



Transnational legal and social report

Proposals to combat LGBTphobia in the European Union

WS3. Proposals for specific social, legal and policy measures to combat homo- and transphobia at national and European levels

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1. Introduction

At the European level, the European Union has adopted policies to combat LGBTphobia through its general policy of non-discrimination. However, there is still a lot to be done to improve the situation of LGBT people through European Union. The European Parliament, since January 2011, has asked the European Commission to produce a comprehensive policy against homophobia and discrimination on grounds of sexual orientation and gender identity.¹ Following the request from the Parliament and a joint call from the Member States, the European Commission has produced a list of actions to advance LGBT Equality to increase efforts to combat discrimination on the grounds of sexual orientation and gender identity.² Even if the text shows a real commitment to tackle inequalities based on LGBTphobia, it seems necessary to develop further the EU *acquis* that would improve the lives of LGBT people and advance LGBT equality in a number of key policy areas.

The results of the Divercity project from national legal reports and city reports also show that the situation is improving for LGBT people at national as well as local levels, especially for lesbian and gay people, but also for transgender people, although for the latter, the developments are happening more slowly. It is also clear from the results that much more can and should be done.

Based on the findings and conclusions, the study has drawn up a number of specific recommendations and proposals, addressed to policymakers, stakeholders and civil society actors, both at national and EU levels.

These focus on six key areas:

- Extending legal protection against discrimination/hate crime based on LGBTphobia
- Improving the reporting on LGBTphobia
- Claims/complaints mechanisms;
- Rights and protection of victims;
- Statistics on discrimination/hate crimes/hate speeches and complaints databases;
- Adoption of a comprehensive policy and an intersectional approach.

¹ Report on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2013/2183(INI)), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0009+0+DOC+XML+V0//EN#title2>

² List of actions to advance equality issues, http://ec.europa.eu/justice/discrimination/files/lgbti_actionlist_en.pdf

2. Objectives and methodology

The purpose of this report is to propose and promote organisational, legal and social measures to combat LGBTphobia at national as well as European level.

The report pays attention to the specific legal and social measures to combat LGBTphobia implemented in each participating country. The aim of this report is to draw up a wide range of measures to combat LGBTphobia, taking into account the obtained results through the study.

Therefore, the suggestions, analyses, perceptions, needs, expectations of the target groups have been extensively considered and adapted to be viable in legal proposals and social measures.

The methods used for the elaboration of this report are various.

They start from the Identification and analysis of law of each participant country about LGBTphobia, gathering information from the WS1 report on national and regional legislation.

They continue with proposing legal measures to combat LGBTphobia in the EU, with the idea of collecting from the WS1 Report on national legislation the most protective measures in terms of fields and grounds covered.

Social and organisational measures to combat LGBTphobia in the EU are finally proposed. They mainly come from the WS1 Comparative analysis of existing legislation, policies and practices on LGBTphobia. The idea was to identify the gaps and the lacks of protection within the current European legislation.

3 Legal proposals and recommendations

3.1 Improvement of legal protection

3.1.1 Extension of the protection against discrimination

At national level

The results of the study show that despite the adoption of a strong legal framework in all the countries to combat discrimination based on LGBTphobia, there are still some missing legal provisions especially concerning transgender people.

Anti-discrimination law	Belgium	Greece	Poland	Spain	UK
Sexual orientation	Yes	Yes	Yes	Yes, via the Spanish Penal Code and the Spanish Constitution which guarantees the non-discrimination	Yes
Gender identity	Yes, via sex discrimination Act	Yes	No, but in practice so far this falls under sex discrimination law	Yes, idem	No, but gender reassignment is and this includes transgender
Gender expression	Yes, idem	No	No, but in practice this falls under sex discrimination law	Yes, idem	No, not explicitly mentioned
Sex characteristics	No	No	No, but in practice this falls under sex discrimination law	No	No, not explicitly mentioned

In addition, the fields covered against discrimination by legislation based on LGBTphobia vary tremendously between countries.

Areas covered	Belgium	Greece	Poland	Spain	UK
Employment	yes	yes	yes	yes	yes
Education	yes	yes	No, but equal access to education enshrined in the Constitution Education Act prohibits discrimination in general	Yes, via regional provisions and the Spanish Law on the Improvement of the Quality of education (2013) which guarantees the equality in a generic way and refers to sexuality as an aggravating circumstance of discrimination	yes

Health and social services	Yes, including social security, health care and social advantages	yes	No, but anti-discriminatory access to medical treatment in Medical Treatment Act.	Yes, through: .General Health Law (1986); .General Law Public Health (2011)	yes
Public spaces	yes	yes	yes, through different general acts	yes (police profiling and sports events)	yes
Policing and security	yes	yes	yes, some general acts apply	No, but in some cases the criminal code might provide a remedy	yes
On-line spaces	yes	yes	No, but relevant rules of civil and criminal law applies to on-line spaces as well	Yes, via national law and Convention on Cybercrime	yes
Others (please specify)	See under comments	Transnational provision of goods and services	No	--	Goods and services

