

## EU LGBTI STRATEGY 2020-2024

### Key EU legislative and policy initiatives for LGBTI rights in Europe and beyond

#### Proposal by ILGA-Europe (April 2020)

**ILGA-Europe** are the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, an international non-governmental umbrella organisation, bringing together over 490 organisations from 45 countries in Europe.

We are a driving force for political, legal and social change for lesbian, gay, bisexual, trans and intersex (LGBTI) people in Europe and Central Asia, ILGA-Europe, advocating for human rights and equality for LGBTI people at European level organisations such as the European Union (EU), the Council of Europe (CoE) and the Organisation for Security and Cooperation in Europe (OSCE).

ILGA-Europe strengthen the European LGBTI movement by providing trainings and support to our member organisations and other LGBTI groups on advocacy, campaigning, community organising, fundraising, organisational development, and strategic communication.

ILGA-Europe currently have participative status at the Council of Europe, consultative status at the UN's Economic and Social Council of the United Nations (ECOSOC) and also advocate for equality and human rights of LGBTI people at the UN level.

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## INTRODUCTION

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In today's European Union, discrimination and inequality continue to be widespread, undermining social cohesion and fundamental EU values. There has undoubtedly been improvement when it comes to the legal protection and public acceptance of LGBTI people, documented clearly in the ILGA-Europe Rainbow Map, yet a lot more needs to be done to achieve equality, non-discrimination and equality in Europe and globally. The issue of bodily integrity for intersex people continues to gain more prominence on the political agenda of governments and institutions. 2019 was a year of positive developments for rainbow families in the region, with an expansion of family rights in a few countries; and important advancements continue to be made on reforming or establishing legal gender recognition procedures, even if progress is slowing down in many countries. However, the development of the first EU LGBTI Strategy takes place at a time when the erosion of the human rights of LGBTI people along with the rise of anti-LGBTI hate rhetoric in countries across Europe is putting European democracy at risk and eroding core principles of the European Union – human rights, equality, freedom and human dignity.

Building on the new mandate in the Commission on equality, and the clear commitments for fundamental rights and equality in the Europe Commission President's "Agenda for Europe", the Commission over the next five years has the opportunity to step up and reaffirm its role as a leader on equality and fundamental rights. The EU has competences which enable its institutions to adopt measures which can concretely improve the lived realities of LGBTI people. The EU has yet to fully tap into all instruments at hand – from existing legislation and policy frameworks, and the right of legislative initiative to financial instruments and technical support to member states and relevant stakeholders – that are able to have an impact on the lives of people in Europe and beyond.

- The European Union matters for people. LGBTI human rights defenders and the broader community are looking to the European Commission to continue to be a clear and strong voice against LGBTI-phobic hate and discrimination.
- The EU is and can be a force for change beyond its borders by setting standards and leading by example through high-level institutional commitment in the form of a strategy.

In a context of rising hate and attacks on the human rights of LGBTI people, it is more important than ever to reconfirm and strengthen the political and financial commitment of the European Commission to the protection and advancement of equality and human rights for LGBTI people. Now is the time to do more, not less. The current Covid-19 pandemic is highlighting the inequalities in our societies, as the negative impact on people's health and well-being, physical and economic safety is disproportionately experienced by people who

are under-privileged in our societies, especially where socio-economic inequalities enhance the marginalisation experienced because of other aspects of their identity. Coming out of the crisis, it will be more important than ever to have targeted measures to meet the needs of the most marginalised in society, including initiatives tackling LGBTI homelessness, and addressing the overrepresentation of LGBTI people in unemployment and highly precarious employment.

There is wide support for the EU Commission to take such action. The majority of member states want to see progress towards equality for LGBTI people in Europe, as was clearly shown by the call from 19 member states in December 2018 on the European Commission to develop an ambitious EU LGBTI strategy. The European Parliament has reaffirmed several times its call for an EU strategy, including in its February 2019 resolution.

The call for an EU LGBTI strategy from civil society organisations, the European Parliament and 19 EU governments is not about asking for unreasonable amounts of new resources to be allocated to LGBTI-related actions. It is first and foremost about better and more effective use of existing financial and human resources towards clear and coherent objectives.

This document presents concrete proposals of legislative and policy initiatives to be included in the EU LGBTI Strategy. Please note that the following concrete proposals for an EU LGBTI strategy are to be considered as main priorities and do not constitute an exhaustive list of all measures that could/should be in the Strategy.

## I. OVERARCHING PRINCIPLES AND WORKING METHODS

1. Adopting an intersectional approach
  2. Mainstreaming across the Commission's work
  3. Coordination within the Commission and between the EC and other EU institutions
  4. Working with civil society organisations
  5. Evaluation of progress and reporting
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### 1. Adopting an intersectional approach

*"If we aren't intersectional, some of us, the most vulnerable, are going to fall through the cracks." - Kimberlé Williams Crenshaw*

One clear goal of the equality framework of the Commission is to address intersectional discrimination and oppression. Commitment to intersectionality requires active integration in a thorough and comprehensive way. Intersectionality is not accomplished as a framework when the issues of multiply marginalised people are only dealt with in silos. Rather, clear and crosscutting intersectional analysis not only deepens understanding of the struggles of those most marginalised, but also encourages an intersectional understanding of identities and experiences more generally. Applying an intersectional lens to actions in the LGBTI equality strategy means that in developing initiatives we are asking ourselves who we are actually listening to in designing these policies, who is not in the room and whose reality is not taken into consideration, and why that is the case. Are we sure that the designed actions reach all in the LGBTI community? For example, do policies equally take into account the specific hate and discrimination LGBTI women face or will they continue to fail them? Do programmes promoting workplace diversity consider a large part of the community that continues to struggle with unemployment and precarious jobs? How do we ensure that equality initiatives within the LGBTI Strategy do not fail LGBTI people of colour, Roma LGBTI people, and LGBTI people with disabilities?

With the introduction of the focused portfolio of the Commissioner for Equality as well as increased attention paid to intersectionality, there is a clear opportunity to ensure that the LGBTI Strategy is truly interlinked with other equality instruments, such as the Gender Equality Strategy, the Disability and Children's Rights Strategy, the Roma and Victims' Rights Strategy and other initiatives. All these initiatives need to truly work together and complement one another, create synergies, and form the foundation of a stronger policy framework to protect the fundamental rights of the most marginalised Europeans and ensure that no one is left behind. Throughout the LGBTI Strategy, clear references need to be made to the interlinking to the other strategies, with clear guidance on how this will be translated concretely through effective cooperation among different directorate-generals (DGs) and policy frameworks.

LGBTI people from under-represented groups should be directly consulted and involved in the preparation, implementation and monitoring of EU policies and programmes that concern them. Funding should be made available for organisations and groups led by LGBTI people from unrepresented groups to build their capacity to be involved in public decision making. All European Commission (EC) equality strategies, including the LGBTI Strategy, will benefit from a clear framework setting out how an intersectional lens will be applied and explaining how the EC will seek to ensure the perspectives of the most marginalised in society are taken into account when designing equality measures.

## **2. Mainstreaming across the Commission's work**

A comprehensive EU LGBTI strategy would bring together all initiatives, programmes and actions undertaken by the EU institutions and thus allow for more coherence between initiatives from different actors, DGs and agencies. Bringing initiatives together in one strategy allows for better identification of complementarity between different actors and the clarification of roles and responsibilities. The Strategy will help in ensuring that full use is made of the EU competences in a clear, coordinated and complementary way.

In addition, the framework of the Strategy will also allow greater alignment of initiatives of actors outside EU institutions, including synchronising efforts with civil society and national governments. It will provide a clear multi-annual vision for all actors to work towards together. As set out above, for each initiative, it should be indicated which DG is leading and how they are organising cooperation with other DGs in ensuring coordinated policy approaches.

