

Equality Bodies contributing to the List of Actions by the European Commission to advance LGBTI equality

September 2017

While there has been progress on legislative protection of LGBTI (Lesbian, Gay, Bisexual, Trans and Intersex) people in recent years, they continue to face discrimination in all areas of life across Europe. The prevalence of hate speech and hate crime, threats to LGBTI organisations and activists, the recent rise in political discourses hostile to equality, as well as political pressure on the independence of some equality bodies, are worrying trends which undermine progress on equality for LGBTI people.

The **2015 List of Actions by the Commission to advance LGBTI equality** is a welcome policy tool available at EU level and it is essential to ensure its swift and ambitious implementation. Nonetheless, it remains crucial to adopt comprehensive EU legislation to combat discrimination on the grounds of sexual

orientation and gender identity, ensuring full legal protection to all LGBTI people in all spheres of life.

This factsheet aims to highlight some of the ways in which the work of national equality bodies in Europe contributes to the implementation of the List of Actions. It focuses on **action n°4 "Supporting key actors responsible to promote and advance equal rights for LGBTI people in the EU"**. It seeks to complement the conclusions on the [Annual Report 2016 to Advance LGBTI Equality and contribute to upcoming exchanges of good practices](#).

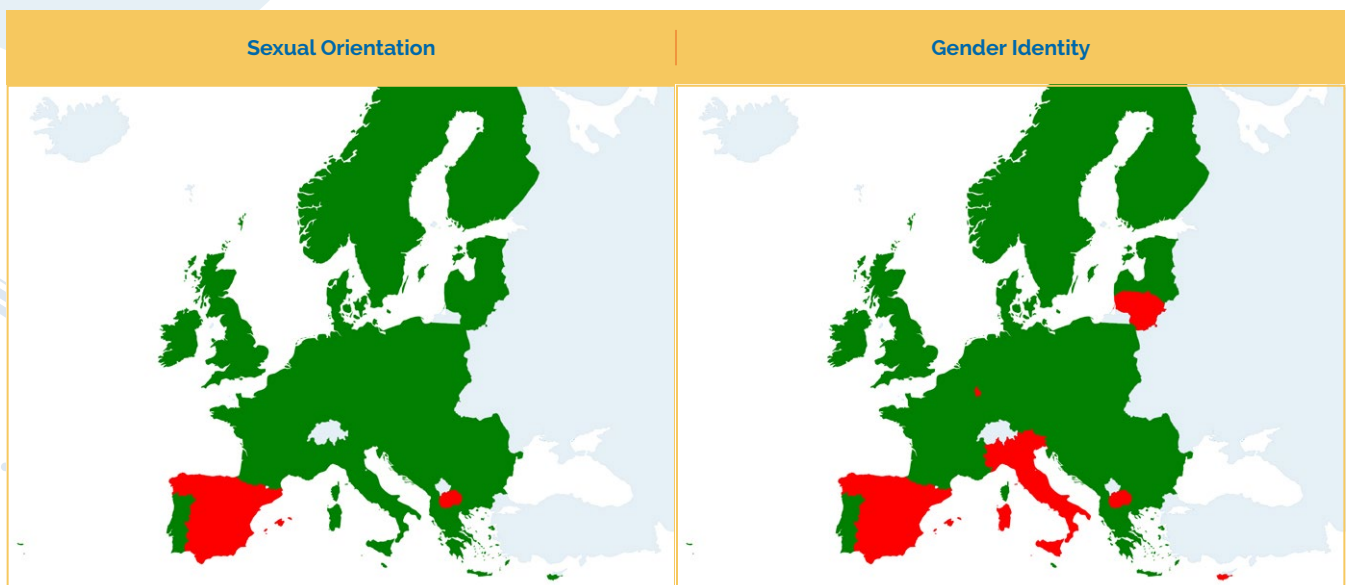
It is based on the input of 21 Equinet members, as well as the 2013 *Equinet Perspective on equality bodies promoting equality and non-discrimination for LGBTI people*.

