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) people persists throughout the EU and takes 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 or 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 is 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 the preserve of 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 May 2019.
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 six of these, they are punishable by death. 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. 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 – 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 laws in the world. Moreover, the EU promotes the rights of LGBTI people internationally. Among numerous examples, it initiated a UN declaration calling for the worldwide decriminalisation of homosexuality.

However, when it comes to the reality experienced by LGBTI people in Europe, the picture is more mixed. For a number of years, the Eurobarometer Discrimination Survey has been capturing public opinion on the extent of discrimination against and social acceptance of LGBTI people. The data shows that between 2006 and 2012 an increasing proportion of Europeans perceived their
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respective countries to be free from discrimination based on sexual orientation and gender identity. However, the 2015 survey showed a considerable rise in the proportion of respondents who considered discrimination against lesbian, gay, bisexual and transgender people to be widespread (up 12 percentage points to 58% and 11 percentage points to 56% respectively), making sexual orientation and gender identity the second and third most commonly indicated grounds for discrimination in the EU. It was noted that the perception that discrimination is more widespread could reflect a greater awareness of discrimination as much as an actual rise in cases of discrimination. The most recent survey, for 2019, covering perceptions of discrimination based on sex characteristics as well as sexual orientation and gender identity, shows that 53% of Europeans consider discrimination against gay, lesbian and bisexual people to be widespread in their country, while 48% say the same about discrimination towards transgender people. Fewer respondents (39%) believe discrimination against intersex people to be widespread. However, in many countries a relatively high number of respondents do not know whether discrimination against transgender and intersex people is common. One thing that emerges across the surveys is that perceptions about discrimination vary considerably between countries and population groups. For example, respondents who know LGBTI people personally are more likely to report that discrimination is widespread. Overall, social attitudes towards LGBTI people have become more positive across the EU, but there is also a wide variation between EU countries when it comes to how comfortable respondents feel about public displays of affection, working with an LGBTI colleague, having a child in a love relationship with an LGBTI person or seeing an LGBTI person in high political office. In 2019, 76% of Europeans agreed that LGBTI people should have the same rights as heterosexual people (up 5 percentage points since 2015) but the figure varied significantly across the Member States from 98% in Sweden and 97% in the Netherlands to 31% in Slovakia and 38% in Slovenia.

Within the LGBTI community itself, the perception and experience of discrimination is also widespread and does not fully coincide with the results of wider public opinion surveys. In May 2020, the EU Agency for Fundamental Rights (FRA) published the results of its second EU-wide survey on the extent and nature of discrimination, violence and hate speech experienced by gay, lesbian, bi, trans and intersex people across the EU, following up the first ever survey of this kind in 2012. This second survey covered 140,000 respondents identifying as LGBTI from EU-27 Member States, the UK, Serbia and North Macedonia, including, for the first time, intersex people and young people aged 15 to 17. The FRA concludes that discrimination against LGBTI people persists, with little overall progress in the seven years since the first survey was conducted, and retrogression in some areas. A higher share of LGBT respondents aged 18 or over are now often or always open about being LGBT (52% compared to 36% in 2012), but 61% of LGBT people still avoid holding hands in public with a same-sex partner. There are indications that younger generations are increasingly able to be open at school and are receiving more positive support in the school environment from teachers or peers, but 37% of respondents aged 15 to 17 are almost never open about being LGBTI. A higher proportion of LGBT respondents over the age of 18 feel discriminated against at work (21% compared to 19% in 2012) and in areas of everyday life such as eating out, shopping or going to hospital (43% compared to 37% in 2012). The share of respondents reporting harassment and violence has also increased. A majority now report experiences of harassment (58% compared to 45% in 2012), but only 14% went to the police to report attacks or threats of violence compared with 17% in 2012. Lesbian women are less likely than gay or bisexual men to report harassment or physical attacks to any authority. As in 2012, trans people are shown to experience higher levels of discrimination, harassment and violence than the other LGBT subgroups, while intersex people are found to suffer more discrimination than any other LGBTI group. One in five trans and intersex respondents report being physically or sexually attacked, double that of other LGBTI groups. Almost two thirds of trans people (60%) feel discriminated against at work (compared with 43% in 2012) and 62% of intersex people say that they faced discrimination in at least one area of life in the year before the survey. Among young people, trans teenagers suffer more discrimination than their peers from other LGBT subgroups. Respondents also reported being
discriminated against on multiple grounds, for instance because of being a woman, being disabled or being from an ethnic minority, as well as being LGBTI. When asked about the factors behind their experiences, respondents consider that intolerance and discrimination decrease as LGBTI people become more visible and LGBTI equality is more publicly discussed, and that positive changes in law and policy and support from public figures and civil society make a difference. Conversely, failure to enforce existing laws and a negative stance from public figures, politicians and political parties are seen to worsen discrimination.

