

Destination

>> EQUALITY

autumn 2008

Strong &
broad
support

**EU Commissioner
Vladimír Špidla:**

"The fight is
not over yet!"

Refuting
counter
arguments

EU debates new
ANTI-DISCRIMINATION
Directive



Welcome to Vienna!

In 1983 the Homosexuelle Initiative (HOSI) Wien, hosted an ILGA (World) conference in Vienna for the first time—25 years later, we are happy to welcome, for the first time, delegates to an ILGA-Europe annual conference in the Austrian capital.

The conference is receiving strong support both from the City of Vienna and the Federal government. Vienna's mayor will invite delegates to a reception at City Hall, and one evening we will dine at the invitation of the Vienna Tourist Board in a restaurant of a wine-growing farm (yes, wine is produced within Vienna's city limits!).

We were able to secure the honorary patronage of Heinz Fischer, the Federal President of the Republic of Austria. It is a first in ILGA's history that a head of state is assuming such a role.

We look forward to welcoming you to Vienna!

HOSI Wien's
conference
organising team



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Magazine of ILGA-Europe. Volume 8, issue 2, autumn 2008

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Special thanks to Vladimir Špidla

Front cover image: Vladimir Špidla, image by Michael Cheetham

Design & layout: Silja Pogule, www.siljadesign.lv

Printer: Corelio Printing, www.corelioprinting.be

ISSN 2070-2353

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This magazine is supported by the Directorate-General for Employment, social affairs and equal opportunities of the European Commission. Its funding is provided for under the European Community Programme for Employment and Social Solidarity PROGRESS (2007-2013).

For more information see: http://ec.europa.eu/employment_social/progress/index_en.html

The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.

Table of contents

12th ILGA-Europe Annual Conference: Thinking Globally, Acting Locally... Plotting the Vision Together	3
Political analysis: A very 'political' directive	4
Combating discrimination outside employment: The new EU proposed directive	8
Countering opposition: "Germany's arguments against the Directive are flimsy"	10
National equality body: Why Latvia needs one more anti-discrimination directive	12
Fundamental Rights Agency: Calling for better EU protection from homophobia	14
National government and proposed directive: Negotiations about the horizontal directive have started	16
European Commission: Interview with Commissioner Špidla	18
New EU anti-discrimination initiative: What it means for national equality bodies and EQUINET	26
Businesses and discrimination: Further improvement required on the labour market	28
Trade union: Active for LGBT rights	32
Real lives, real stories: "Leave, our place is not for people of your kind!"	35
"Sorry, you are not really a family"	36
School bullying which led to suicide	37
Together we can achieve it! European Network Against Racism	39
European Women's Lobby	40
European Disability Forum	41
European Older People's Platform	42
European Youth Forum	43
Multiple discrimination: The need for justice for the whole person	44
Gender identity and expression: A case for full transgender equality	46



A very warm welcome to our magazine's edition on the proposed Directive!

In the beginning of this year we experienced a serious blow – the European Commission signalled that its proposal for a new EU anti-discrimination Directive would not include sexual orientation. But we did not lose faith and jointly with our allies in the European parliament and civil society organisations across Europe we mobilised an intensive campaign.

It worked! The Commissioners listened to our arguments and agreed that the current existing hierarchy of rights and protections in the EU is unacceptable. We sincerely thank all our supporters and allies. But as Commissioner Špidla said: "The fight is not yet over!"

We know all too well that the 27 EU Member States now have to agree on this proposed Directive. We know that fierce opposition towards this Directive is coming from one of the largest EU Member States – Germany. The arguments are difficult to understand. That is why an intense and informed dialogue is vital. That is why we put together this special edition on the Directive to demonstrate the overwhelming support for the Directive from a wide spectrum of organisations. We also provide personal testimonies which prove that this Directive is badly needed.

In the coming months the importance of our togetherness cannot be overestimated, our strength will be in unity. It is time for all of us to think big and beyond our usual grounds. This Directive is a historical opportunity for all of us to ensure that each person, regardless of personal characteristics, is equally protected against discrimination in the European Union. The time when some grounds of discrimination are more acceptable than others needs to be ended. Let's help Europe make this historical decision and prove that it means business when it comes to equality for all, without hierarchies and/or distinctions.

PATRICIA PRENDIVILLE

Executive Director, ILGA-Europe

Thinking Globally, Acting Locally... Plotting the Vision Together

ILGA-Europe's annual conference promises to be hot! This year we ask you to think out of the box and to think globally as indicated by our conference slogan. The experienced, interesting and motivating panel speakers from the Council of Europe, the UN and the European Union will present the state of affairs in international human rights standards related to sexual orientation and gender identity, but will not stop there. They will also explore with the audience a vision of human rights in 10 years time, and strategies which may take us to that vision. The second conference panel will look at aspects of 'acting locally', that is, the implementation of international standards in national settings often full of right-wing political undercurrents and homophobia. Are human rights universal, or are they relative to each culture? How can societies become more accepting of diversity? And what is our vision of the LGBT movement that will achieve a positive social change?

The thought-provoking panels are echoed by a rich and diverse workshop programme. The presentations will be delivered by people who have firsthand experience and knowledge in these areas: experts from the World Health Organisation, the UN, the Fundamental Rights Agency, representatives of Spanish, Dutch and Belgian governments, the Metropolitan Community Church and the International Planned Parenthood Federation. ILGA-Europe is honoured that one of the conference's special guests will be the Council of Europe's Human Rights Commissioner Thomas Hammarberg.



Cyndi Lauper

One workshop is definitely likely to cause excitement - we have been contacted by representatives of the True Colors Tour, which was started by Cyndi Lauper in 2007 in the United States, about ILGA-Europe and its member organisations collaborating to bring the tour to Europe in 2010, like they have with the Human Rights Campaign and other organisations in the US, to promote equality for the LGBT community. The True Colors representatives will be at the conference to discuss this exciting opportunity in a group workshop session, as well as in individual sessions with organisations that are interested in talking to them.

The social programme will be spiced up with the ILGA-Europe roving family posters exhibition in the Vienna City Hall, a tour of Vienna and a dinner in a special Viennese restaurant (offered by the Vienna Tourist Board), and the gay and lesbian Vienna scene will be at your disposal in the evenings.

Still want more? You can organise your own workshops in the 'self-organised spaces' during the day or in the evenings. The programme is filled on a 'first come - first served' basis.

