



Strasbourg, 30 November 2012

CDDH(2012) R76
Addendum VIII

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**Questionnaire on the implementation of
Committee of Ministers' Recommendation CM/Rec(2010)5
on measures to combat discrimination on grounds
of sexual orientation or gender identity**

76th meeting

Strasbourg, 27-30 November 2012

Introduction

On 19 September 2012, the Committee of Ministers' Deputies instructed the Steering Committee for Human Rights (CDDH) to elaborate a questionnaire on the implementation of 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 and to transmit it to member states ¹

On the basis of this decision, the Secretariat has elaborated the following questionnaire.

The competent authorities are kindly requested to fill the questionnaire and to return it, directly or via their CDDH delegation, to the Secretariat of the Council of Europe (nicola-daniel.cangemi@coe.int) **by 31 January 2013 at the latest.**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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Except where explicitly indicated (such as in Question 3), the questionnaire requires to provide information on measures in place or action taken, irrespective of whether such actions or measures were taken before or after the adoption of the Recommendation. Information on whether the measure was actually adopted pursuant the adoption of the Recommendation should be provided in the explanatory boxes.

Many questions require providing, where appropriate, additional information or explanations on existing measures and examples of good practice. Should you need to provide additional explanations also to a question where this is not indicated, for instance to explain why, in a given case, ticking one of the five boxes would be insufficient or not applicable, please feel free to do so by adding the necessary information below your reply. Please separate issues relating to sexual orientation from those relating to gender identity if needed.

On the basis of the replies to the questionnaire, the Secretariat will prepare a report which will be submitted for adoption to the CDDH. In accordance with the decision of the Committee of Ministers' Deputies, the results of the examination of the implementation of Recommendation CM/Rec(2010)5 should be submitted to the Committee of Ministers preferably by 31 March 2013.

Section I – Implementation and dissemination of the Recommendation

1. How would you assess the status of implementation of the Recommendation in your country?
Fully satisfactory Adequate Insufficient Absent

¹ Seven countries made statements at the moment of the adoption of the Recommendation,

Please explain your reply.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?
a. b. c. d. e.

Please explain and, if appropriate, provide examples of any such measures found:

Are there measures in place to redress any such discrimination?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices:

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
a. b. c. d. e.

If appropriate, please provide examples of measures adopted or in preparation.

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
a. b. c. d. e.

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. b. c. d. e.

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices:

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. b. c. d. e.

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. b. c. d. e.

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation 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?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

- a. b. c. d. e.

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

- a. b. c. d. e.

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

II. Freedom of association

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. b. c. d. e.

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, 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?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

17. Have measures been taken to ensure that non-governmental organisations defending the of 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?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

III. Freedom of expression and peaceful assembly

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. b. c. d. e.

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. b. c. d. e.

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do 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?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

IV. Right to respect for private and family life

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. b. c. d. e.

Please provide examples of exceptions to this principle, if any:

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

- a. b. c. d. e.

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

- a. b. c. d. e.

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. b. c. d. e.

Please provide examples:

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. b. c. d. e.

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. b. c. d. e.

If so, are there measures in place concerning in particular:

- i) Access to employment
a. b. c. d. e.
- ii) Promotion, dismissals, pay and other working conditions
a. b. c. d. e.
- iii) Prevention and punishment of harassment
a. b. c. d. e.
- iv) Protection of privacy of transgender persons
(in accordance with paragraph 30 of the Appendix to the Recommendation)
a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

VI. Education

27. Are there 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, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. b. c. d. e.

If so, are there measures in place concerning in particular:

- i) Anti-discrimination training or support and teaching aids
a. b. c. d. e.
- ii) Information, protection and support for pupils and students
a. b. c. d. e.

iii) Objective information on sexual orientation and gender identity in school curricula ?

- a. b. c. d. e.

iv) School equality and safety policies and action plans

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

VII. Health

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

29. Has homosexuality been removed from the national classification of diseases?

- a. b. c. d. e.

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. b. c. d. e.

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

IX. Sports

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

X. Right to seek asylum

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

XI. National Human Rights Structures

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?
a. b. c. d. e.

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?
a. b. c. d. e.

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

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XII. Discrimination on multiple grounds

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?
a. b. c. d. e.

Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.