It is therefore recommended to all EU countries to reinforce the fight against LGBTphobia by:

- Including in the constitution an open-ended lists of grounds, so a court can decide that all these characteristics are covered by the Constitutional guarantee of equality /non-discrimination, including sexual orientation, gender identity, gender expression or sex characteristics which are usually not mentioned.
- Including gender identity and sexual orientation as protected grounds both in civil and criminal law. In Poland, for instance, discriminations based on gender identity and sexual orientation are only protected in civil law in the field of employment and those based on gender identity are not protected at all.
- Extending the areas covered against discrimination by legislation! based on LGBTphobia beyond the employment and occupation sphere in order to prohibit it in a much larger number of areas such as the public and private sector in social

protection, including social security and health care, social advantages, education and access to and supply of goods and services which are available to the public, including housing.

At European level

- Extending the protection against discrimination on the grounds of sexual orientation and sex discrimination (including gender identity and sex characteristics) beyond the employment field. Since 2008, there is an EU Proposal to extend the coverage of Directive 2000/78/EC, which covers religion or belief, disability and age as well as sexual orientation, beyond the employment sphere (COM (2008) 426), but this proposal has not been adopted to date. It is important that this proposal is adopted. If it is, sexual orientation discrimination, among other forms of discrimination covered by Directive 2000/78/EC, will be prohibited in a much larger number of areas. As well as being prohibited in the areas of employment or occupation (via Directive 2000/78/EC, Article 3) it would also be prohibited in both the public and private sector in social protection, including social security and health care; social advantages; education; and, access to and supply of goods and services which are available to the public, including housing.
- Fostering the influence of the ECHR on the EU and the CJEU through the EU Charter of fundamental rights, in particular encourage Member States to ratify Protocol 12 to the ECHR which guarantees non-discrimination in all rights set forth by law on the same, open-ended list of grounds as Article 14 ECHR. Of the five countries, only Spain has signed and ratified this Protocol.

3.1.2 Extension of the protection against hate crime and hate speech

At national level

As shown in the following table, all five countries have some forms of hate speech and/or hate crime provisions, although in Poland this is through cases of court ruling against such crimes or via the general criminal law rather than through specific criminal provisions.

Criminal law provisions Does the criminal law provide against:	Belgium	Greece	Poland	Spain	UK
Homophobic hate speech?	Yes (2007 Federal Antidiscrimination Acts) Equal Opportunities Centre responsible for LGB persons	Yes	No, there are some hate crime provisions but these do not cover sexual orientation or gender identity.	Yes, Article 510 of the criminal Code (see for the text the report on Spain)	Yes, S 29B Public order Act 1986 (added by the Criminal Justice and Immigration

					Act 2008)
Transphobic hate speech?	Yes, Institute for equality between Women and Men is responsible for transgender persons	yes	No, idem	Yes, idem	Yes, via s 4 Public order Act 1986 (see Report UK for text)
Homophobic hate crime?	yes	yes	No, idem	The Spanish Penal Code does not specifically refer to hate crimes. However, there are several articles with which hate crimes against LGBTpeople can be punished: such as art. 22.4 on the circumstance s that aggravate criminal accountability, the art. 170.1 on intimidation, or the art. 173 on crimes against moral integrity	No specific offences but homophobic motive can lead to enhanced sentencing. Hate crime provisions limited to race and religion, but sentencing provisions of Criminal Justice Act 2003 and police, prosecution and other agencies policies on recording hate crime also cover sexual orientation, disability and transgender
Transphobic hate crime?		yes	No, idem	Yes, idem	No, idem
Incitement to homophobic hatred?	yes	yes	No, but generally worded offences have sometimes been used	Yes, Article 510	Yes, S 29B Public Order Act 1986
Incitement to transphobic hatred?	yes	yes	No, idem	Yes, idem	Yes, see under hate

					speech
Incitement or encouragement of violence to LGBT people?	yes	yes	No, idem	Yes	Public Order Act 1986 only mentions material which is threatening and which the publisher or distributor intends to stir up hatred on the grounds of sexual orientation. But there is a general provision on encouragement or assisting crime in S 44-46 of the Serious Crime Act 2007. In Northern Ireland it is a criminal offence to incite hatred, violence or discrimination on the ground of sexual orientation
Does the criminal law provide for increased penalties when a crime is committed with a homophobic or	Yes Law 2103 concerning homo/transphobic cases	yes	No, but Art 53 Penal Code determines that motivation and manner of	Yes, when the offence is due to discrimination on the	Yes, S 146 Criminal Justice Act 2003: increase in

transphobic motive			conduct has to be taken into account by court. This has been applied to homophobic motives.	basis on 'sexual orientation or identity' (art. 22.4 of the Penal Code)	sentence for convicted crimes if there is aggravation related to sexual orientation and transgender.
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To increase protection against hate crime and hate speech, it is proposed:

- To have some forms of hate speech and/or hate crime provisions through specific criminal provisions at national level in order to make hate speech and hate crime on the ground of sexual orientation and gender identity a criminal offence. It could be done by including sexual orientation and gender identity among the grounds covered when implementing the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.
- To provide for **increased penalties** when a crime is motivated by LGBTphobia. All five countries provide for increased penalties when a crime is motivated by LGBTphobia. The latter is important, because a crime which is committed with a homo- or transphobic motive would attract higher penalties. This would recognise the seriousness of such crimes and would also show society's disapproval of such motives.
- To extend the possibility of **enhancing the penalties for criminal offences** to a large number of common crimes, such as threats, blackmail, abuse of authority, degrading treatment, robbery with violence or threats and extortions perpetrated on the basis of LGBTphobia when aggravating circumstances are proven.
- To criminalise incitement to LGBT hatred and incitement or encouragement of violence to LGBT people.
- To conduct training for law enforcement officers and justice department workers, including police officers and judges, on hate speech and hate crimes.
- To create a reporting service for victims such as an online LGBT hate crime victims to provide to anyone experiencing LGBT Hate Crime or incidents, or witnesses a Hate Crime or incident, an access to an independent third party.
- Raise-awareness mechanisms should be deployed in order to publicise the legal rights of LGBT people.
- Finally, the court proceedings linked to LGBT crimes should be simplified and accelerated without the victims experiencing a loss in rights or without compromising criminal law safeguards.

At European level

At European level, it is necessary to encourage improvement of criminalisation of hate speech and hate crime based on LGBTphobia through:

- Encouraging the adoption of a framework decision against LGBTphobia, like the Council Framework Decision on Racism and Xenophobia, 2008/913/HA on combatting certain forms of racism and xenophobia by means of criminal law or by extending the later to include other forms of bias crime and incitement to hatred, including on grounds of sexual orientation and gender identity. It will encourage the criminalisation of LGBTphobia, in particular in EU countries without any specific criminal regulations against hate crime and hate speech based on LGBTphobia.
- Revising the Audiovisual Media Services Directive in order to align it with the Framework Decision on combatting certain forms and expressions of racism and xenophobia to reinforce the fight against hate speech with the amendment as proposed in the previous point.

3.2 Claim and Complaint mechanisms

The situation in relation to making formal claims or complaints is varied in the five countries involved in the study. In all the countries there are the normal procedures for reporting crimes, including hate crime to the police. However, this is not always easy for a victim to make use of and many city reports point out the reluctance to report LGBTphobia. There is a need for improvement of reporting mechanisms, for more organisations where people can report LGBTphobia, confidentially and even anonymously, and a better cooperation between all organisations, including law enforcement agencies. Measures should be taken to resolve the issue of no-reporting.

Complaint system	Belgium	Greece	Poland	Spain	UK
Does the law allow for individual complaints?	yes	yes	Yes	yes	yes

Does the law allow for group complaints	Yes, law of March 2014 allows class actions for the first time in Belgium. However, it only concerns consumers' groups	yes	Yes, through the Class Action Act, but only for consumer protection cases, liability for damage caused by hazardous products and damages in tort	yes	No, complainants can join as a group, but each will have to take an individual case
Does the law allow for complaints by an Equality Body or other organisation?	Yes: Equal Opportunities Centre and Inter-federal institute for Equality of Women and Men can both bring civil and criminal proceedings Unions, employers' federations, NGOs can lodge legal complaints	yes	Yes, Human Rights Defender, but only in cases between private parties and a public authority. In a case between private parties can only give information. Non-discrimination NGOs can take actions with written consent of the victim	Yes, the Equality Body or organisations can report a crime, but a person who represents the organisation is always required	Yes, the Equality and Human Rights Commission can challenge discrimination

It seems therefore necessary to adopt several measures to improve claim and complaint system such as:

- To develop **On-line spaces to complain**, which is important in relation to LGBTphobia because it offers confidentiality.
- To adopt a law which allows **class actions** or actions taken on behalf of a group in discrimination cases. The law in all five countries allows for individual complaints, but class actions in discrimination cases are only possible in Greece and Spain. Class actions could be a very useful tool in the area of LGBTphobia, because it might be easier for victims to come forward if this can be done as a group. It will be a way to counter the phenomenon of underreporting of incidents.
- To enable or extend the ability of **equality bodies to take action** including in cases where there is no individual complainant because sometimes it is difficult for LGBT people to complain. It is proposed to also allow the police or the prosecutor to investigate a case without a complaint from the victim.
- To designate a **person of reference** of hate crime in the police and the justice system. The person of reference for hate crimes and discrimination should have the main

responsibility to respond with expertise to crimes that threaten the principles of equality and non-discrimination.

