

Annual Report 2018

on the List of actions
to advance LGBTI equality



#EU4LGBTI



Věra Jourová

*Commissioner for Justice, Consumers
and Gender Equality*

Foreword

Equality, irrespective of sex, racial or ethnic origin, religion or beliefs, age, disability, sexual orientation, gender identity, sex characteristics or any other background characteristics, is a core value of the European Union.

Although the beauty of this principle is matched only by its simplicity, in practice many people are unable to make full use of their rights without experiencing discrimination, intolerance, hate speech and sometimes even hate crimes. Lesbian, gay, bisexual, transgender and intersex (LGBTI) people, in particular, are often the targets of discrimination, ranging from homophobic comments online or 'jokes' made by colleagues or classmates, to verbal and physical attacks for showing affection in public.

I am deeply committed to working for a European Union in which we all can be who we want to be and love who we want to love. Female, male, transgender, intersex, hetero, or gay, it simply should not matter. We all deserve to have access to the same opportunities and to be free from the burden of discrimination. In 2018, as part of the List of actions to advance LGBTI equality, the Commission completed a series of video testimonies and European Commission representations

and EU delegations participated to IDAHOT¹ and Pride celebrations to voice that message throughout the EU and beyond. Active measures were also taken to combat hate speech. As an example, the Code of Conduct with leading IT companies has become an industry standard to counter the spread of illegal hate speech online, including hate speech based on sexual orientation and gender identity. This third annual report on the list of actions includes many more measures the Commission took in 2018 to advance LGBTI equality.

I presented the list of actions during my first year in office as Commissioner for Justice, Consumers and Gender Equality in 2015. Now we are already in the final months of the present Commission. The elections for the European Parliament are not far off, and soon afterwards a new Commission will take office. Equality is a core European value, and it is vital that we keep working to make it a reality for everyone, including LGBTI people.

I am determined to successfully implement the list of actions in 2019, in order to lay a solid foundation that will enable the next Commission to pursue and further strengthen these policies, which are so important in tackling the challenges that LGBTI people face.

¹ International Day Against Homophobia and Transphobia

Introduction

The Commissioner for Justice, Consumers and Gender Equality, Věra Jourová¹, presented the 'List of actions to advance LGBTI equality' to the Council and the European Parliament in December 2015. This was the European Commission's response to a European Parliament resolution and a joint call from Member States to step up efforts to combat discrimination based on sexual orientation and gender identity. In its conclusions on LGBTI equality in June 2016, the Council called on the Commission to report annually on the implementation of the list of actions.

In February 2017, the Commission presented its first report covering 2016, at the High-Level Ministerial Conference on the LGBTIQ Road Map held by the Maltese Presidency of the EU. A second report, covering 2017,



was presented on 1 March 2018, Zero-Discrimination Day, at a meeting of the High-Level Group on Non-Discrimination, Equality and Diversity.

This third report summarises the measures taken by the Commission in 2018. Its structure is similar to that of last year's report. Sections I - VI reflect the original list of actions, while section VII covers advancements made at the level of the Member States.

¹ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality_en

I

Improving rights and ensuring legal protection of LGBTI people and their families in key areas of EU competence

The Commission continues to work with the Council presidencies to develop the EU acquis so as to improve the lives of LGBTI people.

- ***The proposed Equal Treatment Directive:*** adopting the Directive, which would improve legal protection against discrimination for many lesbian, gay and bisexual people in the EU, remains a priority for the Commission. Accordingly, in 2018, it continued to support the Council presidencies with the aim of encouraging constructive discussions and reaching a consensus on this issue. On 22 June, the Commission boosted the application of equality policies by adopting a Recommendation on standards for equality bodies, which encourages the Member States to set out measures to help improve the equality bodies' independence and effectiveness. Under EU equality law, EU countries are obliged to designate bodies responsible for ensuring in practice the non-discrimination in relation to race and gender. The Recommendation on standards for equality bodies encourages EU countries to extend the mandate of equality bodies, so that it covers all prohibited grounds of discrimination, including discrimination based on sexual orientation. Moreover, the mandate of equality bodies is recommended to not only cover comprehensively the areas of employment and occupation, but also access to and supply of goods and services, education, social protection and social advantages, as well as hate speech in these areas.

- ***Circulation of public documents:*** in July 2016, the EU adopted a regulation simplifying the circulation of certain public documents between EU countries. The regulation aims at cutting red tape and costs for citizens, including LGBTI citizens, who need to present to the authorities of an EU country a public document issued by the authorities of another EU country. It, for instance, helps same-sex couples to have public documents, such as a marriage certificate, accepted as authentic in another EU country without the need for this document to bear an authentication stamp (the so-called apostille). However, the regulation does not provide for the recognition of the effects of the public documents, such as marriage certificates, presented in another EU country, which depends on the law of the receiving EU country. The regulation also introduces multilingual standard forms that citizens can request

in order to avoid having to present a translation of their public document. In 2018, the Commission and the Member States carried out the implementation measures required for the smooth application of the regulation as from 16 February 2019. These implementation measures included the creation of multilingual standard forms to avoid translation requirements, the setting up of a module in the Internal Market Information System to strengthen the fight against fraudulent public documents and the adoption by the Commission and the Member States of a common text to inform citizens about the content of the regulation.

- ***Property regimes of international couples:*** in June 2016, the EU adopted two regulations on the property regimes of international couples, whether in a marriage or a registered partnership, aimed at helping couples to manage their property on a daily basis and to divide it in case of divorce or the death of one of the couple's members. The regulations are gender neutral and thus apply to same-sex couples. The regulations were adopted under the procedure of enhanced cooperation by 18 Member States², and took effect on 29 January 2019. In 2018 the Commission adopted two implementing regulations, one on marriages and one on registered partnerships. The implementing regulations establish the forms that citizens must obtain to have a court decision, an authentic instrument or a court settlement on property matters given in one EU country recognised and/or enforced in another EU country.