## **3. Coordination within the Commission and between the EC and other EU institutions**

By making such a clear political commitment, the EU is reminding its member states of their obligations to equality for all and the fight against discrimination. The EU can help create a critical mass for progress on specific issues (such as legal gender recognition) and provide a platform for mutual learning and exchange of practices where most needed. EU-wide exchange not only ensures the transfer of knowledge, but also helps create acceptance and awareness for change. Many national governments are actively calling upon the EU to facilitate the exchange of information and good practices, as they are facing cases of discrimination and human rights violations.

## **4. Working with civil society organisations**

In the framework of the Strategy, the EC should clearly set out how it will structure dialogue with civil society organisations representing the European LGBTI movement in the drafting, implementation and evaluation of the LGBTI Strategy. To this end, an advisory panel of representative European LGBTI networks could be set up, and bi-annual meetings with DG Justice and Consumers and the Commissioner for Equality scheduled. Punctual consultations

with national organisations should be organised when need arises, especially in relation to developments in a specific country to ensure EU action is relevant and supports the work of local organisations, and to ensure full impact of an action planned by the EC in a given country.

LGBTI people, including those from under-represented groups, should be directly consulted and involved in the preparation, implementation and monitoring of EU policies and programmes that concern them. In addition to existing funding for LGBTI organisations, funding should be made available for LGBTI people from unrepresented groups and their respective organisations or initiatives to build their capacity to be involved in public decision making.

## **5. Evaluation of progress and reporting**

The EU LGBTI Strategy will provide EU and national officials, the European Parliament and civil society a framework to assess and review progress on a year-to-year basis, thus creating accountability. The evaluation should follow a clear assessment of objectives rather than reporting on actions, focusing on the progress made towards full equality for LGBTI people. The annual assessment should foresee a moment of reassessment of the set objectives and strategies, and leave room for adjustment of foreseen activities throughout the five-year cycle. The above-mentioned advisory panel of civil society should be assigned a clear role in the annual evaluation process.

## II. Main legislative and policy priorities in selected policy areas

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### Equality and Non-Discrimination

1. Ensure equal and strong legal protection for everyone on all the grounds of discrimination included in Article 19 of the EU Treaty
2. Establish gender identity and gender expression as protected grounds of discrimination under EU law
3. Clarify the relation between the grounds of sex and sex characteristics in EU legislation
4. Strengthen national equal-treatment legislation on sexual orientation, gender identity, gender expression and sex characteristics (SOGIGESC) across the EU
5. Strengthen implementation of existing legislation through close follow-up, technical support and data collection
6. Step up data collection on discrimination based on SOGIGESC

### Protection of Fundamental Rights in the EU

7. Be an unequivocal champion which protects and advances human rights, including the human rights of LGBTI people
8. Establish a mechanism to uphold the rule of law which effectively includes fundamental rights monitoring

### Enabling Space for Civil Society

9. Ensure accessible and effective funding for civil society at EU and national levels
10. Promote an enabling and safe environment for human rights defenders and civil society organisations

### Countering Hate Crimes/Hate Speech

11. Ensure EU-wide legal protection against LGBTI-phobic hate crime and hate speech
12. Effectively monitor and support implementation of existing legislation and obligations
13. Support better reporting of bias-motivated violence by public authorities
14. Strengthen knowledge and expertise to combat online hate speech

### Advancing Recognition of Human Rights and Equality for Trans People

15. Visibly and firmly uphold and advance trans rights at the EU level
16. Addressing the precarious situation of trans people across the EU, through targeted employment and social protection policy initiatives
17. Access to healthcare without discrimination

### Advancing Recognition of Rights for Intersex People

18. Mainstream intersex human rights into EU anti-discrimination and equality policies
19. Step up data collection regarding the lived experience of intersex people

20. Support member states in introducing legal protections of fundamental rights of intersex people

### **Protecting LGBTI People in the EU Asylum System**

21. Ensure full implementation and enforcement of existing EU legislative protection of LGBTI asylum seekers
22. Safeguard protection of LGBTI asylum seekers in the reform of the Common European Asylum System (CEAS) or a future Pact on Migration and Asylum

### **LGBTI People and their Families in Cross-Border Situations**

23. Ensure full implementation of the Coman Judgement, regarding the Freedom of Movement Directive (2004/38/EC)
24. Propose EU legislation to improve the cross-border recognition of public documents
25. Conduct research on the cross-border situation of rainbow families in the EU
26. Provide clear guidance for Member States and the public on cross-border rights of rainbow families

### **Employment and Social Inclusion**

27. Tackle the disproportionately high rate of unemployment amongst trans people
28. Tackle LGBTI homelessness

### **Healthcare Without Discrimination**

29. Ensure all EC initiatives on health are fully inclusive of LGBTI people
30. Support Member States in ensuring effective de-pathologisation of trans identities
31. Ensure non-discriminatory access to medication and healthcare across the EU
32. Protect and promote the right to health for intersex people

### **Inclusive Education**

33. Combat gender stereotypes in the area of education through targeted actions
34. Develop guidance for member states on accommodating trans, intersex and gender-variant children in schools
35. Develop minimum standards on safety in schools

### **LGBTI Human Rights in Enlargement, Neighbourhood Policies and Third Countries**

36. Remain a strong voice for LGBTI rights globally
37. Support civil society organisations and human rights defenders, including through instruments such as the EIDHR
38. Include non-EU countries in data collection regarding LGBTI people where possible
39. Ensure the EU enlargement process remains a driver for equality
40. Make full use of EU mechanisms in the Eastern Partnership policy to protect LGBTI rights



## Equality and Non-Discrimination

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### 1. Ensure equal and strong legal protection for everyone on all the grounds of discrimination included in Article 19 of the EU Treaty

In today's European Union, discrimination and inequality continue to be widespread, undermining social cohesion and fundamental EU values. In 2019, people living in the EU are still not equally protected by law when they experience discrimination because of their age, gender/sex, belief and religion, sexual orientation, disability, race or ethnicity. National legislation differs a lot from one Member State to another, and different grounds are covered to a different extent. This contravenes the principle of equality for all in the EU and the Sustainable Development Goals (SDGs) key principle of leaving no one behind. The European Commission should make it a priority of the next Commission to effectively ensure that there is equal and strong legal protection for everyone on all the grounds included in Article 19 of the EU Treaty.

This includes:

- Continuing to **actively work towards the adoption of the horizontal anti-discrimination directive** and **assess alternative initiatives** to ensure that there is no longer a hierarchy in legal protection against discrimination within the EU. Considering the blocking of the directive in the Council, this can not only mean keeping the anti-discrimination directive on the agenda of the EC, but needs proactive approaches to ensure equal protection against discrimination across the EU;
- The European Commission should also clearly set out **measures it intends to take to advance protection against discrimination and to close the legislative gap in case the directive remains blocked**. Initiatives could include sharing of good practice to inspire member states to go beyond the grounds covered in existing directives in legislation; working to ensure that the mandates of equality bodies are inclusive of sexual orientation, gender identity, gender expression and sex characteristics, and monitor implementation;
- **Alerting member states to the negative impact which the legislative gaps** and hierarchy of grounds has on upholding the fundamental rights of EU citizens, on freedom of movement and on the good functioning of the internal market. It is important that the EC sends a message of importance and urgency to member states, highlighting the negative perception given to citizens on the EU's commitment to equality and human rights, considering that efforts to ensure equal protection against discrimination across EU member states has been blocked in the Council for over ten years.

National legislations differ a lot from one member state to another and different grounds are covered to a different extent. This contravenes the principle of equality for all and the

SDGs key principle of leaving no one behind. An equal level of protection is key in ensuring citizens can fully enjoy their right to free movement when travelling, residing or working in another member state. Ensuring protection against discrimination on all grounds in Article 19 on EU level will also create more equal conditions and fewer obstacles for companies operating in the internal market. EU equal treatment legislation will take down existing barriers to accessing goods and services, which prevent EU inhabitants from contributing to Europe's growth as citizens, consumers and volunteers. Absence of equal protection is also hindering the willingness of employees to move within the EU and accessing wider audiences. By failing to move forward in closing the legislative gaps, EU member states are sending the message that protection against discrimination for everyone is no longer a core principle of the EU.

