

# The rights of LGBTI people in the European Union

## SUMMARY

The prohibition of discrimination, and the protection of human rights are important elements of the EU legal order. Nevertheless, discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons persists throughout the EU, taking various forms including verbal abuse and physical violence.

Sexual orientation is now recognised in EU law as grounds of discrimination. However, the scope of the provisions dealing with this issue is limited and does not cover social protection, healthcare, education and access to goods and services, leaving LGBTI people particularly vulnerable in these areas.

Moreover, EU competence does not extend to recognition of marital or family status. In this area, national regulations vary, with some Member States offering same-sex couples the right to marry, others allowing alternative forms of registration, and yet others not providing any legal status for same-sex couples. Same-sex couples may or may not have the right to adopt children and to access assisted reproduction. These divergent legal statuses have implications, for instance, for partners from two Member States with different standards who want to formalise/legalise their relationship, or for same-sex couples and their families wishing to move to another Member State.

Combating discrimination has become part of EU internal and external policies, and the subject of numerous resolutions of the European Parliament. However, action in this area remains problematic when it touches on issues pertaining to areas traditionally reserved to Member States, such as marital status and family law.

*This is a further updated version of a Briefing originally drafted by Piotr Bakowski. The [previous edition](#) was published in June 2018.*



### In this Briefing

- Context
- The EU legal framework
- Specific EU programmes and funding
- The European Parliament's position
- Stakeholders' opinions
- Glossary

## Context

In some parts of the world, negative perceptions of LGBTI people (see glossary) are reflected in harsh laws. Consensual same-sex acts between adults are [illegal](#) in at least 72 countries, and in [seven](#) of these, they are punishable by death.<sup>1</sup> Since 2013, several countries have enacted new laws criminalising same-sex conduct. Others, including some European countries, have either passed or discussed so-called '[homosexual propaganda](#)' laws.<sup>2</sup> These have been criticised by the [UN](#) and the [EU](#) for limiting the rights of LGBTI people. Advocacy and human-rights groups have also [noted](#) that such legislation can create a climate of intimidation, and encourage homophobia and hate crime.

On the [global spectrum](#), the EU appears comparatively LGBTI-friendly. The EU Member States are parties to a whole range of international instruments<sup>3</sup> – including the [European Convention on Human Rights \(ECHR\)](#) – which set out a catalogue of fundamental rights for all. At the same time, the EU boasts one of the most extensive sets of anti-discrimination legislation in the world. Moreover, the EU promotes the rights of LGBTI people internationally. Amongst numerous examples, it initiated a UN [declaration](#) calling for the worldwide decriminalisation of homosexuality.

However, when it comes to the lived experience of LGBTI people in Europe, the picture is more mixed. On the one hand, for a number of years, public opinion polls suggested that an increasing proportion of Europeans perceived their respective countries to be relatively discrimination-free. The 2012 [Eurobarometer Discrimination Survey](#) revealed that Europeans were on average less inclined to see discrimination based on sexual orientation as widespread than they were when the previous surveys were conducted (in 2006, 2008 and 2009). On the other hand, the [2015 survey](#) showed a substantial increase in the share of respondents who consider this discrimination to be widespread (58 %, compared to 46 % in 2012). More people also considered discrimination on the basis of gender identity (being transgender or transexual) to be widespread, making sexual orientation and gender identity the second and third most commonly indicated grounds for discrimination in the EU. However, it is noted that this may reflect greater awareness about discrimination – also reflected in the survey – as much as an actual rise in cases of discrimination.

Within the LGBTI community itself, the perception and experience of discrimination is also widespread. In 2012, the [EU Agency for Fundamental Rights \(FRA\)](#) conducted a first ever [EU-wide survey](#) to generate comparable data about the extent and nature of discrimination, violence and hate speech experienced by gay, lesbian, bi and trans people across the EU.<sup>4</sup> Of the 93 000 respondents, almost half reported that they had felt personally discriminated against or harassed within the previous year, whilst a quarter said that they had been attacked or threatened with violence in the past five years. One of the key findings was that 90 % of such incidents go unreported to the authorities. Lesbian women (55 %), young people (57 %) and poorer LGBT people (52 %) were more likely to be discriminated against, whilst [trans persons](#) were shown to experience the highest levels of discrimination, harassment and violence amongst all LGBT subgroups. The survey also flagged homophobia and bullying in schools as a particular problem. A [second](#) EU-wide survey, extended to include North Macedonia, is to be launched in 2019.