National equality bodies are independent public organisations established on the basis of EU equal treatment directives¹ with a mandate to provide independent assistance to victims of discrimination and promote equality through surveys, reports and recommendations.

In 2017, 34 Equinet members had a mandate to address discrimination on the ground of sexual orientation and 30 had a mandate to address discrimination on the ground of gender identity in employment or beyond (education, housing, social protection and goods and services). This work includes dealing with complaints, providing legal support, providing guidance to

duty bearers (including equality duties), conducting research, pursuing legislative and policy change and raising awareness about discrimination issues.

However, establishing an equality body combating discrimination on the grounds of sexual orientation and gender identity is not an EU requirement. This therefore risks retrogression as a country could restrict the mandate of an equality body in these areas due to the absence of EU and European legal safeguards. In practice, not all countries covered by Equinet have an equality body which can deal with these grounds of discrimination.



Green: countries with an equality body with a mandate to address discrimination against LGBTI people
Red: no equality body to address discrimination against LGBTI people

Source: [Equinet European Directory of Equality Bodies – 2017](#)

¹ Directive 2000/43/EC (Race Directive), Directive 2004/113/EC (Gender Goods and Services Directive) and Directive 2006/54/EC (Gender Recast Directive)

Addressing bullying and harassment of LGBTI people

The List of Actions commits the European Commission to support EU Member States by organising good practice exchanges on LGBTI anti-discrimination actions in key areas. The experience of equality bodies in addressing bullying and harassment of LGBTI people in areas such as education and employment has resulted in some useful insights.

Insights from the work of equality bodies

- Reporting of bullying and harassment cases of LGBTI people to equality bodies is **extremely low**. Common efforts of decision-makers, public authorities, equality bodies and non-governmental organisations could be enhanced to improve the impact of awareness raising activities.
- LGBTI persons report harassment and bullying in all areas of their everyday life. Although the main focus of many equality bodies' work remains on homophobic and transphobic bullying and harassment **in the education sector**, good practices from the work done in this area could be implemented to tackle bullying and harassment of LGBTI persons **in other sectors** such as employment, health care, housing or leisure time.
- Experience of equality bodies shows **low levels of awareness among teachers**. Targeted measures should be developed by and/or supported by governments to train education actors to detect and address homo-, bi- and transphobic school bullying and to prevent them through positive measures.



Equality bodies' practices

RESEARCH

In 2015, the **Office of the Equal Opportunities Ombudsperson of Lithuania** conducted research on "*The prevalence of bullying on various grounds of personal identity in Lithuanian schools*". Collected data showed that LGBT students experience bullying more often than their heterosexual colleagues. It showed that bullies tend to mock male students more often than female due to their actual or assumed sexual orientation. 30.5% of students responded that they have noticed bullying in their school, while 7.4% of male students and 2.7% of female students have admitted that they have bullied others due to their LGBT identity.

In its latest *Is Britain Fairer?* report, the **Equality and Human Rights Commission (EHRC)** in Great Britain found out that more than **half of LGB young people** experience bullying in school. More than half of secondary school teachers said that they did not challenge the use of homophobic language every time they heard it.

CASEWORK

The **Hungarian Equal Treatment Authority** has recently handled a case of a transvestite person who had been harassed by the mayor of his hometown. The Equal Treatment Authority imposed a fine on the mayor and ordered him to restrain from engaging in similar conduct.

In 2017, the **Swedish Equality Ombudsman (EO)** started to supervise a school where a pupil was subjected to harassment with reference to the transgender identity of his or her custodian. The EO established that the school was aware of the harassment but did not take action to stop it and therefore breached its obligations under the Discrimination Act.

