



Observatory for Sociopolitical Developments in Europe

Perspectives on the new LGBTI strategy announced by the European Commission

Editorial

Dear readers,

The European Union is equipped with a good legal basis for non-discrimination and equality for LGBTI persons. However, the measures taken so far at EU level to treat LGBTI people equally and to strengthen their rights have been rather sporadic: There is no overarching coherent strategy. Calls from individual EU member states and civil society organisations for the adoption of such a strategy have become more urgent, particularly with regards to the expiration in 2019 of the schedule of the list of actions to promote equality for LGBTI persons adopted under the Juncker Commission.

When EU Commission President Ursula von der Leyen and her College of Commissioners took office in December 2019, a Commissioner for Equality was appointed for the first time. This new Commissioner, Helena Dalli, announced in a speech on the future of LGBTI rights in February 2020 that she would publish an LGBTI equality strategy in the fourth quarter of 2020, building on the existing list of actions. Due to the current COVID-19-pandemic, the European Commission has announced that it will review its work programme – the consequences for the date of publication of the LGBTI strategy were not clear at the date of publication of this newsletter. The current health crisis will certainly exacerbate the existing inequalities in society. Therefore, the calls for a new LGBTI strategy have become even more, not less, relevant and urgent.

In this newsletter, we would like to start by providing you with an overview of the existing legal framework and current political processes at EU level as well as the situation of LGBTI persons in the EU member states.

Subsequently, two contributions will outline requirements for the announced strategy from a legal and civil society point of view. The focus is on the EU-wide recognition of rainbow families as well as the increasing attacks on and incitement to hatred against LGBTI persons. The ensuing article provides an excursus on another organisation, the Council of Europe, which adopted the world's first instrument to combat discrimination on the basis of sexual orientation or gender identity ten years ago.

Finally, we present an overview of existing LGBTI action plans at national level.

The team of the Observatory wishes you an exciting read.

Content

Editorial	1
The status quo of LGBTI policy in the European Union	2
Requirements for a new LGBTI strategy from a legal and civil society point of view	4
Excursus Council of Europe: Ten years of the Recommendation to combat discrimination on grounds of sexual orientation and gender identity	7
Overview of national LGBTI action plans in Europe	8
Publishing Information	9

The status quo of LGBTI policy in the European Union

Marie Wittenius, research officer at the Observatory for Sociopolitical Developments in Europe

The acronym LGBTI stands for lesbian, gay, bisexual, transgender and intersex and is thus an umbrella term for a very heterogeneous group of people who constitute a minority in society because of their sexual orientation or gender identity, and who are often subject to various forms of discrimination.

Protection from discrimination and the rights of LGBTI persons

The ban on discrimination based on sexual orientation has a broad legal basis at European Union level: Articles 2 and 3 of the Treaty on European Union (TEU) and Article 21 of the Charter of Fundamental Rights of the European Union emphasise equality and non-discrimination as fundamental values of the EU; Article 10 of the Treaty on the Functioning of the European Union (TFEU) states that in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sexual orientation. On the basis of Article 19 TFEU, the Union may also actively take measures to that end. Thus, on the one hand, the primary law of the European Union obliges the EU institutions to respect the principle of non-discrimination in all their policies. On the other hand, it also empowers the EU to take specific action for this purpose in the framework of the special legislative procedure.¹

Consequently, the European Union has adopted four comprehensive anti-discrimination directives and multiple strategy papers², for instance, to safeguard protection against discrimination irrespective of racial or ethnic origin as well as at the workplace. Non-discrimination and equality between certain groups, such as women and men, people with disabilities or ethnic minorities, such as the Roma, is also sought. An equivalent legal framework specifically for LGBTI persons does not exist yet.

However, as a cross-cutting issue, the rights of LGBTI people are not only relevant in the area of equality and anti-discrimination policies, but also in other policy areas. One example is the right of free movement and residence, which, among other things, allows EU citizens to reside in all EU member states together with family members who are not EU citizens. A landmark decision³ by the Court of Justice of the European Union was the so-called Coman case: In June 2018, it was established that the provisions on free movement and residence also include same-sex partnerships, even if these are not legally recognised in the specific member state. This court decision strengthens the position of LGBTI rights enormously and raises the question of whether EU law can be applied in a similar way in other areas, for example in terms of the recognition of rainbow families.