- ***Asylum:*** legislative procedures are currently under way on proposals for a reform of the Common European Asylum System (CEAS), including stronger provisions in the interests of applicants with special needs. However, they find themselves at different stages of advancement. Broad political agreement has been reached for Eurodac, the EU Asylum Agency Regulation, the Reception Conditions Directive, the Qualification Regulation and the Union Resettlement Framework Regulation. Member States shall specifically take into consideration the fact that LGBTI applicants are more likely to have special reception needs, shall ensure, as far as

² Sweden, Belgium, Greece, Croatia, Slovenia, Spain, France, Portugal, Italy, Malta, Luxembourg, Germany, the Czech Republic, the Netherlands, Austria, Bulgaria, Finland and Cyprus.

possible, the prevention of assault and violence with a sexual motive when providing housing and shall ensure that persons who have been subjected to sexually motivated violence are provided with necessary medical and psychological treatment and care. Work continues on the Asylum Procedure Regulation and the Dublin Regulation.

- **Media:** on 6 November 2018, the Council adopted the revised Audiovisual Media Services Directive (AVMSD, Directive EU 2018/1808) following the European Parliament's report on the provision of audiovisual media services of 2 October 2018 and the initial proposal for a revision of the directive tabled by the Commission in May 2016. The revised directive is designed to step up efforts to fight 'hate speech' by aligning the AVMSD with the Framework Decision on combating certain forms and expressions of racism and xenophobia. It thus bans both incitement to hatred and incitement to violence, while extending the grounds for protection, in line with Article 21 of the EU's Charter of Fundamental Rights to include grounds such as sex, disability, age and sexual orientation. In addition, the revised directive requires EU countries

to ensure that video-sharing platforms under their jurisdiction (e.g. YouTube) - currently not covered by the AVMSD - take appropriate measures (such as inclusion of the prohibition in the terms of service, flagging, and reporting mechanisms) to protect people from incitement to hatred. The directive establishes 19 September 2020 as the deadline for transposition by the Member States.

Strong monitoring and enforcement of existing rights of LGBTI people and their families under EU law

As guardian of the Treaties, the Commission is responsible for ensuring that all EU countries incorporate and apply EU law in the proper manner. Appropriate measures are taken if an EU country fails to incorporate a directive fully into its national law by the set deadline or if the transposed EU law is not applied correctly. In such cases, the Commission may launch a formal infringement procedure against the country concerned. If the issue is still not settled, the Commission may eventually refer the case to the Court of Justice of the European Union (CJEU). The CJEU also provides interpretations of EU law when national judges request so. Since EU law must be interpreted and applied in the same way in all EU countries, these interpretations can provide case law that further strengthens the rights of LGBTI people under EU law. This chapter provides relevant updates on legal issues in 2018 in relation to sexual orientation and gender identity, including the application of EU law.

- **Gender equality legislation:** on 26 June 2018 the Court of Justice of the European Union ruled in Case C-451/16, *MB v Secretary of State for Work and Pensions*, that a national law requiring a transgender person, who otherwise fulfils all legal criteria for a change of gender, to additionally be unmarried is contrary to sex equality provisions of Directive 79/7/EEC in relation to social security. The applicant, MB, is a transwoman who underwent sex reassignment surgery. At the time of the facts, UK law did not recognise same-sex marriages and required transgender persons to annul any marriage before their change of gender, in order to obtain a gender recognition certificate. Since the applicant wished to remain married to her wife, she could not obtain that certificate. Upon becoming 60, the legal retirement age for women at the time of the facts, the applicant applied for a pension. However, her application was rejected because, without the gender-recognition certificate, she could not be regarded as a woman for determining her pensionable age. The Court recalled that according to its case law gender reassignment falls under the scope of the prohibition of sex discrimination under EU law. It also considered comparable situations of persons who changed gender after marrying and of married persons who kept their birth gender. Hence, the legal rules at stake were directly discriminatory on the ground of sex. Moreover, such discrimination could not be justified by the purpose of avoiding de facto marriages between persons of the same sex at a time when same-sex marriage was not legally recognised, because such justification fell outside the scope of the derogations provided for by Directive 79/7/EC.

- **The Victims' Rights Directive 2012/29/EU:** this contains a number of key provisions which are particularly relevant to LGBTI people who fall victim to crime. It contains a general obligation to ensure that all victims are recognised and treated in a respectful, sensitive, professional and non-discriminatory manner that takes account of their specific needs. The rules apply to all victims of crime in the EU, irrespective of nationality. LGBTI people can be particularly vulnerable to crimes committed with a bias or discriminatory motive related to their personal characteristics. To determine victims' needs on an individual basis, all victims must receive a timely and individual assessment to identify specific protection needs. The Commission is currently monitoring the state of implementation of EU rules in the Member States with a view to publishing a report in 2019. This assessment involves examining such matters as national definitions of 'family members' to whom certain victims' rights apply, including the right to support and protection. This definition should include unmarried partners and it should apply to same-sex couples, regardless of the national legislation. Moreover, the Commission is currently engaging in infringement proceedings against Member States who have not completely transposed into national law the Victims' Rights Directive, which had to be transposed by 16 November 2015.

- **Asylum:** the Commission continued to monitor the transposition and application of EU asylum legislation by the Member States, including on the reception of vulnerable applicants. The European Asylum Support Office (EASO) training tools and modules on sexual orientation and gender identity (SOGI) developed in 2016 remain available. The Country of Origin Information Reports published regularly by

EASO continued paying attention to the situation of LGBTI people in countries of origin. In November 2018, EASO has launched a new Vulnerable Experts Network (VEN). This seeks to address cross-cutting issues and support measures for various types of vulnerable applicants, including LGBTI people, in a holistic manner. The CJEU delivered its judgment in Case C-473/16, *F v Bevándorlási és Menekültügyi Hivatal*, on 25 January 2018. The case concerned a Nigerian national whose asylum application was rejected on the basis of a psychologist expert report indicating that his homosexuality could not be confirmed via different tests. The CJEU ruled that certain expert reports may be useful and may be prepared without prejudicing the fundamental rights of the asylum seeker, but such reports cannot be the only source relied on by the determining authority when assessing an asylum application. The Court also held that a psychologist's report constitutes an interference with the individual's right to respect for his or her private life, even if he or she has consented to certain tests to identify sexual orientation. It observed that such interference is particularly serious because it is intended to give an insight into the most intimate aspects of the asylum seeker's life.