## **2. Establish gender identity and gender expression as protected grounds of discrimination in EU law**

Over the next five years, the EC should consider proactively how to **strengthen legal protection of trans and intersex people at EU level**. In order to do this, the EC should start looking into the possibilities to include gender identity, gender expression and sex characteristics into existing legal protection as well as new legal and policy proposals.

Regarding gender identity, advances have been made in the Employment Directive and the Victims' Right Directive. The EC should make specific proposals on how to strengthen gender identity and gender expression as protected grounds of discrimination, bringing EU legal standards up to the latest international and European human rights standards. The 10-year anniversary of the Employment Equality Directive marks an important assessment moment and an opportunity to firmly advance on the protection on the grounds of gender identity and gender expression.

## **3. Clarify the relation between the grounds of sex and sex characteristics in EU legislation**

The EC should **commission a study to clarify how the ground of sex characteristics is covered by the ground sex** in the context of EU legislation to provide legal clarity, and based on the assessment take the necessary action to ensure that sex characteristics are firmly covered by sex in the future.

## **4. Strengthen national equal-treatment legislation on sexual orientation, gender identity, gender expression and sex characteristics (SOGIGESC) across the EU**

Considering the blockage in the European Council, ensuring protection against discrimination cannot be limited to keeping the anti-discrimination directive on the agenda of the EC. The European Commission should also clearly set out proposed measures to

advance protection against discrimination and to close the legislative gap, should the directive remain blocked. Initiatives could include sharing of good practice of existing national legislation going beyond the grounds covered in existing directives; supporting member states to ensure that the mandates of equality bodies are inclusive of sexual orientation, gender identity, gender expression and sex characteristics, and to monitor implementation of existing legislation.

#### **5. Strengthen implementation of existing legislation through close follow-up, technical support and data collection**

While there are serious gaps remaining in EU protection against discrimination on the grounds of sexual orientation, gender identity and sex characteristics, there are also important legal standards in place, which could be further strengthened through effective implementation and enforcement.

For example, current EU legislation guarantees the right of workers in all EU member states to not be discriminated against on the basis of their sexual orientation in the area of employment. Case law clearly states that, under the EU directives on Goods and Services<sup>1</sup> and on Employment and Social Security<sup>2</sup>, the ground sex does cover “people intending to undergo, [...] undergoing, or having undergone gender reassignment procedures”. Both the Victims’ Rights Directive<sup>3</sup> and the asylum legislation<sup>4</sup> (and relevant case law) establish clear legal protection on the grounds of sexual orientation and gender identity. However, the implementation of these directives remains inconsistent. The European Commission needs to hold firmly accountable those Member States that continue to breach the rights of people to not be discriminated against, which is clearly established in these directives and case law. This needs to include strict follow-up of complaint cases by citizens, including infringement procedures, but also proactive technical implementation support, awareness raising about the rights granted and how to effectively protect them as responsible authorities, and exchanges and encouragement of good practices.

The High Level Group **on Non-discrimination, Equality and Diversity** can be a useful space for exchange of good practices and for bringing together a wide range of different stakeholders of equality work to come together to share good practices, i.e. civil society, academics, lawyers, policymakers, and representatives of specific sectors, including trade union actors. The Group can be the place to work with all member states on effective implementation of existing anti-discrimination protections on EU and national level, as well as how to close existing gaps effectively to ensure full and equal protection for all EU citizens across the EU.

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<sup>1</sup> Directive 2004/113/EC

<sup>2</sup> Directive 2006/54/EC

<sup>3</sup> 2012/29/EU

<sup>4</sup> 2011/95/EU and 2013/32/EU

## 6. Step up data collection on discrimination based on SOGIGESC

Data collection is an important aspect in assessing the impact of equality legislation and practices and where important gaps remain that need to be tackled. To this end, the EC should:

- Plan the next Eurobarometer LGBTI assessment towards the end of the term;
- Ensure the next Fundamental Rights Agency (FRA) LGBTI survey 2024;
- Add legal sex and gender to the list of sensitive data, as suggested by the recommendations developed by the Subgroup on methodologies for recording and collecting data on hate crime of the High Level Group on Combating Racism, Xenophobia and other forms of intolerance;
- Improve the accessibility of legitimate information about trans and intersex human rights and the discrimination faced by trans and intersex people;
- Raise awareness among the public, policymakers, medical profession, and businesses about the realities of trans and intersex issues, to mitigate the ease with which untruths and misinformation are currently believed and used to guide decision making.

This work should be done in close cooperation with FRA and the European Institute for Gender Equality (EIGE) and linked closely to the EC Gender Equality Strategy, ensure synergies and allow for work on intersections of discrimination.

## Protection of Fundamental Rights in the EU

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The rise of hate and divisive, socially and environmentally destructive political forces – including in many EU countries – are putting democracies at risk. They are undermining democratic institutions, the rule of law and fundamental rights. In this context, marginalised groups such as LGBTI people (among others) are becoming even more vulnerable and at risk of violence and discrimination, while organised civil society groups are coming under increasing pressure at a time when their role in protecting fundamental rights and defending the rule of law is more crucial than ever.

In this worrying context, over the next five years, LGBTI people need the EU to do the following:

### 7. Be an unequivocal champion which protects and advances human rights, including the human rights of LGBTI people

The EC needs to be a clear voice for the rule of law and the protection of fundamental rights, continuing to speak out in the face of violations and using all existing instruments,

including the EU's Rule of Law framework, Infringement procedures, Article 7 procedure, the European Semester, the EU Justice Scoreboard, the Cooperation and Verification Mechanism, as well as the inclusion of fundamental rights in impact assessments.

### **8. Establish a mechanism to uphold the rule of law which effectively includes fundamental rights monitoring**

The EC should work on a **strong legal proposal** for an EU rule of law monitoring mechanism to fulfil its duty to ensure governments uphold the rule of law in all EU Member States. We need to make sure the legal instrument gets off the ground; such an annual review mechanism should include fundamental rights as set out in Article 2, also covering LGBTI rights, be conducted by independent experts, include clear indicators regarding the protection of fundamental rights and civil society space, and include clear follow-up of infringements, including sanctions.

ILGA-Europe believe that an annual review conducted in all member states by independent experts would establish the kind of instrument that we need to help marginalised groups in our societies and ensure the full protection of fundamental rights and democracy. In order to be as effective and supportive to the needs of individuals, the mechanisms should clearly link to strategies to tackle legislative gaps (such as the Horizontal Non-discrimination Directive and hate crime legislations) and take into consideration the implementation of existing legal standards, for example the Victim's Rights Directive, Employment Directive and instruments such as the Istanbul Convention adopted by most EU member states need to be closely monitored and strengthened.

### **Enabling Space for Civil Society**

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Over the last 10 years, human rights organisations, pro-democracy actors and wider civil society movements in many countries have been facing increased restrictions when trying to carry out their work. Governments are erecting legal and administrative barriers, making it more difficult for civil society organisations who receive foreign support and funding to operate. In many countries, human rights NGOs are restricted when they attempt to hold public gatherings, express their views or set up new organisations. In addition to this, individual human rights defenders are often subjected to intimidation and harassment. LGBTI organisations and LGBTI activists are often amongst the first targets of such restrictions and attacks. The shrinking civil society space and the questioning of NGOs' legitimacy is becoming a significant and worrying trend, both inside and outside EU borders, which was also acknowledged in the Fundamental Rights Agency's report "Challenges facing civil society organisations working on human rights in the EU" (January 2018).

## 9. Ensure accessible and effective funding for civil society at EU and national levels

Civil society organisations are facing more and more restrictions in accessing funding on national level, as national programmes are being cut, access to foreign funding is limited and other financial and administrative burdens are being applied. At the same time, it is become increasingly difficult for LGBTI organisations working at national level to access EU funding. Indeed, requirements set out in most project calls make it very challenging for national NGOs to apply for funding, the result being that very few LGBTI organisations have been applying for the EU funding available through projects run by DG Justice and Consumers.