The success of the conference will also depend on the participants. Remember to pack the words 'vision', 'strategy' and 'experience' into your luggage. Our annual conference has always been an event at which ideas and strategies merge and emerge and define who we are as a movement.

ILGA-Europe looks forward to greeting you in Vienna!

MAXIM ANMEGHICHEAN

Programmes Director, ILGA-Europe



Mr Barroso, the President of the European Commission meeting the representatives of the Social Platform, 12 June 2008, and confirming the Commission will propose a horizontal directive. Right to left: **Conny Reuter**, (President of the Social Platform); **Roshan Di Puppo** (Director of the Social Platform); **Mr Barroso**; **Fintal Farrell** (Director of the European Anti-Poverty Network); **Patricia Prendiville** (Executive Director of ILGA-Europe); **Luciano Scagliotti** (member of Management Board of the European Network Against Racism)

A very 'political' directive

After months of debate within the European Commission, there is a proposal for a new directive on the table of the European Council. To become law, this directive will need to be adopted unanimously by all 27 member states. This article looks at the political underpinnings of this widely-debated piece of EU legislation.

On 2 July 2008, after years of advocacy and lobbying by NGOs, the European Commission finally adopted a proposal for a new anti-discrimination directive. This proposal constitutes an undeniable landmark in the development of EU equality legislation, not to mention in the advancement of rights for LGBT people in Europe. If adopted by the 27 Member States, the proposed law would ensure that discrimination on the basis of sexual orientation, as well as on three other grounds, would be banned in access to goods and services (including housing), social protection, education and health care across the EU.

This new legislation would not only have the very practical implication of ensuring that protection against discrimination is an "enforceable" right (i.e. that victims will be able to seek justice), but it would send the very important message across the EU that discrimination based on sexual orientation is equally unjustified and unacceptable as discrimination based on age, on disability, on race and on religion/belief. The impact of such law would also reach beyond the EU borders since it would become part of the EU *acquis*, which countries applying for EU membership would have to adopt as part of the



accession process. In other words, adoption of this directive would lead to anti-discrimination legislation covering sexual orientation in all areas of life in at least 30 countries.

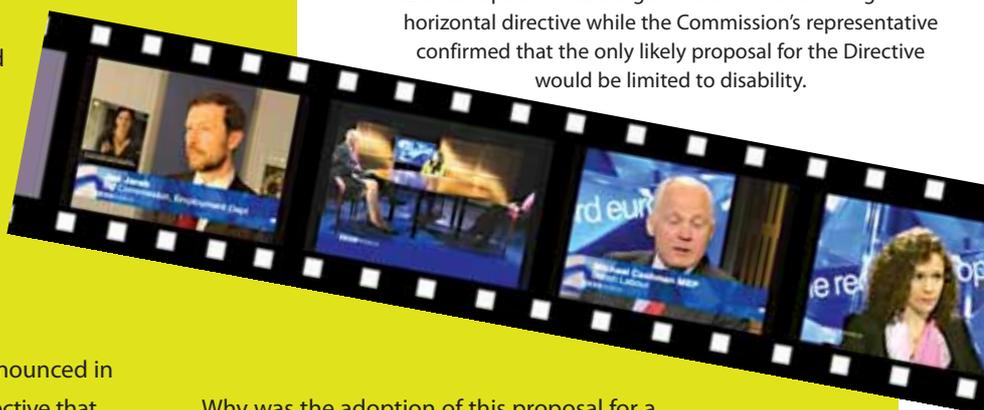
The fact that the Commission adopted this proposal is nothing short of a victory for ILGA-Europe and other NGOs campaigning against discrimination, not only

second turnaround by the Commission which ultimately adopted a proposal in line with its original commitment to bring forward legislation covering the four grounds.



The BBC programme **'The Record: Europe'** in April 2008 kicked off the Europe wide debate around the Directive and intensified ILGA-Europe's campaign. During this BBC programme representatives of ILGA-Europe and MEPs urged the Commission to fight for a horizontal directive while the Commission's representative confirmed that the only likely proposal for the Directive would be limited to disability.

because of the significant impact this new law would have, but also because of the political context in which this draft law came about. Indeed, the proposed new legislation – which is the result of a legislative process full of twists and turns – came out after months of intense political debate in Brussels and in some Member States.



The original intention of the Commission, as announced in autumn 2007, was to bring forward a new EU directive that would close the existing gap in legal protection in EU legislation. The idea was to 'level up' the protection to bring the other grounds to the same level of the Race Directive and ban discrimination based on religion/belief, age, disability and sexual orientation in all areas outside employment. Some uncertainty plagued the early stages of the process with rumours that the scope of the legislation might be limited to goods and services, excluding for example education and health. But until March 2008, the fact that the four grounds would be covered by a new directive was never seriously questioned.

Then, the mood changed radically. The Commission and its President, José Manuel Barroso, indicated that the new directive would likely cover only disability and leave out the other grounds. This change of heart prompted a vigorous mobilisation of Members of the European Parliament and a strong NGO campaign to try to save a horizontal directive. Mobilization of the MEPs as well as the campaign led by ILGA-Europe, ENAR and other allies, significantly contributed to a

Why was the adoption of this proposal for a new directive on equal treatment so arduous? The answer lies mostly in a current climate of resistance by Member States to new legislation and regulations that "come from Brussels" and to what is perceived as EU intrusion into national spheres of competence. The main reason invoked by Commission representatives for their initial change of position was the difficulty in getting a new anti-discrimination directive passed in the European Council, especially given the strong and clearly-stated opposition of Germany, an opposition essentially articulated around the cost of implementation of laws and the burden of 'red-taping' on businesses. While Germany has been singled out as the main opponent to the new directive, other countries also had a lukewarm attitude towards a new directive, expressing their concerns related to encroachment into areas of national competences like education.

To a large extent, the text adopted by EU Commissioners in July addresses most of the Member States' concerns, and in doing so, introduces some worrying limitations on the principle of



non-discrimination and equality. Whether it is through exemptions related to transactions between individuals – which would affect apartment renting for instance, provisions limiting the application of the directive in education or the exception clauses concerning reasonable accommodation for disability, the Commission proposal clearly points to the various battlefields on which equality NGOs will meet the resistance of Member States in their efforts to obtain the best possible legal protection against discrimination.

