



European
Commission

Annual Report 2016
on the List of actions to
advance LGBTI Equality

#EU4LGBTI

*Justice
and consumers*

Introduction

Non-discrimination is a core value in the European Union. The Commission promotes the inclusion of all people, including LGBTI (lesbian, gay, bisexual, transgender, and intersex) people, in society.

The *'List of actions to advance LGBTI Equality'*¹ is the Commission's response to a resolution from the European Parliament² and a joint call from Member States to increase efforts to combat discrimination on the grounds of sexual orientation and gender identity.³

The objectives are to support progress in the entire EU and beyond in a number of policy areas, improve and enforce EU legislation and improve the social acceptance of LGBTI people. It includes activities envisaged by the Commission in different policy areas in 2016-2019.

The Commissioner for Justice, Consumers and Gender Equality, Věra Jourová, presented the list of actions to the Council and the European

Parliament in December 2015. The Commission included a commitment to provide regular feedback to the Council, the European Parliament, the Member States and civil society organisations on progress made in implementing the list of actions.

The Council adopted the first ever conclusions on LGBTI equality in June 2016⁴ requiring the Commission to annually report on the implementation of the list of actions.

The Commission cooperates with Member States, the EU Fundamental Rights Agency and other relevant EU agencies, the Council of Europe, the UN, the OECD, businesses and civil society to implement the actions.

This report provides an overview of the actions undertaken to advance LGBTI equality in 2016 and the ongoing efforts and commitment of the Commission in this area.

¹ http://ec.europa.eu/justice/discrimination/files/lgbti_actionlist_en.pdf

² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0009+0+DOC+XML+V0//EN>

³ Austria, Belgium, Denmark, Finland, France, Estonia, Croatia, Italy, Ireland, Luxembourg, Malta, Netherlands, Sweden, Slovenia, Poland.

⁴ <http://www.consilium.europa.eu/en/press/press-releases/2016/06/16-epsco-conclusions-lgbti-equality/>

Improving rights and ensuring legal protection of LGBTI people and their families in key areas of EU competence

The Commission continues to work with the Council Presidencies to develop further the EU *acquis* that would improve the lives of LGBTI people.

- **The proposed Equal Treatment Directive:**

The Commission remains committed to having this proposal adopted as a matter of priority. It has worked with the Council Presidencies to make progress and will keep highlighting the importance of this Directive for LGBTI people, who in many EU Member States are not protected against discrimination beyond the area of employment. The Commission continued to promote the importance of extending the protection against discrimination beyond employment. For example by highlighting these issues during an event hosted by the Federal Anti-Discrimination Agency in Germany to celebrate the 10th anniversary of the German General Equal Treatment Act, which was attended by the European Commissioner for Justice, Consumers and Gender Equality, Věra Jourová.

Pending the adoption of the Directive, the recent *Comparative analysis of non-discrimination law in Europe 2016*⁵ demonstrates the current absence of a coherent approach in EU Member States.

- **Freedom of movement:** Efforts by the Commission have led to the adoption of a Regulation simplifying the circulation of public documents⁶. The aim is to reduce red tape and costs for people, including LGBTI people, when presenting documents in another Member State. Under this Regulation, certain public documents issued in a Member State must be accepted as authentic in another without the need for these documents to bear an authentication stamp (the apostille). This Regulation will apply from 16 February 2019.

Two Regulations on the property regimes for international couples,⁷ one for marriages and the other for registered partnerships, were adopted under the procedure of enhanced cooperation. These regulations will provide international

couples with legal certainty while reducing the costs of cross-border proceedings. The regulations are drafted in a gender neutral way, and therefore also apply to same-sex couples. Both Regulations will apply from 29 January 2019.

- **Asylum:** The Commission proposed to strengthen rules on vulnerable applicants in its proposals for the reform of the Common European Asylum System. New rules are proposed on: assessing, determining, documenting and addressing applicants' special reception needs (Proposal for Recast Reception Conditions Directive);⁸ and identifying and supporting applicants in need of special procedural guarantees, taking into account their background, including their sexual orientation or gender identity (proposal for an Asylum Procedures Regulation).⁹ The proposal for a Qualification Regulation refers to the current case-law of the Court of Justice of the European Union relevant to LGBTI refugees.

- **Media:** The Commission's proposal for the revision of the Audiovisual Media Services Directive (AVMSD)¹⁰ adopted on 25 May 2016 reinforces the fight against hate speech. The proposal seeks to align the AVMSD with the Framework Decision on combating certain forms and expressions of racism and xenophobia, and Article 21 of the Charter of Fundamental Rights on non-discrimination.

