

## Five key facts on the EU and LGBT equality

The European Union (EU) has been a driver of equality for lesbian, gay, bisexual and trans people over the past 20 years.

In light of the upcoming referendum on the United Kingdom's membership of the European Union on 23 June, ILGA-Europe want to present a few key facts about the role of the EU in advancing equality for LGBT people in Europe, including in the UK.

### FACTS

#### 1- The European Union has set standards internationally

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**It was the first international organisation to explicitly recognise sexual orientation<sup>i</sup> and gender identity<sup>ii</sup> as grounds of discrimination in law.**

***Why does this matter?*** The EU has had the courage and foresight to include protection for LGBT people in key legal documents such as the Amsterdam Treaty (1997), the Charter of Fundamental Rights (2000) and anti-discrimination directives. It has stayed relevant and continued this equality work in areas such as asylum and the protection of the rights of victims of crime. This explicit recognition of the rights of LGBT people is very important in confirming that "LGBT rights are human rights", especially when other organisations (like the United Nations for example) are still struggling to explicitly include sexual orientation and gender identity in their human rights documents.

#### 2- EU legislation was a trigger for UK equality laws

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**LGB people are protected against workplace discrimination as a result of the EU's initiative.**

The collection of workplace anti-discrimination laws enjoyed by UK workers today is a combination of UK and EU proposals. Employees in the UK were protected against discrimination on the grounds of race, sex and disability before the EU took action.

In 2000, the EU Employment Equality Directive was adopted. This extended protection from discrimination in employment to the ground of sexual orientation – which became a reality for workers in the UK in 2003 when the directive was implemented.

**Why does this matter?** It shows that very significant progress can be made on equality for LGBT people when the EU's efforts complement the great campaigning work of national activists. It also means that employees in the UK enjoy a double layer of protection – if their domestic law doesn't solve the problem, the EU law can help.

### **3- EU court cases have introduced even more protection**

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**As a result of the Court of Justice of the EU's decisions, protection against gender identity-based discrimination became a reality in UK workplaces and the rest of the EU.**

In 1996, the European Court of Justice<sup>iii</sup> said that protection against gender-based discrimination at work should also apply to people who had undergone or were planning to have gender reassignment surgery, the first European-level case of its kind. As a result, the UK introduced the Sex Discrimination (Gender Reassignment) Regulations in 1999.

The European courts have also made sure that same-sex registered partners<sup>iv</sup> and transgender partners<sup>v</sup> enjoy exactly the same employment benefits as married couples and stated that they should be treated equally under pension schemes. The principles established in cases against one state apply equally in the other 27 member states.

**Why does this matter?** Because it shows that the European Court of Justice is strictly applying non-discrimination principles to LGBT people, making their life better in the UK and all over the EU. Of course, the UK might have introduced similar protections of its own eventually, but these progressive court cases helped secure equality for LGBT people in the UK much faster.

### **4- The EU has brought greater protection for UK citizens in a same-sex partnership and their family members when they work, live and travel within the European Union**

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When UK same-sex couples, who have registered their partnership or married in the UK, travel to other EU countries with equivalent provisions,<sup>vi</sup> their relationship is recognised thanks to freedom of movement of persons, one of the EU's core principles.

**Why does this matter?** Life can be unpredictable – you or your partner might end up getting a job in another EU country, for example. It is very important that same-sex couples who are married or civil partners in the UK can travel within the EU and continue to have their relationship recognised (along with all the legal rights and

protections that comes with that). This is particularly the case where a UK citizen's partner originates from a country outside the EU.

## **5- The EU encourages solidarity with LGBT people in Europe and beyond**

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As we have already mentioned, EU member states must protect LGBT people under EU laws – they can also go beyond these EU laws and give even more protection if they like! Respect for human rights – including the rights of LGBT people – is also one of the 'Copenhagen criteria' that countries who want to join the EU have to fulfil. This requirement has led to many positive changes in would-be member states, including the repeal of discriminatory criminal laws in six countries. In 2013, the EU adopted a set of guidelines on how to support LGBTI people's human rights. These are used by EU staff and the embassies of EU countries all over the world.

**Why does this matter?** Solidarity and a sense of community have always been at the heart of the LGBTI movement. If the UK sees itself as a beacon for LGBT equality, it can work to use this leverage by sharing its own expertise with those EU member states with less comprehensive laws. As for LGBT people in those countries outside the EU, it would certainly be more effective for the UK to press for more protection and social change as a member of a bigger family (the EU 28) rather than as a single voice. The UK can stand in support of LGBTI asylum seekers and refugees who are escaping terrible treatment in their home countries.

**Both the EU and the UK have made great advances on the road to full equality for LGBT people in the past few years. Activists all over Europe are still working to make that vision a reality – but the UK and the EU have certainly been a positive force for good. Any attempt to weaken the EU and its influence in fighting discrimination could remove a valuable layer of protection for LGBT people – something that everyone has worked for decades to achieve.**

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<sup>i</sup> In the Treaty of Amsterdam (1997) and the Charter of Fundamental Rights (2000)

<sup>ii</sup> Explicitly referred to in the Asylum Qualification Directive (2011) and in the Equal Treatment Directive (2006/54/EC). Indirectly referred to in the recast Goods and Services Directive 2004/113/EC. (Even though Directive 2004/113/EC does not mention trans people in its text, the Council of the European Union and the European Commission have referred to the ECJ case-law for the first time and indicated that trans people are to be protected under the scope of this Directive.)

<sup>iii</sup> The case is called *P v. S and Cornwall County Council*, Case C-13/94, (30 April 1996)

<sup>iv</sup> The relevant cases here are *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, Case C-267/06, (1 April 2008) and *Jürgen Römer v. Freie und Hansestadt Hamburg*, Case C-147/08, (10 May 2011)

<sup>v</sup> The relevant cases here are *K.B. v. National Health Service Pensions Agency*, Case C-117/01, (7 Jan. 2004) and *Richards v. Secretary of State for Work and Pensions*, Case C-423/04, (27 April 2006)

<sup>vi</sup> For more information on the free movement of same-sex partners, see the definitions of family member and beneficiaries in Article 2 and Article 3 of the Free Movement Directive 2004/38