

Joint non-paper by Belgium, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom on the future of the LGBTI list of actions

General considerations

1. Discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics constitutes an infringement of the fundamental rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons and therefore should be protected by European legislation;
2. Despite the issuing of the *List of Actions to Advance LGBTI Equality* and their implementation, much greater effort by the European Union and Member States continues to be required to protect the fundamental rights of LGBTI persons;
3. The responsibility to protect fundamental rights lies jointly with the European Union and Member States.

Introduction

The 2015 Eurobarometer on discrimination shows that almost 60% of EU citizens see discrimination based on sexual orientation and gender identity as widespread. At the same time, 71% of respondents support equal rights for LGBT people. These figures should be a wake-up call for action.

In December 2015, the European Commission put forward the *List of Actions to Advance LGBTI Equality* with the primary objective to further LGBTI equality. It encompassed the following main branches:

1. Improving rights and ensuring legal protection of LGBTI people and their families in key areas of EU competence
2. Strong monitoring and enforcement of existing rights of LGBTI people and their families under EU law
3. Reaching citizens, fostering diversity and non-discrimination
4. Supporting key actors responsible to promote and advance equal rights for LGBTI people in the EU
5. Figures and facts for policy makers on LGBTI challenges at the EU: data collection and research activities
6. External action: LGBTI issues in enlargement, neighbourhood and third countries

Following the publication of this List, the first ever Council Conclusions on LGBTI equality were adopted by the EPSCO Ministers in June 2016.

Belgium, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom welcome the work carried out by the European Commission and believe that the gained momentum should continue to be further built upon by the new College of European Commissioners, post the current mandate.

Initiatives taken by Member States

An increasing number of Member States have invested in various initiatives on a national level. Indeed, several Member States have adopted their respective work plans and legislation, which in many cases exceed the commitments set out in the List of Actions. These plans often take an inter-ministerial and mainstreaming approach. Various member states are reviewing and updating their gender identity recognition procedures to reflect human rights standards, with some exploring the introduction of third gender options on identity documents. In relation to this, it is worth highlighting that diverse efforts towards advancing equality for intersex people have been made. Some Member States have introduced various measures ensuring that reporting of bias motivated crime is facilitated whilst providing the necessary safeguards.

Mainstreaming has been a common priority of the work carried out at the national level. The concept of mainstreaming as a tool was established in the 1990s, however its use and concrete application in the area of LGBTI rights and equality require further strengthening which we are seeking to achieve via multiple measures. Indeed, we believe that the equality and rights of LGBTI individuals cannot be safeguarded solely through a sectoral approach.

Challenges

In order to ensure the fundamental rights and freedoms of the citizens of the European Union, the European Commission should continue to take up the responsibility and leadership in securing the rights and equal opportunities of LGBTI persons. The shrinking space for civil society in some Member States coupled with difficulties in accessing funding also limits the engagement that civil society can have in contributing to the implementation of the Actions.

We are of the belief that the current List of Actions could have availed from a greater degree of visibility on different levels and amongst entities and society in a wider sense. More prominence on a national and EU level, could have potentially led to a greater impact.

Furthermore, it was observed that while a number of European Commission Directorates addressed LGBTI issues in some way through a range of measures and policy instruments, co-ordination on a horizontal level could benefit from further enhancement of the current LGBTI list of actions.

Proposal

It is pertinent to highlight that national initiatives in the field, and their respective impact differs considerably amongst Member States. European Commission initiatives are essential to address such gaps and to live up to the EU's Charter of Fundamental Rights. In this regard, we call upon the current and upcoming European Commission to continue and build further upon the momentum gained in the past years in addressing inequality and discrimination on the grounds of sexual orientation, gender identity, gender expression and sex characteristics. The progress achieved over the past years should serve as a solid foundation for future work at the EU level and through the support of national initiatives.

Several Member States have already adopted legislation which seeks to tackle inequality and discrimination on different grounds. The new European Commission should ensure that there is true and effective monitoring of the implementation of the European Equality Directives whereby the real effect and impact is thus ensured.

Data collection is of the essence in order to allow for better informed and evidence based initiatives by the upcoming European Commission as well as by Member States. In this regard, the conduction of a new LGBTI survey by the EU Fundamental Rights Agency is imperative in order to be able to assess the current climate and the impact that initiatives taken since 2012 have had on EU citizens.

We are also of the belief that the European Union should continue to serve as a platform for the exchange of best practices amongst Member States. Being a matter of national competence, Member States have opted for diverse and distinct measures with different reaching effects in the field of LGBTI rights and equality. Nonetheless, the next European Commission should seek to ensure that dialogue amongst Member States seeking to learn from respective national measures is strengthened.

The current and upcoming European Commission should safeguard the allocation of the appropriate funding to Member States and civil society for a two-fold objective; to support the respective EU priorities in the field of LGBTI rights and equality as well as measures outlined in national action plans.

The upcoming European Commission should strive towards a better, more effective co-ordination and increased coherence in the implementation of the Actions. This might be better achieved through the adoption of an LGBTI strategy which could also incorporate a list of actions. In preparing this strategy, the European Commission should profit from existing good practices at both national and EU level.

Civil society organisations are a fundamental component in our society. Their role **can be a vanguard of progress for the LGBTI community. Thus, it is of essence that civil society organisations are allocated the respective space throughout the different phases of policy making and implementation to provide the necessary input through their expertise. Civil society organisations are direct representatives of the LGBTI community, thus this would ensure that the voices of the latter are heard and taken into account.**

The European External Action Service (EEAS) should continue to promote and protect the human rights of LGBTI persons and strengthen the cooperation between the EU and other international organizations working on LGBTI issues.

We believe that more effort needs to be done to address the marginalisation and well-being of LGBTI persons. The European Commission has always placed an equal, non-discriminatory and safe society at the forefront of their respective agendas. Over the past decades, multiple efforts have been conducted in order to ensure that vulnerable groups are not left behind. Nevertheless, reality demonstrates that LGBTI persons continue to experience discrimination in multiple spheres of life on a daily basis. Measures aiming to ensure their inclusion in society as well as their well-being across all member states should be a priority of the next European Commission. This includes the safeguarding of the free movement of LGBTI persons, same-sex couples and their children.

It is with the above framework in mind that we pledge support to the European Commission's efforts to address discrimination and hatred against LGBTI persons and call for the adoption of a comprehensive LGBTI strategy.

Signed in Brussels, Belgium, on the 6th of December 2018.