

Contribution of the European Union Agency for Fundamental Rights (FRA) to the “follow-up to Committee of Ministers’ Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity”

A. INTRODUCTION

In the context of the planned review of application of CM Recommendation (2010)5, the FRA hereby shares a selection of relevant *FRA Opinions*. These Opinions have been formulated based on independent, reliable and comparable socio-legal research conducted in all EU Member States in the period 2008-2011. In order to facilitate the review process, the Opinions are grouped in section B according to the paragraphs of the CM Recommendation. In section C, a short overview is provided on FRA activities in the area of fundamental rights of lesbian, gay, bisexual and transgender (LGBT) persons. Further data which form the basis for the Opinions can be provided by FRA upon request of the Council of Europe.

B. FRA OPINIONS IN THE AREA OF FUNDAMENTAL RIGHTS OF LGBT PERSONS

Right to life, security and protection from violence

1. Member States should take practical measures to raise awareness among law enforcement authorities on LGBT issues, and to provide adequate training to police in dealing effectively with hate crime incidents, particularly concerning victim support and the systematic recording of incidents.¹
2. Member States and EU institutions, as provided for by the treaties, should take appropriate measures to combat all forms of expression inciting, spreading or promoting hatred or other forms of discrimination against LGBT people, as well as incidents and crimes motivated by prejudice against LGBT persons. Equally, renewed commitment to countering anti-LGBT crimes and violence should lead to more effective action, exploring the potential of the new EU Treaties for the development of legal provisions at EU and national level. Such legal provisions should grant the same level of protection as the one granted to hate speech and crime motivated by racism or xenophobia.²

¹ Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States Part II – The Social Situation (2009). (*Report 2009*)

² Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity. 2010 update. (*Report 2010*)





Freedom of expression and peaceful assembly

3. Authorities in Member States should not rely on general provisions such as those relating to the preservation of ‘public order’ to impose undue restrictions on LGBT related events and other manifestations of LGBT identities or relationships.³
4. The right to receive unbiased information about LGBT persons and their relationships and to live in an open and inclusive environment needs to be respected, protected, promoted and fulfilled across the EU. This is particularly important for LGBT children.⁴

Right to respect for private and family life

5. In relevant areas of EU law, in particular employment related partner benefits, free movement of EU citizens, and family reunification of refugees and third country nationals, EU institutions and Member States should consider explicitly incorporating same-sex partners, whether married, registered, or in a *de facto* union, within the definitions of ‘family member’. In particular in the context of free movement, this could be achieved by explicitly adopting the ‘country of origin’ principle already firmly established in other areas of EU law.⁵

Employment

6. Social partners should facilitate the active participation of LGBT persons in their organisations and encourage public and private sector employers to adopt and implement diversity and equal treatment policies in the workplace.⁶
7. A substantial number of EU Member States already ban discrimination based on sexual orientation beyond the sphere of employment, to include some or all of those areas covered by the Racial Equality Directive. However, different forms of discrimination are still not equally addressed within the EU. The adoption of the European Commission’s proposal for a ‘horizontal directive’, in order to address the existing ‘hierarchy of grounds’ in EU Law, would significantly improve equal protection against discrimination on all grounds across the EU.⁷

Education

8. Member States should ensure that schools provide a climate of safety, support and affirmation for LGBT youth, combating stigmatisation and marginalisation of homosexuality and different gender identities. In this respect, school authorities should put in place concrete anti-bullying policies stating clearly that homophobic name-calling, bullying and harassment will not be tolerated. School authorities should also provide access to support mechanisms and information for young people identifying themselves as LGB.⁸

³ Report 2010

⁴ Report 2010

⁵ Report 2010

⁶ Report 2009

⁷ Report 2010

⁸ Report 2009





9. Member States should ensure that school curricula do not ignore issues of sexual orientation, and that LGBT persons are represented with respect and dignity in accordance with the European Union's fundamental values of equal treatment, non-discrimination and respect for diversity.⁹

Health

10. Member states should examine the situation regarding access to health services and the specific issues facing LGBT persons, particularly their ability to claim 'next of kin' status, together with representatives of healthcare professionals and LGBT organisations. In this respect such multi-agency partnerships would facilitate the development of targeted policies to provide quality health care corresponding to the specific needs of LGBT persons.¹⁰
11. Member states should also ensure that health care providers inform and train their medical and non-medical staff on ethnical and diversity issues in order to raise their awareness of LGBT issues, and improve the provision of services to LGBT persons.¹¹

