

ILGA-Europe's Memorandum to the Spanish Presidency of the European Union

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ILGA-Europe's Four Points Call for Action

- 1. Positive leadership to ensure protection against discrimination**
 - 1.1 Anti-discrimination Directive
 - 1.2 Gender equality
 - 1.3 Transgender equality
 - 1.4 Gender-based violence
- 2. Proactive mainstreaming of equality in EU social policies**
 - 2.1 Mental Health and older LGBT people
- 3. Putting fundamental rights at the core of the Stockholm Programme**
- 4. Promoting LGBT rights in external relations**
 - 4.1 Enlargement
 - 4.2 European Neighbourhood Policy/Eastern Partnership
 - 4.3 Human Rights in third countries

ILGA-Europe, the European Region of the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), is a European NGO with nearly 300 national and local lesbian, gay, bisexual and transgender (LGBT) member organisations in 46 countries. ILGA-Europe works for human rights and equality for lesbian, gay, bisexual, transgender and intersex people at European level. ILGA-Europe enjoys consultative status at Economic and Social Council of the United Nations (ECOSOC) and participative status at the Council of Europe and receives financial support from the European Commission. It is a member of the Platform of European Social NGOs. ILGA-Europe was established as a separate region of the ILGA in 1996. (www.ilga-europe.org)

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ILGA-Europe's Four Points Call for Action

1. Positive leadership to ensure protection against discrimination and promotion of equality

1.1. Anti-discrimination Directive

ILGA-Europe warmly welcomes the fact that the Spanish Presidency has explicitly listed the non-discrimination directive under its priorities related to "Citizen's involvement". ILGA-Europe considers that the European Commission's Proposal for a Council Directive implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation is an essential and much-needed step towards putting an end to the hierarchy of rights between in the EU. Extensive evidence shows that this proposed directive is needed to offer legal protection to those who continue to experience discrimination in housing, access to goods and services, access to health and education, throughout the EU. ILGA-Europe has compiled evidence of the need for new legislation in relation to the ground of sexual orientation¹, evidence which is corroborated by the study carried out by the EU's Fundamental Rights Agency in 2008 that showed that discrimination, harassment and violence against LGBT people is still widespread throughout the EU.

Strong political leadership by Member States is essential given that the unanimity is required for this directive to be adopted. In April 2009, the European Parliament also re-affirmed its strong support for this directive. At the Equality Summit in November 2009, civil society organisations and trade unions reiterated their strong call for a strong legislation to be adopted². **We call on the Spanish Presidency to build on this support and mobilisation from NGOs, trade unions and members of the European Parliament to secure the political will of all Member States to adopt this directive and strengthen legal protection against discrimination in the EU.**

Leadership is also needed to lead negotiations on the proposed text towards the adoption of a strong legal instrument. The European Parliament adopted a report which improves the original proposal and takes into consideration, in a large extent, the amendments called for by organisations working on non-discrimination³. The Swedish Presidency has built on the work of the European Parliament, as well as on the work initiated by the French Presidency of the EU in 2008, and produced new proposals of text. We take note positively of the work done by the Swedish Presidency to seek clarifications to the concerns of Member States and to make proposals to address them. However, there are concerns about the growing number of amendments to the original Commission proposal which depart from the benchmark of the Race Equality Directive and introduce exemptions which would likely limit considerably effective protection against discrimination. We therefore urge the Spanish Presidency to use the European Parliament report as the basis of negotiations of a strong directive which provides effective legal protection.

1 The documents are available at www.ilga-europe.org/europe/campaigns_projects/campaign_for_new_european_anti_discrimination_legislation/what_is_ilga_europe_s_positi on

2 Joint Declaration by the Social Platform and European Trade Union Confederation (November 2009), http://cms.horus.be/files/99907/MediaArchive/Policies/Equality_and_non-discrimination/091023_SP-ETUC_joint%20declaration.pdf

3 See ILGA-Europe's assessment of European Commission proposal as well as the Social Platform's consolidated proposal for amendments

In this context, ILGA-Europe would also welcome the opportunity to contribute our expertise to ensure that negotiations on the proposed text fully take into consideration the experience of organisations working in the area of non-discrimination in relation to implementation of equality legislation and to the needs to be met with this legislation. We have repeatedly demonstrated our willingness and commitment to working constructively with EU institutions to ensure that the text adopted leads to strong and effective legal protection against discrimination and that it is consistent and coherent with existing Article 13 legislation, and we would welcome the opportunity to do the same with this Presidency.