These EU-wide surveys on attitudes and perceptions are also supported by in-depth legal and social analyses. The FRA [Report on homophobia and discrimination on grounds of sexual orientation in the EU Member States](#) – drafted at the request of the European Parliament in 2008 – and the subsequent updates in [2010](#) and [2015](#), confirm the extent of homophobia, transphobia and discrimination experienced by LGBTI people throughout Europe. According to these reports, verbal and physical attacks on LGBTI people have occurred in all Member States.<sup>5</sup> Research also shows that attitudes towards transgender people seem to be particularly negative, and levels of transphobic hate crime particularly high.<sup>6</sup> The Council of Europe monitoring body, the European Commission against Racism and Intolerance, concluded in its [2017](#) annual report that homophobic and transphobic hatred remains present in Europe, and that its prevalence on the internet and in social media has helped fuel a rise in hostility towards LGBTI people.

It may be argued that these social phenomena are reflected at the political level. The FRA has [documented](#) cases of incitement to discrimination, hatred or violence by politicians in some Member States in recent years. It [found](#) that, between 2010 and 2014, LGBTI pride events and other public demonstrations in favour of the rights of LGBTI people met with resistance from the authorities in at least four Member States, whilst demonstrations involving explicitly homophobic and/or transphobic hate speech continued to take place in EU Member States over this period. In 2018, the FRA [reported](#) on a worsening environment for civil society organisations and activists promoting human rights and non-discrimination in the EU, including verbal attacks and negative narratives by public officials in some Member States.

Attention has also turned to current laws and practices that may lead to discrimination against [intersex people](#), including medical interventions, requirements for identity documents, and the relatively low awareness amongst professionals.<sup>7</sup>

This social and political context, combined with major differences in national laws (e.g. in respect of same-sex unions and hate crime/speech), raises questions as to the actual extent to which LGBTI people can exercise their rights in the EU.

## The EU legal framework

### Discrimination on grounds of sexual orientation in EU primary law

The principle of equality and the prohibition of discrimination on the basis of sexual orientation have an extensive legal basis in the EU Treaties (e.g. Article 10 [TFEU](#), Articles 2 and 3 [TEU](#)).

These Treaty provisions are complemented by the [Charter of Fundamental Rights](#) of the EU which – under the Lisbon Treaty – has the same legal value as the Treaties. The charter was the first international human-rights charter to explicitly prohibit discrimination on the grounds of 'sexual orientation' ([Article 21\(1\)](#)).

However, sexual orientation acquired this status only recently. Until the [Treaty of Amsterdam](#) of 1999, the relevant EC Treaty provisions only addressed discrimination on the grounds of nationality and sex. At the same time, the case law of the Court of Justice of the EU (CJEU) defining the scope of the general principle of equality was not uniform – whether discrimination based on sexual orientation was prohibited under this principle remained contentious.<sup>8</sup>

The breakthrough **Article 13 ECT** –introduced by the Amsterdam Treaty (now [Article 19 TFEU](#)) – empowered the EU to adopt measures to deal with discrimination based on other grounds, including sexual orientation.

### Anti-discrimination directives: scope and implementation

Two landmark anti-discrimination directives were adopted on the basis of Article 13 of the EC Treaty in 2000, the:

- [Race Equality Directive](#), implementing the principle of equal treatment irrespective of racial or ethnic origin; and the
- [Employment Equality Directive](#), prohibiting discrimination on the grounds of religion or belief, disability, age or sexual orientation.

There is a notable difference in the scope of application of these two directives. The former has a very broad scope, as it obliges Member States to adopt relevant anti-discrimination legislation in the areas of:

- social protection (including social security and healthcare);
- education; and
- access to and supply of goods and services available to the public (including housing).

The Employment Equality Directive, on the other hand, is restricted to employment, occupation and vocational training.