- **Free movement and cross border issues:** in its judgement of 5 June 2016, in Case C-673/16 *Coman*, the CJEU clarified that the term 'spouse' in Article 2(2)(a) of the Free Movement Directive also applies to a person of the same sex as the EU citizen to whom he or she is married. This ruling confirmed the position taken by the Commission in the proceedings. In particular, the Court considered that an EU country's refusal to recognise, for the sole purpose of granting a right of residence to a non-EU national, the marriage of that non-EU national to an EU citizen of the same sex may interfere with the exercise of that EU citizen's right to free movement. In particular, the Court found that the obligation for an EU country to recognise a same-sex marriage contracted in another EU country, for the sole purpose of granting the right of residence to a non-EU national, does not undermine the institution of marriage in the first country, and does not require that country to provide, in its national law, for the institution of same-sex marriage. In addition, it found that the national identity is not undermined, and that no threat is posed to the public policy of the country

concerned. The judgment confirms that the terms of the Free Movement Directive are to be interpreted in a gender-neutral manner and without discrimination based on such matters as sexual orientation. The Commission continues to monitor EU countries' compliance with EU laws and rules on free movement as regards issues related to sexual orientation and gender identity. As a follow-up of the *Coman* judgement, the Commission is monitoring and addressing the complaints from citizens as regards application of this ruling in EU countries. The Commission is also monitoring the application of CJEU case law on recognition of surnames in the context of children born to same-sex couples. In particular, it is holding a dialogue with an EU country refusing to recognise a double surname as established in another EU country of a child born to a same-sex couple.

- **Combating hate speech online:** the Code of Conduct agreed in May 2016 with leading IT companies continued to make progress in countering the spread of illegal hate speech online, including of homophobic and transphobic nature. IT companies removed 71.7% of the content notified to them. Sexual orientation (15.6%) and gender identity (3.7%) are among the grounds of hate speech most commonly reported. The Code has become an industry standard, as proven by the decision in 2018 by Instagram, Google+, Snapchat, and Dailymotion to join the Code. The French gaming platform jeux-videos.com has also committed to the Code this year. Consequently, the Code now covers about 86% of the market share of online platforms in Europe. In 2018, the Commission also adopted a recommendation on measures to effectively tackle illegal content online, which contains a set of operational measures to be taken by companies and EU countries relevant to all forms of illegal content, including illegal hate speech of homophobic and transphobic nature if covered by national legislation.

- **Employment:** the Commission continued to monitor the correct implementation of the Employment Equality Directive, which bans discrimination based on sexual orientation, as interpreted by the case law of the CJEU. The Commission is currently preparing for an EU wide action to raise awareness of EU anti-discrimination law at work. The aim is to inform EU citizens about their rights and obligations in this area.

Reaching citizens, fostering diversity and non-discrimination

The Commission aims to improve the social acceptance of LGBTI people through awareness raising activities, and by setting the right example as an organisation.

- **Reaching citizens:** the Commission marked the International Day Against Homophobia and Transphobia (IDAHOT, 17 May) with a strong symbolic statement in favour of LGBTI equality by illuminating its headquarters, the Berlaymont building, in the colours of the rainbow flag. Members of the College of Commissioners actively cooperated with ILGA-Europe and Egalité (the organisation representing LGBTI staff in the EU institutions) to participate to events like the Belgian Pride, Egalité's gala for its 25th anniversary, and ILGA Europe's annual conference.

Continuing its online awareness-raising campaign, the Commission completed a total of five video testimonies, one for every letter of L-G-B-T-I, which have been disseminated and promoted specifically in EU countries where the social acceptance of LGBTI people is below the EU average. The Commission also launched a new campaign called 'EUandME', designed to generate recognition and appreciation of the EU among young Europeans (aged 17-35 years) by showing them what the EU has achieved and what opportunities it can offer them, in terms of tangible results and initiatives. To show how the EU protects the fundamental rights of its citizens, the Commission produced a short film delivering the message that in the EU everyone has the right to be whoever they want, and that the EU protects its citizens against discrimination.

To support awareness-raising activities in EU countries, Commission representations received an #EU4LGBTI toolkit. This is designed to help them organise events and meet stakeholders, take part in Prides and other LGBTI-related events; and, in general, raise awareness on LGBTI equality. It included a rainbow flag, give-aways, relevant publications, a factsheet, a standard PowerPoint presentation and a social media toolkit. 26 representations actively participated in the IDAHOT celebrations or during Pride events. Specific events on LGBTI equality were

organised in London, Rome, Wrocław, Prague and Bratislava.

- **Fostering diversity and non-discrimination within the European Commission:** to implement the Commission Communication on Diversity and Inclusion, the Commission adopted a new action plan in July 2018. This includes measures to further advance the inclusion of the Commission's LGBTI staff. The legal network at the Brussels welcome office, available to assist Commission staff with personal issues, has expanded its mandate to offer legal advice on LGBTI equality. A lunchtime event for LGBTI staff, with 100 participants, was organised for IDAHOT on 17 May 2018. A new Commission LGBTI community group has been created in CONNECTED where all relevant news, events and LGBTI staff suggestions and opinions can be shared. In addition, a specific information page on transgender equality has been developed for the Commission's intranet. Information for newcomers about LGBTI inclusion policies has been improved by including a leaflet of Egalité, along with other relevant information in the welcome packs of the Brussels and Luxembourg welcome offices.



A survey of staff views on the Commission as a workplace was conducted in 2018. The survey included specific questions on discrimination, including a focus on sexual orientation. The results are expected in the first half of 2019.

To strengthen diversity and inclusion, the Commission started reviewing the rules on leave entitlements to ensure an inclusive interpretation of the Staff Regulation (i.e. maternity leave in surrogacy cases, where the mother is absent following the birth, etc.). A proposal for review of the legal framework of the Commission Decision on Leave was tabled at the end of 2018, and is expected to be adopted in the first half of 2019.



