions (IE06; 4:40).

The head of the agency, officially referred to as the Chief Executive Officer, plays a central role for the agency, since he or she manages and supervises “the staff, administration and business of the Authority”, as defined by the Employment Equality Act 1998 Section 49.<sup>17</sup> He or she is central to the agency’s legal work, as he has the power to pick strategic cases of alleged discrimination, which subsequently receive substantial legal support from the agency (cf. Equality Authority n.y.). Yet, before reaching the head of the agency, the cases had to pass through a variety of administrative steps, as described by an interviewee.

“We (...) have a couple of tiers. We have administrative support staff with a public information center and they would be trained in the law. (...) They gather up a certain amount of information. The manager of that center will then liaise with the manager of the legal services center and they discuss the case. (...) Then they prepare the file for the solicitor. When the solicitor reads the file and thinks there is something (...) then that's when the preliminary authorization goes in. So they are formally then on our system (...). Usually (...) the cases that get on the system are the ones that are going to progress unless something happens.”

(2:62)

The agency had the powers to support strategic cases in front of courts or the Equality Tribunal<sup>18</sup> to obtain a binding decision, to bring a case in its own name, to act as an *amicus curiae* in a court procedure or to negotiate settlements for its clients. Yet, it could also just simply provide information to alleged victims of discrimination (cf. EQUINET 2012a). The agency used its substantial legal support purely for strategic reasons, as the procedure in front of the Equality Tribunal is free of charge and without the need of having a legal representative. Moreover, free legal advice centers existed in Ireland during the period of investigation supporting alleged victims of discrimination, who wanted to claim their right (cf. Bell 2003a). A staff member of the

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<sup>17</sup> These duties were not changed by the Equality Act 2004.

<sup>18</sup> The Equality Tribunal was created with the adoption of the Employment Equality Act alongside the Equality Authority to hand down decision on alleged discrimination cases in employment and the provision of goods and services. It is the impartial judge besides the Equality Authority, which was created as a promoter of antidiscrimination. The Equality Tribunal is free of charge for alleged victims of discrimination to bring their cases (cf. Council of Europe n.y.).

agency confirms that the agency supported cases when they were strategically important to the agency.

“If (...) [the head of the legal section] feel[s] that the judgement goes beyond the impact of the individual (...) then we can go in on that case.”

(2:66)

Importantly, there were no units with specific expertise on grounds of discrimination within the agency guiding this process. The head of the agency strategically selected these cases. The data shows that the newly hired CEO for the agency came from the Traveller rights movement (cf. Crowley 2010). This is further evidence that the gender origin of the agency was abolished.

Apart from its legal support to individuals, the agency also had the powers to ask employers, businesses or providers of goods and services to carry out equality reviews or to prepare an equality action plan with the approval of the Minister according to the Article 69 Part VI of the Employment Equality Act 1998. It was able to develop and conduct these on its own initiative only in the areas of education and access to products and services. It could also ask the Circuit Court for the enforcement of the decisions of the Equality Tribunal (cf. EQUINET 2012a). The agency was able to support victims of discrimination to fight their discrimination by different means.

The leadership of the agency played a central role in the agency’s decision-making. Yet, the management of the agency also consisted of an advisory board influencing the agency’s intervention.<sup>19</sup> For instance, an employee pointed out that the criteria for selecting strategic cases for the agency’s litigation work were approved by the board (2:3). The agency’s advisory board

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<sup>19</sup> I do not consider the agency’s advisory board as its staff members.

was involved in various activities in the management of the agency, as indicated by a former board member.

“The preparation of a strategic plan, the preparation of the annual report and a fair amount of the work of the organization was preparing policy papers on legislation or guidelines on particular aspects of equality. So, the standard role of a board, I suppose, is strategy, oversight and finance.”

(8:11)

The advisory board of the agency gave its input to the agency’s strategic work and provided the agency with its expertise. Moreover, it was an important platform for the agency to deliberate about the intervention of the agency with its larger professional community and provided access to experts in the field, as the board members came from the fields of disability and LGBT rights; Traveller and ethnic discrimination; employees’ and employers’ interests; education; anti-Semitism; and women’s rights.<sup>20</sup> They worked part-time and were appointed for four years by the Minister after they were nominated by civil society. After four years, the Minister could re-appoint them or select new members. The Minister also had the power to dismiss them before the end of their term terminating their input based on their expertise on the board and the agency. The board members covered many areas of expertise in the field of antidiscrimination.

Although the Minister responsible for the agency had the right to direct the agency in the preparation of its strategic plan “from time to time”, the board and the head of the agency were mainly in charge of managing the agency. The Minister could indirectly influence the

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<sup>20</sup> The advisory board members during the period of investigation were Dr. Angela Kerins (Chief Executive Rehab and head of the National Disability Authority); Christy Lynch (Department of Justice, Equality and Law Reform); Nigel Brander (People with Disabilities Ireland (PWDI) and FIMITIC); Frank Goodwin (The Carers Association (Ireland)); Salome Mbugua (Wezesha and AkiDwA (migrant women’s network)); Ellen Mongan (Galway County, National Traveller Monitoring Advisory Committee); Betty O’Leary (Barrister and member of the National Disability Authority); Kieran Rose (GLEN - LGBT NGO); Denis O’Flynn (IBEC); Finola McDonnell (IBEC); David Joyce (Irish Congress of Trade Unions); Peter White; Rhona Murphy (IBEC); Paddy Maguinness (Traidlinks); Linda Tanham (Labour Court); Louise O’Donnell (trade union Impact); Niall Mc Cutcheon (Department of Justice, Equality and Law Reform); Lynn Jackson (Holocaust Education Trust); Seán Fogarty (Teachers’ union); Theresa Murphy (National Women’s Council of Ireland); Annette Dolan (Teachers’ union).

management by appointing the chairperson of the board with the consent of the Minister of Finance, as regulated by the Articles 40 to 42 of part V of the Employment Equality Act 1998.<sup>21</sup>

While the head of the National Disability Authority was the chairperson of the agency's board during the period of investigation, a representative from the Department of Justice and Equality was her Vice-Chairperson, as shown by the agency's annual reports. By appointing them, disability equality concerns had a stronger representation on the board.

In addition, the Minister also appointed the CEO of the agency after consultation with the agency and the consent of the Minister of Finance giving policymakers the opportunity to interfere in the agency's management according to Article 27 of Part 2 of the Equality Act 2004. The Minister in the Department of Justice, Equality and Law Reform was responsible for the Equality Authority until 2009. After 2009, this responsibility was transferred to the Minister for Community, Equality and Gaeltacht Affairs and to the Minister of State with Special Responsibility for Equality, Human Rights and Integration (cf. Equality Authority 2010, 5). In 2011, it was transferred back to the Ministry of Justice and Equality (cf. Equality Authority 2012, 8).

Moreover, the affiliation with the Ministry was crucial, as the head of the agency had to answer the Minister regarding the financial management of the agency and he assigned resources to the agency. Financial reports of the agency were distributed to the parliament through the Minister. The Minister with the consent of the Minister of Finance decided over the budget of the agency and appointed its staff, as defined by Articles 51 to 55 of the Employment Equality Act 1998 and

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<sup>21</sup> According to the Employment Equality Act 1998 Part V Section 42, he or she chaired the meetings of the Authority and worked full-time or part-time for a period of four years. The 2004 Equality Act did not change this.

Article 27 of the Equality Act 2004.<sup>22</sup> Yet, the agency also had EU funding for its activities during the period of investigation. For instance, the agency acquired EU funding in 2010 to support its promotional work and research (cf. Equality Authority 2011, 63). Although the agency had this additional funding, policymakers exercised considerable power over the resources of the agency.

The examination of the Irish agency shows that the head of the agency had a central role within the agency, as he or she took many strategic decisions for the agency. Yet, the agency also considerably depended on its parent ministry regarding its budget and staff and was influenced by its advisory board. Like the Hungarian agency, the Irish agency was not divided according to expertise, but functions creating ample room for competition for resources and standing among the represented grounds of discrimination within the agency. Chapter 5 shows how this affected its intervention and changes therein.

#### **4.4 Concluding Remarks on the Agencies' Capacity to intervene in the field**

All three agencies had competences to assist alleged victims of discrimination, conduct research, engage in promotional work and to advice their governments. While the Hungarian agency was also able to hand down binding decisions, the Austrian and Irish agencies mainly offered legal counselling to their clients. All three agencies counseled victims of discrimination to enforce their antidiscrimination rights.

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<sup>22</sup> Most staff of the agency were civil servants coming from the Department of Justice, Equality and Law Reform in the past (cf. Crowley 2010, 8f). Civil servants can be promoted and, transferred within the public administration (cf. O'Farrell 2012, 140), which means that the agency continuously experienced changes in its staff.

Considering the agencies' organizational structures, the expertise of the Austrian agency was more compartmentalized than the other two agencies. This arguably gives less room for external influences on the agency in its role as a promoter of antidiscrimination compared to the other agencies. Moreover, the representation of grounds of discrimination is pre-determined and their respective strength and resources is not solely decided by the competition for standing and resources among the expert units within the body. The Hungarian and Irish agency's function-specific organization allows for more thematic changes in their work by incentivizing competition for resources and standing of staff and units within the agency. Moreover, while the management of the Hungarian and Irish agency is concentrated on the head of the agency, the Austrian agency's management is again more compartmentalized. Yet, the Hungarian and the Irish agencies both have an advisory board, which limited the discretion of the head of the agency to determine the intervention of the agency.

While the Irish agency had similar competences to the Austrian agency, its organizational structure resembles more the Hungarian agency. All three agencies are dependent on their parent ministries regarding their budget and staff. As shown in the previous chapters, policymakers can pose new political demands on the agency through changes in their budgets and staff or challenges to their competences to bring the agency on a new course. This made it necessary for the agencies to react to new political demands given to the agencies to guarantee their survival and maintain their discretion as promoters of antidiscrimination.



## Chapter 5: Changes in the Agencies' Scope of Equality Promotion

Since antidiscrimination agencies support alleged victims of discrimination, conduct research, carry out promotional work and advise their governments (cf. Ammer, et al. 2010), they can combat discrimination and create awareness about it in areas covered by their mandates. For instance, they can support the implementation of antidiscrimination policies in areas such as gender or LGBT antidiscrimination through publications on appropriate behavior (cf. Cormack and Niessen 2005; Crowley 2013, 26; Crowther and O'Cinneide 2013, 11; De Witte 2012, 6; MacEwen 1997c, 10f).

In Chapter 4, I examined the organizational structure and competences of the Austrian Ombud for Equal Treatment, the Hungarian Equal Treatment Authority and the Irish Equality Authority to understand how policymakers designed the agencies and how and where the agencies can intervene against discrimination. I found that while the Austrian antidiscrimination agency has a separate and strong organizational unit with expertise to fight gender discrimination, the Hungarian and Irish agencies are not predisposed to prioritize specific types of discrimination in their intervention based on their organizational structure. There is no pre-determined hierarchy among grounds of discrimination represented in the agencies. Different from the Austrian agency where expertise on gender discrimination is strongly represented in the agency, we cannot anticipate likely priorities in the intervention of the Hungarian and Irish agencies.

Since my research is interested in understanding why an agency's intervention changes, I focus on these changes in the agencies' activities in this chapter. As shown in Chapter 2, I assume that priorities in an agency's intervention evolve through the representation of grounds of discrimination within an agency. Agencies establish priorities. Yet, grounds of discrimination, which are represented in the agency, can compete for resources and standing potentially

influencing and causing changes in the agency's priorities and intervention. I assume that competition for standing and resources among grounds of discrimination and changes in an agency's intervention are triggered by new political demands.

This chapter continues as follows. I examine the changes in the activities of the three agencies in the period between 2008 and 2011 to understand changes in how they strategically promoted antidiscrimination and implemented their mandates. For this purpose, I investigate changes in their substantial legal support, research, promotional work and advice to the government. More precisely, I study the target and depth of intervention of the agencies' activities and changes therein. The analysis demonstrates how each agency changed the way it implemented its mandate over the period of investigation and concludes with a comparison.

## **5.1 The Changes in the Austrian Ombud for Equal Treatment's Scope of Equality Promotion**

The following sections examine changes in the scope of equality promotion of the Austrian agency. As illustrated in Chapter 4, the Austrian agency can address discrimination of women, ethnic minorities, senior citizens, LGBT people and religious minorities in employment. In case of gender or ethnic discrimination, it can also intervene in cases outside the field of employment. The agency has no competences in the field of disability discrimination (cf. EQUINET 2012b). The chapter also showed that women's concerns have a strong representation in the agency likely to influence its intervention. I study in the following sections how the agency's activities targeted

this group and others and with what depth of intervention.<sup>23</sup> The examination shows how the agency incrementally changed its promotion of antidiscrimination in Austria between 2008 and 2011.

### ***5.1.1 The Austrian Agency's Substantial Legal Support***

Relative to the number of all submitted enquiries to the agency between 2008 and 2011, the Austrian Ombud for Equal Treatment frequently represented on multiple and LGBT discrimination cases in front of the Commission, as shown in Figure 5. Alleged ethnic and age discrimination cases, in comparison, were supported less frequently. These findings are rather counterintuitive, as the agency's competences are stronger to combat gender and ethnic discrimination. The targeted types of discrimination in the agency's substantial legal support do not coincide with the areas where the agency has stronger competences to intervene against discrimination.

**Figure 5: Ranking of the Type of Discrimination most likely to receive the Austrian Agency's Substantial Legal Support per Year**

	1.	2.	3.	4.
2008	Multiple discrimination	LGBT	Ethnicity	Religion/Belief
2009	Multiple discrimination	LGBT	Age	Gender
2010	Multiple discrimination	Age	Religion/Belief	Ethnicity
2011 <sup>24</sup>	LGBT	Age	Religion/Belief	Gender

<sup>23</sup> The documents selected to study the Austrian agency's activities are listed in Appendix A and the contingency tables analyzing the Austrian agency's substantial legal support are provided in Appendix D.

<sup>24</sup> Detailed data on supported multiple discrimination cases were not available for the year 2011.

Considering that the agency's gender unit has a strong representation in the agency, as shown in the previous chapter, the ranking in Figure 5 is counterintuitive. Yet, the agency's predisposition to prioritize combating gender discrimination is found when looking more closely at the assisted multiple discrimination cases. Figure 5 shows that the agency most frequently supported alleged multiple discrimination cases in front of the Commission throughout the period of investigation. Austria is one of the few countries in Europe that explicitly mentions multiple discrimination in its antidiscrimination law since 2008 (cf. Schindlauer 2012, 25 f). Such provisions do not exist in Hungary (cf. Kádár 2012, 33) or Ireland (cf. O'Farrell 2012, 46). Importantly, most of the supported multiple discrimination cases addressed gender discrimination in combination with another characteristic such as ethnic background.

The data shows that the agency started to focus on ethnic minority women during the period of investigation. While all three assisted cases in 2008 dealt with discrimination based on gender and age. Likewise, six of the seven assisted multiple discrimination cases dealt with gender discrimination in combination with age or ethnicity in the following year. There was only one multiple discrimination in 2009, which addressed multiple discrimination as a combination of religious and ethnic discrimination. Already four out of the seven supported multiple discrimination cases in 2010 targeted the discrimination of ethnic minority women. The analysis demonstrates that the multiple discrimination of women was a strategic area of legal intervention for the agency where it wanted to raise awareness and that multiple discrimination cases of ethnic minority women became more frequently supported by the agency.

The expansion of the agency's intervention towards the multiple discrimination of women indicates that the agency took a progressive approach towards the enforcement of women's antidiscrimination rights where it had comparably strong expertise. The gender unit of the agency

addressed women's discrimination within different groups such as ethnic minorities or senior citizens. This sensitive approach towards women's discrimination is also mirrored in the type of gender discrimination cases assisted by the agency during the period of investigation. Many gender discrimination cases supported by the agency dealt with indirect, and rather systematic, discrimination.<sup>25</sup> In 2009, the ratio between direct and indirect discrimination cases assisted by the agency was even balanced out. This indicates that the agency was sensitive to the systematic discrimination of women and wanted to raise awareness about it. Indirect discrimination, as shown in Chapter 3, is more hidden and needs specific expertise to unfold and discover structural mechanisms of discrimination for women. This approach to frequently support cases of indirect discrimination was solely applied to the discrimination of women.

Moreover, Figure 5 showed that LGBT discrimination cases were likely to receive support from the agency. Yet, this does not mean that the agency asked for many expert opinions on alleged LGBT discrimination by the Commission over the period of investigation. For instance, the agency only supported one LGBT discrimination case in 2008. Yet, considering the small number of the overall enquiries on LGBT discrimination submitted to the agency, it supported them disproportionately. While 15 out of the 27 assisted cases in front of the Commission focused on gender discrimination, substantial legal support provided to alleged gender discrimination cases is not disproportional, as most enquiries received by the Austrian agency concerned gender discrimination. Yet, the agency did not support gender discrimination cases disproportionately.

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<sup>25</sup> For 2009 and 2010 detailed information on 2 cases are missing.

We find that the agency did not give disproportional support to alleged gender discrimination cases, although it has a strong gender unit. Yet, many supported gender discrimination cases covered the systematic discrimination of women and most multiple discrimination cases addressed gender discrimination in combination with another characteristic. Therefore, the agency showed a clear tendency to push the legal limits in the field of gender discrimination through indirect and multiple discrimination cases.

While one could argue that the agency's intervention mirrors the actual needs in the field, this is not supported by the data. For instance, a legal expert working in the agency points out that there was much need for intervention against the discrimination of ethnic minorities.

“Regarding age, one must argue relatively little why this type of discrimination is recognized [by the law]. The level of awareness is surely the highest. In case of sexual orientation, discrimination is only indirect. Regarding ethnic belonging, one has to argue the most and there is the biggest opposition, same for religion.”

(2:109)

Figure 5 shows that there is little correspondence between this assessment and the substantial legal support of the agency. Therefore, the agency's intervention followed its own strategic agenda. While the agency increasingly supported alleged age discrimination cases in front of the Commission during the period of investigation, it gave disproportionate support to LGBT discrimination. Moreover, we find that the discrimination of ethnic minorities became less frequently addressed by the agency. We only found an increase in cases addressing the discrimination of ethnic minority women. Yet, Figure 5 also demonstrates that the agency started to raise awareness about the discrimination of religious minorities. Looking at these minor changes in its substantial legal support, we have no explanation why the discrimination of senior citizens and religious minorities became more frequently addressed by the agency. Moreover, the focus on multiple discrimination cases, is not explained. The following sections show whether

multiple discrimination and these new areas of intervention also emerged in other activities of the agency.

### ***5.1.2 The Austrian Agency's Research***

The examination demonstrates that the agency reinforced its focus on promoting the antidiscrimination of women in its research. Five of the recommendations in 2011 specifically targeted gender discrimination and dealt with the discriminatory character of higher service fees for women in hair salons, the advantages of using a gender-neutral language in job advertisements, the mandatory preparation of income reports for businesses to deal with the equal pay gap between men and women, and the legal limits of the antidiscrimination law. Yet, three of these five recommendations only explained and clarified new legislation to stakeholders. For instance, since businesses were made responsible for publishing salary reports of women and men in 2011, the agency published a recommendation to support compliance (cf. Sauer and Gresch 2012, 58f). In addition, when Austria witnessed an extensive public debate on the use of gender-neutral language, which emerged because of the amendment of Austria's national anthem (cf. Sueddeutsche Zeitung 2011), the agency published a recommendation on the use of gender-neutral language. Only the 'hair salon' recommendation was not incentivized by larger political developments and was strategically selected as a topic for its publications.

Moreover, the Austrian agency issued one recommendation for private businesses on their liability and responsibility to comply with the EU directive demanding for equal access to goods and service for women and ethnic minorities in 2010. Yet, this recommendation was again published with the intention of raising awareness about legal developments in place since 2008 (cf. Bundeskanzleramt n.y.).

Yet, the agency also strategically addressed gender, but also ethnic discrimination in its investigations over the period of investigation. In 2008 and 2009, the agency screened housing and job advertisements in the media for their potential gender and ethnic discrimination, as it had comparably strong powers in this area. In case discrimination was found, the agency substantially intervened by sending perpetrators information letters to amend their discriminatory behavior, as pointed out by a staff member of the agency.

“An important sanction for us (...) is the sanction in the field of job advertisements. (...) We can make a request, when an advertisement is discriminating, and we can report it. The sanction is a penalty of maximum 360 Euro, which is very low and should be much higher, but it still has an impact. (...) One naturally has to continue reporting and creating awareness and sending letters to improve the situation, but we already see effects.”

(2:101)

This screening of housing and job advertisements had a meaningful impact, as the agency was able to directly sanction the discriminatory behavior and create awareness. The agency strategically intervened in the sector since there were no political events incentivizing this intervention.

Furthermore, the agency published one recommendation in cooperation with civil society focused on preventing gender and ethnic discrimination in entering bars and clubs in 2011. By using the expertise of the NGO to explain the principle of equal access, the agency created more awareness about this new legislation and its relevance for ethnic minorities and women.

This shows that the agency used its research primarily to combat gender and ethnic discrimination. Only in the case of two recommendations published in 2011 did the agency address characteristics other than gender and ethnicity. It gave guidelines for hiring procedures and potential courses for action in case of discrimination. These publications had a broad applicability. Yet, they rather follow legal developments. The analysis indicates that the agency



mostly focused its research on areas where policymakers set the agenda. The agency supported these developments with its guidance and expertise. It only intervened strategically in the field of ethnic and gender discrimination. The only change visible in its research is the expansion of its research activities and publications towards addressing ethnic discrimination.

### ***5.1.3 The Austrian Agency's Promotional Work***

The agency re-emphasized its priority on combating gender discrimination between 2008 and 2011 through its promotional work. The agency participated in various informational events and published newsletters to raise awareness and to update the public and stakeholders about ongoing developments, court cases and its own activities. While this bulk of promotional work followed the agency's strategic approach of promoting the antidiscrimination of women, it slightly broadened to cover the discrimination of ethnic minorities, LGBT people and religious minorities over the period of investigation.

In its 2008 publications, the agency mostly focused its resources on combating gender discrimination, as the agency participated in informational events targeting the discrimination of women or discrimination as a broader phenomenon. Also the 2008 newsletters inform about antidiscrimination provisions relevant to women. While the case law in the newsletters more frequently addressed gender and ethnic discrimination, it also covered age and religious discrimination. However, the publication of this information cannot be considered as substantial promotional work. The agency mostly promoted the antidiscrimination of women in 2008.

In case the agency participated in informational events to share its expertise in 2009, they mainly targeted gender discrimination. For instance, the agency organized two workshops in cooperation

with Amnesty International. While one targeted the equal treatment of women, the other one addressed discrimination on a more general level. Moreover, also the regional offices of the agency reinforced the agency's focus on women and organized an event on sexual harassment, a conference dealing with transgender concerns, and informed more generally about gender discrimination. The 2009 newsletters provided information on case law on gender discrimination, but also ethnic discrimination. A gender and a gender+ discrimination case dealt with Austrian high court decisions. Issues not directly connected to women's discrimination did not receive much attention in the agency's promotional work in 2009.

In 2010, this supposedly changed, as the agency visibly broadened its focus by addressing new groups in its awareness raising. Following the adoption of the same-sex partnership legislation in 2009, the BGBl. I Nr. 135/2009, the agency's promotional work broadened to include events on LGBT discrimination. While the agency continued to focus on gender discrimination through, for instance, workshops on sexual harassment and equal pay, it started to raise awareness on other issues. For the first time, topics such as same-sex partnership legislation and the meaning of discrimination based on belief were discussed through its publications. This is also mirrored in the newsletters, as their case law sections addressed gender discrimination, age, ethnic and LGBT discrimination dealing with issues like the right to widow pensions of same-sex couples. Yet, the agency did not select this topic as a strategic area of intervention, but followed political developments. The agency's strategic promotional work did not broaden significantly in 2010.

Starting in 2010, the agency also published a case of the month on its webpage as part of its promotional work to increase the public's awareness on discrimination. In each consecutive year, the agency published five gender and five ethnic discrimination cases as well as one age and one LGBT discrimination case. No cases of religious discrimination were promoted. The publication

of the case of the month is strategic and mirrors the overall emphasis of the agency on combating gender discrimination, but also shows its broadening focus on ethnic discrimination. Different from religious discrimination, LGBT and age discrimination were not neglected by the agency.

Although many events informed again about discrimination of women in pay or sexual harassment in 2011, this year witnessed the most substantial expansion of the agency's promotional work and areas of expertise. While it continued to address gender discrimination, the agency also targeted ethnic discrimination in its events, in two cases even in combination with religion. This points towards a substantial expansion of its scope of promotional work from gender to the discrimination of ethnic and religious minorities. An expert refers to this integration of religious discrimination into the concept of ethnic discrimination as a deliberate strategy of the agency to overcome the differences in legal protection for religious minorities outside employment (AT04; 3:32). The agency used the unclear conceptual boundaries between ethnic and religious discrimination as a way to tackle religious discrimination where it had weaker competences (cf. Cinar, et al. 2005, 144). This strategy was mainly used to intervene against the discrimination of ethnic minority women by the regional offices, which lacked the competences to tackle ethnic discrimination, and by the Vienna office to extend its protection to ethnic minorities discriminated because of their religious belief. The 2011 newsletters had no specific focus and covered a variety of case law on age, gender, multiple, ethnic and LGBT discrimination and many high court decisions like an Austrian constitutional court decision on gender discrimination involving the Viennese public transport services. The agency's promotional work expanded significantly to address the discrimination of ethnic minorities.

In conclusion, the agency's promotional work mainly focused on promoting the antidiscrimination of women, but broadened to address the discrimination of ethnic and religious

minorities. While LGBT concerns became more frequently covered by the agency in 2010, this development has to be seen in the light of Austrian policymakers' efforts in legalizing same-sex partnerships. Many of the agency's interventions, apart from its promotion of women's and ethnic minority rights, followed political developments in the antidiscrimination field. Yet, the agency also expanded its activities to address the discrimination of religious minorities. This was a deliberate strategy of the agency.

#### ***5.1.4 The Austrian Agency's Advice to the Administration***

The Austrian agency published its advice to the Austrian government every two years in the form of a report. It frequently mentioned its lack of competences in these reports. The small changes in the demands published in these reports show that the government mostly ignored the agency's advice. For instance, in its 2008/2009 report, the agency mentioned its complete lack of power to help victims of age, LGBT and religious discrimination outside employment. In its 2010/2011 report, the agency repeats these demands among others, apart from new recommendations to close loopholes in the antidiscrimination legislation. The published recommendations show that the government did not take the recommendations of the previous report into consideration, as the same ones are given two years later. The agency continuously called for more resources, more legal competences and the clarification of the existing legislation. The examination shows that the agency's advice had a very limited impact on the policymakers' agenda.

An employee in the agency's parent ministry states that politicians were mostly interested in the agency's data (11:53). The analysis of parliamentary proceedings shows that the agency's reports were discussed in parliament mainly for their insights on the situation of women (cf. Austrian

Parliament 2011). There was little interest in the agency's reports and advice, apart from its reporting on its counselling for women.

The Austrian agency's advice only had an effect when it followed the needs of policymakers. For instance, the agency offered its comments and opinions on reports and new legislation to the administration (AT01; 2:90). In a few cases, the agency also participated in governmental policy initiatives beyond the field of gender antidiscrimination such as the Roma Dialogue Platform.

“On all accounts when we issue recommendations or opinions or, at the moment, there is a Roma Dialogue Platform, which is organized by the Federal Chancellery, we always participate in it.”

(2:93)

These interactions and cooperations represent a quite meaningful impact of the agency. Yet, it is limited to the specific needs and demands of the policymakers. The analysis of the scope of the agency's advice shows that the government did not take the advice of the agency in its reports into consideration. The agency's expertise only had a meaningful impact if there was prior demand for it by the policymakers.

### ***5.1.5 Concluding Remarks on the Austrian case***

The analysis of the changes in the Austrian agency's scope of equality promotion indicates that the agency incrementally expanded its activities to combat the discrimination of ethnic or religious minorities over the period of investigation. It started to support ethnic or religious minorities by putting emphasis on the ethnic belonging of discriminated women or religious minorities. Apart from that, it continuously focused on combating gender discrimination in all its main activities, which mirror the strength of the gender unit in the agency to guide its intervention. Therefore, the continuous focus on combating gender discrimination in the agency's

scope of equality promotion does not come as a surprise considering that it is also manifested in the agency's organizational structure outlined in the Chapter 4.

Yet, the incremental expansion of its activities to new areas of intervention needs more clarification. In particular, the analysis needs to investigate in how far policymakers or strong non-state actors incentivized these developments to expand its activities to cover the concerns of ethnic and religious minorities. Chapter 6 and 8 further investigate why the agency incrementally changed its intervention as a promoter of antidiscrimination.

## **5.2 The Changes in the Hungarian Equal Treatment Authority's Scope of Equality Promotion**

The changes in the Hungarian agency's scope of equality promotion are analyzed through changes in its substantial legal support, research, promotional work and advice to the Hungarian government.<sup>26</sup> The agency had the powers to intervene against the discrimination of disabled people, ethnic minorities, LGBT people, senior citizens or religious minorities and women in areas like employment, housing or education, as shown in Chapter 4. The agency was not predisposed to prioritize specific groups in its intervention. The following analysis shows how the agency implemented its mandate and changed its intervention in the field between 2008 and 2011.

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<sup>26</sup> A list of analyzed documents is provided in Appendix B and the information on the agency's substantial legal support are presented in Appendix E.

### 5.2.1 The Hungarian Agency's Substantial Legal Support

Figure 6 shows that the agency frequently handed down decisions on alleged disability, ethnic, age and motherhood discrimination between 2008 and 2011. Since the agency had no compartmentalized units of expertise in its legal unit, these were the areas in which the agency frequently applied its legal expertise to hand down decisions.

**Figure 6: Most frequently addressed Types of Discrimination by the Hungarian Antidiscrimination Body's Decisions per Year**

	1.	2.	3	4.
2008	Other	Disability	Age Roma	Motherhood
2009	Age	Disability	Roma	Gender Belief
2010	Roma	Disability	Motherhood	Age Trade union membership Other
2011	Disability	Roma	Health condition	Age Belief Motherhood

We find that cases of disability and Roma discrimination were frequently decided by the agency throughout the period of investigation. We can assume that expertise in this area was comparably well represented in the agency. Decisions on LGBT discrimination were comparably few. While the agency did not decide on any LGBT cases in 2008, it decided on three cases in 2009 and two in 2010. LGBT cases were again absent from the agency's reported decisions in 2011. Moreover, the agency took no decisions on religious discrimination. Different from disability and Roma discrimination, decisions on religious and LGBT discrimination were next to nonexistent.

The examination of the data proposes that a new ground called “other” emerged in the agency’s decisions in 2008. Yet, this was only due to the fact that “other” covered a type of discrimination not explicitly mentioned in the legislation. For instance, while gender is mentioned as a ground potentially causing differential treatment of two people, multiple discrimination was not explicitly covered by the Hungarian legislation. Multiple discrimination in this case was considered as “other” discrimination (cf. Equal Treatment Authority 2009, 4). As will be shown in Chapter 6, the decisions on “other” declined after the agency’s advisory board clarified the applicability of this ground. Therefore, its appearance in the agency’s legal work is not a new area of intervention, but is due to a legal loophole.

Looking at other changes in the target groups of the agency’s decisions and legal work, decisions on Roma discrimination increased while decisions on age discrimination decreased over the period of investigation. Age discrimination cases were more frequently found among its decisions in the period 2008 and 2009 compared to 2010 and 2011. In addition, Figure 6 also shows that while gender discrimination cases were only frequent in 2009, discrimination of mothers became more frequently addressed in the agency’s decisions. The discrimination of mothers rather than of women became part of the agency’s intervention over the period of investigation. We find that disability discrimination was a stable area of intervention for the agency. Moreover, the discrimination of Roma and mothers became more frequently addressed in the agency’s decisions and, therefore, emerged as new areas of intervention. Different from that, age discrimination was less frequently subject to the agency’s decisions.

Importantly, the collected data demonstrates that the agency was not an active enforcer of antidiscrimination, and even less so towards the end of the period of investigation. It did not start any *actio popularis* cases to address the discrimination in areas where it expected to find



discrimination during the period of investigation. A staff member argues that the agency did not engage in this activity, as it only took cases that were submitted by individuals or organizations to the agency.

“There is a rule in the Act that we have the scope if we observe a (...) certain problem or thing to initiate a procedure, but my bosses have always said that we do not have the capacity to do this.”