However, LGBTI people also experience various forms of discrimination in the areas covered by the first directive, including:

- being refused entry to visit partners or children in hospital;
- higher premiums on health insurance;
- not having access to social benefits reserved for married couples;
- bullying, harassment and discriminatory content in educational materials; and
- degrading treatment by neighbours, or refusal to rent.<sup>9</sup>

Moreover, the question arises as to whether this difference in the scope of protection ('hierarchy of grounds') is legitimate and consistent with international human rights law.<sup>10</sup>

The European Commission sought to remedy the situation by making a [proposal](#) for a new horizontal directive, which would extend the prohibition of discrimination on the grounds of religion or belief, disability, age or sexual orientation beyond employment. The European Parliament adopted its [opinion](#) on the proposal in April 2009 under the consultation procedure. However, following the entry into force of the Lisbon Treaty, the proposal falls under [Article 19](#) TFEU, which requires the Parliament's [consent](#) in addition to unanimity in the Council of the EU. Such unanimity has not been achieved and the proposal has remained [blocked in the Council](#), although Commission President, Jean-Claude Juncker, made progress on this directive a priority in his [political guidelines](#) for the 2014-2019 Commission.

Nevertheless, when implementing the Employment Equality Directive, 24 Member States already extend protection on the basis of sexual orientation to cover some or all fields to which the Race Equality Directive applies.<sup>11</sup>

Moreover, there is a general tendency among Member States to create a single equality body, dealing with all grounds of discrimination, while only the Race Equality Directive and the 2004 [Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services](#) require such an institution.<sup>12</sup> The [Victims' Rights Directive](#), adopted in 2012, also explicitly prohibits discrimination based on sexual orientation, gender identity and gender expression.

## EU anti-discrimination legislation and same-sex unions

According to Recital 22 of the [Employment Equality Directive](#), its provisions do not affect national laws on marital status and benefits reserved for married couples. In the same vein, the proposal for

### Discrimination against transgender and intersex people

EU law does not provide for a specific prohibition of discrimination on the grounds of transgenderism. Some Member States see it as a form of sex discrimination. Such an approach is corroborated by extensive case law of the CJEU, which has adopted a definition of sex discrimination covering people who have undergone sex reassignment, but not other transgender persons (e.g. transvestites). In other Member States, this type of discrimination is treated as discrimination on the basis of sexual orientation. The third group of Member States considers it as neither one nor the other. In these Member States transgender people can only rely on the general principle of equality and cannot benefit from the more far-reaching protection of the anti-discrimination directives. Intersex discrimination is a particularly complex form of sex discrimination. It remains unclear whether intersex people are implicitly covered by the existing EU anti-discrimination legal framework. EU gender equality legislation is silent on the issue, and no case of discrimination against intersex people has yet reached the CJEU. The notion of 'sex characteristics' as a protected ground remains underdeveloped in national law, with Malta and the Netherlands being the only Member States to have included specific references to gender identity, expression and sex characteristics in their equality legislation.

Sources: Fundamental Rights Agency, [2009](#), [2015](#), [2017](#), [2018](#); European Commission, [2012](#) and [2018](#).

the new anti-discrimination directive leaves the recognition of marital or family status, adoption and reproductive rights to national laws, supposedly reflecting diverse national traditions and policy choices.<sup>13</sup>

Indeed, there are substantial differences between Member States in [social perceptions](#) of same-sex marriage and the adoption of children by same-sex couples. National [laws](#) also vary considerably with respect to the [legal recognition of same-sex unions](#) and [adoption](#).<sup>14</sup> In this area, it may be said that there is a [fracture line](#) between Member States that were in the EU prior to 2004 and those that have joined since.<sup>15</sup> Some of the latter (Bulgaria, Croatia, Hungary, Latvia, Lithuania, Poland and Slovakia) have constitutional provisions against same-sex marriage.

It could be argued that the refusal of those countries that do not allow same-sex couples to marry to grant such couples certain benefits in the areas covered by the Employment Equality Directive is a discriminatory practice.