IV

Supporting key actors responsible to promote and advance equal rights for LGBTI people in the EU

The Commission supports Member States, Civil Society and Businesses in their efforts to combat discrimination and advance LGBTI Equality:

- **Non-discrimination:** the Commissioner for Justice, Consumers and Gender Equality, Věra Jourová, presented the second annual report on the list of actions to the High-Level Group on Non-Discrimination, Equality and Diversity and took part in a panel discussion with Member of the European Parliament, Terry Reintke, on 1 March 2018, Zero-Discrimination Day. This was followed by in-depth workshops on bisexuality, intersex people and health for LGBTI people. In October 2018, the high-level group facilitated an extensive exchange between EU countries and civil society organisations receiving support through the Rights, Equality and Citizenship programme to implement projects combating the discrimination of LGBTI people. Finally, in cooperation with the Greek Ministry of Labour, Social Security and Social Solidarity, the Commission organised a good practices exchange for EU countries, with regard to multiple discrimination and intersectionality, at which LGBTI equality was well covered. The European Federation of National Organisations Working with the Homeless (FEANTSA) presented a project in which they cooperate with ILGA Europe on the housing of LGBTI homeless people, while the European Forum of Christian LGBT Groups raised the topic of religion and LGBTI equality.

- **Hate crime and hate speech:** through the High-Level Group on combating racism, xenophobia and other forms of intolerance, the Commission continued to support national authorities' efforts to improve responses to hate crime and hate speech, including those of a homophobic and transphobic nature. In 2018, the Group published a guidance note on how to apply the EU Framework Decision on racism and xenophobia in practice. The guidance note, which acknowledges and draws attention to sexual orientation and gender identity as relevant grounds in criminal provisions on hate crime and hate speech, is designed to help national authorities ensure that relevant national laws are effectively implemented in practice. Priority will be given to practical work to assist national authorities implementing existing guidance, including guidance on hate crime training and hate crime victims' support. Progress is also being made on improving national

methodologies for recording and collecting data on hate crimes, through a series of country workshops led by the EU Agency of Fundamental Rights in order to test and implement the agreed guiding principles on hate crime recording.

- **Education and Erasmus+:** the Commission has been active in following up the 2015 Paris Declaration³ and the 2018 Council Recommendation on promoting common values, inclusive education and the European dimension of teaching. About 20 measures have been launched in the fields of education, youth and sport.⁴ The Erasmus+ programme continued to support projects through calls for proposals on inclusion and fundamental values, and on disseminating and upscaling existing good practices at grass-roots level in this area. Erasmus+ has so far supported about 200 projects dealing with LGBTI equality, mobilising young people, supporting associations and fuelling the debate at national and international level. Twenty projects have been initiated in 2018 covering activities in 24 Member States. Five projects extend their activities to non-EU countries. As an example, a number of these projects are being described in Annex I. As part of Education and Training 2020, the Working Group on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education has held several successful peer-learning seminars involving national experts, NGOs and international civil society organisations such as ILGA Europe. The group is set to continue its activities with active input from the International Lesbian Gay Bisexual Transgender and Queer Youth and Student Organisation (IGLYO).

- **Rights, Equality and Citizenship (REC) Programme:** three networks promoting LGBTI equality received operating grants in 2018: ILGA-Europe (European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), IGLYO (International Lesbian Gay Bisexual Transgender and Queer Youth and Student Organisation), and Transgender Europe. The Commission awarded action grants to be co-financed through the Rights, Equality and Citizenship programme to five projects

³ http://ec.europa.eu/dgs/education_culture/repository/education/news/2015/documents/citizenship-education-declaration_en.pdf

⁴ https://ec.europa.eu/education/policies/european-policy-cooperation/inclusive-education_en

focussing on advancing LGBTI equality. Civil society organisations in 17 Member States receive co-funding through these projects for a total amount of € 1 384 546.-. More information on the projects is provided in Annex I. In addition, a number of projects targeting LGBTI people as well as other groups subject to discrimination, received funding.

- **Supporting businesses and inclusive workplaces:** the Commission promotes the inclusion of LGBTI people in the workplace by supporting the Diversity Charters.⁵ In 2018 two new charters were launched in Lithuania and Romania. In early 2019 a charter was launched in Latvia bringing the total number of Diversity Charters in the EU to 23. More than 10,000 organisations, covering over 15.3 million employees in the EU, have now signed the 23 Charters. They include companies, NGOs and public bodies. A number of Diversity Charters organised and took part in events dedicated to LGBTI equality in 2018. An example was the LGBTI Business Forum, held in Slovakia in cooperation with the Commission representation and Diversity Pro. In Poland, a workshop 'LGBT at the workplace' was organised for the signatories of the Diversity Charter, while in Finland a special training session took place. In the Netherlands the diversity guide 'LGBTI at the workplace' was launched. In Luxembourg, Diversity Day was celebrated on 17 May, coinciding with IDAHOT. Commissioner Jourová discussed LGBTI diversity in companies together with Czech business representatives at an event held on 10 May in Prague.

- **Health:** the INTEGRATE joint action has focused on increasing integrated early diagnosis and linkage to prevention and care in EU countries for people

from vulnerable groups (including LGBTI people) with HIV, viral hepatitis, tuberculosis and sexually transmitted infections (STIs). The 36-month project has 29 partners from 15 countries across Europe, 13 of which are EU countries. In 2018, a Croatian partner organisation took part in the spring testing week targeting men having sex with men (MSM). More pilot projects on integrated HCV/HIV/STI testing for MSM in community settings are planned in four countries in 2019.

The EU HIV/AIDS, Viral Hepatitis and Tuberculosis Civil Society Forum (CSF) is an informal consultation body of the EU HIV/AIDS, Viral Hepatitis and Tuberculosis Think Tank (an expert group comprising representatives of national health authorities in EU and selected neighbouring non-EU countries) and Commission departments with civil society. The CSF aims to facilitate the participation of NGOs and networks, including those representing people living with HIV/AIDS, viral hepatitis (B and C) and tuberculosis, in European policy development and implementation, and to exchange information. LGBTI people are represented in the CSF by ILGA Europe. The CSF, whose work complements that of the Think Tank meets twice a year, at the same time as the Think Tank.

The Commission closely follows the World Health Organisation's process to complete the 11th Revision of the International Classification of Diseases (ICD-11), and prepare its adoption and implementation. The June 2018 draft of the ICD-11 reclassified the former diagnosis 'gender identity disorder' as 'gender incongruence'.