(3:21)

Yet, the agency's efforts to start *ex officio* procedures to address discrimination in the public sector were also limited, as shown in its reports. While it only started one *ex officio* procedure in 2008, it initiated two *ex officio* procedures against state or municipal bodies in 2009. No *ex officio* procedures were reported between 2010 and 2011. Moreover, the agency also neglected the monitoring of the adoption of equal opportunity plans of “budgetary organisations employing more than fifty persons, as well as legal entities in which the state has a majority ownership”, as reported by ECRI (2009, 17) and defined by Chapter VI, Article 6 (4) of the Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities. It reported the use of this power only in one case in 2008. The analysis shows that the agency was no active enforcer or advocate for antidiscrimination, as it mostly limited its role to one of a judge. Importantly, it did not intervene in the public sector after 2009.

While the agency could also sanction perpetrators by publishing its decision on its website identifying the perpetrators, it used this sanction in a limited way. It only applied this sanction in the field of Roma discrimination during the period of investigation. The agency published a decision against a municipality and a public elementary school committing ethnic segregation in 2010. This intervention has to be seen against the background that many reports demonstrate that ethnic segregation of Roma in special schools or within the school system is a big problem in Hungary (i.e. European Commission against Racism and Intolerance 2009; European

Commission on Racism and Intolerance 2015). While this shaming of public institutions points towards a strong promotion of the antidiscrimination of Roma of the agency, it was only done in 2010 and for one group.

The examination shows that the agency focused on disabled people and Roma in its legal support and decreased its interventions against discrimination committed by public institutions. The identification of Roma and mothers as target groups and the intensification of the agency's activities in these areas need further investigation. This is not explained by the organizational structure of the agency, as it does not prioritize areas of intervention through more resources.

### ***5.2.2 The Hungarian Agency's Research***

In comparison to its legal work, the research of the Hungarian Equal Treatment Authority is comparably limited, as the agency was only able to commission research in 2009, when it obtained EU funding in the form of the TAMOP project. While the agency periodically helped with the preparation of UN country reports, these cannot be considered as part of the agency's own strategic research.

The TAMOP project provided the agency for the first time with the opportunity to commission research. The project encompassed seven strategic research programs of which five started in 2010. The selection of topics for this research was executed by the first president of the agency, who left the agency in 2010. While three research outlets focused on discrimination in employment, one research output specifically dealt with the gender pay gap. Another research outlet with the aim to collect and publish survey data on the rights awareness of Roma, disabled people, women and LGBT people was started in the same year. The data for this survey was also

collected at the end of the TAMOP project. This research significantly expanded the agency's intervention to address the discrimination of women and LGBT people.

The replacement of the president of the agency in 2010, following the elections in Hungary, coincides with changes in the agency's research. The remaining two research outlets, which were implemented under the agency's second leadership, were originally supposed to target the discrimination of Roma in the public administration (cf. Equal Treatment Authority 2011, 75). Yet, the actual research outputs focused on more protected groups. For instance, one of them focused on senior citizens, Roma and disabled people.

The research was extended selectively and did so to cover women, LGBT people or religious minorities. Yet, they disappeared as areas of intervention. The agency reinforced its focus on disabled people and Roma already found in its substantial legal support. Yet, the emergences of the discrimination of senior citizens is not mirrored in the agency's legal support. The examination of changes in the scope of the Hungarian agency's research shows that it focused on the discrimination experienced by Roma and disabled people. Gender and LGBT discrimination were only covered by the research, which started shortly after the change in leadership. While it significantly expanded the agency's intervention, the inclusion of these groups in the agency's research was discontinued after 2010. While the publication using survey data had to address these groups to publish coherent findings, they were not strategically selected as target groups after 2010.

### ***5.2.3 The Hungarian Agency's Promotional Work***

While the Hungarian agency frequently mentioned and focused on disabled people and ethnic minorities in its newsletters and attended and organized events relevant for these groups, it became less oriented towards the promotion of group-specific concerns throughout the period of investigation. Examining the agency's 2008 promotional work, the annual report mentions various events in which the agency participated. While seven of these reported events raised awareness about the needs of disabled people, other events dealt with trade unions, ethnic minorities and women. Many events, however, did not have a focus on topics relevant to only one specific group. Moreover, the agency's 2008 newsletters mostly dealt with disability concerns. Affirming the agency's power and credibility as a promoter of antidiscrimination, one newsletter covered two decisions of the agency regarding gender and ethnic discrimination, which were upheld by a higher court in an appeal procedure. The agency's 2008 promotional work shows that the agency mainly intervened against the discrimination of disabled people and Roma. This focus corresponds with the prioritized areas in the other activities.

In the following year, we find that the discrimination of mothers emerged as a new area of intervention in the agency's promotional work. Its participation in events, which dealt with the discrimination of disabled people, women, families, ethnic minorities and senior citizens, show this shift. In addition, the agency published the findings of a survey on racism and discrimination of a European agency and some case law regarding the discrimination of Roma, disabled people and mothers.

The agency's 2010 promotional work, in turn, was considerably influenced by the start of the TAMOP project. The TAMOP project included the launch of a national travelling exhibition and a 'Young people against discrimination' program in which students were encouraged to share

their experiences with discrimination. While one newsletter had disability discrimination as the topic of the month, the agency's 2010 newsletters also provided information on a discrimination case of a senior citizen and covered a case of ethnic segregation in an Hungarian school. In this case, the agency called on the Education Authority to enforce its decision. It is striking that the agency took up this case of ethnic segregation, as it was already on the agenda of another public body. Yet, the Education Ombudsman responsible for reviewing discrimination in education lacked independence from the Ministry of Education, as he was directly answerable to the Minister of Education (cf. Open Society Institute 2005, 50). The agency used its more independent position to intervene on behalf of the victims. This is a quite meaningful impact of the agency in terms of fighting ethnic segregation. Overall, the agency again gave priority to Roma and disability discrimination in its newsletters. Gender or LGBT discrimination were not represented as areas in the agency's promotional work. Also, the discrimination of mothers was not addressed.

Women's discrimination emerged as an area of intervention in addition to disability and ethnic discrimination in 2011, apart from disability and Roma discrimination. In 2011, the agency continued the travelling exhibition and promoted its activities during the Sziget festival. Its newsletters continued to promote the antidiscrimination of Roma and disabled people and provided information on best practices in the field of antidiscrimination and reasonable accommodation in schools. Moreover, the newsletters covered the discriminatory experiences of homosexual and Roma students in schools. The topic of the month of the newsletters were the aforementioned 2010 school segregation case and an equal pay case. Gender discrimination temporarily re-emerged as a topic of intervention in the newsletters, as one newsletter also featured a commentary of a female trade unionist criticizing sexism in trade unions. The featured

case law addressed many types of discrimination. While Roma and disabled people remained a focus in the agency's intervention, women emerged temporarily as a target group of the agency's promotional work.

Importantly, the agency's participation and integration in supranational and international networks increased over the period of investigation. The agency explicitly mentioned its participation in events organized by the European Commission against Racism and Intolerance (ECRI) and the European Network of Equality Bodies (EQUINET) in 2008 and 2009. This involvement in trainings did not enhance the agency's own promotional work in Hungary, but its networking. It also supported the learning of the agency, as pointed out by a former staff member.

“I would mention the very important role of the network EQUINET. (...) What we have learned and heard there is very important in our everyday work. You can ask for advice or just for an opinion from the members of the network.”

(3:32)

The agency continued to participate in many events organized by European actors including EQUINET, ECRI, the Fundamental Rights Agency (FRA) and the European Institute for Gender Equality (EIGE) in 2010 and 2011. This shows that the involvement of the agency in European networks increased. The agency focused on its own learning from these networks rather than on the promotion of its knowledge in the domestic context. In its domestic context, the agency promoted the antidiscrimination of disabled people and Roma. In addition, the discrimination of mothers and women emerged temporarily as areas of intervention in the agency's promotional work. This switch in focus needs more explanation, as it is not predetermined by the agency's organizational structure.

#### ***5.2.4 The Hungarian Agency's Advice to the Administration***

The Hungarian Equal Treatment Authority's advisory board published several comments to clarify the Hungarian antidiscrimination legislation during the period of investigation. Many of these covered procedural issues. For instance, recommendations in 2008 focused on the interpretation of the burden of proof, retaliation and the deadlines for complying with the reasonable accommodation provisions. These recommendations do not prioritize groups in the agency's awareness raising or legal interpretation.

Yet, two recommendations interpreting harassment and equal pay provisions did not only focus on women, but applied these principles also to the situation of ethnic minorities. Equal pay initially emerged as a central concern in the field of gender equality. While it is mentioned in a subsection of Article 3 of the Race Equality Directive 2000/43/EC, the European Union dedicated the entire Equal Pay Directive 75/117/EEC to the non-discrimination in salary between men and women.<sup>27</sup> Modes of intervention typically associated with gender antidiscrimination were made relevant to ethnic minorities through the agency's advice. This points towards an absence of advocates for gender equality within the agency, as this legislation was not taken up by the relevant experts within the agency to fight gender discrimination.

In addition, disability discrimination was a central area of intervention when the agency used its expertise to influence the enforcement of the antidiscrimination legislation. For instance, the agency published one recommendation, in which it proposed amendments to the disability law in 2009. This was a substantial input of the agency to the Hungarian government to amend the legislation. Although its 2010 and 2011 advice is mostly procedural, it also focused on disability

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<sup>27</sup> The provisions of the Equal Pay Directive was integrated the Recast Directive 2006/54/EC.

discrimination. While three out of five recommendations in 2010 deal with procedural issues, the other two interpret the applicability of “any situation”, and the principle of reasonable accommodation.

Concluding from the analysis, the advice of the Hungarian agency switched between issuing expert advice on the interpretation of the antidiscrimination legislation and awareness raising about problems experienced in the enforcement of the legislation during the period of investigation. Many developments were influenced by European law. The agency’s advice frequently focused on procedural issues and disability-related matters. Moreover, it extended two legal principles from the field of gender equality to ethnic minorities.

Yet, as pointed out by an expert (HU01; 2:11) and a former employee, the agency played a limited role in advising the government on policy developments. The agency was used as a source of expertise rather than an agenda setter or a promoter of antidiscrimination. The Hungarian agency was mainly asked for its expertise when the government had to submit reports to European or international institutions. Even in its advice function to comment on legislation, the agency experienced many limitations, as pointed out by a staff member.

“Sometimes they send [draft laws], but maybe before the day of adoption or before the day of voting. So, it is not really a substantive thing. (...) There were these huge changes in the labor code and there were few requests addressed to the ETA.”

(3:12)

The agency was not asked to guide developments, but to keep track of current developments. For instance, a staff member points out that in one case the agency was also asked to defend a report for the government (3:10).



### ***5.2.5 Concluding Remarks on the Hungarian case***

The agency focused on combating Roma and disability discrimination in its substantial legal support, research, promotional work and advice to the government between 2008 and 2011. The focus on Roma intensified during the period of investigation. The agency's activities mirror the findings of various reports that Roma and disabled people continue to experience high levels of discrimination in Hungary (i.e. Causse 2008; Köszeghy 2009; Legal Defence Bureau for National and Ethnic Minorities, et al. 2010). The agency, therefore, strategically focused on problems experienced in the field of antidiscrimination.

Gender and LGBT discrimination appeared now and then as targets in the agency's activities and were no stable areas of intervention. Different from that, women's discrimination connected to their potential motherhood emerged and became an area of intervention over the period of investigation. While age discrimination was covered until 2010 when the leadership of the agency changed, it became less frequently addressed later on. Religious discrimination was completely absent from the agency's scope of equality promotion. Moreover, the analysis showed that the agency became less active in using its enforcement powers to challenge discrimination in the field, particularly in the public sector. It is likely that this change in intervention was caused by the interference of policymakers. Chapters 6 and 8 seek explanations for these changes in the agency's intervention in the field of antidiscrimination.

## **5.3 The Changes in the Irish Equality Authority's Scope of Equality Promotion**

This section examines the target and depth of the Irish agency's substantial legal support, research, promotional work and advice to the government in order to see how the agency changed

its intervention during the period of investigation.<sup>28</sup> The agency had the competences to intervene against the discrimination of disabled people, ethnic minorities, LGBT people, senior citizens, religious minorities, women and other groups in fields such as employment or education, as shown in Chapter 4. The agency was not predisposed to prioritize specific groups in its intervention through its organizational structure. The analysis demonstrates which areas the agency identified as relevant for its intervention and how they changed.

### ***5.3.1 The Irish Agency's Substantial Legal Support***

The Irish agency frequently supported cases submitted by Travellers or disabled people in the period between 2008 and 2011, as revealed in Figure 7. Since the agency's legal support unit is not organized according to areas of expertise, this finding is not influenced by the agency's organizational structure.

**Figure 7: Ranking of the Type of Discrimination most likely to receive the Irish Agency's Substantial Legal Support per Year**

	1.	2.	3.	4.
2008	Traveller	Disability	Age	Religion/Belief
2009	Traveller	Disability	Gender	Ethnicity
2010	Traveller	Gender	Disability	Ethnicity
2011	Disability	Traveller	Gender	Ethnicity

Note: Since there is a substantial amount of cases where detailed information is missing, it is possible that there is a substantial amount of missing cases. In addition, detailed information on the agency's supported cases under the Intoxicating Liquor Act was not available.

While the agency's focus on Travellers and disabled people in its substantial legal support remained unchanged over the period of investigation, Figure 7 indicates that alleged gender and

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<sup>28</sup> The analyzed documents are listed in Appendix C and the contingency tables are provided in Appendix F.

ethnic discrimination cases more frequently received the agency's substantial legal support after 2009, when the agency got a new leader. Age and religious discrimination cases, on the other hand, were frequently assisted in 2008. These changes, found in Figure 7, need more investigation, as they are not explained by the resources and standing of the respective grounds of discrimination in the agency's organizational structure.

In addition, apart from the targets, the overall number of cases receiving substantial support by the agency started to decrease in 2009. While the agency supported 68 cases in 2008, only 21 cases received substantial legal support in 2009. Four of these cases addressed alleged discrimination in government departments and public services. Because of missing data on the targeted perpetrator covered in the assisted cases in the other years, the assessment cannot evaluate whether the agency's litigation work in the public sector changed after 2009. Yet, the data shows that the agency's legal support further decreased to only 15 cases in 2010. Although it slightly increased again to 23 in 2011, it never reached its initial size. The data shows that the capacity of the agency to challenge discrimination through its legal support was significantly diminished, which needs further investigation.

Concluding from this examination, the Irish agency frequently supported discrimination cases of members of the Traveller community and disabled people during the period of investigation. The agency did not identify senior citizens or religious minorities as target groups for its strategic legal intervention. Yet, the agency started to more frequently target alleged ethnic and gender discrimination cases after the change in leadership in 2009.

### ***5.3.2 The Irish Agency's Research***

The Irish Equality Authority commissioned a considerable amount of research during the period of investigation. While research forms part of the agency's strategic plan, a staff member points out that the agency did not perceive itself as a research institution. It rather commissioned it from other institutions.

“A body like the Equality Authority is not a research organization. You obviously plan your research to try and support your broader activities.”

(3:69)

The interview quote shows that the agency strategically selected areas for research to support its strategic intervention, but outsourced the research activity. It did not produce the research and built the necessary expertise within its structures. The agency's 2008 publications covered various characteristics broadly and in-depth. For instance, they dealt with the accessibility of pharmacies for disabled people, positive action measures for Travellers, or the age-friendly service provision in the leisure, fitness and tourism sector. Moreover, the agency published information on (ethnically) integrated workplaces, immigrants and employment, gender equality, and guidelines for the implementation of the legal provisions covering the access to goods and services. The agency also had a joint publication with the Health Service Executive, a public body in the health care sector, investigating access to health services of LGBT people. Two additional outputs covered the role of civil society and existing stereotypes in the education system. The examination shows that the 2008 publications are broad in their scope and target. The agency established no priorities in its research.

Different from that, the agency's 2009 research dramatically decreased and established priorities on its target. The agency only published research on ethnic discrimination and commissioned research on the gender pay gap and female labor market participation in Ireland. While the

Spanish antidiscrimination body coordinated one of the research outputs on ethnic discrimination, the other one was executed by the agency and dealt with racist hiring practices in Ireland.

After this decline, the agency's 2010 research was broadening again. Yet, it became more focused on addressing antidiscrimination as a larger phenomenon rather than a problem of a group. Antidiscrimination lost some of its connection with addressing the problem of exclusion experienced by a group. It consisted of equality guidelines for second-level schools to promote equality and practical guidelines for credit unions to facilitate accessibility. Further publications featured conference papers on equality mainstreaming, and addressed homophobic bullying in schools and discrimination-free service provision to members of ethnic minorities. In addition, the Equality Authority also developed equality benefit tools in employment and service provisions and inquired how institutions could improve the exchange between the public administration and the Traveller community. Although the 2010 publications target a wide range of individuals and businesses, we find that the research became more oriented towards covering discrimination as a universal phenomenon rather than a problem faced by specific groups in society.

The 2011 research followed this trend and even switched from promoting antidiscrimination to a diversity agenda. The publications provided examples of good practices for the public sector, advice for teachers on diversity education. Yet, they also informed about racist incidents and crimes in Ireland. Another big theme in 2011 was mental health and the agency looked into workplace equality concerns in the aftermath of the recession, which was jointly published with the Economic and Social Research Institute. We find that the agency for the most part did not target problems connected to specific groups, but approached discrimination as a diversity issue.

The agency only dealt specifically with pregnancy discrimination in three connected publications commissioned by the agency and the HSE Crisis Pregnancy Programme.

The scope of the Irish agency's research shows that the agency covered many groups and sectors throughout the period of investigation, although the agency's research decreased dramatically in 2009. Moreover, it switched from targeting specific types of discrimination and related problems to a diversity agenda in 2010 under the agency's second leadership. Disabled people, ethnic minorities, women and mothers remained targets of the agency's commissioned research throughout the period of investigation. LGBT emerged now and then as a target.

### ***5.3.3 The Irish Agency's Promotional Work***

The Equality Authority organized many joint events with members of the social partnership over the period of investigation, which I do not consider as part of the agency's own strategic promotional work. Among these activities are an initiative called "say no to ageism", an annual conference under the theme "Mainstreaming Equality", and the regularly organized events on the topics of work-life balance and workplace diversity. The agency also managed the Public Sector Equality Learning Network (PSELN) between 2007 and 2010, which had the purpose of training employees in the public service on antidiscrimination and equality issues and to exchange good practices, as part of the social partnership.

Turning to the Irish agency's own strategic promotional work, it encompassed trainings, workshops, presentations, newsletters and press releases, which touched upon a variety of topics throughout the period of investigation. Much of the agency's training, however, was not specifically tailored to raise awareness about the discrimination of specific groups. While the

Irish agency frequently engaged with LGBT discrimination throughout the period of investigation, ethnic discrimination emerged as an area of intervention. Moreover, the newsletters focused more on reporting on legal developments and less so on specific thematic issues like the equal pay gap after the new head of the agency took office in 2009.

Looking at the agency's specific promotional work in 2008, many events targeted LGBT discrimination. This was not a prioritized area of intervention in the other activities of the agency. The agency held a symposium on the health needs of transsexual people, a roundtable on the empowerment of victims of LGBT discrimination and an event with the police. Besides a report on an age discrimination case in the civil service, the newsletters covered different equality initiatives in the private sector. The 2008 press releases targeted various types of discrimination. Overall, the agency mainly targeted LGBT discrimination in its strategic promotional work in 2008.

In 2009, the agency mainly created awareness about LGBT discrimination. For instance, it organized trainings and events on the local level to inform about LGBT discrimination. Yet, it also supported ethnic minorities to improve their access to information. External contributions in the 2009 newsletters focused again on LGBT discrimination, but also on disability, gender and ethnic discrimination. Similar concerns were also target in the agency's case law reports and press releases. They raised awareness for the agency's casework in front of the Irish Supreme Court. On a more general level, the agency also displayed its 'breaking stereotypes' project in various locations, which was sponsored by the European Commission. Examining the agency's 2009 promotional work, we find again that LGBT antidiscrimination was a central area of intervention in 2009. Yet, the agency also started to address the discrimination of ethnic minorities.

The agency's 2010 promotional work continued to concentrate on combating LGBT and ethnic discrimination, as it became a new area of intervention for the agency. For instance, its press releases called for action against homophobic bullying in schools, and informed about case law on LGBT and pregnancy discrimination, sexual harassment, and religious and disability discrimination. Moreover, public sector training events particularly targeted LGBT discrimination and racism and the agency organized a seminar on ethnic discrimination. Even the 2010 newsletters featured external contributions on LGBT discrimination. Apart from LGBT and ethnic discrimination, disability discrimination emerged as an area of intervention. The agency started a pilot project in cooperation with its parent ministry and the Disability Authority dealing with the discrimination of disabled people. In addition, the agency also organized a follow-up roundtable with the police on racism, and participated in a disability event forming part of a national initiative addressing mental health. The case law reports in the newsletters took up the topic of disability discrimination, but also mentioned gender discrimination. Similar to the other years, LGBT and ethnic discrimination were central to the agency's promotional work. Yet, disability discrimination became a new area for the agency.

The agency continued to focus on LGBT and ethnic discrimination in 2011. Yet, while the discrimination of Travellers emerged as an area of intervention, disability was not target like in 2010. The agency covered the state initiative on Travellers and cooperated with civil society to pilot a program for Travellers. The agency also supported a conference dealing with religion and ethnicity, and organized events about diversity and the discrimination of disabled and Travellers, LGBT people, and religious and ethnic minorities. The newsletters picked up LGBT discrimination as a central topic in the agency's work, but also covered an age discrimination case targeting a housing company and a case on transgender. On a more general level, the agency



organized an event called ‘workplace equality in the recession’. The examination shows that the agency’s promotional work broadened to target ethnic, in addition to LGBT and Traveller discrimination in 2011.

The scope of the Irish agency’s promotional work focused on LGBT discrimination throughout the period of investigation. While it constantly covered LGBT discrimination, it also started to create more awareness about ethnic discrimination over the period of investigation. Different from that, gender discrimination was not central to the agency’s promotional work. In addition, the discrimination of disabled people and Travellers emerged as new areas of intervention after the change in leadership in 2009. These changes need further investigation, as they cannot be explained by the agency’s organizational structure.

#### ***5.3.4 The Irish Agency’s Advice to the Administration***

The Irish agency only made two submissions to the government in 2010 through a response to a paper on legal aspects of family relationships and a submission to the gender recognition advisory group. Yet, the agency also shared its expertise gained through its research function with the administration to offer its expert opinion. Members of the agency were also represented on various policy committees.

Although the agency had a quite meaningful impact, it was mainly initiated by the policymakers. They included the agency when they needed the agency’s expert advice, as shown by the interview data. The agency was limited in its advice function.

### ***5.3.5 Concluding Remarks on the Irish case***

The Irish agency had a comparably broad scope of equality promotion throughout the period of investigation. This means that the agency implemented its mandate in various sectors focusing on many discriminated groups. Yet, some target groups emerged in its work. For instance, LGBT, ethnic and Traveller discrimination received much coverage in the agency's intervention. Its focus on Travellers is not so surprising, as they were among the most discriminated groups in Ireland (IE06 4:95). Different from that, the agency's increased efforts to address LGBT discrimination need further explanation, as the salience of LGBT discrimination is not as high in Ireland. Moreover, the analysis showed that age and gender discrimination was less frequently covered in the agency's activities throughout the period of investigation, although gender discrimination started to become an issue in the agency's intervention after the change in leadership. It is particularly surprising to find disability among the frequently covered grounds of discrimination in the agency's intervention, as a separate public body, the National Disability Authority, only responsible for disability equality concerns exists in Ireland.

## **5.4 Comparing the Changes in the Agencies' Scope of Equality Promotion**

This chapter analyzed the changes in the Austrian, Hungarian and Irish agencies' scope of equality promotion. Based on the findings, we can conclude that the agencies supported the enforcement of antidiscrimination in different ways. Moreover, the analysis showed that their intervention changed differently over the period of investigation. While the Irish agency included a variety of groups like LGBT people, ethnic minorities or disabled people in its scope of activities over time, the Austrian and the Hungarian agencies' scope of equality promotion was

more limited. Moreover, while the Irish agency started to embrace a diversity approach, the other agencies continued to focus on antidiscrimination. I look into these dynamics in the following.

The analysis and comparison of the agencies' scope of legal support shows that the agencies focused their efforts on different groups protected by the antidiscrimination legislation. While the Austrian agency focused more on supporting LGBT and multiple discrimination cases of women, the Hungarian Equal Treatment Authority put emphasis on handing down decisions on disability and Roma discrimination cases. Gender discrimination cases were not frequently covered by the Hungarian agency's decisions. The Irish agency, in turn, focused largely on supporting cases submitted by Travellers and disabled people. In comparison, the limited support for gender discrimination cases of the Irish and the Hungarian agencies is striking. Moreover, all three agencies showed changes in their legal support throughout the period of investigation. While the Austrian agency slightly broadened its legal support to ethnic and religious minorities, the Hungarian and Irish agencies slightly expanded their scope to combat the discrimination of mothers and women. Since there are no past policy commitments predicting these changes, these developments need further clarification to understand what was driving them.

The comparison of the scope of the agencies' research and changes therein shows that the Irish agency had the broadest scope followed by the Hungarian and the Austrian agencies. While all three agencies neglected to cover religious discrimination, they all covered ethnic discrimination. Gender discrimination also appeared rather frequently as an area of intervention in Austria and Ireland. While gender discrimination as an area of intervention disappeared under the Hungarian agency's second leadership, it was included in the Irish case. Compared to the Austrian agency, the Hungarian and the Irish agencies focused on a greater variety of protected groups in their research. The Austrian agency's research mainly focused on gender and ethnic discrimination.

Yet, it is still surprising that it expanded to cover ethnic discrimination. Further clarification is needed to understand these developments.

The analysis of the agencies' promotional work shows that while the Austrian and Hungarian agencies' activities became broader, the Irish agency's promotional work started to focus on awareness raising about discrimination of fewer groups. Whereas the Austrian Ombud for Equal Treatment combated mainly gender discrimination in its promotional work, the Hungarian agency dealt with discrimination concerns related to disabled people, ethnic minorities and women, strongly promoted and protected by supranational institutions and laws (i.e. European Communities 2000; 2002). Yet, the Austrian agency's promotional work started to embrace more groups like ethnic minorities over the period of investigation. The Hungarian agency frequently connected women's concerns to their potential motherhood. This aspect did not change over the period of investigation. The Hungarian agency also established a stronger focus on Roma than on disabled people. In comparison to the Austrian and the Hungarian agencies, the Irish agency's promotional work was broad, although the in-depth examination of the data shows that fewer areas were covered with less depth of intervention after 2009. The data shows a shift towards a diversity agenda decreasing its activities targeting specific groups like Travellers.

All three agencies experienced limitations in their advice to the administration. Although the Austrian agency clearly stated its lack of resources and powers in its reports to the government, the Austrian government did not consider the agency's advice. While the Hungarian agency switched between giving advice and interpreting the new legislation, the Irish agency only responded to government initiatives. This shows a passive engagement of the Hungarian and the Irish agencies with the administration. Although the Austrian agency was more active, it had no impact.

In conclusion, all three agencies intervened strategically in the field to promote antidiscrimination. The Austrian agency's scope of equality promotion focused on combating gender discrimination, but broadened to address ethnic and religious discrimination. Different from that, the scope of equality promotion of the Hungarian agency mainly addressed disability and Roma discrimination. Yet, its publications became more neutral and less focused on specific groups under its second leadership. Moreover, the agency became more involved in supranational networks and started to address the discrimination of mothers. The Irish agency, in turn, demonstrated the broadest scope of equality promotion throughout the period of investigation. The agency's inclusion of LGBT equality concerns in its activities is particularly striking, as it is less covered by the other two agencies. Moreover, while the Irish agency's scope of equality promotion became more oriented towards a diversity rather than antidiscrimination agenda during the period of investigation, it maintained a selective focus on the discrimination of LGBT people and ethnic minorities.

## Chapter 6: The Impact of New Political Demands on Agencies

The previous chapters looked at the powers and organizational structures of the Austrian, Hungarian and Irish antidiscrimination agencies and investigated changes in their scope of equality promotion between 2008 and 2011. The analysis showed that there is no common explanation for the changes. While the Austrian agency slightly expanded its scope of equality promotion to address the discrimination of women and ethnic minorities, the Hungarian and Irish agencies narrowed and changed their scope of equality promotion during the period of investigation differently. For instance, the Hungarian agency changed its areas of intervention by omitting LGBT people from its intervention, and by switching its focus to mothers. Moreover, the agency became less focused on specific groups in its awareness raising. Similarly, the Irish agency started to change its approach from pointing towards problems in the field to a diversity approach advertising gender or ethnic diversity as a successful business concept. Apart from this, new target groups emerged in its intervention.

This chapter investigates in how far these changes were caused by the interference of policymakers. Chapter 4 demonstrated that all three agencies depended on policymakers regarding their budgets and the appointment of their staff. This dependence makes the agencies susceptible to interferences of policymakers (i.e. Bell 2008, 42; Carpenter 1996, 283ff; Carver 2011, 9; Cormack and Niessen 2005, 23f; Gilardi 2008, 56; Gilardi 2002; Koop 2011, 210; Krizsán 2004, 166; MacEwen 1997c, 6; Majone 1999, 13f; May, et al. 2008; McBride Stetson and Mazur 2000; O'Cinneide 2002, 48; Spencer and Harvey 2013; Yesilkagit 2004). I conceptualized their interferences, as new political demands on agencies in Chapter 2. New political demands are expressed through changes in an agency's budget and staff or changes and challenges to the use of its competences. I established based on reports that new political

demands most likely occur in the aftermath of shifts in political priorities (cf. International Labour Office 2011), and are likely to influence the agencies.

In fact, the Hungarian and Irish agencies experienced shifts in political priorities and received new political demands through changes in their resources and staff during the period of investigation. Different from that, the Austrian agency received no new political demands during the period of investigation. Yet, including the Austrian agency in the analysis shows whether or not an agency's intervention also changes in the absence of new political demands. This way I test whether policymakers are the only actors influencing changes in an agency's intervention.

In the following sections, I examine how budget cuts, the appointment of new staff and challenges to the use of the agencies' competences influenced the agencies' interventions and the representation of grounds of discrimination within the agencies. I investigate and explain how competition for resources and standing among the represented grounds of discrimination emerged within the agencies due to new political demands and led to changes in the agencies' scope of equality promotion. The Austrian case shows whether this competition is solely triggered by policymakers.

This chapter continues as follows. First, I conduct a within-case analysis of the effects of new political demands on the Hungarian agency around the time of the change in government in 2010 and the Irish agency when the 2008 economic crisis hit the country. Following this analysis, I examine potential changes in the Austrian antidiscrimination agency's intervention in the absence of new political demands. The chapter concludes with a comparison of the findings to understand the actual influence of new political demands on agencies and changes in their intervention.

## 6.1 The Impact of New Political Demands on an Agency

The following analysis shows how new political demands affected the Hungarian and the Irish agencies' interventions. The examination demonstrates how changes in the agencies' resources and staff and challenges to the use of their competences impacted the agencies' interventions. I explain changes in the agency's intervention through studying changes in the representation of grounds of discrimination within the agencies. I assume that when the represented grounds of discrimination in the agency start to compete for resources and standing, weak ones will lose their representation and the agency's intervention changes.

### *6.1.1 The Events that preceded New Political Demands on the Hungarian and Irish Agencies*

Hungary and Ireland experienced shifts in political priorities of their governments in the antidiscrimination and equality field between 2008 and 2011. In Hungary, these shifts took place when a conservative coalition government of the Fidesz and KDNP holding a two-third majority of the seats in parliament took over the government from a minority government of the Socialist party in 2010 (cf. Horváth, et al. n.y., 317; Sitter 2011, 252). The interview data shows that the newly elected Hungarian government did not try to increase the protection of Roma, LGBT people and women against discrimination after taking office (HU03; 4:33). This is confirmed by reports. As indicated by a shadow report published by the Hungarian Women's Lobby and the European Roma Rights Centre in 2013, the Fidesz-KDNP government even diminished the protection of women in areas like equal pay and supported a conservative role model of women. Equality concerns related to women and work-life balance were mostly dealt with by the Department of Family Policy under the newly elected government, which points towards a



limited understanding of gender equality (p. 1ff). Women do not only experience discrimination as mothers. The new Hungarian government did not promote gender equality with its policies and strategies.

Similar changes in the Hungarian government's approach are found with regards to Roma, disabled people, senior citizens and religious minorities. While the discrimination and exclusion of Roma continued to be a problem in Hungary, the Fidesz-KDNP government did not focus on improving the situation of Roma communities on the long-term. Reports show that government programs relevant for Roma did not specifically target their systematic discrimination, except in the area of housing. For instance, the government implemented the public works scheme for unemployed people to offer unskilled workers public employment on low income, in which Roma were well represented. The scheme was not designed to help individuals to overcome their structural and systematic exclusion, as they did not improve the chances of finding future employment (cf. Bureau of Democracy. Human Rights and Labor 2013, 51ff; Háttér 2013, 77f). Likewise, Chapter 7 shows that developments aimed at enhancing the rights of disabled people, religious minorities and senior citizens were limited.