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. Research also shows that attitudes towards transgender people seem to be particularly negative, and levels of transphobic hate crime particularly high. The Council of Europe monitoring body, the European Commission against Racism and Intolerance, concluded in its 2017 and 2019 annual reports 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 can be argued that these social phenomena are reflected at 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. In December 2019, the European Parliament deplored attacks carried out by public authorities against LGBTI people during referenda and elections in several EU countries. The Parliament and the European Commission have also strongly condemned the creation of so-called 'LGBTI-free zones' by local authorities in Poland.

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. 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 of the Treaty on the Functioning of the European Union (TFEU), and Articles 2 and 3 of the Treaty on European Union (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 prohibit discrimination on the grounds of 'sexual orientation' explicitly (Article 21(1)).

However, sexual orientation acquired this status only recently. Until the 1999 Treaty of Amsterdam, the relevant EC Treaty provisions addressed discrimination on the grounds of nationality and sex only. 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.9

The breakthrough Article 13 of the Treaty establishing the European Community (TEC) – 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 TEC 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.10

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.11

In 2008, the European Commission sought to remedy the situation by making a proposal for a new horizontal directive that would extend the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation beyond employment. The European Parliament adopted

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 the 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 few Member States including specific references to gender identity, expression and sex characteristics in their equality legislation.

its opinion on the proposal in April 2009 under the consultation procedure. However, since 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 so far remained blocked in Council, although the previous and current Commission presidents have made progress on this directive a priority for the Commission. The current Commission President, Ursula von der Leyen, has also made a commitment to propose new anti-discrimination legislation during her mandate.

Nevertheless, when implementing the Employment Equality Directive, the majority of Member States already extend protection on the basis of sexual orientation to cover some or all fields to which the Race Equality Directive applies. 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 Equal Treatment in Goods and Services Directive require such an institution. 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 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.

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. 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. 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.

Adoption rights are still more restricted, even in countries offering same-sex marriage, although the number of states making provision for it has expanded. Full joint adoption by same-sex couples is legal in 13 EU countries: the Netherlands (since 2001), Sweden (2003), Spain (2005), Belgium (2006), Denmark (2010), France (2013), Malta (2014), Luxembourg (2015), Austria (2016), Ireland (2016), Finland (2017), Malta (2017), Germany (2017) and Austria (2018).
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Portugal (2016), Finland (2017) and Germany (2017). While not allowing full adoption, Slovenia (2011) and Estonia (2016) 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), while in Greece, same-sex couples in a civil partnership may foster, but not adopt, a child.

Other directives with implications for LGBTI people

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

- the Free Movement Directive: owing to the definition of 'spouse' and 'members of the family'; and the recognition of same-sex marriages concluded and registered partnerships entered into in other Member States;
- the Family Reunification Directive: in connection with the entry and residence rights of LGBTI third-country nationals; and
- the Qualification Directive: with regard to the 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 concerning 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. 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 – 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.

