

# national strategy **LGBT**

**BISEXUAL**  
**HOMOPHOBIA**  
**transsexual**  
**PRIDE**  
**LESBIAN**  
**QUEER**  
**COMING OUT**  
**TRANSGENDER**  
**GAY**  
**intersexuality**  
**TRANSPHOBIA**  
**intersexuality**  
**GENDER**  
**HETEROSEXUAL**  
**gender role**  
**SEXUAL ORIENTATION**  
**equality**  
**homosexual**  
**LGBT**  
**sex**  
**HOMONEGATIVITY**  
**drag king**  
**gender identity**  
**INTERNALISED HOMOPHOBIA**



Presidenza del Consiglio dei Ministri  
Dipartimento per le Pari Opportunità



**UNAR**  
Ufficio Nazionale Antidiscriminazioni Razziali  
a difesa delle differenze

# national strategy **LGBT**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

## NATIONAL STRATEGY TO PREVENT AND CONTRAST DISCRIMINATION ON GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY

2013 - 2015



*Presidenza del Consiglio dei Ministri*  
Dipartimento per le Pari Opportunità



**UNAR**  
Ufficio Nazionale Antidiscriminazioni Razziali  
a difesa delle differenze



Unione europea  
Fondo sociale europeo



MINISTERO DEL LAVORO  
E DELLE POLITICHE SOCIALI  
DIREZIONE GENERALE PER LE POLITICHE  
ATTIVE E PASSIVE DEL LAVORO



PARI OPPORTUNITÀ  
E NON DISCRIMINAZIONE  
PON GOVERNANCE E AZIONI DI SISTEMA - FSE

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RECOMMENDATION CM/REC (2010) 5  
of the Committee of Ministers to member states on measures  
to combat discrimination on grounds of sexual orientation  
or gender identity

*International day against Homophobia and Transphobia 2013.*  
*The Hague* 61-62



# 1. STRATEGY PRESENTATION

The current Italian efforts to contrast discrimination on grounds of sexual orientation and gender identity are represented through the accession to the experimental project proposed by the Council of Europe in order to fulfill and implement the Recommendation of the Committee of Ministers CM/REC 5 (2010).

Such efforts have been formalized in the Directive of the Minister of Labour by delegation of the Department for Equal Opportunity for the administration activity in 2012 and 2013. The above-mentioned Directive also assigns to UNAR (the national Office for the promotion of equal treatment and the removal of discrimination on grounds of racial or ethnic origin), which operates within the Department for Equal Opportunity, the fulfillment of relevant operational objectives in the field of preventing and combating discrimination on grounds of sexual orientation and gender identity, and, in particular, the definition of a national Strategy in collaboration with the Council of Europe.

It is an important and significant multi-annual project, which provides a cooperation among different institutional realities, the third sector and social partners for the implementation of those policies that prevent and combat discrimination towards LGBT people, which are in line with the above-mentioned Recommendation of the Committee of Ministers CM/REC (2010) 5, the focal point of the initiatives realized by the Department for equal opportunities and UNAR.

Thus, the aim is sought to be realized, together with all the stakeholders mostly involved in this field, is to contribute to the fulfillment of a plan of administrative measures, which, beyond an incomplete legal framework, could support national and local policies in this issue, in full compliance with the international and European duties already taken.

It deals with a plan of integrated and multidisciplinary actions, which can provide a dynamic and coordinated answer to combat discrimination on grounds of sexual orientation and gender identity, in line with the typical intervention system carried out by a subsidiary and integrated governance of UNAR to prevent, combat and remove any forms of discrimination, as furthermore provided for by the Ministerial Decree of internal organization on 4<sup>th</sup> December 2012.



Starting from a very pragmatic approach, it has been decided to limit the sphere of action to feasible measures compliant with the existing legislation, in the knowledge, as underlined by different parties, of the problems related to the presence of a very incomplete legal framework, which limits the protection of the rights of LGBT community.

Therefore, according to a selection of priorities after the analysis of the main criticalities, it has been decided to identify four strategic policy areas, namely the sectors of employment, education, mass media, safety and detention.

For each of these areas, several objectives and specific measures will be defined in a very simple and schematic way, in order to promote equal treatment and to strongly boost that process of cultural change we intensely hope for.

Despite the simplicity of the structure, the Strategy doesn't omit to consider, both in the principles and in the implementing measures, two horizontal aspects, sometimes associated, concerning the phenomenon of multiple discrimination and the cross-sectorial approach for gender mainstreaming. Thanks to the efforts of the Department for Equal Opportunities within the field of equality policies, the Strategy includes and considers the specific conditions of lesbians, who suffer, indeed, from a multiple discrimination. Such discrimination affects both the sexual orientation and the gender area. Recently, misogyny, deeply rooted in the cultural fabric, registered an increase in femicide cases, a strengthening in the mass culture of a stereotypical feminine model and a confinement of women's productive role to people's and family's care activities.

Many other discrimination forms are taken into account in the Strategy; they concern immigrant, disabled, and elderly LGBT people, as well as those LGBT people, who live in solitude, in social marginalization and vulnerability.

In order to achieve the targeted path, that leads to the fulfillment of the Strategy, the cooperation between central institutions and civil society is of vital importance; furthermore, for those subjects, still too often marginalized and stigmatized, it has a symbolic and cultural meaning of legitimization, as well as an innate effectiveness, for it helps public actions to become more adequate to citizens' priorities and needs. In this way, citizens will have a leading role in their own emancipation from any form of confinement and discrimination.

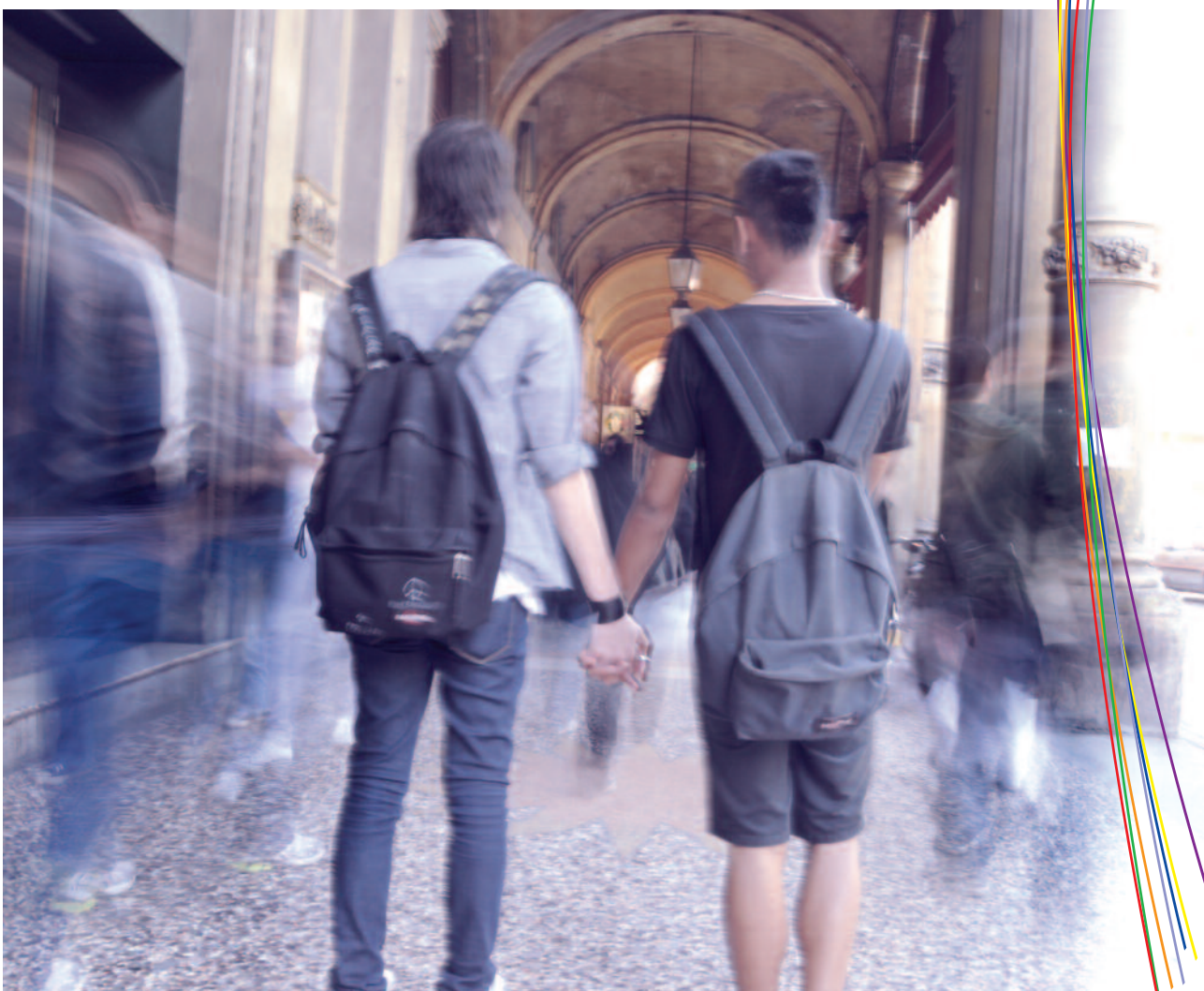
In this perspective, the collaboration with the LGBT Association<sup>1</sup>, which played an active and propositional role, has been very helpful. Associations can be included in the privileged stakeholders concerning the development of the whole Strategy, both in the identification of the objectives and in the prevision of positive measures.

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1 On 20th November 2012 the LGBT National Working Group was established. See the paragraph on Governance to refer to the list of Associations.

In order to develop the Strategy, it has been necessary a comparison with central Administrations, related to the intervention themes effectively requested by the Recommendation, and with the local Administrations (Regions, Provinces, Municipalities), which, through the RE.A.DY. Network (a national Network of public administrations against discriminations for sexual orientation and gender identity), strengthen those measures that spread and implement the good procedures.

It is obvious that, in order to efficiently promote the proposed measures even at a local level, it would be useful to include proximity networks, i.e. antidiscrimination regional centers, provincial hubs, UNAR antennas and other facilities implemented by off-center administrative bodies (districts, city's municipalities, etc.), to understand and reach on a widespread basis citizens' needs, providing, then, an adequate answer with the experience of different public and private entities already existing.





## 2. THE LEGAL FRAMEWORK

### 2.1 THE INTERNATIONAL FRAMEWORK

Before disserting more specifically about the main intervention areas, it is useful to give an overall but brief overview of statements made by international bodies, as well as by the Italian lawmaker for the protection of human rights in favor of lesbians, gays, bisexuals and transgender persons (LGBT).

"Let me say this loud and clear: lesbian, gay, bisexual and transgender people are entitled to the same rights as everyone else. They, too, are born free and equal.": with these words Ban Ki-moon asked in New York, on 11<sup>th</sup> December 2012, to UN Member States to end violence and discrimination against LGBT people.

In 2008, France and The Netherlands, also in the name of the European Union, presented a resolution to the General Assembly of the United Nations, in which they asked for the abrogation of laws that criminalize people on the strength of sexual orientation or gender identity, and for the end of discrimination towards LGBT people. The resolution has received the approval of 94 States while 54 States disapproved it. This broad approval was insufficient to adopt the resolution, although it already represents the most important reference of commitment in favour of human rights and dignity of LGBT people.

In the same wake, on 17<sup>th</sup> June 2011, the UN Commission on Human Rights, the empowered body for the fulfilment of the International Covenant on Civil and Political Rights in signatory States, adopted Resolution 17/19. This resolution, which is, historically, the first adopted by a UN body, condemns the violation of human rights on LGBT people; it reminds the role of the Commission in the global impulse of human rights apart from personal characteristics of human beings; it provides the realization of a study on laws that discriminate LGBT people, and on those violent practices and actions to which they have fallen victims; in the end, it requests to suggest instruments that the international right could prepare in order to end the violation of human rights on LGBT people. The Study, published in November 2011 (A/HRC/19/41), features complete chapters on violence towards LGBT people, on discriminatory laws and practices, as well as those relating to family, and on proposed recommendations.