The **Commissioner for Protection of Equality of Serbia** issued a public warning to the press condemning homophobic content and emphasizing the necessity to eradicate all forms of hate speech from media. It also issued a public warning condemning an assault on an LGBT activist, which highlighted the importance of sanctioning perpetrators, as well as adopting adequate measures in order to create a society where the LGBTI population feels safe.

Supporting education actors to advance LGBTI equality

The List of Actions commits to support Member States through the exchange of best practices of safe school environments and the promotion of diversity for LGBTI people in line with the 2015 Paris Declaration of EU Education Ministers. Equality bodies have been working with education actors to advance LGBTI equality and their experience suggests useful lessons.

Insights from the work of equality bodies

- Targeted **training and guidance for all education actors** is crucial to support an LGBTI-inclusive school environment. Equality bodies participate in designing and delivering trainings to raise awareness on LGBTI issues among teachers, educators and policy makers in education.
- It is important that education policies and school curricula pay due attention to principles of equality and are LGBTI inclusive. Based on their expertise, equality bodies support the work of education actors by giving **policy recommendations** in the field of education.
- The **European Commission** could support the development of EU guidelines to support **school curricula** promoting equality, that is free from discriminatory and stereotypical content. A similar approach could be adopted to develop **EU guidelines** for training material on LGBTI equality for teachers.



Equality bodies' practices

TRAINING

In 2010 and 2011, the **Bulgarian Commissioner for Protection against Discrimination** implemented the project "Schools without discrimination" including training on tolerance and non-discrimination. The training introduced handbooks and educational materials for educators, teachers, children and young people from all levels of education system.

The **Maltese National Commission for the Promotion of Equality (NCPE)** supports education actors to advance LGBTI equality through inputs to draft policies, strategies and legislation related to education to ensure that the needs and concerns of LGBTI persons are identified and addressed. NCPE also delivers training sessions on equality and non-discrimination issues, including LGBTI rights, to educators and policy-makers in the field of education.

RECOMMENDATIONS

The **Commissioner for Protection of Equality of Serbia** issued a recommendation to the Ministry of Education and the Office for Advancement of Education calling for the removal of all discriminatory content from textbooks and workbooks. It highlighted the need for constant promotion of tolerance and human rights within the curriculum. The Serbian equality body suggested that all university textbooks should include content promoting diversity, culture of peace and non-discrimination. Special reference was given to LGBTI rights underlying the necessity of amending content of textbooks in favour of equality and inclusion of the LGBTI community within the education system.

PROMOTION

In 2017, the **Cypriot Commissioner for Administration and Human Rights** co-organised a Student's Forum on diversity and integration for students and teachers from a number of high schools. One of the training sessions for students covered homophobia and transphobia. Teachers were presented with the equality body's views on the issue and received a presentation by a transgender person on everyday difficulties faced by transgender persons.

Supporting businesses to advance LGBTI equality

The List of Actions also requires businesses to take up their responsibilities in including LGBTI people and forming inclusive workplaces with a focus on the development of more Diversity Charters and LGBTI-inclusive company diversity plans. The experience of equality bodies working with businesses to advance LGBTI equality is relevant for future work in this area.

Insights from the work of equality bodies

- LGBTI employees have rarely 'come out' in the workplace, which makes the correct assessment of the scale and nature of their disadvantages more difficult. **Quantitative and qualitative research** conducted by equality bodies can provide helpful insights to fill this gap and inform policy-making and the preparation of diversity and equality plans. Such evidence shows that problems faced by LGBTI employees include difficult access to employment, differences in pay, and the fear of harassment. Good data also allows equality bodies and LGBTI advocates to **demonstrate the benefits of an inclusive workplace** – for example, in terms of working culture and staff retention – and that advancing equality for LGBTI persons in business and the work place is good for business. More comprehensive LGBTI inclusive data collection by business and by government could add further to this knowledge base.
- The experience of equality bodies shows the **importance of building the capacity of businesses and employers to develop an LGBTI-friendly culture within their organisations**, *inter alia*, by addressing LGBTI issues in their **diversity strategies** and in the fulfilment of their statutory duties vis a vis equality in the workplace, recruitment and employment. Equality bodies can play a role in this through providing practical and expert support to the development of strategies, plans and best practice guidelines. **Involving civil society actors and LGBTI advocates** is crucial in this work.