Currently, the only document at European Union level that is most likely to provide a strategic framework for the protection of LGBTI persons is the European Commission's list of actions to promote equality for LGBTI persons⁴. It was adopted in December 2015, partially in reaction to the so-called Lunacek report of the European Parliament⁵. This resolution had called on the European Commission and EU member states to develop a "comprehensive multiannual policy to protect the fundamental rights of LGBTI people"; i.e. a roadmap, a strategy, or an action plan. The list of actions

© Wondervendy_shutterstock.com



Yogyakarta Principles

The **Yogyakarta Principles** were drawn up in 2006 by international human rights experts and for the first time related the existing system of human rights protection specifically to its application with regard to sexual orientation and gender identity. They reflect the current state of interpretation of international law.

The Yogyakarta Principles define **sexual orientation** as "each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender."

The Yogyakarta Principles define **gender identity** as "each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other **expressions of gender**, including dress, speech and mannerisms."

Anti-discrimination directives

- **Directive 2000/43/EC** implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- **Directive 2000/78/EC** establishing a general framework for equal treatment in employment and occupation
- **Directive 2004/113/EC** implementing the principle of equal treatment between men and women in the access to and supply of goods and services
- **Directive 2006/54/EC** on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

A **fifth anti-discrimination directive**, which among other things is intended to create a uniform level of protection for people with disabilities, has been blocked in the Council of the European Union since 2008. According to its political guidelines, the Commission of Ursula von der Leyen will propose new legislative measures in the field of anti-discrimination.

- 1 Further information: *Briefing on the rights of LGBTI persons on EU level by the European Parliament Research Service (2019)*; see [here](#).
- 2 *Gender Equality Strategy 2020–2025; European Disability Strategy 2010–2020; EU Framework for National Roma Integration Strategies up to 2020*.
- 3 *Ruling by the Court of Justice of the European Union: Case C-673/16*; see [here](#).
- 4 *European Commission (2015): List of actions to advance LGBTI equality*; see [here](#).
- 5 *European Parliament resolution 2013/2183(INI) from 4 February 2014*; see [here](#).

adopted by the European Commission the following year contains concrete measures for LGBTI people and their families as well as a timetable for implementation based on six objectives. The aim of this list of actions is to support progress in member states and EU candidate countries, to promote social acceptance of LGBTI persons and to enforce the application of EU law. The European Commission has reported annually on the progress made in implementing the list since the Council of the European Union called on the Commission to do so in its conclusions⁶ of June 2016.

Existing data on the status of LGBTI rights and on discrimination against LGBTI people in EU member states

One aim of the list of actions to promote equality for LGBTI persons is to improve the level of knowledge on LGBTI issues in all core areas of the European Union in order to integrate this into policymaking. The European Union Agency for Fundamental Rights (FRA) is considered to be an actor to achieve this goal. The FRA conducted its first EU-wide LGBT survey as early as 2012. In 2019, a second more extensive LGBTI survey was conducted, the results of which have been published recently. Assessing the results of both surveys, the FRA has stated that the data shows only little, if any, progress for the LGBTI community over the last seven years.⁷

The Eurobarometer, published by the European Union, also conducted a survey on discrimination in the EU member states in 2019.⁸ There, 72 percent of the respondents stated that there was ‘nothing wrong in’ a sexual relationship between two people of the same sex; 76 percent of the respondents agreed that gay, lesbian and bisexual people should have the same rights as heterosexual persons. However, only 55 percent of respondents said that they would feel comfortable with a same-sex love relationship of their children. The survey also shows a considerable divergence in responses among member states: While approval rates for equal rights for LGBT and heterosexual persons reach almost 100 percent in Sweden (98%) and the Netherlands (97%), they are merely at around a third in Slovakia (31%) and Romania (38%), for instance.

