

EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity

European Parliament resolution of 4 February 2014 on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2013/2183(INI))

The European Parliament,

- having regard to Article 2 of the Treaty on European Union,
- having regard to Articles 8 and 10 of the Treaty on the Functioning of the European Union,
- having regard to the Charter of Fundamental Rights of the European Union and in particular Article 21 thereof,
- having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms,
- having regard to Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010,
- having regard to the Communication from the Commission entitled ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’ (COM(2010)0573),
- having regard to the 2012 Commission Report on the Application of the EU Charter of Fundamental Rights (COM(2013)0271), and to the accompanying staff working documents,
- having regard to the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426) and to its position of 2 April 2009 on that proposal¹,
- having regard to the guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons adopted by the Council of the European Union at its meeting of 24 June 2013,
- having regard to the European Union Agency for Fundamental Rights report of November 2010 on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity,
- having regard to the results of the European Union lesbian, gay, bisexual and transgender survey carried out by the European Union Agency for Fundamental Rights (FRA) and published on 17 May 2013,

¹ OJ C 241 E, 8.10.2009, p. 68.

- having regard to the FRA opinion of 1 October 2013 on the situation of equality in the European Union 10 years on from initial implementation of the equality directives,
 - having regard to its resolution of 24 May 2012 on the fight against homophobia in Europe¹,
 - having regard to its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011)²,
 - having regard to its resolution of 14 March 2013 on strengthening the fight against racism, xenophobia and hate crime³,
 - having regard to Rule 157 of its Rules of Procedure,
- A. whereas the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities;
 - B. whereas in defining and implementing its policies and activities, the European Union aims to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;
 - C. whereas in June 2013 the Council of the European Union adopted strong guidelines to promote and protect the enjoyment of all human rights by LGBTI persons outside the European Union, and should ensure that they are protected effectively inside the EU;
 - D. whereas the European Union already coordinates its action through comprehensive policies in the field of equality and non-discrimination through the ‘Framework strategy for non-discrimination and equal opportunities for all’, in the field of gender equality through the ‘Strategy for equality between women and men 2010-2015’, in the field of disability through the ‘European Disability Strategy 2010-2020’, and in the field of equality for Roma persons through the ‘EU Framework for National Roma Integration Strategies up to 2020’;
 - E. whereas in its ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’, the Commission has acknowledged the necessity of developing individual policies concerning certain specific fundamental rights on the basis of the Treaties;
 - F. whereas in the 2013 EU LGBT survey, the European Union Agency for Fundamental Rights (FRA) found that across the EU in the year preceding the survey one in two LGBT respondents felt discriminated against or harassed on grounds of sexual orientation, one in three were discriminated against when accessing goods or services, one in four were physically attacked, and one in five were discriminated against in employment or occupation;
 - G. whereas the FRA recommended that the EU and Member States develop action plans

¹ Texts adopted, P7_TA(2012)0222.

² Texts adopted, P7_TA(2012)0500.

³ Texts adopted, P7_TA(2013)0090.

promoting respect for LGBT persons and protection of their fundamental rights;

- H. whereas in May 2013 11 equality ministers¹ called on the Commission to issue a comprehensive EU policy for LGBT equality, and 10 Member States² have already adopted or are discussing similar policies at national and regional levels;
- I. whereas the European Parliament has asked 10 times for a comprehensive European Union policy instrument for equality on grounds of sexual orientation and gender identity;

General considerations

- 1. Strongly condemns any discrimination on the basis of sexual orientation and gender identity, and strongly regrets that the fundamental rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people are not yet always fully upheld in the European Union;
- 2. Believes that the European Union currently lacks a comprehensive policy to protect the fundamental rights of LGBTI people;
- 3. Acknowledges that the responsibility to protect fundamental rights lies jointly with the Commission and Member States; calls on the Commission to use its competences to the fullest extent, including facilitating the exchange of good practices among Member States; calls on Member States to fulfil their obligations under EU law and under the Council of Europe Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity;

Roadmap contents

- 4. Calls on the Commission, Member States and relevant agencies to work jointly on a comprehensive multiannual policy to protect the fundamental rights of LGBTI people, i.e. a roadmap, a strategy or an action plan featuring the themes and objectives hereunder;

A. Horizontal actions to implement the Roadmap

- (i) The Commission should work to secure existing rights throughout its work and across all domains in which it is competent by mainstreaming issues linked to the fundamental rights of LGBTI people in all relevant work – for instance when drafting future policies and proposals or monitoring the implementation of EU law;
- (ii) The Commission should facilitate, coordinate and monitor the exchange of good practice among Member States via the open method of coordination;
- (iii) Relevant European Union agencies, including the European Union Agency for Fundamental Rights (FRA), the European Institute for Gender Equality (EIGE), the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the European Police College (CEPOL), the

¹ Those of Austria, Belgium, Croatia, Denmark, Finland, France, Italy, Luxembourg, Malta, the Netherlands and Sweden.