The proposal bans, not only incitement to hatred but also incitement to violence, and broadens the grounds on which hate speech may be based by including ethnic origin, belief, disability, age and sexual orientation. In addition, the proposal requires EU Member States to ensure that video-sharing platforms (e.g. YouTube) currently not covered by the AVMSD take appropriate measures (such as flagging, reporting and parental control systems) to protect people from incitement to hatred (Article 28a).

⁵ <http://www.equalitylaw.eu/downloads/3987-a-comparative-analyses-of-non-discrimination-law-in-europe-2016-pdf-1-2-mb>

⁶ http://ec.europa.eu/justice/civil/judicial-cooperation/document-circulation/index_en.htm

⁷ <http://www.consilium.europa.eu/en/press/press-releases/2016/06/09-property-regimes-for-international-couples/>

⁸ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf

⁹ <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-467-EN-F1-1.PDF>

¹⁰ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1464618463840&uri=COM:2016:287:FIN>

II

Strong monitoring and enforcement of existing rights of LGBTI people and their families under EU law

The Commission ensures through its monitoring and enforcement of EU legislation that issues related to sexual orientation and gender identity are taken into consideration during transposition and implementation of EU legislation.

- **Gender legislation:** The Commission continues to monitor the implementation of Directives 2004/113 and 2006/54 to ensure that it is aligned with the case law of the Court of Justice of the European Union on gender reassignment. A good practice exchange seminar on laws and policies for gender identity and sex characteristics for national authorities took place in Berlin. This seminar was jointly organised by the Commission and the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Policy areas that were discussed included legal gender recognition, healthcare for transgender people, employment and social inclusion, data collection and for the first time specific topics regarding intersex people.

- **The Victims' Rights Directive:** The Directive¹¹ lays down a set of rights for all victims of all crimes and of corresponding obligations on Member States. One of these rights — a right to individual assessment of victim's protection needs — is particularly relevant for the people of the LGBTI community who often fall victim to hate crime. The Commission is currently monitoring the implementation of the EU rules in Member States. The infringement proceedings against those Member States who have not informed the Commission about their national measures transposing the Victims' Rights Directive, which had to be transposed by 15 November 2015 are ongoing. The Commission is also working on awareness-raising on victims' rights by upgrading the victims' corner on the e-justice portal.

- **Asylum:** The European Asylum Support Office (EASO) has developed: (1) the practical support tool for the identification of persons with special needs,¹² for officials working in asylum procedures and reception; (2) the Training Module on Gender, Sexual Orientation and Gender Identity (SOGI) that aims at providing case officers with awareness, skills and knowledge to assess an

international protection claim based on these issues in a gender and SOGI sensitive manner; and (3) 'Guidance on reception conditions: operational standards and indicators.'¹³ Moreover, the Country of Origin Information Reports published regularly by the EASO pay due attention to the situation of LGBTI persons in countries of origin.¹⁴

- **Free movement and cross-border issues:** The Commission is exploring how the case law of the Court of Justice on recognition of names, e.g. Case C-353/06 Grunkin Paul' applies to same-sex couples children in cross border situations.

- **Employment:** In the Parris Case¹⁵ on pension provisions for an elderly same-sex couple in Ireland, the Court of Justice of the European Union found no discrimination on the grounds of sexual orientation or age, nor at the intersection of those two grounds.

¹¹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

¹² Person with special reception needs include inter alia: persons who have been subjected to torture, rape, other serious forms of psychological, physical or sexual violence; LGBTI persons; and people with gender-related special needs. <https://ipn.easo.europa.eu/>

¹³ <https://www.easo.europa.eu/news-events/easo-guidance-reception-conditions-operational-standards-and-indicators>

¹⁴ <https://www.easo.europa.eu/information-analysis/country-origin-information>

¹⁵ <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-443/15>

Reaching citizens, fostering diversity and non-discrimination

For the first time in 2016, the Commission and the Commissioner for Justice, Consumers and Gender Equality, Věra Jourová took part in the EuroPride in Amsterdam, an event that raises awareness and supports the emancipation of the LGBTI community. Taking part in the EuroPride was part of the 'We All Share the Same Dreams' campaign, which was launched on the occasion. The campaign aims at: improving the social acceptance of LGBTI people; combating negative stereotypes; and raising awareness about the rights of LGBTI people. It also includes the dissemination of promotional material including videos and visuals through social media channels.