As noted by ILGA-Europe, an umbrella organisation of European and Central Asian LGBTI organisations, the findings suggest that a strong legal and policy basis for LGBTI rights goes hand in hand with higher social acceptance.⁹ However, in contrast to Eurobarometer data, surveys on experienced discrimination against LGBTI people paint a worrying picture: In particular, the 2019 report of the Rainbow Index shows a sharp increase in anti-LGBTI rhetoric by public figures in Europe. This has been accompanied by an enormous increase in online hate campaigns; but physical attacks on LGBTI individuals have also surged. This growing anti-LGBTI sentiment and related crimes can be observed across all European countries. In the UK, this can be directly linked to populist narratives around Brexit. In its resolution of December 2019, the European Parliament also referred, inter alia, to the annual reports of ILGA-Europe and expressed deep concern about the increasing number of attacks on the LGBTI community.¹⁰

Overall, there is a need to collect more data on the specific needs and life situations of LGBTI persons at EU level. Many surveys and studies systematically survey a range of discrimination grounds separately. In doing so, the intersectional aspect of discrimination – i.e. overlapping and mutually reinforcing aspects of discrimination, such as racism, sexism, classism, homophobia and transphobia – to which LGBTI persons are exposed, is lost, though. A holistic view of the diversity of grounds and forms of discrimination is explicitly included in the new EU Equality Strategy 2020–2025, for instance.

Six objectives in the list of actions

- 1) Improving rights and ensuring legal protection,
- 2) Strong monitoring and enforcement of existing rights,
- 3) Reaching citizens, fostering diversity and non-discrimination,
- 4) Supporting key actors who promote and advance equal rights,
- 5) Data collection and research activities and
- 6) External action: LGBTI issues in Enlargement, Neighbourhood and Third countries.

Rainbow Index

The Rainbow Index is an annual benchmarking tool, which ranks 54 European and Central Asian countries concerning their LGBTI equality laws and policies. The data analysis and yearly reports on the 65 criteria of the Index are comprised by ILGA-Europe with the help of national activists.

The **Rainbow Index** examines 65 criteria in six categories: 1) equality and non-discrimination; 2) family; 3) hate crime and hate speech; 4) legal gender recognition and bodily integrity; 5) civil society space; and 6) asylum.

The interactive Rainbow Europe Map as well as the yearly reports can be found [here](#).

EU Gender Equality Strategy

With its new **Gender Equality Strategy 2020–2025**, the European Commission commits itself to integrate an **intersectional perspective** and gender mainstreaming into all EU policies and major initiatives. A Task Force for Gender Equality Policy is to be set up, comprising representatives of all Commission services and the European External Action Service. It will monitor the mainstreaming of equality at operational and technical level with regard to discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

- 6 Council conclusions from 16 June 2016; see [here](#).
- 7 European Union Agency for Fundamental Rights (2013): EU LGBT survey – Results at a glance; see [here](#).
European Union Agency for Fundamental Rights (2020): A long way to go for LGBTI equality; see [here](#).
- 8 European Union (2019): Special Eurobarometer 493 – Summary; see [here](#).
- 9 ILGA-Europe press release from 26 September 2019; see [here](#).
- 10 European Parliament resolution 2019/2933(RSP) from 18 December 2019; see [here](#)

Calls for an LGBTI strategy by the European Commission

The implementation period of the list of actions to promote equality for LGBTI persons ended in 2019. This is one of the reasons why the issue has been addressed more strongly again at EU level, particularly in 2019. Since the implementation of the list of actions coincided with the end of the Juncker Commission's term in office, there was also great uncertainty as to when and in what form the rights of LGBTI persons would continue to be addressed by the European Commission.

During the EU Council presidency of Finland in the second half of 2019, under the main topic of fundamental and human rights, a high-level conference with over 400 participants was held on the issue of advancing equality for LGBTI persons in the EU after 2020¹¹. The conference resulted in a clear call for the drafting of an LGBTI strategy by the European Commission. The European Parliament had also adopted a resolution¹² in early 2019 calling on the Commission to adopt a new strategic document to promote equality for LGBTI people. In December 2018, 19 EU member states had already signed a joint non-paper on the future of the list of actions to promote equality for LGBTI persons¹³ including the same demand.