The main barriers to accessing EU funding at the moment are:

- In a context of shrinking space for civil society, organisations are often struggling to ensure their very basic operations, including service provision to the community. They need support for their work towards defending the rule of law and democracy, supporting victims and working towards better acceptance of LGBTI rights in society. Current funding programmes – mostly aimed at supporting transnational projects – are not designed to support this work. Taking on transnational projects would add more work for the majority of LGBTI organisations, which is not desirable at a moment in time when the burden placed on the finances and human resources of NGOs is quite high.
- The 20% co-funding requirement is very high for most groups and organisations. With only a few exceptions, a significant portion of LGBTI organisations in Europe operate without sustainable funding or flexible funding sources. Finding funds to meet the co-funding requirement is thus a huge undertaking for the majority of groups. Taking on an EU-funded project without having secured co-funding implies a significant financial risk for most organisations.
- Most funding opportunities favour large transnational consortia, which require extensive project and financial management, and have large budgets (and hence high co-funding requirements). Even the larger LGBTI organisations in EU member states often do not have the financial and management resources to run such large projects involving many partners.

In order to ensure EU funding provides meaningful and effective support to LGBTI organisations at national level, it is very important to rethink the current focus on transnational projects and instead include more flexible funding instruments in programmes such as the Rights and Values Programme in the next MFF (Multiannual Financial Framework), that can help make sure money can actually reach organisations experiencing the barriers listed above.

To ensure the sustainability of their work CSOs (civil society organisations), especially small and medium-sized ones, crucially need grants, and non-earmarked funding covering core

and structural expenses, rather than short-term, project-based funding. Effective funding support, needs to include

- Low value grants with no co-financing requirements.
- Re-granting schemes (or cascading funding) offer ways to ensure that larger organisations, often networks such as ILGA-Europe, can carry the financial risk and management burden that comes with a large grant and then make small grants available to national organisations. The possibility for re-granting (or cascading funding) is granted in other funding programmes such as EIDHR (European Instrument for Democracy and Human Rights) and has been working well there in helping to reach national organisations and very often small community groups, but is not yet included in the Rights and Values Programme.

#### **10. Promote an enabling and safe environment for human rights defenders and civil society organisations**

- Swiftly and firmly call out words and actions by political, religious, social or other leaders that seek to restrict the functioning of civil society.
- Support and continuously promote initiatives such as [ProtectDefenders.eu](https://www.protectdefenders.eu), in order to protect human rights defenders in the EU and facilitate their ability to continue actively defending fundamental rights.
- Ensure that CSOs can continue to operate effectively even in situations where national or local authorities may seek to undermine their ability to function. In this context, it is important to ensure that national authorities are not involved in the disbursement of EU funding to CSOs working for fundamental rights and the rule of law.
- Regular monitoring of how disbursed funds are used must also take place, to ensure that funds are utilised for their designated purpose and not against the fundamental rights set out in the Charter and the EU treaties.
- Maintain direct lines of communication with CSOs, independent of national authorities.

#### **Countering Hate Crimes/Hate Speech**

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Despite advances in recognition of the human rights of LGBTI people, including in terms of social acceptance as shown in the 2019 Eurobarometer, LGBTI people across Europe continue to experience discrimination, hate and violence.<sup>5</sup> The new European Commission takes office at a time when we are observing a worrying rise in divisive and hateful rhetoric in election campaigns and public discourse across member states, with minorities being

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<sup>5</sup> For references see ILGA-Europe Annual Review <https://www.ilga-europe.org/annualreview/2020>, as well as results regarding hate in FRA LGBT survey 2013 and the upcoming second FRA LGBTI survey 2019 (launch foreseen May 2020).

scapegoated. And this is translating into real hate in the streets, not only homophobic and transphobic hate, but on all grounds. A rise in populist and extremist political forces has normalised the use of hate speech and divisive rhetoric – a pattern that has been repeatedly shown to lead directly to physical violence motivated by hate. Another rapidly increasing challenge with regard to anti-LGBTI hate is the increasing proliferation of hate speech online. So the work on combatting hate crime and hate speech needs to be stepped up, involve more diverse actors and lead to specific commitments and actions.

The objective of the work of the European Commission needs to be to contribute to strong legislation and policy tools to protect against and prevent LGBTI-phobic hate, as any bias-motivated hate crime and hate speech in the EU.

### **11. Ensure EU-wide legal protection against LGBTI-phobic hate crime and hate speech**

The aim for the EC and member states should be to ensure that sexual orientation, gender identity, gender expression and sex characteristics are recognised as bias-motivations and that LGBTI-phobic hate crimes or hate speech are criminalised across the EU. Currently on national level, 7 EU member states do not expressly include sexual orientation in hate speech legislation as an aggravating factor. 15 member states do not include gender identity and none include gender expression or sex characteristics.

We are asking for the EC to take concrete steps to foster a political discussion amongst member states on how to close these gaps in legal protection and to make specific recommendations for ways forward to address the uneven protection across the EU, including new legislative proposals. The EC should also work with member states on levelling up their national legislation on SOGIGESC. This could be done through the EU High Level Group on Combating Racism, Xenophobia and other forms of intolerance. The discussion needs to also include other grounds of discrimination currently not covered by Framework Decision. In the framework of the EU High Level Group on Combating Racism, Xenophobia and other forms of intolerance, as well as through relevant policy initiatives, the EC needs to foster a political discussion amongst member states on these gaps in legal protection and how to ensure EU-wide protection against LGBTI-phobic hate.

### **12. Effectively monitor and support implementation of existing legislation and obligations**

With the Victim's Rights Directive, national hate crime and hate speech legislation, as well as the Istanbul Convention, legal instruments do already exist that should be fully implemented, applied and enforced. The EC should organise technical assistance, exchange of good practice and closely monitor implementation and application. Clear links should be established with the Victims' Rights Strategy, amongst other relevant processes in the European Commission. The EC should organise technical assistance, exchange of good practice and closely monitor implementation and application. In member states where hate



crime/hate speech legislation covering sexual orientation and/or gender identity exists, the EC should closely monitor its enforcement and raise any concerns about bias motivation not being recognised.

### **13. Support better reporting of bias-motivated violence by public authorities**

The European Commission should ensure that EU legislation enables multiple bias motivations to be recorded, investigated and prosecuted in incidents of hate crime and hate speech, including against LGBTI people, both online and offline. To support better recording, the EC can offer good practice exchanges and support advances amongst member states and national authorities. This will enable the full experience of victims to be taken into account by eliminating hierarchies of grounds, allowing for more appropriate and comprehensive victim support measures, and strengthening data on the severity and prevalence of hate targeting particular grounds.

In member states where hate crime/hate speech legislation covering sexual orientation and/or gender identity exists, the EC should closely monitor the enforcement and raise any concerns about bias motivation not being recognised.

The European Commission should step up efforts to improve the capacity of professionals working with victims of crime to engage with LGBTI people in a respectful manner. This should include at minimum law enforcement, prosecutors, medical staff and frontline civil servants, and should include general training on how to interact with victims, as well as specialised subjects such as identifying and including elements of bias motivation in reporting, investigation and prosecution, and providing SOGIGESC-sensitive healthcare and other support to victims of hate crime. Regular monitoring needs to be conducted to ensure that the effects of such training reaches all parts of all Member States, to ensure that victims of anti-LGBTI hate anywhere can feel secure in expecting a uniform and supportive experience when dealing with public authorities.

### **14. Strengthen knowledge and expertise to combat online hate speech**

The complexity of addressing online hate speech means that there can be no single solution. Based on the principle that what is illegal in the physical world should also be illegal in the virtual world, the European Commission, working with future EU Presidencies in also including the member states and the European Parliament, should support research and exchanges assessing different strategies to tackle online hate, from legislation in some member states to policies and strategies by online platforms and civil society organisations.