Therefore, ILGA-Europe calls upon the Spanish Presidency to:

- Show leadership in harnessing existing support for this proposed anti-discrimination directive and in engaging in bilateral dialogue with Member States where needed, with a view of ensuring unanimous support for this proposal
- Continue the constructive dialogue on the text of the proposed anti-discrimination directive in the Council and build on the work of the European Parliament to improve the proposal
- Create a space for dialogue with civil society organisations and allow for contribution of legal and practical expertise

1.2. Gender Equality

It is important that the Spanish Presidency takes the lead in the follow-up to the *Roadmap for equality between women and men 2006-2010*. In ILGA-Europe's recent [contribution to the consultation on roadmap's follow-up strategy](#)⁴, we listed the following current aims for the EU agenda on gender equality:

- Combating gender-based stereotypes strengthening patterns of patriarchy, homophobia and transphobia, heteronormativity and gendernormativity
- Ensuring effective legal protection against discrimination based on gender identity and/or expression both through existing and future legislation
- Tackling intersectionality/multiple discrimination on the grounds of gender, including intersectionality between sex, sexual orientation, gender identity and/or gender expression
- Ensuring that policies, including gender equality measures, fully take into consideration the needs of lesbians, bisexual women and trans people

The need for the follow-up strategy to tackle “multiple discrimination” and “the experience and situation of trans people” were also confirmed in EQUINET's contribution to the same consultation.

In addition to the above, it is important that any conferences that will be held by the Presidency to tackle pressing gender equality issues, do take into account that women are not a homogeneous group. Trans women, lesbians and bisexual women often experience an accentuated level of discrimination due to multiple discrimination.

Finally, it is important that gender equality legislation does not indirectly discriminate against LBT women either through omission or language use. Attention is therefore urged to the limitation of binary references to ‘men and women’ or ‘fathers and mothers’. Likewise, we would like to draw your attention to gendered references of the parents in parental leave legislation to

⁴ ILGA-Europe's contribution to the consultation on the roadmap for equality between women and men 2006-2010 and follow up strategy (November 2009) http://www.ilga-europe.org/europe/advocacy_lobbying/policy_papers/contribution_to_the_consultation_on_the_roadmap_for_equality_between_women_and_men_2006_2010_and_follow_up_strategy

ensure that lesbian, bisexual and transgender parents are not indirectly barred from equal access to maternity, paternity and other parental leave rights.

Therefore, ILGA-Europe calls upon the Spanish Presidency to:

- Ensure that LBT women form part of the discussion towards the follow-up to the *Roadmap for equality between women and men 2006-2010*.
- Raise the intersectional dimensions of gender with LBT issues during gender equality conferences and high level meetings, particularly in view of the gender mainstreaming obligation and the implementation of current EU Gender Equality legislation.
- Ensure that the Maternity Leave Directive fully covers and protects lesbian and bisexual parents.

1.3. Transgender Equality

EU Gender Equality legislation covers the ground of gender identity due to various rulings by the European Court of Justice (ECJ) and European Court of Human Rights (ECtHR), as well as the references included to 'gender reassignment' in the Goods and Services Directive (2004/113/EC), and the Gender 'Recast' Directive (2006/54/EC). Nonetheless, most EU Member States are ill-informed as to what extent they are obliged to protect transgender people from discrimination. In fact, some are still uncertain as to whether gender identity falls under 'sex' or 'sexual orientation' or nothing at all⁵.