Sports

12. Member States are encouraged to work with sports organisations and fan clubs to combat homophobic incidents and hate speech in sports events, supporting them in developing awareness-raising campaigns and applying the rule of 'zero tolerance for hate incidents'.¹²
13. Sports organisations or institutions should consider developing awareness raising programmes on LGBT issues for staff, coaches and athletes, as well as diversity policies and, in particular, harassment policies in relation to sexual orientation and gender identity.¹³

Right to seek asylum

14. EU institutions and Member States should consider explicitly recognising gender identity as a ground of persecution in the current reform of the Qualification Directive in the context of the 'asylum package'.¹⁴
15. The UNHCR Guidance note on Refugee Claims relating to Sexual Orientation and Gender Identity of 2008 is of particular relevance in assessing asylum claims particularly regarding an individual's assertion of orientation or identity, irrespective of marital status, children, or conformity with stereotypes. Current uses of degrading and intrusive assessments of credibility of asylum claims based on sexual orientation and gender identity should be discontinued.¹⁵

⁹ Report 2009

¹⁰ Report 2009

¹¹ Report 2009

¹² Report 2009

¹³ Report 2009

¹⁴ Report 2010

¹⁵ Report 2010





Discrimination on multiple grounds

16. Where Member states have multiple national equality bodies for different grounds of discrimination, strategies could be developed for dealing effectively and appropriately with complaints on multiple grounds.¹⁶

C. ACTIVITIES BY FRA IN THE AREA OF FUNDAMENTAL RIGHTS OF LGBT PERSONS

17. Following a request by the European Parliament, FRA collected data on discrimination against LGBT persons and the situation regarding homophobia in the EU. The first publication¹⁷ contained a comprehensive legal analysis of the situation in the EU member states. The legal analysis was based on 27 national legal studies that EU Member States drafted on the basis of detailed guidelines provided by FRA. The second publication¹⁸ was a comparative social analysis based on available data throughout the EU, as well as fieldwork research with relevant key actors.
18. At the request of the Council of Europe's Commissioner for Human Rights the FRA updated its 2008 comparative legal analysis report for all EU Member States¹⁹. This legal update, and the national background information which it was based on, was used as input by the Council of Europe Commissioner for Human Rights for his 2011 report on homophobia and transphobia in all 47 Council of Europe Member States.
19. In 2011 FRA published a summary of the socio-legal findings, including an analysis of trends, challenges and promising practices.²⁰ The publication linked FRA's research findings with the standards to which the EU Member States have agreed, including Council of Europe CM Recommendation (2010)5.
20. Acting upon a request by the European Commission, the FRA conducted in 2012 a specific survey on hate crimes and discrimination against LGBT persons in all member states and Croatia. The survey consisted of large-scale empirical data collected via an online questionnaire. Over 93.000 respondents participated in the survey. The overall aim of the survey was to provide reliable and comparable data on the fundamental rights situation of LGBT persons in the EU and Croatia, with particular reference to the extent and nature of discrimination, violence and verbal abuse or hate speech on the grounds of sexual

¹⁶ Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States. Synthesis Report (2009).

¹⁷ Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis (2008).

¹⁸ Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States Part II – The Social Situation (2009).

¹⁹ Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity. Comparative legal analysis, update (2010).

²⁰ Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States. Summary of findings, trends, challenges and promising practices (2011).



orientation and/or gender identity in the EU.²¹ The survey results and FRA Opinions will be presented on the *International Day Against Homophobia and Transphobia 2013*.

21. In 2012 FRA launched a new research project on public authorities and duty bearers *vis-à-vis* fundamental rights of LGBT persons. The research is of qualitative nature and will provide information on policy and policy measures by Member States to combat discrimination, focusing on key areas of employment, education, health, law enforcement and public policies. Results are foreseen for 2014.
22. More information on FRA's activities in this area, as well as links to reports on the fundamental rights of LGBT persons can be found at <http://fra.europa.eu/en/theme/lgbt> .

²¹ EU LGBT Survey: Main results (unpublished 2013), EU LGBT Survey: At a glance (unpublished 2013).