© oksanka007_shutterstock.com

When EU Commission President Ursula von der Leyen and her College of Commissioners took office in December 2019, an independent department for equality was established for the first time. Helena Dalli was appointed as Commissioner for Equality. Her appointment raises hope, in particular for the LGBTI community, as

Dalli is considered a champion of LGBTI rights in Malta, for instance during her term as Minister for Civil Rights in the Maltese government. In February 2020, she announced in a speech on the future of LGBTI rights 2020–2024 that she would publish an LGBTI equality strategy in the fourth quarter of 2020, building on the existing list of actions.¹⁴ Due to the current COVID-19 pandemic, the European Commission has announced that it will review its work programme – the consequences for the date of publication of the LGBTI strategy were not clear at the date of publication of this newsletter. The current health crisis will certainly exacerbate the existing inequalities in society, thus increasing the need to safeguard and enshrine the rights of vulnerable groups at EU level. The calls for a new LGBTI strategy have therefore become even more, not less, relevant and urgent.¹⁵

Requirements for a new LGBTI strategy

What should the new EU LGBTI Strategy cover from a legal point of view?

Prof. Dr Alina Tryfonidou is Professor of Law at the University of Reading. Her main research interests are EU free movement law, Union citizenship, and protection of LGBT rights. She is also a supporting member of the Network of European LGBTIQ Families Associations, NELFA. In the following article, she will take a closer look at the legal requirements for a new LGBTI strategy with a particular focus on the rights of rainbow families.*

The proposed EU LGBTI strategy will need to revolve around the main axes on which the Commission's List of Actions¹⁶ was based. The latter document did not lack breadth

Joint Non-Paper

The non-paper, an unofficial document without binding formal or legal status, has been signed by Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom.

¹¹ Conference report; see [here](#).

¹² European Parliament resolution 2019/2573(RSP) from 14 February 2019; see [here](#).

¹³ See [here](#).

¹⁴ See [here](#).

¹⁵ See also: ILGA-Europe Open Letter to Commission President Ursula von der Leyen; see [here](#).

¹⁶ See [here](#).

of coverage: it was comprehensive, with the proposed actions listed covering all policy areas relevant for LGBTI persons: non-discrimination, education, employment, health, free movement, asylum, hate speech/hate crime, enlargement and foreign policy. Nonetheless, it did lack in detail as for each policy area, only a limited number of measures were proposed, and those measures were described in an abstract manner. Accordingly, although the proposed strategy should cover the same areas as those enumerated in the Commission's List of Actions, the list of measures suggested should be longer, more precise, and more ambitious.

One area that the new LGBTI strategy should treat as a matter of priority is the safeguarding of the free movement rights of rainbow families. The European Parliament's LGBTI Intergroup, has recently written a letter¹⁷ to the new Commissioner for Equality, Helena Dalli, underlining the need for the Commission to take action in this field, after the matter was discussed at a meeting¹⁸ between the two earlier this year.

At the moment, rainbow families crossing borders in the EU are experiencing difficulties in having their family ties legally recognised, even when such ties have already been legally established elsewhere. This is because it is not clear if, for the purposes of EU law, rainbow families are considered equal to families established by opposite-sex couples. Accordingly, EU member states that do not make provision for rainbow families within their own legal system, believe that they are free to refuse to recognise the (already legally established) familial links between the members of such families when they move to their territory in exercise of their EU free movement rights. What this means, in practice, is that in some cases, an LGB parent who is a third-country national may not be allowed to join their child – who is an EU citizen – in the host state, as the latter refuses to legally recognise the already legally established parent-child relationship, simply because the parents of the child are of the same sex. Or, the child of same-sex parents may be deprived of entitlements which they would enjoy (e.g. acquiring the nationality of one of the parents) simply because a birth certificate listing two mothers is not recognised in the member state to which the family moves.¹⁹



As argued elsewhere²⁰, although the EU does not have the competence to require EU member states to enable rainbow families to *legally establish* familial links among their members if this is not provided under national law, it can, nonetheless, require them to recognise such links if they have *already* been legally established *elsewhere*. This is because failure to recognise such links can lead to a breach of EU free movement law (as it can create an unjustified obstacle to free movement between EU member states); and a violation of fundamental human rights protected under EU law, namely, the right to private and family life and the right not to be discriminated against on the grounds of sexual orientation, which are both laid down in the EU Charter of Fundamental Rights.