Specific EU programmes and funding

It has been recognised that legislative protection against discrimination is not in itself sufficient to effect change. Accordingly, the EU has also adopted a series of strategies setting out active measures to promote non-discrimination and equal opportunities. In November 2020, the European Commission adopted a new EU LGBTIQ equality strategy 2020-2025, developed under the responsibility of the first ever EU Commissioner for Equality, Helena Dalli. The new strategy builds on the lessons learned from the previous actions to advance LGBTI equality. It includes a mix of legislative and non-legislative measures in four areas: tackling discrimination, ensuring safety, building inclusive societies and leading the call for LGBTIQ equality around the world. Planned measures include steps to tackle anti-LGBTIQ hate speech and hate crime and ensure that same-sex couples and their families can exercise their right to free movement across the EU. There will also be support for Member States in promoting workplace inclusion, ensuring safe and inclusive education and healthcare, ending harmful practices such as forced medicalisation and 'conversion practices', and tackling the biases and stereotypes that underpin discrimination. The strategy will interlink with other EU equality strategies and LGBTIQ rights will be mainstreamed across all EU policies.
Funding for LGBTIQ 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 LGBTIQ equality. 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. A further €1.38 million went to civil society projects in 2018, while in 2019, civil society organisations in 14 Member States received co-funding of €1.7 million through six projects. 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 LGBTIQ 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 LGBTIQ persons’ human rights, adopted in 2013, provide a checklist for assessing LGBTIQ 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 European Parliament’s position

The European Parliament has addressed the issue of LGBTIQ rights on numerous occasions, starting with the adoption of a resolution on the rights of homosexuals in the workplace, as early as 1984. Parliament has strongly condemned all forms of discrimination against LGBTIQ people, including the practice of LGBTIQ conversion therapies and the pathologisation of trans and intersex people, stressing the urgent need to tackle increasing levels of hate speech and hate crime motivated by bias against a person’s sexual orientation or gender identity, and putting forward concrete proposals to combat hate speech and harmful stereotypes in the media. It has deplored the ongoing backlash against LGBTIQ rights in a number of EU countries and urged Member States to ensure that these rights are protected and recognised in the framework of democracy and the rule of law. In the first resolution dedicated to LGBTIQ rights during its current legislative term, Parliament again sent a strong message about the need for the EU and Member States to uphold LGBTIQ rights and take action to uphold them.

Parliament has also called on many occasions for a comprehensive multiannual policy to protect the fundamental rights of LGBTIQ 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. In its resolution of 14 February 2019 on the future of the LGBTIQ list of actions Parliament asked the Commission to make LGBTIQ rights a priority in its work programme for 2019 to 2024 by mainstreaming them across all relevant directorates-general including education and health, and adopting a further strategy for this period, with input from itself and from civil society.

The two-year Health4LGBTI pilot project, financed by the European Parliament and completed in 2018, reviewed the health inequalities experienced by LGBTIQ 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).
Regarding the legislative framework for combating discrimination, Parliament has 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 has also called for monitoring to ensure proper transposition and implementation of existing EU legislation. In addition, it has 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 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.

A 2018 study carried out for Parliament by EPRS 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 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 Parliament have also been the focus of major stakeholders.

The European Parliament’s LGBTI Intergroup – an informal forum for MEPs – monitors the Commission’s work on LGBTI rights as one of its five priorities for action. At the end of the 2014-2019 parliamentary term, it summarised the voting on LGBTI issues, and issued four overviews of what the EU, the Parliament and the Intergroup itself had done for LGBTI rights and priorities for the 2019-2024 term. During the current term, it has highlighted the difficulties faced by same-sex spouses, trans parents and their children wishing to use their free movement rights.

ILGA-Europe – the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) – paints a mixed picture of the situation for LGBTI people in the EU in its annual review, covering the period from January to December 2019. ILGA-Europe issued a ComeOut pledge for candidates in the 2019 European elections to combat discrimination based on sexual orientation, gender identity and gender expression. The association strongly supports the proposed horizontal anti-discrimination directive. It considers, 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 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 – although 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.

