



EUROPEAN COMMISSION

*Brussels, 3.10.2022
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Dear Presidents,

The Commission would like to thank the Vlaams Parlement – which, as set out in the Declaration no. 51 annexed to the Treaties, in terms of the competences exercised by the Union acts as a component of the Belgian national parliamentary system – for its Opinion on the Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Union of Equality: LGBTIQ Equality Strategy 2020-2025 {COM(2020) 698 final} and the Belgian Senaat for its transmission.

The Commission appreciates the interest expressed by the Vlaams Parlement as regards the protection and strengthening of the rights of LGBTIQ people in the European Union (EU) and takes note of the observations contained in its Opinion.

Equality and the respect for dignity and human rights are core values of the EU, enshrined in Article 2 of the Treaty on European Union and specified in the Charter of Fundamental Rights of the European Union. The Commission uses the instruments at its disposal to defend these values. In that regard, the Commission decided on 15 July 2022 to refer Hungary to the Court of Justice of the European Union over a Hungarian law which violates several fundamental rights enshrined in the Charter, including that of non-discrimination on grounds of sexual orientation and sex.

The Commission monitors the equality situation of LGBTIQ people in the EU Member States. As guardian of the EU Treaties, the Commission makes sure that, when implementing EU law and funded projects, the principle of non-discrimination is fully respected. Beyond the implementation of EU law, it is for Member States to enhance inclusion and diversity, and to ensure that fundamental rights are effectively respected and protected, in accordance with their national legislation and international human rights obligations.

Throughout the implementation of the LGBTIQ Equality Strategy, the Commission will continue to work directly with Member States in the framework of the LGBTIQ Equality Subgroup, of which Belgium is an active member. The Subgroup was set up under the High-Level Group on non-discrimination, equality and diversity to support and monitor progress in the Member States, including as regards the development of national action

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plans on LGBTIQ equality. The Commission will publish a mid-term review report on the implementation of its LGBTIQ Equality Strategy in 2023.

The Commission will continue to support the Council to enable the adoption of the Equal Treatment Directive that is blocked at the level of the Council. In addition, as announced in the strategy, in 2022, the Commission will propose a horizontal legislative initiative on minimum standards for equality bodies.

Regarding trans people, the Court of Justice of the European Union has ruled that the prohibition of discrimination based on sex, provided in the sex equality directives, also includes discrimination based on gender reassignment – i.e. discrimination against people who intend to undergo, are undergoing and have undergone gender reassignment. Trans and intersex people remain among the most discriminated groups within European societies and the Commission has commissioned specific studies on their situation. The study on intersex people is currently underway and will also facilitate good practice exchanges between Member States in the context of the newly created LGBTIQ Equality Subgroup to share examples of anti-discrimination, prevention of hate-crime, or legal gender recognition legislation. The Commission has also tasked the European network of legal experts in equality to prepare an article on ‘Protecting Trans, Non-Binary, and Intersex Persons against Discrimination in EU Law’, to be published in the first issue of its European Equality Law Review of 2022. It examines how trans, non-binary and intersex people are currently protected against discrimination in EU law, and how that protection could be improved.

In 2022, the Commission will review the 2009 guidelines on free movement. The review will reflect the latest developments, and in particular the case law of the Court of Justice of the European Union, related to the diversity of families.

In 2022, the Commission will also propose a horizontal legislative initiative on the mutual recognition of parenthood between Member States. When the Commission is considering new legislation, it must assess, on the basis of the information available to it, the priorities on which it must act and the feasibility that the measures it is considering will be adopted by the EU legislators, the European Parliament and the Council. In the light of these elements, the Commission considers that, at this stage, measures to protect the rights of children in cross-border situations are the measures that should be proposed. The legislative proposal, like other EU instruments on family law, will be free from gendered references, so it will protect the rights of children in cross-border situations independently of the sex or gender of the parents.

The LGBTIQ Equality Strategy is informed by the results and recommendations as provided by the EU Agency for Fundamental Rights in its EU LGBTI Survey II. The Commission has ensured with the Agency that the third edition of the survey will be carried out in 2023, as data collection is a key priority for the Commission. The EU LGBTI Survey III will provide an indication of the state of play of LGBTIQ people’s rights in Europe. The Commission expects the report to be available and discussed in public in 2024.

The war in Ukraine shows the need to focus on the most vulnerable people. The Commission has met with NGOs to discuss the needs of refugees fleeing Ukraine belonging to different minorities or at greater risk, including those of LGBTIQ people. The Commission is also following the situation on different technical levels in order to identify appropriate tools for support. The Commission is funding NGOs through the Citizens, Equality, Rights and Values programme to support services, including safe houses for LGBTIQ people at the borders.

As regards the state of play of the proceedings against Poland and Hungary under Article 7(1) of the Treaty on European Union, these proceedings continue before the Council. As regards Poland, the Commission adopted on 20 December 2017 a reasoned proposal under Article 7(1) of the Treaty on the European Union. The Council has so far held five formal hearings on Poland. As regards Hungary, the European Parliament's reasoned proposal triggering the procedure was adopted on 12 September 2018. It considers that there is a clear risk of a serious breach by Hungary of the values referred to in Article 2 of the Treaty on European Union. The Council has so far held four formal hearings on Hungary. The Council has also scheduled regular state of play agenda points on the situation in Poland and Hungary. The Council remains seized of both proceedings under Article 7(1) of the Treaty on European Union.

Since 2010, the Commission has been publishing annual reports¹ on the application of the Charter of Fundamental Rights of the European Union. Following the publication of the new Strategy to strengthen the application of the Charter² in 2020, the Commission has taken a thematic approach to the annual reports. The 2022 report will be devoted to civic space and its role in promoting and protecting the fundamental rights under the Charter.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Vlaams Parlement and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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Member of the Commission*

¹ https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/annual-reports-application-charter_en

² https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/application-charter/eu-strategy-strengthen-application-charter_en