While the genuine participation of IT companies is vital for successfully countering online hate, the problem of online hate must first and foremost be recognised as an issue of human rights, and thus cannot be left solely to the discretion of private companies. Activities the European Commission should include under this initiative:

- Continue and expand its existing work to ensure commitment by IT companies to the Code of Conduct on Countering Illegal Hate Online, and use its convening power to bring different stakeholders together to discuss new approaches, including possible legislation;
- Questions tackled should include how to facilitate cross-border investigation, prosecution and redress to be carried out efficiently, effectively, and transparently;
- Working with future EU Presidencies, as well as member states and the European Parliament, the EC should support research and exchanges assessing different strategies to tackle online hate, from legislation in some member states to policies and strategies by online platforms and civil society organisations. Questions tackled should include how to facilitate cross-border investigation, prosecution and redress to be carried out efficiently, effectively, and transparently;
- While the genuine participation of IT companies is vital for successfully countering online hate, the problem of online hate must first and foremost be recognised as an issue of human rights, and thus cannot be left solely to the discretion of private companies;
- Facilitate knowledge sharing amongst member states;
- Strengthening the ability of CSOs to participate in monitoring exercises, e.g. by:
  - Providing adequate and accessible financial support to enable civil society organisations to dedicate capacity to participate in monitoring exercises;
  - Facilitating access to psychological support services for the individuals who participate in monitoring exercises, in acknowledgement of the vicarious trauma that prolonged exposure to such hatefulness can induce in people;
  - Providing facilities for legal and security support in the event that a CSO or individual's participation in monitoring exercises marks them as a target for hate, physical violence, or legal persecution.

**A word about the approach to this work:** In order to step up the fight against hate on all grounds, it is important to strengthen cooperation across different sectors. The EC needs to facilitate conversations and initiatives amongst a wide range of actors. The current rise in hate needs strong and broad alliances to stand up against divisiveness in our societies. The EC, in the framework of its high-level groups, but also by facilitating targeted conversations and events, can bring a wide range of relevant actors to the table, including health practitioners, media, education specialists, key social influencers and key actors in society such as political actors, political parties, and religious leaders. Such efforts should provide spaces for meetings focused specifically on particular aspects of countering hate crime such as reporting, investigation, prosecution or victim support, as well as spaces for meetings across the different areas, to enable cross-sectoral sharing of best practices and learning.

Clear links with relevant EC strategies, including the Victims' Rights Strategy, the Disability Strategy, the Roma Strategy, the Gender Equality Strategy and the Children's Rights Strategy need to be ensured and clearly referenced in the LGBTI Strategy.

## Advancing recognition of human rights and equality for trans people

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### 15. Visibly and firmly uphold and advance trans rights at the EU level

There are many member states where trans people have no legal recourse or social support and no current prospects for changing this at the national level. Within its competences, the EU needs to propose and implement protections for trans people against discrimination and violence in all areas of life in all Member States, including facilitating the free movement of trans people and their documents across borders.

The European Commission should also ensure that any legal protections for trans people that exist are properly implemented at the national level, including by providing technical assistance and calling attention to situations where the human rights of trans people are under attack, especially if these attacks are perpetrated or otherwise enabled by national or local authorities (see section Equality and Non-discrimination of this paper).

**A word about approach:** Ensure that any work undertaken with regard to trans children focuses on protecting the child and ensuring their wellbeing. Clear links should be established here between the EC Children's Rights Strategy and the LGBTI Strategy. Solutions or responses to dealing with questions such as minimum age requirements and access to legal, social and medical transition must not be based on concerns about how society in general would respond to the child, but about what best addresses the child's needs. Utilise resources such as the Yogyakarta Principles plus 10 (YP+10) to guide any policymaking on this issue.

### 16. Addressing the precarious situation of trans people across the EU, through targeted employment and social protection policy initiatives

The EC 2019 Trans Study highlights key challenges faced by trans people in the EU, particularly around their socioeconomic and sociodemographic status and how this relates to the availability of legal gender recognition procedures in the Member State in which they live. The European Commission must ensure that, based on the findings of the Study, next steps are identified to tackle the problems, involving substantive participation of LGBTI and trans organisations in all stages of the process. Key processes for this in 2020 will be the review of the EU Employment Directive and the Gender Equality Directive.

The problems trans people still face when accessing employment are key findings of the study. It is important that DG Employment, Social Affairs and Inclusion tackle the problem of

very low representation of trans people in the labour market and the precarity coming with that, and identify good practices by governments and employers in increasing trans people's participation in the labour market. Recommendations and good practice exchanges should be organised, also in the context of the EU Platform of Diversity Charters.

The Study also looks into the consequences that access to legal gender recognition procedures (or the lack thereof) has for equality for trans people. In this context, the EC should further encourage member states to put in place fully accessible legal gender recognition legislation and procedures that are based on the principle of self-determination and without age limits.

### **17. Access to healthcare without discrimination**

Trans people face specific problems when it comes to access to trans-specific healthcare. Two particular issues that DG Health and Food Safety (Santé) needs to look into and propose solutions to:

- Access and cost-coverage for cross- border health care
- Shortage in of medication in certain member states, such as for example hormones

Finally, all work of the European Commission regarding HIV/AIDS and STI (sexually transmitted infections) needs to be fully inclusive of trans people, and their specific concerns and needs.

### **Advancing recognition of rights for intersex people**

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In February 2019, the European Parliament adopted a Resolution on the rights of intersex people, clearly setting out clearly what needs to be done both on national and EU level. Whereas first steps have been made to identify and raise awareness about the ongoing human rights violations and discrimination intersex people face, – for example with the FRA paper “The fundamental rights situation of intersex people” (May 2015), inclusion of intersex people in the EUC campaign “We all share the same dreams”, and integration of intersex people’s experiences of discrimination in the 2019 FRA LGBTI survey. However, the EC now needs to clearly set out how it will tackle the lack of protection of intersex people on EU level and support member states to also put national legislation and policies in place.

In accordance with the call of the European Parliament Resolution on the Rights of Intersex People (2018/2878(RSP)) adopted on 14 February 2014, the following initiatives should be include:

### **18. Mainstream intersex human rights into EU anti-discrimination and equality policies**

It is important that future equality strategies fully integrate the specific discrimination faced by intersex people and set out specific measures to ensure the protection of intersex human rights and against counter discrimination of intersex people. The EC Gender Equality Strategy, the EC Children’s Rights Strategy and the EC Disability Strategy are key strategic documents that should include strong reference to being intersex-inclusive and identify specific actions to further the human rights of intersex people.

The LGBTI Strategy should set out targeted actions to ensure that the human rights violations intersex people face, such as IGM (intersex genital mutilation), are clearly included in relevant EC policy actions, such as the work on ending female genital mutilation (FGM). The link between the EC Gender Equality Strategy and the LGBTI Strategy needs to be very explicit, also regarding the work on End FGM.

### **19. Step up data collection regarding the lived experience of intersex people**

The EC should take initiatives to ensure sociological and medically independent data collection by mainstreaming intersex people in surveys and other data collection mechanisms, both at the EU level and by encouraging Member States to include intersex people in national surveys. This could include the implementation of health surveys, a study similar to the EC Trans Study currently underway, a legal study on the extent to which sex characteristics are covered by the ground ‘sex’ in EU law, or a follow-up on the 2019 FRA LGBTI Survey II. Enhanced data collection will help in educating all sectors of policymaking about the realities of intersex people and provide support for identifying targeted solutions for changing the narrative around intersex people.

### **20. Support member states in introducing legal protections of fundamental rights of intersex people**

Over the last years, awareness of the need to put legal protection in place to ensure the fundamental rights of intersex people, to put an end to bodily harm and to combat discrimination has increased tremendously across Europe. Some member states have started adopting legislation banning non-medically necessary surgeries on intersex babies and children. Others have started to include the ground of sex characteristics into anti-discrimination legislation. Member states are seeking advice and good practice examples of how to better protect the fundamental rights of intersex people.