While the Fidesz-KDNP government still engaged with these aforementioned groups in its policies, it did not adopt any strategies or programs to promote the antidiscrimination of LGBT people (cf. Háttér 2013, 80). On the contrary, it displayed a homophobic attitude towards LGBT people on various occasions, as reported in an ECRI report (2010). For instance, when the personal representative on cultural matters of Viktor Orbán made homophobic statements, they remained unmentioned by the Prime Minister (p. 20;34).

This brief assessment showed that the Fidesz-KDNP government's approach to antidiscrimination was not progressive. The impact of these shifting political priorities, which

became visible through cuts and changes to the Hungarian antidiscrimination agency's budget and staff, is studied in this chapter.

Different from Hungary, there was no political change in Ireland during the period of investigation.<sup>29</sup> Yet, the country was severely hit by the economic crisis in 2008. Irish experts argue that the crisis significantly diminished the political will to advance an antidiscrimination agenda in Ireland. Moreover, since the Irish government had to respect the conditions imposed by the loan of the European Union and the International Monetary Fund taken out in the wake of the financial crisis to recover its economy, it was bound by them. This is pointed out by an expert in the following.

“The current government hasn't created an opportunity to do very much in that when they arrived into office, there was a program with the troika agreed that they had to implement. (...) I think in most of the political parties there are people, who would try and champion equality issues.”

(IE09; 7:24)

After the crisis hit the country, the Irish government developed a recovery plan and made significant changes for economic recovery. This plan foresaw that each ministry would propose cuts on its own expenditures (cf. Hammarberg 2011, 4). In the equality and antidiscrimination sector, this recovery plan had a dramatic impact. For instance, the budget of the Irish Human Rights Commission (-32%), the budget of the Office of the Minister for Integration (-26%) (cf. Irish Human Rights Commission 2010, 8f), and the budget of the Equality Authority (-43%) were significantly cut. In addition, the budget for Traveller initiatives in the Ministry responsible for promoting their equality was decreased by fifty percent (cf. Pavee Point Travellers Centre 2011, 10f) like the budget of Pobal, which provided support to local institutions to foster “social

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<sup>29</sup> Besides, Irish political parties, particularly the ruling parties Fianna Fial and Fine Gail, cannot be classified along the political spectrum of liberal and conservative, as these two centrist political parties follow conservative and liberal agendas depending to the policy area (Parker 2012, 3).

inclusion, reconciliation and equality” (cf. National Women's Council Ireland 2009, 10). The government also chose to dissolve and integrate the tasks of the National Consultative Committee on Racism and Interculturalism in the Office of the Minister for Integration and to integrate the Combat Poverty Agency into the Department of Social and Family Affairs (cf. Combat Poverty Agency n.y.-b). Before becoming dissolved, the Combat Poverty Agency focused on supporting disabled people, senior citizens and parents (cf. Combat Poverty Agency n.y.-a). These examples show that political priorities shifted in Ireland and led to dramatic cuts to the whole antidiscrimination and equality sector.

A certain reluctance to expand the resources of institutions dealing with antidiscrimination was also visible before the economic crisis hit Ireland. For instance, the matching fund for the Equality Mainstreaming Unit established in 2007 within the Equality Authority was not fully given by the parent ministry (cf. Equality and Rights Alliance 2010, 11). Yet, this stands in no relation to the abovementioned changes to the antidiscrimination infrastructure in Ireland in the wake of the economic crisis.

This brief examination of developments in the field of equality and antidiscrimination in Hungary and Ireland shows that policymakers’ willingness to support antidiscrimination was severely diminished during the period of investigation and, in the case of Ireland, even replaced by austerity measures. The following analysis shows how the Hungarian and Irish agencies received new political demands in the wake of these shifting political priorities and how they affected the agencies. While Chapter 5 already demonstrated that both agencies changed their intervention during the period of investigation, the following sections explain how these new political demands affected the preference formation within the agencies.

### ***6.1.2 The Impact of New Political Demands on the Hungarian Agency and its Intervention***

The Hungarian administration signaled new political demands to the agency in 2010 and 2011 by appointing a new president to the agency, by making changes to its advisory board and by significantly cutting its budget. As the newly elected Fidesz-KDNP government made extensive use of the possibility to replace civil servants in the whole Hungarian public administration (cf. Hajnal and Csengodi 2014, 50), it also replaced the president of the Hungarian antidiscrimination agency in 2010. This replacement was the first signal of new political demands on the agency, and had a significant impact on the agency's preference formation.

According to the assessment of a former employee of the agency, the focus of the agency's activities shifted towards the protection of senior citizens, mothers and disabled people under the new leadership. In comparison, she perceived the first president of the Equal Treatment Authority (ETA) as more open towards the promotion of the antidiscrimination of LGBT people, Roma or women.

“Now the focus is mainly on mothers, on disabled persons or the elderly. (...) If there is a conference or the head of the Authority is going to talk about the Authority, she likes to put emphasis on these groups. She does not really mention LGBT or women's issues apart from family issues. (...) She [the former president] was more open to all of the grounds. (...) Now, they don't really like to have a focus on Roma.”

(3:4; 3:5)

The data confirms that the agency published more decisions on the discrimination of mothers than women. Yet, this was only a minor change in the agency's intervention, as the agency's first leadership was also weakly committed to the promotion of the antidiscrimination of women. For instance, a former public servant points out that the first president of the agency did not support the implementation of gender equality measures within the agency.

“When I worked for the xxx as an expert, I worked in one committee with her [Judit Demeter] and I wanted to achieve that the ETA and other organizations had to develop a gender mainstreaming

perspective. I couldn't. So now, Judit Demeter is out of the office and (...) her position has changed and she is more critical.”

(10:21)

While the data shows that fighting the discrimination women was not a priority for both leaders of the agency, its first president dealt with these concerns, at least in a limited way. For instance, the agency criticized the Hungarian government for the way it transposed the antidiscrimination directive guaranteeing access to goods and services to women. The agency took a stance for women in the parliamentary hearings (cf. Vajda 2012, 147). With the change in leadership, women's discrimination became mostly associated with the discrimination of mothers, particularly under the agency's second leadership.

The data shows that this neglect of women's issues was mostly due to the fact that most staff members of the agency left after the change in leadership. Since the agency's organizational structure did not guarantee the representation of gender equality in the agency, the replacement of the staff led to a loss of expertise, also in the field of gender antidiscrimination. The interview data shows that the exchange of staff led to a reconfiguration of the agency's preference formation. The only remaining staff member of the agency in the aftermath of the change in leadership was an expert on pregnancy discrimination and managed to acquire resources and standing for this ground of discrimination within the agency (HU10). She established the discrimination of mothers as a central area of intervention of the agency.

Although the new president had the discretion to incentivize the agency's staff to build expertise in different areas of the agency's mandate, as she supervised all units of the agency, as defined by Article 2 of the Government Decree 362/2004, expertise on women's discrimination, apart from motherhood, did not develop to an extent to influence the agency's intervention. Under its first leadership, the agency built expertise on sexual harassment through a staff member of the agency.

Her interview quote shows how she learnt to deal with sexual harassment cases under the agency's first leadership.

“When I started to work with sexual harassment, I was a newcomer. I started to research and read the CEDAW. I read the guidelines and studies on the topic because it is not just about the legislation. (...) The problem is it really depends on you and your sense of responsibility. There is no one who will check on you whether you are the kind of person who looks into (...) everything.”

(3:28)

The first leadership assigned this employee with the task of building expertise in the area of sexual harassment. Yet, she left the agency after the change in leadership, which affected the agency's expertise and the representation of grounds of discrimination within the agency. For instance, the agency did not report any harassment cases in its annual reports of 2010 and 2011. The agency lost part of its pro-active approach to women's rights enforcement by the exchange of staff members. The data shows that it did not rebuild this expertise and replaced it with a focus on mothers.

Looking at the agency's alleged neglect of LGBT issues, the data and a report published by an LGBT NGO confirm that the agency ceased to talk about LGBT issues in public after the change in leadership (cf. Háttér 2013, 154). While the former president of the Authority participated in LGBT events and included LGBT research in the agency's research activities (cf. Hungarian Business Leaders Forum 2010), LGBT discrimination lost its representation and was excluded from the agency's intervention after the change in leadership. Yet, the agency always had a limited expertise on LGBT discrimination, as shown by the following quote. The legal services of an NGO dealing with LGBT discrimination did not recommend its clients to take their cases immediately to the Equal Treatment Authority for a decision because the NGO did not see the agency as the main expert body.

“Basically, our interaction with the ETA is focused on individual complaints that we do. We usually advise clients not to go directly to the ETA, but to use our free legal aid.”

(2:5)

This quote shows that LGBT expertise within the agency was limited. The analysis confirmed that LGBT discrimination lost its representation in the agency’s intervention, as it was always weakly represented in the agency.

Although the first quote talked about the agency’s neglect of Roma discrimination, the examination of the agency’s scope of equality promotion in Chapter 5 showed that the agency focused on their discrimination throughout the period of investigation. This, however, was mostly due to the fact that the influence of the first president on selecting the agency’s strategic research did not vanish immediately after she was replaced by the second president. In determining the research agenda of the agency for four years, her influence on the agency’s research was not immediately terminated.

Expertise on Roma also had a comparably strong representation within the agency under its first leadership, which continued to affect the agency after the change in leadership. The examination of the professional background of the agency’s management shows that the first president of the agency, Judit Demeter, started to work on human rights issues in 2002 in her function as the Minister of Justice’s head of Cabinet. She managed among other things the antidiscrimination and legal aid services for Roma until 2005 when she joined the agency (cf. Hungarian Business Leaders Forum 2010, 26). In addition, her Vice-president was the former director of a Roma rights NGO. Expertise on Roma discrimination was well represented in the management under the agency’s first leadership and influenced its preference formation and intervention.

Yet, combating Roma discrimination became less important to the agency. Although the agency took on an ethnic school segregation case in its promotional work after the change in leadership, the agency did not continue to focus its activities on combating the discrimination of Roma to the same extent as before, as shown in Chapter 5. Roma discrimination, as a strong interest within the agency with a relatively high standing and considerable resources, was weakened by the replacement of the leadership, but did not lose its representation.

Combating Roma discrimination remained a priority also because the agency was managed by an advisory board, where expertise on Roma discrimination was strongly represented. Chapter 4 showed that board members had expertise on Roma children and disability discrimination. The board members were not replaced at the time of the change in leadership. They continued to provide their expertise to the agency. The examination of the agency's advice to the government shows that the board was very active in interpreting the antidiscrimination legislation and guiding the agency in its legal work. For instance, by specifying the ground of discrimination "other", the board significantly affected the agency's legal work and helped to close loopholes in the antidiscrimination legislation. Moreover, the analysis showed that the board members used their expertise specifically to advance the protection of Roma and disabled people. For instance, their interpretation of harassment and equal pay explicitly referred to ethnic discrimination, although these areas of the antidiscrimination law were traditionally associated with gender equality. Therefore, the representation of grounds of discrimination, like Roma and ethnic discrimination, remained strong through the advisory board. The board reinforced the agency's intervention in the area of ethnic and disability discrimination, also after the change in leadership.

Yet, the board's influence ceased in 2011, as the Hungarian administration made changes to the board as another signal of new political demands on the agency. It did not appoint experts to the



vacant seats of the board from May 2011 onwards, and completely abolished the board in February 2012. The government justified its abolishment by stating that its guidance was no longer needed. Courts were indicated as the responsible institutions to give advice on the interpretation of antidiscrimination laws (cf. Kádár 2012, 133). Interview data and research, however, show that many judges lacked the expertise and experience to deal with discrimination (cf. Causse 2008, 85 and HU01; 82:88), as the Fidesz-KDNP government also replaced the judges in the courts supervising the antidiscrimination agency's decisions. Some of the new judges had no prior experience or expertise in the field of antidiscrimination or human rights (HU02; 3:19). Therefore, the abolishment of the agency's advisory board is likely to have a significant effect on the agency in the future.

The dismantling of the board is also likely to impact civil society, as the board gave input to civil society dealing with antidiscrimination in its areas of expertise. For instance, the interpretation of the antidiscrimination legislation by the board helped civil society in their own legal casework, as shown by a quote with a NGO member.

“When we went to the Civil Court and we won a sterilization case [on Roma], we were using the concept of discrimination by association. I was using the opinion that was issued by the advisory body of the equal treatment body to explain to the Court what we mean by that.”

(HU06; 7:5)

Apart from changes in its staff and advisory board, the Hungarian administration also signaled new political demands on the agency through budget cuts. As mentioned beforehand, the Hungarian agency had its budget assigned by the administration, its revenues from its casework and its European funding. Looking at its budget, it continuously diminished over the period of investigation. The budget decreased from €15 500 in 2009 to €95 000 in 2010, and from €91 500 in 2011 to finally €386 500 in 2012 (cf. Kádár 2012, 132). The most significant cuts occurred

after the new Fidesz-KDNP government took office in 2010. Overall, the agency's budget was cut in half in the short period of four years.

Yet, the scope of the agency's substantial legal support did not immediately respond to these cuts, as the number of decisions taken by the agency peaked in 2009 with 48 decisions, and did not significantly decrease until 2011. Yet, the budget cuts affected the capacity of the agency to retain staff and in-house expertise, which destabilized its preference formation, as described beforehand. The agency needed to train new staff and develop new expertise in the different areas of its mandate. The agency was only able to hire new staff when its budget was increased after 2012 (11:1;11:12). At this point, trained staff had already left the agency.

Moreover, since October 2009, the agency's legal officers had to seek settlements between clients and perpetrators, which limited the possibility of the agency to generate additional revenues (cf. Kádár 2012, 116f). Prior to these changes, the agency was able to keep half of its imposed fines as additional resources. A legal expert believes that the administration adopted these provisions mainly to stop the agency from fining public institutions (HU01; 2:10). This points towards a challenge against the agency's use of its competences to promote antidiscrimination in the public sector and affected the agency's capacity to acquire additional funds for its intervention.

The effect of this challenge is confirmed by the fact that the agency became more passive in its enforcement of antidiscrimination in the public sector under its second leadership. As the agency was incentivized not to fine, the agency did not take many decisions against public institutions, although it had the competences to do so. The reported cases decreased after the change in leadership. The interview data also shows that the agency was careful in its exchange with the government. This approach went even so far that the agency asked the administration for guidance on how to interpret new antidiscrimination laws, as indicated by a former employee.

“There is a separate Act on disabled persons and there were some questionable terms or questionable goals in it, and we asked the Ministry to explain to us what they wanted with these terms. There were some meetings on this, and we interpreted the term as the Ministry said.”

(3:11)

This quote has to be seen against the background of a reported incident in which the administration interfered in the agency’s use of its competences in the public sector. A Hungarian expert reported that the agency’s parent ministry interfered in the agency’s legal intervention when the agency took on a disability discrimination case in the public sector.

“Accessibility has always been an issue (...). Although the Authority tried to fight for these clients, and there was a clear standpoint on it, the Ministry, I know, was intervening and asking them to withdraw because actually it was the government’s fault not to implement properly the accessibility deadlines.”

(HU05: 6:23)

The government interfered in the agency’s activities targeting the proper enforcement of the accessibility provisions and even postponed the deadlines for complying with the accessibility requirements after that (cf. Equal Treatment Authority 2011, 33). By interfering, the agency was not able to monitor the compliance with the antidiscrimination provisions of public bodies. Yet, the publications of the agency’s advisory board show that it continued to raise awareness on disability discrimination. Since disability equality concerns were comparably well represented through the board, like expertise on Roma discrimination, they had a comparably strong representation within the agency and the agency continued its intervention against disability discrimination.

The analysis of the impact of new political demands on the Hungarian agency showed that they destabilized and challenged the agency’s intervention. Yet, the agency did not become an empty shell under its second leadership. This was mostly due to the influence of its advisory board.

Yet the available EU funding also played a central role in this context, which is addressed in more detail in Chapter 8. The agency received more than 3 Million Euro from the European Social Fund and the Hungarian government in 2009, as pointed out in Chapter 4, which was invested through the TAMOP project. It had various components to increase the agency's research, training and regional representation. The EU funding channel enabled the agency to commission research in the field of gender, LGBT, Roma and disability discrimination.

Concluding on these findings, the analysis of the influence of new political demands showed that the represented grounds of discrimination within the Hungarian agency started to compete for resources and standing after the agency received new political demands. The change in leadership significantly weakened the representation of Roma discrimination within the agency. Yet, as a formerly strong interest, it did not lose its representation. Moreover, the agency had to hire and train new staff when almost all staff members decided to leave the agency after the change in leadership. These changes in staff almost led to a complete loss of coverage of gender and LGBT discrimination, which were always weakly represented within the agency. The competition among the remaining grounds of discrimination led to a shift of the agency's intervention towards the discrimination of mothers. Moreover, the agency became more neutral and less specific in addressing discrimination of groups and more careful in its intervention against discrimination in the public sector over the period of investigation. A former employee describes the change in leadership from an activist one towards a managerial one.

“She [Judit Demeter] was a kind of woman, who was really involved in all of the cases. She was an expert and we have learned from her... but this new leadership is another type of leadership. (...) It's a kind of managerial type of leadership and she is not really involved in the cases.”

(3:30)

While this examination was able to show why the agency continued to support disabled people and Roma to fight their discrimination, the agency's continuous but limited intervention against women's and LGBT discrimination found in Chapter 5, cannot be explained through the described changes in the agency's preference formation. Moreover, the changes in the agency's awareness raising on the discrimination of senior citizens has not yet been explained by the analysis. An examination of the agency's reaction to new political demands in a multi-actor environment is necessary for truly understanding the effects of new political demands on the Hungarian agency.

### ***6.1.3 The Impact of New Political Demands on the Irish Agency and its Intervention***

The Irish agency received new political demands in the form of a 43% budget cut, which was announced in October 2008 after the financial crisis hit Ireland (cf. Crowley 2010, 100). The head of the agency resigned shortly after and was replaced by a new CEO. Moreover, the budget cut also led to a drastic drop in the agency's scope of substantial legal support, promotional work and research, shown in Chapter 5.

The CEO's resignation and his replacement in 2009 caused changes in the agency's management style. Like in the case of the Hungarian agency, the new CEO was perceived as an executive leader rather than an advocate for antidiscrimination, as shown by the following interview quote.

“He [the former CEO] had a very strong background in the NGO sector and he was an adventurous and brilliant choice for a CEO, (...) replaced by Renee Dempsey, who is a civil servant, and just a very different person with a very different background. (...) In comparison to Niall, more an executive leader rather than a moral leader.”

(IE08; 6:27)

The data confirms that the agency's intervention was strongly influenced by its first leader Niall Crowley, who was working on Traveller rights before he joined the agency, as shown in Chapter 4. His prior commitment to enhancing Traveller rights is partly mirrored through the agency's continuous and extensive support to Traveller discrimination cases in the agency's substantial legal support. This support was not even amended when the government made it more difficult for the agency to support Traveller cases under his leadership. For instance, the agency's litigation work against the discrimination of Travellers in accessing licensed premises was opposed by the Vinter's federation in 2002. Although pubs were condemned for their discriminatory behavior, some of them continued to ban Travellers from accessing their premises (cf. Crowley 2010, 74ff). Although the government intervened to enforce the law, it also amended the Intoxicating Liquor Act 2003 to transfer the responsibility to enforce antidiscrimination provisions in licensed premises from the Equality Tribunal to the district courts.<sup>30</sup> As a consequence, individuals and the Equality Authority lost the opportunity to take cases against licensed premises free of charge in front of the Equality Tribunal (cf. Barry 2003, 430). This immensely increased the financial risk of alleged victims of discrimination to take cases against licensed premises. Yet, this incident had a small effect on the agency's intervention. The agency continued to support alleged Traveller discrimination cases, particularly in relation to the Intoxicating Liquor Act. This is not explained by any specialized unit within the agency working on Traveller rights, but by the commitment of its first leadership to enforce Traveller rights.

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<sup>30</sup> Article 19 (11) (a) of the amended Intoxicating Liquor Act states that "the Act of 2000 shall cease to apply in relation to prohibited conduct occurring on, or at the point of entry to, licensed premises on or after the commencement of this section". This means that cases can no longer be taken to the Equality Tribunal free of charge.

Besides this commitment to support Travellers, a staff member of the agency reports that the agency was active on all grounds of discrimination covered within its mandate under his leadership and not only on the Traveller ground. A member of an LGBT NGO confirms that and states that the first CEO had a large network, which did not only encompass NGOs fighting against racism and Traveller discrimination. He was also seen as a crucial figure in the antidiscrimination sector by NGOs dealing with LGBT rights, as shown by the following interview quote.

“Because he had a very strong background in the NGO sector as the leader of an organization that was campaigning for equality at the rough edge; [he was] personally very likeable with an enormous capacity to think things through and just really strong on the issue; [with a] huge network of relationships; [and] huge respect long before he got there.”

(6:27)

This statement is confirmed by the agency’s scope of intervention under his leadership. For instance, the Irish agency’s research focused on many groups in 2008 without losing depth of intervention. The intervention of the agency was not centered on promoting specific grounds of discrimination. There was no hierarchy of priorities. The first leadership did not support the emergence of competition or strong interests within the agency, which is also pointed out by a staff member.

“I would say Niall has been key in that the agency had a systematic approach to looking at across the nine grounds and trying to get organizations to address equality across the nine grounds.”

(IE07; 5;3)

The commitments of the Irish agency’s management to preventing competition and the establishment of strong interests within the agency is mirrored in the creation of its Equality Mainstreaming Unit, in addition to its Development Unit, and its Research Unit. These units had broad visions of antidiscrimination and pushed the agency to develop a broad scope of

intervention, as shown by the interview data and the agency's publications. Antidiscrimination was addressed as a complex and systematic problem.

While the agency's activities still remained comparably broad after the change in leadership in 2009, the agency started to use a more neutral tone and language focused on promoting diversity rather than antidiscrimination. Only with regards to ethnic minorities, disabled people and LGBT people did the agency continue to cover these dynamics promoting their antidiscrimination. This development was visible in all units of the agency, also in the one's which were less likely to embrace such an approach. For instance, the Equality Mainstreaming Unit of the agency, which did not prioritize grounds of discrimination under the agency's first leadership, focused on the discrimination of these groups in specific events after the change in leadership. This emphasizes that the leadership played a central role in preventing the competition and a hierarchy among the represented grounds of discrimination within the Irish agency.

While the change in the agency's leadership seems coincidental with the budget cuts, the examination of events prior to the budget cut demonstrates that the government longed for this change in leadership for a long time. Before the Irish government was able to appoint a new CEO to the agency, it had already amended the respective appointment procedures in 2004. Prior to 2004, the Ministry lacked the competences to define the criteria for the appointment of a new CEO. Consequently, the government's prior attempts to replace the head of the agency failed, as it was not able to refuse his contract renewal. The 2004 Equality Act transferred the necessary competences from the agency's advisory board to the parent ministry. While the Irish administration did not fire the CEO in 2009, it changed the procedures and challenged his leadership and the agency's intervention to take control over his or her appointment in the future (cf. Crowley 2010, 100ff).



While the agency's leadership was crucial for the absence of prioritized grounds of discrimination in the agency's intervention, the scope of its equality promotion did not dramatically change under its second leadership. Its intervention, after an initial narrowing, remained broad compared to the Hungarian agency. This was partly due to the fact that there was no exodus of staff leaving the agency after the change in leadership. While the 2008 budget cut affected the capacity of the agency to retain staff, this difficulty initially applied more to maintaining its administrative than expert staff (IE07; 5:18). For instance, an interest group representative dealing with gender discrimination states that she had diverse contact points in the agency to talk about these initiatives throughout the period of investigation.

“So anything to do with gender mainstreaming (...) I had 2 people to go to there. Around general equality issues, there would have been one particular lady who was quite senior in there.”

(1:18)

This quote demonstrates that even grounds of discrimination like gender discrimination did not entirely lose their representation under the agency's second leadership, although gender discrimination only had a weak representation in terms of standing and resources visible in the agency's intervention. This is partly explained by the fact that staff was not completely replaced in the agency in 2009.

In addition, the agency's advisory board was key, as it continued to offer its expertise after the change in leadership. The advisory board had broad expertise in the field of disability and LGBT rights; Traveller and ethnic discrimination; employees' and employers' interests; education; anti-Semitism; and women's rights, as shown in Chapter 4. The professional background of the board members led to the representation of many grounds of discrimination in the agency's management also affecting its strategic work. The agency was able to rely on a broad network of expertise on diverse antidiscrimination matters in addition to its leadership and staff.

While the board was also attacked by the parent ministry because of its support to the agency's first leadership under Niall Crowley, it was not abolished. While the parent ministry did not reappoint the board members in 2007 (cf. Crowley 2010, 83ff) and appointed a departmental representative to the new board in 2008 (cf. Equality and Rights Alliance 2010, 7) because of a conflict within the board initiated by the parent ministry about the powers of the CEO, the board continued its work (4:19). Moreover, the board remained in place after the change in the agency's leadership, which shows that the parent ministry had no intention to dismantle the board, but to exchange the leadership of the agency.

This conflicting relationship of the agency with its parent ministry was mostly limited to the role of the first CEO of the agency. According to the interview data its parent ministry opposed the agency's litigation work in the field of Traveller rights (IE08; 6:16) and against the public sector (IE06;4:15). Moreover, a staff member of the agency states that the parent ministry was supportive of the agency's role in providing research and information.

“The relationship we had with the department around the research, was quite positive, partly because we were very careful, and empirically correct.”

(3:48)

Although the agency received new political demands, which considerably affected the agency's intervention and its leadership, it maintained an independent understanding of its role as an agency promoting antidiscrimination throughout the period of investigation. It published its strategic orientation and broad approach to antidiscrimination regularly in its strategic plan. As illustrated by an interview quote of a staff member, it addressed many problems and responded to developments in the field through its strategic plan, rather than to the needs of policymakers.

“The Equality Authority from the time it was set up always had (...) a cycle of strategic planning. Every three years, it had to have a strategic plan and that's fairly high level and fairly general in a sense, but what it sort of tried to identify was what you were prioritizing in terms of key areas of

work in that period, usually based on the fact that either you were just choosing to prioritize or for some contextual reason it made sense to prioritize work in a certain area.”

(3:39)

The analysis showed that new political demands affected the Irish agency because they led to the replacement of its leadership and reduced its resources. The new leadership of the agency imposed a different management style on the agency leading to competition among the represented grounds of discrimination for standing and resources. Stronger grounds became visible in the agency’s work after the change in leadership, and the agency started to talk more about diversity rather than antidiscrimination. These changes cannot be explained by the budget cut, as the agency’s expertise and the representation of grounds of discrimination within the agency did not change dramatically. It remains unclear why the agency started to talk about diversity and why some grounds of discrimination became more frequently addressed in the agency’s activities. Chapter 8 studies changes in the Irish agency’s intervention in the aftermath of new political demands in a multi-actor environment to give further explanations.

#### ***6.1.4 Concluding Remarks on the Hungarian and Irish cases***

Concluding from the analysis of the impact of new political demands, the Hungarian agency experienced more significant changes in its resources and expertise compared to the Irish agency. While the staff of the Hungarian agency was almost completely replaced, the expert staff in the Irish agency initially remained relatively stable. Competition for resources and standing among the represented grounds of discrimination increased significantly in the Hungarian agency. Consequently, LGBT issues disappeared from the Hungarian agency’s agenda and the agency started to use a more neutral tone in addressing discrimination. Moreover, the discrimination of

mothers emerged as a new area of intervention. In comparison, the Irish agency experienced more incremental changes in its intervention. It became more focused on disabled and LGBT people, but also continued to intervene against the discrimination of other groups. Although it also started to talk more about diversity than antidiscrimination, its scope of equality promotion and intervention remained relatively broad. While new political demands can explain some of the changes, Chapter 8 shows how the agencies dealt with new political demands in a multi-actor environment giving an explanation for the yet unexplained changes.

## **6.2 Political Negligence of the Austrian Agency**

The Austrian Ombud for Equal Treatment did not experience interferences by policymakers in its resources and expertise or challenges to the use of its competences during the period of investigation. Different from Ireland, Austria was not as severely affected by the economic crisis, since it did not take out any emergency loans, and it did not enter into a recessionary period (cf. Economic Chamber Austria 2015). Moreover, unlike Hungary, Austria was ruled by centrist coalition governments during the period of investigation with no major shifts in political priorities (cf. Austrian Federal Chancellery n.y.). The following analysis shows what happens in an agency's intervention when new political demands are absent in the case of the Austrian agency.

While the Irish and the Hungarian antidiscrimination agencies experienced changes in their leadership during the period of investigation, the Austrian policymakers did not exchange in the management of the agency. Its director has been working in her position for 25 years. Before joining the agency, she assisted and worked for social democratic politicians (cf. Brickner 2014).

The other two managers of the agency have been employed with the agency since its reform in 2004, which expanded its competences to intervene in age, ethnic, religious and LGBT discrimination cases in employment. The management of the agency, therefore, is made of career civil servants (AT05; 4:37). Based on the length of their employment we can assume that the agency's management has stable routines and the relationship of the units in the agency is anchored in these routines.

The examination of the management further shows that women's issues are comparably well represented within the agency, since the director of the agency is also the responsible head of the gender unit of the agency. Moreover, when the gender equality body was reformed in 2004 to become the antidiscrimination agency, the former director of the equality body remained in her position as the director of the agency. She had well-established expertise in fighting for gender equality and in managing a public expert body. The priority given to women in the agency's intervention is mirrored in the organizational structure of the agency, outlined in Chapter 4.

Yet, there was another reason why women's issues became the priority in the Austrian agency's intervention after its reform in 2004. An interviewed Austrian expert reports that the recruitment of the new managers and lawyers for the new units in the reformed agency did not lead to the employment of experienced staff.

“The two women that were hired had just graduated from University and succeeded in appearing as harmless as possible... Luckily, that wasn't the case, as we saw later. (...) I knew others who applied and I have to say, (...) they would have been more qualified, with experience in the field.”

(AT05; 4:37)

The interview quote shows that the new managers and lawyers recruited to fill positions in the new units of the agency lacked experience in combating discrimination. Considering the fact that they had to build expertise and routines within the new units of the agency, their limited

experience further weakened the representation of these grounds of discrimination within the agency, and introduced a hierarchy of representation with gender at the top. The employment of the new managers did not destabilize the dominant representation of women's concerns within the agency, but reinforce it.

While the Irish and the Hungarian agencies witnessed cuts in their budgets, the Austrian agency only experienced an indirect decrease of its budget after its reform in 2004. Although its mandate was expanded to cover more sectors and types of discrimination, its budget was not proportionately increased. For instance, the law reforming the agency did not guarantee a larger budget to the reformed agency in 2004 for its promotional work (cf. Austrian National Council 2004, 222ff). In its Vienna main office, the agency was only able to hire three full-time and one part-time lawyer to deal with the discrimination of ethnic and religious minorities, senior citizens and LGBT people (cf. European Commission against Racism and Intolerance 2010, 20). Although each of the two new units of the agency received an additional employee in 2009, resources were still limited, as shown in a report of the European Commission against Racism and Intolerance published in 2012 (p.5).

While the reform of the agency happened in 2004 under a coalition government of the conservative party and the right-wing Freedom Party, the subsequent coalition government of the social democrats and the conservative party did not improve the funding situation of the agency. An interviewed public servant stated that there is a general lack of political will to tackle discrimination in Austria (AT06;11:58).

A further consequence of the agency's lack of resources was that also its regional offices had difficulties to expand their activities beyond combating gender discrimination. They were not able to recruit additional staff to intervene in areas other than gender discrimination (cf. Austrian

Ombud for Equal Treatment 2010, 169f). Unsurprisingly, the scope of the Austrian agency's intervention shows a clear focus on combating gender discrimination in its regional offices.

Yet, the data also shows that the regional offices slightly broadened their activities by offering support to women belonging to ethnic minorities targeting their discrimination as a combination of gender and ethnic discrimination. This attempt to address the discrimination of ethnic minorities from a gender perspective indicates that the agency broadened its intervention in the regional offices despite their limited resources. This was partly facilitated by the fact that the meetings between the agency's staff in its Vienna main office and its regional offices brought together its lawyers with expertise in litigation to exchange their experience. For instance, the Vienna main office could offer its expertise on ethnic discrimination to lawyers in the regional offices (02:19). Therefore, the incremental changes were not incentivized by new political demands, but by the agency's internal exchange of expertise.

The lack of resources, however, severely affected the Austrian agency's ability to conduct strategic investigations. While the agency had a budget of €40,000 for engaging in awareness raising and training in 2008 (cf. European Commission against Racism and Intolerance 2010, 20), the 2012 budget augmented only slightly to €50,000 (cf. EQUINET 2012b, 3). The limited budget hindered the agency to carry out its investigative function, as shown by its scope of equality promotion and as pointed out by a staff member of the agency.