Equality bodies' practices

RESEARCH

In February 2017, the **German Federal Anti-Discrimination Agency** launched the online '[Out in the Office](#)' survey, tracking the experience of LGBTI persons in employment. It seeks to gain an understanding from gay, bisexual and trans employees. This includes information as to the role their sexual orientation or gender identity plays within their professional environment, the extent to which it is possible to openly express their identity, and the perceived improvement in the situation over the past ten years.

PROMOTION

Lithuania's Office of the Equal Opportunities Ombudsperson has partnered with two Lithuanian NGOs – the Human Rights Monitoring Institute and the National LGBT Rights organisation (LGL) – to work with companies to develop diversity plans. By 2020, the project aims to have assisted 20 companies to incorporate diversity plans into their strategic planning.

NGO SUPPORT

Under its [2016 Human Rights and Equality Grant Scheme](#), the **Irish Human Rights and Equality Commission** awarded funding to the non-profit organization Transgender Equality Network Ireland (TENI) to conduct a programme on Trans inclusion in the workplace aimed at employers. Through primary research, the programme will document the experience of Transgender people in the workplace in Ireland, develop best practice guidelines and training for employers, and engage in advocacy on the research findings. The programme is due for completion at the end of 2017.

In [Is Britain Fairer?](#), the **Equality and Human Rights Commission (EHRC)** gained some important insights on the experience of LGBTI people in employment which businesses should consider. This included insights into pay differentials between different categories of people; the positive effects of the Employment Equality (Sexual Orientation) regulations 2003 on employees' ability to be out at work; gaps in enforcing equality in the workplace for LGBTI persons; and the barriers faced by trans people in accessing employment, and in enjoying a workplace free from discrimination.

Supporting key actors to promote and enhance equality in access to healthcare for LGBTI people

Healthcare is a crucial source of discrimination and disadvantage for LGBTI people as noted by the List of Actions. They all face different and serious challenges in accessing quality healthcare. A number of lessons have been learnt through the work of equality bodies in and with the healthcare sector.

Insights from the work of equality bodies

- The work of equality bodies contributes towards **addressing some of the healthcare challenges faced by LGBTI persons**. This includes addressing barriers to accessing healthcare due to discrimination; de-medicalisation of trans people, serophobia (discrimination against those who are, or are perceived to be, HIV positive), preventing and addressing mental health issues, blood donation and HIV status. Significant variation exists across Europe where the provision of health services for LGBTI persons is concerned, as well as a great variation in attitudes and understanding within the medical profession of the particular health needs of LGBTI persons.
- National equality bodies have been active across Europe **in gathering data on LGBTI health experiences and outcomes**. As with other areas touched upon in this paper, good data is crucial for a better understanding of these variations, and in identifying areas for action. An emphasis has also been placed on highlighting and promoting best practices in LGBTI health law, policy and practice through high-level peer-to-peer exchanges, collaboration with civil society, and through contributions to policy formation at a domestic level.

Equality bodies' practices

In October 2016 the **Cypriot Commissioner for Administration and Human Rights** worked with the Council of Europe, in partnership with LGBTI NGOs Accept, LGBT Cyprus, ILGA Europe and TGEU, to run a peer-to-peer exchange on Legal Gender Recognition. The exchange coincided with the publication of proposals by the equality body for human rights compatible gender recognition legislation that would de-medicalise trans identities, while taking into account the health needs of trans people.