In the recent Trans Rights Conference that ILGA-Europe held in Malta with the support of Transgender Europe, the participants voted in favour of a [declaration](#)⁶ calling upon the European Institutions to:

- "Monitor the implementation of case-law and gender equality legislation vis-à-vis trans people
- Make sure that future gender equality legislation expressly includes gender identity and gender expression
- Outlaws any form of discrimination against all trans people explicitly.
- Clearly include measures addressing trans equality issues within gender mainstreaming measures; funding programmes; and including the multi-dimensional gender identity and gender expression in internal and external policy
- Fund detailed research and data collection on trans equality and human rights issues
- Consult and involve trans equality and rights organisations in European gender equality and human rights policy development"

Therefore, ILGA-Europe calls upon the Spanish Presidency to:

- Include a specific event on the situation of trans people in Europe in the agenda of the Presidency
- Raise the duty to tackle the rampant discrimination against transgender workers during gender equality conference and high level meetings, particularly in view of the gender mainstreaming obligation and the implementation of current EU Gender Equality legislation.
- Make sure that any gender legislation that is currently under discussion or that will be initiated by the Presidency

5 For a mapping of the current situation consult the EU Fundamental Rights Agency report on "Homophobia and discrimination on grounds of sexual orientation in the EU Member States"

http://www.fra.europa.eu/fraWebsite/products/publications_reports/comparative_reports/pub_cr_homophobia_p2_0309_en.htm

6 Declaration of the Trans Rights Conference (28th October 2009, Malta)[http://www.ilga-](http://www.ilga-europe.org/europe/about_us/annual_conference/malta_2009/conference_day_by_day/trans_rights_pre_conference_28th_october/d)

[europe.org/europe/about_us/annual_conference/malta_2009/conference_day_by_day/trans_rights_pre_conference_28th_october/d](http://www.ilga-europe.org/europe/about_us/annual_conference/malta_2009/conference_day_by_day/trans_rights_pre_conference_28th_october/d)
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1.4. Gender-based Violence

ILGA-Europe is pleased that the Spanish Presidency has put violence against women as a key point on its agenda. As the Presidency will know, the Council of Europe is currently in the process towards drafting a convention on action to combat violence against women and domestic violence (CAHVIO). ILGA-Europe has provided a submission into this process calling for the express inclusion of lesbian, bisexual and transgender women into the text of the Convention. The Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly welcomed the submission and incorporated the proposal in its opinion on [Discrimination on the basis of sexual orientation and gender identity](#)⁷, stating that: “*The committee points out that discrimination on the basis of sexual orientation and gender identity can be magnified on the basis of sex and gender, with lesbian, bisexual and transgender women, in particular, running an increased risk of violence. There can be instances of sex discrimination also within the LGBT community. The committee proposes four amendments to gender mainstream the texts to be adopted.*”

Therefore, ILGA-Europe calls upon the Spanish Presidency to:

- Coordinate its efforts to tackle gender-based violence with the Parliamentary Assembly of Council of Europe
- Take note of the opinion on ‘Discrimination on the basis of sexual orientation and gender identity’, thus including lesbian, bisexual and transgender women in the scope of the actions and activities that it intends to carry out.

2. Proactive mainstreaming of equality in EU social policies

2.1. Mental Health and LGBT older people

ILGA-Europe takes note that the Spanish Presidency will hold a conference in cooperation with the European Commission on “mental health of older people”. The issue of mental health is an extremely important one in relation to older LGBT people.

Older LGBT people often experience greater social isolation as a result of their invisibility and the marginalization of homosexuality and bisexuality. The increasing physical and sometimes psychological dependency that can accompany the ageing process can make any older person feel vulnerable. However, the increased possibility of experiencing homophobia and either a verbal or physical attack, combined with a heightened sense of vulnerability can increase older lesbians’, gay men’s and bisexual people’s social isolation. This often leads older LGBT people to conceal their sexual orientation and gender identity. As highlighted during a project tackling issues of ageing for LGBT people in 2008, mental health problems that arise due to this loneliness and isolation are considered a priority issue for older LGBT people⁸.

The EU Mental Health Pact has acknowledged the impact that stigmatisation and discrimination can have on the mental well-being of people. This conference constitutes an opportunity to draw attention to one of the causes that makes older people vulnerable to mental ill-health and that affects their well-being, namely the marginalisation and violence experienced by LGBT people.

⁷ See Discrimination on the basis of sexual orientation and gender identity (15 December 2009)

<http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc09/EDOC12099.htm>

⁸ See Report of the joint ILGA-Europe/IGLYO AGE Project ‘Intergenerational Dialogue with(in) the LGBT Community’ (December 2008)

ILGA-Europe calls on the Spanish Presidency to:

- Highlight the needs of older LGBT people and ensure that their voices are heard at the Conference on “Mental health of Older People” (21-22 April 2010) and to use this event to share good practices in order to help Member States create policies and programmes responsive to their needs.