**LGBTI rights in responses to the Covid-19 pandemic**

Civil society organisations and EU bodies are alerting policy-makers to the importance of ensuring that existing inequalities do not worsen as a result of the immediate health emergency and likely socio-economic consequences, calling for equality measures to be at the core of sustainable, fair, recovery plans. ILGA-Europe and TGEU have identified a number of specific problems facing the LGBTI community, including increased stigmatisation and scapegoating, risks of domestic violence for those forced to quarantine with hostile or abusive family members, potential difficulties in accessing healthcare, and increased risks of unemployment and poverty. The FRA LGBTI survey shows that one in three respondents overall and one in two trans and intersex respondents already found it difficult to make ends meet before the pandemic and that access to healthcare and housing was also an issue. ILGA Europe and the European Parliament's LGBTI Intergroup have called on the Commission to maintain a focus on equality in recovery measures following the Covid-19 pandemic, taking account of the situation and needs of LGBTI people and other minorities.

**Anti-LGBTI positions**

A Pew report investigates the divide in attitudes across the world, illustrating how (non-) acceptance of homosexuality correlates with factors such as age, gender and religiosity. Pew has also explored divides in attitudes to transgender issues. 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.26
FURTHER READING


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.

Trans Rights Europe and Central Asia Index 2020, Transgender Europe.

ILGA Europe Rainbow Packages – Map, Index and Annual Review of the Human Rights Situation of LGBTI people in Europe (annual publications: 2009-2020). The 2020 map and tables were issued shortly before the International Day against Homophobia, Transphobia, Biphobia and Interphobia (IDAHOBIT) on 17 May 2020.

ENDNOTES

1 The update to the 13th edition of the report on State-Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition, issued in December 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 six other UN member states: Mauritania, the United Arab Emirates, Qatar, Pakistan and Afghanistan and Brunei. The results are summarised in the form of a world map.

2 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.

3 For instance, whilst the Eurobarometer survey of the general population indicates that social acceptance of LGBTI people has increased in most EU Member States, LGBTI respondents to FRA’s second survey paint a more mixed picture: 40 % of respondents report that prejudice and intolerance have decreased in their country but 36 % say that it has increased ‘a little’ or ‘a lot’. Trans and intersex respondents were less likely to report improvement.

4 The 2012 survey covered lesbian, gay, bisexual and trans people aged 18 or older. Intersex people were not included.

5 There are considerable variations between countries. For details please see the full report or data explorer for comparative data, and the individual country reports.


8 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.


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, while in Italy and elsewhere younger adults tended to be more supportive.

For a historical overview, see Kees Waaldijk, *Extending rights, responsibilities and status to same-sex families: trends across Europe*, Council of Europe, 2018. The annual ILGA-Europe rainbow package provides a snapshot of legislation and more detailed information is available on the interactive LawsAndFamilies Database, for 21 European countries (Austria, Belgium, Bulgaria, Czechia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Sweden, and the United Kingdom).


CJEU cases: *Maruko* (C-267/06) and *Römer* (C-147/08).

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.

In the United Kingdom, full joint adoption was introduced in 2005 in England and Wales, 2009 in Scotland and 2013 in Northern Ireland. Same-sex marriage is also recognised in the UK (England and Wales 2013; Scotland 2014; Northern Ireland, 2019),

Step-parent adoption is recognised under Section 15 of Estonia’s Registered Partnership Act. However, since the 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.


Current migration situation in the EU: Lesbian, gay, bisexual, transgender and intersex asylum seekers, FRA, 2017.

See the EU gender equality strategy 2020-2025, the EU anti-racism action plan 2020-2025, the post-2020 EU framework on Roma equality and inclusion strategies, the EU strategy for victims’ rights and the forthcoming EU strategy on the rights of people with disabilities.

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.

Details of projects funded from 2018 to 2020 are set out in the Appendices to the Commission’s second (2017), third (2018) and fourth (2019) annual reports on the list of actions to advance LGBTI equality.

The stances adopted on same-sex marriage by various religions are explored in a further report by the Pew Research Centre in the United States.

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eprs@ep.europa.eu (contact)

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