According to CJEU case law, when a Member State has created some form of union, comparable to marriage, for same-sex partners, it may not create an arbitrary difference in treatment between marriage, not open to such partners, and this form of union. This does not mean, however, that the directive compels Member States to create such an institution.<sup>16</sup>

Adoption rights are still more restricted, even in countries offering same-sex marriage, although the number of states making provision for it is expanding. Full joint adoption by same-sex couples is legal in 14 EU countries: the Netherlands (since 2001), Sweden (2003), Spain (2005), the United Kingdom (2005 in England and Wales, 2009 in Scotland and 2013 in Northern Ireland), Belgium (2006), Denmark (2010), France (2013), Malta (2014), Luxembourg (2015), Austria (2016), Ireland<sup>17</sup> (2016), Portugal (2016), Finland and Germany (2017). Whilst not allowing full adoption, Slovenia (2011) and Estonia (2016<sup>18</sup>) permit step-child adoption, where the partner in a registered same-sex partnership can adopt his or her partner's biological, and in some cases, adopted child. In Italy, decisions are made on a case by case basis by the courts. Croatia allows registered and unregistered life partners to become partner-guardians of their partner's child (2014), whilst in Greece, same-sex couples in a [civil partnership](#) may foster, but not adopt, a child. Opinion polls show wide variations in public attitudes on this issue across Europe.<sup>19</sup>

#### Same-sex marriage and civil partnerships: Member States' rules

[Fourteen](#) Member States currently allow same-sex marriage: the [Netherlands](#) (since 2001), Belgium (2003), Spain (2005), Sweden (2009), [Portugal](#) (2010), Denmark (2012), [France](#) (2013) the [UK](#) (England and Wales 2013; Scotland 2014), [Luxembourg](#) (2015), [Ireland](#) (2015), and [Finland](#), Malta, [Germany](#) (2017), Austria (2018).

Most of the remaining Member States recognise unions similar to marriage, or some form of contract or registration. These include [Slovenia](#), whose [Civil Partnership Act](#) giving same-sex partners the same rights as married couples, except for access to joint adoption and *in vitro* fertilisation, came into force in February 2017, and [Estonia](#), whose Cohabitation Act has been in effect since 2016. [Italy](#), the only western European country which had no form of recognised partnership, passed a law recognising civil unions between same-sex couples in May 2016.

Six countries, Bulgaria, Latvia, Lithuania, Poland, Romania, and Slovakia, offer no legal recognition for same-sex relationships.

## Other directives with implications for LGBTI people

Among the EU instruments with implications for the rights of LGBTI people, three directives deserve particular attention due to specific problems in their interpretation:

- the [Free Movement Directive](#): definition of 'spouse' and 'members of the family'; the recognition of same-sex marriages concluded and registered partnerships entered into in other Member States;
- the [Family Reunification Directive](#): entry and residence rights of LGBTI third-country nationals; and



- the [Qualification Directive](#): granting of asylum on the basis of belonging to a specific 'social group', including explicit references to sexual orientation and gender identity.

There are various open questions in respect of the interpretation and application of these directives. Given the divergence between Member States when it comes to the legal recognition of same-sex relationships, significant [practical issues](#) arise and same-sex couples and their families may currently experience significant and disproportionate obstacles when moving around the EU.<sup>20</sup> A court case brought before the European Court of Justice has clarified the EU's position on family reunification rights when same-sex couples in a recognised partnership move to a Member State that does not provide for legal recognition of same-sex relationships ([Coman](#) case – C-673/16). In June 2018, the Court [ruled](#) that EU countries that have not legalised gay marriage must at least respect the residency rights of same-sex spouses who want to live together in their territory. With regard to the right to asylum, the 2004 EU Qualification Directive referred explicitly to sexual orientation, and the amended version, adopted in 2011, marks further progress in ensuring LGBTI applicants' rights by adding gender identity as a cause of persecution. However, there is no uniform interpretation of the directive across the Member States.<sup>21</sup>

## Specific EU programmes and funding

It has been recognised that legislative protection against discrimination is not sufficient in itself to effect change. Accordingly, the EU has also adopted a series of strategies setting out active measures to promote non-discrimination and equal opportunities.<sup>22</sup> The current '[List of actions to advance LGBTI equality](#)', adopted by the Commission in 2016 and running to 2019, includes an EU-wide communication [campaign](#) to combat stereotypes, action to combat hate speech and bullying, investigation of inequalities in [healthcare and education](#), and financial support for national authorities and advocacy and rights organisations. The third annual [report](#) was published in March 2019. In December 2018, 19 Member States<sup>23</sup> [urged](#) the Commission to ensure a strong follow-up to the current list of actions and adopt a coherent EU LGBTI strategy.