- It is also necessary to create or **reinforce the complaint network** by supporting exchanges between different actors, like in Sabadell where the Commission of Coexistence, an organisation that monitors and deals with hate crimes and discrimination, is composed of representatives of local government, all the political parties present in the city parliament, trade unions, civic organisations, members of the Lawyers Association of Sabadell, representatives of social minorities and law enforcement authorities.
- Finally, there is a need to address **intersectionality** and to take into account all dimensions of discrimination or hate crime in the analysis of a complaint based on LGBTphobia. There is thus the need to bring about a more inclusive LGBT community both within the LGBT community itself and in relation to other forms of social division and identity, such as age, disability and faith groups. All these differences should be addressed by all the actors in charge of claims and complaints, including the police and the justice system.

3.3 Protection and rights of the victims in the proceedings

At national level

All the countries seem to provide quite extensive rights and protection for victims. Victims can appear in proceedings as witness in all five countries, and, with the exception of the UK, they can also appear as parties in the proceedings. Legal aid is available for victims in all five countries, subject to financial tests and they can also ask for financial compensation in the criminal proceedings.

Rights of the victims	Belgium	Greece	Poland	Spain	UK
Does the victim play a role in the criminal proceedings?	Yes, victim can take part by claiming compensation	yes	Yes (see comment below)	Yes, Law of the Victim of a Felony	yes
As witness?	Yes, in case of criminal proceedings without civil action	yes	Yes , the victim can perform as a witness both in preparatory and in legal proceedings	yes	yes
As party?	Yes, when asking for compensation in a civil proceeding	yes	Yes, as an auxiliary prosecutor. Other victims of	Yes	No

			the same offence may also join the proceedings.		
Can the victim claim compensation in criminal proceedings?	Yes, at different stages of the procedure: at the beginning, at the stage of instruction or judgment	Yes	Yes	Yes, for material and moral damages. State can also pay compensation, if offender is insolvent or unknown	Yes
Can victims appear in the proceedings and exercise the accusation regardless of what may be formulated by the prosecutor?	Yes, if not action is taken by the authorities, the victim can introduce a civil action in order to force the judge to exercise criminal proceedings	yes	yes	Yes, victim has right to appear and exercise the criminal action	no
If so, are they entitled to the benefits of legal aid?	Yes, under certain financial conditions	yes	Yes, in civil and criminal proceedings, but not in administrative proceedings, and only under certain financial conditions	Yes, prosecutor can request that the victim is referred to an Office for the Attention of Victims	
What actions are foreseen in the law to protect the victims from reprisals from perpetrators?	Arts 16 and 17, 2007 Antidiscrimination Acts protect victims and witnesses against reprisals. However, according to the Inter-federal Centre, the protection is not really effective, especially in case of harassment at work		Yes, under the provisions of the Victim and Witness Protection Act. Covers, witnesses, victims and spouse, an ascendant, a descendant, siblings, a relative in the same line or degree in-laws	Yes, the Law on Witness Protection establishes some measures to protect the identity of the victim and to provide them with financial support.	Yes, See page 29 of Ministry of Justice Code of Practice for Victims of Crime (October 2015) see comments below.

			and people cohabiting. Can be provided during and after closing of the proceedings		
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However, there are still eight Member States in the European Union that have yet to establish the generic victim support service required by Article 8 of the Directive 2012/29/EU.³ The role in the proceedings and the protection of victims should be improved in order to combat under-reporting, amongst others:

- The law should provide some **protection from reprisals** from perpetrators. This is important, because the fear of reprisals can stop victims of homo- and transphobic hate speech and hate crime from reporting these to the police or other agencies. In an area where there is a big problem with under-reporting, protecting victims during and after the proceedings is very important.
- It is suggested to provide **comprehensive assistance** to victims, like in Spain where there is a protocol which establishes that the law enforcement authorities investigate the incident, whilst members of the Lawyers Association of Sabadell provide legal support to the victim and the city council provides social and psychological support, if required.
- To help victims in the claim/complaint process, the implementation of a **Helpline** run by a network providing help and support could be very useful such as the LGBT+ network in Nottingham.
- **Publicising data on cases** of LGBT-phobic discrimination and crimes and court judgments can be also useful and can help identify legal gaps in order to ensure that public authorities carry out necessary legislative changes.
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- **It is recommended to offer a comprehensive set of rights to victims, such as** in the UK with the Code of Practice,⁴ where victims are entitled to:
 - A needs assessment to help work out what support you need;
 - Information on what to expect from the criminal justice system;
 - Be referred to organisations supporting victims of crime;
 - Be informed about the police investigation;

³ Greece, Italy, Bulgaria, Cyprus, Latvia, Lithuania, Romania and Slovenia.