“So we are for sure very much focused on individual assistance. More than that, we can give recommendations or publish statements or reports etc., but to take additional structural measures... we are not able to do this.”

(2:54)

The quote shows that the Austrian agency lacked the staff for conducting research, and to build expertise and routines in this area of its mandate. While the Irish Equality Authority and the

Hungarian Equal Treatment Authority acquired additional resources from European Union funds to carry out and commission research, an official working in the Austrian Ministry dealing with Women's Concerns hints at the fact that the Austrian government would not provide such a matching fund for acquiring EU funds (11:82). Because of a lack of political will additional resources could not be found to broaden the agency's intervention.

Importantly, the data shows that the agency's focus on gender discrimination reflects the government's salience attached to combating gender discrimination. The government actively limited the agency's competences to women's concerns, as it did not broaden its competences to intervene against discrimination for groups other than women and ethnic minorities outside employment. Although there were attempts to change this, they were blocked by political parties. For instance, the last attempt by the social democrats to broaden the agency's competences and the scope of protection offered by the antidiscrimination legislation in 2013 was blocked by the conservative party (cf. DieStandard 2013). The agency's powers remained limited to intervene against the discrimination of senior citizens, religious minorities and LGBT people in the employment sector. Only in case of gender and ethnic discrimination was the agency able to intervene outside the sphere of employment, according to the amended Equal Treatment Act, BGBl. I no. 98/2008.

Moreover, we find also one minor instance in which policymakers broadened the agency's competences, and this was solely for the purpose of increasing the agency's powers to intervene against the discrimination of women. The government amended the equal treatment legislation in 2011, BGBl. I no. 7/2011, requiring businesses of a certain size to publish salary reports to combat the equal pay gap. The supervision of the compliance with the legislation was integrated in the agency's competences. While the competences of the agency to intervene in the field of



gender discrimination were extended, they remained unchanged for the other potential areas of intervention. Although this seems more like a symbolic expansion of the agency's powers, as the agency pointed towards a lack of staff to enforce the new provisions, the government only expanded the agency's powers when they applied to women.

Yet, the government did not actively challenge the agency's use of its competences in the field during the period of investigation. An NGO expert believes that the agency did not face opposition by the government, as the agency always lacked the competences to support the enforcement of antidiscrimination provisions in the public sector.

“They are independent in their assistance, at least that is what the Ombud for Equal Treatment always told me (...) which is related to the fact that the Ombud for Equal Treatment is not responsible for public institutions, but for private organizations (...) except if there are (...) outsourced services where it is not yet clear where they belong to.”

(AT04; 3:19)

The analysis showed that the Austrian agency did not receive new political demands. Since the gender equality body became a part of the agency and its head became the director of the agency, the unit strongly influenced the preference formation of the agency. Moreover, since the management was supplemented with inexperienced staff, the agency's focus on combating gender discrimination remained relatively unchallenged. The initial gender focus of the gender equality body remained intact in the new antidiscrimination agency. Yet, the agency incrementally expanded its intervention to cover ethnic discrimination during the period of investigation, as shown in Chapter 5. This occurrence is not explained by the configuration of expertise and preference formation within the agency. An explanation for these changes in the agency's intervention is given in Chapter 8 studying changes in an agency's intervention in a multi-actor environment.

### 6.3 Concluding Remarks on the Impact of New Political Demands on Agencies

I found that changes in government after elections in Hungary in 2010 and the impact of the 2008 economic crisis led to new political demands on the antidiscrimination agencies in Hungary and Ireland. The Irish-Hungarian comparison shows that while the Irish government limited the Irish agency's resources after the economic crisis hit the country, the new Hungarian Fidesz-led government cut the Equal Treatment Authority's resources and exchanged its leadership after they took office in 2010. These changes challenged the intervention of the agencies. In the Hungarian case, the new political demands led to a complete exchange of the agency's staff and expertise. In comparison, the new political demands on the Irish agency had a smaller effect, as the agency's routines were not completely disrupted and it maintained much of its expertise, although a new leader was appointed to the agency. Therefore, new political demands destabilized the Hungarian agency more than the Irish agency. Both agencies had to adapt their preference formation in response to the changes induced by policymakers.

The new political demands challenged the representation of grounds of discrimination within the two agencies. The coalitions of interests between the represented grounds of discrimination within the agency were completely destabilized in the case of the Hungarian agency and weakened in the case of the Irish agency. This destabilization caused more competition for resources and standing among the remaining grounds of discrimination represented in the agencies. I found that strong interests within the agencies remained represented in the agency's intervention while weaker ones lost their representation or was significantly diminished after the budget cuts, as predicted by hypothesis one.

I found that the interest or grounds of discrimination that remained represented within the Hungarian agency after the exchange of staff members guided the building of new expertise in

the agency, as proposed by hypothesis two. The analysis showed that the Hungarian and Irish agencies' expertise formed around strong interests like Roma or Traveller rights after the agencies' staff was exchanged. In the case of the Irish agency, the replacement refers to the head of the agency. Yet, the agencies' interventions expanded beyond these areas of expertise, unexplained by the analysis of the impact of policymakers.

Apart from cuts in their resources and changes in their staff, the Hungarian and Irish agencies also experienced challenges to the use of their competences in the public sector, or in case of the Irish agency, related to Traveller rights, which affected the intervention of the Hungarian agency. While the Hungarian agency decreased its intervention in the public sector, the Irish agency continued to intervene against the discrimination in the public sector and against Traveller discrimination in the private sector. The hypothesis three, therefore, is only partly confirmed, as the Irish case shows a strong influence of the management to pursue strategic litigation against Traveller discrimination even after the previous CEO left the agency who was committed to enforcing Traveller rights. The agency did not focus on strongly represented grounds of discrimination. This needs further explanation.

Moreover, the Austrian Ombud for Equal Treatment, which did not receive any new political demands during the period of investigation, confirms that changes in an agency's intervention are not solely triggered by new political demands. Since the agency was left in unfavorable circumstance for an expansion of its intervention in 2004 to embrace a broader mandate, the agency had no incentive to change its intervention. The coalition government between Austria's conservative party and right-wing party created unfavorable political circumstances for the Austrian agency during its reform in 2004, as they did not increase its resources. Yet, the agency incrementally expanded its intervention over the period of investigation. Although its scope of

equality promotion was limited, and focused, to a large extent, on combating gender discrimination, the Austrian agency managed to broaden its intervention beyond combating gender discrimination. This incremental change is not explained by the interference of policymakers, as they did not change the budget or staff of the agency or challenged its intervention.

In order to seek explanations for the unexplained changes in the agencies' intervention, I test the influence of an agency's professional community and the influence of past policy commitments on the agencies' activities. I will explain why the Austrian and Irish agencies were able to maintain a broader scope of equality promotion than to be expected from the exposure to new political demands and unfavorable political circumstances. I will also test the influence of an agency's environment on the Hungarian case to understand changes in the Hungarian agency's intervention. The following chapter examines the context in which the agencies operated and received new political demands. This prepares the analysis for the influence of a multi-actor environment.

## **Chapter 7: The Agencies' Professional Community and Past Policy Commitments in the Field of Antidiscrimination in Austria, Hungary and Ireland**

This chapter examines past policy commitments and the strength of non-state actors in the field of equality and antidiscrimination in Austria, Hungary and Ireland. The previous chapter showed that some changes in the agencies' interventions could not be explained by the interferences of policymakers. As the literature review in Chapter 2 demonstrated that strong non-state actors and past policy commitments influence agencies in their intervention, I study the strength of non-state actors and the type of past policy commitments represented in Austria, Hungary and Ireland in this chapter.

Past policy commitments allegedly affect changes in the agencies' interventions, as they distribute resources and power among advocates for equality. Scholars in the equality institutions' literature proposed that power distributions in the form of historically developed structures and institutions allegedly affect the way an institution embraces and adjusts its role in a policy field (cf. Kenny and Mackay 2009). Scholars identified these structures, which distribute power and resources to equality advocates, as laws, policies and programs; governmental policy-making units, and consultation mechanisms with non-state actors in the field of antidiscrimination (cf. McBride and Mazur 2010, 53 ff; Walby, et al. 2012). I use their insights and conceptualize these structures, policies and institutions as past policy commitments and study their presence in Austria, Hungary and Ireland to understand the potential direction of their influence on changes in the agencies' interventions.

Moreover, the literature review also proposed that strong non-state actors in the field of antidiscrimination influence the agencies. Therefore, I investigate their alleged impact in the field

of antidiscrimination based on published reports to establish their strength (cf. Burstein and Linton 2002; McVeigh, et al. 2003). I examine the strength of social partners, and organizations dealing with the rights of disabled people, ethnic and religious minorities, LGBT people, senior citizens and women to understand whether they are likely to have the strength to influence the agency. Strong non-state actors are likely to influence the agencies when they have to deal with new political demands.

This chapter is organized as follows. The analysis starts with the Austrian case, where the administration mainly focused on the promotion of gender equality in the past. While strong non-state actors focused on combating the discrimination of ethnic minorities, interest groups litigating the discrimination of women. I continue with my Hungarian case showing that Hungarian policymakers mainly tackled the discrimination of ethnic minorities and disabled people in the past. While civil society is also strong in these fields, Hungarian LGBT organizations are also active in combating discrimination. Subsequently, I examine the Irish case where policymakers addressed the discrimination of many different groups vulnerable to discrimination from early on through their policies and institutions. While past policy commitments did not extensively address LGBT, ethnic minority and Traveller equality issues, civil society is comparably strong in fighting for them. The chapter concludes with an assessment and comparison of the potential direction of the influence of past policy commitments and the strength and potential direction of influence of the Austrian, Hungarian and Irish non-state actors in the field of antidiscrimination. This examination lays the foundation for the analysis of the influence of past policy commitments and strong non-state actors on the agencies after they received new political demands in Chapter 8.

## **7.1 Austrian Actors and Past Policy Commitments in the field of Antidiscrimination and Equality**

This section examines the timing of the adoption of the laws, policies and programs, and the creation of policy-making units and consultation mechanisms addressing the discrimination of groups vulnerable to discrimination in Austria to understand the potential direction of their influence on the agency. Moreover, I also study the strength of non-state actors to understand how likely they are to influence the antidiscrimination agency. I conclude with an overview and show that past policy commitments promoting the antidiscrimination and equality for women are extensive and that organizations combating the discrimination of ethnic minorities and women are strongly represented in Austria.

### ***7.1.1 Austrian Antidiscrimination and Equality Institutions and Policies***

The Austrian government put the equal treatment of women relatively early on its political agenda. It adopted its first equal treatment law regulating equal wages and salaries for men and women in the private sector in 1979.<sup>31</sup> Further amendments to the equal treatment legislation to combat the discrimination of women in other areas followed shortly after in the second half of the 1980s and the beginning of the 1990s (cf. Falkner 1995, 416f). Austria also ratified the Convention of the Committee on the Elimination of Discrimination against Women (CEDAW) in 1982 (cf. Austrian Government 2004, 6), which stands as an “international bill of rights of women” demanding governments to take action in many different areas to improve the situation

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<sup>31</sup> It had already ratified the Equal Pay Convention in 1953 (cf. Tertinegg and Sauer 2007, 13).

of women (UN Women n.y.).<sup>32</sup> At the turning of the millennia, the Austrian government even amended Austria's Constitution in 1998 to integrate a commitment to the equality of women and men on all levels of government (cf. Tertinegg and Sauer 2008). This shows that Austrian policymakers introduced and amended laws to enhance women's rights in the 1980s and 1990s.

The most significant legal developments in the field of antidiscrimination not focused on women were achieved through the adoption of the Act of the Ombud for Equal Treatment and the Equal Treatment Commission and the amendments of Austria's equal treatment laws for the public and private sectors in 2004 (cf. Frey 2005, 52f).<sup>33</sup> The amended equal treatment law for the private sector, BGBl. I Nr. 66/2004, introduced protection against discrimination in employment based on age, disability, ethnicity, gender, religion or belief and sexual orientation. Outside employment, the law only protected against ethnic and gender discrimination. Since Austria is a federal state, the *Länder* governments also adopted their own equal treatment laws, regulating public employment and access to public goods and services in the *Länder*. Like in the equal treatment law regulating the equal treatment in the private sector, they also introduced hierarchies of protection among grounds of discrimination in their equal treatment laws (cf. Frey 2005, 53f). Despite extending protection to many different groups with the amendment of the equal treatment law, the Austrian government introduced a hierarchy of protection with ethnicity and gender at the top.

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<sup>32</sup> The Austrian government also ratified the European Convention on Human Rights in 1964, and the ILO Convention on discrimination in employment in 1973 (cf. Tertinegg and Sauer 2007, 12f). It ratified the Convention on the Elimination of All Forms of Racial Discrimination in 1972 (cf. Schindlauer 2012, 115).

<sup>33</sup> Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft - GBK/GAW-Gesetz StF: BGBl. Nr. 108/1979; Bundesgesetz über die Gleichbehandlung im Bereich des Bundes (Bundes-Gleichbehandlungsgesetz-B-GIBG) StF: BGBl. Nr. 100/1993; Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungs-anwaltschaft, BGBl. I Nr. 66/2004



Before the amendment of the equal treatment laws, the legal protection against discrimination of groups other than women was limited. The main legal developments in the field of LGBT rights regarded the decriminalization of “all homosexual acts” in 2004 (cf. Tertinegg and Sauer 2007, 3) and the adoption of the Civil Partnership Act in 2010 <sup>34</sup> (cf. Austrian Ombud for Equal Treatment 2012, 45), which only happened after the amendments of the equal treatment laws. Moreover, while religious freedom and the equal treatment of religious communities was guaranteed by the Republican principle in the Constitution since 1920 (cf. Prainsack 2006, 545), this provision is no proper antidiscrimination policy. There was no legislation tackling age discrimination prior to the amendments (cf. Bell 2002, 201). Legislation did not address the discrimination of LGBT people, religious minorities, children and senior citizens.

Yet, the Austrian government’s approach to support groups vulnerable to discrimination was not only limited to the adoption and amendment of laws. For instance, it committed to gender mainstreaming in the public administration in 2000 (cf. Austrian Government 2004, 24) and adopted actions plans for children, women and ethnic minorities in the 2000s. The National Action Plan for the Rights of Children and Young Persons (2004) specifically mentioned disability, gender and ethnicity as potential causes of discrimination against children. While the problem of discrimination was also addressed in the National Action Plan for the Equal Treatment of Women and Men in the Labour Market (2010), the National Action Plan for Integration (n.y.) did not refer to discrimination (cf. Ministry for Interior 2010). While governmental action plans focused on children, women and ethnic minorities, LGBT people, religious minorities or senior citizens are not covered in the action plans.

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<sup>34</sup> Bundesgesetz über die eingetragene Partnerschaft (Eingetragene Partnerschaft-Gesetz - EPG) StF: BGBl. I Nr. 135/2009

Apart from the government's focus on the equal treatment of women in its laws and policies, it did also prioritize women's issues through its administration. The government established two state secretaries in the Federal Chancellery and the Ministry for Social Welfare in 1979 to deal with women's concerns. While one of them dealt with gender equality in employment, the other one focused on gender equality beyond employment. These state secretaries were reformed and transformed many times after their creation. For instance, the Ministry for Women, which was created out of the state secretary in the Federal Chancellery in 1990, was again dissolved in 2000 by the conservative ÖVP-FPÖ coalition government (cf. Rosenberger 2006, 746). Women's equality concerns were integrated into the portfolio of the Ministry for Social Welfare, Family and Generations (cf. Tertinegg and Sauer 2007, 7). Yet, a separate Ministry for Women's Concerns was again established in 2003. The Minister for Women's Concerns was again transferred and integrated in the Federal Chancellery after a short period of four years (cf. Tertinegg and Sauer 2008, 28). Although institutions dealing with women's concerns were reformed many times, upgrading and downgrading their status, women's concerns were integrated and represented in state secretaries and ministries since 1979.

Like the equal treatment of women, the concerns of children and senior citizens were represented comparably early through Austrian ministries. Their concerns were represented and transferred across ministerial portfolios many times since the 1980s like in the case of women's concerns, as shown in the laws, which amended the names and portfolios of the Austrian ministries (cf. Austrian Federal Chancellery 2017). They were either included in the Ministry responsible for Social Affairs or in the one dealing with Family Concerns. While the concerns of senior citizens and young people were represented from early on in the public administration, the respective units experienced many reforms like the units and ministries dealing with gender equality.

The representation of equality concerns of LGBT, religious and ethnic minority in the Austrian public administration was comparably limited and started late. Policymakers were more concerned with the protection of the national labor market against foreign laborers than to protect ethnic minorities against discrimination. Among the first policies managing the increased ethnic diversity of Austrian society were the integration policies adopted in the 1990s and the amended equal treatment law (cf. Bauböck and Perchinig 2006, 729ff). While the equality concerns of ethnic minorities and LGBT people were tackled through equality units within the Ministry responsible for Social Affairs and coordinated through the Federal Chancellery, the equality concerns of religious minorities were integrated in the responsibilities of the ministries dealing with Education and Internal Affairs (cf. Schindlauer 2012, 96; Tertinegg and Sauer 2007, 20f). Moreover, the Austrian government established the State Secretary for Integration in 2011 giving more representation to the concerns of ethnic minorities (cf. Bundesministerium für Europa n.y.). The examination shows that Austrian policymakers did not create strong institutional representations for the issues of religious minorities and LGBT people, and ethnic minorities until 2011 in the administration.

Like the aforementioned laws, the regional *Länder* administrations also have their own equality units in place (cf. Sauer 2007, 49). The representatives of these units and the regional offices of the Austrian antidiscrimination agency meet annually to discuss developments and exchange experiences in the field of equal opportunities (cf. Austrian Government 2004, 36). This annual conference took place for the twelfth time in 2011 and had a strong focus on the equal treatment of women (cf. Stadt Wien 2014, 14).

The examination showed that while the equal treatment of women was important to Austrian policymakers, the discrimination of ethnic and religious minorities and LGBT people reached the

political agenda late. Equality concerns of senior citizens and young people feared better, as they became represented through ministries comparably early. The representation of senior citizens', young people's and women's equality concerns within the Austrian public administration was comparably strong. Attempts to address the situation of ethnic minorities and LGBT people only happened in the 2000s. Religious groups always had a poor representation within state structures. The examination of past policy commitments in the field of equality and antidiscrimination in Austria demonstrates that gender equality was a priority for the Austrian government from early on.

### ***7.1.2 Austria's Special Case of Disability Policy***

Disability policy developed as a separate legal, policy and institutional strand in Austria, as it became viewed as a cause of discrimination comparably late. Although Austria adopted the Act on the Employment of People with Disabilities,<sup>35</sup> supporting disabled people and regulating the right to antidiscrimination of disabled people in employment, in 1969,<sup>36</sup> provisions to compensate disabled people for their discrimination, giving teeth to the legislation, were only introduced with the 2005 Disability Equality Package. Similarly, by introducing a constitutional clause prohibiting the discrimination of disabled people in 1997, the government did not create clear legal rules for the compensation of discriminated disabled people incentivizing them to take action. Until the 2000s, disability was considered as a medical concern, impairing people, rather

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<sup>35</sup> Behinderteneinstellungsgesetz, BGBl Nr. 22/1970

<sup>36</sup> It also established a fund and quotas for realizing this goal (cf. Casado Asensio 2008, 17).

than as a cause of discrimination, explaining why protection against disability discrimination developed late in Austria (cf. Austrian Government 2011, 6ff).

In 2005, the most comprehensive laws dealing with the rights of disabled people was adopted in the form of the Federal Disability Equality Act catching up with the developments in the larger field and establishing disability policy as a priority of the Austrian government. The 2005 law demanded for the “installation of a Federal Disability Advisory Board as a consultative body, which had an advisory function in disability-related law- and policy-making” (cf. Fundamental Rights Agency 2014a, 13). The board encompassed seven representatives of disability NGOs. Moreover, an Ombudsman, offering support to alleged victims of discrimination, was created by the amendment of the Federal Disability Act and started to operate in 2006. The Minister responsible for Social Affairs, where disability issues were represented in the administration, was obliged to consult with the Disability Ombudsman and the aforementioned board on fundamental issues regarding disability policy (cf. Austrian Government 2011, 13 f).

In relation to its international obligations, the Austrian government followed a comprehensive approach. It ratified the Convention on the Rights of People with Disabilities in 2008 (cf. Fundamental Rights Agency 2014a, 2) and adopted a disability strategy (2012) to support its implementation. Moreover, Austria created separate institutions responsible for supporting the enforcement of disability rights on the ground. Chapter 4 already showed that disability was not integrated in the mandate of the Austrian antidiscrimination agency. The Federal Social Office was responsible for mediating cases of disability discrimination (cf. Austrian Government 2011). The conciliation procedure is mandatory and the agency cannot interfere in this procedure. Two interviewees hint at the possibility that the Austrian government did not want to integrate disability into the agency’s mandate because it needed to become a priority. Uniting disability

rights enforcement under the institutional umbrella of the antidiscrimination agency might have endangered the achievement of this goal according to these interviewees (AT06; 11:22; AT07; 6:42).

The examination of the developments in the field of disability equality shows that it developed isolated from the larger antidiscrimination agenda in Austria. The analysis points towards the existence of completely separate structures, laws and policies dealing with the antidiscrimination and equality concerns of disabled people.

### ***7.1.3 Austrian Non-State Actors in the field of Antidiscrimination and Equality***

The exchange between representatives of the Austrian public administration and non-state actors on antidiscrimination occurs regularly. It is formalized in the form of an annual meeting (cf. Cinar, et al. 2005, 133), which took place for the first time in 2006. The government only invited members of the Litigation Association of NGOs against Discrimination called *Klagsverband* to this first meeting (cf. European Network of Legal Experts in the Non-Discrimination Field 2006). The *Klagsverband* was founded by ZARA (combating ethnic discrimination), BIZEPS (lobbying for disability rights) and Hosi Wien (lobbying for LGBT rights) in 2004 to coordinate the strategic litigation work of NGOs in the field of antidiscrimination (cf. Frey 2005, 65). The association is the only organization which has the right to represent victims of discrimination in court in Austria (cf. Mayer 2013, 30f). NGOs, which are not members of the *Klagsverband*, can only legally intervene in a court if they “prove their legal interest in the case” (Schindlauer 2012, 6). The association is the focal point of civil society to combat discrimination and it regularly participated in the meetings with the representatives of the Austrian public administration.

While these annual meetings were perceived as positive by ministry officials (11:70) and NGOs, a report written by a legal expert (cf. Schindlauer 2012, 94) and a shadow report (2008) published as an alternative report to the European Commission against Racism and Intolerance (ECRI) show that non-state actors, particularly those working against ethnic discrimination or the aforementioned *Klagsverband*, rather influenced developments in the field of antidiscrimination outside these meetings. Reports assessing the work of non-state actors on antidiscrimination point towards NGOs like ZARA promoting the antidiscrimination of ethnic minorities as strong actors in the field (cf. European Commission against Racism and Intolerance 2010; Ludwig Boltzmann Institute of Human Rights, et al. 2008). Since organizations, like ZARA and Helping Hands Graz can only offer legal counselling to victims of discrimination but no litigation (cf. ZARA – Zivilcourage und Anti-Rassismus-Arbeit 2010, 61),<sup>37</sup> the *Klagsverband* is the strongest actor and central for litigating discrimination and incentivizing developments in the field. Therefore, it is not surprising that the first court decision condemning discriminatory and racist entrance policies of clubs in 2010 was supported by the *Klagsverband* (cf. European Network of Legal Experts in the Non-Discrimination Field 2010). While NGOs like ZARA are important for legal counselling or awareness raising, the *Klagsverband* is one of the strongest actors in the field.

Since it is such a central actor, the strength of NGOs within the association becomes fundamental to understand the direction in which the *Klagsverband* is likely to push the antidiscrimination agenda. The examination of the supported cases by the *Klagsverband* demonstrates that many cases on ethnic discrimination were supported, as the institution has much expertise on ethnic discrimination. Apart from the former head of ZARA, an NGO fighting racism, becoming the

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<sup>37</sup> While having a limited impact on casework, organizations like the Romano Centro and *Verein Karika* support Roma in Austria. Their impact is marginal (cf. Romano Centro 2015, 29f).

president of the *Klagsverband* (cf. ZARA – Zivilcourage und Anti-Rassismus-Arbeit n.y.-b), a member of an LGBT NGO states that ZARA substantially contributed its expertise within the *Klagsverband*.

“There is so much expertise from ZARA especially from the BIM.<sup>38</sup> So, we don’t need to build simultaneously our own expertise because the rights are the same and the laws are the same and it is also very practical and pragmatic that we simply use this expertise and benefit from it... piggy backing.”

(1:17)

The data shows that the expertise on ethnic discrimination was strongly represented in the *Klagsverband*. Grounds of discrimination other than ethnicity did not have the same representation. Yet, they also benefited from the application of this expertise in their own areas. For instance, although the network of LGBT organizations in Austria is relatively broad, there are no organizations solely focusing on fighting LGBT discrimination (cf. HOSI Wien n.y.). According to an interviewee, the *Klagsverband* is the main organization addressing LGBT discrimination in Austria (AT02; 1:17), which it also did in practice. The first case on LGBT discrimination was supported by the *Klagsverband*, and decided by a regional court in November 2006.

While LGBT was represented through a founding member of the *Klagsverband*, this was not the case for equality concerns like the ones of senior citizens. The two main organizations lobbying for senior citizens rights are connected to the two major political parties, the conservative ÖVP and the social democrat SPÖ. The association “*Zum alten Eisen*” is the only other visible group lobbying for the interests of senior citizens (cf. ZARA – Zivilcourage und Anti-Rassismus-Arbeit 2008, 13). Their engagement with the discrimination of senior citizens and 50+ employees,

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<sup>38</sup> Ludwig Boltzmann Institute



however, is mostly limited to lobby work (cf. Pensionistenverband n.y.; Seniorenbund n.y.). Unsurprisingly, the first Supreme Court decision on an age discrimination case regarding the lower pay of apprentices compared to regular workers was decided in July 2008 without the involvement of an organization (cf. European Network of Legal Experts in the Non-Discrimination Field 2008). Since neither the Klagsverband is very active in litigating age discrimination, senior citizens and their equality concerns do not have the same representation like ethnic minorities in the *Klagsverband*.

The representation of religious discrimination in the *Klagsverband* is a special case. While religious discrimination is tackled by NGOs like the *Forum gegen Anti-Semitismus* and the *Islamische Glaubensgemeinschaft* (cf. ZARA – Zivilcourage und Anti-Rassismus-Arbeit 2008, 13), their legal counseling is not visible. Yet, an interviewee points out that ZARA, which has a strong influence on the litigation work of the *Klagsverband* as pointed out beforehand, established the practice to frame religious discrimination as part of ethnic discrimination to address religious discrimination in areas where the law only foresees the protection of ethnic minorities against discrimination. Religious discrimination, therefore, became incorporated in the fight against ethnic discrimination and was also represented in the litigation work of the *Klagsverband* (AT04; 3:31).

Women's discrimination is scarcely touched by the litigation work of the *Klagsverband*. Moreover, a report (2015) assessing also litigation in the field of antidiscrimination mentions no specific organization or institution offering legal advice to women to fight their discrimination (p. 41). Women's organizations, giving legal advice to discriminated women in employment, are almost absent. Litigation work against gender discrimination should be very limited in practice.

Yet, the Chamber of Labor fills this lack and actively supports victims of discrimination in front of labor and social courts and provides legal counselling (cf. Frey 2005, 65), especially to women. It is a well-resourced player in the field of antidiscrimination (cf. Sauer 2007, 41) <sup>39</sup> and appears strongly committed to enhancing women's equality. An interviewee argues that the Austrian employees' organizations view the antidiscrimination of women as a central concern in the field.

“...because these institutions in themselves think only about institutions. This means that there is a group, which deals with gender discrimination and they have made it their priority, long enough. (...) If you have to talk about ethnic discrimination, then there is no clarity and there is always the retreat to the status quo.”

(AT05; 4:17)

Looking at the social partners on the employers' side, they do not directly engage with discrimination on the ground, although they influence policymaking. For instance, the Association of Industries supported the creation of care facilities for children to support women's employment (cf. Tertinegg and Sauer 2008, 56). While this was a positive input, they also opposed the extension of protection against age, disability, LGBT and religious discrimination outside employment in 2004 (cf. Casado Asensio 2008, 21). Both social partners representing employers' interests officially support diversity management (cf. Tertinegg and Sauer 2008, 56), and influence developments mostly in favor of the equal treatment of women in policymaking.

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<sup>39</sup> Historically, there has been extensive exchange and cooperation between the social partners, the political parties and the administration in policy fields like social policy or employment relations in Austria. While the social democrats are linked to the social partner representing employees' rights, the conservatives have strong ties to the social partner representing the employers (cf. Tálos 2006, 430). Social partners began to lose some of their influence on policymaking in the 1970s (cf. Tertinegg and Sauer 2007, 3f), particularly under the conservative ÖVP-FPÖ coalition government, which took office in 2000. Although the social partners gained again more influence after the victory of the SPÖ in the 2006 elections, it is not completely restored (cf. More-Hollerweger, et al. 2014, 29).

An ambiguous player in the field of antidiscrimination is the Catholic Church. Although we would expect its opposition to an antidiscrimination agenda, an interviewee points out that an organization's affiliation with the Catholic Church did not necessarily mean that the organization opposed a proactive antidiscrimination agenda on the ground.

“There we have again the phenomenon... it is again strongly connected to personal relations because naturally there are legal counsellors and people in the CARITAS as well as in the *Volkshilfe* who work on various projects... who clearly have this antidiscrimination perspective, which they also try to implement it in their (...) field of competence.”

(AT04; 3:28)

This assessment is supported by looking at the Catholic Women's Movement support for some gender equality initiatives. For instance, it criticized the equal pay gap between women and men in one of its press releases (cf. Catholic Women's Movement 2009), and supported equal treatment initiatives for women alongside the women's movement in the 1990s (cf. Rosenberger 2006, 748). Organizations connected to the Catholic Church supported some topics relevant to the equal treatment of women, but, like employers' organizations, opposed a pro-active antidiscrimination agenda on the policy-making level through its connection to the conservative party ÖVP (cf. Tálos 2006, 430) in the field of gender equality.

The interview data reveals that opposition against the enforcement of antidiscrimination is rather ad hoc and not coming from one player. For instance, the bar association attacked the *Klagsverband* for its litigation work on antidiscrimination. It challenged the competences of the *Klagsverband* to represent alleged victims of discrimination (AT05;4:50). This opposition was ad hoc and targeted the competences of the association rather than the content of its litigation work. Yet, a successful attack on the *Klagsverband* would have been disastrous for litigation against antidiscrimination, as it remains one of the strongest players in the field, apart from employees' organizations.

The examination of the strength of Austrian non-state actors in the field of antidiscrimination shows that the *Klagsverband*, giving representation to the discrimination of ethnic and religious minorities is a strong actor in the field. Civil society groups lobbying against ethnic discrimination are comparably well resourced and represented in the *Klagsverband*. They provide legal counselling and influence the *Klagsverband*. Moreover, employees' organizations like the Chamber of Labor with its regional offices and focus on the equal treatment of women is also active in the field. Litigation and lobbying work of non-state actors against discrimination is focused on ethnic minorities and women in Austria.

#### ***7.1.4 Concluding Remarks on Austrian Antidiscrimination Politics***

The examination shows that the direction of the changes in the agency's intervention follows the strength of non-state actors rather than past policy commitments. The examination shows that there are significant past policy commitments in the field of women's rights in Austria, which is also a priority of the agency. Gender, as well as disability equality concerns received support from Austrian policymakers from early on. Moreover, the employees' organizations focused on combating gender discrimination are strong players. Yet, changes in the agency's intervention mirror the strength of non-state actors. Legal counselling and litigation work of non-state actors is focused on combating ethnic discrimination. Chapter 8 tests whether these observations truly explain the incremental changes found in the Austrian agency's intervention.

## **7.2 Hungarian Actors and Past Policy Commitments in the field of Antidiscrimination and Equality**

This section examines the strength of non-state actors, and legal, policy and institutional developments in the field of equality and antidiscrimination in Hungary. As in the Austrian case, this analysis lays the foundation for the examination of influences on the changes in the Hungarian agency's intervention. The examination shows that the antidiscrimination of Roma and disabled people was comparably well promoted in the past through past policy commitments. In addition to these areas, non-state actors were also relatively strong in combating the discrimination of LGBT people.

### ***7.2.1 Hungarian Antidiscrimination and Equality Institutions and Policies***

The first policy developments in the field of antidiscrimination were achieved through the ratification of international conventions in Hungary. Prior to the adoption of its first antidiscrimination law, Hungary ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 1966 (cf. United Nations n.y.), the CEDAW Convention in 1982 (cf. Dombos, et al. 2008b, 44), and the Convention of the Rights of the Child in 1991 (cf. Open Society Institute 2005, 29). The Convention on the Rights of Persons with Disabilities was ratified in 2007, right after its finalization (cf. Hungarian National Council of Persons with Disability (FESZT), et al. 2013, 1).