Commissioner Věra Jourová also participated in the IDAHO Annual Forum 2016¹⁶ in Copenhagen, while the Commissioner for Internal Market, Industry, Entrepreneurship and SMEs, Elżbieta Bieńkowska participated in the European Equality Gala organised by ILGA Europe.

The Commission's First Vice-President, Frans Timmermans, personally supported the campaign 'Heroes in Football' which is a campaign co-funded by the Erasmus+ Programme aimed at combating homo- and transphobia in sports. The campaign brings together football associations, players, executives and other relevant stakeholders and reaches out to football fans to raise awareness on the discrimination of LGBTI people.

Finally, in October 2016 the European Journalists Awards on Diversity were held. One of the winning articles was *'Being Muslim, gay and an imam in Europe: 'The Koran doesn't say anything against homosexuals'*.¹⁷

#ShareYourDream
ec.europa.eu/lgbti

¹⁶ The IDAHO Forum annually brings together representatives of the national authorities, EU institutions and civil societies to commemorate the International Day against Homophobia, Transphobia and Biphobia on 17 May.

¹⁷ http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=35830

IV

Supporting key actors responsible to promote and advance equal rights for LGBTI people in the EU

The Commission cannot combat discrimination alone. It therefore supports EU Member States, civil society and businesses to advance LGBTI equality:

• **Non-Discrimination:** The High-Level Group on Non-Discrimination, Equality and Diversity met twice in 2016. The task of the Group is to assist in the development and implementation of policies and programmes at EU and national level aimed at combating discrimination. Moreover, through its good practice exchange seminars, the Group works on promoting equality and diversity and strengthen cooperation and coordination between Member States authorities and the Commission on questions relating to achieving diversity and equality in practice. In this context the results of the latest good practice exchange seminar on laws and policies for gender identity and sex characteristics were shared with the group and updates on the '*List of Actions to Advance LGBTI Equality*' were provided.

• **Hate crime and hate speech:** The High-Level Group on combating racism, xenophobia and other forms of intolerance¹⁸ launched in June 2016 has met twice. The work of this Group will improve responses to prevent and counter hate crime, hate speech and manifestations of intolerance in the Member States, including against LGBTI people. It will also strengthening cooperation and synergies between key actors in this area, including civil society. Discussions promoted so far included an in-depth thematic exchange on hate crime training, on the basis of which the Commission will be issuing a conclusions paper compiling key guiding principles. Priority areas for the Group include combating hate speech online (in particular by implementing the Code of Conduct on countering illegal hate speech online signed by major IT companies in May 2016¹⁹) and improving recording and data collection.

• **Education:** In the 'Paris Declaration',²⁰ EU Education Ministers agreed to strengthen their action in education to promote social inclusion, citizenship and the common values of freedom, tolerance and non-discrimination through education. As part of the follow-up, a working group on citizenship was set up under the ET 2020 framework. The focus of the working group is on tolerance and respect in general which also includes LGBTI equality.

• **Financial support:** The Rights, Equality and Citizenship (REC) Funding Programme²¹ serves to fund organisations and projects that aim to tackle discrimination, hate crime and hate speech and better implement relevant legislation. Two action grants have been awarded to LGBTI projects with an estimated budget of EUR 1.2 million and three networks promoting LGBTI equality²² received operating grants of an estimated EUR 1.4 million. In addition, Equinet,²³ which also promotes LGBTI equality, received an estimated EUR 1 million.

• **Supporting businesses and inclusive workplaces:** A roundtable on LGBTI equality with the Diversity Charters was organised in February 2016. The Commission published the report '*The Business Case for Diversity in the Workplace: sexual orientation and gender identity*'.²⁴ The report examines how equality for LGBTI in the workplace can be best achieved by providing good practice cases from companies. The study was presented during the 7th EU-Platform of Diversity Charters in Ireland in October 2016 to encourage Diversity Charters to increase their work on this topic. In addition a workshop with companies on LGBTI equality took place.²⁵ Currently, Diversity Charters have been established in 17 countries.²⁶

• **Health:** In the area of public health action to combat major diseases like HIV/AIDS, hepatitis and tuberculosis, the Commission continues to provide support to Member States, civil society and stakeholders to improve policies targeting the populations most at risk, including from the LGBTI community. One of the key vulnerable groups in the EU remains men having sex with men (MSM). To better understand the barriers and challenges this LGBTI group may be facing in accessing testing, prevention or linkage to care, the Commission is currently investing EUR 2 million under the Health Programme in EU-wide surveys among MSM, the results of which are expected in 2018.²⁷ In addition, the Commission fosters the exchange of best practices at EU level through its established expert groups: the Civil Society Forum comprising of representatives of NGOs, including on LGBTI rights and the Think Tank, comprising of representatives of EU Member States.

