

GUIDELINES FOR THE PROJECT

“IMPLEMENTING THE COUNCIL OF EUROPE'S RECOMMENDATION ON LGBT RIGHTS”

1 PROJECT DESCRIPTION

1.1 Background

In March 2010 the Committee of Ministers of the Council of Europe adopted a "Recommendation on measures to combat discrimination based on sexual orientation or gender identity", the first Europe wide instrument dealing specifically with sexual orientation and gender identity discrimination (2010)5.

The Recommendation sets out how international human rights principles apply to LGBT persons, recognises the seriousness of discrimination against them, and agrees on a wide range of measures Member States of the Council of Europe should take to combat this discrimination. Although the Recommendation itself is not a legally binding document, it is based solidly on Member States' existing binding human rights obligations and carries a strong moral obligation on governments to implement its detailed measures, not least because each of the Member States has agreed to the text.

The first Review process of the Recommendation (2010)5 took place in 2013. NGO shadow reporting ensured that the process gained importance and provided a lot of relevant information. The outcome of the process in many ways helped strengthening the Council of Europe's work on sexual orientation and gender identity, from the Human Rights Commissioner's comments, to ECRI reporting including SOGI, to the Council of Europe SOGI Unit.

The second Review is an important moment to build on these achievements. Strong pressure from LGBTI organisations at both national and European level will be needed to ensure ongoing engagement in the implementation of the Recommendations, especially in countries where there is a lack of political will to work on LGBTI rights.

The rights of intersex people and sex characteristics were unfortunately not included in the Recommendation (2010)5 at the time. And as the Review process is based on the Recommendations, it is difficult to integrate them into the process. ILGA-Europe and OII-

Europe are however currently seeing how to ensure intersex rights are included in the review questionnaire where possible.

1.2 Objectives

The project has two overall objectives:

- To contribute to the effective monitoring of the implementation of the Recommendation (2010)5 by member states
- Enable LGBTI organisations to engage with their national governments around the review process and to support national advocacy through the process

1.3 Activities

In 2018-19, the Council of Europe is to conduct the second review of the progress of member states in implementing the Recommendation. As a contribution to this review, grantees will provide country reports based on their documentation to the Council of Europe, while ILGA-Europe will provide a summary of the overall position.

Under this call for proposals grants will be made to organisations working at national level to carry out two key activities:

- i. Documentation of the extent to which the Recommendation's measures remain to be implemented in individual member states – to take place in the first half of 2018. The documentation will be based on a questionnaire that the Council of Europe will send to member states and a methodology developed on the basis of this approach; the timetable is determined to feed into the official review process of the Council of Europe.
- ii. Advocacy aimed at ensuring that member states engage meaningful in the review and throughout the process consult with civil society organisations, also around next steps on how to fill implementation gaps thus identified

ILGA Europe will provide grantees with the documentation methodology as soon as the final questionnaire is available. ILGA Europe will also provide support on advocacy planning, particularly in relation to dialogue with national authorities.

The review process this time should build on the last review process and should thus only cover the time period between 2012 and 2018.

1.3.1 Additional information about the structure and content of the Recommendation

The Recommendation consists of two elements, a **preamble** and a short **operative text**. The latter sets out briefly and in very general terms the measures member states should take to combat sexual orientation and gender identity discrimination. It is supported by an **Appendix**, which lists in much more detail the actions needed to implement these measures.

The Recommendation is accompanied by an **Explanatory Memorandum**. This provides information on legal sources and precedents, and spells out in considerable detail the activities needed to implement the measures listed in the Recommendation and its Appendix.

For further background information on the Recommendation, please see the attached document: "A short guide to the Committee of Ministers Recommendation and its Explanatory Memorandum".

The texts of the Recommendation and Explanatory Memorandum can be found at: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1606669>
[http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/DH-LGBT_docs/EM_CM_Rec\(2010\)5_en.pdf](http://www.coe.int/t/dghl/standardsetting/hrpolicy/other_committees/DH-LGBT_docs/EM_CM_Rec(2010)5_en.pdf).

You can also find the ILGA-Europe/ TGEU report for the first round of Review, as well as the country reports here: <https://www.ilga-europe.org/resources/guide-european-institutions/council-europe/lgbti-rights/recommendation>

1.3.2 Documentation activity

a) Methodology

Documentation of the gaps in implementation by member states will be structured based on the questionnaire developed by the Council of Europe and sent to the member states. On this basis, ILGA-Europe will develop a documentation methodology. The review will assess where any of the following steps have been taken by member states:

- i. introduction of **legislation specifically addressing sexual orientation or gender identity** (e.g. on discrimination, hate crimes or recognition of gender identity)
- ii. **application of existing general laws to LGBTI people on a non-discriminatory basis** - mainly in the fields of freedom of expression, freedom of association, and freedom of assembly.
- iii. introduction of **non-legal policy measures** specifically aimed at combating sexual orientation and gender identity discrimination

Grantees should use the information they have in their own records, those of other LGBTI organisations as well as their own new documentation and data collection with regard to freedom of expression, association and assembly to assess implementation. Furthermore, grantees should reach out to the respective ministries to inquire on their assessment and plans to strengthen implementation. In addition, we recommend organisations to request a meeting with relevant government officials to commonly assess implementation and discuss ways forward. Where a ministry fails to respond, this will suggest a lack of commitment by the authorities concerned, and will be documented and included as evidence in the final report submitted to the Council of Europe.