The EC can play a role in supporting more member states in adopting relevant legislation and policies, by facilitating exchange of good practices between member states on protecting the fundamental rights of intersex people. One initiative could be organising a good practice seminar amongst member states in the framework of the High Level Group on Non-discrimination, Equality and Diversity, and include OII Europe and ILGA-Europe in the planning and implementation of this seminar. Other initiatives could include providing guidance to member states on the specific discrimination experienced and what measures

and polices are need to tackle discrimination, and raising awareness about the human rights violations and discrimination that intersex people face across the EU.

## Protecting LGBTI People in the EU Asylum System

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A significant number of people applying for asylum in EU Member States are LGBTI people. Some of them flee persecution unrelated to their sexual orientation or gender identity (e.g. military conflicts, natural disasters or their political activity), while others are at risk of persecution precisely because of their sexual orientation, gender identity, gender expression or sex characteristics (SOGIGESC). Upon arrival in the EU, LGB asylum seekers often qualify as vulnerable persons under EU asylum law, with recognises specific needs in terms of protection, legal assistance, reception conditions, healthcare etc. Under the [1951 Refugee Convention](#) as well as EU asylum law – the [Common European Asylum System \(CEAS\)](#) – sexual orientation and gender identity can be grounds for protection, depending on the situation in the country of origin of the asylum seeker and the details of their case. While the existence of such protections is positive, they remain limited in terms of the identities and contexts for which they are applicable, with protections for trans and intersex people most notably absent. Furthermore, in practice, the implementation of the laws that do exist continues to fall short, with many EU Member States still relying on stereotypes and prejudices in dealing with LGBTI people.

### **21. Ensure full implementation and enforcement of existing EU legislative protection of LGBTI asylum seekers**

A wide range of protections for LGBTI asylum seekers are established through EU legislation as well as EU case law. However, information received regularly from civil society organisations and legal experts point to repeated infringements of EU standards and lack of coherent and effective application of the legislation across Member States. EU institutions and agencies have an important role to play in addressing these barriers to effective implementation. To this end, there is a clear need for the European Commission, more precisely DG Migration and Home Affairs to:

- Ensure LGBTI-specific analysis in its regular monitoring of all relevant EU asylum directives;
- Support peer learning and sharing of good practices for different stakeholders e.g. civil society, academics, lawyers, policymakers, and representatives of relevant institutions such as EASO (European Asylum Support Office) and Frontex;
- Consider any cases brought to their attention where existing legal protections have not been respected and, where there are clear breaches of existing EU law, take infringement procedures;

- Make information about case law from the ECJ (Court of Justice of the European Union) known and understood, including in the framework of publications, trainings and events aimed at member states' officials on the application of EU asylum directives;
- Provide technical assistance on legal transposition on sexual orientation and gender identity in the EU asylum directives. The European Asylum Support Office is uniquely placed to train asylum officials on national level, specifically regarding vulnerable groups, including LGBTI asylum seekers, and should focus on continuing these training efforts;
- Create spaces for sharing good practices: the European Commission should create opportunities for the different stakeholders of equality work to come together to share best practices, i.e. civil society, academics, lawyers, policymakers, and representatives of relevant institutions such as EASO and Frontex. The participation of NGOs led by LGBTI people with personal experience of the European asylum system should be prioritised in these spaces. This can be through the organisation of European Commission events, by supporting participation in the EASO Consultative Forum, or by funding projects, conferences or other civil society activities with this purpose.

Within this framework, particular attention should be given to the following issues:

- Return of LGBTI asylum seekers to countries of origin where their SOGIGESC places them at risk of persecution;
- Continued use of stereotyping and European conceptions of LGBTI persons to reject credibility of SOGIGESC-based asylum claims;
- Specific risks facing LGBTI people in detention centres, reception centres and shared accommodation;
- Access to SOGIGESC-specific physical and psychological healthcare.

## **22. Safeguard protection of LGBTI asylum seekers in the reform of the Common European Asylum System (CEAS) or a future Pact on Migration and Asylum**

The European Commission should remain strong in the ongoing negotiations on the CEAS package, to enable that advancements in the protection of LGBTI asylum seekers and refugees already secured are implemented without delay. A provisional agreement has already been reached on the Reception Conditions Directive, Qualification Regulation, EURODAC (European Asylum Dactyloscopy Database) Regulation, Regulation for an EU Asylum Agency (EUAA), and Union Resettlement Framework Regulation.

In the event that the CEAS is replaced by a Pact on Migration and Asylum or any other set of legislation, the European Commission should ensure that the protections and rights of LGBTI

refugees and asylum seekers agreed upon in the CEAS files that have attained provisional agreement will serve as unassailable minimum standards.

For more information, see ILGA-Europe's comments regarding the EU Asylum Pact (April 2020).

## LGBTI People and their Families in Cross-Border Situations

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Rainbow families today still experience substantial discrimination and must deal with insecurity, bureaucratic obstacles and legal barriers to accessing their rights. This applies to people in same-sex relationships, transgender parents, parents of LGBTI children and children of LGBTI parents, among others. The lack of recognition of same-sex partnerships and family ties not only means legal insecurity for same-sex couples, but also directly affects their children. Cases in Europe are reported where due to the lack of recognition of family ties, children of same-sex parents end up stateless and in unclear custody situations. It is therefore very important to include a clear children's rights perspective in all work on rainbow families.

Within the EU competences, family rights for LGBTI people are key when ensuring the right to freedom of movement for all, but also in areas of asylum, healthcare and children's rights. Also all work on trans and intersex rights needs to ensure to look at trans and intersex people in all life situations, including when they are parents.

### **23. Ensure full implementation of the Coman Judgement, regarding the Freedom of Movement Directive (2004/38/EC)**

The Coman judgement (June 2018) provides legal clarity regarding the fact that the term 'spouse' includes the same-sex spouse of an EU citizen and that therefore freedom of movement needs to be fully granted to same-sex partners within the EU. However, testimonies from rainbow families across the EU provide evidence that this principle is not yet respected by all member states and that further action is needed from the European Commission to ensure full implementation and enforcement of the judgement. In this context, within the next five years, the EC should:

- Provide support to EU member states that have no legal recognition of same-sex partnerships in ensuring effective transposition of the Coman judgement in relation to the Directive 2004/38 in these countries;
- Take steps to provide legal clarification with respect to the terms 'family' and 'parent', to ensure that the right to freedom of movement of LGBTI people and their families is fully upheld;



- Ensure that the Coman judgement is fully applied to all relevant pieces of EU legislation i.e. that the clarification that the term ‘spouse’ is inclusive of same-sex partners is respected in the application of all EU legislation, such as for example the Family Reunification Directive.

#### **24. Propose EU legislation to improve the cross-border recognition of public documents**

The free movement and mutual recognition of public documents is an important factor in enabling LGBTI people and their families to claim their rights when moving between EU Member States. The European Commission should take steps to strengthen the Regulation on free movement of public documents (2016/1191/EU) by upgrading the recognition of the content and substance of these documents. Relying on Article 21(2) TFEU, the Commission should propose a Directive or Regulation requiring recognition of marriage certificates, registered partnership certificates (if the registered partnership is substantially similar to a marriage), birth certificates (including information about legal gender or the parentage of a child), and gender recognition certificates issued in one EU Member State as valid for all purposes of national law in all other Member States. This would facilitate the exercise of the Article 21(1) right of EU citizens to move and reside freely within the territory of the Member States and would not change national family law or civil status law in any Member State.

#### **25. Conduct research on the cross-border situation of rainbow families in the EU**

The European Commission should collect testimonies and cases brought forward by civil society organisations on national and EU level, and undertake research to collect reliable data on the various problems experienced by LGBTI people and their families when moving from one EU Member State to another. This would provide much needed mapping of how different Member States approach and regulate this issue and identify good practices, as well as key challenges, to serve as a solid basis for subsequent activities.

#### **26. Provide clear guidance for member states and the public on cross-border rights of rainbow families**

The European Commission should develop and disseminate information materials about how to guarantee the rights of free movement to rainbow families: what are their legal rights, what is recommended policy, which conventions and charters should be taken into account, etc. This should be aimed at Member States as well as the wider public and include clear instructions on how members of the public can report violations of their rights, the various steps and timelines involved in such a process, the impact it can have, and organisations they can reach out to for support in such a process.