Even the Organisation of American States (OAS) adopted more resolutions to combat discrimination and violence towards LGBT people (AG/RES. 2435, XXXVIII-O/08; AG/RES. 2504,



XXXIX-O/09; AG/RES. 2653, XLI-O/11). The resolution adopted in 2009 refers explicitly to the resolution presented to the UN General Assembly, while the resolution adopted in 2011 allowed the realization by the Inter-American Commission on Human Rights (IACHR) of a study on legal, conceptual and terminological involvements related to sexual orientation as well as gender identity and expression (OEA/Ser.G,CP/CAAP-INF.166/12).

## 2.2 THE EUROPEAN FRAMEWORK

In the European continent, the Council of Europe (COE) has intervened many times, through its bodies, to promote measures aimed at obtaining the respect and the full enjoyment of human rights for LGBT people (Recommendations 924/1981; 1470/2000; 1635/2003; 1915/2010).

In particular, the Committee of Ministers noted in the essential Recommendation CM/Rec (2010)5, to which this Strategy refers many times, that for centuries LGBT people have fallen victims of intolerance and discrimination, even within their families, in the form of criminalization, marginalization, social exclusion and violence. The reference to the principle, according to which neither cultural, traditional or religious values nor precepts resulting from a "dominant culture" can be invoked to justify hate or any form of discrimination, including discrimination on grounds of sexual orientation or gender identity, assumes a great importance. Member States were requested to remedy to any direct or indirect discrimination on grounds of sexual orientation or gender identity, by reviewing their own laws and promoting new legislative actions aimed to efficiently combat any form of discrimination and to ensure the respect of human rights for LGBT people, even within the family.

In June 2011, the Commissioner for Human Rights published a detailed report, featuring a socio-legal analysis on the condition of LGBT people in all COE Member States. COE's efforts in defence of LGB people rights are extremely efficient with the help of the European Court on Human Rights (ECHR), which operates on the basis of the Convention signed in Rome in 1950.

ECHR's jurisprudence was able to determine and influence amendments of numerous discriminatory penal laws towards LGBT people in 47 COE Member States (*Dudgeon vs. United Kingdom*; *Norris vs. Ireland*); age of consent (*X. vs. United Kingdom*; *S.L. vs. Austria*); freedom of assembly, association and expression (*Baczkovski and Others vs. Poland*; *Alekseyev vs. Russia*); adoption of children (*E.B. vs. France*; *Gas and Dubois vs. France*); labour and social security (*Karner vs. Austria*; *Kozak vs. Poland*); armed

forces (Smith and Grady vs. United Kingdom; Brown vs. United Kingdom); family and its regulation (Schalk and Kopf vs. Austria); gender identity (Rees vs. United Kingdom; Christine Goodwin vs. United Kingdom).

Particularly important was the role of the European Union at a supranational level, which in 2000 adopted the Charter of Fundamental Rights for the EU citizens, having binding legal effect within the EU as from 2009. It includes, above all, the non-discrimination rule based on sexual orientation in human beings and the full recognition of the right to marriage and family.

Also Art. 10 of the Treaty on Functioning of the European Union features a general principle to combat discrimination on grounds of sexual orientation in the resolution and fulfilment of all EU policies and actions.

In addition to legislative actions, realised through rules and directives that should be accepted by Member States and that include specific provisions in favour of LGBT people (i.e. Directive 2000/78, accepted in Italy with Legislative Decree n. 216 of 2003), many resolutions have been conceived by the European Parliament that request to Member States the respect of rights and dignity of LGBT people, as well as the equalisation of rights in family and marriage issues (1117 of 29 September 1989; A3-0028/94;P7\_TA(2011)0427; 2011/2244 INI;P7\_TA(2012)0222).

## 2.3 THE ITALIAN FRAMEWORK

**T**he Italian lawmaker made several approaches to remove discrimination towards LGBT people. The first approach was the introduction of the law n. 164 of 1982, which allows gender reassignment for transgender persons.

With regard to protection at work, there have been many provisions that prohibit direct and indirect discrimination related to sexual orientation (Legislative Decree n. 216 of 2003; Article 15 of the Workers' Statute, law n. 300 of 1970; Article 7 of the consolidated Text on public employment, Legislative Decree n. 165 of 2001; Article 10 of Legislative Decree n. 276 of 2003; Article 1468 of the Code of Military Order, Legislative Decree n. 66 of 2010; Article 21 of Legislative Decree n. 183 of 2010, on Central Guarantee Committees for equal opportunities, improvement of workers' wealth and against discriminations).

The consolidated Text on audiovisual media and radio services contains the general principle on commercial communications that prohibits the promotion of discrimination on grounds of, among others, sexual orientation (Article 36-bis of Legislative Decree n. 177 of 2005).

Other provisions that protect sexual orientation as a personal condition, that could give rise to discrimination, are contained in decisions and agreements on asylum, international protection and extradition (Article 3 of the Extradition Treaty between the Government of the Italian Republic and the Government of Canada on 13<sup>th</sup> January 2005; Article 4 of Legislative Decree 25 January 2007 n.24; Article 8 of Legislative Decree 19 November 2007).

Unfortunately, the Italian legal system doesn't provide for a specific legislation for crimes of homophobia and transphobia. In several occasions the Parliament rejected different proposed laws on that issue.

Concerning the acknowledgement of unions between persons of the same sex, it is important to notice that the Decision of the Constitutional Court n. 138 14 March 2010, on the extension of marriage also to persons of the same sex, declared it inadmissible, but, at the same time, recognised that, on the basis of the Article 2 of the Constitution, couples of the same sex could legitimately request for equality and only the Parliament, on the exercise of its full discretionary powers, can choose the best specific instrument to recognize their rights and duties. Recently, the President of the Constitutional Court gave authoritatively opinions on such issue. Many proposed laws on the recognition of marriage between couples of the same sex, registered partnerships and de facto unions have been lodged to Chambers in different legislations, without ever being adopted.

Our Regions have recently started a long-term acknowledgement process of duties arising from the supranational law, which impose an acknowledgement and protection of personal conditions considered at risk of discrimination, such as homo/bisexuality, by approving a set of regional laws. Such laws appear to be, against a very incomplete legal framework, undoubtedly innovative from the point of view of the improvement and specific prevision for the protection and the acknowledgement of those cohabitations different from marriage, as well as of those specific actions that combat discrimination related to sexual orientation. Both at statute and at sectorial legislative level, several Regions, namely Tuscany, Liguria, Puglia, Emilia Romagna, Marche, Piedmont and Umbria, intervened to improve the access to services, to combat discrimination and homophobia and to promote active employment policies.

# 3. LGBT PEOPLE IN ITALY

## 3.1 THE STATISTICAL SURVEY: THE FIRST ISTAT SURVEY ON SEXUAL ORIENTATION

The Italian framework presents criticalities highlighted by recent studies and by UNAR activity of its Contact Center. Among such studies, the most considerable and recent one seems to be "The homosexual population in Italy", carried out by Istat (National Statistics Institute) in 2011<sup>2</sup>, presented at the Chamber of Deputies on 17 May 2012, during the International Day against homophobia. It is the first survey at a national level on this issue, and it was financed by the Department for Equal Opportunities. The survey, carried out on a sample of approximately 8.000 citizens aged 18 to 74, reports a precious cross section on citizens' attitude towards homosexuals, on the presence of stereotypes and on the evaluation of discriminatory attitudes within the Italian society. A part of the survey focused also on discrimination towards LGBT people.

First of all, Istat survey shows how population believes there is discrimination towards homosexual community<sup>3</sup> in Italy, which becomes clearer towards transsexuals. In theory, this discriminatory attitude would be condemned, but for some work categories and social roles, Italian population shows serious difficulty and embarrassment in accepting homosexuality: for example, 41.4% of interviewed people believes that an homosexual person should not work as a teacher, 28.1% as a doctor, 24.8% as a politician.

This contradiction is also visible in the acceptance of relationships between gays or lesbians; in this specific case, approximately 60% of the interviewed sample considers acceptable a relationship between two men or two women, but 55,9% believes that "if homosexuals were more moderate, people would accept them better", and nearly 30% believes that the best thing for a homosexual is avoiding to say it to others. 62.8% of the sample is favorable to registered partnership, 43.9% to marriage and 20% to adoption.



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2 The study is available at: <http://www.istat.it/it/archivio/62168>

3 From now on, the term, together with the correct acronym LGB, will refer to gays, lesbians and bisexuals.

These data also report a hesitation towards discrimination related to sexual orientation in the Italian population, due to merely cultural factors related to a traditional regulatory model (where heterosexuality is the only legitimate and socially accepted way of expression of sexual orientation, while homosexuality is a disvalue) and the reticence of many LGBT people to make public their own sexual orientation as a form of preventive defense against discrimination and exclusion.

Taking into consideration the perception of LGBT people, they admit to suffer from discrimination when searching for accommodation (10.2%), in the relationship with neighbors (14.3%), while accessing to health services (10.2%) or in pubs, public offices or means of transport (12.4%).

These data vary according to gender, age or geographical origin. Women and young people are more congenial towards homosexuals. There are other differences between Italian regions: central regions come across to be more congenial than northern regions, while southern regions are generally closer and very far from the national average.

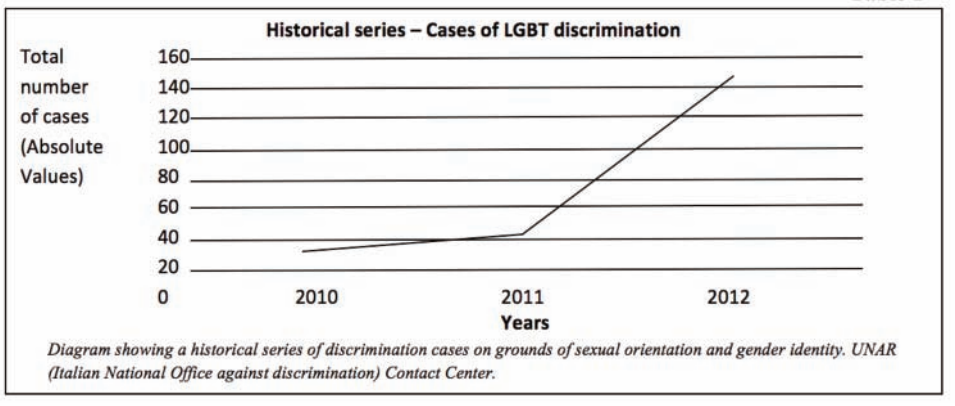
### 3.2 AWARENESS INITIATIVES OF THE DEPARTMENT FOR EQUAL OPPORTUNITIES

The Department for Equal opportunities financed several information, awareness and communication activities, some of them realized in collaboration with associations, in order to have a positive effect on the perception of homosexuality and to explicitly combat discrimination related to sexual orientation. Among these, it is worth citing the first national institutional communication campaign at against homophobia, "*Deny homophobia. Don't be the different one*" launched in 2009 and again in 2010. Another campaign followed it in 2012-2013 called "*There's nothing to say. Yes to difference. No to homophobia.*" In the educational sector, chosen as the starting place for prevention, specific activities that prevent and combat violence and discrimination have been realized through several Memorandums of Understanding executed between the Minister for Equal Opportunities and the Minister for Education, Universities and Research. The first Memorandum was signed in 2009, and formally set up the "Week against violence", an awareness, information and education initiative that takes place every October in all types of schools. The new Memorandum, signed in January 2013, extended the activities of the "Week" to several forms of discrimination, among others those on grounds of sexual orientation and gender identity, especially on bullying phenomena related to homophobia and transphobia. As from 2010, for discriminatory actions on grounds of sexual orientation and gender identity, it is

possible to call the Contact Center service of UNAR at its toll free number 800 90 10 10 (active since 2004) or at the website [www.unar.it](http://www.unar.it) (since 2009). The Contact Center reports every case of discrimination, provides information, orientation, legal support and counseling and acts as a mediator between the parties. It uses a nation-wide network of counters and also monitors information means.

### 3.3 ANALYSIS OF THE PHENOMENON AND DATA COLLECTED FROM UNAR CONTACT CENTER

Data from the Contact Center between 2010 and 2012 show an increase of reports, from 43 in 2010 to 144<sup>4</sup> in 2012. The data analysis must not be intended only as an increase of discrimination cases; they show an improvement in intercepting the emergence of the phenomenon (Table 1). Furthermore, the majority of the inquiries initiates immediately, due to certain unwillingness from those who have fallen victims to report cases of discrimination on grounds of sexual orientation or gender identity.



