

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

24 September 2019 – Brussels

## **Hate crime and hate speech against LGBTI people**

Violence motivated by LGBTI-phobia across the EU is a worrying reality. LGBTI people are too often the victims of hate crimes and hate speech due to their actual or perceived sexual orientation, gender identity and/or sex characteristics, affecting the full enjoyment of their fundamental rights. According to the 2013 FRA LGBT survey<sup>1</sup>, almost half (47%) of all respondents reported feeling personally discriminated against or harassed on the grounds of sexual orientation in the year preceding the survey; a quarter (26%) of all EU LGBT survey respondents had been attacked or threatened with violence in the previous 5 years and almost 3 in 10 transgender respondents indicated that they had been victims of violence or threats of violence more than three times in the previous year.

LGBTI people also face bias-motivated hatred online. According to the data gathered by civil society organisations through to 2018, hate speech based on sexual orientation and gender identity (19.3% in total) is among the grounds most often reported on social media platforms<sup>2</sup>. Yet, systematic data collection of LGBTI-phobic crimes and speech is often lacking, and instances of hate crimes and hate speech against LGBTI people remain underreported. Only around one out of five incidents of hate-motivated violence which respondents to the 2013 FRA survey experienced in the 12 months preceding the survey were reported to the police.

The Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law (the 'Framework Decision') is the main EU legislation defining a Union-wide, criminal law approach to racism and xenophobia, aiming at ensuring that such behaviour constitutes an offence in all Member States. While sexual orientation, gender identity and sex characteristics are not covered by the Framework Decision, 22 Member States have decided to go beyond its requirements and included them as aggravating circumstances and as a form of hate speech in their national legislation.

The European Commission is furthermore closely monitoring the implementation of the Victims' Rights Directive<sup>3</sup>, which ensures that all victims of all crimes, including hate crime with biased

<sup>1</sup> Fundamental Rights Agency, LGBT survey, 2013, <https://fra.europa.eu/en/publication/2013/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-results>

<sup>2</sup> [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/countering-illegal-hate-speech-online\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/racism-and-xenophobia/countering-illegal-hate-speech-online_en)

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029>

motives, receive appropriate information, support and protection and are able to participate in criminal proceedings. LGBTI people can be particularly vulnerable to crimes committed with a bias or discriminatory motive related to their personal characteristics. The Directive lays down a set of binding rights for victims and clear obligations on Member States to have these rights respected in practice. Under the Directive, all victims have a right to access support services and receive protection in accordance with their individual needs.

The European Commission is also supporting national authorities and civil society organisations in combating hate speech and hate crime through a number of policy actions. It has enhanced Member States' efforts in ensuring better identification, recording, investigation and prosecution of hate crimes, access to justice, and protection and support for victims, by fostering expert discussions, providing guidance and strengthening alliances and cooperation. Through the High Level Group on combating racism, xenophobia and other forms of intolerance, in 2017 and 2018, the Commission provided guidance<sup>4</sup> to Member States on how to apply the Framework Decision in practice, including through best practices and guidance on police training<sup>5</sup>. With the support of the FRA, Member States have improved the manner in which hate crimes, including those committed with a homophobic or transphobic motivation, are recorded by law enforcement authorities, and related data is collected. Several Member States have initiated an implementation strategy by hosting country workshops to assess national systems against guiding principles on hate crime recording developed by the High Level Group<sup>6</sup>. Supporting civil society initiatives to counter LGBTI-phobia, ensuring protection of victims and addressing underreporting are also amongst the Commission's funding priorities under the Rights, Equality and Citizenship (REC) Programme 2014-2020.

The Commission has also stepped up its efforts to prevent and combat hate speech online through the work carried out in cooperation with major IT companies (Facebook, Instagram, Microsoft, Twitter, YouTube, Google+, Snapchat, Dailymotion and Jeuxvideo.com) on the Code of Conduct on Countering Illegal Hate Speech Online, which was agreed in May 2016. A Recommendation was adopted in 2018 on measures to effectively tackle illegal content online. In addition, the revised Audiovisual Media Services Directive reinforces its measures which address incitement to violence or hatred, providing that audiovisual media services shall not contain any such incitement based on the grounds listed in Article 21 of the Charter of Fundamental Rights, including sexual orientation. The Directive also obliges video-sharing platforms to put in place a detailed set of adequate measures in this regard.

Notwithstanding the progress made, challenges to combating LGBTI-phobic hate speech and hate crime persist. In particular, the FRA survey underlined the persistence of high levels of underreporting, which undermines Member States' efforts to enhance the protection of victims, to effectively implement the legislation on the ground and to foster the systematic collection of data. The European Parliament Resolution<sup>7</sup> on the Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2014) already emphasised that police forces,

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<sup>4</sup> Guidance Note on the practical application of Council Framework Decision 2008/913/JHA – November 2018.

<sup>5</sup> Hate crime training conclusions paper – 'Hate crime training for law enforcement and criminal justice authorities: 10 key guiding principles' and 'Overview of resources and initiatives to support hate crime training programmes in the EU Member States'.

<sup>6</sup> <http://fra.europa.eu/en/news/2017/improving-recording-hate-crime-law-enforcement-authorities>

<sup>7</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0062&language=EN>

prosecution services and judges play a key role in ensuring effective, prompt and impartial investigations of such crimes. Therefore, it is essential that the EU and Member States and, in particular, local authorities, improve efforts to provide for effective training addressed to police staff, to increase concrete awareness-raising activities to help LGBTI people access, efficiently and easily, structures and procedures for reporting hate-motivated violence, and to establish an effective system for collecting data on LGBTI-phobic hate crimes.

### **Questions for the workshop**

- Which remaining challenges should take priority in future actions to combat hate crime and hate speech against LGBTI people?
- How can underreporting be tackled and how can we improve the collection of data on LGBTI-phobic hate crime?
- How can we better train law enforcement to combat hate speech and crime, and would there be a role for the European Union Agency for Law Enforcement Training (CEPOL)?
- What can Member States do to improve their efforts in combating hate crime and hate speech and how can the European Commission best support them?