⁴ See Ministry of Justice, Code of Practice for Victims of Crimes (October 2015):

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF

- Be informed if the suspect is to be prosecuted or not or given an out of court disposal;
 - Seek a review of the police or CPS's decision not to prosecute;
 - Arrange a court familiarisation visit and enter the court through a different entrance from the suspect and sit in a separate waiting area where possible;
 - Meet the CPS advocate and ask him or her questions about the court process where circumstances permit;
 - Be informed of any appeal against the offender's conviction or sentence;
 - Make a complaint if you do not receive the information and services you are entitled to, and to receive a full response from the relevant service provider.
- Finally, victims of LGBTphobia are sometimes reluctant to lodge a formal complaint because they do not think that it is the right solution to their discontent or problems. It is recommended to seek alternatives to a judicial process to solve LGBT hate crimes such as a mediation between parties in order to promote alternative solutions to the formal resolution process.

At European level

Proper and effective implementation of the Victims Directive (Directive 2012/29/EU (2012/29/EC establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA) should be a priority. It is of particular importance to encourage victims to report. If victims are afraid of reprisals and feel that they will not be protected against reprisals from the perpetrators, they are unlikely to report any incident to the police or to other agencies. Protection needs to be provided both during the proceedings and after the proceedings have ended.

3.4 Reporting on LGBTphobia

Problems with reporting LGBTphobia to law enforcement bodies are mentioned in all city reports as well as a lack of other organisations to report to in many cities. There is a clear need for improvement of reporting mechanisms, for more organisations where people can report LGBTphobia, confidentially and even anonymously, if the victims so wish, and a better cooperation between all organisations, including law enforcement agencies.

The reasons for not reporting LGBT hate crimes are multiple:

- LGBTphobia is often associated with the explicit manifestations of violence, whilst symbolic violence (isolation, shame, secrecy) is not always conceptualised as a LGTBphobic expression. Consequently, this symbolic violence is often not reported by people nor addressed by the authorities.
- The fear of possible reprisals by the perpetrators is another reason.
- The mistrust in the effects of the court proceedings, which are often complex and slow.

- The anxiety that the complaint process may incur a non-desired coming out.
- The effects of the secondary victimisation (especially in the case of those people who have suffered violence during a practice socially stigmatised, such as cruising).
- Lack of knowledge of where and to whom to report such offences.

It is therefore important to improve the reporting system by:

- Allowing employers and “third parties” (such as charities, agencies, etc.) to report anonymously on hate crime and discrimination, as suggested in Nottingham, through the possibility of creating third party reporting centres with the City Council for confidential reporting of hate crime.
- To improve the identification of LGBTphobic discrimination or crime by the police through training for police.
- Multiply public information campaigns to increase the knowledge of LGBT people about fundamental rights and the existing resources and services of reporting and assistance to the victims. The police, as in Nottingham, can organize a hate crime reporting campaign together with a hate crime poster campaign to try and raise awareness of hate crime and to improve reporting rates. It is of tremendous importance to help LGBT people to identify discrimination and crimes based on LGBTPhobia.
- To increase the number of LGBT organisations to help victims to report. This includes the increase of their financial support.

3.5 The necessity to improve data collection

At national level

It is highly recommended to standardise the way to collect data on LGBTphobic incidents (hate speech and hate crime) including between different services, such as police and justice.

The lack of statistics on hate speech and hate crimes on the ground of sexual orientation and gender identity remains a problem across the Member States. It is therefore proposed to encourage and enable the reporting of hate crime and hate speech and to effectively follow it up in order to get a better knowledge and to better identify issues.

There is no uniform approach to collecting data concerning discrimination and hate crime based on LGBTphobia. Member States should therefore encourage to develop the gathering and analysis of relevant quantitative data recorded by authorities to better monitor LGBTphobia.

- We recommend a standardisation of data collection methods at national and regional level within equality bodies in order to improve the institutional knowledge on diverse aspects of discrimination at national level.