In public life, where aggressions, disparaging statements from public representatives and homophobic or transphobic actions take place, a greater number of reports has been registered, with great interest by press organizations. Many reports have been registered for incitement to hatred on the social networks, that the Office tries to monitor and solve with the collaboration of OSCAD (The Observatory for Security against Discriminatory Acts).

4 Contact Center classifies cases in the following spheres: Mass Media, Public Life, Services Provision from Public Bodies, Work, Home, Free Time, Services Provision from Public Establishments, School and Education, Financial Services Provision, Law Enforcement Agencies, Public transport, Health.

OSCAD is an operational instrument established on 2 September 2010, within the Central Directorate of the Criminal Police, Department of Public Security and composed of National Police (Polizia di Stato) and Carabinieri (Arma dei Carabinieri) representatives. It prevents and combats discriminatory acts that are considered criminal offence and removes the remaining risks of prejudice that, sometimes, are still related, within the Administration of the Public Security, to "outside" and "inside" differences.

In the field of education, sociological surveys show that, in the last years, there is a potential increasing acceptance towards homosexual behaviors among young people. However, several recent cases of bullying and homophobia in the educational environment have been reported and intercepted by the Contact Center. In these cases, UNAR provides support to school heads through focused awareness and education initiatives. According to the Istat survey, an astonishing 24% of homosexual population suffered at school from prejudices and discrimination, a percentage that shows the need of specific measures on a large scale. Such measures are also requested by teachers, who denounce the absence of a basic knowledge and of upgrading courses concerning sexual orientation and gender identity. UNAR seeks to implement associations' activity in all those awareness projects held in schools where the education to conscious affectivity is still a taboo. Experimentation activities concerning sexual orientation are held only in some specific institutes.

At the moment, there is no evidence of discrimination concerning the access to accommodation, or to public or private workplace, which demonstrates the difficulty UNAR experiences in the emergence of the phenomenon. Indeed, such lack of data proves how victims prefer to maintain the anonymity and don't denounce discriminatory acts related to sexual orientation or gender identity, for considered highly "disparaging". Data from the Istat survey report, however, that 10.2% of the victims suffered from discriminations when searching for accommodation, 14.3% in the relationship with neighbors, 29.5% when searching for a job and 22.1% at work.

In the field of public administrations, the RE.A.DY. Network (national Network of public administrations against discriminations for sexual orientation and gender identity) has reported positive results. In these last years, several local and regional administrations started policies in favor of social integration of homosexuals and transgender persons, developing good procedures and promoting administrative acts and measures aiming at protection from discrimination, by opening helping counters, contributing to improve LGBT quality of life and enhancing a social climate of respect and comparison free from prejudices.

Even though different forms of discrimination exist also within the healthcare sector, there is no evidence of them<sup>5</sup>. It is important to remember that the prohibition of blood donation for homosexual male people, Decree of the Ministry of Health of 15 January 1991, has been amended by a Ministerial Decree of 26 January 2001, estab-



lishing that what will be taken in consideration is high risk sexual behavior, instead of "high risk groups".

The situation of transsexuals presents many peculiarities. In the healthcare sector, transsexual people authorized to sex reassignment surgery (Law n. 164 of 14 April 1982<sup>6</sup>) have the possibility to undergo it in one of the specialized facilities operating within the national health service, but through a waiting list, which can be even of 4 years, or in private clinics, at own expenses (UNAR Contact Center reports several situations at the Forlanini hospital in Rome and the Cedig hospital in Trieste, where a decrease in the number of operating theaters intended for that service should have led to longer delays). With regard to expenses, sometimes prohibitive, only Tuscany has facilitated the access to those services, by removing the expenses for the administration of hormones (which affects only 0.003% of the regional pharmaceutical expenditure).

In the case of LGBT people in prison, it is important to find adequate solutions, to avoid their isolation. Furthermore, transgender persons and transsexuals should have access to a medical specialist control for the administration of hormones, to continue the gender transition process. A training program for prison staff is necessary, while a training program, organized and managed by UNAR together with OSCAD, is already active for National Police and Carabinieri officers (police forces with general competence).

From the analysis of several cases, it is observed that, when they draw up a contract for accommodation, transsexuals and transgender persons suffer a double discrimination, due to their visibility concerning both the aesthetic perception and the discordance between physical aspect and personal data.

Agencies and property owners don't rent, for they fear neighbors' reaction and have the prejudice that transsexuals prostitute themselves or have relationships with criminals. Due to such prejudices, they often ask for unregistered rents, which are more expensive than market average. However, victims rarely denounce such procedures and, if they do, they report them in counters where they have already created a trust relationship.

It is proper to distinguish cases of sexual orientation and gender identity also at work, for it is commonly assumed, that homosexual and bisexual people can hide his/her own identity easier than transsexuals or transgender persons. The consequence of discrimination for homosexuals and bisexuals is that they can not fully and freely live their identity and personal behavior (Istat data show the difficulty in coming out

5 Source: UNAR Contact Center

6 Law n. 164 of 1982 "Rules relating to sex reassignment" shows criticalities without establishing requirements for sex reassignment. An analysis with the legislative body is considered necessary.



with colleagues), with consequent negative effects in the socialization at work, the participation to company's activities, the sharing of objectives that reduces the productivity, the psychophysical well-being and the ability of the company to innovation. For transsexuals and transgender persons, access to work represents the most difficult situation, by analyzing the data collected by UNAR Contact Center, moreover for low-skilled workers from other countries and for those who, after the "sex reassignment surgery, are too old to access into employment". They therefore need help for orientation and requalification as skilled worker, through programmes, which are still in an experimental phase, or are carried out by associations only in some specific areas. The failure to draw up specific rules, since non-discriminatory protection provided for by Legislative Decree 216/2003 concerns only sexual orientation, can be considered a further proof of the invisibility and the lack of consideration shown by the lawmaker and public administrations.

There aren't data and surveys on career advancements and discharges of LGBT people, while policies of diversity management and policies for including differences in the company are very rare, and mostly relating to Italian branches of multinationals such

as IBM or IKEA, where product quality criteria include, for purposes of competition, the attention to corporate image.

With regard to promotion activities of worldwide positive actions, UNAR realized in 2008 an important event, called "Diversity at work", which aims to facilitate efficaciously the access to employment also for LGBT people, by leading to a better matching of labor market supply and demand.

There are some LGBT associations that locally provide services similar to the UNAR Contact Center, through helping counters, directly contactable by phone.



# 4. STRATEGY AREAS

## 4.1 EDUCATION AND INSTRUCTION AREA

From 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.

*Appendix to Recommendation CM/Rec(2010)5*

### VI. Education

31. *Taking into due account the over-riding interests of the child, member states should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.*
32. *Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.*



## 4.1.1 THE REFERENCE NETWORK

The Council of Europe invites its Member States to guarantee the right to education, without discrimination on grounds of sexual orientation and gender identity, respecting the right of children and young people to have an education in a safe environment, free from violence, bullying and social exclusion. Indeed, school has an important role, not only as the best place for the promotion of a culture, where mutual knowledge and respect exist, but also for the aid it can give in the process of accepting one's sexual orientation and gender identity, without leading up to invisibility, thus creating a safe and comfortable context, where the coexistence of differences can contribute to improve the psychophysical well-being of people as well as the active cohesion of the community. In our country, with regard to the perception of discriminatory acts towards LGBT people observed in our national ISTAT survey, data reported that 41% of the Italian population doesn't accept a homosexual teacher in the primary school. Data have also reported that interviewed homosexuals/bisexuals suffered from discriminations at school or at university with a higher percentage than heterosexuals (24% against 14.2%).

Such stereotyped prejudices at the basis of discrimination give rise to intolerance and, often, violence, whose manifestations are mostly expressed in the school environment through homophobic and transphobic bullying, with devastating effects on victims: from exclusion to abandon and non-completion of schooling, or, even, from violence to molestations up to suicide, as it recently happened.

But, beyond homophobic and transphobic bullying episodes, there are other problems, such as those related to a culture with a heteronormative vision, models of sexuality and gender rules. LGBT themes are secondary in classrooms, or are relegated to extra-scholastic moments; on their part, teachers and educators are uninformed and unprepared to relate with this issue.

To this perspective the role of teachers in schools assumes great importance to change and modify specific behaviors and attitudes in order to educate young people to respect differences, not only cultural or geographic, and to remove every form of intolerance, violence, prejudice or discrimination.

Recent initiatives, promoted after several Memorandums of Understanding executed between the Minister for Equal Opportunities and the Minister for Education, Universities and Research. The first Memorandum was signed in 2009, and formally set up the "Week against violence", an awareness, information and education initiative that takes place every October in all types of schools. The new Memorandum, signed in January 2013, extended the activities of the "Week" to several forms of discrimination, among others those on grounds of sexual orientation and gender identity, especially on bullying phenomena related to homophobia and transphobia.

MIUR has launched an awareness initiative on LGBT themes during the International Day against Homophobia on 10 May 2012, as it issued a specific circular to all scholastic institutes, where it highlighted the role of schools in establishing integration communities that recognize differences and the importance of combating any form of discrimination, included homophobia<sup>7</sup>.

However, even though there are already several awareness and information initiatives, there is a urgent need to elaborate strategies and structural training projects inside teaching plans, in an adequate and systematic manner, which involve all actors of the school community, moreover students, teachers and families.

To that end, an integration policy would be desirable, as well as refresher courses in school curricula on LGBT themes and a non-stereotyped communication and information promotion, respectful of gender identity and sexual orientation.

It is necessary to plan innovative training activities on education to affectivity that start from the early years of education, such as kindergartens or preschools, in order to develop an educational model, which facilitates integration and is based on the respect to differences, a resource for all members of the LGBT community and for all children.

## 4.1.2 OBJECTIVES AND MEASURES

With relation to the area of "Education and Instruction", the national Strategy has recognized the following operational objectives and measures that could factually be implemented.

### Objectives

- a. To develop general skills and knowledge of all school community actors on LGBT themes;
- b. to prevent and combat the phenomenon of intolerance and violence related to sexual orientation and gender identity;
- c. to ensure a free and friendly educational environment, free from violence, outrages, social exclusion or other forms of degrading discriminatory acts related to sexual orientation or gender identity;
- d. to know the depth and the consequences of bullying in schools at a national and

7 Ministerial Circular of 10 May 2012 (Prot. A00DGAI/7974 – Subject: 17th May – International Day against homophobia.

- territorial level, particularly referring to homophobia and transphobia, through a systematic collection of data;
- e. to improve LGBT people empowerment in school, among teachers and scholars;
  - f. to prevent and combat isolation, social disease, failure, non-completion of schooling of LGBT young people;
  - g. To inform about new family realities, defeating the prejudice of parents' affective orientation, in order to avoid discriminations towards children with homosexual parents.

## Measures

1. Data collection and monitoring activities
  - Monitoring, quantitative and qualitative analysis on bullying in schools related to homophobia, transphobia and sexophobia.
2. Training
  - Realization of innovative training activities and refresher courses intended for school heads, teachers and scholars on non-discriminatory issues, particularly on LGBT theme and on homophobic and transphobic bullying, as well as cyber-bullying, with a formal recognition of educational credits. In particular, they should concern: the development of sexual identity in adolescents; the sexual-affective education; the knowledge of new family realities; the prevention and management of bullying episodes related to sexual orientation; the sharing in classrooms of bullying episodes, their meaning and the possible consequences; intervention procedures in cases of violence on students; intervention procedures among equals towards the author of the physical or verbal violence, through an educational and disciplinary twin-track approach. Training should not be oriented only towards teachers and students (with the formal recognition for both of educational credits), but also to all non-teaching staff in schools (administrative staff, janitors, etc.). Furthermore, training should consider constant refresher courses, and should fall in the national adjournment Plan;
  - start-up of collaboration agreements on local training activities, among Regional and Provincial education authorities, local authorities, LGBT associations and group and student associations, pursuant to the same principles of the Memorandum of Understanding executed between the Minister of Labor and Social Policy with delegation to the Department for Equal Opportunities and the Minister for Education, Universities and Research, signed on 30 January 2013;

- enhancement of the expertise in LGBT associations to train and inform teachers, students and families, in order to make use of their knowledge and to strengthen the relationship with local networks;
- integration of non-discriminatory issues in school curricula (i.e. within the Citizenship and Constitution programme), particularly on LGBT theme;
- drawing up of school forms, for administration and didactics on social integration, respectful of new family realities, for instance families with homosexual parents;
- participation of Regional and Provincial education authorities on diversity management courses for teachers;
- acknowledgment for LGBT associations as MIUR training institutions;
- Enrichment of those available training activities through the arrangement of bibliographies on LGBT themes and on new family realities, of reading workshops and of a glossary with LGBT specific terms, which allows a proper use of such specific language.