² Belgium, Croatia, France, Germany, Italy, Malta, the Netherlands, Portugal, Spain and the United Kingdom.

European Union's Judicial Cooperation Unit (Eurojust), the European Judicial Network (EJN) and the European Asylum Support Office (EASO), should mainstream issues related to sexual orientation and gender identity in their work, and continue to provide the Commission and Member States with evidence-based advice on the fundamental rights of LGBTI people;

- (iv) The Commission and Member States should be encouraged to regularly collect relevant and comparable data on the situation of LGBTI persons in the EU together with relevant agencies and Eurostat, while fully respecting EU data protection rules;
- (v) Together with relevant agencies, the Commission and Member States should encourage training and capacity-building for national equality bodies, national human rights institutions and other organisations tasked with the promotion and protection of the fundamental rights of LGBTI persons;
- (vi) Together with relevant agencies, the Commission and Member States should seek to make citizens aware of the rights of LGBTI persons;

B. General provisions in the field of non-discrimination

- (i) Member States should consolidate the existing EU legal framework by working to adopt the proposed directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, including by clarifying the scope and associated costs of its provisions;
- (ii) The Commission, Member States and relevant agencies should pay particular attention to lesbian women's experience of multiple discrimination and violence (both on grounds of sex and sexual orientation), and design and implement non-discrimination policies accordingly;

C. Non-discrimination in employment

- (i) The Commission should include a specific focus on sexual orientation when monitoring the implementation of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation¹, and on gender identity when monitoring the implementation of 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 occupation²;
- (ii) Together with the relevant agencies, the Commission should issue guidelines specifying that transgender and intersex persons are covered under 'sex' in 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;

¹ OJ L 303, 2.12.2000, p. 16.

² OJ L 204, 26.7.2006, p. 23.

- (iii) Equality bodies should be encouraged to inform LGBTI persons, as well as trade unions and employer organisations, about their rights;

D. Non-discrimination in education

- (i) The Commission should promote equality and non-discrimination on grounds of sexual orientation and gender identity throughout its youth and education programmes;
- (ii) The Commission should facilitate the sharing of good practice in formal education, including teaching materials, anti-bullying and anti-discrimination policies, among Member States through the non-binding open method of coordination;
- (iii) The Commission should facilitate the sharing of good practice throughout Member States' youth and education sectors, including youth welfare services and social work, among Member States through the non-binding open method of coordination;

E. Non-discrimination in health

- (i) The Commission should place LGBTI health concerns within relevant wider strategic health policies, including access to health care, equality in health, and the EU's global voice in health-related matters;
- (ii) The Commission should continue working within the World Health Organisation to withdraw gender identity disorders from the list of mental and behavioural disorders and to ensure a non-pathologising reclassification in the negotiations on the 11th version of the International Classification of Diseases (ICD-11);
- (iii) The Commission should support Member States in the training of health professionals;
- (iv) The Commission and Member States should undertake research on health issues specific to LGBTI persons;
- (v) Member States should take account of LGBTI people within national health plans and policies, ensuring that training curricula, health policies and health surveys take specific LGBTI health issues into account;
- (vi) Member States should introduce or review legal gender recognition procedures so they fully respect transgender people's right to dignity and bodily integrity;

F. Non-discrimination in goods and services

- (i) The Commission should include a specific focus on access to goods and services by transgender persons when monitoring the implementation of Directive 2004/113/EC implementing the principle of equal treatment

between men and women in the access to and supply of goods and services¹;

G. Action specific to transgender and intersex persons

- (i) The Commission should ensure gender identity is included among prohibited grounds of discrimination in any future equality legislation, including any recasts;
- (ii) The Commission should mainstream issues specific to transgender and intersex people throughout the relevant EU policies, mirroring the approach adopted in the Gender Equality Strategy;
- (iii) Member States should ensure equality bodies are informed and trained about the rights of, and specific issues pertaining to, transgender and intersex people;
- (iv) The Commission, Member States and relevant agencies should address the current lack of knowledge, research and relevant legislation on the human rights of intersex people;

