

## **LGBTI rights in 2024-2029 – what can the EU still do?**

### **General recommendations**

European Commission to maintain the portfolio for a Commissioner for Equality with a specific focus on the protection of the fundamental rights of LGBTIQ+ people in the EU, as well as to adopt a new LGBTIQ+ Equality Strategy. Additionally, the Commission and Member States to adopt measures against the discrimination of LGBTIQ+ persons in the health sector. Particularly, Member States to expand coverage of all healthcare services, allowing LGBTIQ+ persons to seek specific care, including sexual and reproductive health and technologies. Lastly, the EU institutions and Member States to work together in a modification of the EU treaties to ensure better protection of the fundamental rights of LGBTIQ+ people at the EU level. In the Article 10 and Article 19 TFEU the grounds of gender identity, gender expression and sex characteristics should be added as grounds for discrimination alongside sexual orientation, as well as in the Article 21 of the EU Charter for Fundamental 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 17 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 and be in line with the position of the EP.

### **Violence, hate crime and hate speech**

Unfortunately, violence, hate crime and hate speech continue to be on the rise in the EU. In recent years, there has been a clear accumulation of anti-LGBTIQ speech from officials across the region, often instrumentalising children by falsely invoking concerns for their safety. Transphobic speech continues to be on the rise as well and hate speech concerning trans minors’ access to healthcare is common. In addition, online hate is on the rise as well, so a robust EU criminal law response to hate speech and hate crime is urgently needed. The EU also needs a programme of work to raise awareness and encourage the reporting of SOGIESC bias-motivated hate crimes. In addition, police and judicial officers receive training on LGBTIQ+ issues, to better support LGBTIQ+ people and adequately investigate and prosecute cases of hate crimes.

## Freedom of movement and family life

2018 was an important year for freedom of movement for LGBTIQ+, 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. While the European Court of Human Rights ruled favourably on strategic cases against Romania, Poland, Russia and Ukraine, in Bulgaria, the Supreme Court denied a birth certificate and citizenship to a child of two mothers, one of whom is Bulgarian, despite the CJEU ruling saying it must do so. There were major setbacks in Italy with a measure to only recognise biological parents on birth certificates, resulting in a large number of birth certificates being revoked. In December 2023, the European Parliament adopted its [position on the European Commission's draft regulation on cross-border recognition of parenthood](#), confirming the main aspects of the Commission's draft. The EP, however, only has a consultative role in this file: negotiations in the Council of the EU are ongoing. More work needs to be done in ensuring that Member States comply with EU law and with the judgments of the CJEU, in particular in regards of LGBTIQ+ people and rainbow families crossing borders within the EU.

## LGBTIQ+ refugees and asylum seekers

LGBTIQ+ asylum seekers are often at risk of additional danger because of their SOGIESC during their journey and upon arrival in the country where they seek asylum, which can take the form of harassment, exclusion, sexual violence, or other forms of violence. Trans asylum seekers experienced serious challenges in many areas, including access to gender-affirming healthcare. The EU needs appropriate protection of LGBTIQ+ applicants in the context of the common European asylum system and its reform, and grant access to asylum to LGBTIQ+ persons, including those from so-called "safe countries".

## Human rights of trans people

Though trans identities have been depathologised in the WHO's International Classification of Diseases (ICD-11), major challenges still exist for trans and gender-diverse people's access to basic, quality gender-affirming healthcare. The ongoing anti-rights backlash affects existing healthcare protocols and impacts the health and wellbeing of trans community. As of March 2023, 11 countries have legal gender recognition procedures based on self-determination of the person: Belgium, Denmark, Finland, Iceland, Ireland, Luxembourg, Malta, Norway, Portugal, Spain and Switzerland. However, while there has been progress in implementing more rights for trans people in Europe during 2022 and 2023, the risk of regression and anti-trans backlash across swathes of the continent remains a pressing issue for the community.

Governments should reform national gender-affirming healthcare protocols and guidelines in-line with the classifications in the ICD-11, as well as invest in the education and training of healthcare professionals, and to decentralise access to gender-affirming healthcare. Member states need to urgently improve the quality, access, and availability of gender-affirming healthcare and coverage to relieve the financial burden upon trans community, in line with the WHO call for Universal Health Coverage (UHC) and the Sustainable Development Goal 3 to “Ensure healthy lives and promote well-being for all at all ages”. All our allies should publicly declare support for trans and gender-diverse communities, to join with us in our efforts to counter the anti-rights movement. General awareness raising campaigns for the public, training for officials and media, prevention and combating hate speech and making sure proper safeguards are in place to prevent discrimination in the society are key actions to take.

### **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. There is strong forward movement in banning so-called ‘conversion practices’, with Belgium, Cyprus, Iceland, Portugal and Spain all adopting legislation. Parliamentary debates and plans for bans are taking place in Finland, Ireland, Netherlands and Switzerland, while Norway has approved legislation. Malta made improved amendments to its law and three people were prosecuted under the ban.<sup>1</sup> In addition, the EP has repeatedly taken a strong stance on intersex human rights. In its historic [resolution of 14 February 2019 on the rights of intersex people](#), the EP called for the fundamental rights of intersex people to be better protected in Europe. In 2021, [the EP declared the EU an LGBTI+ freedom zone](#) and called again for a ban. However, more work needs to be done. Member States must address the root causes, such as stereotypes, spread of misconceptions and inaccurate information, stigma and taboo, and work to fulfil the enjoyment of the highest attainable standard of physical and mental health for persons with innate variations in sex characteristics. The Council should address the human rights violations of intersex people, and ensure their depathologisation. Furthermore, we need to ensure no one is subjected to non-necessary medical or surgical treatment during infancy or childhood and support the adoption of flexible birth registration procedures. Lastly, we need to enhance the exchange of good practices and promote the adoption of legislation that adequately protects the fundamental rights of intersex people and intersex children and guarantee full protection against discrimination based on all grounds, especially sex characteristics.

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<sup>1</sup> Further reading: [https://www.ilga-europe.org/sites/default/files/2024/full\\_annual\\_review.pdf](https://www.ilga-europe.org/sites/default/files/2024/full_annual_review.pdf)