The Hungarian government adopted its first domestic policies, after transitioning to a market economy, to deal with the situation of ethnic minorities, women, disabled and religious minorities in the 1990s. Most of these laws, however, cannot be considered as relevant to the field of

antidiscrimination. Like in the Act on Freedom of Conscience and Religion and the Churches (cf. Dombos, et al. 2008a, 13f; Schanda 2011, 22) and in the Act on the Protection of National and Ethnic Minorities adopted in 1993, antidiscrimination was of no particular concern (cf. Szalai and Hobson 2003, 200ff). Likewise, the Governmental Decree on implementing the Beijing Platform 1997 set out the government's agenda to support women's equality in different sectors, but was no antidiscrimination legislation (cf. Hungarian Government n.y., 24). Among the few noteworthy legal developments enhancing the rights of LGBT people in this period was the Constitutional Court's recognition of same-sex partnerships as equal to common-law marriages in 1996 (cf. Causse 2008, 70). Only in the case of disability did the Hungarian government adopt the Act on the Rights and Equal Opportunities of Disabled Persons in 1998, which had relevance for antidiscrimination, as it defined disabled people as equal members of society (cf. Open Society Institute 2005, 33). The examination of the laws and policies adopted in the 1990s shows that the most significant developments in the field of antidiscrimination were achieved in relation to disability discrimination, although Hungary established a strong representation for ethnic minorities through the Act on the Protection of National and Ethnic Minorities.

According to a staff member of the Hungarian Equal Treatment Authority, the Constitution,<sup>40</sup> the Labor Code and the Civil Code were relevant legal sources to fight discrimination, apart from the antidiscrimination law adopted in 2003 (HU02). Most discrimination complaints were brought under the Civil Code before 2003, which offered more opportunities to fight discrimination (cf. Causse 2008, 75ff; Dombos, et al. 2007, 6). Yet, appropriate procedural rules,

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<sup>40</sup> The constitutional clause prohibiting discrimination was introduced in 1989 (cf. Takacs 2007, 36).

sanctions or case law were limited in both Codes. Therefore, protection against discrimination was limited.

With the 2003 Act on Equal Treatment and Equal Opportunities, Hungary adopted its first proper antidiscrimination law. Although the number of characteristics protected in the Act was left open (cf. Kádár 2012, 5), some groups like women were specifically mentioned. The law only made minor differences in the level of protection of the specified groups. These differences were, for instance, that direct discrimination could under no circumstances be justified for men or women and ethnic minorities (cf. Dombos, et al. 2008a, 14). Yet, the law did not introduce a hierarchy of protection among the grounds like in Austria.

In addition to laws, the Hungarian government also adopted strategies for groups vulnerable to discrimination supporting Roma and disabled people. These strategies and action plans focused on disabled people, Roma and senior citizens. The government agreed, comparably early on a National Disability Programme in 1999 outlining the government's strategic approach towards enhancing the participation of disabled people (cf. Open Society Institute 2005, 34f) followed by the National Disability Action Plan in 2006 (cf. European Commission 2013, 71). Moreover, it adopted the Roma strategy in the light of Hungary's joining of the Decade of Roma Inclusion in 2005, which set goals and indicators to support Roma and their equal participation in sectors like employment or housing (cf. European Roma Rights Centre 2007, 11). While it also adopted the National Strategy for the Issues of the Elderly in 2009, it did not result in the formulation of an action plan (cf. Mosoni-Fried 2014, 16f). We find that the problems of disabled people and Roma in the field of equality and antidiscrimination were on the agenda of policymakers through laws, international commitments and policies.

Yet, disability concerns achieved representation in the public administration comparably late, as the equality concerns of ethnic minorities and women became the first ones to be integrated in the portfolios of Ministries and equality units. The Bureau of National and Ethnic Minorities was established as early as in 1990. Apart from this Bureau, which was reformed many times until it was terminated in 2007 (cf. Vajda and Dupcsik 2008, 19), the government also created a special Inter-Departmental Committee on Roma Affairs, which replaced the previous Coordinating Council of Roma Affairs (cf. Open Society Institute 2002, 255). This shows that equality concerns of Roma were on the agenda of the public administration and achieved representation early on.

An important addendum to this equality infrastructure for Roma was the creation of the Parliamentary Commissioner for National and Ethnic Minorities' Rights (Minorities' Ombudsman) in 1995 (cf. Causse 2008, 86), in addition to the Parliamentary Commissioner for Civil Rights (cf. Dombos, et al. 2007, 15; Hungarian Government 2010, 54). While the later one had the competences to deal with the violation of constitutional rights, which also included the areas of gender and disability discrimination, the Commissioner did not really engage with these issues in practice (cf. Hungarian Government 2006, 11). Information only exists on one instance when the Ombudsman investigated gender discrimination and conducted an ex officio thematic review in 2009 to understand whether the current legislation on disability rights was effective (cf. European Commission 2013, 72; Krizsán and Zentai 2006, 146). The separation of equality concerns of Roma through the Minorities' Ombudsman was crucial, as the Commissioner became an important part of the equality infrastructure for Roma. Chapter 4 already showed that the institution had powers to investigate and raise awareness about the discrimination of Roma and to influence policymaking by reporting to parliament and engaging with parliamentary



committees, which it exercised in practice (cf. Parliamentary Commissioners' Office 2008).<sup>41</sup>

The Ombudsman represented Roma and created awareness for their issues, also in the field of antidiscrimination.

Looking at the representation of equality concerns of women, the institution dealing with gender equality was established at the end of 1995 in the form of the Secretariat for Women's Policy in the Ministry of Labor. It was transformed into the Secretariat for Equal Opportunities shortly after and it created awareness and investigated gender equality. In every subsequent election, this institution was renamed and its status was considerably downgraded when a coalition of the Fidesz party, the FKGP and MDF were in power. In 2003, the head of the then-called Directorate for Equal Opportunities became the Minister for Equal Opportunities without portfolio. With this change, the representation of gender equality within the public administration was significantly improved (cf. Dombos, et al. 2007, 11ff).

Yet, this was not the only change to the equality infrastructure in Hungary. The Directorate was also meant to deal with the equal treatment of other groups like Roma and disabled people. Moreover, it received ministerial status in 2003 with its own Minister without a portfolio. The Office was subsequently integrated in the Ministry of Youth, Family, Social Affairs and Equal Opportunities in 2004. Yet, competences concerning the advancement of gender equality were moved to the deputy state secretary for EU coordination and strategy in 2004 (cf. Krizsán and Zentai 2006, 140).

The competences for equal opportunities were integrated in the responsibilities of a new ministry in 2006, but this time together with the responsibilities for women's concerns. A state secretary

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<sup>41</sup> The various Ombudsman institutions were merged into one institution named the Commissioner for Fundamental Rights in 2012 (cf. Kádár 2012, 117).

was created within the new Ministry for Social and Labor Affairs to deal with equal opportunities. While two departments within the state secretary were working on the equal treatment of specific groups like Roma and disabled people as before, one department was responsible for general equality concerns. While equality concerns of children and senior citizens were represented in two separate sub-departments, the equality concerns of LGBT people or ethnic minorities other than Roma had no representation (cf. Dombos, et al. 2008a, 16; Dombos, et al. 2007, 11f). While the equality concerns of Roma and disabled people fared relatively well under the united institutional umbrella established in 2006, others like the ones of women did not benefit from this integration, as they experienced a downgrading.

The competences for equal opportunities were yet again integrated in the portfolio of a new ministry, named the Ministry of National Resources, after the elections in 2010 won by Fidesz and KDNP including further equality concerns in the Ministry's portfolio (cf. Hungarian Women's Lobby and European Roma Rights Centre 2013, 1). At this point, also equality concerns of religious minorities were integrated in the Ministry's portfolio.<sup>42</sup> Moreover, disability-related matters were represented through the General Department of Rehab and Disability Affairs within the Ministry (cf. Hungarian Government 2010, 54). While gender equality was integrated, the Ministry had somewhat limited competences in this field. For instance, issues like work-life balance were transferred to the Department of Family Policy giving the Ministry less room to take action (cf. Hungarian Women's Lobby and European Roma Rights Centre 2013, 1).

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<sup>42</sup> The secretariat responsible for religious communities, created in 2002, was integrated in the Ministry (cf. Schanda 2011, 58).

Apart from creating this unified institutional umbrella under this Ministry, the government still followed its dual approach in creating institutional representations for Roma and women's concerns. For instance, "a commissioner responsible for women's employment was appointed in the Ministry of National Economy" (ibid. 5) and a Secretary of State responsible among other things "for the social inclusion of Roma" nominated in the Ministry of Administration and Justice. This secretary was responsible for all characteristics except for gender (cf. Kádár 2012, 140). While the government also reported on following a mainstreaming approach for Roma, disabled people and women in the Hungarian administration (cf. Hungarian Government 2010, 54), it is unclear to what extent this promise was fulfilled in practice. Based on the developments in terms of representation, the government only facilitated the representation of Roma.

It also created some level of an equality infrastructure on the local level, especially for Roma. The Ministry of Youth, Family, Social Affairs and Equal Opportunities initiated the creation of a network of Houses of Equal Opportunities in 2004. Eighteen Hungarian counties had such representations by 2007. Some of these representations were integrated in the local governments, but also in NGOs. Apart from these Houses, the Roma Anti-discrimination Network existed in each county and provided four to five hours of legal advice through one or two lawyers to the local Roma community (cf. Hodasz and Scullion 2007, 14ff).

The examination of the legal, institutional and policy developments shows that Hungary established structures and adopted policies to protect Roma and disabled people against discrimination. Gender discrimination was also comparably well represented in the public administration, but not on the same level as Roma and disabled people. Age, religious or LGBT equality concerns had limited to no institutional representation within the public administration. Although they were covered in the antidiscrimination law, they were not covered in policies or

programs promising more substantial developments. While the 2003 antidiscrimination law was the first attempt to extend protection against discrimination to many groups vulnerable to discrimination, the example of the creation of the Minorities' Ombudsman shows that past policy commitments were most extensive in the field of Roma rights giving representation to their needs.

### ***7.2.2 Hungarian Non-State Actors in the field of Antidiscrimination***

The Hungarian government engaged with non-state actors mainly through councils in the past. These councils were created to deal with the equality concerns of senior citizens, disabled people, women and Roma (cf. Dombos, et al. 2007, 26). Yet, coordination within the councils dealing with women (10:1; 10:2) and disabled people was suspended in 2010 under the newly elected government (cf. Fundamental Rights Agency 2014b, 14). Moreover, the only information available on the exchange in the Council for the Affairs of Elderly does not allow for assessing its work and the quality of exchange provided within the council (cf. Mosoni-Fried 2014, 16). While the council dealing with Roma issues was also transformed, it continued its work. By adopting the Government Decision no. 1102/2011 (IV. 15.), the Hungarian government limited the participation in the Roma Coordination Council to churches and minority self-governments (cf. Háttér 2013, 77f), but did not stop it from operating. While the antidiscrimination body like the Minorities' Ombudsman, as public bodies, were invited to participate in the sessions of the council bodies (cf. Minority Rights Group International 2012), these changes to the council effectively excluded civil society from participation. While councils facilitated exchange between the government and civil society in the past, the newly elected government discontinued

cooperating through these structures, except in the case of the Roma Coordination Council and potentially the Council for the Affairs of Elderly.

The new Fidesz-KDNP government established a Human Rights Working Group in 2012 with a roundtable for civil society consultation instead of the councils to engage on antidiscrimination matters (cf. Háttér 2013, 76). The interview data with NGO activists shows that civil society did not perceive these roundtables as a form of substantial exchange or cooperation with the government (HU06; 7:12; HU08; 9:11).

Unlike these roundtables, bilateral exchanges between the administration and individual civil society actors like in the field of Roma rights were perceived as more substantial. This is partly due to the fact that the government incentivized this exchange between ministries and civil society organizations, as Ministries were asked to invite NGOs to become strategic partners of the Hungarian public administration. Yet, the practice shows that this did not substitute the exchange through the councils. For instance, the Ministry of Public Administration and Justice did not invite any human rights NGOs to participate in these strategic partnerships in 2012 (cf. Háttér 2013, 76).<sup>43</sup>

Besides this lack of an infrastructure for substantial exchanges with the administration, the main obstacle for non-state actors working on antidiscrimination was their precarious funding situation. The interview data shows that civil society in the field of antidiscrimination formed

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<sup>43</sup> The government also amended the consultation processes with civil society in 2010. Since the adoption of the Act on Social Participation in 2010, consultation can occur through the online publication of the draft bill or through the targeted consultation of specific actors or organizations. Each Minister has the power to decide which type of consultation should take place, and how long the consultation should last. The need for consultation could also be suspended in the case of an emergency (cf. Fundamental Rights Agency 2014b, 12f). Yet, this law supposedly had a limited effect on consultations in the field of antidiscrimination, as consultations under the Socialist government were also limited (cf. Vajda 2012, 139f).

informal coalitions among themselves to exchange information, as some did not even have the resources to stay up to date on the developments (HU07; 8:9; 8:18). While the 2006 CEDAW report of the Hungarian government mentions a National Fund Programme for Non-Governmental Organizations to support NGOs to deal with their running costs (p. 4), none of the interviewees sees the government as a potential source of funding to overcome their lack of resources.<sup>44</sup>

This lack of funding notwithstanding, civil society fighting for disabled people, ethnic minorities and children were comparably strong in the field of antidiscrimination (cf. Dombos, et al. 2008a, 20). For instance, a regional association working in the field of disability rights “enforced claims of public interest on behalf of the blind and persons with impaired eyesight against 19 pharmaceutical manufacturer and distributor companies” in 2008. This shows the strength of disability groups in the area (Equal Treatment Authority 2009, 4). They were numerous and active in litigation work. Organizations like the Hungarian Civil Liberties Union, the Mental Disability Advocacy Centre and the De juRe Alapítvány helped victims of disability discrimination supporting their cases in front of courts (cf. De juRe Alapítvány 2011; Hungarian Civil Liberties Union n.y.; NGO Alliance 2005). Disability organizations were strong actors in the field.

In addition, a shadow report published by the International Law Research and Human Rights Monitoring Centre in 2011 shows that NGOs fighting the discrimination of Roma were strong. The report mentions three NGOs, which primarily provide legal counseling and representation to

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<sup>44</sup> This lack of resources became even more visible after the changes in government in 2010, as many funding channels of non-state actors dried up (cf. Háttér 2013; Vizsla and Pomidori n.y.). Besides government funding, NGOs could also apply for external funding to, for instance, the Norwegian Civic Fund. The Fidesz-KDNP government, however, tried to seize control over the distribution of the Fund in 2014 (cf. Vizsla and Pomidori n.y.).

alleged victims of discrimination, as best practice. Among these NGOs is the Hungarian Helsinki Committee (p. 37ff), which supports eight to nine discrimination cases per year and regularly files *actio popularis* claims with the antidiscrimination agency (cf. Hungarian Helsinki Committee 2010; 2011; 2012). Further NGOs dealing with the discrimination of Roma are the Hungarian Civil Liberties Union, the European Roma Rights Centre, the Chance for Children Foundation and NEKI. A report (2012), tracing legal developments in the field of antidiscrimination, shows that the Chance for Children Foundation is very active in fighting ethnic segregation in schools (p.10ff). While these NGOs are the strongest players in the field, they also provided joint statements in the past, bundling their strength to influence politics (cf. Hungarian Helsinki Committee 2010; NGO Alliance 2005). Although case law develops slowly and civil society groups face problems in supporting victims of discrimination because of their lack full legal standing (cf. Bell 2003b, 6), a report (2013) outlines that organizations litigating Roma discrimination are comparably strong in Hungary.

While organizations dealing with the rights of senior citizens are absent in public debates, civil society actors dealing with the rights of LGBT people are more visible in litigating cases (cf. Dombos, et al. 2008b, 65ff). For instance, Hatter, one of the organizations providing legal aid to LGBT people, initiated an *actio popularis* claim against the University of the Hungarian Reformed Church in 2004 (cf. NGO Alliance 2005; Takacs 2007, 25 f; 53). While civil society litigating against Roma discrimination are strong, LGBT NGOs are also active litigators in the field.

Considering that the women's movement was always comparably weak in Hungary (cf. Causse 2008, 69) and had a limited influence on policy-making in the past (cf. Vajda 2012, 117), it is not surprising that their actual litigation work was limited in the field of antidiscrimination. Many

NGOs in the field of gender equality worked on projects or provided services (cf. Fabian 2009, 91; Vajda 2012, 121). The Habeas Working Group, one of the few NGOs which provided legal aid to discriminated women ceased to exist after 2005 (cf. European Justice n.y.). PATENT or NANE, the strongest women's NGOs in the field, primarily fight domestic violence and do not support women in employment discrimination cases (cf. NANE n.y.; PATENT n.y.). There is a lack of strong actors fighting against the discrimination of women in Hungary.

Trade unions cannot make up for this lack of strength of non-state actors, particularly to help women and senior citizens, as their influence is very limited in Hungary. The six trade union confederations and the eight employers' confederations have a low prestige and membership rate (cf. Causse 2008, 66ff). A 2002 Hungarian CEDAW shadow report states that "the assistant role of the trade unions as possible helper institutions regarding the access to legal remedy in cases of sexual harassment and discrimination in the workplace is insignificant for individuals as well as groups" (p. 26). This is also confirmed by the interview quote with an NGO activist.

"They don't really have a strong mobilization power. They don't have a broad social justice agenda. (...) They focus on employment issues and collective agreements and things like that, which might matter on the local level, but usually they are not that involved in discrimination."

(HU01; 2:18)

Although religious organizations gained increased access and resources over time, amendments to the constitutional and cardinal laws in 2011 removed the official status from some of the established churches and religious groups in Hungary (cf. Hungarian Civil Liberties Union 2012). As part of losing their status, they lost the chance to apply for state funding for their activities in sectors like healthcare or social work (cf. Human Rights Watch 2013, 19f). While this has a tremendous impact for their basic support on the ground, a Roma NGO staff points out that religious organizations did not engage in debates on human rights and antidiscrimination.



“It’s about providing services like providing shelter and food and these things, but they are not really active in speaking up for the Roma or raising awareness.”

(9:21)

The examination of the strength of non-state actors shows that the Hungarian government had mechanisms and councils in place until 2010 to facilitate the exchange between the administration and non-state actors. After the change in government, these mechanisms were abandoned. Civil society groups lost their access and experienced a greater lack of funding. Yet, they were strong litigators in combating the discrimination of ethnic minorities, and to a lesser extent disabled and LGBT people. Organizations combating the discrimination of women or senior citizens are weak and less visible in the field of antidiscrimination. Organizations fighting against religious discrimination are absent.

### ***7.2.3 Concluding Remarks on Hungarian Antidiscrimination Politics***

The examination shows that the changes in the Hungarian agency’s intervention are more in line with past policy commitments and the government’s agenda outlined in Chapter 6 than the strength of non-state actors. The examination of the legal, policy and institutional developments in the field of antidiscrimination indicates that Roma and disabled people were relatively well represented and served by Hungarian state structures and policies. This mirrors the areas to which the agency retreated in its intervention. In comparison, women’s equality concerns did not fare so well. While they are represented in the public administration, they were weakly represented through civil society working on antidiscrimination. The agency’s intervention started to focus on the protection of mothers, which were on the government’s agenda. Civil society combating the discrimination of Roma, and to a lesser extent, disabled and LGBT people remained comparably

strong in Hungary. While these areas were covered by the agency's intervention, LGBT discrimination was abandoned. Moreover, LGBT discrimination is not dealt with by the Hungarian State except for its recognition in the antidiscrimination law. Chapter 8 shows how past policy commitments and strong non-state actors influenced the agency.

### **7.3 Irish Actors and Past Policy Commitments in the field of Antidiscrimination and Equality**

In the following sections, I examine the legal, policy and institutional developments and the strength of Irish non-state actors in the field of equality and antidiscrimination to understand how they can influence the Irish agency. I show that Ireland promoted the antidiscrimination of diverse groups vulnerable to discrimination in its structures and policies from early on. Moreover, civil society supporting Travellers, ethnic minorities and disabled and LGBT people is strong.

#### ***7.3.1 Irish Antidiscrimination and Equality Institutions and Policies***

The first equality concerns addressed by the Irish government in the 1970s were the ones of women. The first antidiscrimination law prohibiting the discrimination of women in salaries was adopted in 1974.<sup>45</sup> But this was just the beginning. Only three years later, the government agreed on the Employment Equality Act protecting against discrimination based on gender or marital status in employment and demanding the creation of the Employment Equality Authority (cf.

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<sup>45</sup> Anti-Discrimination (Pay) Act of 1974

Mahon 1995, 132). As mentioned in Chapter 4, the agency supported the enforcement of the legislation. In the same year, the government also agreed on the Unfair Dismissals Act, which initially protected employees against unfair dismissals based on pregnancy, ethnicity, skin color and religious or political beliefs (cf. Barry 2003, 422; Office of the Attorney General n.y.). While the first antidiscrimination laws only covered women, the government started to extend protection to other grounds shortly after.

The Belfast Agreement, signed in 1998 between the United Kingdom and Ireland was among the incentives for the Irish government to extend protection to ethnic minorities, as it guaranteed that developments in Northern Ireland and Ireland needed to be of an equal scope. This agreement also encompassed the field of antidiscrimination (cf. Kissane 2011, 118ff). Therefore, developments in the United Kingdom and Ireland are closely linked, which pushed developments to protect ethnic minorities, but also other groups vulnerable to discrimination, as they were extensive in the United Kingdom (cf. De Witte 2012).

The Irish government further expanded its antidiscrimination legislation during the 1990s and the early 2000s. In addition to the amendment of the Employment Equality Act extending the protection against discrimination to senior citizens, disabled people, ethnic minorities, women, religious groups and LGBT people, Irish policymakers also adopted the 2000 Equal Status Act protecting these groups against discrimination outside employment (cf. Crowley 2010, 1ff).<sup>46</sup> The 2004 Equality Act subsequently merged the two acts in one piece of legislation (cf. O'Farrell 2012, 4). In addition, the government also adopted the Disability Act in 2005 (cf. National Disability Authority n.y.) and the Civil Partnership Act in 2010 (cf. Hammarberg 2011, 7).

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<sup>46</sup> The Social Welfare (Miscellaneous Provisions) Act adopted in 2004 separately regulates antidiscrimination in occupational social benefits (cf. O'Farrell 2012, 85).

Protection against discrimination was substantially extended to many groups vulnerable to discrimination by Irish policymakers in the 2000s.

While Ireland expanded protection against discrimination in its laws to many groups, it ratified international conventions comparably late. It became a signatory to diverse international conventions like the CEDAW convention in 1985 (cf. Government of Ireland 2003, 2) and only ratified the UN Convention on all forms of racial discrimination in 2011, more than forty years after its signing (cf. Office of the Minister for Integration 2009, 3). While the government signed the UN Convention dealing with the status of disabled people in 2007, the provisions still await ratification (cf. Amnesty International Ireland n.y.).

The Irish government's progressive approach did not just stop at expanding domestic legal protection against discrimination. The period between the mid-1990s until the beginning of the recession witnessed a significant expansion of the Irish equality infrastructure, apart from some set-backs at the beginning (cf. Barry and Controy 2012, 17f). The first Ministry dedicated to equality issues, named the Ministry of State for Women's Affairs, was established in the year 1982. This newly formed junior ministry was abolished shortly after when the conservative government took office (cf. Mahon 1995, 133ff) and a women's affairs portfolio was integrated in the Department of the Taoiseach (cf. Good 2001, 224).

Yet this was not the end of the story and equality issues remained on the political agenda. The first Ministry dealing with a variety of equality concerns, like women or ethnic minorities, named the Ministry for Equality was established in 1993, and merged with the Department of Justice creating the Department of Justice, Equality and Law Reform in 1995. Although the Minister was downgraded to a junior minister, a broad range of equality concerns became represented through this ministry (cf. Armstrong, et al. 2008, 15). Yet, gaining representation under this united

institutional umbrella did not benefit all grounds. For instance, the budget of the gender equality desk was cut and closed down in its original format in 2009 (cf. Barry and Controy 2012, 19).

Nonetheless, gender equality was not only a concern of the Department of Justice, Equality and Law Reform. For instance, it had minor representations through the gender equality unit in the Department for Education and Science, which administered grants and bursaries until 2006 to develop good practices to foster women's educational attainments (cf. Government of Ireland 2003, 52f). Moreover, an office for the Minister for Children in the Department of Health and Children was created in 2005, which was responsible for supporting the expansion of the Irish childcare infrastructure, which indirectly affected women (cf. Children's Rights Alliance n.y.).<sup>47</sup> These responsibilities were transferred to the Department of Children and Youth Affairs (cf. Department of Children and Youth Affairs n.y.), which continued working on improving the situation of the childcare infrastructure.

Apart from including youth equality concerns in the Ministry for Equality and its predecessor, the adoption of the Ombudsman for Children Act in 2002 created the Ombudsman for Children's Office representing the concerns of children. The office provides support to individuals, conducts research and advises the government on "how the State is providing services or making decisions about children" (cf. Ombudsman for Children n.y.). Concerns for their potential discrimination in education fall in the competences of the Department of Education through the 1998 Education Act (cf. O'Farrell 2012, 90f). Equality concerns of children are represented in the equality infrastructure.

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<sup>47</sup> The office supported the implementation of the National Childcare Investment Programme adopted by the government for the period 2006 to 2010.

Concerns of senior citizens, in comparison did not fare so well, and were mainly addressed through councils apart from the Ministry. It operated under the name of the National Council on Ageing and Older People, established in 1997, (cf. Armstrong, et al. 2008, 20), until it was dissolved in 2009 (cf. The National Council on Ageing and Older People n.y.). The crisis diminished the representation of senior citizens in the administration. While a portfolio for the promotion of the employment and education of senior citizens was integrated in the Department of Social and Family Affairs (cf. Department of the Taoiseach 2006, 58), it became the Department of Social Protection in 2010 focusing solely on social welfare (cf. Department of Social Protection n.y.).

The Irish government only started to focus its attention on ethnic minorities and expanded the equality infrastructure in this area in the late 2000s after it had experienced a large influx of immigrants. Before the economic boom years, Ireland was an emigration country rather than a destination country for immigrants (cf. Strozza 2010, 38f). Following these developments, Irish policymakers established the office of the Minister for Integration together with a Minister of State for Integration in 2007 to deal with their situation. The Minister's competences in matters of integration stretched over all ministries (cf. Office of the Minister for Integration 2009, 11). Prior to this, the government only had a National Action Plan Against Racism for a period of three years in place (p. 54), succeeding the 2001-2003 National Anti-Racism Awareness Programme (cf. Government of Ireland 2003, 21). While the equality infrastructure started to address ethnic discrimination comparatively late, Chapter 6 also showed that the financial crisis brought some setbacks with the closing of the National Consultative Committee on Racism and Interculturalism, whose tasks were integrated in the Office of the Minister for Integration.

Since the Irish State does not recognize Travellers as an ethnic minority, the government adopted separate policies targeting Travellers (cf. Kenny and McNeela n.y., 8). The government first established a task force to develop recommendations for supporting Travellers in 1995 (p. 16). Based on its recommendations, the government took action in the areas of housing, employment, health and education (cf. Foras Áiseanna Saothair 2012, 37; Government of Ireland 2003, 18). For instance, it adopted the Housing (Traveller Accommodation) Act in 1998, which “requires housing authorities to adopt and implement programmes to deal with Travellers’ accommodation needs” (Kimber 2003, 253), and implemented the Traveller Accommodation Programmes between 1999 and 2009 (cf. NGO Alliance Against Racism (NAAR) 2006, 29). Apart from policies and programs targeting specific sectors, Irish policymakers also created a High Level Group responsible for helping state agencies to provide services to Travellers, and created a National Traveller Monitoring and Advisory Committee (cf. Hammarberg 2011, 19). Yet following the economic crisis, the High Level Group did not meet in the period between May 2008 and November 2010 (cf. Pavee Point Travellers Centre 2011, 18) and many educational programs supporting Travellers were cut since the recession (cf. O’Farrell 2012, 90ff) or completely abolished in 2011 (cf. Pavee Point Travellers Centre 2011, 26).

Similar to the government’s approach to Travellers, Irish policymakers had already established the Commission on the Status of People with Disabilities in 1993 to understand needs of disabled people. Among other issues, the report, published by the Commission in 1996, advised the government to adopt antidiscrimination legislation for disabled people (cf. Quinn and Quinlivan 2003, 214ff). Before following this recommendation with the adoption of the 2005 Disability Act, the government established a National Disability Authority in 2000 to advise the Minister of the Department of Justice, Equality and Law Reform (cf. Government of Ireland 2003, 19) and

adopted the National Disability Strategy in 2004. This strategy *inter alia* encompassed funding and mainstreaming initiatives for public services for disabled people (cf. European Commission 2013, 37). Although disability policy reached the agenda comparably late, developments were substantial in the 2000s.

Besides adopting policies and laws and creating institutions addressing discrimination in specific areas, the government also engaged in mainstreaming, as mentioned in one of its CEDAW report (2003). For instance, a National Development Plan Gender Equality Unit in the Department of Justice, Equality and Law Reform was established to support gender mainstreaming in the administration (p.13f). In addition, each department of the Irish public administration had an employment rate target for disabled people <sup>48</sup> and had to implement a gender equality policy since 2001, monitored by the Department of Finance (p. 9). Under the 2007 European Year of Equal Opportunities for All, the government even created the Public Sector Equality Learning Network (PSELN) to give a more practical input to mainstreaming in the public administration on antidiscrimination (cf. Equality Authority 2009, 41f).

Moreover, equality concerns were also covered in the government's national development plans and social partnership agreements. For instance, both development plans contained references to gender equality (i.e. Irish Government 2007), and the social partnership agreements like the National Action Plan for Social Inclusion and the social partnership agreement "Towards 2016", referred to equality concerns of various groups (cf. Armstrong, et al. 2008, 10). The National Women's Strategy (2007), in particular, addressed topics like the gender pay gap (p. 27) or

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<sup>48</sup> The government committed to a three percent employment rate target for disabled people in the public administration as early as 1977 (cf. Government of Ireland 2003, 10).



childcare (p. 49). Yet, the government ended the social partnership in 2010 (cf. O'Farrell 2012, 123). Its significance is addressed in the next section.

The examination of the legal and policy developments in antidiscrimination in Ireland shows that the Irish state extended the protection against discrimination and adopted positive action measures for various groups including Travellers, disabled people, women or children from early on. Its policy support is particularly strong for ethnic minorities and disabled people. Moreover, the analysis shows that LGBT and religious discrimination are minor concerns for policymakers.

### ***7.3.2 Irish Non-State Actors in the field of Equality and Antidiscrimination***

Consultation between the Irish public administration and non-state actors was to a large extent organized through the social partnership. Since the 1990s, it consisted of four pillars, which included the “business, trade unions, farming and the community and voluntary sector“ (Crowley 2010, 2). Seventeen members like AgeAction, the National Women’s Council Ireland and the Disability Federation Ireland were included in the community and voluntary sector and got access to policymaking through its network (cf. Community Platform n.y.). They were invited to engage with the government on issues like antidiscrimination matters (cf. National Women's Council Ireland 2009, 21). Civil society received formalized access to policymakers and reached inclusion in policymaking as social partners.

The consultation and participation within this social partnership led to significant policy outcomes. The National Women’s Council for Ireland (NWCi) representing about 160 women’s groups (cf. Armstrong, et al. 2008, 21), for instance, accessed the coordination committee of the National Women’s Strategy (2007, p. 119) through the social partnership influencing its

implementation. While exchange was substantial, it also led to conflicts. For instance, a shadow report (n.y.) published by the Women's Human Rights Alliance also mentions that the council faced difficulties in its participation in the social partnership in the past, as their contributions were sometimes not recognized or their access to policymakers was limited (p.8). A 2004 report even mentions the exclusion of the Council because of its critical stance on government policies (cf. Equality Coalition 2004a, 13f).

Besides these conflicts in the social partnership, the strength of women's organizations also diminished significantly at the beginning of the economic crisis making them weak actors in the field. For instance, the NWCI experienced a 38 percent budget cut after 2008, which eventually led to the resignation of the head of the organization in 2012 (cf. Barry and Controy 2012, 19). Likewise, public funding for organizations providing services for women was cut, as stated in the NWCI 2008 annual report (p. 10). While there are NGOs like the Council for Civil Liberties, fighting discrimination on all grounds, women's NGOs specialized on the litigation of discrimination experienced by women are few and they were weakened by the lack of funding (cf. O'Farrell and African Women's Network in Ireland 2008, 11f).