Funding for LGBTI rights comes under the consolidated [Rights, Equality and Citizenship Programme \(2014-2020\)](#), with a total budget of €439.47 million (current prices), representing a slight reduction in the net budget from the previous funding programmes. The programme funds both specific projects and operating grants for three networks promoting LGBTI equality.<sup>24</sup> As of October 2017, around €3 million had been [awarded](#) to projects aimed at countering homophobia and transphobia, focusing on empowering and supporting victims of hate crimes and improving reporting. In 2018, civil society organisations in 17 Member States received further co-funding of €1.38 million through five projects.<sup>25</sup> In addition, the [European Social Fund](#) (ESF) for the 2014-2020 period has been extended to combating discrimination based on sex – including discrimination against transsexual persons – and sexual orientation. Funding has now also been made available under the Equity and Inclusion strand of the [Erasmus+ Programme](#), to support people facing difficulties or obstacles in accessing educational mobility because of their gender, age, ethnicity, religion, sexual orientation or disability. Twenty projects on LGBTI equality were launched with support from this programme in 2018.

The promotion of non-discrimination and human rights is also a part of the EU's enlargement and [external policy](#). The [guidelines for supporting LGBTI persons' human rights](#), adopted in 2013, provide a checklist for assessing LGBTI human rights issues in this field. Under the [European Instrument for Democracy and Human Rights](#) (EIDHR), EU funding is also available to support NGOs working against all kinds of discrimination outside the EU, including homophobic and transphobic violence, and to promote general freedoms of assembly, association and expression.

The two-year [Health4LGBTI pilot project](#), financed by the European Parliament and completed in 2018, [reviewed](#) the health inequalities experienced by LGBTI people, including problems accessing care, and developed a practical training package for doctors and other professionals, which has been piloted in six countries (Bulgaria, Italy, Lithuania, the Netherlands, Poland and the UK).

## The European Parliament's position

The European Parliament has addressed the issue of LGBTI rights on numerous occasions, starting with the adoption of a resolution on the rights of homosexuals in the workplace, as early as 1984. During the 2014-2019 Parliamentary term, it adopted a number of resolutions condemning discrimination and calling for further legislation and action to protect and extend LGBTI rights.

Parliament strongly [condemned](#) all forms of discrimination against LGBTI people, including the practice of LGBTI conversion therapies and the pathologisation of [trans](#) and [intersex](#) people, [stressed](#) the urgency of tackling increasing levels of hate speech and hate crime motivated by bias against a person's sexual orientation or gender identity, and [put forward](#) concrete proposals for combating hate speech and harmful stereotypes in the media.

Regarding the legislative framework for combating discrimination, it [continued](#) to call for movement on the proposed horizontal anti-discrimination directive, which remains blocked in Council. In 2009, whilst supporting the Commission's proposal, it suggested numerous [amendments](#), including an extension of the directive's scope to include discrimination based on assumptions about a person's religion or belief, disability, age or sexual orientation, and discrimination based on a person's association with people with one or more of those characteristics. Parliament also called for monitoring to ensure [proper transposition and implementation](#) of existing EU legislation. In addition, it urged the Member States to include the grounds of [gender identity and sex characteristics](#) in their own national equality legislation, to [allow](#) legal recognition of a person's preferred gender, and to [introduce](#) legislation prohibiting 'sex-normalising treatments and surgery' on intersex people.

On family and free movement issues, Parliament has [encouraged](#) the EU and Member States to 'reflect on the recognition of same-sex marriage or same-sex civil union as a political, social and human and civil rights issue' and called for further action to ensure that same-sex couples and their families can truly exercise their [right to free movement](#) across the EU, including automatic [cross-border recognition of adoption orders](#), without discrimination. Parliament also [pushed](#) for a right to paternity leave for equivalent second parents, as recognised by national law, to be included in the forthcoming [work-life balance directive](#).

Parliament has also drawn attention to the [human rights situation](#) for LGBTI people outside the EU, and the need to ensure that their situation is taken into account in [asylum procedures](#).

Parliament has called on many occasions for a comprehensive multiannual policy to protect the fundamental rights of LGBTI people, in the form of a roadmap, a strategy or an action plan. Its 2014 [resolution](#) on a future EU roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity, called for measures covering hate speech and hate crime, freedom of assembly and expression, non-discrimination in employment, education, healthcare goods and services, citizenship and free movement, asylum, external action and the specific needs of transgender and intersex people. Its [resolution](#) of 14 February 2019 on the future of the LGBTI list of actions asks the Commission to make LGBTI rights a priority in its work programme for 2019-2024 by mainstreaming them across all relevant directorates-general including education and health, and adopting a further strategy for this period, with input from the Parliament and civil society.