- Moreover more coordination between police, justice, equality bodies and NGOs should be promoted so that they follow the same guidelines and common methods when collecting cases of hate crime, hate speech and discrimination, share experiences and maximise efforts.
- The EU Member States should foresee collection of data at the level of tribunals and courts in order to have comprehensive data on discrimination cases. Record of legal cases regarding LGBTphobia in courts could be a competence of national equality bodies.
- In order to guarantee the protection of the personal data of the citizens filing complaints/claims the encoding system must ensure anonymity for the individuals whose cases are registered by the national equality bodies. This method of collection and storage of data on discrimination cases will secure access to it for every interested individual with no violation of the provisions regulating the protection of personal data.

At European level

At the EU level, a standardised way of collecting data on LGBTphobic incidents could be proposed:

- There is a strong need to develop a common complaint statistics system for all equality bodies through EU which will allow comparative analyses of the situation among the Member States.
- A collection of data from tribunals and courts at national level should be promoted by the EU through regulation in order to have comparative data on discriminations cases at the level of the EU.
- The Fundamental Rights Agency should assist Member States in improving their collection of comparable data about LGBT discrimination and hate crime/hate speech based on LGBTphobia.

3.6 Additional legal recommendations

3.6.1 Procedures concerning legal change of sex/gender

In all five countries, it is possible to change the sex on a person's birth certificate, but the procedure for doing so varies and is more complicated in some countries than in others.

Legal change of sex/gender	Belgium	Greece	Poland	Spain	UK
Does the registration process for new born babies allow for a category other than male or female (e.g. possibility of sex to be left open or to enter an X)?	No, As of 15 May 2007, art 57 Civil Code provides for the possibility to postpone the registration of the gender of a child in the birth certificate by three months, if its gender is unclear and on the condition that a medical justification is submitted.	No	No	No	No, the registration of sex/gender is compulsory at birth. The only options are male or female.
Can the sex on a person's birth certificate and other official documents be changed? If so describe the procedure	Yes, the Transgender Federal Act of 10 May 2007 (M.B. 11/07/2007) provides transgender people with a legal basis for the registration of the change of their sex and name. See Report Belgium for conditions, which mean that the law is restricted.	Yes, procedure before the court (correction of the birth certificate) because of sex change	Yes, the court action needs to be brought under the article 189 of the Civil Code, which says that the claimant may demand court to establish the existence or the non-existence of the law or the legal relation, if he/she has a legal interest. Thus, the claimant has to literally file a lawsuit against his/her own parents on the ground that they wrongly indicated his/her	Yes, Law 3/2007 regulates the rectification of the register, concerning peoples' sex (wrongly known as the 'gender identity law'). See comments below	Yes, Gender Recognition Act 2004 (see comments below)

			gender at the time of birth.		
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It is recommended that national law allows for a category other than male or female in the registration process for new born babies.

The possibility for the sex of a baby to be left open or to be entered as X should be created, like in Belgium, where, from 15 May 2007, article 57 of the Civil Code provides for the possibility to postpone the registration of the gender of a child in the birth certificate by three months, if its gender is unclear and on the condition that a medical justification is submitted.

In order to prevent communication of information about a person's sex change, it is proposed to adopt, like in Belgium, a transgender specific regulation concerning the consultation of the National Registry to avoid revealing the change during the consultation of the National Registry data during statistical surveys or other similar exercises.

Concerning the rectification of the register for transgender people, several laws, such as the Spanish Law, establish the necessity to obtain a 'gender dysphoria' diagnosis and requires two years of hormonal treatment. In order to depathologise transgender people and promote their autonomy, all medical requirements should be removed. In this sense, European countries should follow the Danish and Norwegian gender laws, which are based on the principle of corporal self-determination and the right to self-identity.

3.6.2 Improving the protection of LGBT asylum seekers

- The adoption of the second **Qualification Directives** (Directive 2004/83/EC and 2011/95/EU on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted) should be encouraged. In 2011, the European Union adopted the Recast of the Qualification Directive, recognising that persecution based on a person's sexual orientation or gender identity is a valid ground to be granted asylum. This regulation is a very positive evolution but needs a proper implementation in all Member States to **allow the inclusion of sexual orientation and gender identity** (art.7.1) as qualification criteria in an asylum claim.
- In addition, Member States should ensure that asylum professionals, including interviewers and interpreters, receive adequate training – including existing training – to handle issues relating specifically to LGBT persons, to avoid inadequate behaviour with LGBT asylum seekers.
- Concerning the EU asylum reform, it is recommended to encourage adoption of new rules within the reform of the Common European Asylum system in order to

reinforce protection of LGBT people (proposal for a qualification Regulation) and to take into account the LGBT peoples' special needs (proposal for Recast Reception Conditions Directive). It is strongly recommended, following the propositions from ILGA Europe, to enhance reception and procedural standards offered to people persecuted on the ground of their sexual orientation, gender identity, gender expression and sex characteristics.⁵

4. Policy recommendations to prevent and combat LGBTphobia

4.1 Policy recommendations at national level

4.1.1 Adoption of an intersectional approach

The results of the study show that there is increasing realisation of the need to bring about a more inclusive LGBT community both within the LGBT community itself and in relation to other forms of social division and identity, such as age, disability and faith groups, race and religion. Several grounds may intersect and there is often no or little linking between the different strands. There is therefore a strong need to adopt an intersectional approach to deal with LGBT issues. There remains much to be done in services such as education and health to adopt inclusive approaches. In particular transgender people continue to face considerable bullying, harassment and discrimination. Everyone thus needs to be aware of the interaction of LGBT with other social divisions such as age, disability, faith and legal status and incorporate these insights into policy interventions.

