Resolution of the ILGA-Europe Annual General Meeting 2020
in relation to the Proposal of the Executive Board
on the approval and filing of the annual accounts

Taking into account:

- the new provisions of the Belgian Code of Companies and Associations (BCCA) which entered into force on 1 January 2020 and now requires ILGA-Europe to have annual accounts approved by the membership and filed no later than June 30th of the year following the fiscal year in question; and

- the provisions of the ILGA-Europe Constitution, as approved in October 2018:
  
  o Section D point 11:
    An extraordinary European Regional Conference shall be convened by the Executive Board
    a) if decided by a previous European Regional Conference; and
  
  o Section D point 3:
    The European Regional Conference may be held with the physical presence of the Members and Friends or, in the case of an extraordinary European Regional Conference, without personal meeting by videoconference, web-conference or any other simultaneous electronic conference as well as by any other clear, secure and confidential electronic means which offers the possibility to each Full Member definitively although not simultaneously to cast their vote on the agenda items.

the ILGA-Europe Annual General Meeting 2020 decides to hold an extraordinary European Regional Conference with a General Meeting of the membership in June 2021 for the purpose of reviewing the Treasurer’s Report and annual accounts for the financial year 2020, and approving them by electronic means of voting. The Executive Board is charged with convening of the event in accordance with relevant provisions of the Constitution and Standing Orders.

Attached is the original Proposal of the Executive Board on the approval and filing of the annual accounts of the financial year 2019, as submitted to the membership.
Proposal of the Executive Board
Approval and filing of the annual accounts of the financial year 2019

The Belgian Code of Companies and Associations (BCCA) entered into force on 1 January 2020 and introduced changes applicable to ILGA-Europe regarding the delay for approval and filing of the annual accounts. For the financial year 2019, ILGA-Europe will not be able to comply with the relevant provisions of the BCCA.

The background note at annex provides more information on the context, legal and financial implications and advice received from our lawyer. It also presents options to be explored in order to ensure ILGA-Europe will be in compliance in the future.

The Executive Board proposes to unanimously approve the following:

- Full Members recognize that they have been informed of the violations of the relevant provisions of the BCCA with respect to the approval and filing of the annual accounts and the reasons for the delay.
- Full Members approve a discharge of the Executive Board members for damages suffered by them due to the failure to respect the deadlines set out in the relevant provisions of the BCCA.
- Full Members approves the proposed next steps to ensure ILGA-Europe will be in compliance with the relevant provisions of the BCCA in the future.
ANNEX

New obligations regarding approval and filing of the annual accounts introduced by the Belgian Code of Companies and Associations

Context
The Belgian Code of Companies and Associations (BCCA) is the most recent reform of the Belgian legal framework for (international) non-profit associations, which has undergone substantial changes in recent years. The BCCA integrates the current company code and the main (I)NPA legislation into one single code. The BCCA fully applies to INPAs (so called ‘AISBL’ or ‘IVZW’) as of 1 January 2020.

The derogatory practice by which ILGA-Europe get the annual accounts approved by the General Assembly on in September/October was based on the Law of 27 June 1921 (art. 53) which has now been repealed.

As a result, the annual accounts of an AISBL have to be approved by the General Assembly within 6 months after the closing of the financial year (art. 3:47 §1 BCCA). In the case of ILGA-Europe, the financial year ends on 31 December. Consequently, the deadline for having the annual accounts per 31 December 2019 approved by the General Assembly is 30 June 2020. 30 days after such a approval, the directors of the AISBL must file the annual accounts with the National Bank of Belgium (art. 3:47 §7 BCCA).

Consequences
For the financial year 2019, ILGA-Europe will not be able to comply with the relevant provisions of the BCCA.

The potential consequences are the following:

- The Executive Board members can be held liable by third parties or Full Members of ILGA-Europe (art. 2:56 BCCA). Damage suffered by third parties is, unless proven otherwise, presumed to result from this omission. Damage and causal link with the breach have to be proven by the claimant. In practice this does not apply to ILGA-Europe. None of our funders take information about ILGA-Europe from the National Bank of Belgium hence this does not represent an actual risk.

- An administrative fine can be imposed for the late filing with the National Bank of Belgium. In practice the rules for calculating this fine means that the amount for a submission any time between 1 October 2020 and 31 December 2020 will be €600 for an INPA of ILGA-Europe’s size. According to our lawyer, it is unclear if such administrative fines will be applied at all this year considering the context – a majority of

\[\text{Loi du 27 juin 1921 sur les associations sans but lucratif, les fondations, les partis politiques européens et les fondations politiques européennes}\]
Belgian companies and associations have had to postpone their general assembly due to the Covid-19 outbreak and it is likely that the administration will be lenient this year.

- The Enterprise Court can, upon request of a member, third party showing an interest or the public prosecutor, decide to dissolve the AISBL (art. 2:113, 4° BCCA). Again according to our lawyer, it is unlikely that this would be applicable this year considering the context and the fact that it is the first year ILGA-Europe is not be in compliance – in practice these provisions are applicable for associations that are repeatedly and consistently in breach of the legislation.

Next steps

Short term
The detailed implications of the entry into force of the BCCA were brought to our attention early 2020. We decide to seek advice from our lawyer – both about the approval and filing of the annual accounts, and about exceptional measures granted by the Belgian Federal Government for holding General Assembly meetings in light of the COVID-19 crisis.

Our lawyer advised to include in the agenda of the Annual General Meeting an item informing Full Members of the violations of the relevant provisions of the BCCA with respect to the approval and filing of the annual accounts, together with the reasons for the delay. In addition, our lawyer advised to submit to the membership a proposal requesting a specific discharge for the Executive Board members for not respecting the deadlines set out in the relevant provisions of the BCCA.

Long term
On the long term, we are looking for a sustainable solution to comply fully with the provisions of the BCCA without disrupting the usual schedule of the Annual Conference (in order to hold the AGM before end-June) or the start/end of the financial year (in order shift the deadline for approving the annual accounts to end-October each year). These solutions do not seem relevant or applicable.

We are exploring several options:

- Having the annual accounts approved via an extra-ordinary AGM by video- or web-conference or any other simultaneous electronic means enabling the participants to interact with each other and vote in real time in a secure and confidential way as provided by the Constitution (art. D.3 and D.11) in June each year.
- Changing the Constitution to grant power to the Executive Board to approve annual accounts on behalf of the membership in June. This decision would then have to be ratified by the regular AGM with retro-active effect in October.
- Other options to be identified on the advice of our lawyer.