⁵ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/tackling-discrimination/diversity-management_en

V

Figures and facts for policy makers on LGBTI challenges in the EU: Data collection and research activities

In 2018, the Commission took a number of measures improving available figures and facts on LGBTI equality:

- **Equality data:** the High-Level Group on Non-Discrimination, Equality and Diversity instructed a subgroup on equality data to draw up a set of non-binding guidelines on improving the collection and use of equality data, to develop a diagnostic tool/checklist that EU countries can use to assess the availability of equality data collected at national level and to compile best practices implemented at national level that relate to the proposed non-binding guidelines. In June 2018, a meeting of the subgroup focused on LGBTI equality data to improve the methodology and definitions used in current surveys (with a particular emphasis on transgender and intersex people), and to brainstorm on how to establish better links with the LGBTI community and raise awareness of the importance of equality data.

- **Transgender and intersex equality:** on the International Transgender Day of Remembrance, on 20 November 2018, the Commission published a new comparative analysis of 'Trans and Intersex Equality Rights in Europe', authored by the independent European network of legal experts in gender equality and non-discrimination. The report, which draws on expert knowledge of 30 European legal systems, highlights the significant levels of inequality facing transgender and intersex people across the EU and the European Free Trade Association (EFTA). The report also analyses existing EU protection for transgender people – in particular, the case law of the CJEU – and reveals the comparative absence, both de jure and de facto, of domestic protection against

transphobic and intersex-motivated discrimination.

- **Health research and data:** the final conference under the pilot project 'Reducing health inequalities experienced by LGBTI people (Health4LGBTI)' took place on 1-2 February 2018. The project produced a state of the art review of the health inequalities experienced by LGBTI people and the barriers faced by health professionals in providing healthcare for LGBTI people, and undertook focus group studies looking into the situations in different countries. A training course for health professionals on issues relating to LGBTI-health inequalities was also developed.

An online survey for MSM, including men with trans identities, was conducted as part of the European Surveys and Training to Improve MSM Community Health (ESTICOM). The survey collected data from 127 792 participants from 43 European countries, including all EU countries, between October 2017 and January 2018. Only persons identifying as cis or trans men were eligible for the survey. They were asked what gender they were assigned at birth (male or female) or given the option of declining to answer. A survey report examining sexual health morbidities, describing behaviours that contribute to these morbidities, identifying unmet sexual health needs, as well as outlining and assessing interventions to meet these needs, will be published in 2019.

External action: LGBTI Equality in Enlargement, Neighbourhood and Third countries

Besides advancing LGBTI equality within the EU, the list of actions also commits the Commission to taking action internationally and advancing LGBTI equality worldwide.

- **Enlargement and European neighbourhood countries:** in 2018, the Commission continued to closely monitor and support the development of legal and policy tools to ensure non-discrimination against LGBTI people in enlargement and neighbourhood countries.

The Commission issued its latest assessment of the rights of LGBTI people in each enlargement country in April 2018, as part of the Enlargement Package country reports. It also continued to support the rights of LGBTI people by providing financial assistance. It continued to provide funding for the ERA – LGBTI Equal Rights Association for the Western Balkans and Turkey network. Throughout 2018, projects implemented by NGOs continued in Albania, Montenegro, Serbia and Turkey supported with the European Instrument for Democracy and Human Rights. The Commission also took part in events organised by NGOs working on the rights of LGBTI people, both at headquarters and at EU delegation level, and attended meetings with civil society representatives working on this issue. EU delegation representatives also took part in pride events held in the region. As regards countries covered by the European Neighbourhood Policy, the EU addressed the rights of LGBTI people in political and human rights dialogues. The EU also continued to provide financial assistance to civil society organisations to combat discrimination, including discrimination against LGBTI people. In the Southern neighbourhood, although homosexuality is still criminalised in all countries except Israel and Jordan, the rights of LGBTI people are increasingly discussed in public and in the media. As a result, an upsurge of homophobic acts was noticed in several countries in the region during the period under consideration. Civil society-led initiatives also face pressure from public authorities in many cases. In 2018, the Commission provided regional support to promote and protect the rights of LGBTI people in this geographical area.

- **Third countries:** analysis of and reporting on threats against LGBTI people have been improved

through the inclusion of non-discrimination as a component of the Human Rights and Democracy Country Strategies (HRDCS). More than 30 HRDCS have identified LGBTI equality as a priority for action or as an issue of concern. Threats against LGBTI people have been discussed in human rights dialogues and during high-level visits. Public and private messaging have been used in situations where the human rights of LGBTI people were under attack, as for example, through the statement made by the EU Spokesperson on 6 September 2018 in reaction to the public caning of two women in Malaysia for allegedly attempting to have sexual relations with each other. To mark IDAHOT, the High Representative for Foreign Affairs and Security Policy, Federica Mogherini, issued a statement paying homage to the courageous efforts of advocates to promote the enjoyment of all human rights by LGBTI people. Several EU delegations around the world commemorated the day by flying the rainbow flag, issuing press releases or organising events on ending discrimination based on sexual orientation and gender identity. The Commission, the EEAS and ILGA Europe organised a panel entitled 'Making sure EU development cooperation leaves no one behind' at the European Development Days (5 - 6 June 2018) in Brussels. During the High-Level Week of the 73rd United Nations General Assembly, a side event on extrajudicial killings and a Reuters event at Times Square on the role of the media in reporting on LGBTI issues featured high on the EU's agenda.

The Commission continued to protect and promote the human rights of LGBTI people by allocating grants to projects implemented by civil society organisations worldwide, mainly via the European Instrument for Democracy and Human Rights (15 active grants). A specific call for proposals worth € 10 million was launched to support LGBTI human rights defenders and their organisations working in areas where LGBTI people are most at risk of discrimination. Continuous support was also provided through emergency mechanisms to LGBTI human rights defenders at risk.

VII

Advancements at the level of the Member States

As a number of actions have an impact at Member State level, a table is included with information on the following 12 questions:

1. Does the Member State participate in the enhanced cooperation on the two regulations on property regimes of international couples?
2. Is there a Diversity Charter in the Member State?
3. Did the Commission awarded funding in 2018 to a Rights, Equality and Citizenship (REC) programme project in the Member State to combat discrimination, hatred and intolerance against LGBTI people?
4. Has in the Member State an Erasmus+ project been granted funding in 2018 to combat discrimination of LGBTI people and promote tolerance?
5. Did the Member State attend in 2018 the exchange on good practices on multiple discrimination?
6. Did a meeting at the political level (minister or state secretary) between the government and main NGOs combating the discrimination against LGBTI people take place in 2018?
7. Did the Member State financially support in 2018 one of the main NGOs in the country to combat the discrimination of LGBTI people?
8. Does the Member State have an (in)formal regular (at least once a year) meeting between at least three ministries (can be at policy officers level) to effectively coordinate LGBTI policies in the government?
9. Is the Member State a member of the European Governmental LGBTI focal points network?
10. Is the Member State a member of the intergovernmental Equal Rights Coalition (ERC) that is active at the global level?
11. Is sexual orientation covered as a ground of discrimination in national equality legislation protecting against discrimination outside the area of employment? This could be in (one of) the following areas: education, goods and services, social protection and/or social advantages.
12. Does in the Member State a binary gender recognition procedure exists, without medical requirements (sterilisation or surgery) or the need for a medical diagnosis?