3. Putting fundamental rights at the core of the Stockholm Programme

The EU Stockholm Programme (2010-2014) in the area of freedom, security and justice (“*An open and secure Europe serving and protecting the citizens*”) has been adopted by the European Council of 10 and 11 December 2009. The European Council invited the Commission to present an Action Plan for implementing the Programme, to be adopted at the latest in June 2010, before the end of the Spanish Presidency.

ILGA-Europe wants to call on the Presidency to ensure that the protection of fundamental rights will remain an overarching priority of the legislative proposals to be discussed in the next months. The European Union has a significant responsibility to ensure not only that its own activities respect human rights standards but also that it takes action to actively respect, protect and fulfil fundamental rights through the standards that are set for the Union and for Member States.

All proposals in the field of freedom, security and justice must be built on the respect for the universality and indivisibility of the fundamental human rights of all in keeping with the EU Charter of Fundamental Rights and Article 6 of the EU treaty. The entry into force of the Lisbon treaty further strengthens these requirements.

ILGA-Europe would like to draw the attention of the Spanish Presidency to the EU Fundamental Rights Agency report on “Homophobia and discrimination on grounds of sexual orientation in the EU Member States”⁹. In its legal and sociological studies, the FRA provides clear evidence for actions needed in order to respect, protect and promote the fundamental rights of LGBT persons across the EU. It offers a roadmap for Member States on how EU laws that impact LGBT people should be implemented in order to be in accordance with the requirements of fundamental rights, as required under Article 6 of the EU Treaty.

Several opinions provided by the FRA fall under the heading of justice and home affairs:

- FRA called for an EU legislation covering homophobia and transphobia to be adopted, following the model of the framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (OJ L 328/2008). The Stockholm Programme also mentions that “*criminal behaviour, in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis should become the object of common incriminations and common minimum levels of maximum sanctions*”.
- FRA called for the development of concrete criteria and guidelines for the treatment of LGBT asylum seekers and for the handling of issues of sexual orientation and gender identity in the application procedures. The Agency also mentioned the need to ensure that officials dealing with LGBT asylum seekers are appropriately trained to deal with issues of sexual orientation and gender identity.

⁹ The report is available at http://www.fra.europa.eu/fraWebsite/products/publications_reports/comparative_reports/pub_cr_homophobia_p2_0309_en.htm

- FRA called for the protection of same-sex spouses in asylum and family reunification legislations;
- FRA called for a correct implementation of the freedom of movement within the EU and mutual recognition of civil status in relation to LGBT families. The Stockholm Programme stresses that unnecessary “*obstacles restricting that right in everyday life should be removed*”.

ILGA-Europe calls on the Presidency to ensure that the Stockholm Programme will enable EU institutions and Member States to make concrete advances on the implementation of the FRA’s opinions. [ILGA-Europe’s contribution to the Commission’s consultation on the Stockholm Programme](#) details how the EU can progress on the Agency’s opinions over the next five years.

ILGA-Europe calls on the Spanish Presidency to:

- Ensure that the upcoming Action Plan for the implementation of the Stockholm Programme strongly commits the EU to enhancing human rights protection for everyone in the EU and to mainstreaming fundamental rights, including the rights of LGBT people, into all EU law and policy;
- Ensure that the Stockholm Programme will effectively contribute to fighting homophobia and discrimination based on sexual orientation and gender identity over the next five years, in particular in relation to:
 - legislation, policies and programmes to combat homophobia and transphobia and incitement to hatred or discrimination against LGBT people
 - obstacles and limitations on the freedom of movement of same-sex partners and family members of LGBT people, including in relation to the ‘portability’ of rights and the mutual recognition of civil status
 - the correct transposition and implementation of EU legislation in the area of asylum and family reunification
 - the on-going recast of the EU asylum legislation aiming at developing a Common European Asylum System, and the establishment of the European Asylum Support Office.

4. Promoting LGBT rights in external relations

4.1 Enlargement

ILGA-Europe takes note that the Spanish Presidency will continue to advance accession negotiations with Croatia and Turkey, to enable accession negotiations to start with Macedonia, and to assess the new membership applications from Montenegro and Albania. The main focus of ILGA-Europe’s advocacy work in the accession process with these countries is to ensure that human rights of lesbian, gay bisexual and transgender (LGBT) people are incorporated in the partnership agreements with the accession countries and that EU legislation relevant to LGBT rights are properly implemented and enforced through the appropriate administrative and judicial structures.