¹⁸ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3425>

¹⁹ http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf

²⁰ http://cache.media.education.gouv.fr/file/01_-_janvier/79/4/declaration_on_promoting_citizenship_527794.pdf

²¹ <http://ec.europa.eu/research/participants/portal/desktop/en/opportunities/rec/index.html#calls=hasForthcomingTopics/t/true/1/1/0/default-group&hasOpenTopics/t/true/1/1/0/default-group&allClosedTopics/t/true/0/1/0/default-group&+PublicationDateLong/asc>

²² ILGA Europe, Transgender Europe and IGLYO.

²³ The European Network of Equality Bodies.

²⁴ http://ec.europa.eu/justice/discrimination/files/report_companies_final_en.pdf

²⁵ http://ec.europa.eu/information_society/newsroom/image/document/2016-50/annual_forum_dublin_-_report_40582.pdf

²⁶ http://ec.europa.eu/justice/discrimination/diversity/charters/index_en.htm

²⁷ <http://www.eatg.org/project/esticom-european-surveys-and-trainings-to-improve-msm-community-health/>

V

Facts and figures for policy makers on LGBTI challenges in the EU: Data collection and research activities

In 2016, the Commission issued several reports to advance LGBTI equality in a number of key policy areas:

- **Non-Discrimination & Fundamental Rights:**

The Commission completed a study on Member States' collection of equality data, including on LGBTI equality. The study updates the European Handbook on Equality Data and produces a comparative review of Member States' equality data collection practice. It will be incorporated in awareness-raising activities and during relevant expert groups. The equality data will help to prepare evidence-based strategies and policies on how to best address discrimination.

- **Health inequalities:** The pilot project '*Health4LGBTI: Reducing health inequalities experienced by LGBTI people*' was launched in March 2016, which will increase the understanding of how to best reduce specific health inequalities experienced by LGBTI people. The focus is in particular on intersecting inequalities stemming from discrimination and unfair treatment on other grounds (e.g. older, younger, refugee, immigrant, disability, rural, poverty). The anticipated outcome is to provide European health professionals with the tools that give them the right skills and knowledge to contribute to the reduction of health inequalities.

- **Education:** Two reports have been published: 1) The report '*Education policies and practices to foster tolerance, respect for diversity and civic responsibility in children and young people in the EU*'²⁸ is a study on good practices in education policies fostering tolerance and diversity, including for LGBTI people, and was published on the occasion of the one year anniversary of the Paris Declaration; 2) The report '*How to Prevent and Tackle Bullying and School Violence Evidence and Practices for Strategies for Inclusive and Safe Schools*'²⁹ describes good practices that serve as guidelines on how to best address homo- and transphobia in schools.

- **Barriers to achieve equality:** The report '*Professionally speaking: challenges to achieving equality for LGBT people*',³⁰ published by the EU Agency for Fundamental Rights, examines the drivers and barriers encountered by frontline officers, such as public officials, teachers, doctors, nurses and law enforcement officers when doing their work. Within the High-Level Group on combating racism, xenophobia and other forms of intolerance, a sub-group led by the EU Agency for Fundamental Rights was created to assist Member States in improving methodologies to record and collect data on hate crime, including homophobic and transphobic crime.

- **Free movement of LGBTI families; Intersex; Transgender/legal gender recognition:** On these policy areas, the Commission disseminates existing research and is currently in the preparatory phase of initiating the preliminary steps to map research activities and studies as listed in the list of actions.

²⁸ http://ec.europa.eu/dgs/education_culture/repository/education/library/study/2016/neset-education-tolerance-2016_en.pdf

²⁹ https://ec.europa.eu/education/news/20161212-new-neset-report-school-bullying_en

³⁰ http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-lgbt-public-officials_en.pdf

VI

External action: LGBTI Equality in Enlargement, Neighbourhood and Third countries

Besides advancing LGBTI equality within the EU, the List of Actions also engages the Commission to take action externally and advance LGBTI equality globally.

• **Enlargement and neighbourhood countries:** The Commission continued to closely monitor and support the development of legal and policy tools ensuring non-discrimination of LGBTI people in the western Balkans and Turkey. The Commission also followed the situation for LGBTI people in enlargement countries including in the context of the accession negotiations and the Stabilisation and Association Process, raising issues of concern in political dialogue meetings and in regular reporting.

