

# 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, health care, 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](#), from November 2020, was by Rosamund Shreeves.*



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## Glossary

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

**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).

**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.

**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 that spread, incite, promote or justify hatred founded on intolerance.

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

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

**Interphobia or intersexphobia:** irrational fear of and aversion to intersex people based on prejudice.

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

**LGBTI:** describes a diverse group of lesbian, gay, bisexual, transgender and intersex people 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'. The acronym is sometimes extended to cover queer people explicitly (LGBTIQ) or other sub-groups (LGBTI+).

**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.

**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.

**Transphobia:** the irrational fear of and aversion to trans people based on prejudice.

## Introduction

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 67 countries, and in [six](#) 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 '[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<sup>2</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 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 show that [between 2006 and 2012](#) an increasing proportion of Europeans perceived their 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 of 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, population groups and circumstances. 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 loving 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.<sup>3</sup> 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 on the first-ever survey of this kind in [2012](#).<sup>4</sup> This second survey covered 140 000 respondents identifying as LGBTI from the 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.<sup>5</sup>

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 respondents 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 a 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 as worsening 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 its 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>6</sup> Research also shows that attitudes towards transgender people seem to be particularly negative, and levels of transphobic hate crime particularly high.<sup>7</sup> The Council of Europe monitoring body, the European Commission against Racism and Intolerance (ECRI), 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.<sup>8</sup> In its [2020 annual report](#), the ECRI added that the climate of opposition to LGBTI persons' human rights has gained ground in certain European countries in 2020, linked to populist homophobic and transphobic rhetoric and the 'anti-gender movement'.

There are other signs 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. In December 2019, the European Parliament [deplored](#) attacks carried out by public authorities against LGBTI people during referendums and elections in several EU countries. The Parliament and the European [Commission](#) have also strongly condemned the creation of the '[LGBTI-free zones](#)' by local authorities in Poland. In response, in March 2021, the Parliament declared the EU an '[LGBTIQ Freedom Zone](#)'.

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>9</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 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; consequently, the question of whether discrimination based on sexual orientation was prohibited under this principle remained contentious.<sup>10</sup>

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 on other grounds, including sexual orientation.

### 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. In other Member States, this type of discrimination is treated as discrimination on the basis of sexual orientation. A third group of Member States considers it as neither one nor the other. Transgender people in these Member States 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.

Sources: Fundamental Rights Agency, [2009](#), [2015](#), [2019](#); European Commission, [2012](#), [2018](#) and [2019](#).

## 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;
- 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;
- 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, occupational and vocational training.

However, LGBTI people also experience various forms of discrimination in the areas covered by the Race Equality Directive, including:

- refused entry to visit partners or children in hospital;
- higher premiums on health insurance;
- no access to social benefits reserved for married couples;
- bullying, harassment and discriminatory content in educational materials;
- degrading treatment by neighbours, or refusal to rent.<sup>11</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>12</sup>

In 2008, the 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 Parliament adopted 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. Such unanimity has not been achieved and the proposal remains [blocked in the Council](#), although the [previous](#) and the [current](#) Commission presidents both 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, but it is only the Race Equality Directive and the 2004 [Equal Treatment in Goods and Services Directive](#) that provide for the creation of such an institution.<sup>13</sup>

The [Victims' Rights Directive](#), adopted in 2012, also explicitly prohibits discrimination based on sexual orientation, gender identity and gender expression.

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

[Thirteen](#) Member States currently allow same-sex marriage: the [Netherlands](#) (since 2001), [Belgium](#) (2003), [Spain](#) (2005), [Sweden](#) (2009), [Portugal](#) (2010), [Denmark](#) (2012), [France](#) (2013), [Luxembourg](#) (2015), [Ireland](#) (2015), [Finland](#) (2017), [Malta](#) (2017), [Germany](#) (2017) and [Austria](#) (2019).

Most other 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, [Estonia](#), whose Cohabitation Act has been in effect since 2016, [Greece](#), which amended its 2008 Partnership Act to include same-sex couples after the 2015 judgment of the ECtHR in [Vallianatos v. Greece](#), [Cyprus](#) (2015), [Croatia](#) (2014), [Hungary](#) (2009) and [Czechia](#) (2006). [Italy](#) passed a law recognising civil unions between same-sex couples in May 2016 after the ECtHR judgment in [Oliari v. Italy](#).

Six countries – Bulgaria, Latvia, Lithuania, Poland, Romania, and Slovakia – do not offer any legal recognition to same-sex relationships.