One of the main battles for ILGA-Europe will be the exclusion of the exemption related to marital status, family status and reproductive rights from the text; there are serious concerns that this exemption

would perpetuate discriminatory practices, or could even lead to more discrimination. This is likely to be a very difficult battle since this particular exemption was put in the Commission's proposal to respond to the growing fear of Member States that the new directive might open the door to same-sex marriage, partnership and adoption in their country.

In this context, ILGA-Europe and all its allies are certainly taking on a formidable challenge in campaigning for the adoption of the new directive by all 27 Member States – since unanimity is required for the directive to become law. But we have compelling arguments to make, not just about the demonstrated need for new legislation in the face of ongoing discrimination, but also, for instance,

around the important implications on the freedom of movement of citizens and workers that a new law would have. We also need to highlight the fact that harmonised legislation in the EU would ensure a level-playing field for business and give greater clarity about their obligations. And we need to remind states that Article 13 of the Treaty, the legal basis of the proposed directive, clearly gives the EU competence to take action in the field of non-discrimination. The arguments are on our side. So, ultimately adoption of this directive is going to be about political leadership and the true commitment of EU Member States to the fundamental values of human rights and non-discrimination.

EVELYNE PARADIS

Senior Policy Officer
ILGA-Europe

KEY DATES OF THE DIRECTIVE CAMPAIGN

Autumn 2007

The European Commission announces its intention to propose a new directive to outlaw discrimination based on disability, age, religion and sexual orientation in areas outside employment.

March 2008

President Barroso talks about a disability-specific directive at a European Parliament committee meeting.

9 April 2008

ILGA-Europe launches its campaign in support of comprehensive new EU anti-discrimination legislation covering discrimination on all grounds.

19 April 2008

In an interview for the BBC, a Commission representative confirms the intention of the Commission to present new legislation only on the ground of disability.

20 May 2008

The European Parliament adopts a report explicitly calling for single equality legislation.

16 June 2008

At a Parliament hearing, Commissioner Barrot announces a new shift in the Commission's decision: the new legislation will cover the four grounds.

2 July 2008

The Commission adopts a horizontal directive.



FLASH- BACK

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On 26 October 2004, in a speech to the European Parliament, José Manuel Barroso, President of the European Commission, made the commitment to:

“initiate work in view of a framework-directive on the basis of Article 13 of the EC Treaty, which will replace the directives adopted in 2000 and enlarge them to all forms of discrimination. (...) With a framework-directive, the community action will cover all areas of discrimination and also discrimination founded inter alia on gender and sexual orientation. All of these initiatives, and other ones to be considered by the Group of Commissioners, will be prepared under my authority, and I am prepared to present them to you in person, when the time comes. Let me be very clear: I will personally ensure full control of our action in the fight against discrimination and the promotion of fundamental rights”.



The new EU proposed Directive

Professor Bell provides legal analysis of the proposed EU anti-discrimination directive. While calling this proposal a victory for ILGA-Europe and other anti-discrimination networks, Professor Bell warns about key challenges with the text which need to be overcome in order for this proposal to become effective law.

On 2 July 2008, the European Commission issued a proposal for a Directive designed to prohibit discrimination on grounds of sexual orientation, age, disability and religion or belief.¹ In short, the Directive aims to forbid discrimination in the fields of education, social protection (including healthcare and social security), social advantages and access to goods and services (including housing). The mere fact that this proposal was actually issued already constitutes a considerable victory for ILGA-Europe and other NGO networks campaigning against discrimination. In spring 2008, the Commission indicated that the legislative proposal would only cover

disability discrimination. Intense lobbying from NGOs, together with pressure from the European Parliament, led to a remarkable reversal in the Commission's position, ensuring that sexual orientation was fully included within the proposed Directive.

As EU legislation currently stands, it is unlawful to refuse someone a job because of their sexual orientation, but there is nothing which prohibits a landlord refusing to rent an apartment to a same-sex couple, or which prevents a hotel denying a room to a same-sex couple. This Directive would therefore be a vital step in building a comprehensive framework of protection against discrimination in all walks of life. It

covers key areas where lesbian, gay and bisexual people commonly encounter discrimination, such as homophobic bullying at school or discriminatory treatment by healthcare providers. The extension of the prohibition of discrimination to areas outside employment also fills a notable gap in EU legislation. This should assist in tackling multiple discrimination. The current state of EU law means that a gay man of Asian ethnic origin could be lawfully refused entry to a bar because of his sexual orientation, but not because of his ethnic origin.

In seeking to extend the material scope of the ban on discrimination, the proposal aims to remain consistent with the existing EU anti-discrimination

Directives in how it defines the concept of discrimination. Consequently, discrimination will be unlawful whether it is direct or indirect, while harassment and instructions to discriminate will also be prohibited. Similarly, the provisions relating to enforcement echo the existing Directives. Victimisation of those who make a complaint of discrimination would be unlawful and there is provision for a shift in the burden of proof from the complainant to the respondent, once the complainant presents evidence from which it could be concluded that unlawful discrimination has occurred. Remedies for a breach of the Directive would have to be 'effective, proportionate and dissuasive'; the proposal specifies that there can be no maximum limit on levels of financial compensation. Perhaps the most significant development in this part of the Directive is a requirement on Member States to establish a body or bodies for the promotion of equal treatment. Such bodies would have a mandate to assist individual victims of discrimination, as well as conducting research and making recommendations to government. The majority of Member States have voluntarily chosen to include sexual orientation within the remit of such national institutions, but this Directive would compel all states to take this step.

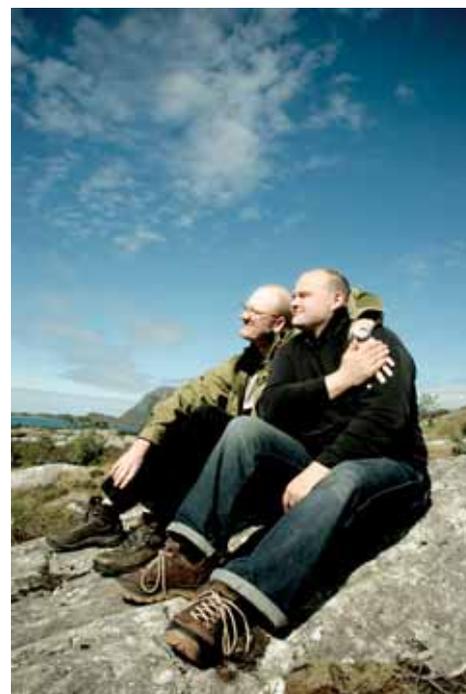
Although there is much to be welcomed in the proposal, there are still several areas where its contents give rise for concern and where the text could be enhanced. From the perspective of sexual orientation, the greatest difficulty is probably Article 3(2), which states 'this Directive is without prejudice to national laws on marital status or family status and reproductive rights'. It is useful to consider the three elements of this exception separately. With regard to 'marital status', it is widely accepted that the EU does not possess the legal powers to require Member States to change their national legislation relating to marriage or recognition of partnerships. Yet in the *Maruko* case (concerning

discrimination against a same-sex partner in access to an occupational pension), the Court of Justice held:

'Admittedly, civil status and the benefits flowing therefrom are matters which fall within the competence of the Member States and Community law does not detract from that competence. However, it must be recalled that in the exercise of that competence the Member States must comply with Community law and, in particular, with the provisions relating to the principle of non-discrimination.'²

By including a blanket exception for national laws on marital status, the proposed Directive risks allowing unequal treatment of same-sex couples to continue in areas such as access to public housing or social security benefits. The second element of Article 3(2) is 'family status'. This raises the concern that differences will be permitted based on who is deemed by national law to constitute a 'family'. In particular, there is a risk that this goes beyond preferential treatment for married couples and permits differences in treatment between unmarried opposite-sex couples and unmarried same-sex couples. For example, could 'family' benefits be limited to families based around an opposite-sex couple? Finally, the complete exclusion of reproductive rights would appear to permit discriminatory practices to continue, for instance, where assisted reproduction was available to opposite-sex couples (married or unmarried), but not to same-sex couples.

In addition to Article 3(2), the Directive contains a range of other exceptions and limitations which are of concern to ILGA-Europe and other NGO networks. It is not possible to examine all of these within the space of this article; however, one example is the provision in Article 3(3) that 'Member States may provide for differences in treatment in access to



educational institutions based on religion or belief'. On the face of it, this clause, which is inconsistently translated in the different versions of the Directive, seems a blanket exception for differential treatment in admission to religious schools. This is especially problematic in those Member States where a high proportion of schools are managed by organised religions and there may be few alternative forms of schooling in the immediate locality.

The uphill struggle to get sexual orientation included in this proposal graphically illustrated the political obstacles that will have to be overcome in order to get this proposal adopted by the Council of Ministers. The fact that all 27 states will need to unanimously approve the Directive indicates how many challenges lie ahead. Yet the legislative process is also an opportunity to improve upon the existing text; the European Parliament will naturally be a key venue for seeking amendments to remove and rewrite some of the problematic exceptions.

Professor MARK BELL
University of Leicester

¹ COM (2008) 426.

² Para 59, Case 267/06, judgment of 1 April 2008.

“Germany’s arguments against the Directive are flimsy”



Lissy Gröner, MEP

The main opposition against the proposed Directive is coming from Germany. We asked a German Member of the European Parliament to highlight and counter the main arguments of the opposition and examine why the Directive is important not just for Germany, but for the entire European Union.

Since its foundation, the European Union has been a strong supporter of human rights. With the Treaties of Maastricht and Amsterdam in the late 1990s, the European Union became competent on a number of social issues. Article 13 of the Amsterdam Treaty gave the EU a clear mandate to create a society founded upon the principles of equality and non-discrimination. It effectively gives a legal basis to the EU to take legal measures to end discrimination on the basis of gender, age, disability, sexual orientation, ethnic or racial origin, and religious belief.

The European Parliament in particular has played an active leading role in Europe's efforts to create a society in which all people, regardless of their sexual orientation, may live freely and without fear of homophobic reprisals for being who they are. As the only directly elected institution of the European Union, it is especially important for the

European Parliament to be at the political forefront of anti-discrimination.

As Vice-president of the European Parliament's Gay and Lesbian Rights Intergroup, and also with the Parliamentary Group of European Socialists, I fight for the core European principles of tolerance and diversity. We play a decisive role in working to realise progressive anti-discrimination politics in Europe. During the plenary session of the European Parliament in Strasbourg in May, we, the Members of the European Parliament, called for a ban on all forms of discrimination in the EU. Despite conservative opposition, 362 Euro MPs urged the Commission's President Barroso to ban all forms of discrimination in the EU by adopting the new EU anti-discrimination directive.

When José Manuel Barroso was appointed President of the European

Commission, he committed himself to presenting a horizontal directive to fight discrimination on all grounds. The European Parliament reminded him with this vote that he must keep his promises. Initially, the Commission announced only a Directive prohibiting discrimination on the grounds of disability would be drafted. This was not acceptable because it would create "a hierarchy of human rights" at European level. The new anti-discrimination directive proposal includes prohibition of discrimination on ALL grounds mentioned in Article 13 – discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

In the coming months we have to defend the directive and in some parts even strengthen it. As I am appointed rapporteur for the new directive in the Culture Committee I will put forward amendments to include ideas and defend the rights of LGBT people. In Germany in particular there is opposition to this new directive coming from conservative and liberal groups and from German businesses and trade associations. Despite all the fine words of the conservatives in Germany, who all

Despite all the fine words of the conservatives in Germany, who all say in their 'Sunday speeches' that they are against discrimination, they do not do anything to implement good legal instruments to fight discrimination.

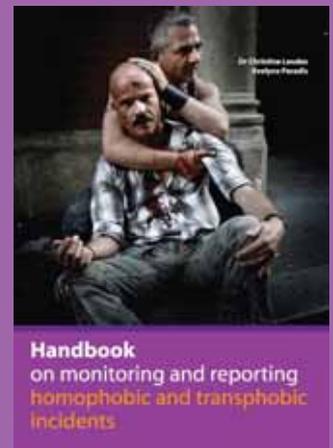
say in their 'Sunday speeches' that they are against discrimination, they do not do anything to implement good legal instruments to fight discrimination. Their arguments are flimsy. They refer to the principle of subsidiarity, the costs that would arise for small and medium sized businesses, too much bureaucracy and the wish to regulate anti-discrimination at the national level. This deviousness on the part of the conservatives is unacceptable. History shows that agreements on a voluntary basis are not enough. Although modern businesses have begun to understand that discrimination does not pay, the trade associations still live in the past and miss out on the opportunity to look to neighbouring European countries for examples of best practice. But apart from the socialists in Germany there are a lot of groups, NGOs and organisations that are pressuring the government in Germany to end this violation of the fundamental values of the European Union. We all need to join forces and, through close networking, move rapidly along the road of equality until LGBT people in Europe and worldwide are no longer deprived of their basic rights solely on the ground of their sexual orientation or gender expression.