### 3. Information and awareness

- Organization and implementation of speeches during the "Week against violence and discrimination" in all types of schools within the national territory, pursuant to the Memorandum of Understanding between the Minister of Labor and Social Policy with delegation to the Department for Equal Opportunities and the Minister for Education, Universities and Research;
- Deployment of services, provided by observers or by territorial helping and proximity counters, related to bullying prevention, discriminatory dynamics, management of coming out, emergence of new educational needs regarding specific uncomfortable situations for students, relatives, teachers and teaching staff. This would give more importance to online counters, which provide a constant help, with a higher respect for privacy;
- promotion of a network of different training agencies (schools, associations, scout centers, gyms, Asl, namely competent local health agencies, sports associations, soccer schools);
- realization of national and local information campaigns;
- organization of specific initiatives for youth associations;
- organization of specific information and follow-up initiatives for so-called Universities of the Third Age, People's Universities and other adult-oriented extracurricular training experiences;
- realization of focused interventions aiming at sensitizing and mediating specific episodes that occur in school, without limiting them to victim – attacker comparison, but expanding it to the whole community of equals.



## 4.2 EMPLOYMENT AREA

From 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.

*Appendix to Recommendation CM/Rec(2010)5*

### V. Employment

29. *Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimization.*

30. *Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.*

### 4.2.1 THE REFERENCE FRAMEWORK

At a national level, the existing legislation concerning sexual orientation provides for a non-discrimination protection at work, laid down in Legislative Decree n. 216 of 2003, implementing "Directive 2000/78/CE on equal treatment in employment and occupation". It establishes the concepts of direct and indirect discrimination and molestation, which are protected by specific laws. Such protection concerns both the public and the private sector. However, non-discrimination rules don't provide for protection at work for gender identity.

With regard to discrimination towards transsexuals and transgender persons, the Court of Justice of the European Communities, by sentence C-13/94 of 30 April 1996, recognizes the implementation of provisions introduced by Directive 1976/207/CE concerning the equality of women and men (adopted in Italy by Law n. 903 of 9 December 1977, hereafter amended and supplemented by Law 125 of 10 April 1991).

Therefore, the scope of the "equality of women and men" principle should be considered as also concerning discrimination towards transsexuals and transgender.

With regard to employment issues, it is necessary to differentiate between the situation of gays and lesbians and the situation of transsexuals and transgender persons, particularly referring to "visibility", both for the access to accommodation and for conditions at work. There are remarkable differences, if we consider territorial areas (i.e. metropolis and northern Italy areas in comparison with southern Italy). The main criticalities concern discrimination related to the access to employment, mobbing, professional deskilling, interruption in career progression and multiple discriminations.

Among such criticalities, it is necessary to highlight discrimination arising from the non-recognition in Italy of the rights of de facto union and of marriage between couple of the same sex, which can lead to "inevitable" difference of treatment also at work.

Gay and lesbian community finds difficulties in coming out at work, fearing potential consequences and reprisals concerning the access to employment and career, due to the persistent prejudice and the inadequate information on such theme by employers and managers, generally less open to LGBT matters, also relating to age and cultural level. It is necessary to highlight the importance of diversity management policies, which improve the well-being and the identification of talented people, while increasing company's productivity.

With regard to lesbian women, often victims of multiple discrimination, the mere computation of homophobic discriminatory acts at work is limitative, for the importance of gender dimension in their daily life is not properly considered. This will bring to depreciative and superficial conclusions: women face more difficulties to access into the labor market or to obtain a good job or career advancements. They have a lower income than male colleagues with the same task and are still considered the main playing role in taking care of children and elderly people.

There are some counters that help transsexuals and transgender persons in employment orientation, but there aren't enough data to consider them an evidence.

Furthermore, some criticalities have been identified as often incompatible with labor market dynamics, for instance too low systems of sex reassignment provided for by existing legislation (L. 164/1982).

One of the main problem related to "visibility" of transsexuals and transgender persons is, the non-correspondence of personal data and aesthetical appearance of people. In Italy, law requires long procedures, for it allows personal data and gender change only after the sex reassignment surgery. Some sentences have recently given a broad interpretation to such law, considering sufficient for those changes only the demolition surgery. Furthermore, an innovative sentence, issued by the Court of Rome on March 2011, allows personal data reassignment, exclusively trusting the choice

and well-being of a transsexual person, who previously rejected such surgery. If he/she works and decides to start the reassignment process, suffers often from a lack of comprehension and mobbing. It is therefore necessary to monitor welcoming conditions and to establish a working environment that takes care of the respect for privacy.

UNAR started to implement several projects against discrimination towards LGBT people, which refer to good procedures, such as "*Diversità al lavoro*", which provides a possibility to some vulnerable individuals, i.e. transsexuals and transgender persons, to take part to job interviews for personnel selection in the most important companies within the national territory, and "*Pari merito*", for the deployment of diversity management policies in the so-called "Regioni Obiettivo Convergenza".

## 4.2.2 OBJECTIVES AND MEASURES

With relation to the area of "EMPLOYMENT", the national Strategy has recognized the following operational objectives and measures that could factually be implemented.

### Objectives

- a. To realize studies and monitoring activities for a more precise information on proportions and real characteristics of discrimination on grounds of sexual orientation and gender identity at a national and territorial level, through a systematic collection, analysis, processing and representation of data, with particular relevance to transsexuals and transgender persons;
- b. to monitor the application of the existing non-discrimination legislation, taking into consideration also judgments to be given;
- c. to effectively deploy the competences of Equality Council Members to discrimination at work related to gender identity;
- d. to promote the establishment of an Oversight body, on the basis of a new Memorandum with social partners on LGBT themes, emulating UNAR positive results for the prevention and combating of ethno-racial discrimination;
- e. to prevent and contrast discrimination at work on grounds of sexual orientation and gender identity, improving the knowledge and the awareness of public opinion;

- f. to promote positive initiatives for vocational training and access to employment for LGBT people as a vulnerable target of active employment policies, including through the European Structural Funds;
- g. to facilitate gay friendly policies and diversity management policies, in order to give more visibility to LGBT people;
- h. to promote awareness activities on LGBT themes oriented towards employers, managers, workers and group associations;
- i. to identify specific approaches related to gender identity issues and development of equality and corporate social responsibility culture, with particular reference to vocational training and to access to employment for vulnerable groups, for the organization of future recourse to European Structural Funds;
- j. To enhance and reproduce good procedures at international and national level.

## Measures

1. Data collection and monitoring initiatives
  - Beginning of a statistical survey on access to employment and working environment of LGBT people, with particular reference to transsexuals and transgender persons;
  - establishment of a monitoring structure for discrimination phenomena at work and for the application of non-discrimination protection provided for by Legislative Decree 216/2003, and development of specific studies on conditions of LGBT people, with the collaboration of Central Administrations and relevant local authorities;
  - Monitoring initiatives of the application of Art. 21 of Law 183/2010, concerning Central Guarantee Committees;
  - Establishment of a second-level permanent structure, which monitors national negotiations.
2. Diversity management
  - enhancement and deployment of good procedures on diversity management in companies, increasing UNAR positive actions, such as "Diversità al lavoro", "Pari merito" and territorial Career Forums, through the active participation of LGBT associations;
  - establishment of a LGBT network within the companies and, at the level of senior management, of a new role called LGBT mentor;

- support in the analysis and establishment of benefit and pay systems, that will consider cultural differences in the company, and in the verification of compliance with the existing legislation;
- extension of specific benefit for LGBT people, also relating to homoparental family;
- voluntary certification of gay friendly companies for social responsibilities (acknowledgements/rewards for companies that clearly combat discrimination);
- establishment and experimentation of the first Italian Equality Index that will estimate equal treatment – integration of LGBT people in companies operating in Italy – which aims to become a company benchmark, always on a voluntary basis, and an integral part of company policies of voluntary social responsibilities.

### 3. Training

- Realization and implementation of awareness and training initiatives oriented towards employees and all levels of management, that will help to develop mentoring programmes and to improve one's professional career;
- Promotion of orientation, advisory and protection services for LGBT people;
- Establishment of awareness and specific training initiatives for social partners on the issue of employment integration of LGBT people;
- training for the employment centers staff, particularly on the situation of transsexuals and transgender persons, and the definition of correspondents in employment centers and agencies for discriminatory situations, with a specific competence on LGBT discrimination;
- Specific initiatives of vocational training for transsexuals and transgender persons;
- Informative publications for employers.

### 4. Specific positive actions

- Valorization, deployment and expansion of already tested, evaluated and repeatable projects, such as Work Bursaries, vouchers or credit cards for LGBT training, realized by some Regions;
- development of initiatives in "Obiettivo Convergenza" Regions for the promotion of training and the employment integration of LGBT people as a vulnerable group under serious risk of exclusion, including the recourse to European Structural Funds;
- Positive actions for LGBT youth entrepreneurship (i.e. in the tourism sector);
- Promotion for an easier access to favorable credit terms and to training for cooperative societies in southern Italy;
- specific and focused actions through national competitions for transsexuals and transgender persons on orientation, training and access to employment to those

groups under the risk of labor market exclusion related to sexual orientation and gender identity;

- Organization of orientation and recruitment days at universities for LGBT people;
  - Realization of programmes for the reintegration into society and employment of victims of trafficking and forced prostitution.
5. Information and awareness initiatives
- Realization of national information and awareness campaigns through associations' support and expertise on the rights of LGBT people in the labor market and reintegration into employment issues, particularly relating to discrimination towards transitioning people;
  - Deployment of monitoring initiatives and data on working environment of LGBT people;
  - Publication of a manual for companies on "transsexuals and employment", starting from all previous publications on such theme;
  - drawing up of guidelines and recommendations to Regions for the realization of specific actions, including those financed by European Structural Funds through regional competitions, for transsexuals and transgender persons on orientation, training and reintegration into employment of all those people under risk of labor market exclusion, related to sexual orientation and gender identity;
  - provision of communication plans for companies and, more generally, for labor market institutions, in order to maximize the potentialities of a strategic inclusive business.

## 4.3 SAFETY AND DETENTION AREA

From 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.

*Appendix to Recommendation CM/Rec(2010)5*

### I. Right to life, security and protection from violence

#### A. "Hate crimes" and other hate-motivated incidents

1. *Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.*

2. *Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.*

3. *Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.*

4. *Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.*

5. Member states should ensure that relevant data are gathered and analyzed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

### 4.3.1 THE REFERENCE FRAMEWORK

With regard to safety and protection from violence for LGBT people. The Italian legal system doesn't provide for recognition of the crimes of homophobia and transphobia. Several proposed laws on the introduction of specific hate crimes related to sexual orientation or gender identity (an extension of the so-called legge Mancino) have been considered and debated during parliamentary sessions.

Without a specific legislation, some initiatives have been adopted through national awareness campaigns realised by the Department for Equal Opportunities: policies aiming at preventing and combating hate crimes, specific training activities realised by UNAR and OSCAD and oriented towards the National Police (Polizia di Stato) and the Carabinieri (Arma dei Carabinieri), collection systems for reports of discrimination or violence cases and specific assistance provided by UNAR Contact Center, OSCAD, and LGBT associations.

In particular, OSCAD aims to ease the procedures for complaints of discriminatory acts that are considered criminal offence, also relating to the belonging of victims to particularly vulnerable social groups. To that end, a mail address has been created ([oscad@dcpc.interno.it](mailto:oscad@dcpc.interno.it)), where anyone can send also anonymous reporting of discriminatory acts that threaten the safety of the victims, and through which information exchanges with discrimination-related associations have been improved.

