

LGBTI rights in 2019-2024

what can the EU

still do?



Since the beginning of the 8th legislature of the European Parliament in 2014, the European Union has consistently expressed support for human rights for lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals within and beyond the EU. While we can celebrate several achievements in the field (see our other briefings on what the EP and the EU have done for LGBTI rights in 2014-2019), there is still work to fully guarantee and protect the human rights of LGBTI people.

Future of the LGBTI List of Actions

In 2015, the European Commission published its [List of Actions to advance LGBTI equality](#), in response to the [2014 “Lunacek” EP report](#). According to the 2016 and 2017 implementation reports, progress has been made, but the List of Actions will expire in 2019. 19 Member States signed a joint non-paper in December 2018 to ensure that the newly appointed Commission will at least continue with the List of Actions, if not adopt a strategy or roadmap as demanded by the 2014 Lunacek report. In a [resolution on the future of the LGBTI List of Actions](#) of February 2019, the European Parliament also highlighted the importance to include topics that were initially requested by the European Parliament report but left out of the List of Actions (e.g. mainstreaming of trans and intersex rights).

Protection against discrimination

In 2008, the European Commission presented an [anti-discrimination “Horizontal” Directive](#) that would protect all EU citizens, in areas of life other than employment, against discrimination based on nationality, age, religion or belief, sex, sexual orientation or disability. Without unanimity in the Council, the Directive has been blocked now for 10 years. At the moment, EU legislation only protect against discrimination based on sexual orientation in the field of employment. Issues such as discrimination based on gender identity and/or expression, or in recruitment, prevail, so advocating for an anti-discrimination directive is still up to date. However, the text should be upgraded in order to also include discrimination on gender identity, gender expression, and sex characteristics.

Violence, hate crimes & hate speech

Protections are enshrined in the [Victims’ Rights Directive 2012/29/EU](#) for violence based on sexual orientation, gender identity, and gender expression, though not sex characteristics. The EU still has a key role to play in monitoring the implementation of the Directive. Indeed, Member States implement it irregularly, frontline officials still lack sensitivity training in LGBTI issues and some victims’ support structures remain inaccessible to LGBTI individuals. This is even more relevant that in 2017, there were [369 reported murders](#) of trans and gender diverse individuals worldwide, with many more LGBTI individuals facing violence and hate crimes, which more often than not remain unreported.

Freedom of movement

2018 was an important year for freedom of movement for LGBTI, with the landmark decision of the Court of Justice of the EU on the [Coman case](#) recognising the right to freedom of movement for married same-sex couples. However, many member states have not fully implemented the CJEU's decision. Furthermore, the decision only concerns an EU national, their third-national spouse and their right of residence. Today in the EU, couples of two EU nationals residing in or traveling in different EU Member States lack protections because same-sex marriage or civil partnership is not always mutually recognised by national legislation. Different legislation on legal gender recognition can also make it difficult for trans people to move across the EU.

Rainbow Families

The protection afforded to Rainbow Families is far from being consistent across the EU. As of 2019, 5 EU Member States do not afford any legal protection to same-sex couples and 14 Member States do not allow adoption by same-sex couples, leaving Rainbow Families in a state of legal limbo. Furthermore 16 Member States discriminate against same-sex couples by not allowing them access to medically assisted insemination. Even though family is not an EU competence, the EU can do something about Rainbow Families rights, whether in the economic domain (for example through an inclusive work-life balance legislation) or when it comes to freedom of movement (see section above).

LGBTI refugees & asylum seekers

LGBTI people are persecuted worldwide, yet only 6 Member States still do not allow asylum claims based on sexual orientation. Only 13 Member States allow claims based on gender identity, and only 2 Member States on sex characteristics¹. LGBTI people who seek refuge in the EU face specific challenges (e.g. access to safe accommodation) that are not met uniformly across the EU. The reception conditions directive, the resettlement framework, and the qualifications directive are key files for the rights of LGBTI asylum seekers and refugees. The European Council is yet to agree on the proposals made by the European Parliament on the reform of the Common European Asylum System, underway since 2016.