The horizontal directive is important to improve legislation to introduce equal rights and fight discrimination against LGBT people in all the Member States. Equality is our goal. Germany is one of the biggest Member States of the European Union and cannot afford to tolerate discrimination. As new family models arise, the socialist family wants to send a strong signal of solidarity and support.

I would like to express my support and solidarity for your annual conference and your continued struggle for equal rights for all citizens of Europe and this world, despite massive opposition from conservative political and religious forces.

LISSE GRÖNER

Member of the European Parliament



Handbook on monitoring and reporting homophobic and transphobic incidents

Incidents and violence motivated by hatred against lesbian, gay, bisexual and transgender (LGBT) people take different forms: physical violence, hate speech, threats of violence, verbal abuse, etc. They take place in different places, including public areas, schools, the workplace, or in the privacy of the home.

The incidents motivated by hatred against LGBT people cited in this Handbook have been reported by human rights and LGBT organisations. Unfortunately, many similar cases are not reported and thus remain unknown to national or international authorities.

The consequence of under-reporting homophobic and transphobic incidents is that the issue of violence targeting LGBT people remains invisible. It remains invisible in data on hate crimes and therefore invisible among law enforcement officials, law-makers and public officials.

The lack of documented facts on the occurrence of homophobic and transphobic violence constitutes an important barrier to taking a case against an aggressor and to advocating for legislation on combating hate crime against LGBT people.

Ultimately, the absence of legislation specifically prohibiting violence motivated by homophobia contributes to legitimising homophobia and transphobia and to creating an environment of impunity for perpetrators of violence against LGBT people.

The aim of this publication is therefore to contribute to increased and better reporting of homophobic and transphobic incidents by providing tools and a methodology to document and report violence motivated by hatred against LGBT people in a systematic and factual manner.

This publication is designed for LGBT and human rights organisations who intend to monitor the occurrence of homophobic or transphobic incidents and violence, in order to advocate for legislative changes to increase legal protections from violence motivated by homophobia, lesbophobia and transphobia at national, European and international levels.

You can download a PDF version of the Handbook on our website:

www.ilga-europe.org/europe/publications/non_periodical

If you want to order a printed version please contact info@ilga-europe.org



TIESĪBSARGA BIROJS

Iluta Lāce, board member of the Resource Centre for Women 'Marta' addresses the participants of the Riga March for Equality 2008



George Steele, representative of AfroLat addresses the participants of the Riga March for Equality 2008



Why Latvia needs one more anti-discrimination directive

This article provides a brief insight into the current Latvian situation in the field of combating discrimination, with the purpose of demonstrating the need for the adoption of the next legislative step at the European level – the new equal treatment directive.

Latvian private law provides for non-discrimination only on the grounds of the EU non-discrimination directives.

In Latvia the first provisions prohibiting discrimination in the private sector were adopted under the Labour Law in 2001 for the purpose of the implementation of the *acquis communautaire*. Initially, in 2001, prohibition on the grounds of sex was implemented. Other grounds were

included in the list of non-discrimination grounds under amendments adopted in 2004, except sexual orientation.

Afterwards, several proposals for an amendment to explicitly include sexual orientation as a ground of non-discrimination were rejected by the parliament. This was due to the political platform of one of the parties - the First Party of Latvia, also known as the "Clergy Party", who took a position then which

they currently maintain. This party bases its political platform on the promotion of Christianity and traditional family values and considers homo- and bisexual orientation to be abnormal and unacceptable behaviour. Politicians knew about the obligation of implementation of the Framework Employment Directive 2000/78. In order to avoid this obligation, the First Party insisted that since the Labour Law provides for a non-exhaustive

list of non-discrimination grounds, it is just a matter of interpretation. However, the European Commission disagreed. It decided to initiate infringement proceedings against Latvia. These facts compelled parliament to adopt an amendment to the Labour Law explicitly naming sexual orientation as a ground of non-discrimination in 2006.

The second phase of the implementation of the EU non-discrimination directives has just started. It concerns implementation of the principle of non-discrimination with regard to access to and supply of goods and services on the grounds of sex, race and ethnic origin. Quite a long time after the expiry of the term of implementation, amendments to the Law on the Protection of Consumer Rights were finally adopted in July.

It is worth mentioning that neither in the field of employment, nor in the field of the provision of goods and services, are EU non-discrimination directives fully implemented. There are still considerable gaps. For example, in the field of employment, none of the Latvian normative acts protects self-employed people against discrimination; in the field of the provision of goods and services protection against discrimination is determined only insofar as it concerns consumer protection. This means that only those providing goods and services within a commercial framework are bound by anti-discrimination provisions.

Although actions of the legislative and executive powers in Latvia with regard to discrimination prevention could be characterised as slow, if not resistant, more and more persons complain about discrimination. The mass media more and more frequently discuss discrimination cases, and the Ombudsman's office which performs the functions of the National Equality Body is receiving an increasing number of complaints on discrimination. It

Members of 'Mozaika' – the Alliance of LGBT People and Their Friends at the Riga March for Equality 2008



proves the well known fact that discrimination has existed and exists in Latvia like everywhere else. The only change is that people are becoming more aware of it and are beginning to recognise what discrimination is.

In spite of the opinion of many politicians and civil servants, who consider discrimination an exaggerated problem,

If there are obstacles to fighting discrimination at national level, the international community should assist by helping establish the true values of a democratic and open society.

people more frequently raise their voices about discrimination and the rights of every group in society to live their lives on the basis of equal rights accommodated to suit individual needs. For example, LGBT people have constantly, for years, claimed their rights in all areas of life. The same can be said for disabled people. Recently NGOs defending rights of disabled people organised a protest in reaction to the decision of politicians not to accede to the UN Convention on the Rights of Persons with Disabilities.

These actions have been fruitful - after the protest politicians decided to sign the UN Convention. At the moment a special inter-

ministerial working group exists to assess the obligations of Latvia after ratification of the UN Convention. Similarly, the Ministry of Justice has inserted into its action plan an elaboration of the legal regulation of partnership in the field of family law. Recently Latvian legal literature has presented two scientific articles analysing the rights of LGBT people in light of recent decisions of the European Court of Human Rights and European Court of Justice.