Different from the situation of the women's groups, disability organizations remained strong even when the crisis hit the country, as the Disability Federation Ireland describes the funding situation of disability organizations as stable in its 2009 report (cf. Disability Federation Ireland 2009). <sup>49</sup> In fact, the 2010 report only mentions a 1.8 percent cut of funding in the disability sector (cf. Disability Federation Ireland 2011a). Compared to the cuts experienced by women's

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<sup>49</sup> The National Disability Strategy refers to the Disability Stakeholders Group (cf. Irish Government n.y.). Within this group, six umbrella organizations, like the Disability Federation Ireland, from civil society are represented (cf. Disability Federation Ireland 2011b). The Disability Federation Ireland represents in itself 132 organizations (cf. Disability Federation Ireland n.y.-a).

organizations during the same period, they are insignificant. While disability organizations remained relatively strong, their engagement with litigation was limited. For instance, there is no litigation association or group among the members of the Disability Federation Ireland focusing on combating the discrimination of disabled people. Most of them are service providers (cf. Disability Federation Ireland n.y.-b). While disability organizations are strong, they do not necessarily engage with discrimination on the ground.

While lacking substantial inclusion in policy-making, non-state actors in the field of ethnic and Traveller discrimination are strong litigators. The main social partnership initiative involving civil society is the anti-racist workplace week, which has existed since 1999, but provides limited exchange between the Irish State and non-state actors (cf. European Commission against Racism and Intolerance 2007, 23). Shadow reports published by NGOs confirm and describe the consultation between the Irish administration and ethnic minority organizations as limited (cf. ENAR Ireland 2012; NGO Alliance 2004 2004; Pavee Point Travellers Centre 2011). Yet, they are strong litigators. For instance, the Irish Traveller Movement Law Centre was an active litigator and in close contact with the Irish Equality Authority. Moreover, the Northside Community Law Centre, Ballymun Community Law Centre, Free Legal Advice Centers and the Immigrant Council of Ireland provided support to victims of ethnic discrimination (cf. Independent Law Centres Network n.y.). Although the law centers also supported victims of discrimination other than ethnic minorities, the Immigrant Council only focused its efforts on combating ethnic discrimination (cf. O'Farrell and African Women's Network in Ireland 2008, 12). Organizations fighting ethnic discrimination were comparably strong and visible.

Yet, this situation might change in the future, as many non-state actors experienced cuts in their funding. In addition, the announced exit of two philanthropic donor organizations, the Atlantic

Philanthropies and the One Foundation in the wake of the financial crisis is likely to affect many organizations working against ethnic discrimination (cf. Crosbie 2013; NGO Alliance Against Racism (NAAR) 2011, 15), as described by an activist.

“Two of the very big philanthropic funders are finishing in Ireland and it has left a wake of devastation in the sector. (...) The voices in the sector have been very much diminished.”

(IE07; 5:47)

The exit of donor organizations is not only relevant to NGOs dealing with ethnic discrimination, but also to LGBT organizations. For instance, a major LGBT organization, GLEN, received its funding from Atlantic Philanthropies in the past. Only because of its lobbying activities sponsored through this philanthropic organization, did it acquire subsequent governmental funding for its activities. The NGO was very active in influencing developments in the field of antidiscrimination (cf. Parker 2012) and was also frequently in touch with the Equality Authority, as will be shown in the subsequent chapter. Although LGBT organizations did not necessarily engage with antidiscrimination on the ground, they were strong actors with influence on the developments.

While civil society dealing with equality concerns of senior citizens are also integrated and represented in the social partnership, there are no reports on how their specific funding situation has changed since the economic crisis, and whether they provided legal advice to alleged victims of discrimination. Looking at an exemplar organization like Age Action, a charity organization, they engaged mostly in project work (cf. Age Action Ireland Ltd 2010; AgeAction n.y.). Its impact on developments in the field of antidiscrimination is not visible and they are weak actors.

Different from that, a strong actor in the Irish non-state sector is the Catholic Church. Although amendments to the Constitution reduced its influence over time, it still plays a considerable role in education and health care in Ireland. The primary school sector, which is publicly financed, is

more or less run by the Church. The CERD report (2009) on ethnic discrimination points out that the Church administers 92 percent of the primary schools (p.38). This fact gives the Church particular influence on the education system (cf. Daly 2012, 85). Although the government adopted the Education Bill (Amendment) in 2010 to support the creation of non-denominational schools (cf. Irish Human Rights Commission 2010, 19), its impact is still unclear. Moreover, the Church also had considerable influence in the area of social services, as support services are lacking in this area (cf. Budge 2008, 43).

While active on the ground, the analysis shows that the Church tried to exercise its influence more on the policymaking level than through directly opposing institutions. For instance, its own think tank, the Iona Institute tried to influence and interfere in the adoption of the Civil Partnership Bill (cf. Parker 2012, 12 f). Yet, they did not openly challenge actors on the ground working on antidiscrimination with a significant impact.

The analysis shows that strong civil society actors litigating discrimination cases are mostly found in the field of ethnic discrimination or are organizations without any specific focus group. While trade unions also take up cases and support their members in seeking justice against discrimination (cf. O'Farrell and African Women's Network in Ireland 2008, 9ff), trade unions and NGOs cannot represent victims of discrimination in front of district or circuit courts, which significantly limits their role as litigators (cf. Equality Coalition 2004b, 16). The examination showed that organizations litigating against Traveller and ethnic discrimination were comparably strong in Ireland. Moreover, LGBT organizations were quite influential in the field, although they did not necessarily litigate discrimination.

### ***7.3.3 Concluding Remarks on Irish Antidiscrimination Politics***

The examination shows that the changes in the Irish agency's intervention follow more in the direction of the agenda of strong non-state actors than past policy commitments. The analysis of the respective legal, policy and institutional developments showed that Irish policymakers were committed to establishing a broad equality infrastructure in Ireland. While equality concerns of ethnic minorities and disabled people were well represented, LGBT and religious matters received less attention and resources by policymakers. We can say that past policy commitments in these areas are much weaker. Litigation work or legal advice of civil society in Ireland is mostly limited to all-purpose law centers and NGOs providing expertise on ethnic discrimination, which makes organizations fighting ethnic and Traveller discrimination relatively strong in the field. Importantly, the analysis showed that disability and LGBT organizations were also quite influential, which is mirrored in the changes in the agency's intervention.

## **7.4 Concluding Remarks on the Potential Influence of Past Policy Commitments and Strong Non-State Actors on the Austrian, Hungarian and Irish Agencies**

The examination showed that the Austrian, Hungarian and Irish agencies are exposed to different past policy commitments. While the Austrian government focused primarily on the advancement of the protection of women against discrimination through its institutions, Hungary and Ireland followed different strategies. The Hungarian government designated institutions and adopted policies and laws to promote the equality of Roma, but also disabled people, from early on. Different from that, the Irish government targeted diverse groups vulnerable to discrimination since the 1990s. While Hungary and Austria have past policy commitments focusing on the

discrimination of one or two groups, Ireland promoted the antidiscrimination of many different groups through its policies, laws and institutions. In comparison, equality concerns of LGBT people or religious minorities received less salience in the past. These differences should impact the agencies.

Looking at the strength of non-state actors in the agencies' professional community, we find that organizations dealing with disabled people, ethnic minorities and LGBT people are comparably strong in all three countries. Yet, while disability organizations are strong litigators in Hungary, Irish ones are strong, but service providers. It is striking that LGBT organizations in all three countries are not strong litigators in the field, but have a strong impact on the field. Different from Hungary and Ireland, employees' organizations with a specific focus on tackling the discrimination of women are strong in Austria. The strength of non-state actors dealing with religious minorities or senior citizens in the field of antidiscrimination is very limited in all three countries. The different strength of non-state actors should affect the agencies.

The examination and comparison of past policy commitments and the professional communities of the agencies shows that we can expect a strong push on the Austrian agency to intervene against the discrimination of women. Yet, it is also likely that Austrian non-state actors incentivize the agency to focus its efforts on ethnic minorities and LGBT people. The Hungarian context suggests that strong non-state actors combating Roma discrimination along with past policy commitments in the sector are likely to incentivize the Hungarian agency to implement activities focusing on the discrimination of Roma. Yet, LGBT and disability organizations are also quite visible in litigating discrimination. This could influence the agency to take action in these areas. The Irish case showed that the agency is embedded in a broad equality infrastructure. While developments focused on LGBT people or religious minorities were less extensive, non-

state actors are particularly strong in the field of ethnic minority, Traveller and LGBT rights. As strong actors, they might influence the Irish agency's intervention when it has to deal with new political demands and reaches out to them.



## **Chapter 8: The Influence of Strong Non-State Actors and Past Policy Commitments on Antidiscrimination Agencies before and after their Exposure to New Political Demands**

The previous chapter investigated and showed that new political demands challenged the intervention and the preference formation of the Hungarian and Irish agencies. By diminishing the Hungarian and Irish agencies' resources and by replacing staff members and the agencies' leaders, competition for resources and standing among the remaining grounds of discrimination in the agencies emerged or increased, affecting their intervention. This was shown in Chapter 6.

Yet, it remained unclear from the analysis why the Hungarian and Irish agencies' interventions changed the way they did. The literature review demonstrated that, apart from policymakers, strong non-state actors like civil society organizations or interest groups, which form part of an agency's professional community, can cooperate and interact with an agency lending their support in the form of resources or expertise. By accepting this support, scholars argued that agencies become susceptible to the influence of strong civil society and interest groups (i.e. Cormack and Niessen 2005; Wilson 1992). Therefore, strong non-state actors can influence the way an agency's intervention changes in the aftermath of new political demands.

Since the literature also assigns explanatory power to past policy commitments to understand changes in an agency's intervention, I also examine their alleged influence on the agencies' interventions in the aftermath of new political demands. Supposedly, they are able to influence how an agency embraces its role, as shown in Chapter 2. While the Hungarian administration focused on Roma and disabled people and their unequal treatment in the past, the Irish government focused on many grounds of discrimination through its policies and structures. Yet, equality concerns of LGBT and religious minorities received less attention by policymakers. The

influence of different past policy commitments on the changes in the Hungarian and Irish agencies' interventions is tested in this chapter.

As mentioned beforehand, I examine the influence of past policy commitments against the influence of strong non-state actors. Based on Chapter 7, where I identified past policy commitments and strong non-state actors in Hungary and Ireland, I expect that the Hungarian agency is either influenced by past policy commitments focusing on the antidiscrimination of Roma or by strong non-state actors in the field of Roma, disability or LGBT rights. While past policy commitments in Ireland did address the problems of many different groups affected by discrimination, Irish non-state actors are comparably strong in the fields of ethnic, disability and LGBT rights. They potentially influence the agency after its exposure to new political demands. Especially in the field of LGBT rights, changes in the agencies' interventions addressing LGBT discrimination shows the respective influence of strong non-state actors in Hungary and Ireland against the influence of past policy commitments. There is a significant discrepancy in the representation of LGBT issues in state structures and civil society in both cases.

As in Chapter 6, the Austrian case helps to understand how strong non-state actors and past policy commitments influence an agency in the absence of new political demands. The analysis shows whether the Austrian agency was influenced by past policy commitments prioritizing the protection of women or by strong non-state actors fighting against ethnic and gender discrimination. The Austrian case shows how they influence an agency when the agency is not challenged by policymakers. Moreover, apart from my Austrian case, I also study the influence of strong non-state actors and past policy commitments on the Hungarian and Irish agencies before they received new political demands.

I continue as follows. I investigate in more detail how strong civil society organizations and interest groups participated in the activities of the three selected antidiscrimination agencies. I study how the antidiscrimination agencies cooperated with them to implement their activities and how this affected their intervention. In addition, I test whether the changes in the agencies' interventions mirror past policy commitments in the field in the three countries. This allows me to explain why the Austrian, Hungarian and Irish agencies' interventions changed the way I found in Chapter 5. I examine how strong non-state actors or past policy commitments alternated the hypothesized effects of new political demands on the agencies in the case of the Hungary and Ireland.

### **8.1 The Influence of Strong Non-State Actors and Past Policy Commitments on an Agency's Intervention in the Aftermath of New Political Demands**

The following analysis shows how strong non-state actors and past policy commitments influenced the Hungarian and Irish agencies' interventions after they received new political demands to understand why their interventions changed the way they did. While Chapter 6 analyzed the effects of changes in the agencies' budget and staff and challenges to the use of their competences on the agencies' interventions, this chapter examines how they were subsequently influenced by strong non-state actors and past policy commitments. Chapter 6 already established the direct effects of new political demands on the agencies. Since the analysis did not provide conclusive findings, I extend my research focus to the influence of the larger environment of the agencies on their intervention to explain the changes found in the agencies' interventions in Chapter 5.

### ***8.1.1 The Influence of Past Policy Commitments and Strong Non-State Actors on the Hungarian Agency's Intervention before and after its Exposure to New Political Demands***

Chapter 6 showed that the Hungarian antidiscrimination agency received new political demands through the appointment of a new president to the agency, the loss of a significant part of its budget and the replacement of almost all of its staff members in 2010 and 2011. The analysis also showed that the Hungarian government challenged the agency's use of its competences as a promoter of antidiscrimination in the public sector. Chapter 5 showed that the agency's scope of equality promotion subsequently narrowed and prioritized Roma and disabled people.

The analysis of the collected data on the Hungarian agency's joint projects with non-state actors suggests that the agency had limited exchange with its professional community throughout the period of investigation making its influence on the agency rather unlikely. A staff member described her interactions with civil society as limited. She indicated that the agency's staff participated in some events organized by civil society to stay up to date and to learn from their experience, yet. These exchanges only served to collect information.

“Mainly we meet them when they launch a claim (...), and when they have special events like conferences, they invite us and in many cases we just accept this invitation to widen our horizon on several topics.”

(3:13)

The agency itself also organized such informational events for its professional community to disseminate information about its activities. The agency had to do so, as it was obliged to organize a regular exchange with non-state actors by EU law, as stated in the 2006 CEDAW report (p. 9). These mandatory meetings satisfied this obligation, as shown by the interview data. An NGO expert, who participated in these meetings organized by the agency, underlines their superficial character.

“I mean they sometimes invite us to meetings, but these are more like press conferences, no substantial things. They have never invited us to any of their trainings as trainers. They send us all the information on trainings that they offer, but they are more general than one professional organization working in the field of equal treatment would need.”

(HU01; 2:6)

Non-state actors did not gain access to the agency to influence its intervention through these meetings. When the agency noted in its annual reports of 2008 and 2009 that it was in contact with over a hundred NGOs (cf. Equal Treatment Authority 2009, 112; 2010, 152), it meant that the agency engaged with them mainly through its informational events. The high number of NGOs mentioned in the reports is based on the fact that the agency included an organization on a list generated for its regular send outs when a non-state actor reached out to the agency with a case or to seek information (HU10; 11:27). The agency counted these sent-outs as exchange.

Yet, the analysis of the interview data and publications reveal that the agency had substantial exchange with non-state actors, potentially influencing its intervention, through informal channels. An interview quote of an advisory board member demonstrates that the board of the Hungarian agency provided access to non-state actors with their claims, as its members still perceived themselves as part of civil society.

“Actually, in itself the advisory board members were representing civil society organizations, NGOs, (...) that are or have always been working against discrimination.”

(6:17)

This access had a significant impact on the agency’s intervention against Roma and disability discrimination before the agency received new political demands, as the board members provided access to their peers in the field of Roma, children’s and disability rights. For instance, the advisory board acted upon a proposal of an NGO called MEOSZ (National Alliance of Societies of Physically Handicapped Persons) lobbying for the advancement of disability rights, as reported in 2010 (p. 146), and published an interpretation of reasonable accommodation in 2009.

As shown in Chapter 4, equality concerns of disabled people were comparably well represented on the board. The board provided access to disability organizations, which affected the agency's intervention before 2010.

The representation of equality concerns of Roma on the board also had an impact on the agency's intervention. For instance, another board member mentioned that the board members actively tried to establish networks between the agency and organizations or institutions like the Minorities' Ombudsman to increase the agency's expertise (4:39). Demonstrating this impact in practice, the agency's annual reports before the change in leadership mention the agency's interactions with the Ombudsman for National and Ethnic Minorities and its participation in many disability events (cf. Equal Treatment Authority 2009, 112 ff; 2010, 139). The exchange with the Ombudsman had further impacts, as it also resulted in referrals of cases to the agency (cf. Hodasz and Scullion 2007, 9).

After 2009, the agency did not report on any exchanges with the Minorities' Ombudsman, which points towards less cooperation at a time when the agency received new political demands and the position of the advisory board was weakening. Chapter 6 already showed that the government started to dismantle the advisory board after it took office in 2010. The agency's neglect of reporting on its participation in civil society events in 2010 is further evidence pointing towards a diminishing influence of non-state actors, also in the areas of Roma and disability rights.

With a diminishing access to the agency through the informal channel of the advisory board, Hungarian non-state actors depended on the willingness of the agency's leadership to cooperate with them. An interview quote shows that the president of the agency cooperated with non-state actors in joint projects under her discretion.

“There are some lucky ones who have these connections.”

(3:15)

Some of these ‘lucky’ non-state actors were working against Roma discrimination, as shown by the data. For instance, an NGO member working on Roma discrimination states that the agency continued working with the NGO and used the NGO’s expertise and resources in situation testing throughout the period of investigation to test discrimination (HU08; 9:3). The use of the NGO’s expertise in situation testing enabled the agency to integrate a new mode of intervention to fight Roma discrimination. While the validity of the method of situation testing was formally acknowledged in 2004 by the Hungarian Government Decree 362/2004 on the Equal Treatment Authority (cf. Kádár 2012, 41), expertise was limited and the NGO helped the agency to acquire it.

While the agency continued to cooperate with selected NGOs, the change in leadership in 2010 closed the access of LGBT NGOs to the agency. The first president was more open to cooperate with LGBT NGOs. When she needed to integrate and address LGBT discrimination in the agency’s intervention because of the pressure of civil society, she did not refrain. Chapter 4 showed that the head of the agency was responsible for selecting research topics for the agency in 2009. The agency had to approach research institutes with a call for tender, as the agency did not have the capacity to execute the research itself and needed to tender it. This provided Hungarian experts approached for the tender with the opportunity to integrate more protected groups, among them LGBT people, into the research programs, as pointed out by an interviewed expert.

“In this call there were three target groups again. It was disability, gender and Roma (...), sexual orientation was not mentioned at all in the call. (...) What happened is that (...) the research institution, which was approached said ‘Well, we are not doing this research without the LGBT component being added to it (...)’, and only then it was added to the research.”

(HU01; 2:26)

The Hungarian research institute was able to broaden the scope of the agency's research to include LGBT issues, also because the first president of the agency did not oppose their inclusion.<sup>50</sup> Different from that, the agency did not commit to raising awareness of LGBT discrimination in its intervention after the change in leadership. Under its second leadership, it did not advocate against LGBT discrimination. Even when the EQUINET training, which was quite influential for incentivizing changes in the agency's intervention, focused on LGBT discrimination, the agency did not integrate these issues in its intervention. This is strong evidence for the diminished influence of non-state actors after the change in leadership, as EQUINET had a strong impact on the agency in the past. A former staff member of the agency describes the impact of this network on the work of the Hungarian agency as substantial.

“I would mention the very important role of the network EQUINET, because (...) what we have learned and heard there was very important in our everyday work, and you can ask for advice or just an opinion from the members of the network.”

(3:32)

Chapter 6 already showed how the exchange through EQUINET helped a staff member to acquire expertise on combating sexual harassment before the changes in 2010. The analysis of the represented grounds of discrimination within the agency showed that the agency lacked expertise and developed it through this exchange. Moreover, since the agency reported openly on the impact of the network before it received new political demands in 2010, it is also possible to trace this impact in the annual reports of the agency. For instance, the 2008 report mentions the agency's participation in EQUINET trainings, which focused on age discrimination and the role

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<sup>50</sup> The integration of LGBT issues in the agency's intervention was achieved through collaborations between non-state actors in the field of antidiscrimination (HU01; 2:26). As shown in Chapter 7, LGBT NGOs had a strong human rights enforcement approach and were well represented and connected to other actors in the field of antidiscrimination (HU03; 4:12) allowing them to increased their influence on the agency.



of social partners in the field of antidiscrimination (Equal Treatment Authority 2009, 118). In the following year, the agency provided detailed information about the situation of senior citizens in Hungary and the potential role of trade unions in enforcing *actio popularis* claims (cf. Equal Treatment Authority 2010, 21; 79f). Since non-state actors dealing with senior citizens were weak in Hungary, as shown in Chapter 7, the incentive to raise awareness about these issues came from the network. Its influence explains why the agency covered these issues in its intervention before 2010.

Moreover, the agency's attention to the potential role of trade unions in the enforcement of antidiscrimination provisions came solely from the network. As shown in Chapter 7, trade unions were weak in Hungary. The relationship between the Hungarian agency and the Hungarian trade unions was mainly focused on the exchange of information in 2008 (cf. Neumann 2010, 5). Yet, the agency invited trade unions to meetings (HU10; 11:25) and offered training to them after 2009. The inclusion and focus on trade unions points towards a rather pro-active strategy to train them to take cases. This was mainly incentivized by EQUINET.

Only in the case of Roma discrimination did the agency share its knowledge rather than learn from the members of the European networks, as shown in its annual reports (cf. Equal Treatment Authority 2010, 156 ff). This confirms the comparably strong representation and high standing of Roma issues within the agency. The agency was not influenced by the network, but shared its own expertise.

Although the annual reports of the agency demonstrate that it became more involved in supranational European networks, like EQUINET working on equality and antidiscrimination, their impact diminished after 2009. For instance, the agency did not integrate what it learnt from the network about the discrimination of transsexual people and religious minorities in its

intervention, although EQUINET focused on these topics in 2010 and 2011 (cf. Equal Treatment Authority 2011, 68; 2012, 49). The diminished influence of domestic non-state actors is mirrored in a diminished influence of European networks on the agency's intervention.

More importantly, the analysis demonstrates the influence of the government and past policy commitments on the changes in the agency's intervention. Although non-state actors working against LGBT discrimination are relatively strong, the government did not want to integrate them in policymaking, as shown in Chapter 6. Past policy commitments did not address them. Since equality concerns of religious minorities and LGBT people were weakly represented through non-state actors and past policy commitments, the agency had no incentive to include them.

Moreover, different from LGBT antidiscrimination, the agency found ways to promote antidiscrimination after 2010 in areas like Roma or disability rights, where strong past policy commitments always existed. For instance, it incentivized non-state actors in these fields to start *actio popularis* claims, as demonstrated by the interview quote with a staff member, subsequently affecting the agency's work.

“There were a few cases when the Authority had a request towards an NGO or human rights organization in order to turn to the Authority in the name of some complainants as an *actio popularis*. (..) So, the Authority had received a complaint or some complaints and the Authority's opinion was that it would have been better to turn with that problem to us as an *actio popularis*.”

(5:4)

The data shows that the agency subsequently supported some of these *actio popularis* cases after they reached the agency. This permitted the agency to fight Roma discrimination, but from its role as a judge, not risking opposition by the government. For instance, one of the *actio popularis* cases dealing with ethnic harassment committed by a mayor was submitted by a non-state actor, but subsequently supported by the agency in the review procedure, as shown in its 2010 report (p. 51 ff). The agency applied for the review of the case, as the Metropolitan Court decided in favor

of the mayor after the agency condemned the mayor. Since the case eventually became a Supreme Court case, it shows how *actio popularis* claims of non-state actors were picked up by the agency. While the agency did not start the case, it raised awareness and further supported the case in review procedures. The agency relied on non-state actors to start the cases, since non-state actors working against Roma discrimination were strong, as shown in Chapter 7 and supported many *actio popularis* claims, especially in the education sector, as shown in the agency's 2009 annual report (p. 82 f).

The agency also applied this strategy to fight disability discrimination where non-state actors were strong. The agency dealt with many disability cases submitted to the agency as *actio popularis* claims. One claim in particular affected the agency's work considerably, as it was taken against 19 pharmaceutical manufacturers and distributors in 2008 (cf. Equal Treatment Authority 2009, 4). An informal communication reports that the agency was networking with the civil society organization, which submitted the claim at the end. These cases show that the agency was not actively involved in starting *actio popularis* cases risking opposition by the government, but supported them strategically afterwards in areas where past policy commitments and strong non-state actors existed.

Against this background, the interview data confirms that the Hungarian agency wanted to be perceived as a judge rather than a proactive advocate for antidiscrimination critical of the administration throughout the period of investigation. A former board member states that the agency wanted to establish itself as part of the administration rather than as an access point for civil society.

“Many people working in the Authority had the feeling that they are the experts and they should know, as they are representing the Authority and they shouldn't actually consult with anyone (...).

Plus, also it seemed to be politically delicate sometimes and now it is even more so that NGOs (...) seemed to be working against the government or the ruling political forces.”

(6:16)

Among the few influences on the agency, which initially persisted after the change in government, was the one exercised by the equality referees established in the Hungarian counties through EU funding. The data shows that the creation of local contact points for alleged victims of discrimination significantly ameliorated the agency's reach of Roma and disabled people, affecting the agency's legal work. For instance, in 2011, these contact points submitted 125 complaints to the agency and most of these complaints concerned ethnic, health status or disability discrimination (cf. Equal Treatment Authority 2014, 67 ff), which significantly increased its casework on ethnic and disability discrimination. Since disabled people and the Roma are difficult to reach because of mobility and segregation problems, the agency was able to extend its reach significantly through EU funding.

Yet, also in this area the government seized control. The Fidesz-KDNP government outsourced these services to NGOs and local governments through cooperations in ten out of nineteen counties in 2011. The activities of the houses were even integrated in the local government departments in three counties (cf. Equal Treatment Authority 2012, 59). This is expected to become a problem, as individuals discriminated by public institutions are unlikely to complain to the very entity that was discriminating against them. Moreover, the report summarizing the achievements of the TAMOP project shows that the so-called new service points support families or individuals seeking support to improve their situation rather than people fighting their discrimination (cf. Equal Treatment Authority 2014, 66).

The examination showed that strong non-state actors mainly influenced the Hungarian agency's intervention prior to the change in leadership. When the agency had interaction with them, these

exchanges broadened the agency's intervention and influenced its preference formation to intervene against the discrimination of senior citizens, LGBT, Roma, women and disabled people. The focus on Roma and disabled people in the agency's intervention remained unchanged after the agency received new political demands because past policy commitments impacted the agency, as it did not cease its intervention. It applied different strategies to continue its intervention in these areas. Other areas of intervention, like LGBT discrimination, were omitted by the agency, as it focused on its own survival and feared further interferences by policymakers.

### ***8.1.2 The Influence of strong Non-State Actors and Past Policy Commitments on Changes in the Irish Agency's Intervention before and after its Exposure to New Political Demands***

The analysis of the Irish Equality Authority's scope of equality promotion and the interview data show that the agency maintained a comparably broad scope of intervention throughout the period of investigation. While Chapter 6 showed that this was partly due to the maintenance of broad in-house expertise, some changes in its intervention happened and could not be explained by the interference of policymakers. As shown in Chapter 5, the agency changed its promotion in the direction of a diversity approach rather than maintaining an antidiscrimination one. Moreover, it targeted fewer groups in its intervention establishing a hierarchy among the nine grounds of discrimination in its intervention. I examine how this can be explained through extending my research focus to the agency's environment in the following.

Examining the activities of the Irish agency before the budget cut, we find that the agency guided non-state actors to develop their expertise on antidiscrimination. For instance, we find that the agency cooperated extensively with civil society during its first leadership to provide training to

Traveller organizations to train them to improve their own strategic litigation work, as shown by an interview quote.

“We couldn’t take all the cases. We trained Traveller groups to have people who could support people in cases. That was quite a good model (...). We wanted to do it with other groups, but the one group we really did it successfully with was the Travellers and that was quite good. It did increase the number of cases.”

(4:63)

By training Traveller groups to take on discrimination cases, the agency exchanged information and expertise with NGOs, which it had gained through its own litigation work and raised the number of litigated discrimination cases of Travellers. The agency did not rely on NGO expertise in this case, but was a provider of legal expertise. It searched for multipliers in the field. An interviewed NGO activist even called the agency’s litigation work combating the discrimination of Travellers as a co-opted strategy with civil society (6:81). Since the first president of the agency worked for the Traveller movement, as shown in Chapter 4, before he joined the agency, these close cooperations to train civil society promoting Traveller rights were motivated by his professional background.

In addition to training Traveller groups, the agency also managed to shape the agenda of non-state actors through its funding. The analysis of the reports and interview data in Chapter 7 showed that funding to civil society and interest groups was either provided by the public administration or by philanthropic organizations in Ireland. By offering additional funding to non-state actors, the agency encouraged them to integrate research on antidiscrimination and equality policies in their agenda, as pointed out by a staff member.

“The theory was always that either we or others then would support more of that kind of research. (...) So for example, we had a meeting here recently with the xxx and (...) they have a focus on equality, but that largely comes from the fact that we were commissioning research from them.”

(3:68)

The quote indicates a certain agenda-setting function of the agency within the respective research institute in the past. The agency was able to incentivize its professional community to engage with problems connected to discrimination through its funding. The data further shows that funding was a clear motivation for non-state actors working on antidiscrimination to engage and cooperate with the agency, which gave the agency the opportunity to guide developments in the field.

“We also did a survey recently (...) and about 34 NGOs responded and (...) over half of them had engaged a lot with the Equality Authority. (...) When the engagement was initiated by the NGO, it tended to be because they wanted funding through the funding stream (...), but when the engagement was the other way, it tended to be much more that the Equality Authority was trying to develop initiatives with NGOs.”

(5:15)

This interview quote from a former staff member in the agency’s development section, who left the agency after the cuts, demonstrates that the agency was a promoter of antidiscrimination and created awareness and supported its professional community to engage with antidiscrimination.

The 43% budget cut diminished the agency’s ability to commission research and guide these developments, and changed the agency’s approach. For instance, the Equality Mainstreaming Unit’s funding to support businesses to develop equality schemes dropped from €330,925.13 in 2008 to €73,538 in 2009 (cf. Equality Authority 2009, 10; 2010, 44). Although the agency acquired new EU funding in 2010 to support its promotional work and research (cf. Equality Authority 2011, 63), the agency started to establish a focus on certain topics like LGBT discrimination, as shown by the data.

To understand this change in the agency’s approach and intervention, a closer look at the changed dynamics in the exchange between the agency and its professional community determined by the social partnership needs to be applied. The interview data and publications of the agency

demonstrate that the agency frequently engaged with the rather formalized and pre-determined network of the Irish social partnership, which also included non-state actors (3:44). Within the social partnership, the agency chaired the National Framework Committee for the Development of Equal Opportunities to support employers' and employees' organizations in the implementation of the equality legislation adopted in 1998, and participated in the National Framework Committee aimed at facilitating family-friendly policies (cf. Government of Ireland 2003, 10; 88). The agency used this network to guide developments. Moreover, most of the agency's promotional work was organized with members of the social partnership or with other parts of the administration during the period of investigation. Much of the agency's research was conducted with them. For instance, the agency's scope of equality promotion shows that the agency frequently engaged with members of the community and voluntary sector represented in the social partnership in 2008.

The demise of the Irish social partnership in 2010 (cf. O'Farrell 2012, 123), <sup>51</sup> however, had a small effect on these cooperations of the agency. The data shows that the network formed out of this process continued to structure the agency's cooperations even after the social partnership was terminated (IE09; 7:10). There was a strong informal connection between the agency and the members of the social partnership.

Yet importantly, their influence on the agency's intervention changed after 2009, as the agency started to focus on areas of intervention promoted by member organizations of the former social partnership, also represented on the agency's advisory board. The analysis of the joint initiatives with non-state actors in 2010 shows that the agency funded many of their projects. For instance,

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<sup>51</sup> The social partnership arrangement broke down in 2010. Kirby (2010) identifies the period of Irish social partnership between 1987 and 2007 (p. 42f).



AkiDwa and the National Disability Authority were approached for joint projects in 2010 (cf. Equality Authority 2011, 63ff). Moreover, in 2011, the agency sponsored five projects through its Equality Mainstreaming Unit. Three of these projects were proposed by GLEN, IBEC and the National Disability Authority, which were represented on the agency's board and formerly through the social partnership (cf. Equality Authority 2012, 62ff). The analysis of the joint project shows that the board members coming from organizations formerly included through the social partnership provided access to non-state actors and influenced the agency's intervention to focus on disability and LGBT discrimination, particularly after the change in leadership. This explains why the agency started to prioritize these grounds of discrimination in its intervention after the change in leadership.

The increasing influence of the board members on the agency's intervention also explains the emergence of the diversity approach in the agency's intervention found in Chapter 5. The analysis demonstrated that the agency became more oriented towards a diversity approach rather than antidiscrimination. The focus moved from the problems experienced by individual groups to the development of diversity schemes, which could be implemented by employers (IE06; 4:9). Since diversity management comes from the business sector, this is a strong evidence of the influence of employers' organizations on the agency. An interest group representative portrays this change within the agency as a positive move from criticizing businesses to searching for positive incentives to support antidiscrimination policies in the business sector. The change in perspective shows that the agency switched from a perspective on the alleged victims of discrimination to embracing the thinking and needs of the business community.