In this context, ILGA-Europe would like to draw the attention of the Spanish Presidency to the fact that framework laws on anti-discrimination have not been enacted in Former Yugoslav Republic of Macedonia, Montenegro and Albania. In the countries where the laws are adopted (Serbia, Croatia, Bosnia and Herzegovina) the level of protection against discrimination as well as judicial prosecution of acts of discrimination against LGBT people is not in line with EU standards. Without explicit and strong anti-discrimination protection in the law, LGBT people in accession countries will continue to be forced to live as second-class citizens, under the constant pressure of secrecy, job discrimination, violence and social isolation.

ILGA-Europe calls on the Spanish Presidency to:

- Emphasize the obligation of accession countries to transpose the EU acquis into national legislation (including comprehensive anti-discrimination legislation) as a precondition for EU membership and to monitor the process of transposition.
- Monitor the actions of the governments to respect and uphold LGBT people's rights in light of the requirement to respect the human rights and fundamental freedoms and the rule of law as a precondition for EU membership.

4.2 European Neighbourhood Policy/Eastern Partnership

ILGA Europe welcomes the particular emphasis placed by the European Union on pursuing closer regional integration with Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine through the Eastern Partnership. We are however concerned that despite the overarching commitment to respect human rights and fundamental freedoms within the Joint Declaration of the Prague Eastern Partnership Summit, LGBT people risk remaining invisible unless it is clearly communicated in human rights dialogues and in ENP action plan successor agreements that the categories of vulnerable groups and minorities requiring tolerance and non discrimination include LGBT people.

ILGA-Europe therefore calls on the Spanish Presidency to:

- Use bilateral engagement with ENP countries to ensure that all ENP action plan successor agreements include a commitment to pass comprehensive anti discrimination legislation and that it is clearly stated that references to vulnerable groups and minorities include LGBT people.
- Ensure that in multilateral engagement, the approximation of legislative and regulatory framework support involving relevant EU services includes anti discrimination legislation.
- Work with the Moldovan and Ukrainian authorities to ensure that the respective national anti discrimination laws currently in draft form, are adopted inclusive of LGBT people.
- Urge Russian Authorities for a clear message that existing anti-discrimination legislation also applies to LGBT people and to take all necessary measures to guarantee the exercise in practice of the right to peaceful association and assembly for the LGBT community in Russia.

4.3. Human Rights in third countries

The EU has the possibility to act as a powerful force for positive change on human rights, including in relation to LGBT rights, on the global stage. Over the last year, the EU and its Member States have demonstrated its leadership and ongoing support for LGBT rights at the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe, and the United Nations. Such a leadership is crucial to achieve global decriminalization of homosexuality¹⁰ and international legal recognition of sexual orientation and gender identity as prohibited grounds of discrimination. EU leadership is also needed in relation to the protection of defenders of LGBT human rights, which many UN human rights bodies have recognised as a particularly vulnerable group.

¹⁰ ILGA-Europe has produced a report - "Rights, not crimes: the EU's role in ending criminalisation of same-sex acts in third countries", - on the role that the EU can play to put an end to these breaches of human rights. The report is available on our website http://www.ilga-europe.org/europe/publications/non_periodical/rights_not_crimes_april_2005

ILGA-Europe calls on the Spanish Presidency to:

- Ensure that the situation of LGBT people is included in the human rights dialogues with Central Asian countries and raise decriminalization of consensual same sex relations in Uzbekistan and Turkmenistan.
- Take a strong stance in support of explicit recognition of LGBT rights in international forums such as at the OSCE, the Council of Europe's Committee of Ministers and Parliamentary Assembly, the United Nations' Human Rights Council and General Assembly
- Raise concerns for human rights of LGBT people with the third countries with which summits are organised during its Presidency
- Ensure the implementation of the EU's Human Rights Guidelines on Death Penalty, Torture and Human Rights Defenders, as well as complete the work by COHOM on developing the toolkit on the promotion of human rights of LGBT people, started by the Swedish Presidency