Although society raises its voice against discrimination more consistently, nothing suggests that politicians are planning prompt action to improve the rights of every group.

These are the reasons to favour the new EU non-discrimination directive. If there are obstacles to fighting discrimination at national level, the international community should assist by helping establish the true values of a democratic and open society.

KRISTĪNE DUPATE

Head of the Discrimination Prevention Department of the Ombudsman Office of the Republic of Latvia
www.tiesibsargs.lv

Calling for better EU protection from homophobia



Any discrimination based on certain protected grounds, amongst them sexual orientation, should be prohibited. This is what Article 21 of the Charter of Fundamental Rights of the European Union heralds. The wording of this Article makes no distinction between the listed discrimination grounds.

When the European Union adopted important groundbreaking legislation to fight discrimination in 2000, this was done through two main legal instruments: the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). These two instruments differ in two important aspects:

- First, discrimination on grounds of race and ethnic origin is prohibited in a wider number of fields (including education, housing, goods and services, social protection etc.) than discrimination on other grounds like sexual orientation

(concerning all LGB people), religion, disability and age (which enjoy mandatory protection from discrimination only in the field of employment).

- Second, only the Racial Equality Directive provides for a mandatory equality body in each Member State to engage in the fight against ethnic discrimination, whereas such a body is not mandatory for all the other discrimination grounds.

Thus, the legislation adopted by the EU seemingly established

a hierarchy of discrimination grounds, which did not seem to correspond to the general principle of non-discrimination heralded in the Charter of Fundamental Rights of the European Union. This perceived hierarchy of discrimination grounds has been criticised since the adoption of these two instruments.

This was the setting for the report of the EU Agency for Fundamental Rights (FRA) "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis" which was published in June 2008.

FRA is of the opinion that the EU has to respect the general principle of equality which is a general principle common to the constitutional traditions of all Member States (Article 6 of the EU Treaty). According to this principle, differences in treatment between discrimination grounds can only be acceptable if they are reasonably and objectively justified. FRA thinks that a difference in the scope of protection and the institutional safeguards protecting people from ethnic discrimination and discrimination of LGBT people cannot be reasonably and objectively justified. Therefore, FRA suggests that this artificial hierarchy which currently exists in EU law needs to be dismantled. There needs to be an equal right to equal treatment.

The European Commission has already made moves concerning this matter. In July 2008, the European Commission made a proposal for a new Council directive which would fill the gaps and ensure the equal right to equal treatment on all discrimination grounds. FRA also raised other concerns in its report which merit consideration by the EU Commission, EU Parliament and EU Council.

The EU has no competence regarding marriage law under the EU Treaties. Thus, the EU cannot adopt legislation that same-sex marriage or equivalent same-sex partnerships are accepted by all Member States. But, EU legislation contains certain important rights and benefits for spouses and other close family members, which serve the purpose of preserving family unity:

- in the context of the freedom of movement of EU citizens, the right of close family members to accompany the citizen to live in another Member State of the EU;
- the right to family reunification for third country nationals;
- the right to the preservation of family unity in the context of asylum.

FRA is of the opinion that these rights and benefits for spouses and close family members foreseen in EU law need to be made available to same-sex couples. EU law needs to provide for all cases explicitly:

- Member States which permit same-sex marriage;
- Member States which provide for equivalent same-sex

registered partnerships; and

- Member States which do neither or both.

FRA is of the opinion that the principle of non-discrimination demands that these rights and advantages reserved for married couples in EU law should be made available in some way for same-sex couples, either via same-sex marriage or equivalent registered partnership or in some other manner. If Member States do not permit same-sex couples to marry or to form registered partnerships, then a same-sex relationship with a sufficient degree of permanency (and thus equivalent to marriage) should qualify for access to these rights and advantages under EU law. To deny access to these rights to same-sex couples living in a long term relationship would amount to discrimination on the grounds of sexual orientation. The point is that the impossibility to marry or to form a registered partnership under national law should not bar same-sex couples completely from access to the rights and advantages preserving family unity provided by EU legislation. In this respect, the treatment of same-sex couples under a number of legislative acts of the EU (Freedom of Access Directive, Family Reunification Directive, Qualification Directive) needs to be clarified.

FRA is also of the opinion that the EU could envisage criminal law combating homophobia (homophobic hate speech, homophobic hate crime) in the Member States following the model of the proposed framework decision on racism and xenophobia. The analysis by FRA of the legislation of Member States in this respect demonstrated a wide variety of approaches and the total absence of relevant legislation in some Member States.

Finally, FRA found a wide variety of approaches to the treatment of transgender people under EU discrimination law. The EU should clarify that discrimination against transgender people constitutes discrimination on the ground of gender following the relevant case law of the European Court of Justice.

This report constituted the first report of FRA on homophobia and discrimination on the grounds of sexual orientation. FRA will follow up on this report with a second report analysing homophobia and discrimination on the ground of sexual orientation from a sociological perspective. With these reports, FRA's analysis and opinions, FRA works towards an improvement in living conditions for LGBT people in Europe.

Dr. NIRAJ NATHWANI

Programme Manager Research
European Union Agency for Fundamental Rights
www.fra.europa.eu

Negotiations about the horizontal directive have started

Last month the Social Council of Ministers met in Luxemburg and kicked off the discussion about the proposal for a horizontal directive. At this meeting all Member States made public their official position on the directive proposal. Which countries will support the proposal of the Commission? The Dutch government welcomes the proposed directive.



Ronald Plasterk, Minister for Education, Culture and Science, who is also responsible for LGBT equality issues, on the Dutch government's boat at Amsterdam Pride 2008

Together with some other Member States, The Netherlands is one of the countries in Europe with a high level of protection against discrimination on grounds of sexual orientation, religion or belief, age, gender, race or ethnic origin and disability, with wide material scope. Because of this some people might question the need for the proposed horizontal directive. Why would LGBT friendly countries favour the EC proposal?

In its impact assessment the European Commission has concluded that the (current) differences in the level of legal protection between Member States have a negative influence on the free movement of its citizens and the introduction of goods and services in other Member States. But the impact assessment provides an unclear picture of the impact on the ground of disability.

The Netherlands and the directive

The Netherlands is positive about the EC proposal. The

Netherlands welcomes the all inclusive approach of four grounds, instead of one ground as in the former communication by the EC. The Dutch government has made this opinion on the Commission's proposal public and presented its position paper to the Dutch Parliament for debate. This was done in September. The position document clarifies the Dutch position at the beginning of the negotiation process. The debate in the Dutch Parliament takes place this autumn.