With regard to safety, the situation of transsexuals and transgender persons appears to be very serious, since they are usually associated with prostitution, distribution of drugs and criminality. Indeed, it is necessary to consider their specific vulnerability related to visibility, their frequent social marginalization (often related to their legal status as illegal immigrants, to the problems of access to employment, to accommodation, etc.) and the possibility they suffered from trafficking, exploitation, racket, etc. Consequently, they unlikely report suffered abuses, give testimony against such acts or address to security services (national police, Carabinieri, Office of the Public Prosecutor, etc.). There are very few consulting rooms prepared to manage such services for transsexuals.

It is necessary to ensure equal treatment for transgender persons, not always con-



sidered due to strict requirements, such as the correspondence between personal data and biological and anatomical sex, and the absence of specific reception facilities for victims of violence, homeless or people with psychiatric disorders.

With regard to detention, it is necessary to highlight the fact that, in a place where forced detention gives inevitable rise to violence and State resources and prisons are inadequate to re-educate prisoners in general, the protection of physical security for gays, lesbians, transsexuals and transgender is very problematic. In some prisons, the use of segregation procedures in specific cells is common: these procedures on one hand increase the level of protection, but, on the other hand, they could cause a further discrimination and marginalization. However there isn't unambiguous and standard procedures, i.e. provided for by a ministerial circular or any other source, for the integration of gays, lesbians, transsexuals and transgender in prison. In Rebibbia (a prison located in Rome), a new division only for transsexuals and transgender persons has been created; this test is interesting but, at the same time, full of criticalities, such as the procedure of "monitored segregation", the system for the administration of hormones and the consequent clinical assessment. To date, there are 12 prisons with specific areas for transsexuals, almost exclusively MtF, and other publicly recognised special division for transsexuals in Rebibbia (Rome), San Vittore (Milan), Poggioreale (Naples), Sollicciano (Florence) and Belluno.

Some associations carried out interesting positive initiatives for integration and re-education in prison. In comparison with other prisoner, a lower access to common spaces and services, for instance the daily walk, has been, however, registered. It is therefore necessary to collect given testimonies to create a database of good procedures, taking always into account the great differences among metropolises (Rome, Milan, etc.), northern Italy and southern Italy.

Dealing with these themes, the Department for Equal Opportunities has drawn up in 2013 a Memorandum of understanding with the Department of Penitentiary Administration of the Ministry of Justice and the Authority for prisoners in Lazio.

## 4.3.2 OBJECTIVES AND MEASURES

With relation to the area of "Safety and detention", the national Strategy is seeking to develop some cross-cutting objectives. More specifically, it is seeking:

- to promote studies and monitoring initiatives to compensate the current deficit of data, both on themes of violence and safety and on LGBT people conditions in prison, in C.I.E. and in juvenile detention centers, particularly on transsexuals' conditions;
- to add concepts of "hate crimes", included "hate speeches", related to sexual orientation and gender identity in programming documents and those competitions on integral safety issues at a urban, national, regional and local level;
- to enhance and reproduce evaluated and repeatable good procedures conducted at a national and international level;
- to improve efficient and non-discriminatory helping and response instruments of police forces, as well as judiciary, social, health and hospital services.

The national Strategy has recognized, for each line of approach, operational objectives and measures that could factually be implemented.

### Approach 1 – Safety

#### Objectives

- a. to realize initiatives for a more precise information on proportions and characteristics of intolerance and violence cases related to homophobia and transphobia at a national and territorial level through the systematic collection, processing and representation of data;
- b. to enhance the report of homophobic and transphobic acts, including through an easier access for LGBT people to safety and support services, for complaints of any suffered crime or violence;
- c. to realize information and awareness activities on specific LGBT themes oriented towards police forces, Office of the Public Prosecutor staff members and support service staff (hospitals, social services, etc.) for victims of violence;
- d. to evaluate the effectiveness of access to national support services (national police, hospitals, dormitories, etc.) for victims of homophobic and transphobic violence, and the capability to provide adequate assistance and specific responses;
- e. to prevent intolerance and violence phenomena related to sexual orientation and gender identity, also increasing the awareness of the public opinion on homophobia and transphobia;

- f. to promote a national plan aiming at preventing and combating violence related to sexual orientation and gender identity.

## Measures

1. Data collection and monitoring initiatives
  - Beginning of a statistical survey on homophobic and transphobic violence at a national level, with particular reference to bullying phenomena;
  - Systematic collection of the cases of discrimination and violence through information from UNAR Contact Center and OSCAD;
  - Establishment of a monitoring structure of such phenomenon and development of specific studies on the situation of LGBT people, with the collaboration of Central Administrations and relevant local authorities.
2. Training
  - Realization and implementation of awareness and training initiatives oriented towards Police Forces on different levels of LGBT themes, including the use of a proper language and the right situational approach, aiming at highlighting the experiences of UNAR, OSCAD and different associations, that tried to find adequate solutions to different territorial needs;
  - establishment of awareness initiatives inside the Police Forces, in order to improve the climate of acceptance around the free expression of sexual orientation and gender identity of Police Forces staff member;
  - realization of awareness and training activities on specific LGBT themes for police forces, Office of the Public Prosecutor staff members and support service staff (hospitals, social services, etc.) for the victims of violence.
3. Access to safety services
  - Establishment of initiatives for an easier access for LGBT people to safety and support services, for complaints of any suffered crime or violence;
  - Explicit extension of programmes and national competitions in favor of the victims of trafficking, of serious exploitation and also to victims of actions against sexual orientation or gender identity;
  - Inclusion of MtF transsexuals into services provided for female victims of violence;
4. Information and awareness initiatives
  - Realization, together with associations, of information and awareness national campaigns on homophobic and transphobic violence cases and on safety;

- Deployment of data on homophobic and transphobic violence phenomena, resulting from monitoring initiatives;
- awareness initiatives of the working staff for strangers, in order to give effect to asylum application access and to refugee status on grounds of sexual orientation or gender identity.

## Approach 2 – Detention

### Objectives

- a. to know the correct situation of LGBT people in prison or in juvenile facilities;
- b. to deploy the culture of human rights' respect and non-discrimination in detention centers, through specific information, awareness and training initiatives oriented towards different levels of the penitentiary administration staff, in order to combat discrimination in prison and the consequent marginalization;
- c. to improve the access to health services, particularly for transsexuals and transgender persons;
- d. to reproduce and deploy local good procedures, relating to the access to sheltered accommodation for transsexual victims of trafficking;
- e. to promote protection actions and integrating activities into society and employment to former prisoner.

### Measures

1. Data collection and monitoring
  - Realization of an investigation, in collaboration with the Department of Penitentiary Administration of the Ministry of Justice, on LGBT people in prison, on detention conditions and on discrimination and violence phenomena in prison related to sexual orientation and gender identity.
2. Training
  - Realization of information, awareness and training initiatives oriented towards different levels of Penitentiary Administration staff and prisoners, in order to combat discrimination in prison and the consequent marginalization;
  - Realization of different programmes for the education to affectivity and sexuality in juvenile prisons.

### 3. Health

- Proposal of specific guidelines and directives, in collaboration with relevant institutions, concerning the treatment of transsexuals in prison, with particular reference to the access to hormones therapy, to the continuation of transition surgeries and to transsexuals' health, as well as to "internal safety";
- easier access for transsexuals to hormone treatments and health services, providing further monitoring studies and specific medical controls;
- promotion of new helping counters in prison both for LGBT prisoners and working staff, in order to facilitate the report of discriminatory acts and the combating of reticence related to violence acts, as well as permanent combined counters (for psychological and legal needs), which aim to manage and collect reports of sexual discriminatory harassment and to advise and support transitioning people through the whole process;
- Realization of monitoring and intervention programmes on HIV or other sexually transmitted infections, in collaboration with the AIDS National Council.

### 4. Social integration

- Realization of initiatives to support and facilitate the access to employment after the release from prison, with particular reference to transsexuals, as well as support programmes, which aim to facilitate the process of the last period of detention and to find alternative measures to prison, for instance custodies, etc.
- realization of initiatives, which aim to facilitate the integration of trans women to improve their quality of life in prison, also through support activities, such as support groups and drama workshops.

## 4.4 COMMUNICATION AND MEDIA AREA

From 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.

*Appendix to Recommendation CM/Rec(2010)5*

### B. "Hate speech"

6. *Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.*
7. *Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimizing such hatred or discrimination.*
8. *Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organizations, political organizations and religious communities.*

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### 4.4.1 THE REFERENCE FRAMEWORK

In Italy, the "hate speech" is regulated by a specific legislation, that restricts it, in criminal laws, only to race, ethnic group, nationality or religious motives. It doesn't include crimes of homophobia and transphobia, since several proposed laws on that matter have been rejected by the Chamber of Deputy.

With regard to the world of communication, the legislation is limited only to Legislative Decree n. 44 of 2010, implementing Directive 2007/65/CE on the pursuit of television broadcasting activities, and specifically provides for that audiovisual commercial communications, assigned to media services providers subject to the Italian legislation, must not entail nor promote discrimination on grounds of sexual orien-

tation. Furthermore, the deontology code regarding the handling of personal data in the pursuit of journalism protects "the right to information and protection of privacy" (Art. 5)<sup>8</sup>, ensures "the protection of the right of non-discrimination (Art. 9)<sup>9</sup> and "the protection of a person's life sex (Art. 11). The Charter of Duties of Journalists reiterates such statements, and, particularly in the "Principles" chapter, "A journalist has to respect people, their dignity and right to secrecy and never discriminate against anyone due to his race, his religion, his sex, his mental and physical condition, his political views".

This statement is confirmed in the "Duties" chapter, in which it is asserted that "A journalist cannot discriminate against people on grounds of race, religion, mental and physical conditions or political opinions.

Circumstances that are not extenuating, references that are not insulting or denigratory concerning people and their privacy are only accepted when they are relevant to the public interest."

Several policies have been adopted through national awareness campaigns and specific protection initiatives realized by the Department for Equal Opportunities and UNAR, often in collaboration with LGBT associations to prevent and combat "hate speeches" towards LGBT people. However, monitoring actions and data collection from UNAR Contact Center on discrimination and violence cases report how speeches from public authorities and representatives of political and religious institutions, transmitted by Italian media, include hate and discrimination incitements.

The belief that homosexuality is a mental disorder, from which one can be cured or "saved", seems to be still strong in the public opinion. On one side, several narrative products show LGBT people without denigratory references; however, on the other side, the mass media often doesn't use the proper language on LGBT people themes. Too often mass media communication goes down in easy and disparaging stereotypes, with particular reference to transsexuals and transgender persons, due to the unawareness of the right terminology and the search of sensationalism. If the mass media sphere shows the need to several fields of intervention, social networks don't protect LGBT people at all. The extent and the innovative characteristic of social networks, together with the absence of an adequate legislation, are the reasons why the virtual world is the most prolific area in which homophobic and transphobic messages and propaganda are spread.

- 8 1. In collecting personal data disclosing racial and ethnic origin, religious, philosophical or other beliefs, political opinions, membership of parties, trade unions, associations or organisations of a religious, philosophical, political or trade-unionist character and any data disclosing health and sex life, journalists must ensure the right to information on facts of public interest, by having regard to the materiality of such information, and avoid any reference to relatives or other persons who are not involved in the relevant events.
- 9 1. In exercising the rights and duties related to freedom of the press, journalists must respect a person's right to non-discrimination on account of his/her race, religion, political opinions, sex, personal circumstances, bodily or mental condition.

## 4.4.2 OBJECTIVES AND MEASURES

With relation to the area of "EMPLOYMENT", the national Strategy has recognized the following operational objectives and measures that could factually be implemented.

### Objectives

- a. to prevent and combat the deployment of stereotypes that encourage, also through Internet, the so-called "hate speech" towards LGBT people;
- b. to implement and deploy a proper language in the mass media, avoiding stereotypical and superficial attitudes towards LGBT people;
- c. to prevent intolerance and violence phenomena related to sexual orientation and gender identity through a better information and awareness level of the public opinion on homophobia and transphobia;
- d. to implement and enhance information and awareness campaigns, in order to eliminate prejudices and discriminatory attitudes towards LGBT people;
- e. to enhance and deploy of good communication procedures of national and international mass media;
- f. to collect systematically data particularly related to the Internet and social network sphere, on homophobic and transphobic language of national and international mass media;
- g. to realize information and awareness initiatives on specific LGBT themes oriented towards journalists and workers in such sector;
- h. active participation of sector associations, in order to fulfill the proposed objectives and to develop consequent measures.