The results for questions 1 – 5 are based on information gathered internally by the Commission, while the results of questions 6 – 10 are based on reporting by individual EU Member States. The results for question 11 are based on information provided by the independent European network of legal experts in gender equality and non-discrimination, while those for question 12 are based on the report 'Trans and intersex equality rights in Europe – a comparative analysis' which was supervised by the same network. The table below sets out the results by Member State.

	1 Participates in cooperation on property regimes	2 Diversity Charter for businesses exists in the MS	3 Rights, Equality and Citizenship project has been awarded in 2018	4 Erasmus+ project has been awarded in 2018	5 MS participated in exchange on good practices on multiple discrimination	6 Met with LGBTI civil society organisations in 2018 at the political level	7 Supports financially LGBTI civil society organisations	8 Coordination meeting between ministries in the government to advance LGBTI equality	9 Member of the European Governmental LGBTI focal points network	10 Member of the Equal Rights Coalition at global level	11 Sexual orientation is a ground covered beyond the area of employment in equality	12 A binary gender recognition procedure without medical requirements exists
BE	●	●	●	●	●	●	●	●	●	●	●	●
BG	●		●	●							●	
CZ	●	●		●		●			●	●	●	
DK		●				●	●	●	●	●	●	●
DE	●	●		●		●	●		●	●	●	
EE		●	●	●	●		●		●	●		
IE		●	●	●		●	●	●	●		●	●
EL	●		●	●	●	●		●	●	●	●	●
ES	●	●	●	●		●	●	●	●	●	●	
FR	●	●		●		●	●	●	●	●	●	●
HR	●	●	●	●	●	●	●	●			●	
IT	●	●	●	●		●	●	●	●	●		
CY	●			●		●		●				
LV		●	●	●			●		●		●	
LT		●	●	●	●	●	●	●		●	●	
LU	●	●			●		●	●	●	●	●	●
HU		●	●		●	●	●	●			●	
MT	●			●	●	●	●	●	●	●	●	●
NL	●	●	●	●	●	●	●	●	●	●	●	●
AT	●	●		●	●	●	●	●	●	●	●	
PL		●	●	●		●						
PT	●	●	●	●	●	●	●	●	●	●	●	●
RO		●	●	●		●					●	
SI	●	●		●		●	●	●	●	●	●	
SK		●	●	●		●	●	●	●		●	
FI	●	●			●		●		●	●	●	
SE	●	●		●	●		●	●	●	●	●	
UK			●	●	●	●	●	●	●	●	●	
Total EU 28	18	23	17	24	14	21	22	20	21	19	24	9
NO						●	●	●	●	●	●	●

As the table shows, the actions of the Commission have an effect in a majority of EU countries. A total of 18 have joined the enhanced cooperation on property regimes of international couples, while 14 took part in the good practice exchange on multiple discrimination. Twenty-three now have a Diversity Charter to encourage businesses to advance equality. The Commission awarded funding in 2018 through the Rights, Equality and Citizenship programme to projects advancing LGBTI equality covering 17 Member States. Through the Erasmus+ programme the Commission awarded funding for projects in 24 Member States.

Most Member States are implementing policies to advance LGBTI equality. Twenty-one report to have a political level dialogue with representatives of the LGBTI community and 22 report to have given financial support to NGOs that combat discrimination against LGBTI people. A total of 20 Member States

report to have an internal coordination meeting with different responsible ministries to coordinate LGBTI equality policies inside the government. Twenty-one Member States report to be a member of the European Governmental LGBTI focal points network, while 19 report to be a member of the Equal Rights Coalition.

In 24 Member States the national equality and non-discrimination legislation to protect against discrimination based on sexual orientation goes beyond the area of employment as required by EU law. Nine Member States have a binary gender recognition procedure that includes no medical requirements such as sterilisation or surgery or the need for a medical diagnosis.

Conclusion

The Commission takes a variety of measures to advance LGBTI equality, ranging from legislative proposals to improve LGBTI people's rights under EU law, to awareness raising measures designed to increase the social acceptance of LGBTI people.

In 2018, the adoption of the revised Audiovisual Media Services Directive (AVMSD) is worth to highlight as it constitutes an improvement in legal protection for LGBTI people under EU law. The directive is designed to step up efforts to combat hate speech based on the basis of sexual orientation and other grounds by banning both incitement to hatred and incitement to violence. Rulings by the CJEU have further developed case law that protects LGBTI people against discrimination. In case C-451/16, the Court clarified that a national law requiring transgender persons to be unmarried in order to obtain a gender-recognition certificate and thereby obtain a pension is contrary to the sex equality provisions of Directive 79/7/EEC in relation to social security. And in case C-673/16, the Court clarified that the term 'spouse' in the Free Movement Directive also applies to a person of the same sex as the EU citizen to whom he or she is married.

To reach the general public, the Commission continued with awareness raising activities and completed a series of five video testimonies on LGBTI equality. The #EU4LGBTI toolkit was developed to support European Commission representations in the EU countries to raise awareness on LGBTI equality. 26 representations actively participated in the IDAHOT celebrations or during Prides and special events were held in London,

Rome, Wrocław, Prague and Bratislava.

Through numerous high-level groups and working groups, the Commission has worked with the EU Member States to combat discrimination, xenophobia, and other forms of intolerance towards LGBTI people, and to promote the shared values of freedom and tolerance. The Code of Conduct, to which leading IT companies subscribe, has helped to counter the spread of illegal hate speech online, including homophobic and transphobic hate speech.