In the following paragraph I have tried to cover the most relevant elements. However, for strategic reasons the government did not publish all the elements of its position because the Commission's proposal needs to be negotiated first with the Commission and with other Member States.

- The Netherlands is positive about the EC proposal. The Netherlands welcomes the all inclusive approach of four

National government and proposed directive

grounds, instead of one ground as in the original announcement by the Commission.

- The Netherlands values a consistent terminology and definitions that are in concurrence with the other directives. In particular this counts for the scope and exceptions, and for the protection of the ground of disability in Article 4. The coherence of the scope with other non discrimination directives and with the Convention on the Rights of Persons with Disabilities also has to be taken in account.



Ben Baks

The Dutch government's LGBT policy

The Dutch government has presented a national LGBT policy plan for the years 2008 until 2011. The policy document 'Simply Gay' ('Gewoon homo zijn') has been debated with the Dutch Parliament in spring 2008. The full text of the government's LGBT policy document 2008-2011 can be found at

www.minocw.nl/documenten/08BK2008B014.pdf

BEN BAKS

Economist, senior policy advisor at the LGBT Equality Unit of the Equality Department of the Dutch Ministry of Education, Culture and Science. Ben is also general-secretary of the Coordination of the Dutch Government's LGBT Policy Working Group (IWOH)



- The Netherlands also values the sufficient room for a Dutch approach. In this it draws attention to its two way policy and to its national lawmaking framework of conditions. Detailed regulation on many areas, the administrative burden that comes with reports and consultation about manuals and standards, has to be avoided as much as possible.¹

The above sketch is derived from the official position paper. Therefore the Ministry of Education, Science and Culture is not liable for any incorrect or incomplete transmission of the information in this article. This article shall not create any obligations.



¹The full text of the Dutch government's public position paper is available at http://www.minbzk.nl/algemene-onderdelen/uitgebreid_zoeken?Zoe=gelijke%20behandeling&ZoeWay=&ZoeOrd=&SttDtm=&EndDtm=&pager_page=0



Interview with **Vladimír Špidla** the EU Commissioner for Employment, Social Affairs & Equal Opportunities

“Europe should promote an inclusive society. It should continue to roll back all forms of discrimination - based on race or ethnicity, disability, age, sexual preference.”

Vladimír Špidla¹





Juris Lavrikov (ILGA-Europe) interviewing Commissioner Špidla

The proposed EU anti-discrimination Directive belongs to Vladimír Špidla's portfolio. Throughout his Commissioner's mandate, Vladimír Špidla, who we regard as 'our Commissioner', was an active and vocal supporter of harmonised EU anti-discrimination legislation covering all grounds. ILGA-Europe attempted to find out more about the 'Directive saga' and other topics...

Could you please explain the reasons why the Commission departed from its legislative plan to propose a single directive covering all grounds of discrimination in March and indicated that the proposed directive would only cover the ground of disability?

People with disability are discriminated against. The Commission is doing its best to combat this discrimination. Due to the influence of Europe it was possible to achieve the Convention on the Rights of Persons with Disabilities at the level of the United Nations. There was a very strong political impulse worldwide and the Commission wanted

to use this impulse. The second point is that during different stages of considering technical and political issues it became clear that there is a certain specificity about people with disabilities. This is because when fighting most types of discrimination it is enough to prohibit it and monitor it (after prohibition) whereas when it comes to people with disabilities or old people there is a need for greater positive (proactive) action in order to achieve equality. During our discussions we came to the conclusion that we can achieve this equality even through a horizontal directive. However, the original worry was that it

was not feasible from the structural point of view to meet the legal and technical criteria needed in order to incorporate all types of discrimination into one directive.

I have always aimed for a general directive but at the same time the discussion was really difficult. My goal in politics has always been not just to draft some nice sophisticated provisions but to create a political situation and text that has the ability to be passed and get further. So at one point I was also seriously considering the directive only for people with disabilities. But through further

discussions we came to the conclusion that the overall directive would be a better approach.

You know that the situation caused significant dissatisfaction to a range of organisations that were very critical of such a u-turn. Could you tell us what the atmosphere was within the Commission and your DG around that time? But most importantly, what made the Commission change its mind and return to the original plan and to propose a single horizontal directive?

Whenever the Commission is debating something important you can say that the atmosphere is really good. This was a really deep discussion from all possible points of view. You know very well that the Commission led the negotiations two or three times because it has proven to be an important and complex issue from the general political point of view as well as from the legal technical perspective. So the atmosphere was really good. I think there were two or three informal discussions among the Commissioners who spent hours and hours discussing all the different points of view. I can say that the Commissioners discussed it (including informally) for probably as much as 20 hours in total.

Do you think you could single out one or two major reasons which made the College of the Commissioners propose a single horizontal directive as opposed to a directive covering just disability?

The creation of hierarchies. That was the main argument.



How would you assess ILGA-Europe's campaign and lobbying and what would you say was its role and impact?

Of course the process is not yet over and a lot still depends on the support of NGOs and further discussions. But in general I can say that the arguments

coming from the social sector were accepted in different ways and were taken into consideration. And ILGA-Europe was part of this discussion as were other NGOs (i.e Social Platform).

What in your view are the main obstacles, counterarguments and problems which might be hindering,

obstructing or delaying the adoption of the directive?

Hmmm... of course the main argument of the people who are against this directive mostly leads towards the idea of subsidiarity, suggesting that this directive is unnecessary. And the second argument, which is a political tactic, is that we should have waited to see the full and complete implementation of directives that are currently in force and where we are running approximately 14 infringement procedures against individual states. The third argument is

connected to people with disabilities because there we are formulating a 'ménage raisonnable' (something accepted by everybody) as there are expected to be expenses which would be supported by the economic sector.

What is your response to those counterarguments/objections? What would you say to those Member States raising those issues, in order to support your proposal?

The debate is very complicated. On several occasions I have already stated

that if Article 13 clearly defines it as a competence of the Union then it is. Therefore from this legal technical perspective it is not in conflict with the subsidiarity principle, because the highest values are not a question of subsidiarity. Also you can argue that if you look at the development that followed the passing of previous directives, in spite of everything, they are a success and you can see that protection against discrimination has considerably strengthened throughout Europe. So from the point of effectiveness it has proven to be more effective than negotiations at a national level. Then there's the argument as to why we haven't waited. I believe that in this case it is possible to prove that it is about broadening the scope to fields that haven't yet been covered. This means that from the point of view of structural and legal arrangements there is a broadening of the area of effectiveness and not just some basic reorganisation. That means that whether the other procedures have or have not run their course has no effect on it. It is not going to bring any further procedural propositions.