### Measures

1. Establishment of a database on information and awareness initiatives
  - Analysis and collection of evaluated and repeatable good procedures about national and international awareness campaigns on LGBT themes;
  - Valorization of good procedures collected for promoting new communication campaigns.
2. Monitoring initiatives
  - Systematic analysis of the language adopted by the mass media on LGBT themes, also through reports at the UNAR Contact Center;
  - provision of agreements between UNAR, Territorial Networks, Regional Centers and LGBT associations, to improve monitoring activities of the media sector, in particular of social networks;



- drawing up of an annual Report on data and reports of discrimination cases in national media.

### 3. Training

- Realization of training initiatives held in several schools of Journalism, in collaboration with the Association of Journalists and the Italian National Press Federation, particularly related to transsexuals and transgender persons;
- realization of training and information initiatives oriented towards institutional press offices (Departments, Police Forces, etc.) on LGBT themes in the media, particularly related to transsexuals and transgender persons;
- promotion of a journalism prize, in collaboration with the Association of Journalists and the Italian National Press Federation, for the best articles on LGBT themes, particularly related to transsexuals and transgender persons.

### 4. Communication

- Realization of national communication and awareness campaigns with the participation of the LGBT National Group, also aiming at promoting the expression of a healthy affectivity and the visibility of new family realities;
- Development of guidelines for a responsible communication of LGBT themes, particularly related to transsexuals and transgender persons;
- Provision of outreach tools particularly for LGBT teenagers, in order to inform them of the possibility to go to places where the LGBT community congregates;
- development of an online platform that collects material (clips, spots, posters, brochures, kits, slides, researches, examples of good procedures, etc.) realized by entities and associations, which could be useful for communication, information and training purposes, subject to a previous census, selection, organization and classification through keywords/tags; monitoring and feedback actions on users' application, together with a constant update of contents, including those related to users' needs and suggestions;
- Inducement of productions and representations on LGBT themes in TV, cinemas and theaters, also through the participation of testimonials, in order to reach a heterogeneous audience per age, territorial or education categories;
- organization of local and national events during celebration days: International day against homophobia and transphobia (17<sup>th</sup> May), Coming Out Day (11<sup>th</sup> October) and T-Dor, Transgender Day of Remembrance (20<sup>th</sup> November); integration of LGBT themes during different celebration days on remembrance and combating of all forms of discriminations, such as the Remembrance Day (17<sup>th</sup> May), the International Women's Day (8<sup>th</sup> March), the International Day for the Elimination of Violence against Women (25<sup>th</sup> November), the World AIDS Day (1<sup>st</sup> December) and the Human rights Day (10<sup>th</sup> December).

# 5. THE GOVERNANCE

The definition and implementation of the Strategy requires a system of multilevel governance, that includes all different actors interested in policies that prevent and combat discrimination on grounds of sexual orientation and gender identity. It is an integrated and well-structured model, which provides a synergic action of institution, civil society, social partners and other associations involved in such themes. UNAR, which operates within the Department for Equal Opportunities, Office of the President of the Council of Ministers, is considered the national focal point to combat every form of discrimination, and is the central authority that coordinates all Strategy's activities.



## 5.1 GOVERNANCE INSTRUMENTS

### 5.1.1 LGBT NATIONAL WORKING GROUP

The LGBT National Group was set up by Directorial Decree 20 November 2012, following the publication of a public Notice of interest to participate to the programme "Combating discrimination on grounds of sexual orientation or gender identity", promoted by the Council of Europe to implement Recommendation CM/Rec (2010)5, oriented towards associations that conduct activities for the protection and promotion of rights of LGBT people.

The Group is made up of 29 sector associations, selected on the basis of the received requests. However, also experts and representatives of other associations or entities with a specific knowledge on sexual orientation and gender identity can be chosen by the Office to take part into working sessions, when this is necessary.

The following associations take part as consultants to the National Working Group:

- Provincial Committee ARCIGAY "Chimera Arcobaleno", Arezzo;
- IREOS – Service Center of the self-driven Queer community;
- ARCIGAY;

- Provincial Committee ARCIGAY "Ottavio Mai, Turin;
- A.GE.DO.;
- PARKS – Liberi e Uguali;
- EQUALITY ITALIA – Cross-network for Civil Rights;
- ALA MILANO ONLUS;
- ARCI GAY\_LESBICA OMPHALOS;
- POLIS APERTA;
- DI'GAY PROJECT – DGP;
- CIRCOLO CULTURALE OMOSESSUALE "MARIO MIELI";
- GAY CENTER/GAY HELP LINE;
- FAMIGLIE ARCOBALENO;
- ARCILESBICA ASSOCIAZIONE NAZIONALE;
- RETE GENITORI RAINBOW;
- SHAKE LGBTE;
- CIRCOLO CULTURALE MAURICE (MAURICE, Center for the LGBT Community);
- ASSOCIAZIONE ICARO ONLUS;
- PINK Club;
- CGIL Nuovi Diritti;
- MIT – Movement for Transsexual Identity;
- Radical Association CERTI DIRITTI;
- The Bar for LGBTI Rights RETE LENFORD;
- GAY.NET;
- I KEN;
- TRANSGENERE Consulting room;
- LIBELLULA;
- GAY LIB.

During the development of the Strategy, the LGBT National Group will organize several consultation meetings during the plenary session, including those related to the collaboration through online tools between the associations and the Administration. Experts and representatives of other associations or entities with a specific knowledge on sexual orientation and gender identity can be chosen by the Office to take part into working sessions, when this is necessary.

The National Group is the focal point for the development of the Strategy through an active and shared path with the third sector, whose aim is the definition of the right objectives and activities.

## 5.1.2 THE INTER-INSTITUTIONAL COOPERATION COMMITTEE

The development and implementation process of the Strategy needs a policy sharing with the administrations involved in the different thematic areas.

The inter-institutional cooperation Committee is the concrete instrument for the strategic planning of policies that will maximize the efficacy of the actions provided by the Strategy. The Committee is coordinated by UNAR, the national focal point for the project promoted by the Council of Europe, and is composed of the representatives of the following Central Administrations and local authorities:

- Ministry of the Interior - Observatory for Security against Discriminatory Acts (OSCAD);
- Ministry of Justice - Department of Penitentiary Administration;
- Ministry of Health;
- Ministry of Labor and Social Affairs – Directorate General for Active and Passive Labor Policies and Directorate General for Social Integration;
- Ministry of Education, Universities and Research – Directorate General for Student Status, Integration, Participation and Communication;
- Ministry of Foreign Affairs;
- Regions and autonomous provinces Conference;
- ANCI – Associazione Italiana Comuni italiani (National Association of Italian Municipalities)
- READY Network - Rete nazionale delle Pubbliche Amministrazioni contro le discriminazioni per orientamento sessuale e identità di genere (National Network of public administrations against discrimination for sexual orientation and gender identity).

## 5.1.3 SOCIAL PARTNERS (TRADE-UNION ASSOCIATIONS AND EMPLOYERS' ORGANIZATIONS)

In order to define the measures provided by the Strategy, particularly relating to the strategic area of EMPLOYMENT, a forum with social partners (trade union associations and employers' organizations) was set up and organized by UNAR.

The representatives of the following most important trade union associations have been invited to take part to this forum:

- CGIL;
- CISL;
- UIL;
- UGL;

As well as national employers' organizations:

- CONFINDUSTRIA;
- CONFCOMMERCIO;
- COLDIRETTI;
- CONFARTIGIANATO;
- CONFESERCENTI;
- CONFSCOOPERATIVE;
- CONFAPI;
- LEGACOOP;
- CNA;
- CONFAGRICOLTURA.

#### 5.1.4. SECTOR ROUND-TABLES

Sector round-tables on specific themes can be considered as further instruments of governance. They have been established by representatives of the relevant Ministries and the third sector. They aim to address and solve specific issues, through an easier direct contact between administrations and institutions, within a collaborative field of problem solving.

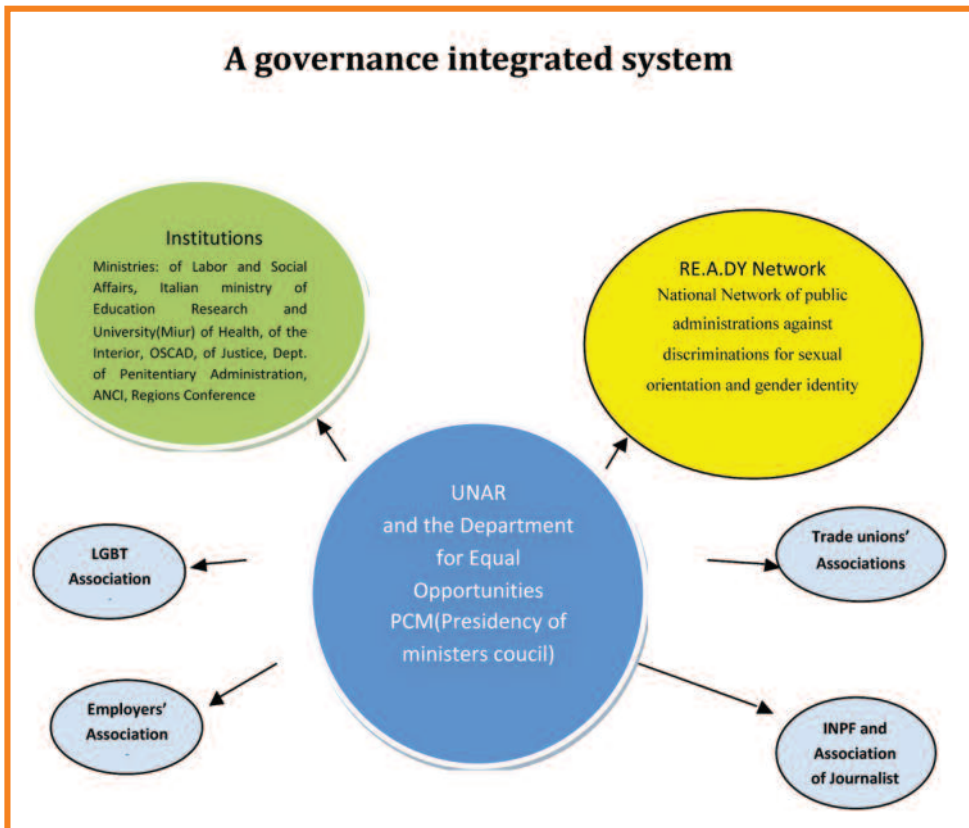
#### 5.1.5. THE RE.A.DY. NETWORK

On 19 December 2011 the Department for Equal Opportunities and the City of Turin, as national Secretariat of the RE.A.DY. Network (national Network of public administrations against discriminations for sexual orientation and gender identity), signed a Memorandum of Understanding, in order to promote some common activities, aiming at the implementation of the national Strategy. It is to notice that the city of Turin has been working for years on such issue; in fact, it has already established, in 2001, a LGBT Service, aiming at getting over discrimination on grounds of sexual orientation and gender identity, and, in 2006, has conducted the functions of coordination and national secretariat for such national Network.

## 5.1.6. OTHER PARTICIPANTS

These four primary areas need the participation of several actors, who have to share the objectives and the implementing measures of the Strategy, such as, in the MEDIA area, the Italian National Press Federation and the Association of Journalists.

The Department for Equal Opportunities and UNAR, as coordination and monitoring authority of the Strategy, will identify, in collaboration with the other relevant Administrations, the most suitable stakeholder for the analysis, the development, the implementation or the evaluation of the measures provided for it.



## 6. GLOSSARY<sup>10</sup>

### SEX

the biological and anatomical characteristics of a male and a female, determined by sexual chromosomes.



### GENDER

the social and cultural category built on biological sexual differences (male gender vs. female gender).



### GENDER IDENTITY

the perception of oneself as a male or female or in a non-defined condition.



