

# Advancing LGBTI Equality in the EU: from 2020 and beyond

24 September 2019 – Brussels

## **Intersectionality and multiple discrimination**

Intersectionality, for the purpose of this workshop, reflects the distinct experiences of oppression and disadvantage associated with multi-layered identities and constitutes a critical framework to improve the ability of legal and policy measures to address these experiences, including intersectional discrimination. Intersectional discrimination refers to the synergistic discrimination individuals at the crossroads of multiple identities experience on the basis of the interaction of several inseparable grounds; none of these grounds may be sufficiently substantiated in itself, because the discrimination occurs specifically due to the combination of grounds. It is to be distinguished from multiple discrimination, which means discrimination on distinct but separable grounds and can more easily be addressed by existing legal frameworks.

Identities, including those of LGBTI persons, intersect in complex and multifaceted ways. In reality, one's sexual orientation, gender, gender identity, gender expression or sex characteristics are not isolated identity characteristics, but are experienced at the intersection with other grounds, such as age, disability, religion or belief, race or ethnicity. Laws and policies, including those that seek to combat discrimination and inequality, largely fail to capture the intersectional experiences that are the lived realities of LGBTI people who find themselves at the intersections of multiple identities, and who are, consequently, particularly vulnerable to discrimination, harassment, hate speech and violence. This exposes LGBTI persons who constitute 'minorities within minorities' to potential exclusion and stigmatisation both from society in general as well as from communities with whom they may share identity characteristics – for example LGBTI members of religious communities or particular ethnic groups, LGBTI people with disabilities, or older LGBTI people. The European Parliament has therefore called on the European Commission to ensure that future actions address the specific needs of LGBTI persons who experience intersectional discrimination<sup>1</sup>.

Both the EU and the Member States have already made attempts through policy and law to address intersectionality and multiple discrimination. Under EU law, discrimination may be based on multiple grounds. Although the recitals of the Race Equality Directive and the Employment Equality Directive only refer to multiple discrimination experienced by women, the European Commission has clarified that both Directives allow for several grounds to be combined<sup>2</sup>. However, there is no guidance on how national legislation and national courts should deal with it once it occurs; for example, the Directives do not contain any provision which obliges the national courts to impose a heavier penalty if the discrimination occurs on multiple grounds. In 2008, the European Commission issued a

<sup>1</sup> [http://www.europarl.europa.eu/doceo/document/TA-8-2019-0129\\_EN.html?redirect](http://www.europarl.europa.eu/doceo/document/TA-8-2019-0129_EN.html?redirect)

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2014:0002:FIN>

Proposal for a Directive which would extend the protection against discrimination based on sexual orientation, disability, age and religion or belief, beyond employment. The European Parliament proposed to add specific provisions on multiple discrimination to the Proposal<sup>3</sup>.

Yet, under the current state of EU law, intersectional discrimination is not covered. The Court of Justice of the European Union has repeatedly held that it is not competent to add new grounds to the EU Equality Directives<sup>4</sup>. Moreover, in the *Parris* case, the Court found that a rule that does not discriminate on the basis of any of the grounds protected by the Employment Equality Directive *taken separately*, cannot produce discrimination based on the combination of one or more of these grounds.

Nevertheless, the European Commission is taking measures to address intersectionality and multiple discrimination. Already in 2007, the European Commission published a report which puts forward a number of recommendations on how to tackle multiple and intersectional discrimination<sup>5</sup>. More recently, in 2016, a report was prepared for the European Commission on intersectional discrimination in EU gender equality and non-discrimination law. The report found that none of the Member States explicitly refers to intersectionality in its national legislation, and that only around half of the Member States have domestic legislation that makes explicit mention of multiple discrimination or, in the absence of legislation, have national courts that nevertheless allow grounds to be cumulated. According to the report, more attention has been given to the issue by the national equality bodies<sup>6</sup>.

In October 2018, Guidelines on improving the collection and use of equality data were endorsed by the High Level Group on Non-Discrimination, Equality and Diversity, which encourages the Member States to mainstream multiple and intersectional discrimination in data collection and analysis<sup>7</sup>. The High Level Group also organised a Good Practice Exchange Seminar on Intersectionality and Multiple Discrimination in December 2018.

As part of the implementation of the 2015 List of actions to advance LGBTI equality, the Commission has also supported projects of civil society organisations aiming to advance LGBTI equality with an intersectional approach through the Rights, Equality and Citizenship Programme and Erasmus+ Programme.

### Questions for the workshop

- What are known examples of forms of multiple or intersectional discrimination, harassment, hate speech and violence experienced by LGBTI people in the EU?
- Is more data and research needed to map such experiences? If so, how should this data be collected? What are key research questions the European Commission should look into?

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<sup>3</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0211+0+DOC+XML+V0//EN>

<sup>4</sup> See, for example, cases C-13/05 *Chacón Navas*, para. 56; C-303/06 *Coleman*, para. 46; C-406/15 *Agafitei and Others*, para. 35; and C-406/15 *Milkova*, para. 34.

<sup>5</sup>

[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwju46zww\\_XiAhWloVwKHS8KCqMQFjAAegQIBBAC&url=http%3A%2F%2Fec.europa.eu%2Fsocial%2FblobServlet%3FdocId%3D776%26langId%3Den&usg=AOvVa\\_w3L9DzO4Ootd5Ci6hLH3QrQ](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwju46zww_XiAhWloVwKHS8KCqMQFjAAegQIBBAC&url=http%3A%2F%2Fec.europa.eu%2Fsocial%2FblobServlet%3FdocId%3D776%26langId%3Den&usg=AOvVa_w3L9DzO4Ootd5Ci6hLH3QrQ)

<sup>6</sup> <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2016/07/Intersectional-discrimination-in-EU-gender-equality-and-non-discrimination-law.pdf>

<sup>7</sup> [https://fra.europa.eu/sites/default/files/fra\\_uploads/ec-july-2018-guidelines-equality-data-collection.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/ec-july-2018-guidelines-equality-data-collection.pdf)

- What can Member States and the European Commission do to adopt an intersectional approach in their policy-making?
- How can protections be formulated to also cover, insofar as possible, those we are not yet aware of?