Education

Despite the European Parliament's call in 2015 to Member States to fight homophobia and transphobia in schools, LGBTI youth still face bullying, harassment, and discrimination. In addition, some countries actively block access to LGBTI inclusive resources for minors through anti-gay 'propaganda' laws such as in Latvia or through canceling initiatives to create more inclusive school environments for LGBTI students (see for example recent pressures by the Polish government to [cancel Rainbow Friday](#)). Though education is not within the competencies of the EU, it has helped foster exchanges of best practices among Member States and should continue to do so.

Health

Although the European Parliament condemned LGBTI conversion therapy in 2018, only one Member State (Malta) has completely banned the practice. Conversion therapy is detrimental to the mental health of LGBTI individuals and LGBTI youth are especially affected. In addition, health care for trans and intersex individuals needs improvement (see in the dedicated sections below).

¹ For an overview of LGBTI laws and policies in Europe, look at ILGA-Europe's Rainbow Map: <https://rainbow-europe.org/>

Human rights of trans people

Though trans identities have been depathologised in the [new ICD-11](#) this year, it is yet to be adopted by the World Health Assembly in May 2019 (and support from the EU will be key). At the moment, 7 countries in the EU still require sterilisation for legal gender recognition; while only 6 EU countries do not require a mental health diagnosis and therefore allow legal gender recognition based on self-determination. The situation for individuals who identify outside of the gender binary is even more difficult as only 3 Member States have procedures in place to recognise non-binary genders.

Human rights of intersex people

Approximately [1.7%](#) of the world population is intersex, yet the human rights violations they go through remain widely unknown. ‘Sex normalising’ treatments have only been banned in two Member States (Malta and Portugal). Support from the EU is needed to push for the depathologisation of intersex variations remaining in the new ICD-11. Protection of intersex people against discrimination is also necessary: only two Member States, Malta and Greece, explicitly includes sex characteristics in their anti-discrimination legislation, while they are excluded from all EU legislation at the moment.

LGBTI rights outside the EU

The EU has an important role to play in promoting LGBTI rights outside of its borders. Respect for human rights - including LGBTI rights - is a key condition in enlargement and neighbourhood EU policies, and should continue to be pushed for. As for third countries, the EU should also continue to stand up against human rights violations against LGBTI people worldwide, including by ensuring the implementation of the [EU Council's LGBTI Guidelines](#). Human rights conditions in trade agreements are also an opportunity to support LGBTI rights in third countries.

Support to civil society

Funding programmes such as the Rights, Equality, and Citizenship Programme (2014-2020), the European Social Fund and Erasmus+ have provided important support to LGBTI organisations working to combat homophobia and transphobia and to promote equality and diversity in the EU. It is of utmost importance that they continue to support LGBTI organisations in the next European Commission mandate, especially in a context of growing LGBTIphobic across the EU.

Brexit

UK's planned departure from the EU should have a significant impact on the protection of human rights in the UK, including the human rights of LGBTI people. Currently, the Charter of Fundamental Rights of the EU is the only international instrument that expressly prohibits discrimination on the ground of sexual orientation. While national legislation on anti-discrimination can be amended by a simple act of parliament, international law prevails. Following a [vote in the House of Commons](#), the Charter of Fundamental Rights of the EU will be removed from UK law post-Brexit, therefore removing protection above national UK law.

For more data on LGBTI rights in Europe, take a look at ILGA-Europe's [Rainbow Europe](#) project.

The LGBTI Intergroup is the European Parliament's largest intergroup with 150+ MEPs from 24 Member States and 6 political groups. We have consistently defended the rights of LGBT people in the work of the European Parliament over 5 years, and will continue to defend them in 2019-2024.