A crucial part of the Commission's policies to advance LGBTI equality remains support for NGOs. Through the Rights, Equality and Citizenship programme and the Erasmus+ programme, it has helped both EU-wide and national NGOs to combat discrimination within the EU. Through the European Instrument for Democracy and Human Rights much needed support to NGOs combating discrimination against LGBTI people and their criminalisation has been provided in enlargement countries, European neighbourhood countries and other non-EU countries.

The report shows that the Commission is ambitiously implementing a wide range of activities to advance LGBTI equality. However, a measure at risk of not being implemented remains the proposed Equal Treatment Directive, which would improve the legal protection against discrimination for many lesbian, gay and bisexual people in the EU. The Commission remains fully committed to get it adopted.

ANNEX I — Projects awarded and supported through the Rights, Equality and Citizenship programme and Erasmus+ in 2018

Rights, Equality and Citizenship programme projects awarded in 2018

In 2018, the following projects were awarded through the Rights, Equality and Citizenship programme to combat the discrimination of LGBTI people:

PRIDE. CHANGING WORKPLACES, SCHOOLS AND HEALTHCARE

Coordinator: Kampania Przeciw Homofobii (PL)

Participants: PL

The project's objectives are to empower the LGBTI community to take agency in changing their situation in the workplace, education system and healthcare, and to enable key professionals (teachers, doctors, psychologists, businesses) to implement systemic solutions that protect LGBTI people from discrimination.

This will be done through desk research and needs assessments in mentioned sectors, good practice

seminars, networking activities, development of pilot programmes, their implementation and evaluation.

The expected results of the project are an increased number of LGBTI-sensitive and engaged networks of professionals, development of a youth movement in schools, and an increased number of businesses engaged in the implementation of Diversity Charters.

Implementation period: 01-09-2018 - 31-08-2020

Total grant: 99 006 EUR

EQUALITY LEAGUE: CONSOLIDATING A PLATFORM FOR COMMUNITY ORGANISING, ACTION AND REACTION AGAINST DISCRIMINATION

Coordinator: C.E.G.A. Start Za Efektivni Grazhdanski Alternativi (BG)

Participants: BG, SK

The project aims to fight against discrimination of oppressed communities, with focus on Roma, LGBTI people and people with disabilities, by uniting the efforts of different communities and organisations in a joint multi-dimensional action.

The objectives are:

- To consolidate and build the capacity of a coalition of organisations, actors and activists working with different oppressed communities;
- To build a movement against discrimination, engaging both upcoming leaders from oppressed

communities and allies from the majority with focus on young people;

- To challenge harmful stereotypes, leading to discrimination, by training, and the organisation of cultural and political events;
- To ensure political responses and participation of oppressed communities in policy issues;
- To test, assess and disseminate a model for a joint action of oppressed communities and their organisations against discrimination.

Implementation period: 01-09-2018 - 31-08-2020

Total grant: 220 968 EUR

TACKLING ANTI-LGBT HATE SPEECH AND HATE CRIME

Coordinator: Cavaria VZW (BE)

Participants: BE, PT, ES, HU, UK, LV, LT, BG, EE

The project has three main aims:

- To build the capacity of law enforcement on countering anti-LGBT hate speech and hate crime, while respecting victims' rights and needs, by building strong networks, promoting best practices and developing a toolkit as a basis for law enforcement trainings.
- To raise awareness on anti-LGBT hate speech and on freedom of expression, to empower LGBT communities

to develop narratives to counter online hate speech and to encourage and facilitate reporting.

- To stimulate the application of restorative justice and rehabilitation services in anti-LGBT hate speech and hate crime by sharing knowledge and best practices and by strengthening cooperation with police and justice officers, mediation services, and other stakeholders.

Implementation period: 01-11-2018 - 31-10-2020

Total grant: 460 236 EUR

BEST4OLDERLGBTI - BEST INTEREST FOR THE OLDER LGBTI

Coordinator: Anziani E Non Solo Societa Cooperativa Sociale (IT)

Participants: IT, IE, RO, PT, EL, NL

The project aims to fight against discrimination based on age, sexual orientation, gender identity, gender expression and sex characteristics of older people, and to promote the rights of older (LGBTI) people, through raising awareness of different target groups contributing for a more equal and inclusive society. Among the activities are:

- A network of professionals across Europe concerned with this kind of discrimination that will be promoted, to exchange good practices and to make people more alert to report cases of discrimination based on age and LGBTI's issues.

- An awareness raising campaign that will be developed in 6 EU Member States with multimedia and face-to-face actions, targeting different groups in the society.

This should encourage changes in attitudes and behaviours, through more awareness about age discrimination and sexuality of older people, including LGBTI. In addition, it should encourage the political and social discussion on these topics, and encourage reporting of cases of discrimination.

Implementation period: 01-11-2018 - 31-10-2020

Total grant: 361 947 EUR

WORKPLACE EQUALITY FOR ALL

Coordinator: Kulture K-Zona (HR)

Participants: HR, NL

The project will promote equality and equity among the participants and target groups. It targets young people that need to increase or can contribute to the promotion and understanding of diversity, European values, freedom, respect, tolerance and human rights. The project will enrich participant's critical thinking and sense of initiative in general and especially on promotion of LGBTQ+ awareness.

The main objective of the project is to raise awareness

about issues that concern the LGBTQ+ community, especially the youth. It will promote different ways in which people who do not identify as heterosexual deal with social discrimination, and teach how to help a fellow citizen not to feel in conflict about their sexual orientation and gender identity. Participants will learn more about how the subject is addressed in other countries and exchange opinions on improving the life of young LGBTQ+ people.

Implementation period: 01-01-2019 - 31-12-2020

Total grant: 242 395 EUR

Erasmus+ projects supported in 2018

In 2018, in total 20 projects on LGBTI equality were initiated with support from the Erasmus+ programme. As an example, a number of these projects is being described below:

QUEEREUROPE 2018

Coordinator: SVLS e.V. (NGO) DE

Participants: DE, IT, SK, EL

The project focusses on the general question how gender definitions affect society, how they can give privileges or can limit freedom and how we can try to share those privileges in order to raise appreciation for diverse ways of life. It particularly explores and compares empowerment strategies for young LGBT refugees and develops methods used for the work with this specific target group within European youth

projects. It maps LGBT rights, spots discrimination and methods for empowerment to overcome existing discrimination of young LGBT people. Among the project activities are the Bi-National Youth Summit and an International Training Course for LGBT youth workers. The content of the reflections will be used to create a video documentary or a forum theatre piece.