“About then 6 or 7 years ago, the idea of diversity sort of was raised and I was brought in at that point to look more at a diversity focus, which goes beyond the carrot and stick. (...) Trying to

change to a diversity mindset that says actually there is a business case as well as an equality case.”

(1:51)

The analysis shows that the push to frame antidiscrimination as diversity became stronger within the agency after the change in leadership in 2009. An NGO activist stated that the first leadership under Niall Crowley was not in favor of making a business case for antidiscrimination (IE08; 6:56). Yet, this stance changed under the agency’s second leadership.

While a diversity approach was embraced by the agency, some of the agency’s interventions, incentivized by its first leadership, persisted after the change. Although Traveller groups were rather outsider organizations to the agency’s network, as they were not well represented through the board <sup>52</sup> or the social partnership, the agency continued to have joint initiatives with them. Since this cooperation did not change in 2009, we can assume that the first leadership, as shown in Chapter 6, established Traveller issues as strong interests within the agency, apart from creating a strong, informal network with these organizations.

Concluding from the examination of the influence of strong non-state actors on the Irish agency, we find that the agency extensively and substantially cooperated with non-state actors to implement its activities. Yet, they only started to influence its intervention after the change in leadership. While the agency incentivized its professional community to take on grounds of discrimination in their activities, particularly under the agency’s first leadership, it was influenced by their agenda, especially after the change in leadership. This explains the emergence of a diversity approach in the agency’s intervention in addition to specific target groups. Past policy commitments did not influence the changes in the agency’s intervention. While LGBT and

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<sup>52</sup> A board member of the agency also represented Traveller issues within the agency, giving it some representation.

Traveller issues were important in the agency's intervention, past policy commitments were comparably weak in these areas. The analysis showed that the agency changed its role from setting the agenda for its professional community to being influenced by their demands in its intervention.

## **8.2 The Influence of Strong Non-State Actors and Past Policy Commitments on an Agency's Intervention in the Absence of New Political Demands**

As shown in the Chapter 6, Austrian policymakers did not cut the agency's resources or replace its staff during the period of investigation. Yet, the reformed agency needed to operate under severe financial constraints hindering it to fully embrace its competences in areas touching upon grounds of discrimination other than women, as demonstrated in the Chapter 6. Nevertheless, the analysis of the scope of its equality promotion and the interview data show that the agency managed to expand its promotion of antidiscrimination to groups other than women during the period of investigation. This means that the agency managed to broaden its intervention incrementally in the absence of new political demands.

The interview data reveal that the agency substantially relied on cooperations and joint projects with civil society and interest groups to increase its reach, promotional work and to lessen the effects of its constrained resources and weak competences during the period of investigation. Chapter 7 already showed that the Austrian agency regularly participated in the annual meetings organized by its parent ministry with non-state actors working on antidiscrimination. Moreover, it also met with civil society and interest groups in the framework of other events organized by the Austrian agency, as pointed out by an NGO activist.

“There are presentations, then there are buffets. We talk. We meet (...) and we know them [the staff of the agency] anyway from various other occasions.”

(AT02; 1:11)

Yet, the agency’s informal cooperations with non-state actors proved more decisive to explain changes in its intervention, as in the case of the Hungarian agency. For instance, the agency cooperated with ZARA, a strong NGO fighting racism (cf. ZARA – Zivilcourage und Anti-Rassismus-Arbeit n.y.-a), to use its expertise in the field of situation testing to test entrance policies of clubs for their potential discrimination against ethnic minorities. Situation testing as a proof procedure in discrimination cases is still an ambiguous method in Austria, as it was permitted by the law but not further defined or explained (cf. Schindlauer 2012, 30). Moreover, the agency was lacking this experience according to an expert, as shown in the following interview quote.

“ZARA already did 3 or 4 situation testings in bars and ZARA has already pressed charges in many cases together with the *Klagsverband* related to access to premises before courts and has also already won compensation. So there simply is a lot of expertise (...), which the Ombud for Equal Treatment is lacking.”

(AT04, 3:50)

A 2011 newsletter mentions three cases in which the agency used the expertise of the NGO to test discrimination. By integrating the expertise of civil society to prove discrimination, the agency was able to demonstrate and test discrimination with non-legal means. It integrated a new mode of promoting antidiscrimination in its intervention. While this only had a minor impact, the cooperation for non-legal expertise with this NGO had spin-off effects on the agency’s research, as the agency also published advice to prevent ethnic discrimination in the access to goods and services in collaboration with this NGO. Since this NGO fighting against ethnic discrimination was strong, it was able to influence the agency.

Yet, this was only a minor instance demonstrating the influence of non-state actors on the agency's intervention, as the data shows that the agency relied substantially on cooperations with non-state actors to overcome its limitations in its strategic litigation work. Since the Austrian agency did not have the power to take a case to court or launch an *actio popularis* or *ex officio* claim, the agency cooperated with civil society to overcome this limitation. As shown in Chapter 7, only the NGO association *Klagsverband*, a strong actor in the field, was able to support alleged victims of discrimination before a court. Apart from that, the Austrian antidiscrimination agency only had the right to demand a declaratory judgement by a court if it disagreed with the decision of the Equal Treatment Commission in one of its own cases, as shown in Chapter 4. Only the *Klagsverband* had the right to bring cases to court. These differences in powers led to the creation of an informal network for substantial exchange between the agency, the association, ZARA and two other institutions. While the agency shared its expertise and information on cases of discrimination which reached the agency, the association deliberated with the agency on cases for strategic litigation (AT02; 1:15).

This cooperation and exchange between the agency and the *Klagsverband* with the aim to have more strategic cases was informal, but strategically coordinated between the agency and the association, as pointed out by an interviewed expert.

“So there exists (...) a so-called *jus jour fixe*, (...) where representatives from ZARA, from the Ombud for Equal Treatment, from the *Klagsverband*, from the unit of the independent equal treatment referees from Vienna, and someone (...) from the LIM<sup>53</sup>, try to strategically plan how to deal with certain cases in the sense whether it is smarter to forward a case, which reached ZARA (...) to the Ombud for Equal Treatment because they could maybe achieve more in this particular sector, and maybe in another case, which reaches the Ombud for Equal Treatment, to think and to say, ‘Yes, maybe this case would be better litigated by an NGO’.”

(AT04; 3:11)

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<sup>53</sup> Ludwig Boltzmann Gesellschaft

This shows that the agency cooperated through the network, as it forwarded and deliberated on cases. Since the *Klagsverband* did not offer legal counselling like the agency (cf. Frey 2005, 65), it needed the agency's pool of cases. Through these informal exchanges, the agency also had the opportunity to point the *Klagsverband* towards cases for strategic litigation, which it could not take on itself.

Importantly, these informal meetings increased the agency's expertise on fighting types of discrimination aside from gender discrimination. The network helped the agency to build expertise on combating ethnic discrimination, as these grounds of discrimination were strongly represented within the *Klagsverband* and through ZARA, but lacking within the agency, as shown in Chapter 4. ZARA shared its expertise with the agency after its reform in 2004, as shown by an interview quote with the president of the *Klagsverband*, which resulted in the creation of the informal network, joined by the *Klagsverband*.

“I think it is not a big secret. When the new lawyers were hired, I was still the chairman of ZARA, and my first reaction was to call them and invite them. (...) Out of this developed an institution, which is now simply called *jus jour fixe*. It is an informal thing. (...) There is this exchange about legal stuff in a more or less increasingly professional way. With the increased self-confidence of the lawyers, it became more and more part of their expertise.”

(4:36)

The exchange with strong non-state actors explains why the agency incrementally broadened its intervention. ZARA's input in the agency's publications was already mentioned. Partners of the agency in its informal network helped the agency to incrementally broaden its intervention.

Yet, this informal network was not the only informal platform for exchange between the agency and non-state actors influencing the agency's intervention. The Austrian agency also had meaningful exchange with the Austrian Chamber of Labor, represented on the Equal Treatment Commission handing down expert opinions on discrimination cases. An employee of the agency

points towards the close exchange of expertise and resources between the agency and the trade union movement influencing its intervention.

”There is a lot of contact and feedback and networking. There are exchange meetings. We sit together in the Equal Treatment Commission. Yes, there really is a close contact; and the Chambers of Labor also constantly forward cases to us and we deliberate with each other when we have the same case, for instance. There is a very close contact.“

(2:38)

The quote shows that also the Chambers of Labor helped the agency to overcome its limited litigation powers. The agency used this network to deliberate on strategic cases for litigation. This is also emphasized by a staff member.

“Yes, our problem is that we cannot go to court. We can take the cases to the Equal Treatment Commission, but not to court, and in this case, the Chambers of Labor are in demand (...) or the trade unions because otherwise the victims have to carry the risks of the costs and they mostly cannot do it. The Chamber of Labor, therefore, is very important in taking cases.”

(2:87)

When a representative of the Chamber of Labor was asked in an interview if cases were also forwarded from the Chamber of Labor to the Austrian agency, she replied in the affirmative (6:15). The data shows that these cooperations were strategic and influenced the agency’s intervention.

Moreover, the strong path dependence of employees’ organizations as champions of equality concerns, especially for women, reinforced the agency’s focus on combating gender discrimination. For instance, events organized in collaboration with the Chamber of Labor and its regional offices did almost exclusively deal with the discrimination of women. They were important cooperation partners, especially on the regional level, to increase the agency’s reach. The Austrian agency reported on many workshops, which were implemented with the support of regional NGOs or institutions in its reports, apart from the Chamber of Labor (cf. Austrian

Ombud for Equal Treatment 2012, 103). Furthermore, the Chamber of Labor offered legal counselling for alleged victims of discrimination in their regional offices where the Ombud for Equal Treatment had no representation (cf. Austrian Ombud for Equal Treatment 2010, 26; 2012, 36). This reinforced the agency's focus on combating the discrimination of women.

As pointed out by an employee of the Austrian agency, the agency also cooperated with LGBT NGOs like HOSI to increase its reach to alleged victims of discrimination other than women outside Vienna.

“No, for instance, HOSI exists in all *Länder* (...). Helping Hands, for instance, exists in many *Länder*. Yes, it is very important to keep this exchange because this way we also get many cases and it is important for us that we get the cases over NGOs, especially, in the *Länder* because it is very hard for us to reach the people.”

(2:79)

Yet, these cooperations with LGBT organizations did not affect its intervention. Chapter 5 showed that the agency rather started to deal with the multiple discrimination of women in its work. Although the agency participated in 2008 in an EQUINET workshop on multiple discrimination potentially influencing this change (cf. EQUINET 2008), the agency's casework demonstrates that it already intervened against the multiple discrimination of women before 2008 (cf. Bundesministerin für Wirtschaft und Arbeit and Bundeskanzleramt 2008). The agency expanded its intervention based on its own expertise in combating age and ethnic discrimination. Supranational networks, strong domestic non-state actors and public institutions integrated multiple discrimination only later on their agenda (i.e. Ludwig Boltzmann Institute of Human Rights n.y.; MA 57 – Department for Women's Issues 2012). This change in its intervention came internally from the agency. The agency broadened its intervention within the area of gender equality where a proactive approach to the equal treatment of women was represented in the Austrian public administration from early on, as shown in Chapter 7. The agency used the



expertise of its two units dealing with discrimination beyond gender discrimination to expand its intervention. This confirms the strong position of the gender unit in the agency, which guided these developments.

The analysis showed that while incremental changes in the Austrian agency's intervention to address the discrimination of ethnic minorities were influenced by strong non-state actors, the expansion of its activities concerning gender equality came from within the agency. Different from the Irish agency, the Austrian agency was not able to set the agenda of non-state actors. Civil society did not consider the agency as the central actor in the field of antidiscrimination (AT02; 1:13; AT05; 4:2). Although they cooperated extensively with the agency, the agency was on an equal footing with civil society and interest groups working on antidiscrimination. The agency was one actor among others. Non-state actors were crucial for the incremental expansion of its intervention to cover ethnic discrimination, found in Chapter 5. With their support, the agency was able to broaden its intervention beyond addressing gender discrimination. The analysis also showed that neither the agency nor non-state actors or past policy commitments pushed the discrimination of senior citizens on anyone's agenda. Their discrimination was problematized by individuals, who experienced discrimination. Moreover, the analysis showed that although past policy commitments cannot explain the incremental expansion of the Austrian agency's intervention to tackle ethnic discrimination, the agency was influenced by them, as they were ingrained in its organizational structure making the gender unit comparably strong and influential on the agency's intervention.

### **8.3 Concluding Remarks on the Impact of Strong Non-State Actors and Past Policy Commitments on the Agencies' Interventions**

The analysis showed that strong civil society and interest groups gained access to the three agencies during the period of investigation and influenced changes in their intervention, especially before or in the absence of new political demands. The comparison shows that the Irish agency was influenced by interest groups and civil society dealing with antidiscrimination after its exposure to new political demands, like the Austrian agency, which experienced their influence throughout the period of investigation. The Austrian agency relied significantly on informal cooperations with civil society to increase its resources and to expand its activities to promote the antidiscrimination of ethnic minorities in addition to women. I also found that strong non-state actors influenced the Hungarian agency until 2010, before the agency received new political demands. Their influence diminished after 2010. Strong non-state actors influenced the Austrian and Hungarian agencies' interventions in the absence of new political demands and in the Irish case after the agency received new political demands.

The analysis shows that Hypothesis 4, predicting that strong non-state actors are likely to influence changes an agency's intervention after it receives new political demands, is only confirmed in the case of the Irish agency. I found that while strong non-state actors influenced the Irish agency after its exposure to new political demands, their influence was only strong in the case of the Austrian and Hungarian agencies in the absence of new political demands. New political demands increased the influence of Irish non-state actors on the agency's intervention and strong Irish non-state actors, also represented on the agency's advisory board, steered the agency to introduce a diversity approach and to focus on specific target groups in its intervention.

Having also tested the influence of past policy commitments on changes in the agencies' interventions as an alternative explanation, we find exciting new insights on the behavior of agencies in the aftermath of new political demands. The Hypothesis 5, claiming that past policy commitments are likely to influence an agency's intervention in the aftermath of new political demands, is confirmed in the Hungarian case. While the Hungarian agency was influenced by strong non-state actors, represented through the agency's advisory board before 2010, their influence on the agency's intervention diminished after the change in leadership and the dismantling of the board after 2010. The agency retreated to areas of intervention where past policy commitments exist. The diminishing influence of strong non-state actors on the agency's intervention was also visible with regards to European actors, as the agency engaged substantially with its professional community on the European level before 2010. Through these cooperations, the agency learnt about new modes of intervention, which substantially influenced its intervention. Yet, this influence ceased after 2010. While past policy commitments had no influence on the Irish agency, they started to influence changes in the Hungarian agency's intervention, as it retreated to these areas of intervention. Hypothesis 5 is confirmed in the Hungarian case.

Moreover, the incremental changes in the Austrian agency's intervention show that past policy commitments ingrained in an agency's organizational structure predisposes an agency to focus on these areas in its intervention. The agency prioritized the fight against the discrimination of women in its intervention throughout the period of investigation. Yet, strong non-state actors, committed to anti-racist work, helped the agency to broaden its scope of equality promotion to combat ethnic discrimination. We, therefore, can assume that when an agency's organizational structure is strongly influenced by past policy commitments, they are likely to influence an

agency's intervention. Yet, they cannot explain changes in the agency's intervention. My research was not able to verify the impact of new political demands in the case of the Austrian agency.

Yet, policymakers do not necessarily have to ingrain past policy commitments in an agency's organizational structure to make it follow these pre-determined paths. The examination of the organizational structure of the Hungarian agency and the designation process of the agency showed that they were not influenced by past policy commitments. Yet, when the Hungarian agency received new political demands, it was significantly destabilized and past policy commitments in the larger environment subsequently guided changes in the Hungarian agency's intervention. While the Irish agency narrowed its scope of equality promotion on selected groups not prioritized through past policy commitments after it received new political demands, the Hungarian agency focused on Roma and disabled people and included mothers in its activities, aligning its activities with past policy commitments and the agenda of the government. The retreat to areas of intervention where past policy commitments exist is no coincidence. The agency identified safe areas for its intervention through them and changed its intervention.

In addition, the diminished influence of European actors points towards a complete isolation of the Hungarian agency. The analysis demonstrated that the support of European networks was important for the Hungarian and Irish agencies after they received new political demands, as they were frequently mentioned as a positive input in the reports and interview material collected on the Hungarian and Irish agencies. Moreover, the agencies relied substantially on EU funding to expand their intervention and the Hungarian agency was considerably driven by the expertise and agenda of its professional community on the European level. The diminished influence of European actors shows that the Hungarian agency became isolated in its domestic context.

The comparison of the influence of strong non-state actors and past policy commitments on the three agencies demonstrates that strong non-state actors only had an impact on the agencies when they received new political demands and were not struggling for survival or when they did not receive new political demands. Although new political demands destabilized the Irish agency, they only led to an increased influence of strong non-state actors on the agency. Different from that, the Hungarian agency was severely destabilized and needed to safeguard its survival. It continued its intervention where it felt politically safe to do so and reoriented itself after the government's agenda and past policy commitments in the field.

## Chapter 9: Conclusion

*“Equality bodies rise and fall like empires.”*

*(Quote from the interview with the CEO of the Irish antidiscrimination agency)*

The quote illustrates the fact that agencies, like the ones operating in the field of antidiscrimination, change their role as promoters of policies overtime. These changes do not happen without a reason. The analysis of the changes in the intervention of the Austrian Ombud for Equal Treatment, the Hungarian Equal Treatment Authority and the Irish Equality Authority showed that change was likely to happen when the agencies experienced interferences of policymakers in their resources, the replacement of their staff or challenges to the use of their competences. New political demands disrupted existing routines of the agencies and challenged the representation of grounds of discrimination within the agency and in its intervention. The agencies’ interventions changed when they experienced challenges and established new priorities.

While the way policymakers triggered changes in the agencies’ activities through cuts in their resources or the replacement of their staff was similar, the outcomes differed. Hypotheses 1 to 3 were confirmed by the analysis, as the agencies changed their interventions in the aftermath of budget cuts, the replacement of staff and challenges to the use of their competences. Yet, the examination and comparison of the impact of new political demands on the interventions of the Hungarian and the Irish agencies showed that they led to some counterintuitive outcomes. As one would expect, the Irish agency’s intervention narrowed although it remained comparably broad, after it received new political demands. Yet, its intervention also became more focused on

individual groups like disabled people or Travellers and the agency embraced a diversity agenda, which was not to be expected. This switch to a diversity agenda meant that the agency focused on depicting diversity as an asset for businesses to increase their productivity in times of a crisis rather than addressing problems of discriminated groups. While this follows the government's agenda of taking a less critical stance on discrimination during a period of crisis and economic recession, the agency also continued to fight the discrimination of groups like Travellers, which was already challenged by the government in the past. It did not follow the wishes of its political masters. Although the agency faced opposition, it continued its intervention in this area even after it received new political demands.

The comparison with Hungary further shows that while policymakers are able to disrupt the established priorities and routines in an agency's intervention by exposing the agency to new political demands, policymakers cannot necessarily determine new priorities in an agency's intervention. While the Hungarian agency almost completely omitted the discrimination of LGBT people or women, apart from mothers, from its intervention after it received new political demands reorienting itself after the agenda of the government, it also continued to focus its intervention on Roma and disabled people. Since the government did not problematize the discrimination of women, Roma and LGBT people, it is surprising that the agency continued combating Roma discrimination. It risked further interferences by its political masters although the analysis showed that policymakers had already considerably threatened the agency's survival in 2010. Policymakers, even when the agencies are not independent, cannot force agencies to change their intervention exactly to their needs integrating and omitting areas of intervention as they see fit.

Moreover, the inclusion of the Austrian Ombud for Equal Treatment in the analysis showed that policymakers are not the only factors causing changes in an agency's intervention. The Austrian agency's intervention changed incrementally, although it did not receive new political demands during the period of investigation. Therefore, the need to look for alternative factors influencing changes in an agency's intervention increased during the investigation.

The theoretical chapter showed that besides policymakers, past policy commitments or strong non-state actors had the opportunity to influence the way an agency changed its intervention in the field. Following an examination of these arguments in the literature, I studied the influence of these two factors, apart from the influence of policymakers, in Chapter 8. I attempted to find a more suitable explanation for changes in an agency's intervention when the agency is dependent on policymakers, who are likely to expose it to new political demands.

The analysis of how the Hungarian and Irish agencies deal with new political demands in Chapter 8 tested the influence of past policy commitments and strong non-state actors on the agencies' interventions. The literature review suggested that these factors had an influence on the agencies. The investigation showed that the Irish agency frequently cooperated with its professional community throughout the period of investigation. Yet, the new political demands changed their influence on the agency. Prior to receiving new political demands, the Irish agency was setting the agenda in the field of antidiscrimination. It lost this role after its exposure to new political demands and became considerably influenced by the agenda of experts in its professional community, who were also represented on its advisory board. For instance, the access of employers' organizations pushed the agency to embrace a diversity agenda. Moreover, since non-state actors were quite strong in the field of disability, Traveller and LGBT rights, they managed to influence the agency to establish these areas as new priorities in the Irish agency's



intervention. Past policy commitments had a limited impact on the changes in the Irish agency's intervention, as the new priorities favored groups where strong past policy commitments were weak or absent.

Looking at the Hungarian case, I found that the agency did not become an empty shell after its preference formation and routines were severely destabilized by the interference of policymakers. Because of the support of its professional community, but also because of the indirect effect of past policy commitments. The agency sought guidance from its professional community and cooperated with them to help them to challenge the government, a role the agency did not want to assume itself. Past policy commitments were decisive in laying out relatively safe areas of intervention for the agency. For instance, the agency did not address concerns of LGBT people or religious minorities in its intervention, as these concerns were politically delicate to address under a Fidesz-led government and past policy commitments in these areas were missing. Although LGBT organizations are relatively strong, the historical and political developments suggested to the agency that it was not safe for the agency to maintain its intervention in this area threatening its survival. Although policymakers did not want attention on the discrimination of Roma or women, the Hungarian agency was not under the same pressure to omit these areas of intervention, as past policy commitments existed. The effect of past policy commitments explains why the Hungarian agency retreated from raising awareness about LGBT discrimination after the change in government, but continued challenging the discrimination of Roma and women.

Turning to the case of the Austrian Ombud for Equal Treatment, the analysis confirmed that the support of the agency's professional community was decisive for understanding why its intervention expanded incrementally to address the discrimination of ethnic minorities in the absence of new political demands. Chapter 6 showed that the agency operated under constrained

resources after its reform in 2004, which were unfavorable towards an expansion of its mandate to ethnic and religious minorities, senior citizens or LGBT people. Strong non-state actors helped and incentivized the agency to expand its intervention to address ethnic discrimination. The networking with NGOs working against ethnic discrimination helped the agency to build expertise within its own organizational structures. Moreover, the analysis showed that the agency solidified its gender focus in its intervention through cooperations with employees' organizations. Since past policy commitments were not strong in combating ethnic discrimination, the influence of strong non-state actors was decisive for understanding changes in the agency's intervention.

The comparison shows that while changes in the agencies' scope of equality promotion were affected by new political demands, these changes could only be understood by extending the research focus to the agencies' embeddedness in their professional communities and the impact of past policy commitments, especially in the Hungarian case. While cooperations with civil society and interest groups incentivized the Austrian and Irish agencies to integrate new areas of intervention, past policy commitments marked safe areas for the Hungarian agency's intervention. While Hypothesis 4, predicting the influence of strong non-state actors on the agencies was confirmed in the Irish case, Hypothesis 5, predicting a strong influence of past policy commitments, was confirmed in the Hungarian case. Therefore, antidiscrimination bodies either formed cooperations with civil society and interest groups to expand and implement their activities or retreated from their intervention to safe areas marked by past policy commitments.

The Hungarian case laid out the actual limits of the influence of strong non-state actors on agencies when they fight for survival. Whether new areas were identified or new modes of intervention were used by the agency largely depended on the emerging competition for resources and standing of the represented grounds of discrimination within the agency and on

whether their integration did decrease the agency's chances of survival. Only if cooperations with its professional community or the inclusion of an area of intervention entailed that the agency would not experience further interferences by policymakers further destabilizing its operations, it integrated these areas in its intervention. For instance, the Hungarian agency refrained from engaging with LGBT discrimination in its intervention after the changes in 2010 because the government strictly opposed them. Different from that, past policy commitments in the field of Roma rights allowed the agency to intervene in this area, although the government was not particularly in favor of the agency's intervention in this area. Due to past policy commitments problematizing their discrimination, it was relatively safe for the agency to intervene in this area.

Since the Irish and the Austrian agencies were not threatened to become completely destabilized by new political demands and did not fear for their survival, past policy commitments do not explain changes in the agencies' interventions. While the Austrian agency also incrementally expanded its intervention to address the discrimination of women where past policy commitments in the Austrian public administration existed, this was no new area of intervention for the agency.

The analysis showed that past policy commitments in the sector are a last resort for the agencies to decide over their strategic interventions in the field. Past policy commitments, in this sense, point agencies to areas where they can continue their interventions without risking further interferences by the government, which can potentially destabilize the agencies even more. Moreover, following past policy commitments also means that they do not need to acquire new expertise and raise awareness for a new problem identified in the field. They can continue their operations without drawing the attention of policymakers to their interventions.

We first learnt from analyzing and comparing the changes in the scope of equality promotion in the individual case studies that new political demands affected the antidiscrimination agencies.

They destabilized the representation of grounds of discrimination within the agencies. Second, strong non-state actors in the agencies' professional community and past policy commitments helped the agencies to deal with new political demands. Figure 10 explains how these factors influenced the agencies in their search for new priorities. I designed a model that predicts how policymakers, an agency's professional community and past policy commitments affect changes in an agency's intervention based on my analysis. I characterize the agencies as trendsetters, expert networkers or emulators according to their intervention. Figure 8 shows what role the agencies are likely to play in the field considering the various influences on them.

**Figure 8: The Influence of Policymakers, Strong Non-State Actors and Past Policy Commitments on Changes in an Agency's Scope of Equality Promotion**

	<b>Representation of Grounds of Discrimination within the Agency</b>	<b>Influence of Strong Non-State Actors and Past Policy Commitments</b>	<b>Relationship to the State</b>	<b>Cases</b>
<b>The Trendsetter</b> (Active in all areas of its mandate)	No/Minor competition for standing and resources among grounds represented within the agency	Agency structures and guides the activities and exchange with non-state actors  No influence of past policy commitments	Agency sets the agenda for the administration in the policy field proposing innovations	IE before 2009
<b>The Expert Networker</b> (Expert in one or two area/s of its mandate)	Stable representations of grounds of discrimination  Competition for resources and standing among strong and weak grounds	Strong non-state actors integrate areas and modes of intervention in the agency's intervention  Past policy commitments influence the agency's intervention if ingrained in its organizational structure	Agency raises awareness on its areas of expertise with the administration	AT 2008-2011  HU before 2010  IE after 2009
<b>The Survivor</b> (Agency refrains from intervening in areas threatening its survival)	No (stable) representations or coalitions between grounds of discrimination  Open competition for resources and standing among represented grounds	Limited influence of non-state actors  Past policy commitments point the agency towards safe areas for its intervention	Agency is subordinated and raises awareness on issues identified by the administration	HU after 2010

The Trendsetter did only apply to the Irish agency before it received new political demands in 2009. The analysis showed that an agency representing a Trendsetter has a broad scope of equality promotion and hardly any prioritized areas of intervention emerge in its intervention. There is no or minor competition among the represented grounds of discrimination within the

agency for standing and resources incentivizing the agency to prioritize areas of intervention. The agency is not influenced by past policy commitments and rather tries to break with them by raising awareness about new areas and modes of intervention within the administration, but also through its exchanges with non-state actors. The Irish agency's intervention showed that the agency incentivized non-state actors to raise awareness and fight discrimination in new areas. Moreover, the Irish agency had a central role in the administration to lead developments in the field of antidiscrimination.

All three agencies had periods in which the Expert Networker applied to them. The Expert Networker is an agency where the represented grounds of discrimination within the agency do not have the same resources and standing within the agency. Strongly represented grounds compete with weaker ones for standing and resources. Priorities emerge in the agency's intervention. Past policy commitments only affect the agency when they are ingrained in its organizational structure. The Austrian agency's intervention showed that it was influenced by past policy commitments incentivizing the agency to combat the discrimination of women. Yet, past policy commitments did not influence the Irish or Hungarian agencies like the Austrian agency, as they were not ingrained in their organizational structures. Moreover, the Expert Networker uses its area(s) of expertise to interact with strong non-state actors as an expert, and also provides its expertise to the administration. Non-state actors, in turn, influence the agency to integrate areas of their expertise in the agency's intervention. The analysis of the Irish agency showed that it became influenced by the agenda of non-state actors and retreated to the role of being an Expert Networker rather than a Trendsetter in the field after 2009, like the Austrian agency. The Hungarian agency also offered its expertise and included areas of intervention proposed by its professional community before it received new political demands in 2010.

The Survivor, which only applies to the Hungarian agency in the period after 2010, refers to an agency, which was completely destabilized by new political demands. Grounds of discrimination compete for resources and standing, and influence the agency's intervention ad hoc. Yet, the most important influence on the agency's intervention are policymakers, as the agency reorients its intervention after the agenda of policymakers and past policy commitments. Past policy commitments represent areas of intervention where the agency can safely intervene and where it does not have to create awareness about new problems identified in the field. Strong non-state actors do not influence the agency's intervention.

These findings have various implications for the type of role antidiscrimination bodies can play as promoters of antidiscrimination. Figure 10 shows that an agency configured like the Trendsetter is likely to influence and set the agenda for its professional community, but also for the administration. While the Trendsetters are relatively strong and independent from policymakers in practice, they can also implement their mandates beyond past policy commitments in the field. Agencies working as Expert Networkers tend to focus on specific groups and are open to the influence of strong non-state actors. It is the type of agency most exposed to the influence of strong non-state-actors. Different from that, antidiscrimination agencies operating as Survivors are completely destabilized by new political demands. Their intervention is strongly influenced by their material interests of survival. They are relatively closed to their professional community and only integrate areas of intervention which do not threaten their survival. Past policy commitments are crucial for the agency to identify safe areas for their intervention. A Survivor is unlikely to go beyond the expectations expressed by policymakers and past policy commitments.

This typology of how antidiscrimination agencies implement their mandates and how they are affected by policymakers, strong non-state actors and past policy commitments gives new input to scholars researching equality institutions. So far, systematic attempts to classify these bodies are missing. As pointed out by Carver (2011), although bodies supporting the implementation of equality policies, like the antidiscrimination agencies, have become quite common, research and systematic approaches to study influences on them are still lacking. My research helped to systematize these influences and provides a typology for future research in the field.

In addition, this model also addresses the question of accountability of public bodies, which motivated much research and discussion in the regulation literature. Scholars like Majone (1999) argued that public bodies like agencies face accountability problems, as they are independent from policymakers to whom they should nevertheless be accountable. Scholars like Carpenter and Moss (2013) critically addressed this problem and proposed that accountability of agencies does not necessarily have to be to policymakers, but should be to the public interest. My model adds to this theoretical discussion on accountability by indicating to whom the three antidiscrimination agencies were actually accountable and with what outcome. The Trendsetter proved to be relatively independent from policymakers, past policy commitments or non-state actors and appeared to be the least accountable agency. Different from that, while the Expert Networker was accountable to civil society and policymakers, the Survivor responded solely to the demands of policymakers and expectations in the form of past policy commitments. The developed model shows that the Expert Networker is the agency most likely to act in a way that it remains responsive to new political demands, but also to its professional community, which represents the public interest in the field of antidiscrimination. The model demonstrates and



confirms that an agency's independence, like in the case of the Trendsetter, faces accountability problems, as pointed out in the regulation literature.

Apart from the findings' implications for understanding the potential role of antidiscrimination bodies and problems connected to the accountability of agencies, my findings contribute and fill different lacunas in the regulation and equality institutions' literature. My first contribution is on the actual influence of policymakers on agencies, extensively addressed in my research. As shown in the literature review, scholars claim that without full independence, policymakers have various instruments such as budget cuts or the dismissal of staff at their disposal to bring agencies to heel. My research showed that this, however, is a messy process. Policymakers cannot determine how agencies deal with new political demands expressed through budget cuts, the replacement of their staff or challenges to the use of their competences. I showed that the influence of policymakers destabilizes agencies to various degrees.