## 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 a 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>14</sup>

Indeed, there are substantial differences between the Member States in terms of their [social perceptions](#) of same-sex marriage and the adoption of children by same-sex couples.<sup>15</sup> [National laws](#) also vary considerably with respect to the legal recognition of same-sex unions and adoption.<sup>16</sup> In this area, it may be said that there is a [gap](#) between Member States that were in the EU prior to 2004 and those that have joined since.<sup>17</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 that is comparable to marriage, what this means for same-sex partners is that they should not be treated under this form of union in a way that is arbitrarily different from their treatment if marriage was

open to them. This does not mean, however, that the Employment Equality Directive compels Member States to create such an institution.<sup>18</sup>

[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<sup>19</sup> (2016), Portugal (2016), Finland (2017) and Germany (2017).<sup>20</sup> While not allowing full adoption, Slovenia (2011) and Estonia (2016)<sup>21</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), 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 the specific problems encountered 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;
- 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,<sup>22</sup> as was highlighted in a [recent study](#) commissioned by the Parliament. A case brought before the CJEU 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 CJEU [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. In a pending case (*V.M.A.* – C-490/20), the CJEU is asked to rule on whether Member States can refuse to provide proof of acquisition of nationality of a child born in another Member State to a lesbian couple. Such a refusal would have severe consequences for the exercise of the right of free movement. 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 this directive across the EU.<sup>23</sup>

## 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 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 [actions](#) carried out over 2015-2019 with the aim to advance LGBTI equality. It includes a mix of legislative and non-legislative measures in four areas: tackling discrimination, ensuring safety,

### Funding for LGBTI rights in the new MFF

In the new multiannual financial framework (MFF) for 2021-2027, LGBTI rights are covered in Heading 2 – Cohesion, Resilience and Values – under the Justice, Rights and Values Fund. This fund is subdivided into the [Justice programme](#) (JUST) and the [Citizens, equality, rights and values programme](#) (CERV). The CERV programme receives €641.7 million (current prices) plus an additional top-up, of €912 million as of 2022, making a total of €1 553.7 million. This is triple the budget of the previous Rights, equality and citizenship programme (2014-2020).

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 health care, 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,<sup>24</sup> and LGBTIQ rights will be mainstreamed across all EU policies.

Between 2014 and 2020, funding for LGBTI rights was under the consolidated [Rights, equality and citizenship programme](#), with a total budget of €439.47 million. The

programme funded both specific projects and operating grants for three networks promoting LGBTI equality.<sup>25</sup> As of October 2017, around €3 million had been [awarded](#) to projects aimed at countering homophobia and transphobia, at empowering and supporting victims of hate crimes, and at 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.<sup>26</sup> In addition, the [European Social Fund](#) (ESF) for the 2014-2020 period was extended to activities combating discrimination based on sex – including discrimination against transsexual persons – and sexual orientation. Funding was also 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.

In accordance with the [new Common Provisions Regulation](#) invested EU funds should comply with the Charter of Fundamental Rights, including the principle of non-discrimination of LGBTI persons.

The promotion of non-discrimination and human rights is also 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. In accordance with the [EU Action plan on human rights and democracy 2020-2024](#), the EU will step up actions to prevent, denounce and combat all forms of discrimination and harassment against LGBTI persons, including LGBTI-phobic violence, hate speech and hate crime. 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 LGBTI rights on numerous occasions, starting with the adoption of a [resolution on the rights of homosexuals in the workplace](#) back in 1984.

Parliament has strongly [condemned](#) all forms of discrimination against LGBTI people, including the practice of LGBTI 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 LGBTI 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. Additionally, the Parliament has declared the EU an [LGBTIQ Freedom Zone](#). In the first [resolution](#)



dedicated to LGBTI rights of the current legislative term, Parliament again sent a strong message about the need for the EU and the Member States to uphold LGBTI 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 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. In its [resolution](#) of 14 February 2019 on the future of the LGBTI list of actions, Parliament asked the Commission to prioritise LGBTI rights in its 2019-2024 work programme by mainstreaming them across all relevant directorates-general, including education and health, and by adopting a further strategy for this period, with input from itself and civil society.

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 the 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.

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

On family and free movement issues, Parliament has [encouraged](#) the EU and the 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 has 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. The Parliament has also [called](#) for the EU to end child statelessness by affording universal access to birth registration and certification regardless of the parents' status, including for LGBTQI+ families. 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 EPRS [study](#) carried out for Parliament quantified the serious impact of discrimination on LGBTI individuals and wider society (including increased health risks, estimated lost earnings of €19-53 million, lost pension incomes of €1.5-3.1 billion and GDP loss of €25-71 million), highlighted the inconsistent treatment of 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. A [recent report](#) brought by a coalition of many global companies showed that LGBTI discrimination costs Member States up to 1.75 % GDP annually.

## Stakeholder opinions

### Positions in favour of LGBTI rights

The issues debated in Parliament have also been the focus of debate by 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 of 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, as well as setting out priorities for the current, 2019-2024 term. In this term, it has [highlighted](#) the difficulties faced by same-sex spouses, trans-parents and their children wishing to use their right to free movement.