### GENDER IDENTITY DISORDER

an expression used in medicine to describe a strong and persistent identification with the opposite to biological sex, also called *gender dysphoria*.



### GENDER ROLE

the combination of expectations and social models that determine *how* men and women should behave in a given culture or a given historical period.

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### SEXUAL ORIENTATION

the direction of affective and sexual attraction towards other people: it can be heterosexual, homosexual or bisexual.

10 This Glossary was prepared by RE.A.DY. Network and is available at this link: [http://www.comune.torino.it/politichedigenere/lgbt/lgbt\\_glossario/glossario-lgbt-2.shtml](http://www.comune.torino.it/politichedigenere/lgbt/lgbt_glossario/glossario-lgbt-2.shtml) . For these definitions, the following glossaries have been consulted:

1. AGEDO (by), *Nessuno uguale. Adolescenti e omosessualità*, Turin, 2005;
6. Coordinamento Genitori Democratici, *Quando.. Un imprevisto in famiglia. Un contributo per conoscere la realtà omosessuale. Una guida per I genitori*. Piedmont, 2009;
7. Graglia Margherita, *Psicoterapia e omosessualità*, Carocci, 2009;
8. ONIG *Identità e genere. Istruzioni per l'uso*, 2009.

## **HETEROSEXUAL**

a person affectively and sexually attracted to people of the other sex.

## **HOMOSEXUAL**

a person affectively and sexually attracted to people of the same sex.

## **BISEXUAL**

a person affectively and sexually attracted to people of both sexes.

## **LESBIAN**

homosexual woman.

## **GAY**

homosexual man (in Anglo-Saxon countries, this term is also used for homosexual women).

## **TRANSSEXUAL**

a person who strongly feels the belonging to the opposite sex and, for this reason, starts a transition process that ends with a sex reassignment surgery. This term is used in Italian with the feminine article ("la" transessuale) to refer to males who feel to be females (MtF – Male to Female) and with the masculine article ("il" transessuale) to refer to females who feel to be male (FtM – Female to Male).

## **TRANSGENDER**

an "umbrella" term that includes all kind of people who don't recognize themselves in the current models of identity and gender role, considering them too limiting to their experience.

## **TRANSVESTITE**

a person normally wearing clothes of the opposite sex, independently from his/her own sexual orientation or gender identity.

## **DRAG QUEEN/DRAG KING**

a men wearing like a woman (queen) or a woman wearing like a man (king), emphasizing the characteristics for artistic or recreational purposes.

## **INTERSEXUALITY**

the condition of a person who is genetically born with genitals and/or secondary sexual characters not defined as exclusively masculine or feminine.

## **LGBT**

an Anglo-Saxon acronym used to refer to lesbians, gays, bisexuals, transsexuals and transgender persons. Sometimes the acronym used is LGBTIQ, including those who are experiencing an intersexuality conditions and queers.



## QUEER

an English term used in a pejorative sense towards homosexuals. It has been recently re-used in a political/cultural sense, in a positive way, to refer to all the different aspects of gender identity and sexual orientation, rejecting at the same time those categories expressed by the acronym LGBT, too fixed and rigid, and claiming the overcoming of it.

## COMING OUT

the expression used to show the decision to declare his/her homosexuality. It comes from the English sentence "coming out of the closet". More generally, coming out refers to the whole process a person undertakes to become conscious of his/her homosexuality, to accept it, to start new relationships and to inform the others.

## OUTING

the expression used to show the revelation of somebody's homosexuality without the consent of the person involved. The homosexual emancipation movement used many times this practice to reveal the secret homosexuality of public representatives (politicians, Churches representatives, journalists) who publicly assume homophobic positions.

## VISIBILITY

the results of the self-acceptance process, through which a homosexual person can freely live his/her, own identity.

## HETEROSEXISM

a global vision that considers as natural only heterosexuality, taking for granted that everyone is heterosexual. Heterosexism rejects and stigmatizes every non-heterosexual behavior, identity or relationship. It arises both individually and culturally, influencing the habits and the social institution, and it is considered the first cause of homophobia.

## HOMOPHOBIA

the prejudice, fear and hostility towards homosexuals, and the consequent actions that this attitude involves. It can bring to violence actions against homosexuals. The international day against homophobia is the 17<sup>th</sup> of May, in remembrance of 17<sup>th</sup> May 1990, when the WHO removed homosexuality from the list of mental disorders.

## INTERNALISED HOMOPHOBIA

a kind of homophobia, often not recognized, as result of the educational and social values, that sometimes affects homosexuals.

## **HOMONEGATIVITY**

the term homophobia is nowadays outdated and replaced with the term homonegativity, which refers to the fact that discriminatory and violent acts towards homosexuals are not necessarily irrational and the result of fear, but, instead, the expression of a negative conception of homosexuality, which arises from a culture and society with an hetero-sexist point of view.

## **TRANSPHOBIA**

the prejudice, fear and hostility towards transsexuals and transgender persons (and towards transgressive people in relation with gender roles) and the consequent actions that this attitude involves. It can bring to violence actions against transsexuals and transgender. The 20<sup>th</sup> of November is the International Transgender Day of Remembrance (T-DOR), to commemorate the victims of transphobic violence, and in remembrance of Rita Hester, whose murder in 1998 gives rise to the project called "Remembering our Dead".

## **INTERNALISED TRANSPHOBIA**

a kind of homophobia, often not recognized, as result of the educational and social values, that sometimes affects transsexuals.

## **PRIDE**

an expression that refers to every kind of initiatives that take place every year immediately before or after the Gay Pride on the 28<sup>th</sup> of June, commemorating the Stonewall riots ended on 28<sup>th</sup> June 1969. Stonewall riots were a series of violent riots among transgender and transsexuals, on one side, and New York police, on the other side. On 27<sup>th</sup> June 1969 was the first night of riots, when the police burst into the *Stonewall Inn*, a gay bar in Christopher Street, inside the Greenwich Village. "Stonewall" (as it is called in short terms) is considered the symbolic moment of birth of the modern LGBT emancipation movement in the whole world.

## Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity

*(Adopted by the Committee of Ministers on 31 March 2010 at the 1081st meeting of the Ministers' Deputies)*



The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,



Considering that the aim of the Council of Europe is to achieve a greater unity between its members, and that this aim may be pursued, in particular, through common action in the field of human rights;



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Recalling that human rights are universal and shall apply to all individuals, and stressing therefore its commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) (hereinafter referred to as "the Convention") and its protocols;

Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms;

Recognising that lesbian, gay, bisexual and transgender persons have been for centuries and are still subjected to homophobia, transphobia and other forms of intolerance and discrimination even within their family – including criminalisation, marginalisation, social

exclusion and violence – on grounds of sexual orientation or gender identity, and that specific action is required in order to ensure the full enjoyment of the human rights of these persons;

Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons;

Recalling that, in accordance with the case law of the Court, any difference in treatment, in order not to be discriminatory, must have an objective and reasonable justification, that is, pursue a legitimate aim and employ means which are reasonably proportionate to the aim pursued;

Bearing in mind the principle that neither cultural, traditional nor religious values, nor the rules of a "dominant culture" can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity;

Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations;

Bearing in mind the recommendations adopted since 1981 by the Parliamentary Assembly of the Council of Europe regarding discrimination on grounds of sexual orientation or gender identity, as well as Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on "Freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons";

Appreciating the role of the Commissioner for Human Rights in monitoring the situation of lesbian, gay, bisexual and transgender persons in the member states with respect to discrimination on grounds of sexual orientation or gender identity;

Taking note of the joint statement, made on 18 December 2008 by 66 states at the United Nations General Assembly, which condemned human rights violations based on sexual orientation and gender identity, such as killings, torture, arbitrary arrests and "deprivation of economic, social and cultural rights, including the right to health";

Stressing that discrimination and social exclusion on account of sexual orientation or gender identity may best be overcome by measures targeted both at those who experience such discrimination or exclusion, and the population at large,

Recommends that member states:

1. examine existing legislative and other measures, keep them under review, and collect and analyse relevant data, in order to monitor and redress any direct or indirect discrimination on grounds of sexual orientation or gender identity;
2. ensure that legislative and other measures are adopted and effectively implemented to combat discrimination on grounds of sexual orientation or gender identity, to ensure respect for the human rights of lesbian, gay, bisexual and transgender persons and to promote tolerance towards them;
3. ensure that victims of discrimination are aware of and have access to effective legal remedies before a national authority, and that measures to combat discrimination include, where appropriate, sanctions for infringements and the provision of adequate reparation for victims of discrimination;
4. be guided in their legislation, policies and practices by the principles and measures contained in the appendix to this recommendation;
5. ensure by appropriate means and action that this recommendation, including its appendix, is translated and disseminated as widely as possible.

## APPENDIX TO RECOMMENDATION CM/REC(2010)5

### I. RIGHT TO LIFE, SECURITY AND PROTECTION FROM VIOLENCE

#### A. "Hate crimes" and other hate-motivated incidents

1. Member states should ensure effective, prompt and impartial investigations into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator; they should further ensure that particular attention is paid to the investigation of such crimes and incidents when allegedly committed by law enforcement officials or by other persons acting in an official capacity, and that those responsible for such acts are effectively brought to justice and, where appropriate, punished in order to avoid impunity.
2. Member states should ensure that when determining sanctions, a bias motive related to sexual orientation or gender identity may be taken into account as an aggravating circumstance.
3. Member states should take appropriate measures to ensure that victims and witnesses of sexual orientation or gender identity related "hate crimes" and other hate-motivated incidents are encouraged to report these crimes and incidents; for this purpose, member states should take all necessary steps to ensure that law enforcement structures, including the judiciary, have the necessary knowledge and skills to identify such crimes and incidents and provide adequate assistance and support to victims and witnesses.
4. Member states should take appropriate measures to ensure the safety and dignity of all persons in prison or in other ways deprived of their liberty, including lesbian, gay, bisexual and transgender persons, and in particular take protective measures against physical assault, rape and other forms of sexual abuse, whether committed by other inmates or staff; measures should be taken so as to adequately protect and respect the gender identity of transgender persons.
5. Member states should ensure that relevant data are gathered and analysed on the prevalence and nature of discrimination and intolerance on grounds of sexual orientation or gender identity, and in particular on "hate crimes" and hate-motivated incidents related to sexual orientation or gender identity.

## B. "Hate speech"

6. Member states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such "hate speech" should be prohibited and publicly disavowed whenever it occurs. All measures should respect the fundamental right to freedom of expression in accordance with Article 10 of the Convention and the case law of the Court.

7. Member states should raise awareness among public authorities and public institutions at all levels of their responsibility to refrain from statements, in particular to the media, which may reasonably be understood as legitimising such hatred or discrimination.

8. Public officials and other state representatives should be encouraged to promote tolerance and respect for the human rights of lesbian, gay, bisexual and transgender persons whenever they engage in a dialogue with key representatives of the civil society, including media and sports organisations, political organisations and religious communities.

## **II. FREEDOM OF ASSOCIATION**

9. Member states should take appropriate measures to ensure, in accordance with Article 11 of the Convention, that the right to freedom of association can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, discriminatory administrative procedures, including excessive formalities for the registration and practical functioning of associations, should be prevented and removed; measures should also be taken to prevent the abuse of legal and administrative provisions, such as those related to restrictions based on public health, public morality and public order.

10. Access to public funding available for non-governmental organisations should be secured without discrimination on grounds of sexual orientation or gender identity.

11. Member states should take appropriate measures to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression to which they may be exposed, including when allegedly committed by state agents, in order to enable them to freely carry out their ac-

tivities in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities.

12. Member states should ensure that non-governmental organisations defending the human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons.

### III. FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY

13. Member states should take appropriate measures to ensure, in accordance with Article 10 of the Convention, that the right to freedom of expression can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity, including with respect to the freedom to receive and impart information on subjects dealing with sexual orientation or gender identity.
14. Member states should take appropriate measures at national, regional and local levels to ensure that the right to freedom of peaceful assembly, as enshrined in Article 11 of the Convention, can be effectively enjoyed, without discrimination on grounds of sexual orientation or gender identity.
15. Member states should ensure that law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons from any attempts to unlawfully disrupt or inhibit the effective enjoyment of their right to freedom of expression and peaceful assembly.
16. Member states should take appropriate measures to prevent restrictions on the effective enjoyment of the rights to freedom of expression and peaceful assembly resulting from the abuse of legal or administrative provisions, for example on grounds of public health, public morality and public order.
17. Public authorities at all levels should be encouraged to publicly condemn, notably in the media, any unlawful interferences with the right of individuals and groups of individuals to exercise their freedom of expression and peaceful assembly, notably when related to the human rights of lesbian, gay, bisexual and transgender persons.