My research showed that the Hungarian and Irish agencies experienced cuts in their budgets and staffing and challenges to the use of their competences, which however did not turn the agencies into empty shells. The degree to which the agencies changed their intervention depended largely on the severity of the interference. While policymakers destabilized the Hungarian agency more profoundly effectively limiting its scope of intervention, the Irish agency was more stable and continued its intervention in areas even if those conflicted with government's preferences. We learnt that no matter how much control was exercised by the policymakers, the agencies maintained some level of discretion to implement their mandates visible through their strategic interventions in the field. For instance, although the Hungarian and Irish agencies experienced considerable interferences by policymakers in their resources and staff, the agencies still continued their intervention addressing discrimination. This finding shows that actual political

control of an agency is not possible, although policymakers can severely affect the intervention of agencies and can make them rather passive promoters.

My research confirms findings of scholars like Carpenter (1996), testing the power of the purse, that a cut in resources does not determine changes in an agency's intervention. While the agency is destabilized, it continues its intervention through its established routines and expertise. Yet, my research demonstrated that new political demands as a combination of a budget cut and the replacement of almost the entire staff of an agency makes an agency very open to political influence. This supports findings of scholars like Yesilkagit (2004) and May et al. (2008) that an agency's routines filter new political demands, as the agency's routines affect its intervention also in the aftermath of new political demands. Staff and units with expertise on specific grounds of discrimination continue to influence the agency's intervention and push for a better standing of these grounds in the agency's intervention. This suggests that an agency's intervention is more severely affected by a replacement of its staff than a cut in its resources.

I was also able to test the strong claim of scholars pointing towards the centrality of leadership in safeguarding an agency's interpretation of their mandates. Scholars like Spencer and Harvey (2013) claimed that leaders have a strong impact on the performance of antidiscrimination bodies. My three case studies showed that a change in the agencies' leaderships gave a strong signal to the agencies to change their interventions. This effect was confirmed by the subsequent changes in their interventions. Yet, while the Hungarian agency's leadership did not risk further political interferences after 2010, the Irish agency continued its intervention under its second leadership, also in areas where it risked political opposition. A change in leadership did not silence the Irish agency as a promoter of antidiscrimination.

My findings contribute to our understanding about the role of organizational leaders by showing that changes in leadership rather proved decisive for the way competition among the represented grounds of discrimination emerged or increased within the agency when the agency received new political demands. While the Irish case showed that a change in leadership did not lead to drastic changes in the scope of the agency's equality promotion, although competition for standing and resources among the represented grounds of discrimination started after the change in leadership in 2009. The agency started to establish priorities, but maintained a broad scope of intervention. While an agency's leadership affected organizational processes leading to priority setting, the agency's intervention did not follow the agenda of Irish policymakers under a new leadership.

Second, my research improved our understanding in which way and especially under which circumstances strong non-state actors influence agencies like antidiscrimination bodies. My research demonstrated that the interference of policymakers opened the Trendsetter up to the influence of its professional community. The agenda of strong non-state actors started to influence the agency's intervention. Strong non-state actors influenced the agency's intervention subsequently. Yet, strong non-state actors were not able to capture the agency. Moreover, the analysis showed that Stigler's (1971) capture approach has limited applicability in the field of antidiscrimination. The influence of strong non-state actors did not corrupt the intervention of the agency against the public interest. The antidiscrimination bodies rather used the support of strong non-state actors to build expertise in new areas and to expand its intervention.

My research also contributed to the equality institutions' literature with new insights on the influence of strong non-state actors on public bodies. The literature explained that triangles of empowerment evolve between the staff of public bodies, experts and non-state actors. While my research proved this to be true for antidiscrimination bodies, I also showed that their influence on

the agencies' interventions changed. By specifying the circumstances under which cooperation or, as defined by the literature, triangles of empowerment have an impact on the agencies' interventions, I contributed to the literature by theorizing about the circumstances under which this impact actually occurred. While the capture approach predicted this impact when political attention moved away from the agency, Woodward (2003) and others did not specify when the exchange with non-state actors starts to impact a public body's intervention. My research showed that policymakers, by challenging an agency, created incentives for the agency to engage with its professional community. While a strong agency, like the Trendsetter, was not influenced by the individual agenda of non-state actors, the Survivor did not seek substantial cooperations with non-state actors to implement its activities. The Expert Networker is the most likely one to build triangles of empowerment with experts and civil society.

Third, my research on antidiscrimination bodies added to the literature populated by scholars like Squires or Verloo by showing the actual impact of past policy commitments. These scholars proposed that past policy commitments, especially when ingrained in the organizational structure of a body, affect how a public body embraces its role. So far, many of these scholars only addressed the influence of past policy commitments at the stage of an institution's creation. My analysis showed that past policy commitments mainly had an influence when the agencies struggled for survival and when past policy commitments were represented in the agencies' organizational structures. The analysis of changes in the Hungarian agency's intervention showed that it began to focus its intervention on areas of intervention where it did not expect subsequent interferences by policymakers to silence the agency and where past policy commitments existed. For instance, the agency continued to intervene against the ethnic segregation of Roma children in schools risking further political interferences, as this issue was not problematized by the

government. Yet, past policy commitments problematized Roma discrimination indirectly lending support to the agency's intervention in this area.

Moreover, my analysis confirmed that past policy commitments can significantly influence the organizational structure of an agency and subsequently its intervention. This was a central claim in the equality institutions' literature, as scholars, like the aforementioned ones, argued that the organizational structure determines whether the agency is able to create awareness about issues where past policy commitments do not exist. While these expectations did not determine how the Austrian agency expanded its scope of equality promotion, they influenced the agency to focus on the discrimination of women in its intervention. Importantly, the agency did not deal with the discrimination of senior citizens where past policy commitments were relatively strong. Yet, they were also not ingrained in the agency's organizational structure. Considering that the agency expanded its intervention to address the discrimination of ethnic minorities, past policy commitments are not able to predict which new areas of intervention are embraced by the agency over time. They are only able to point towards logical areas of intervention for the agency.

Moreover, in the case of a strong agency like the Irish agency, especially prior to the interference of policymakers, the agency was not influenced by past policy commitments. The Irish agency focused on groups historically marginalized by policymakers such as LGBT people or the Travellers in its intervention. This shows that an agency operating like a Trendsetter was able to break with past policy commitments in the field and develop an agenda outside these expectations being an innovator.

The study of changes in the antidiscrimination bodies' interventions filled important lacunas in the literature. As a newly emerging policy field, antidiscrimination provided an excellent field to study how public bodies like agencies changed their interventions, as the interference of

policymakers was likely and there were different actors and past policy commitments present in its environment potentially influencing the agencies. Therefore, the study of the antidiscrimination agencies' interventions helped to understand why the role of public bodies promoting policy developments changed over time and under what circumstances.

My research revealed that new political demands and attempts of political control could severely affect agencies in their role as promoters of antidiscrimination. A change of political priorities due to the rise to power of a conservative government or the emergence of a crisis is likely to have a negative impact on policy fields like antidiscrimination and on the agencies designed to intervene in the field. This is crucial, as my research showed that a government's approach towards a proactive antidiscrimination agenda is fundamental for the agencies to be strong promoters of antidiscrimination.

The study of the changes in the antidiscrimination agencies' interventions showed that research on the impact of policymakers has to go beyond the realm of the state. My findings pointed towards the important role of strong non-state actors and past policy commitments for the functioning and survival of agencies. The agencies were able to deal with new political demands relying on their support. The Austrian case showed that non-state actors were a crucial source of expertise for the Austrian antidiscrimination agency, which operated under political circumstances unfavorable for an expansion of its mandate to new areas of intervention. Policymakers did not offer additional resources to the agency. Agencies remain active promoters of antidiscrimination with the help of strong non-state actors.

This research indicates three potential areas for future research endeavors. First, I showed that an agency's intervention continues to be proactive even when it is challenged by policymakers because of the support of its professional community. Yet, if there are no strong non-state actors,

it is likely that the effect of new political demands on agencies becomes much more significant. The analysis of the situation of the Hungarian and Irish agencies showed that the government also challenged the survival of many non-state actors. The full effect of the diminished capacity of non-state actors in combination with an agency, which is on the search for support, needs to be a topic for future research.

Second, my research showed that European actors and funding diminished the effect of new political demands on the agencies. The Hungarian, but also the Irish agency, used European platforms, such as EQUINET or EU funding, as support mechanisms to deal with new political demands. European networks worked, in this sense, as filters of domestic developments in EU member states. By providing additional sources of funding, expertise and guidance, EU actors can diminish the impact of policymakers on agencies. Research studying public bodies operating on the domestic level, therefore, should not ignore the potential influence of European actors and funding. The European Union and its networks give policy incentives to actors and institutions in the member states to implement pro-active policies leading towards more equality within European societies. The full effect of the influence of EU funding and other support mechanisms for domestic institutions provided by the EU needs to be addressed in future research, as my research was only able to look at its immediate effect when the antidiscrimination agencies received new political demands. Yet, this needs to be addressed in a more systematic way relying on European integration research and in different policy fields.

Finally, my research only focused on the effect of new political demands following a crisis or change in government towards less support for a progressive antidiscrimination agenda. Yet, research needs to address whether a change in government committed to a pro-active agenda leads to an expansion of the intervention of antidiscrimination agencies. So far, my research was

only able to demonstrate that less support for an antidiscrimination agenda leads to challenges for the agencies to implement their activities. I showed how agencies dealt with these challenges. Scholars need to investigate the conditions under which agencies thrive as promoters of a policy in a case when the agency was a survivor. Future research needs to understand how agencies become Trendsetters after having experienced periods of being a Survivor. Understanding these dynamics helps us to identify what is necessary to make antidiscrimination bodies rise again like an empire.



## Appendix A: Analyzed Austrian Documents in Chapter 5

### 1) Annual reports:

Austrian Ombud for Equal Treatment (2010). "Gemeinsamer Bericht 2008/2009 Gemäß § 24 des Bundesgesetzes über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft." Vienna, <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=42115>.

Austrian Ombud for Equal Treatment (2012). "Teil II des Gleichbehandlungsberichts für die Privatwirtschaft 2010 und 2011 Gemäß § 24 des Bundesgesetzes über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft." Edited by Bundesministerin für Frauen und Öffentlichen Dienst im Bundeskanzleramt Österreich, Vienna, <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=49985>.

### 2) Case of the month:

**2010:** <http://www.gleichbehandlungsanwaltschaft.at/site/7240/default.aspx>

**2011:** <http://www.gleichbehandlungsanwaltschaft.at/site/7457/default.aspx>

### 3) Events:

<http://www.gleichbehandlungsanwaltschaft.at/site/7239/default.aspx>

### 4) Opinion:

Ass.-Prof. Dr. Barbara Beclin (2010): Gutachtliche Stellungnahme zur Frage der Haftpflichtigen und der Verantwortung für Dritte nach dem III. Teil des GIBG, Wien: Institut für Zivilrecht.

### 5) Newsletters:

Austrian Ombud for Equal Treatment (2008). "Newsletter Mai 2008." <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=34408>

Austrian Ombud for Equal Treatment (2008). "Newsletter Oktober 2008." <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=32045>

Austrian Ombud for Equal Treatment (2009). "Newsletter 3 / März 2009." <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=34409>

Austrian Ombud for Equal Treatment (2009). "Newsletter Juni 2009." <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=35843>

Austrian Ombud for Equal Treatment (2010). "Newsletter März 2010." <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=38745>

Austrian Ombud for Equal Treatment (2010). "Newsletter September 2010." <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=40729>

Austrian Ombud for Equal Treatment (2011). "Newsletter März 2011." <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=42667>

Austrian Ombud for Equal Treatment (2011). "Newsletter Oktober 2011." <http://www.gleichbehandlungsanwaltschaft.at/DocView.axd?CobId=45322>

### Recommendations of the OfeT:

Empfehlung der Gleichbehandlungsanwaltschaft zur geschlechtsneutralen Auspreisung von Friseurdienstleistungen

Diskriminierung im Personalauswahlverfahren vermeiden – Empfehlungen für Unternehmen

Ihr Recht auf diskriminierungsfreie Personalauswahl – Informationen für Bewerberinnen und Bewerber; Empfehlung der Gleichbehandlungsanwaltschaft

Empfehlung der Gleichbehandlungsanwaltschaft zum geschlechtergerechten Sprachgebrauch; Geschlechtergerechter Sprachgebrauch im Unternehmen, Leitfaden für Arbeitgeberinnen und Arbeitgeber in 2011

Empfehlung der Gleichbehandlungsanwaltschaft zu den Einkommensberichten gemäß § 11a Gleichbehandlungsgesetz

Gemeinsame Empfehlung der Gleichbehandlungsanwaltschaft, des Klagsverbands und des Vereins Zara für eine diskriminierungsfreie Eintrittspolitik von Lokalen

### 6) Research:

Unabhängige Untersuchung zur geschlechtergerechten Stellenausschreibung in 2007-2009

### 7) Supported cases:

#### *Gender:*

**2008:** GBK I/138/08; GBK I/127/08; GBK I/128/08; GBK I/129/08; GBK I/134/08; GBK I/139/08; GBK I/143/08; GBK I/158/08; GBK I/160/08; GBK I/164/08; GBK I/165/08; GBK I/167/08; GBK I/130/08; GBK I 156/08; GBK III/38/08

**2009:** GBK I/178/09; GBK I/189/09; GBK I/198/09; GBK I/203/09; GBK I/204/09; GBK I/212/09; GBK I/224/09; GBK I/190/09; GBK I/184/09; GBK I/206/09; GBK I/213/09; GBK I/226/09; GBK I/228/09; GBK I/191/09; GBK I/225/09; GBK I/234/09; GBK I/238/09; GBK I/242/09; GBK I/219/09; GBK I/231/09; GBK I/239/09; GBK I/245/09; GBK I/246/09; GBK I/247/09; GBK I/248/09; GBK I/318/11

**2010:** GBK I/305/10; GBK I/251/10; GBK I/291/10; GBK I/301/10; GBK I/255/10; GBK I/279/10; GBK I/299/10; GBK I/309/10; GBK I/267/10; GBK I/272/10; GBK I/284/10; GBK I/294/10; GBK I/298/10; GBK I/300/10; GBK I/303/10; GBK I/318/11; GBK III/59/10; GBK III/71/10

**2011:** missing data

*Multiple discrimination:*

**2008:** GBK I/140/08-M; GBK I/153/08-M; GBK I/155/08-M

**2009:** GBK I/173/09-M; GBK I/175/09-M; GBK I/187/09-M; GBK I/199/09-M; GBK I/230/09-M; GBK I/236/09

**2010:** GBK I/283/10-M; GBK I/296/10-M; GBK I/268/10-M; GBK I/287/10-M; GBK I/256/10-M; GBK I/259/10-M; GBK I/264/10-M; GBK III/58/10

**2011:** missing data

*Other than gender:*

**2008:** GBK II/48/08; GBK II/52/08; GBK II/57/08; GBK II/70/08; GBK III/33/08; GBK III/34/08; GBK III/35/08; GBK III/36/08; GBK III/39/08

**2009:** GBK II/74/09; GBK II/79/09; GBK II/96/09; GBK II/80/09; GBK II/92/09; GBK II/98/09; GBK III/40/09; GBK III/45/09; GBK III/49/09

**2010:** GBK II/112/10; GBK II/101/10; GBK II/107/10; GBK II/111/10; GBK II/103/10; GBK III/56/10; GBK III/58/10; GBK III/63/10; GBK III/70/10

**2011:** GBK II/N-144/11; GBK II/N-149/11; GBK II/N-150/11; GBK II/N-135/11; GBK II/N-129/11; GBK III/89/11; GBK III/81/11; GBK III/72/11

## **Appendix B: Analyzed Hungarian Documents in Chapter 5**

Annual Reports:

Equal Treatment Authority (2009). "Information on the activity of the Equal Treatment Authority in 2008, and on the findings of the application of Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities." not online.

Equal Treatment Authority (2010). "Information on the activity of the Equal Treatment Authority in 2009, and on the findings of the application of Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities." Budapest, not online.

Equal Treatment Authority (2011). "Report of the activity of the Equal Treatment Authority in 2010 and on application of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities." Budapest, <http://www.egyenlobanasmod.hu/data/2010report.pdf>.

Equal Treatment Authority (2012). "Report on the activity of the Equal Treatment Authority in 2011 and on the application of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities." Budapest: Equal Treatment Authority, <http://www.egyenlobanasmod.hu/data/2011report.pdf>.

Equal Treatment Authority (2014). "With the Same Reverence 'Combating Discrimination – Shaping Societal Attitude and Strengthening the Work of the Authority' TÁMOP–5.5.5/08/1-2008-0001 project – Final Publication." Edited by Márta Pánczél, Budapest, [http://www.egyenlobanasmod.hu/app/webroot/files/img/articles/c3d85264cfaec3a18542379bd526adbf/TAMOP\\_zarokiadvany.pdf](http://www.egyenlobanasmod.hu/app/webroot/files/img/articles/c3d85264cfaec3a18542379bd526adbf/TAMOP_zarokiadvany.pdf), 03.05.2015

#### Advice/Comments:

Equal Treatment Authority (n.d.). "Az Egyenlő Bánásmód Tanácsadó Testület 384/5/2008.(IV.10.) TT."

Equal Treatment Authority (2008). Az Egyenlő Bánásmód Tanácsadó Testület 384/4/2008.

Equal Treatment Authority (2008). Az Egyenlő Bánásmód Tanácsadó Testület 384/3/2008.

Equal Treatment Authority (2008). Az Egyenlő Bánásmód Tanácsadó Testület 384/1/2008.

Equal Treatment Authority (2008). Az Egyenlő Bánásmód Tanácsadó Testület 384/2/2008.

Equal Treatment Authority (2009). 6/2009. (XI. 23) TT.sz. Decision.

Equal Treatment Authority (2010). Az Egyenlő Bánásmód Tanácsadó Testület 288/1/2010 (II.11.) TT. sz. Állásfoglalása. [http://www.egyenlobanasmod.hu/data/TTje\\_2010-288.pdf](http://www.egyenlobanasmod.hu/data/TTje_2010-288.pdf)

Equal Treatment Authority (2010). Az Egyenlő Bánásmód Tanácsadó Testület 288/4/2010. (VI. 21. ) TT. sz. Állásfoglalása. [http://www.egyenlobanasmod.hu/data/TTaf\\_201006.pdf](http://www.egyenlobanasmod.hu/data/TTaf_201006.pdf)

Equal Treatment Authority (n.d.). "Az Egyenlő Bánásmód Tanácsadó Testület 288/2/2010. (IV.9.) TT. sz. állásfoglalása az egyéb helyzet meghatározásával kapcsolatban." [http://www.egyenlobanasmod.hu/data/TTaf\\_201004.pdf](http://www.egyenlobanasmod.hu/data/TTaf_201004.pdf)

Equal Treatment Authority (2011). Az Egyenlő Bánásmód Tanácsadó Testület 309/1/2011(II.11).TT. sz. állásfoglalása az akadálymentesítési kötelezettségről. [http://www.egyenlobanasmod.hu/data/TTaf\\_20110211-1.pdf](http://www.egyenlobanasmod.hu/data/TTaf_20110211-1.pdf)

Equal Treatment Authority (2011). Az Egyenlő Bánásmód Hatóság Tanácsadó Testülete 309/2/2011 (III.25.). TT. sz állásfoglalása. [http://www.egyenlobanasmod.hu/data/TTaf\\_2011-309.pdf](http://www.egyenlobanasmod.hu/data/TTaf_2011-309.pdf)

#### Case law:

Equal Treatment Authority (n.d.). "Case law 2008." <http://www.egyenlobanasmod.hu/jogesetek/jogesetek#y2008> (offline)

Equal Treatment Authority (n.d.). "Case law 2009." <http://www.egyenlobanasmod.hu/jogesetek/jogesetek#y2009> (offline)

Equal Treatment Authority (n.d.). "Case law 2010." <http://www.egyenlobanasmod.hu/jogesetek/jogesetek#y2010> (offline)

Equal Treatment Authority (n.d.). "Case law 2011." <http://www.egyenlobanasmod.hu/jogesetek/jogesetek#y2011> (offline)

Newsletters:

Equal Treatment Authority (2008). "Hírlevele 2008/1." [http://www.egyenlobanasmod.hu/data/EBH\\_7sz.pdf](http://www.egyenlobanasmod.hu/data/EBH_7sz.pdf)

Equal Treatment Authority (2008). "Hírlevele 2008/2." [http://www.egyenlobanasmod.hu/data/EBH\\_8sz.pdf](http://www.egyenlobanasmod.hu/data/EBH_8sz.pdf).

Equal Treatment Authority (2008). "Hírlevele 2008/3." [http://www.egyenlobanasmod.hu/data/EBH\\_9sz.pdf](http://www.egyenlobanasmod.hu/data/EBH_9sz.pdf)

Equal Treatment Authority (2009). "Hírlevele 2009/1." [http://www.egyenlobanasmod.hu/data/EBH\\_10sz.pdf](http://www.egyenlobanasmod.hu/data/EBH_10sz.pdf)

Equal Treatment Authority (2009). "Hírlevele 2009/2." [http://www.egyenlobanasmod.hu/data/EBH\\_11sz.pdf](http://www.egyenlobanasmod.hu/data/EBH_11sz.pdf)

Equal Treatment Authority (2009). "Hírlevele 2009/3." [http://www.egyenlobanasmod.hu/data/EBH\\_12sz.pdf](http://www.egyenlobanasmod.hu/data/EBH_12sz.pdf)

Equal Treatment Authority (2009). "Hírlevele 2009/4." [http://www.egyenlobanasmod.hu/data/EBH\\_13sz.pdf](http://www.egyenlobanasmod.hu/data/EBH_13sz.pdf)

Equal Treatment Authority (2010). "Hírlevele 2010/1." [http://www.egyenlobanasmod.hu/data/EBH\\_14sz.pdf](http://www.egyenlobanasmod.hu/data/EBH_14sz.pdf)

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## Appendix D: Contingency tables used to study the Austrian agency's substantial legal support

2008	Gender	Ethnicity	LGBT	Age	Religion	Multiple Discrimination
Substantial support	15	6	1	1	1	3
Enquiries	1641	274	22	134	57	36

		Ethnicity				Age	
		No	Yes			No	Yes
Support	No	1836	268	Support	No	1971	133
	Yes	21	6		Yes	26	1
		1,13085622	2,189781022			1,30195293	0,74626866

		Multiple Discrimination				Religion or Belief	
		No	yes			No	Yes
Support	No	2104	33	Support	No	2048	56
	Yes	24	3		Yes	26	1
		1,127819549	8,333333333			1,2536162	1,75438596

		Gender				LGBT	
		No	Yes			No	Yes
Support	No	478	1626	Support	No	2083	21
	Yes	12	15		Yes	26	1
		2,448979592	0,914076782			1,23281176	4,54545455

2009	Gender	Ethnicity	LGBT	Age	Religion	Multiple discrimination
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Substantial support	26	4	1	3	0	7
Enquiries	2222	346	31	157	65	65
	1,15658363	1,14285714	3,125	1,875	0	

		Ethnicity				Age	
		No	Yes			No	Yes
Support	No	2445	342	Support	No	2633	154
	Yes	37	4		Yes	38	3
		1,49073328	1,15606936			1,42268813	1,91082803

		Multiple Discrimination				Religion or Belief	
		No	yes			No	Yes
Support	No	2787	58	Support	No	2722	65
	Yes	34	7		Yes	41	0
		1,205246367	10,7692308			1,48389432	0

		Gender				LGBT	
		No	Yes			No	Yes
Support	No	591	2196	Support	No	2757	30
	Yes	15	26		Yes	40	1
		2,475247525	1,17011701			1,43010368	3,22580645

CEU eTD Collection

2010	Gender	Ethnicity	LGBT	Age	Religion	Multiple discrimination
Substantial support	18	5	0	2	1	8
Enquiries	2244	459	51	159	82	37
	0,795755968	1,077586207	0	1,242236025	1,204819277	

		Ethnicity				Age	
		No	Yes			No	Yes
Support	No	2515	454	Support	No	2812	157
	Yes	29	5		Yes	32	2
		1,139937107	1,089324619			1,125175809	1,257861635

		Multiple Discrimination				Religion or belief	
		No	yes			No	Yes
Support	No	2969	29	Support	No	2888	81
	Yes	26	8		Yes	33	1
		0,868113523	21,62162162			1,129750086	1,219512195

		Gender				LGBT	
		No	Yes			No	Yes
Support	No	743	2226	Support	No		51
	Yes	16	18		Yes	34	0
		2,108036891	0,802139037			100	0

CEU eTD Collection

2011	Gender	Ethnicity	LGBT	Age	Religion	Multiple discrimination
Substantial support	17	3	2	2	1	?
Enquiries	1950	351	25	145	98	33

		Ethnicity				Age	
		No	Yes			No	Yes
Support	No	2196	348	Support	No	2401	143
	Yes	22	3		Yes	23	2
		0,991884581	0,854700855			0,94884488	1,379310345

		Multiple Discrimination				Religion or belief	
		No	Yes			No	Yes
Support	No			Support	No	2447	97
	Yes				Yes	24	1
			??			0,97126669	1,020408163

		Gender				LGBT	
		No	Yes			No	Yes
Support	No	611	1933	Support	No	2521	23
	Yes	8	17		Yes	23	2
		1,292407108	0,871794872			0,90408805	8

CEU eTD Collection

## Appendix E: Tables used to study the Hungarian agency's substantial legal support

2008	Gender	Ethnicity	LGBT	Age	Religion	Disability	Health condition	Sum
Decisions	1	5		5		6	2	37
Investigated cases	256	256	256	256	256	256	256	256
	0,39	1,95	-	1,95	-	2,34	0,78	

2008	Political opinion	motherhood	financial status	trade union	other	equal opportunity plan	Sum
Decisions	3	4	1	1	9	1	37
Investigated cases	256	256	256	256	256	356	256
	1,17	1,56	0,39	0,39	3,52	0,39	

2009	Gender	Ethnicity	LGBT	Age	Religion	Disability	Health condition	Sum
Decisions	5	7	3	12		8		47
Investigated cases	273	273	273	273	273	273	273	273
	1,8315	2,564103	1,098901099	4,395604396	0	2,930403	0	

2009	Political opinion	Motherhood	Financial status	Trade union	Other	Equal opportunity plan	Sum
Decisions	5	3		1	3		47
Investigated cases	273	273	273	273	273	273	273
	1,831501832	1,098901099	0	0,36630037	1,099	0	

2010	Gender	Gender identity	Ethnicity	LGBT	Age	Religion	Disability	Sum
Decisions	2	2	8	2	4		6	40
Investigated cases	377	377	377	377	377	377	377	377
	0,5305	0,5305	2,122016	0,530503979	1,06	0	1,591512	

2010	Health condition	Political opinion	Motherhood	Family status	Trade union	Other	Equal opportunity plan	Sum
Decisions	2	2	5	1	4	4		40
Investigated cases	377	377	377	377	377	377	377	377
	0,530503979	0,530503979	1,326259947	0,265251989	1,06100796	1,061	0	

2011	Gender	Financial status	Ethnicity	LGBT	Age	Religion	Disability	Sum
Decisions	3	1	8		4		12	
Investigated cases	359	359	359	359	359	359	359	
	0,8357	0,27855	2,228412	0	1,11	0	3,342618	

2011	Health condition	Political opinion	Motherhood	Family status	Trade union	Other	Equal opportunity plan	Sum
Decisions	6	4	4	1	1	1		44
Investigated cases	359	359	359	359	359	359	359	359
	1,671309192	1,114206128	1,114206128	0,278551532	0,27855153	0,279	0	

## Appendix F: Contingency tables used to study the Irish agency's substantial legal support

2008	Gender	Ethnicity	LGBT	Age	Religion	Traveller	Disability	Marital status	Family status	Total
Substantial legal support	3,95	3,75	0,7	20	1,5	5	26,5	0,95	0,75	63
Enquiries	434	372	84	558	78	121	646	78	122	2293

		Ethnicity				Age				Traveller	
		No	Yes			No	Yes			No	Yes
Support	No	2061,65	368,25	Support	No	1891,9	538	Support	No	2313,9	116
	Yes	59,35	3,75		Yes	43,1	20		Yes	58,1	5
		2,798208392	1,00806452			2,227390181	3,584229391			2,449409781	4,1322314
		Religion/Belief				Gender				LGBT	
		No	Yes			No	Yes			No	Yes
Support	No	2353,4	76,5	Support	No	1999,85	430,05	Support	No	2346,6	83,3
	Yes	61,6	1,5		Yes	59,15	3,95		Yes	62,4	0,7
		2,550724638	1,923076923			2,872753764	0,91013825			2,590286426	0,833333333
		Disability				Marital Status				Family Status	
		No	Yes			No	Yes			No	Yes
Support	No	1810,4	619,5	Support	No	2352,85	77,05	Support	No	2308,65	121,25
	Yes	36,6	26,5		Yes	62,15	0,95		Yes	62,35	0,75
		1,98159177	4,102167183			2,573498965	1,217948718			2,629692113	0,614754098

2009	Gender	Ethnicity	LGBT	Age	Religion	Traveller	Disability	Marital status	Family status	Total
Substantial legal support	5,5	1		1		3	10,5			21
Enquiries	268	285	35	372	21	75	400	40	57	1456

		Ethnicity				Age				Disability	
		No	Yes			No	Yes			No	Yes
Support	No	1248	284	Support	No	1161	371	Support	No	1142,5	389,5
	Yes	20	1		Yes	20	1		Yes	10,5	10,5
		1,577287066	0,35088			1,693480102	0,26882			0,910667823	2,625
		Traveller				Religion or Belief				Marital Status	
		No	Yes			No	Yes			No	Yes
Support	No	1460	72	Support	No	1511	21	Support	No	1492	40
	Yes	18	3		Yes	21	0		Yes	21	0
		1,217861976	4			1,37075718	0			1,387970919	0
		Gender				LGBT				Family Status	
		No	Yes			No	Yes			No	Yes
Support	No	1269,5	262,5	Support	No	1497	35	Support	No	1475	57
	Yes	15,5	5,5		Yes	21	0		Yes	21	0
		1,206225681	2,05224			1,383399209	0			1,403743316	0

CEU eTD Collection



2010	Gender	Ethnicity	LGBT	Age	Religion	Traveller	Disability	Marital status	Family status	Total
Substantial legal support	4	2	0	0	0	2	4	0	0	12
Enquiries	224	204	31	275	34	40	323	44	42	1131

		Ethnicity				Age				Disability	
		No	Yes			No	Yes			No	Yes
Support	No	1003	202	Support	No	930	275	Support	No	886	319
	Yes	10	2		Yes	12	0		Yes	8	4
		0,987166831	0,98039216			1,27388535	0			0,894854586	1,238390093
		Traveller				Religion or Belief				Marital Status	
		No	Yes			No	Yes			No	Yes
Support	No	1167	38	Support	No	1171	34	Support	No	1161	44
	Yes	10	2		Yes	12	0		Yes	12	0
		0,849617672	5			1,01437025	0			1,023017903	0
		Gender				LGBT				Family Status	
		No	Yes			No	Yes			No	Yes
Support	No	985	220	Support	No	1174	31	Support	No	1163	42
	Yes	8	4		Yes	12	0		Yes	12	0
		0,805639476	1,78571429			1,01180438	0			1,021276596	0

2011	Gender	Ethnicity	LGBT	Age	Religion	Traveller	Disability	Marital status	Family status	Total
Substantial legal support	4	2	0	1	0	1	12	0	0	20
Enquiries	359	246	66	314	54	72	431	63	86	1542

		Ethnicity				Age				Disability	
		No	Yes			No	Yes			No	Yes
Support	No	1427	244	Support	No	1358	313	Support	No	1252	419
	Yes	18	2		Yes	19	1		Yes	8	12
		1,24567474	0,81300813			1,37981118	0,31847134			0,634920635	2,784222738
		Traveller				Religion or Belief				Marital Status	
		No	Yes			No	Yes			No	Yes
Support	No	1600	71	Support	No	1617	54	Support	No	1608	63
	Yes	19	1		Yes	20	0		Yes	20	0
		1,173563928	1,38888889			1,2217471	0			1,228501229	0
		Gender				LGBT				Family Status	
		No	Yes			No	Yes			No	Yes
Support	No	1316	355	Support	No	1605	66	Support	No	1585	86
	Yes	16	4		Yes	20	0		Yes	20	0
		1,201201201	1,11420613			1,23076923	0			1,246105919	0

## **Appendix G: Institutional Affiliations of the Interviewed Elite and Experts**

### Austria:

Austrian Ombud for Equal Treatment

Klagsverband

Ludwig Boltzmann Institute for Human Rights

Ministry for Women and the Public Service

HOSI Wien

Arbeiterkammer Wien

### Hungary:

Chance for Children Foundation

Equal Treatment Authority

Former Public Servant in the Ministry responsible for women's concerns

Hátter

Mona

NEKI

Roma Rights Centre

### Ireland:

Equality Authority

GLEN

IBEC

Immigrant Council of Ireland

Irish Congress of Trade Unions

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