[ILGA-Europe](#) – the European chapter 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 2020. On the one hand, more progressive laws are being proposed, on the other hand the coronavirus pandemic and its consequences have highlighted all the gaps in terms of lived realities of LGBTI people across Europe and Central Asia. Furthermore, a stark rise of abuse and hate speech is reported. 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 to marital and family status and reproductive rights in the proposal 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;
- if the national law provides for registered partnerships, the 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 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.<sup>27</sup>

## LGBTI rights in responses to the coronavirus 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 and 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 health care 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 coronavirus pandemic, taking account of the situation and needs of LGBTI people and other minorities.

## FURTHER READING

[A long way to go for LGBTI equality](#), European Union Agency for Fundamental Rights, 2020.

[Mapping of studies on the difficulties for LGBTI people in cross-border situations in the EU](#), European Commission, November 2019.

[A comparative analysis of non-discrimination law in Europe 2020](#), The 28 EU Member States, Albania, North Macedonia, Iceland, Liechtenstein, Montenegro, Norway, Serbia and Turkey compared, European network of legal experts in gender equality and non-discrimination, European Commission, December 2020.

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

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

[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: 2009-2021).

## ENDNOTES

<sup>1</sup> The [update](#) to the 14th edition of the report on [State-Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition](#), issued in December 2020, clarifies that while in 67 countries consensual same-sex acts are illegal, in Egypt, Iraq, Gaza and certain regions of Indonesia it is *de facto* criminalised. The report also clarifies that six UN member states impose the death penalty on consensual same-sex sexual acts, with four in Asia (Brunei, Iran, Saudi Arabia and Yemen) and two in Africa (Mauritania, Nigeria). In addition, the death penalty is a possible punishment in five other UN member states: Afghanistan, Pakistan, Qatar, Somalia and the United Arab Emirates. The results are summarised in the form of a [world map](#).

<sup>2</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>3</sup> 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 the 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.

<sup>4</sup> The 2012 survey covered lesbian, gay, bisexual and trans people aged 18 or over. Intersex people were not included.

<sup>5</sup> There are considerable variations between countries. For details, please see the [full report](#) or [data explorer](#) for comparative data, and the individual [country reports](#).

<sup>6</sup> [FRA report: Part II](#), Fundamental Rights Agency, March 2009, p. 127.

<sup>7</sup> L. Turner, S. Whittle and R. Combs, [Transphobic Hate Crime in the European Union](#), 2009, p. 17.

<sup>8</sup> In its judgment of 14 January 2020, in the case [Beizaras and Levickas v. Lithuania](#), the ECtHR set out the responsibility of states to protect individuals from homophobic online hate speech.

<sup>9</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>10</sup> P. Craig and G. De Búrca, [EU law: text, cases, and materials](#), Oxford University Press, 2008, p. 560.

- <sup>11</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>12</sup> [Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity – 2010 Update \(Comparative legal analysis\)](#), FRA, 2010, p. 19. See also: S.B. Lahuerta and A. Zbyszewska, [EU equality law: looking ahead after twenty years of policy-making](#), European Law Blog, 8 April 2019.
- <sup>13</sup> FRA report on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity – 2010 update, pp [19](#) and [28-29](#).
- <sup>14</sup> [Impact Assessment](#), European Commission, July 2008, p. 6.
- <sup>15</sup> 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.
- <sup>16</sup> 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).
- <sup>17</sup> See also P. M. Ayoub, 'Contested norms in new-adopter states: International determinants of LGBT rights legislation', *European Journal of International Relations*, June 2015; Vol. 21, 2: pp. 293-322., first published on 1 September 2014 and M. Tremblay, D. Paternotte and C. Johnson, [The Lesbian and Gay Movement and the State: Comparative Insights into a Transformed Relationship](#), 2011.
- <sup>18</sup> CJEU cases: [Maruko](#) (C-267/06), [Römer](#) (C-147/08) and [Hay](#) (C-267/12).
- <sup>19</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>20</sup> In the United Kingdom, full joint adoption was introduced in 2005 in England and Wales, in 2009 in Scotland and in 2013 in Northern Ireland. Same-sex marriage is also recognised in the UK ([England and Wales](#) in 2013; [Scotland](#) in 2014; [Northern Ireland](#) in 2019).
- <sup>21</sup> 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.
- <sup>22</sup> [White Paper 'Rights on the Move – Rainbow Families in Europe'](#), Peace Institute, 2015.
- <sup>23</sup> [Current migration situation in the EU: Lesbian, gay, bisexual, transgender and intersex asylum seekers](#), FRA, 2017.
- <sup>24</sup> 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 [EU strategy on the rights of people with disabilities](#).
- <sup>25</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>26</sup> 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.
- <sup>27</sup> 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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[epgs@ep.europa.eu](mailto:epgs@ep.europa.eu) (contact)

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