The understanding of multiple discrimination in the analysis of complaints should help the anti-discrimination institutions to better define the most disadvantaged groups. It allows practitioners to grasp the full complexity of discrimination processes, the different dimensions involved and how they interrelate. An intersectional analysis framework should be used by the institutions when registering complaints. This intersectional approach should also be adopted by private and public institutions in contact with LGBT people as well as LGBT organisations. It is only on the basis of recognition of the existence of such sub-groups that social policies and laws that correspond to their specific needs may be developed.

4.1.2 Policy of inclusion of LGBT people

To complete the intersectional approach, it is proposed to adopt a general policy of inclusion of LGBT people. This general policy should be stipulated in a LGBT Comprehensive Law, where rights of LGBT people in different areas (education, police, health, etc.) should be clearly specified.

This would also include the implementation of a national plan against LGBTphobia covering the main dimensions of this community (education, work, health, public spaces and personal

⁵ See Protecting the rights of LGBTI asylum seekers and refugees in the reform of the Common European Asylum System, https://www.ilga-europe.org/sites/default/files/Attachments/ilga-europe_-_protecting_the_rights_of_lgbti_asylum_seekers_and_refugees_in_the_ceas_-_december_2016.pdf

relationships) with concrete and innovative objectives and a coherent budget. In addition, some proposals concerning specific areas are suggested below.

Education

The adoption of specific legislation to promote education and dialogue to challenge negative attitudes towards LGBT people should be encouraged.

The creation of a guide for the prevention, detection and intervention in situations of LGBTphobic bullying in educational institutions with the aim of promoting the respect for the diversity in terms of sex, family configuration and gender identity, and some indicators in order to detect possible cases of bullying.

In addition, it is necessary to better inform teachers, staff and psycho-social centres for young people on LGBT issues with proper and adequate information, especially on transgender issues, which are still dominated by prejudice and stereotypes.

Police

It is strongly recommended to propose training for policemen in order to improve their awareness of how to serve LGBT people appropriately in the police station when they are victims of LGBTphobia.

Health

In regard to health services, the key point is information, because people are sometimes still under-informed on prevention. It is therefore recommended to create a specific space where people living in remote areas without easy access to information can find information and support.

Information should also be more focused on lesbians, as they seem under-informed on health issues. Lesbians are exposed to sexually transmitted diseases but do not adopt preventive attitudes because they have integrated the common discourse on sex without risks for lesbians. At the same time, specific projects on lesbian health are rare because public authorities argue that they need specific data on lesbians which currently do not exist.

It is also suggested to widely implement specific **ethical codes on LGBTphobia for health services and hospitals** to encourage staff to use appropriate language and attitudes towards LGBT people, especially transgender people to improve understanding of the needs of the transgender patients. The aim is to ensure respectful and appropriate behaviour by staff in their relations with LGBT people and train people in working with and assisting LGBT people.

Public spaces

In order to promote the visibility of LGBT lives in public spaces, material and symbolic actions, such as the celebration of annual PRIDE festivals and IDAHOT Day and the setting up of consultation bodies should be encouraged, without neglecting any of its components, whether L, G, B or T, and with emphasis on lesbians and transgender people who are usually the least visible among the invisibles.

Work place

In the field of work, action has to be taken to make employees aware of equality and anti-discrimination practices and render workplaces LGBT friendly.

Given that transgender people experience serious difficulties to access to the labour market, professional inclusion and training policies should be deployed by European governments for this social group.

Media

The Media also has a role to play by portraying LGBT individuals in a more favourable light. The adoption of an ethical code promoting the rights of LGBT people within the media is also highly recommended. This specific ethical charter should be signed by journalists. The aim of the charter would be to invite journalists to use a proper and respectful vocabulary when speaking about LGBT people and to avoid reproducing stereotypes and prejudice, especially concerning trans people, by using inappropriate vocabulary.

Finally, it is suggested to propose specific training on LGBT issues for local media, including the use of proper vocabulary. The ethical charter could be signed by journalists at the end of the training session.