In November 2016, the Commission issued its latest assessment of the respect for and protection of the rights of LGBTI people in each enlargement country.³¹ In 2016, the Commission also continued to support the rights of LGBTI people through its financial assistance. For instance, it provided a second year of funding to the 'ERA — LGBTI Equal Rights Association for the Western Balkans and Turkey' network. For countries falling under the European Neighbourhood Policy, the European Union in 2016 continued to monitor the situation regarding non-discrimination. These issues continued to be addressed, where possible, as part of the Human Rights Dialogues.

• **Third countries:** The EU also raised LGBTI equality during several Human Rights Dialogues and demarches with third countries in 2016. Commissioner Věra Jourová attended a meeting of the UN LGBT core group³² in which she stressed the commitment of the EU to play an active role in promoting equal rights and opportunities for LGBTI, including at the UN level. To mark IDAHO 2016, many EU Delegations raised the rainbow flag and organised events, while the High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, Federica Mogherini, issued a declaration on behalf of Member States reiterating the EU's commitment to the equality and dignity of all human beings irrespective of their sexual orientation and gender identity

(SOGI). EU Delegations also supported pride celebrations and organised other ad hoc events.

The EU became a signatory of the International Coalition for Equal Rights worldwide for LGBTI people. It also supported the third ever SOGI resolution in the UN Human Rights Council, creating the position of an independent expert on violence and discrimination based on SOGI. The EU participated in the high-level #Path2Equality³³ campaign organised by the UN LGBT Core Group to advance LGBTI rights. A training course and internal guidance was given to Commission staff to improve knowledge and handling of topics regarding LGBTI equality. 39 projects to promote and protect LGBTI rights worldwide were supported through the European Instrument for Democracy and Human Rights.

³¹ https://ec.europa.eu/neighbourhood-enlargement/countries/package_en

³² A cross-regional committee that works for the advancement of LGBT rights, and of which the EU and some MS are members.

³³ <http://unfoundationblog.org/a-path-to-equality-at-the-un-general-assembly-lgbt-core-group-meeting/>

Moving forward

This report shows the Commission's efforts to advance LGBTI equality in a number of key policy areas. Still much more should be done in order to achieve the equal treatment of LGBTI people and to ensure that they can fully enjoy their rights like everyone else in society. The Commission will continue to champion fundamental rights in its legislative and policy proposals whenever they cover aspects relevant for the rights of LGBTI people. However, full social acceptance of LGBTI people and the full respect of their rights also require the commitment and cooperation from the Member States, civil society, businesses and other stakeholders.

The Member States are therefore encouraged to design comprehensive action plans, containing both mainstreaming and targeted actions, to prevent and counter discrimination and intolerance against LGBTI people and advance LGBTI equality. Member States are the main drivers for change, as they hold key competences in areas where LGBTI people experience inequality, discrimination and victimisation.

The EU-legislator should move forward with the adoption of relevant legislation to improve the lives of LGBTI people like the proposed Equal Treatment Directive and the new proposals in the areas of asylum and media. The Commission will continue to enforce and monitor existing legislation like the Victims' Rights Directive that still needs to be transposed into national legislation in some Member States,³⁴ and relevant legislation in areas such as gender equality, asylum, free movement and employment.

The Commission will also continue to support civil society to ensure that LGBTI people can share their stories, are visible and can emancipate them-

selves. It will continue the '*We All Share the Same Dreams*' campaign at national level and develop more knowledge on the issues relevant for LGBTI people to make the challenges that LGBTI people face visible and understandable for the public.

The Commission has always pursued a zero-tolerance policy to combat discrimination in its own organisation and is now developing a Communication on Diversity and Inclusion, setting out the main actions it intends to implement to foster diversity and inclusion among its staff up to the year 2019.

Businesses also need to take up their responsibilities to include LGBTI people in the workplace. The Commission therefore will continue to encourage the development of more Diversity Charters and the inclusion of LGBTI equality in the diversity strategies of companies.

The Commission will continue to organise good practice exchange seminars for national authorities such as on homophobic and transphobic bullying, and plans to discuss better support for victims of homophobic and transphobic crime in the High-Level Group on combating racism, xenophobia and other forms of intolerance. The Commission is currently finalising a report on the business case for LGBTI equality at the level of cities and regions to also encourage local levels of government to advance LGBTI equality.

To conclude, the Commission remains dedicated to promoting the rights of LGBTI people in the EU and beyond who are subject to discrimination and harassment on a daily basis and will continue to work on implementing the list of actions in 2017 and beyond.

³⁴ Nine EU Member States at the moment of publication of this report.

More information:

ec.europa.eu/lgbti

ec.europa.eu/justice/discrimination/orientation/eu-action/index_en.htm

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