A 2018 [study](#) carried out for Parliament by EPRS has quantified the serious impact of discrimination on LGBTI individuals and wider society (including increased health risks, estimated lost earnings of €19-53 million and a GDP loss of €25-71 million), highlighted the uneven protection in the current EU anti-discrimination legislation and recommended the adoption of the horizontal directive, along with revisions to existing directives to include sexual orientation and gender identity consistently as protected grounds.

## Stakeholders' opinions

### Positions in favour of LGBTI rights

The issues debated in the Parliament have also been the focus of major stakeholders.

The [EP Intergroup on LGBTI Rights](#) – an informal forum for MEPs – sets monitoring the Commission's work on LGBTI rights among its five priorities for action. As well as summarising the [voting on LGBTI issues in the 2014-2019 parliamentary term](#), the intergroup has issued [four overviews](#) of what the EU, the EP and the Intergroup itself have done for LGBTI rights during the term, and priorities for the 2019-2024 term.

[ILGA-Europe](#) – the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) – challenged those elected to the Parliament in 2014, through a ten-point EP elections [pledge](#), to combat discrimination based on sexual orientation, gender identity and gender expression. It has reissued a [ComeOut pledge](#) for candidates in the 2019 European elections, and supports the appeal for '[No Hate](#)' election campaigning. The association strongly [supports](#) the proposed horizontal anti-discrimination directive. It has considered, however, that the references in the proposal to marital and family status and reproductive rights are not justified and could be harmful to protection against discrimination based on sexual orientation and on other grounds. This brings ILGA Europe's position close to the views taken by [Amnesty International](#), which recognises the discriminatory character of civil marriage laws. ILGA-Europe has also [commented extensively](#) on the Free Movement Directive, its [implementation guidelines](#), and the [Coman judgment](#), arguing that:

- restricting the notion of 'spouse' to opposite-sex spouses amounts to discrimination on the grounds of sexual orientation; the prohibition of such discrimination is enshrined in the preamble to the directive, which – even though not binding – the CJEU will take into account when interpreting it; and
- if the national law provides for registered partnerships, national legislation must extend the right to enter and reside to individuals who formed such a partnership in another Member State.

ILGA-Europe has also [drawn attention](#) to the potential impact of the reform of EU asylum law.

ILGA-Europe and [OII](#), the European Intersex Organisation, both [welcomed](#) the European Parliament's 2019 resolution on the rights of intersex people.

While noting that the EU has limited competence, [Transgender Europe](#) (TGEU) identifies [10 key areas](#), including an EU action plan for LGBTI rights and an internal human rights strategy, where it could contribute further to advancing trans people's human rights.

### Anti-LGBTI positions

A [Pew report](#) investigates the divide in attitudes across the world, illustrating how (non-) acceptance of homosexuality is correlated with factors such as age, gender and religiosity. Reference to LGBTI rights meets with particularly strong resistance when it takes place in the context of laws on marriage or family. This is illustrated by the fierce [opposition](#) and mass protests in France sparked by the law of May 2013 that granted same-sex couples the right to marry and jointly adopt children. Similar opposition has been expressed by a number of different religious authorities.<sup>26</sup>



## FURTHER READING

Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part I: [Legal Analysis](#); Part II: [The Social Situation](#), Fundamental Rights Agency, June 2008 and March 2009.

[Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity: 2010 Update](#), Fundamental Rights Agency, 2010. A further [update](#) of the FRA's comparative analysis of homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity across the EU was issued in December 2015.

[Trans and intersex people: Discrimination on the grounds of sex, gender identity and gender expression](#), European Network of Legal Experts in the non-discrimination field, 2011.

[The fundamental rights situation of intersex people](#), Fundamental Rights Agency, 2015.

[Trans and intersex equality rights in Europe: a comparative analysis](#), European network of legal experts in gender equality and non-discrimination, European Commission, 2018

[Developing Anti-Discrimination Law in Europe. The 28 EU Member States, the Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein, Norway and Turkey compared](#), European Commission, 2013.