There is, currently, reason for optimism, as the newly appointed Commissioner Dalli – who is a devoted advocate of LGBTI rights – has announced²¹ that among her priorities is the adoption of an EU LGBTI strategy, in the fourth quarter of 2020. Accordingly, the Commission will soon adopt a comprehensive LGBTI strategy, which, it is hoped, will fill the gaps in the protection of LGBTI rights that have already been identified – including the protection of the rights of rainbow families – whilst it will mainstream LGBTI rights across EU policies. This will be a significant step, not merely practically but also sym-

Network of European LGBTIQ* Families Associations (NELFA)

The **Network of European LGBTIQ* Families Associations**, NELFA, is an umbrella organisation of 41 associations of LGBT parents and their children across 33 European countries. The organisation fights for legal regulation and equal opportunity policies as well as free movement for LGBTIQ* families. NELFA also assists national organisations with capacity building and the exchange of information.

LGBTI Intergroup Letter

Key demands of the European Parliament's LGBTI Intergroup letter:

- 1) Extension of recognition of same-sex marriages for all legal purposes (i.e. not just for family reunification purposes, as per Coman),
- 2) Recognition of familial ties of Union citizens that have already been legally established in another country by the host EU member state when Union citizens move to its territory,
- 3) Validity of certificates issued in one EU member state for all purposes of national law in all other member states,
- 4) Legal ties between children and their same-sex parents – as these have already been legally established in another country – are maintained when the family moves to the host EU member state.

Parental rights of same-sex couples

To date, there has been no comprehensive study regarding national legislations on the parental rights of same-sex couples in EU member states. However, information provided by **ILGA-Europe** demonstrates that, currently, there is a legal patchwork regarding the parental status of same-sex couples in EU member states, with only a minority of EU member states granting full parental rights to same-sex couples.

Legal provisions on EU level

Legal provisions concerning the **free movement of persons**: Articles 21, 45, 49 and 56 of the Treaty on the Functioning of the European Union (TFEU)

Legal provisions concerning the right to **private and family life** as well as **non-discrimination on grounds of sexual orientation**: Article 7 and 21 of the Charter of Fundamental Rights of the European Union

¹⁷ See [here](#).

¹⁸ NELFA press release from 7 February 2020; see [here](#).

¹⁹ There are many such examples: NELFA exemplary cases [here](#).

²⁰ Tryfonidou (2020): *The cross-border legal recognition of rainbow families under EU law*; see [here](#).

²¹ Speech by Helena Dalli on 4 February 2020; see [here](#).

bolically, as it will signal that the EU is taking LGBTI rights seriously and wishes to work together with the member states in areas in which it has no competence in order to eradicate discrimination against LGBTI persons.

The civil society perspective: Representation of interests with regard to LGBTI rights in Europe

Katrin Hugendubel, Advocacy Director at ILGA-Europe, takes a look at the announced LGBTI strategy from a civil society standpoint. ILGA-Europe has been collecting data on the situation of LGBTI people and making fact-based assessments of ongoing developments and trends available to the public since 2009.

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 Europe Map. 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-LGBT hate rhetoric in countries across Europe is putting European democracy at risk and eroding core principles of what the European Union stands for – human rights, equality, freedom and human dignity.

Building on the new mandate of the Commissioner on Equality, Helena Dalli, and the clear commitments for Fundamental Rights and Equality in the European Commission President's "Agenda for Europe"²², the Commission needs to step up and reaffirm its role as a leader on LGBTI rights over the next five years. The EU has yet to fully tap into its competences and all instruments at hand – from existing legislation and policy frameworks, the right of legislative initiative to financial instruments and technical support to member states and relevant stakeholders – to make a difference for the lives of people in Europe and beyond.

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 Commission²³ to develop an ambitious EU LGBTI strategy. The European Parliament has reaffirmed its call for an EU strategy several times, including in its February 2019 resolution.²⁴

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 to the protection and advancement of equality and human rights for LGBTI people by the European Commission. Now is the time to do more, not less. The current coronavirus 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 one's 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, addressing the overrepresentation of LGBTI people in unemployment and highly precarious employment.