Information for rainbow families regarding moving between EU member states should be included in relevant EU fact sheets, Solvi and Your Europe Advice, as well as networks such as MoveS and other relevant places and fora.

## Employment and social inclusion

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The Covid-19 crisis is shedding a clear light on the inequalities in our societies and shows the extreme vulnerability of people in precarious job and housing situations, including questions on access to social protection and access to healthcare services. A greater than average rate of LGBTI people are unemployed and in precarious jobs and live on very limited and unstable financial resources. An estimated 25-40% of young people experiencing homelessness are estimated to identify as LGBTI.

Coming out of the crisis, the EC needs to set out clearly in the LGBTI strategy how it will tackle these problems. While important work has been done in recent years on workplace diversity, it is time to shift the focus to tackling barriers and discrimination in access to employment, and more generally to the experience of social exclusion of young LGBTI people.

### **27. Tackle disproportionately high rate of unemployment amongst trans people**

The ongoing Trans Study aims at highlighting key challenges faced by trans people in the EU, particularly around their socioeconomic and sociodemographic status and how this relates to the availability of legal gender recognition procedures in the Member State in which they live. The European Commission must ensure that, based on the findings of the study, next steps are identified to tackle the problems, involving substantive participation of LGBTI and trans organisations in all stages of the process. Key processes for this in 2020 will be the review of the EU Employment Directive and the Gender Equality Directive.

Given the disproportionate high rate of trans people outside employment, there is a need to zoom in on EU legislation and policies to develop initiatives to tackle this problem. It is important to raise awareness of the problem of high unemployment rates and underrepresentation of trans people in the labour market, and share expertise and good practices of how to tackle this specific problem. Also in the EU Forum of Diversity Charter, attention needs to be given to the specific situation of trans people in accessing, as well as the labour market.

The EC should also make specific proposals on how to strengthen gender identity and gender expression as grounds of protection against discrimination, aligning EU legal standards with the latest human rights standards as agreed by international and European bodies.

## 28. Tackle LGBTI homelessness

LGBTI homelessness in Europe is hidden. While institutional erasure makes it difficult to quantify the problem, research from Wales, England, France, the US and Canada, in addition to the experiences of shelters across the EU, have demonstrated that LGBTI homelessness, especially amongst young people, is a reality with its own specificities, needs and *ad hoc* solutions. An estimated 25-40% of young people experiencing homelessness are estimated to identify as LGBTI. In Europe, there are almost no specialised LGBTI homelessness services.

Across the EU, there is a clear gap when it comes to data regarding LGBTI homeless people. The Fundamental Rights Agency's 2nd LGBTI survey (2019) included a question on homelessness with striking results in not only the high number of LGBTI people being homeless at some point in their life, but also the high rate of long-term homelessness for trans and intersex people. However, even in this survey the data set is very small. What is needed at this stage is to raise awareness of the hidden problem of LGBTI homelessness, and to develop data-based advocacy, policy and service recommendations.

Under an initiative on tackling LGBTI homelessness, the European Commission should include targeted actions to:

- Create a better understanding of the situation of LGBTI people experiencing homelessness across the EU through enhanced data collection;
- Provide analysis on how EU and national equality and homelessness policies can ensure LGBTI homeless people are reached by policies and services, and work towards ending LGBTI homelessness;
- Ensure exchanges and cooperation between policymakers, homelessness service providers and LGBTI organisations to discuss specific measures to tackle LGBTI homelessness, ensure that homelessness services meet the specific needs of LGBTI people, and to discuss strategies to overcome barriers in ending LGBTI homelessness.

These actions would contribute to ensuring EU-wide cooperation between homelessness service providers and LGBTI rights, raise awareness of European and national-level policymakers and service providers of the high percentages of LGBTI people experiencing homelessness and their specific needs, and support EU member states willing to improve the situation of LGBTI homeless people in their respective countries through providing them with the relevant expertise.

## Healthcare without discrimination

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LGBTI people are often reluctant to seek healthcare because they have experienced stigmatisation in the past or fear hostile reactions from healthcare professionals based on their sexual orientation, gender identity or sex characteristics. Awareness and sensitivity of healthcare providers on the specific needs of LGBTI people is often very low. At the same time, stigmatisation and social exclusion faced by LGBTI people have a strong impact on their mental and physical health. In addition, access to quality and affordable healthcare, especially trans-specific healthcare, is still not a given even within the EU, and critically hinders equality and freedom of movement of trans citizens. Another issue which increasingly requires attention is lack of access to medication such as antiretroviral drugs and hormones which also cause serious problems for LGBTI people.

Keeping in mind the EU's competences in the area of health, the Commission, and more precisely DG Health and Food Safety (Santé), can play significant roles in promoting inclusive and equal access to health in the following ways.

### **29. Ensure all EC initiatives on health are fully inclusive of LGBTI people**

The EC, and specifically DG Santé, should ensure that all EU proposals regarding healthcare provisions are inclusive of the specific concerns and needs of LGBTI people. This is especially the case for all policies and initiatives taken regarding HIV/AIDS prevention and STIs, but also includes the EC Cancer Plan and similar initiatives, as well as conversations and initiatives regarding mental health.

Some important steps DG Santé should take to ensure full inclusiveness include:

- Using appropriate terminology when referring to trans and intersex people or medical processes meant to serve trans and intersex people;
- Ensuring that information provided about blood donation by LGBTI people has no basis in stereotypes or stigmatisations;
- Depathologising trans identities, in line with ICD-11;
- Incorporating the realities of intersex people, including highlighting the harm of intersex genital mutilation (IGM) practices;
- Providing information on the dangers of conversion therapy;
- Ensuring distribution and uptake of the results and products of the Health4LGBTI project.

The Health4LGBTI pilot project by DG Santé identified a number of discriminatory practices LGBTI people face on a daily basis when seeking medical care, and developed important information about the range and impact of discrimination as well as training manuals to equip health practitioners with the necessary knowledge and good practices to avoid discriminatory practices

DG Santé should preview next steps to ensure dissemination and uptake of the information and the training manuals of the Health4LGBTI project by member states. Whereas all partners of the project, including ILGA-Europe, remain committed to ensuring dissemination and incorporation of the products of the project into their work, DG Santé can play a role in directly reaching member states and health departments and engaging them in the follow-up of the pilot project. Furthermore, financial resources for the dissemination and roll-out of the trainings should be identified.

### **30. Support member states in ensuring effective depathologisation of trans identities**

With the revision of the ICD-11 in 2019, the World Health Organisation (WHO) has adopted ground-breaking changes by removing trans-related categories from the Chapter on Mental and Behavioural Disorders; in effect, this means that trans identities are formally de-psycho-pathologised in the ICD-11. However, the WHO ICD-11 revision is not the end of the road. The implementation process for the ICD-11 has begun and efforts need to focus on ensuring full implementation as quickly as possible, including that of the new Chapter on Conditions related to sexual health across all EU member states and removing the category Gender Incongruence of Childhood (GIC), which does not serve a medical purpose.

The Commission can now play an important role in making sure that policymakers, healthcare practitioners, universities, as well as other healthcare providers and stakeholders across EU Member States are properly informed and provided with expertise to ensure that the new standards are adopted and changes are made in national health care classifications and protocols accordingly.

Other areas of focus will be advancing legal depathologisation everywhere, to ensure that the human rights of all trans and gender diverse people are respected and that there is progressive expansion of public healthcare coverage, as established in the Universal Health Coverage framework. Full depathologisation of trans and gender diverse people requires the complete removal of: psycho-medical classifications; all medical requirements linked to legal gender recognition processes; legal and bioethical gatekeepers; corporate-driven medical care and treatments; normative gender stereotypes; and all forms of socioeconomic injustice. The EC can further the conversation with member states on all these necessary changes to ensure a strong voice from EU member states in the next important revision process.