Several sources are available in order to assess the legal state of play, such as

- the ILGA-Europe Rainbow map <https://rainbow-europe.org/>
- The Fundamental Rights Agency's legal review <http://fra.europa.eu/en/press-release/2015/update-legal-protection-lgbti-people>
- Country thematic studies on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity by the CoE Human Rights Commissioner <https://www.coe.int/en/web/commissioner/thematic-work/lgbti-country-studies>
- An additional point of reference and source of information is the ECRI country recommendations, all country reports can be found here: https://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp

In addition, survey statistics and individual cases or examples can provide evidence of whether these measures are effective; and where they have not been implemented, evidence of why they are needed and can thus be included in the reports.

The emphasis in providing these statistics and case details is on demonstrating the failure of the authorities to implement the necessary protection of LGBTI people from discrimination, rather than on the acts of discrimination themselves. To take hate crimes as an example: while it will be useful to provide any statistics on the incidence of hate crimes (to show the need for protection), the emphasis of the report must be on the failure of the authorities -- whether police, prosecution services, or judiciary, to take proper measures to address these hate crimes.

Such information can for example be based on

- Your organisation's database and other records of human rights violations;
- The database/records of other organisations in your country, whether LGBTI, HIV/AIDS or broader human rights organisations
- Records of lawyers who have been involved in sexual orientation/gender identity'/sex characteristic cases
- Any reports by your organisation
- Other published reports, including by organisations such as Amnesty International or Human Rights Watch
- Events reported in the media

It is recognised that it may not be possible to document all the issues in every country, as the extent of research available varies considerably and the timeframe is limited. The range of subjects covered by the Recommendation is very wide. It is thus advised to set out a limited number of priorities per country to look into.

Grantees may conduct additional research into areas where they consider more information is needed (perhaps, for example, in relation to any failure of the authorities to protect LGBTI people from discrimination in education, or to protect transgender or intersex people). However, as will be seen below, the timetable required in order to meet the Council of Europe review process is very tight. Grantees should therefore consider carefully their resources and priorities when considering the scope of any additional research work.

In some Council of Europe member states regional governments may be responsible for implementing aspects of the Recommendation. Where this is the case the report will need to include information on the actions taken by these regional governments.

b) Report preparation

Grantees will gather together evidence of non-compliance with the Recommendation in a report consisting of the following elements:

- Summary
- The detailed Documentation Report, the format for which will be provided once the questionnaire is finalised by the Council of Europe.
- Report annexes - any detailed supporting information, particularly sheets documenting individual cases.

The report should be prepared for two audiences – (1) the national authorities, and (2) the Council of Europe review team. It should therefore be prepared in English and where deemed necessary as well as in your national language.

The report will have to be available for review by ILGA-Europe by July 2018. In view of the importance of this deadline to the achievement of the wider objective of the project, applicants will need to demonstrate clearly that they have the capacity to achieve this deadline.

1.3.3 Advocacy activity

As noted, the advocacy and the reporting will both have to happen in the first half of 2018.

A preliminary advocacy note, identifying key areas and what seems possible in terms of liaising with the government must be submitted as part of the application process.

ILGA-Europe will offer advocacy support throughout the implementation of the grant, both advising on activities and strategies where needed, as well as adding our voice where national organisations see this as an added value.

In parallel with the advocacy activities at national level, ILGA-Europe will engage with the relevant Council of Europe bodies, mainly the SOGI Unit and the CDDH Committee, using the information from the national reports.

1.3.4 Division of resources between documentation and advocacy activities

The resources required to complete the documentation activity will vary from country to country, depending on the extent already existing reports of data, reports. It is therefore a matter of judgement for individual applicants as to how they wish to divide resources between the two activities. Documentation and advocacy elements of the project must be clearly identified in the budget. Evaluation of the proposals will include both aspects: Documentation (primary and secondary) and Advocacy.

2 THE EVALUATION OF APPLICATIONS

Applications will be evaluated by ILGA-Europe staff and the Advisory Board of ILGA-Europe's Human Rights Violations Documentation Fund, using the following maximum value for the main sections of the application form (the paragraph numbers of which are shown in brackets below)

Evaluation grid

Project application section	Criteria	Score
1, 2, 7	Structure and capacity of the organisation. Compliance with previous calls criteria and ability to finish reports on time. Solidity of the budget proposal. Minimum score required is 10.	0-15
3	Justification and purpose of the project. How does it fit with IE's objectives? How closely does the proposal adhere to the Guidelines in all of the attached documents?	0-10
4, 5.3, 8	Overall quality of the proposal. Resources your organisation will make available to carry out the project. Illustrates that the project can yield effective results. Timeline.	0-15
5.1	Methodology (what info will be collected?, collection methods, organisation of the data, categorization of data, analysis of the data. Clear link between objectives, strategy, methods, results, and evaluation of success). Is it clear what original data will be collected (primary documentation), and what secondary research (existing documents) will be used?	0-25
5.2	Advocacy /communication / awareness raising strategies. Clear description of strategies including audience analysis of target group, change objectives, methods of approach, products etc.).	0-25
6	Evaluation and impact. Definition of success. Method of measuring success and impact. Please provide concrete methods to demonstrate success of the project.	0-10

3 PAYMENT ARRANGEMENTS

The grant will be transferred in two instalments. Grantees will receive 90% at the start of the activities. The final 10% will be payable on successful completion of the documentation report and submission of a detailed financial report.

Payments can only be transferred to a *euro* bank account, which successful applicants organisations will need to open, if they do not already have one.

5 TIMETABLE

Dates	Activity
05/02/2018	Deadline for applications' submission
06-19/02/2018	Evaluation of projects, including written comments
28/02/2018	Finalisation of contracts
01/03/2018	Start of projects' implementation
30/06/2018	Submission of country reports to ILGA-Europe
31/08/2018	Submission of final project report