ILGA-Europe is an international non-governmental umbrella organisation comprised of over 600 LGBTI organisations from 54 European and Central Asian countries. The organisation fights for human rights and equality for LGBTI people at the international level, for instance in the European Union, Council of Europe and United Nations. ILGA-Europe is committed to strengthening the LGBTI movement through capacity building and support with strategic litigation in European courts.

ILGA-Europe also monitors – with the cooperation of national activists – the situation of LGBTI people in Europe and Central Asia. You can access the interactive Rainbow Europe Map as well as the annual reports [here](#).

²² See [here](#).

²³ See [here](#).

²⁴ See [here](#).

Excursus Council of Europe: Ten years of the Recommendation to combat discrimination on grounds of sexual orientation and gender identity

This contribution by the **Sexual Orientation and Gender Identity Unit** will provide an outside-EU perspective on how other organisations have been addressing discrimination on grounds of sexual orientation and identity. 2020 marks ten years since the adoption of the Recommendation of the Committee of Ministers to member states to combat discrimination on grounds of sexual orientation and gender identity (CM/REC(2010)5). The Recommendation is highly respected and has been referred to as the gold standard of LGBT rights in Europe by numerous European civil society organisations²⁵.

In a world of catchy titles and snappy soundbites, CM/REC(2010)5²⁶ by name alone could hardly claim to be attention grabbing. It does not roll off the tongue or stick in the mind with great ease. In spite of this, CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity should have all of our attention. Ten years after it was adopted, it is still ground-breaking in nature. It is a milestone in the struggle for LGBT rights globally and crucially, a foundation for work on sexual orientation and gender identity issues across Europe. It was the very first international instrument dealing specifically with the question of discrimination based on sexual orientation and gender identity, and therefore an enormous achievement to be proud of not only as the Council of Europe, but also as activists and allies who worked tirelessly to have the Recommendation adopted and applied.



Adopted on 31 March 2010, the Recommendation established the important guideline that discrimination and social exclusion on the grounds of sexual orientation or gender identity must be overcome by measures aimed both at those who experience such discrimination or exclusion, and also the population at large. The dual aspects are of equal importance, and equality cannot be achieved without work

along both strands. An impressive number of member states have made great strides in applying this Recommendation over the past decade. During this time, substantial progress regarding the legal and social recognition of LGBT persons has been made, despite challenging political and social contexts. Political leadership and greater visibility of the LGBT movement combined with support and guidance from the Council of Europe (the Court, ECRI, PACE, Congress) were among the key driving forces behind this progress.

The foundation of the Recommendation is being built upon over the years, and recent developments have expanded the scope of work to include intersex persons. It has been a catalyst for reflection and a drive towards equality, with 34 States having reviewed legislative and other measures for direct or indirect discrimination on the ground of sexual orientation and 33 States reviewing for discrimination on the ground of gender identity since its adoption. Closer intergovernmental cooperation and regular focal points network exchange of LGBTI-equality policy practices between member states have also contributed to these achievements.



The **Sexual Orientation and Gender Identity Unit (SOGI Unit)** in the Council of Europe has been mandated per the Recommendation CM/Rec (2010)5 of the Committee of Ministers. The Unit provides technical support and expertise to member states and assists in improving the legal and institutional frameworks. Furthermore, the Unit helps member states with capacity building as well as sharing good practices and raising awareness. In 2013 and 2018, the SOGI Unit also undertook reviews of the progress of the implementation of the 2010 Committee of Ministers Recommendation by member states.

Recommendation CM/Rec(2010)5

The **Recommendation CM/Rec(2010)5** of the Committee of Ministers to member states to combat discrimination on grounds of sexual orientation and gender identity was adopted on 31 March 2010 unanimously as the first agreement between governments addressing discrimination against LGBT people in Europe. Since its adoption, it has served as a frame of reference for states and civil society alike.