In 2015, the **Finnish Non-Discrimination Ombudsman** referred a case to the country's **National Non-Discrimination and Equality Tribunal** regarding restrictions in certain hospital districts excluding single women and female couples from assisted reproductive treatments provided by the public health-care system. The Tribunal found in 2016 that the district Medical Directors had acted contrary to the Non-Discrimination Act and that the complainant had been discriminated against on the grounds of her sexual orientation. The Tribunal imposed a conditional fine of 30,000 euros on each of the Medical Directors, and ordered that the discriminatory practice cease. There is an appeal by the defendants of the case pending in the administrative court.

In Great Britain, the **Equality and Human Rights Commission's 'Is Britain Fairer?' study** highlighted a number of areas of concern regarding access to health for LGBTI persons. This included a higher incidence of poor mental health amongst sexual minority respondents; insufficient information tailored to the healthcare needs of LGBTI persons; the persistence of negative stereotypes of LGBTI persons in the healthcare setting; and discriminatory and hurtful interactions between healthcare providers and Trans patients.

In 2011, the **Czech Public Defender of Rights** responded to a complaint from a gay man who was excluded from blood plasma donation on the grounds of his sexual orientation. The [investigation](#) concluded that the authorities, when evaluating the suitability of blood donors, should distinguish between sexual orientation and sexual behaviour, and that exclusion on grounds of sexual orientation amounts to direct discrimination.

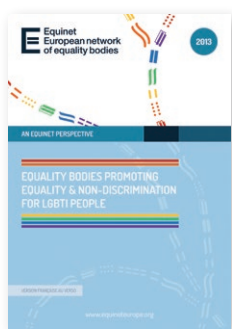
In 2017, the **French Defender of Rights** publicly took a position at a hearing organised by the French Senate in favour of the prohibition of unnecessary genital surgical interventions on intersex children without their consent and for an easier modification of the gender in the civil registry.



Unia (Interfederal Centre for Equal Opportunities, Belgium) partnered with the Observatory on AIDs and Sexualities at the University of Saint-Louis to conduct a survey on HIV status discrimination. The survey indicated that serophobia persists in many areas of Belgian life. Areas of concern included discrimination in provision of goods and services; workplace discrimination and barriers to professional advancement; and the impact of HIV stigma on the private lives of those diagnosed. This is important as it undermines the efforts of the Commission to improve policies targeting the populations most at risk, including from the LGBTI community.

Ways Forward - Equality bodies contributing to better address discrimination against LGBTI people

- The contribution of equality bodies **goes beyond action n°2** on "strong monitoring and enforcement of existing rights of LGBTI people and their families under EU law". Equality bodies could be usefully consulted and associated with other actions, in particular supporting key actors (action n°4). Examples show that they have a valuable role in promotion, awareness-raising and research (action n°3).
- Regarding enforcement, the experience of equality bodies shows the necessity of having **comprehensive discrimination legislation covering the grounds of sexual orientation and gender identity in all areas of life**. Strategic efforts need to be sustained at both national and European levels to ensure adoption of the proposed Equal Treatment Directive (also known as the Horizontal Directive).
- In order for equality bodies to make the most of their potential to support the List of Actions, safeguards are necessary to secure their effectiveness. Adopting **European standards strengthening the independence and effectiveness, as well as ensuring adequate resources for national equality bodies**, would considerably strengthen the impact of the List of Actions to address discrimination against LGBTI people.
- Ensuring the List of Actions is continued by a **comprehensive strategy on LGBTI equality** after 2019 is essential to capitalize on the achievements of the List of Actions. A comprehensive strategy would be key in particular in EU Member States where no equality body was appointed to address discrimination against LGBTI people.



Equinet, the European Network of Equality Bodies, brings together 46 equality bodies from 34 European countries. Since 2007, Equinet supports the work of equality bodies to be independent and effective through capacity-building and by conveying the voice of equality bodies to European and international policy-makers.

For more information on the work of equality bodies in tackling discrimination against LGBTI people, the [Perspective "Equality bodies promoting equality & non-discrimination for LGBTI people"](#) provides an overview of the mandate, challenges and promising practices of equality bodies in this area.

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