#### IV. RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

18. Member states should ensure that any discriminatory legislation criminalising same-sex sexual acts between consenting adults, including any differences with respect to the age of consent for same-sex sexual acts and heterosexual acts, are repealed; they should also take appropriate measures to ensure that criminal law provisions which, because of their wording, may lead to a discriminatory application are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination.
19. Member states should ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used by public institutions including in particular within law enforcement structures, except where this is necessary for the performance of specific, lawful and legitimate purposes; existing records which do not comply with these principles should be destroyed.
20. Prior requirements, including changes of a physical nature, for legal recognition of a gender reassignment, should be regularly reviewed in order to remove abusive requirements.
21. Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way; member states should also ensure, where appropriate, the corresponding recognition and changes by non-state actors with respect to key documents, such as educational or work certificates.
22. Member states should take all necessary measures to ensure that, once gender reassignment has been completed and legally recognised in accordance with paragraphs 20 and 21 above, the right of transgender persons to marry a person of the sex opposite to their reassigned sex is effectively guaranteed.
23. Where national legislation confers rights and obligations on unmarried couples, member states should ensure that it applies in a non-discriminatory way to both same-sex and different-sex couples, including with respect to survivor's pension benefits and tenancy rights.
24. Where national legislation recognises registered same-sex partnerships, member states should seek to ensure that their legal status and their rights and obligations are equivalent to those of heterosexual couples in a comparable situation.

25. Where national legislation does not recognise nor confer rights or obligations on registered same-sex partnerships and unmarried couples, member states are invited to consider the possibility of providing, without discrimination of any kind, including against different sex couples, same-sex couples with legal or other means to address the practical problems related to the social reality in which they live.
26. Taking into account that the child's best interests should be the primary consideration in decisions regarding the parental responsibility for, or guardianship of a child, member states should ensure that such decisions are taken without discrimination based on sexual orientation or gender identity.
27. Taking into account that the child's best interests should be the primary consideration in decisions regarding adoption of a child, member states whose national legislation permits single individuals to adopt children should ensure that the law is applied without discrimination based on sexual orientation or gender identity.
28. Where national law permits assisted reproductive treatment for single women, member states should seek to ensure access to such treatment without discrimination on grounds of sexual orientation.

## V. EMPLOYMENT

29. Member states should ensure the establishment and implementation of appropriate measures which provide effective protection against discrimination on grounds of sexual orientation or gender identity in employment and occupation in the public as well as in the private sector. These measures should cover conditions for access to employment and promotion, dismissals, pay and other working conditions, including the prevention, combating and punishment of harassment and other forms of victimisation.
30. Particular attention should be paid to providing effective protection of the right to privacy of transgender individuals in the context of employment, in particular regarding employment applications, to avoid any irrelevant disclosure of their gender history or their former name to the employer and other employees.

## VI. EDUCATION

31. Taking into due account the over-riding interests of the child, member states

should take appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; this includes, in particular, safeguarding the right of children and youth to education in a safe environment, free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity.

32. Taking into due account the over-riding interests of the child, appropriate measures should be taken to this effect at all levels to promote mutual tolerance and respect in schools, regardless of sexual orientation or gender identity. This should include providing objective information with respect to sexual orientation and gender identity, for instance in school curricula and educational materials, and providing pupils and students with the necessary information, protection and support to enable them to live in accordance with their sexual orientation and gender identity. Furthermore, member states may design and implement school equality and safety policies and action plans and may ensure access to adequate anti-discrimination training or support and teaching aids. Such measures should take into account the rights of parents regarding education of their children.

## VII. HEALTH

33. Member states should take appropriate legislative and other measures to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity; in particular, they should take into account the specific needs of lesbian, gay, bisexual and transgender persons in the development of national health plans including suicide prevention measures, health surveys, medical curricula, training courses and materials, and when monitoring and evaluating the quality of health-care services.

34. Appropriate measures should be taken in order to avoid the classification of homosexuality as an illness, in accordance with the standards of the World Health Organisation.

35. Member states should take appropriate measures to ensure that transgender persons have effective access to appropriate gender reassignment services, including psychological, endocrinological and surgical expertise in the field of transgender health care, without being subject to unreasonable requirements; no person should be subjected to gender reassignment procedures without his or her consent.

36. Member states should take appropriate legislative and other measures to ensure that any decisions limiting the costs covered by health insurance for gender reassignment procedures should be lawful, objective and proportionate.

## VIII. HOUSING

37. Measures should be taken to ensure that access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity; such measures should in particular seek to provide protection against discriminatory evictions, and to guarantee equal rights to acquire and retain ownership of land and other property.
38. Appropriate attention should be paid to the risks of homelessness faced by lesbian, gay, bisexual and transgender persons, including young persons and children who may be particularly vulnerable to social exclusion, including from their own families; in this respect, the relevant social services should be provided on the basis of an objective assessment of the needs of every individual, without discrimination.

## IX. SPORTS

39. Homophobia, transphobia and discrimination on grounds of sexual orientation or gender identity in sports are, like racism and other forms of discrimination, unacceptable and should be combated.
40. Sport activities and facilities should be open to all without discrimination on grounds of sexual orientation or gender identity; in particular, effective measures should be taken to prevent, counteract and punish the use of discriminatory insults with reference to sexual orientation or gender identity during and in connection with sports events.
41. Member states should encourage dialogue with and support sports associations and fan clubs in developing awareness-raising activities regarding discrimination against lesbian, gay, bisexual and transgender persons in sport and in condemning manifestations of intolerance towards them.

## X. RIGHT TO SEEK ASYLUM

42. In cases where member states have international obligations in this respect, they should recognise that a well-founded fear of persecution based on sexual ori-

entation or gender identity may be a valid ground for the granting of refugee status and asylum under national law.

43. Member states should ensure particularly that asylum seekers are not sent to a country where their life or freedom would be threatened or they face the risk of torture, inhuman or degrading treatment or punishment, on grounds of sexual orientation or gender identity.

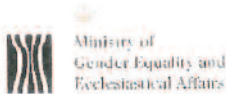
44. Asylum seekers should be protected from any discriminatory policies or practices on grounds of sexual orientation or gender identity; in particular, appropriate measures should be taken to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty, and to ensure their access to information relevant to their particular situation.

## **XI. NATIONAL HUMAN RIGHTS STRUCTURES**

45. Member states should ensure that national human rights structures are clearly mandated to address discrimination on grounds of sexual orientation or gender identity; in particular, they should be able to make recommendations on legislation and policies, raise awareness amongst the general public, as well as – as far as national law so provides – examine individual complaints regarding both the private and public sector and initiate or participate in court proceedings.

## **XII. DISCRIMINATION ON MULTIPLE GROUNDS**

46. Member states are encouraged to take measures to ensure that legal provisions in national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity; national human rights structures should have a broad mandate to enable them to tackle such issues.



*Il Ministro per le Pari Opportunità  
Le Sport e le Politiche Giovanili*

## International Day against Homophobia and Transphobia 2013 - The Hague

We believe that the European Union, as a key player in the area of fundamental rights, is in a unique position to support Member States' efforts to improve the fundamental rights situation of lesbian, gay, bisexual and transgender (LGBT) people. The EU should take a leading role, complementing and supporting national policies where relevant. We, European ministers, make this **Call for a comprehensive policy approach at European Union level and across the European Union on LGBT issues**, aiming at improving human rights and mainstreaming equality for LGBT people.

We have concerns about the living situation of many LGBT people around Europe and are committed to taking action in order to improve the lives of LGBT people. LGBT people still face violence, lack of freedom of assembly and expression and problems with freedom of movement for both couples and their children. We are aware of the reported incidents of suicide and bullying of LGBT children, homophobic and transphobic incidents in the workplace and at school, and prejudice-based stereotyping of LGBT people in Europe and abroad.

The Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union, adopted by the European Commission in October 2010, announced the "development of individual policies concerning specific fundamental rights [...], examples being [...] non-discrimination". According to the Strategy, the Union being exemplary is "vital not only for people living in the Union but also for the development of the Union itself". We fully support this approach.

We commend the European Commission's previous statements on the occasion of IDAHO 2011 and 2012 and its participation in and commitment to the European Informal Network of Governmental LGBT Policy Focal Points. We also welcome the positive measures that have been taken in many European countries and at the European level. We are therefore confident that the European Commission shares our concern and our commitment to improve the situation.

By adopting a comprehensive policy approach the European Commission is in a position to make a difference. This policy approach should ensure that, in accordance with Article 10 TFEU, the Union, "in defining and implementing its policies and activities, [...] shall aim to combat discrimination". While the EU already is a key player in combating discrimination against LGBT people, it is now time to consolidate its position in this area, by ensuring that its actions are and will remain, consistent and sustainable.

To fully enforce the principle of non-discrimination and equality on grounds of sexual orientation and gender identity in all spheres of life, it should be carefully examined what measures could be taken in the respective areas of competence of the European Union and the Member States in consideration of the EU-Fundamental Rights Agency (FRA) studies.

The results of the FRA European LGBT survey will serve as a very useful basis for discussing the pan-European situation of LGBT people. Those findings should guide the development of priorities, effective measures and follow up within a clear timetable.

We concur with the European Parliament, which has supported the adoption of a comprehensive policy for equality on grounds of sexual orientation and gender identity. The study: Towards an EU Roadmap for Equality on Grounds of Sexual Orientation and Gender Identity, recently published by the European Parliament, is a useful resource that the Commission should consider when defining its approach.

We are committed to following up the Council of Europe Ministers' Recommendations on measures to combat discrimination on grounds of sexual orientation or gender identity. Similarly, the Council of Europe Ministers' recommendations are a useful resource for Member States to consider when identifying appropriate measures to combat discrimination on grounds of sexual orientation or gender identity. Therefore, we call upon the European Commission to facilitate co-operation within the European Union and to assist and support Member States to tackle discrimination of LGBT people within their own countries whilst having regard to these recommendations. The Commission could assist Member States through a variety of policy instruments, co-ordinating initiatives and by establishing clear timetables for making progress towards realising LGBT equality by providing funding and support, establishing simple measurements and encouraging campaigns to achieve these aims.

EU action is necessary to co-ordinate and to promote efforts at the EU level and share good practice and to support efforts at the national level in order to make progress towards a Europe free from homo- and transphobia. Taking action to prevent discrimination and providing remedies can make a difference not only for the millions of LGBT citizens in Europe, but for all.

A comprehensive approach has already proven effective in tackling other forms of discrimination.

We are ready to support the process towards a comprehensive policy approach at EU level and to share our expertise with the European Commission. We call on the European Commission to commit to developing and adopting a comprehensive policy approach which builds on the recommendations of the Fundamental Rights Agency Survey and the study of the European Parliament.

### International Day against Homophobia and Transphobia 2013 - The Hague

(Alphabetical):

**Jet Bussemaker**, Minister of Education, Culture and Science - The Netherlands

**Helena Dalli**, Minister of Social Dialogue, Consumer Affairs and Civil Liberties - Malta

**Gabriele Heintsch-Hosek**, Minister for Women and the Civil Service - Austria

**Anna-Maja Henriksson**, Minister of Justice - Finland

**Josefa Idem**, Minister for Equal Opportunities - Italy

**Vesna Pusić**, Minister of Foreign and European Affairs - Croatia

**Manu Sareen**, Minister of Gender Equality and Ecclesiastical Affairs - Denmark

**Pascal Smet**, Flemish Minister of Education, Youth, Equal Opportunities and Brussels - Belgium

**Marc Spautz**, Minister for Family and Integration - Luxembourg

**Erik Ullenhag**, Minister for Integration - Sweden

**Najat Vallaud-Belkacem**, Minister for Women's Rights - France

<sup>\*)</sup> on behalf of the federal and federated governments of Belgium