[National protection beyond the two EU Anti-discrimination Directives. The grounds of religion and belief, disability, age and sexual orientation beyond employment](#), European Commission, 2013.

[Implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation](#), EPRS, 2014: Complementary Impact Assessment of the proposed horizontal Directive on Equal Treatment.

[Same-Sex Couples before National, Supranational and International Jurisdictions](#), Daniele Gallo, Luca Paladini, Pietro Pustorino, 2013.

[ILGA Europe Rainbow Packages](#) – Map, Index and Annual Review of the Human Rights Situation of LGBTI people in Europe (annual publications: 2009-2018). The [2019 update](#) was issued shortly before the [International Day against Homophobia, Transphobia, Biphobia and Interphobia \(IDAHOBIT\)](#) on 17 May.

## ENDNOTES

- <sup>1</sup> The 13th edition of the report on [State-Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition](#), issued in March 2019, clarifies that six UN member states impose the death penalty on consensual same-sex sexual acts, with three in Asia (Iran, Saudi Arabia and Yemen) and three in Africa (Nigeria, Sudan and Somalia). In addition, the death penalty is a possible punishment in five UN member states: Mauritania, the United Arab Emirates, Qatar, Pakistan and Afghanistan. Iraq was removed from the list following the elimination of the Islamic State (ISIL/ISIS), but remains as a de facto criminalising country due to reports of State prosecution using laws on public indecency, prostitution or others. The results are summarised in the form of three [world maps](#). In April 2019, after the publication of the report, a new penal code including death by stoning for sex between men, [went](#) into effect in Brunei. However, following widespread [condemnation](#), including by the [European Parliament](#), it [may not](#) in fact be implemented.
- <sup>2</sup> [State-Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition](#), Aengus Carroll and Lucas Ramón Mendos, ILGA 2017, p. 42.
- <sup>3</sup> These include UN, ILO and Council of Europe instruments, complemented by extensive jurisprudence of the European Court of Human Rights concerning discrimination on the grounds of gender and sexual orientation.
- <sup>4</sup> The 2012 survey covered lesbian, gay, bisexual and trans people aged 18 or older. Intersex people were not included.
- <sup>5</sup> [FRA report: Part II](#), Fundamental Rights Agency, March 2009, p. 127.
- <sup>6</sup> [Transphobic Hate Crime in the European Union](#), L Turner, S Whittle and R Combs, 2009, p. 17.
- <sup>7</sup> The specific situation of intersex people was addressed for the first time in the [2015 update](#) of the FRA report (Chapter 4), which found that 'sex normalising' surgery is carried out on intersex children in at least 21 Member States.
- <sup>8</sup> [EU law: text, cases, and materials](#), Paul Craig and Gráinne De Búrca, Oxford University Press, 2008, p. 560.
- <sup>9</sup> Study on discrimination on the grounds of religion and belief, age, disability, and sexual orientation outside of employment, European Policy Evaluation Consortium (EPEC), June 2008, pp. 16–25.