### **31. Ensure non-discriminatory access to medication and healthcare across the EU**

The EC should pay attention to access to medication which has a particular impact on LGBTI people, such as PrEP (prevention of HIV), antiretroviral drug treatment and access to hormones for trans people. There are increasing issues with access to medicines for LGBTI people in several EU countries. More knowledge needs to be gathered around areas of shortages with a view of supporting effective responses by EU member states to these problems as a matter of public health.

Access to transition-related healthcare, as well as coverage for transition-related healthcare costs, are not equally available and guaranteed in all member states, treatment options are not consistent, and cross-border access and reimbursements are unclear at best. These are key issues to ensuring trans people's freedom of movement. DG Santé should map existing barriers in this area, as well as identify good practices by member states and ensure these are shared and discussed by all member states to develop common solutions.

### **32. Protect and promote the right to health for intersex people**

Significant barriers exist for intersex people in terms of accessing their right to health. This begins with mistrust of the health profession among intersex people, stemming from exposure to non-consented medical procedures, mistreatment and exploitation, and misinformation provided to intersex people and their families by medical practitioners. DG Santé can take steps to improve the health of intersex people by:

- Collecting data from health systems and medical facilities on the numbers and cost of medical procedures performed on intersex people, as well as continuing care costs associated with these procedures, with guidance from intersex organisations;
- Establishing norms for medical education and training, also within medical professional associations, with the goal of eliminating non-consented non-vital procedures on intersex infants and children, and ensuring access to justice for survivors of these practices, in line with activities focused on the elimination of female genital mutilation;
- Ensuring full and complete access to medical records for intersex people, pursuant of the right to truth.

### **Inclusive Education**

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LGBTI children and children of rainbow families commonly experience stigma due to their SOGIGESC or that of their parents, making them targets for discrimination and bullying, and may lead to their being ostracised and isolated from their peers. Ensuring safe and inclusive school environments for LGBTI children and youth serves to directly protect the wellbeing and best interests of children and youth in schools as well as at home, and can enable

schools to be safe havens for LGBTI children and youth, particularly in situations where parents are the aggressors. Furthermore, SOGIGESC inclusivity in schools also has the multiplier effect of normalising LGBTI people in society by countering misconceptions about SOGIGESC issues and thus anti-LGBTI attitudes.

The EC and more specifically DG EAC (Education, Youth, Sport and Culture) should ensure that all initiatives and policy proposals are fully inclusive of LGBTI students and, where appropriate, tackle the specific discrimination experienced. The European Commission can play a role in evidencing the effectiveness of school-based interventions, for example by supporting pilot projects on SOGIGESC inclusion in schools and raise the awareness of member states on the positive impact of educating children about gender equality, civic and human rights and non-discrimination, education for diversity, and respect on the one hand and sexuality and relationship education on the other.

The list of initiatives under this heading should include initiatives, such as

### **33. Combat gender stereotypes in the area of education through targeted actions**

The EC can develop knowledge and recommendations for member states on how to tackle gender stereotypes in education and set an example in the EC's work on education. The EC Gender Equality Strategy names combatting gender stereotypes as one priority and the LGBTI strategy should clearly link to this initiative and ensure the planned actions are clearly inclusive of SOGIGESC and the discrimination LGBTI people face based on gender stereotypes.

### **34. Develop guidance for member states on accommodating trans, intersex and gender-variant children in schools**

The EC can work on establishing and providing guidance on how member states could better accommodate the needs of trans, intersex and gender-variant children in schools and enable trans people to change name on academic certificates.

### **35. Develop minimum standards on safety in schools**

The EC should propose and seek to establish minimum standards related to safety at school and support member states in developing their own policies on safe school environments for all. In that context, the EC should address the phenomenon of school bullying by enabling practical exchange of good practices and the development of common principles.

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## **LGBTI Human Rights in Enlargement, Neighbourhood Policies and Third Countries**

### **36. Remain a strong voice for LGBTI rights globally**

The European External Action Service (EEAS) should continue to promote and advance the EU Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons in all areas of the EU in its work with third countries. According to the principle of “Leaving no one behind” enshrined in the Sustainable Development Goals, the EC should ensure that LGBTI rights are mainstreamed into all its work with third countries, and EU delegations are provided with the information and support to fully ensure their work is LGBTI-inclusive.

In this context, the EU should continue and enhance its work on the decriminalisation of same-sex relations, combatting violence, supporting human rights defenders and promoting equality, while also working to ensure the strengthening of rule of law to ensure that advances made in legislation are respected and properly implemented, so that it is reflected in the lived experiences of LGBTI people.

### **37. Support civil society organisations and human rights defenders, including through instruments such as EIDHR**

DG DEVCO (International Cooperation and Development) should facilitate the **provision of funding** for civil society organisations, including movement-led CSOs working for the human rights of LGBTI people. This funding should be accessible also to small, grassroots and informal groups working for human rights, especially considering that in certain contexts it can be impossible for such groups to obtain formal registration; it is important to fund LGBTI organisations in order to develop a robust local civil society that is able to advocate for, and defend, its own human rights that can work in complementarity with political work in order to ensure sustainable change. It is important that funding goes directly to the LGBTI movement, so that knowledge and skills remain with the movement after the project end (which is often not the case when projects are led by mainstream organisations).

### **38. Include non-EU countries in data collection regarding LGBTI people where possible**

More data is needed on non-EU countries, especially Enlargement and Neighbourhood countries, in order to facilitate data-driven policymaking, trade and diplomacy. Some efforts towards this have already been undertaken by FRA in their 2019 LGBTI Survey II, which also covered North Macedonia and Serbia, and by the World Bank in their 2018 survey on the experiences of LGBTI people in South-eastern Europe. The EC should take action to more systemically extend the Eurobarometer and the FRA LGBTI survey to non-EU states, as well as future undertaking of research such as the 2019 EU Trans Study.

### **39. Ensure the EU enlargement process remain a driver for equality**

Over the past two decades, the EU enlargement process – through the proactive and sustained engagement of the Commission – has led to significant advances in terms of laws



and policies explicitly protecting the human rights of LGBTI people and combatting discrimination and hate in accession countries.

Over the next five years, the Commission should maintain its current commitment to integrate LGBTI human rights through the accession process, with a particular focus on providing support to governments towards the effective implementation of the EU acquis and national legislation in the area of equality and protection against violence, and on ensuring an enabling environment for the work of CSOs (including through funding). The Commission should pay particular attention to the following areas:

- The adoption and implementation of laws and policies to prevent and protect against hate crime and hate speech which explicitly include LGBTI grounds;
- The explicit inclusion of the categories of sexual orientation, gender identity and sex characteristics as grounds of discrimination in national anti-discrimination legislation;
- The legal recognition of same-sex partnership;
- The adoption of legal gender recognition legislation;
- Measures to guarantee access to trans-specific healthcare;
- Improving access to funding for local CSOs

\*\*\*There were concerns that the recent decision not to open accession negotiations with North Macedonia and Albania could have not only negative impact on progress in these two countries, but could also create backlash in the Western Balkans region. In addition to specific actions to support further legal advances protecting the human rights of LGBTI people, it is important that the Commission also works towards preserving the relevance of the accession process, including by maintaining a very high level of engagement with both government authorities and civil society in the current accession countries. The leverage provided by the enlargement process to introduce strong legislation and procedures to protect the human rights of LGBTI people is at stake.

#### **40. Make full use of EU mechanisms in the Eastern Partnership policy to protect LGBTI rights**

Through the Eastern Partnership (EaP) policy, the EU should attach human rights principles, including with respect to the human rights of LGBTI people, as non-negotiable components of all agreements reached with Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine in all areas to which the EaP pertains. These should further include efforts to ensure the legal protection from anti-LGBTI hate crime and hate speech, and the right to freedom of assembly in these states.

The existence of the EaP should encourage the EU institutions and delegations to publicly respond to attacks on LGBTI people by these countries, for example with regard to the

detention of LGBTI people by Azerbaijan, in a similar manner to the response of the EU to the anti-LGBTI persecutions in Chechnya.

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