Implementation period: 01-05-2018 - 31-01-2019

Total grant: 37 343 EUR

AKADEMIJA ZA OMLADINSKE LGBT LIDERE

Coordinator: Asocijacija DUGA – Sabac - SR

Participants: RS, MK, BiH, HR

Interethnic and religious differences are common in the region, and LGBT people are very often highly discriminated. Young generations from these countries need to learn about diversity and differences, cherish them and respect others.

The project aims to enhance the influence of youth workers as leaders in fighting for LGBT rights and to empower them to take part in decision-making processes through active participation in democratic life. The project outcomes are:

- Increasing professional competences and skills of youth workers in the area of writing project proposals, strategic planning, advocacy, media appearance and facilitating workshops;
- Increasing the active participation of youth workers in public life, through advocacy processes for changes of discriminatory policies at local and national level;
- Increasing the social inclusion of young people in the process of solidarity and reducing social exclusion of LGBT persons.

Implementation period: 01-06-2018 - 31-03-2019

Total grant: 10 192 EUR

MY FAVOURITE PART OF MATHS IS THE EQUALITY SYMBOL

Coordinator: Loesje e.V. – Berlin, DE

Participants: DE, LT, HR, PL, CZ, TN, LB, MK

This project explores, maps and creates solutions for discrimination that young persons from the LGBTI community face today. It will also map the intersectionality of how different forms of oppression work together: class, race, ethnicity, gender, age, ability, religious beliefs. Many people don't face discrimination based on "only" one of these parameters, but several. Oppression also has different effects, depending on

how the different forms of oppression intersect.

For instance, refugees and migrants in the LGBTI community do not only face the discrimination connected to race, ethnicity and religion, but they also face very big issues regarding their gender identity and/or sexual orientation and/or practices.

With more knowledge and improved awareness, the youth workers will be better equipped to recognize

discrimination, to support the affected youth and to educate the bullies, and their further surroundings, like their youth clubs and schools, about their discriminatory behaviour and its consequences. Through reflecting on their own privileges the youth workers will be better equipped for a less discriminatory attitude to work with youth.

The project is created to equip youth workers, educators and teachers with knowledge, creative skills and competences for the promotion of human rights and inclusion processes and combating discrimination in general, and of the LGBTI community particularly, online and offline.

Implementation period: 01-08-2018 - 31-07-2019
Total grant: 21 871 EUR

QUEENS OF THE THEATRE OF THE OPPRESSED

Coordinator: Leadership, Equality and Active Participation in Sports for LGBTI in Scotland – Glasgow UK

Participants: UK, CZ, BG, HR, SI, EL, SK, IE, ES, IT, BE, AT

The project exists of a three phase long-term international training aimed at improving the quality of youth work and strengthening the capacities of youth organisations working with marginalised communities or human rights education through the development of competences of youth workers. Two residential trainings with a practice phase in between are also included. The goal is to provide staff with knowledge and skills of the theatre of the oppressed methodology so that they can achieve success in empowerment of the marginalised / LGBT+ youth groups and in human rights education.

The project will be as much as possible practically oriented, i.e. on acquiring practical competences - participants will not only learn the basics of the Theatre of the Oppressed (TO) but will also prepare, execute and evaluate a small TO activity. They will be mentored and peer-mentored throughout the whole training.

Participants will be enabled to design, run and evaluate and activity using TO techniques with relevant target group and having realistic expectations about the possible impacts of their activity.

Implementation period: 01-05-2018 - 31-10-2019
Total grant: 43 116 EUR

GET READY FOR LGBT+

Coordinator: Asociacion Juvenil Cultural Demeter – Sanlúcar de Barrameda - ES

Participants: ES, LT, EE, SE, PL, IT, BG, TR, AM, MK,

The project consists of training courses about the inclusion of LGBT with a multicultural background in the youth field. It responds to the demand of young LGBT people and our partners, due to their lack of training and support resources for these young people, especially in multicultural groups. It is aimed at youth workers, youth leaders, educators, and people working with youth. It includes participants with fewer opportunities like immigrants, refugees, LGBT+, from rural areas, from cultural minorities, and with economic difficulties.

The main goal of the training course GET READY TO INCLUDE LGBT+ is to develop the competencies of

participants (and organizations) to improve inclusion of LGBT youth in society. Competences will be developed to empower LGBT people and to raise tolerance, empathy and acceptance among the mainstream groups, through deeper knowledge of sexual diversity, cultural diversity, equality, discrimination, and by using methods of non-formal education to fight discrimination caused by sexual orientation.

The creation of inclusion products, i.e. digital guide and Facebook page, will increase the awareness and training of other people, organizations and institutions throughout Europe.

Implementation period: 02-07-2018 - 01-12-2018
Total grant: 19 966 EUR

HOW TO LGBTQ+

Coordinator: Youth Center of Epirus – Ioannina – GR

Participants: EL, ES, FR, JO, TN, MA

The project will promote equality and equity among the participants and target groups, and increase the quality of youth work of the involved partner organisations. It targets young people that need to increase or can contribute to the promotion of understanding of diversity, European values, freedom, respect, tolerance and human rights. The project will enrich participant's critical thinking and sense of initiative in general and especially on promotion of LGBTQ+ awareness.

The main objectives of the project are:

- to raise the awareness about issues that concern the LGBTQ+ community, especially the youth;

- to learn about and promote different ways in which people who do not identify as heterosexual deal with social discrimination, as well as to learn how to help a fellow citizen not to feel conflicted about their sexual orientation and gender identity;

- to learn more about the addressing of the subject in other countries and exchange opinions among young people on improving the life of young LGBTQ+ people, as in developing their social lives;

- to promote European and Mediterranean values, tolerance, human rights, respect, freedom, cultures and international collaboration among young people, youth leaders and organisations.

Implementation period: 15-05-2018 - 14-09-2018

Total grant: 19 560 EUR

More information:

ec.europa.eu/lgbti

https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/list-actions-advance-lgbti-equality_en

Věra Jourová

Commissioner for Justice, Consumers
and Gender Equality



Directorate General for Justice and Consumers