- <sup>10</sup> [Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity - 2010 Update \(Comparative legal analysis\)](#), FRA, 2010, p. 19. See also: [EU equality law: looking ahead after twenty years of policy-making](#), S.B. Lahuerta and A. Zbyszewska, European Law Blog, 8 April 2019.
- <sup>11</sup> As of 2018, national equality and non-discrimination legislation to protect against discrimination based on sexual orientation goes beyond the scope of the Employment Equality Directive in all Member States except Cyprus, Estonia, Italy and Poland. See the Commission's [2018 annual report on the list of actions to advance LGBTI equality](#), p. 16 and ILGA Europe's [2019 Rainbow Index](#).
- <sup>12</sup> FRA, 2010, pp [19](#) and [28-29](#).
- <sup>13</sup> [Impact Assessment](#), European Commission, July 2008, p. 6.
- <sup>14</sup> The interactive [LawsAndFamilies Database](#), with legal information on 21 European countries (Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Sweden, and the United Kingdom) went online in early 2017.
- <sup>15</sup> See also '[Contested norms in new-adopter states: International determinants of LGBT rights legislation](#)', P.M. Ayoub, *European Journal of International Relations*, June 2015; Vol. 21, 2: pp. 293-322., first published on 1 September 2014 and [The Lesbian and Gay Movement and the State: Comparative Insights into a Transformed Relationship](#), M. Tremblay, D. Paternotte and C. Johnson, 2011.
- <sup>16</sup> CJEU [Maruko case](#) (C-267/06) and [Römer case](#) (C-147/08).
- <sup>17</sup> A bill extending the right to co-habiting same-sex couples who are in a civil partnership or have been living together for at least three years, was [passed](#) in October 2017.
- <sup>18</sup> Step-parent adoption is recognised under §15 of Estonia's [Registered Partnership Act](#). However, since Parliament has not adopted the accompanying implementing legislation there is a certain legal limbo. This has led to a number of court cases where individuals have been successful in getting adoptions recognised. See: [Supreme Court: Registered Partnership Act part of Estonia's legal order](#), ERR, 10 April 2018, and the [Estonia](#) chapter of the ILGA Europe 2019 Annual Report.
- <sup>19</sup> [Same-Sex Couples before National, Supranational and International Jurisdictions](#), p. 320. In 2017, a Pew Research Center [study](#) in eight Western European countries (Denmark, France, Germany, Italy, the Netherlands, Spain, Sweden and the UK), found that in all countries except Italy, more than half of respondents strongly supported LGBT adoption, whilst in Italy and elsewhere [younger](#) adults tended to be more supportive.
- <sup>20</sup> [White Paper 'Rights on the Move – Rainbow Families in Europe'](#), Peace Institute, 2015.
- <sup>21</sup> [Current migration situation in the EU: Lesbian, gay, bisexual, transgender and intersex asylum seekers](#), FRA, 2017.
- <sup>22</sup> The [Green Paper on equality and non-discrimination in an enlarged EU \(2004\)](#), [Non-Discrimination and Equal Opportunities for All - A Framework Strategy \(2005\)](#), and the [Communication on Non-discrimination and equal opportunities \(2008\)](#).
- <sup>23</sup> Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Spain, Sweden and UK. The decision to issue the common paper was spurred by these countries' refusal to accept the adoption of Council [conclusions](#) on 'gender equality, youth and digitalisation', from which the Austrian Presidency had deleted a reference to LGBTIQ people at the request of Poland and Hungary.
- <sup>24</sup> These are: [ILGA-Europe](#) (European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), [IGLYO](#) (International Lesbian Gay Bisexual Transgender and Queer Youth and Student Organisation), and [Transgender Europe](#). Details of the grants are available on the [EU Transparency Register](#), operated by the European Parliament and the Commission.
- <sup>25</sup> Details of projects being funded from 2018-2020 are set out in the Appendices to the Commission's [second \(2017\)](#) and [third \(2018\)](#) annual reports on the list of actions to advance LGBTI equality.
- <sup>26</sup> The stances adopted on same-sex marriage by various religions are explored in a further [report](#) by the Pew Research Centre in the USA.

## Glossary

**LGBTI:** describes a diverse group of persons who do not conform to conventional or traditional notions of male and female gender roles. LGBTI people are also sometimes referred to as 'sexual, gender and bodily minorities'.

**Lesbian:** describes a woman whose enduring physical, romantic and/or emotional attraction is to other women.

**Gay:** describes a man whose enduring physical, romantic and/or emotional attraction is to other men, although the term can be used to describe both gay men and lesbians.

**Bisexual:** describes an individual who is physically, romantically and/or emotionally attracted to both men and women.

**Transgender:** describes people whose gender identity and/or gender expression differs from the sex they were assigned at birth and those people who wish to portray their gender identity in a different way to the gender assigned at birth. This includes, among many others, transgender persons who are between male and female, transsexuals and transvestites.

**Intersex:** covers bodily variations in regard to culturally established standards of maleness and femaleness, including variations at the level of chromosomes, gonads and genitals.

**Discrimination:** the less favourable treatment of one person or group than another on various grounds (direct discrimination), or the situation where an apparently neutral provision is liable to disadvantage a group of persons in comparison to others (indirect discrimination).

**Gender identity:** each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body.

**Hate speech:** public expressions which spread, incite, promote or justify hatred founded on intolerance.

**Homophobia:** the irrational fear of and aversion to homosexuality and LGB people based on prejudice.

**Sexual orientation:** each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.

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