The **recommendations for member states** include the following areas:

- 1) Right to life, security and protection from violence,
- 2) Freedom of association,
- 3) Freedom of expression and peaceful assembly,
- 4) Right to respect for private and family life,
- 5) Employment,
- 6) Education,
- 7) Health,
- 8) Housing,
- 9) Sports,
- 10) Right to seek asylum,
- 11) National human rights structures and
- 12) Discrimination on multiple grounds.

²⁵ Karsay, Dodo (2018): *Protecting LGBTIQI rights in Europe. Submission to the second review of the Council of Europe Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5)*. ILGA-Europe, Transgender Europe, OII Europe; see [here](#).

²⁶ Recommendation CM/Rec(2010)5 of the Council of Europe Committee of Ministers from 31 March 2010; see [here](#).

One of the most outstanding areas of progress has been in relation to private and family life. At the time of the most recent review of the Recommendation in 2018, 27 member states had adopted laws on either same-sex partnerships or same-sex marriages, 17 had extended access to joint adoption and 18 to second-parent adoption. Assisted reproductive treatment is provided to same-sex couples in 13 member states and to single persons in 26. Of course, it certainly cannot be claimed that the progress has been uniform across the member states, and some steps forward have been quickly followed by two steps back, depending on shifting public opinion and political change. Indeed, all stages of progress are being lived or re-lived somewhere. However, the Recommendation provides us with the direction we need to keep us moving together towards a Europe which delivers human rights and equality for all of its citizens, regardless of sexual orientation, gender identity and sex characteristics.

By the time the dust settles on the COVID-19 crisis, we are likely to have identified dozens of ways in which the LGBT community has come together to address the distinct challenges that have been encountered, often at an intersection with other minorities. Whether we are dealing with equal access to healthcare and employment, or the compounded effects of social distancing, the Recommendation is a solid foundation upon which to support our community and make important strides forward in the decades to come.

Overview of national LGBTI action plans in Europe

Marie Wittenius, research officer at the Observatory for Sociopolitical Developments in Europe

The aforementioned Recommendation of the Committee of Ministers of the Council of Europe on measures to combat discrimination based on sexual orientation or gender identity is by now considered the “gold standard” of rights for LGBT persons²⁷ in Europe. Both states and civil society organisations use the obligations under European and international law as a frame of reference for promoting LGBTI rights in Europe.²⁸ The Recommendation itself is not legally binding. Nevertheless, it has clearly displayed great political weight. This shows the importance and potential of a comprehensive strategic document at European level.

National action plans are a key instrument for implementing international strategies in the member states. The adoption of national action plans has proven to be an effective way of promoting equality for LGBTI people.²⁹ By implementing them, member states can break down the objectives at strategic level for different policy areas and into concrete measures. In addition, the progress of implementation can be documented, and the data obtained can be used to improve measures and adapt them to the specific needs of LGBTI people in the respective policy areas.

There is a wide range of guidelines for the preparation of effective national action plans as well as comparative analyses of existing national actions plans, for example in the field of development policy or gender equality.³⁰ In 2016, the Council of Europe also published a checklist for drawing up national action plans as an effective means of promoting and protecting LGBTI rights.³¹

ILGA-Europe also gathers information on national action plans as part of the Rainbow Index monitoring process. According to the criteria of the Rainbow Index, an action plan must present projects that are sufficiently concrete over a defined period of time and allocate clear responsibilities as well as financial and personnel resources. Furthermore, the action plans must include a monitoring mechanism. According to the 2019 annual report³², eight of the 27 EU member states currently have such national action plans covering the issues of sexual orientation and gender identity in place.³³ In the Rainbow Index ranking, all of these eight countries are in the top ten among a total of 49 states.³⁴ This means that countries that have adopted national action plans covering sexual orientation

Checklist: National Action Plans

Summary of central aspects when drawing up national action plans:

- 1) **Content:** All policy areas affecting the life situation of LGBTI persons and their families must be taken into account.
- 2) **Implementation:** Projects and initiatives must be specifically and concretely formulated and must be realisable within the given time frame.
- 3) **Authority:** A designated state authority with sufficient financial and human resources specifically for the implementation of the measures has to be in place. All relevant public bodies from other policy areas and levels are to be involved in the implementation.
- 4) **Monitoring and evaluation:** The implementation is documented and regularly checked with regard to the progress made.
- 5) **Cooperation:** Civil society organisations and the LGBTI community are involved throughout the process.