H. Citizenship, families and freedom of movement

- (i) The Commission should produce guidelines to ensure that Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States², and Directive 2003/86/EC on the right to family reunification³, are implemented so as to ensure respect for all forms of families legally recognised under Member States' national laws;
- (ii) The Commission should make proposals for the mutual recognition of the effects of all civil status documents across the EU, in order to reduce discriminatory legal and administrative barriers for citizens and their families who exercise their right to free movement;
- (iii) The Commission and Member States should study whether restrictions in place for the change of civil status and identity documents for transgender people harm their ability to enjoy their right to free movement;
- (iv) Member States which have adopted legislation on cohabitation, registered partnerships or marriage for same-sex couples should recognise similar provisions adopted by other Member States;

I. Freedom of assembly and expression

- (i) Member States should ensure that rights to freedom of expression and assembly are guaranteed, particularly with regard to pride marches and similar events, by ensuring these events take place lawfully and by guaranteeing the effective protection of participants;

¹ OJ L 373, 21.12.2004, p. 37.

² OJ L 158, 30.4.2004, p. 77.

³ OJ L 251, 3.10.2003, p. 12.

- (ii) Member States should refrain from adopting laws and reconsider existing laws which restrict freedom of expression in relation to sexual orientation and gender identity;
- (iii) The Commission and the Council of the European Union should consider that Member States adopting laws to restrict freedom of expression in relation to sexual orientation and gender identity breach the values on which the European Union is founded, and react accordingly;

J. Hate speech and hate crime

- (i) The Commission should monitor and provide assistance to the Member States with regard to issues specific to sexual orientation, gender identity and gender expression when implementing Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime¹, in particular when crimes are committed with a bias or discriminatory motive which could be related to the personal characteristics of the victims;
- (ii) The Commission should propose a recast of the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law including other forms of bias crime and incitement to hatred, including on grounds of sexual orientation and gender identity;
- (iii) Together with relevant agencies, the Commission should facilitate the exchange of good practice among Member States pertaining to the training and education of police forces, prosecution services, judges and victim support services;
- (iv) The Fundamental Rights Agency should assist Member States in improving their collection of comparable data about homophobic and transphobic hate crime;
- (v) Member States should register and investigate hate crimes against LGBTI people, and adopt criminal legislation prohibiting incitement to hatred on grounds of sexual orientation and gender identity;

K. Asylum

- (i) Together with the European Asylum Support Office (EASO) and relevant agencies, and within the remit of existing EU legislation and jurisprudence, the Commission should include specific issues linked to sexual orientation and gender identity in the implementation and monitoring of asylum legislation, including Directive 2013/32/EU on common procedures for granting and withdrawing international protection², and Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection³;

¹ OJ L 315, 14.11.2012, p. 57.

² OJ L 180, 29.6.2013, p. 60.

³ OJ L 337, 20.12.2011, p. 9.

- (ii) Together with relevant agencies, the Commission and Member States should ensure that asylum professionals, including interviewers and interpreters, receive adequate training – including existing training – to handle issues relating specifically to LGBTI persons;
- (iii) Together with the EASO and in cooperation with the European External Action Service, the Commission and Member States should ensure that the legal and social situation of LGBTI persons in countries of origin is documented systematically and that such information is made available to asylum decision-makers as part of Country of Origin Information (COI);

L. Enlargement and external action

- (i) The Commission should continue its current monitoring of issues linked to sexual orientation and gender identity in accession countries;
 - (ii) The Commission, the European External Action Service, the EU Special Representative for Human Rights and Member States should systematically use the Council Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons, and maintain a unified position when responding to violations of these rights;
 - (iii) The Commission and the European External Action Service should provide information obtained from EU delegations on the situation of LGBTI persons in third countries to the European Asylum Support Office and Member States;
5. Emphasises that this comprehensive policy must respect the competences of the European Union, of its agencies, and of Member States;
 6. Recalls that the freedom to express and display one's beliefs and opinions in keeping with the principle of pluralism of ideas, and provided that it does not incite to hatred, violence or discrimination, should be respected;

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7. Instructs its President to forward this resolution to the Council, the Commission, the European External Action Service, the governments and parliaments of the Member States, all agencies cited herein, and the Council of Europe.