NGOs

It is essential to ensure significant financial support to LGBT NGOs. They should be the reference centre for information on LGBT issues for individuals as well as organisations and should be able to steer people to the appropriate service when needed, such as specialists for asylum seekers, for instance. It is also necessary to strengthen the networking of all social actors involved in LGBT issues to address intersectional LGBT issues appropriately.

LGBT organisations should always participate in the elaboration, implementation and assessment of LGBT public policies, programmes and measures.

4.2 Policy recommendations at European level

4.2.1 Implementation of a comprehensive policy of inclusion for LGBT people

At European level, a general policy of inclusion of every person including LGBT people should be implemented. There is a lack of comprehensive policies to protect the fundamental rights of LGBT people and therefore a clear need of mainstreaming LGBT equality and inclusiveness in all EU actions.

The European Union has the obligation to combat discrimination when defining and implementing its activities (Article 10 TFEU). This obligation is materialised in existing comprehensive policies to combat discrimination based on sex, disability and affecting Roma people. There is a clear need to extent this obligation for grounds of sexual orientation and gender identity by mainstreaming issues linked to the fundamental rights of LGBT people in all relevant work. It should be the case, for instance, when drafting future policies and proposals or monitoring the implementation of EU law.

Relevant EU agencies should mainstream issues related to sexual orientation and gender identity in their work, and continue to provide the Commission and Member States with evidence-based advice on the fundamental rights of LGBT people.

To improve data collection, the Commission and Member States should be encouraged to regularly collect relevant and comparable data on the situation of LGBT persons in the EU together with relevant agencies and Eurostat.

The Commission and Member States should encourage training and capacity-building for national equality bodies, national human rights institutions and other organisations tasked with the promotion and protection of the fundamental rights of LGBT persons.

Together with relevant agencies, the European Commission and Member States should seek to make citizens aware of the rights of LGBT persons.

To sum up, mainstreaming includes supporting progress in the entire EU in a number of policy areas, improvement and enforcement of EU legislation, and, improvement of the social acceptance of LGBT people.

It is also very important to adopt an intersectional approach in all policies regarding LGBT people, following the example of the High Level Group on combatting racism, xenophobia and other forms of intolerance.

4.2.2 Specific action for transgender persons

The Commission should mainstream issues specific to transgender people throughout the relevant EU policies, mirroring the approach adopted in the Gender Equality Strategy.

Concerning specifically trans people and intersex people, the Commission should ensure gender identity is included among prohibited grounds of discrimination in any future equality legislation, including any recasts. It is crucial that transgender people are identified as protected people by the EU anti-discrimination directives through sex discrimination provisions or through specific provisions.

Member States should ensure equality bodies are informed and trained about the rights of, and specific issues pertaining to, transgender people.

Conclusions

Protection against LGBTphobia has been tremendously improved in the last years at European as well as national levels. However, it is still difficult to get proper information of the number of discrimination and hate crime and hate speech based on LGBTphobia occurring in the European Union for various reasons. It is an important matter as policies and legal framework should be based as much as possible on the reality of the situation of LGBT people.

The improvement of information on discrimination and hate crime and hate speech at European and national levels should thus be the first priority. One of the greatest challenges is how to encourage people to report discrimination, hate crimes and hate speech based on LGBTphobia. In the meantime, it is important to open widely the opportunity to lodge a complaint. Many opportunities should exist as regards reporting hate crimes: police, employers and “third parties” (such as charities, agencies etc.) should be allowed to report anonymously.

Strong empirical data are needed to clearly show the current scale of the issue. To proceed with the above end, a common way of collecting data from all agencies involved in the recording process (police, justice, equality bodies and others) should be established; all types of hate crime and hate speech should be recorded.

The second priority is undoubtedly to multiply permanent training for police enforcement, justice and city employees working in various sectors (health, education, etc.) in contact with LGBT people, who should also be sensitive to transgender people needs.

Finally, a general inclusion policy dealing with LGBT issues should be adopted at national and European level. There is a lack of comprehensive policies to protect the fundamental rights of LGBT people and therefore a clear need for the mainstreaming of LGBT equality and inclusiveness in all national and European actions.

The results of the Divercity study clearly show that despite the existence of multiple sub-groups within the LGBT community, LGBT people are all treated in the same way by institutions. The understanding of multiple discrimination in the analysis of complaints should help the anti-discrimination institutions to better define the most disadvantaged groups. It allows practitioners to grasp the full complexity of discrimination processes, the different dimensions involved and how they interrelate. An intersectional analysis framework should be used by the institutions when registering complaints. This intersectional approach should also be adopted by private and public institutions in contact with LGBT people as well as LGBT organisations. It is only on the basis of recognition of the existence of such sub-groups, however, that social policies and laws that correspond to their specific needs may be developed.