²⁷ *Intersex people were originally not mentioned in the Recommendation. However, the deduced principles of European and international law are generally used by civil society organisations to promote LGBTI rights.*

²⁸ *See footnote 25.*

²⁹ *ILGA-Europe, National action plans; see [here](#).*

³⁰ *Examples:*

EIGE: [Launching gender equality action plans](#)

Interactive overview by the Danish Institute for Human Rights: [What National Action Plans say on The 2030 Agenda for Sustainable Development](#).

³¹ *See [here](#).*

³² *Data downloadable as Excel sheet; see [here](#).*

³³ *In order of their ranking in the Rainbow Index: 1. Malta, 2. Belgium, 3. Luxembourg, 4. Finland, 5. Denmark, 8. Portugal, 9. France, 10. Netherlands*

³⁴ *The other two states among the top ten are the non-EU countries Norway and the United Kingdom, ranking sixth and seventh, respectively.*

© Anna Kutukova_shutterstock.com



and gender identity have also scored high on the remaining 63 criteria of the index.

Malta has been ranked first in the Rainbow Index since 2015. In 2018, the national LGBTIQ equality strategy, which runs until 2022 and includes an action plan, was adopted. The priorities are almost identical to the fields of action identified in the 2010 Recommendation of the Committee

of Ministers of the Council of Europe and cover a very wide range of policy areas, including anti-discrimination, education, health, family policy, asylum policy, civil society involvement and foreign policy. Belgium’s national action plan against discrimination and violence against LGBT persons and Luxembourg’s national action plan for the promotion of LGBTI rights, both adopted in 2018, also proceed by policy area and cover a range of policy areas, including labour market policy. Discrimination as an intersectional problem is usually not addressed in the action plans. Denmark has a separate priority for cross-cutting issues in its national action plan to promote security, well-being and equal opportunities for LGBTI people 2018–2021, under which, for example, an inter-ministerial working group on LGBTI policies has been established. Germany has not yet adopted an LGBTI action plan at federal level that meets the criteria of the Rainbow Index.³⁵

³⁵ Action plans with LGBTI relevance exist in all German federal states except Bavaria, though with varying degrees of detail and topicality.

Project design

The Observatory for Sociopolitical Developments in Europe is a project run by the Institute for Social Work and Social Education (ISS). ISS maintains two project offices, one in Frankfurt on the Main and one in Berlin. The Observatory is funded by the German Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ).

Publishing Information

Publisher:
 Institute for Social Work and Social Education
 Observatory for Sociopolitical Developments in Europe
 Benjamin Landes (Director)
 Office Address: Zeilweg 42
 D-60439 Frankfurt am Main
 Germany
 +49 (0)69 - 95 78 9-0
 Berlin location: Lahnstraße 19, 12055 Berlin
 +49 (0)30 - 616 717 9-0

Responsible according to the German press law:
 Benjamin Landes
 E-mail: beobachtungsstelle@iss-ffm.de

This is a publication of the Observatory for Sociopolitical Developments in Europe.
www.sociopolitical-observatory.eu

The German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 11018 Berlin, provides funding for the project “Observatory for Sociopolitical Developments in Europe”. This publication does not necessarily reflect the opinion of the Government of the Federal Republic of Germany. Responsibility shall remain with the publisher and/or the respective author.

The agency responsible for the Observatory is:
 Project Teams Frankfurt and Berlin
 Institute for Social Work and Social Education

Design: www.avitamin.de
Translation: Tim Steins
Date of publication: May 2020

This publication may be downloaded at:
www.sociopolitical-observatory.eu

The content and the structure of the Observatory’s Newsletter are copyrighted. Feel free to use our articles, but please inform us in advance and state the author’s name and the Observatory as the source of the material.

Picture credits:
 © Wondervendy_shutterstock.com (1044074431)
 © oksanka007_shutterstock.com (660161146)
 © Oldesign_shutterstock.com (1392012488)
 © ILGA-Europe
 © SOGI-Unit
 © Apple Pho_shutterstock.com (1566948301)
 © Anna Kutukova_shutterstock.com (435185494)