What would you say to civil society groups – what exactly can they do at national and European level to support this proposal?

What is relevant here is public support and engagement in debates. If there are articles published which oppose the directive while using different arguments, it is necessary to counter them.

This requires an agreement of 27 states, each one of them, there is no option of

Vladimír Špidla: personal details²

Nationality:

Czech
Born April 22nd, 1951 in Prague, Czech Republic
Married, 2 sons

Education:

1944: Charles University of Prague, Master Degree at the School of Liberal Arts and Sciences
1976: Charles University of Prague, PhD. in History and Prehistory

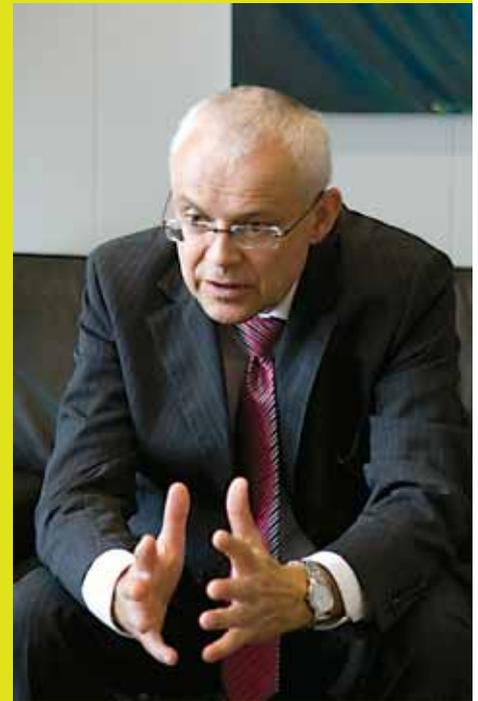
Career:

Since 2004: Member of the European Commission
2002: Prime Minister of the Czech Republic
2001: Chairman of the Czech Democratic Party (CSSD)
1998: First Deputy Prime Minister, Minister of Labour and Social Affairs
1997: Vice-Chairman of the CSSD
1996: Member of the Czech Parliament Chamber of Deputies for the CSSD, Chairman of the Social Policy and Health Care Committee of the Chamber
1991: Director of Regional Employment Authority in Jindřichův Hradec
1990: Vice-Chairman of Regional Public Authority in Jindřichův Hradec
1989 -1976: In fact, a respectable person did not make a special career in my country at that time. So, following my studies I occupied different positions in different sectors very often just as a worker:
saw-mill worker, scene-shifter, dairy industry worker, archaeologist, public administrator in nature protection and environment, construction worker, public administrator in culture heritage preservation

Hobby:

History and care for historical monuments in particular
Outdoor sports, particularly cross-country and long distance running

²http://ec.europa.eu/commission_barroso/spidla/cv_en.cfm



qualified majority. That means that in each and every state this debate has to be led in a way that will ensure victory. In any case the directive is ready and I am sure, I am persuaded, that it is a good one, textually and conceptually. It has a high chance of success but the fight is not yet over. And there is one more thing which I think is rather clear but not always fully appreciated. Success requires an approach to the grounds as a whole. If we formulate all the forms of discrimination as non hierarchical then each (even the more significant) organisation has to fight for all of them. It is not possible to divide grounds. This is very important.

What is your assessment of the marital and family status clause? Do you think this is a 'political' insertion into the directive? What in your opinion is the best way to balance the national competence in family law and a non-discrimination principle in relation to LGBT people/same-sex couples?

I think that we found the best possible balance in the proposal of the directive. These are national competences over things that are very sensitive and which are not the subject of European legislation so we preserve them in that way and I think that at this moment there is the best possible balance.

While there are states which provide recognition to same-sex partners and therefore it is easier for them to fight discrimination, for example in access to social benefits, there are some countries which do not provide any recognition and they will basically be legitimising discrimination against same sex unions. What would be possible to achieve a balance in this situation?

Within European legislation we have gone as far as we can go. If a state accepts the equality of these relationships then that state cannot discriminate. And there are already

some infringement procedures against some states on this matter. However, whether the state accepts these unions or not is a basic national competence. And we don't interfere with that.

(I have been the one in the Czech Republic proposing legislation on registered partnership several times, so my stand on this is clear).

What about two same-sex partners, both EU nationals married in Belgium, enjoying a range of rights and protections. Once they move to Latvia, an EU Member State, they lose all these rights and protections. Does this situation not conflict with the fundamental principle of freedom of movement in the EU?

That is a very sensitive question but I don't think you are completely right because there are possibilities of transferring some social entitlements such as pension benefits. So these are



things which have to be commented on with a very deep and accurate knowledge of the issue. On the other hand, my goal and my political aim is equal protection against discrimination on all grounds throughout the whole EU. And of course when it comes to transferability of social entitlements I am also trying to ensure that transferability is as universal as possible. That is my approach.

When you were Prime Minister of the Czech Republic you actively supported the law on registered partnerships for same-sex couples. Using your experience as Prime Minister and as a Commissioner, how do you think the issue can be advanced at European and national levels?

If I base it on my experience from the Czech Republic, I think we proposed the legislation 6 or 8 times. So that means long term efforts, long term discussions,

campaigns and explanations. That is what can change the approach. And because it is such a sensitive issue there has to be a discussion which is more than just legally rational.

In May, the Fundamental Rights Agency published part 1 of their study on homophobia in Europe which concentrates on the legal situation. One of the key issues highlighted by this report is hate speech and hate crime against LGBT people. How in your opinion can these issues be addressed both at national and European levels?

The first thing, which is rather obvious, is that it's necessary to run an active and dynamic campaign against this, which we are doing. It is true that I cannot talk for all Member States but in many of them there is a legal prohibition of propaganda that attacks groups of citizens for various reasons and creates hatred against a group of citizens.

So I think it is good to promote, in the political debate, these formulations into legislation. A lot depends on the implementation of the legislation, and of course a lot also depends on the atmosphere in the society. So it is a question of campaigns, discussions, media, and schools etc. Inciting hatred is very easy.

The Commission's mandate expires next year. What are your plans – will you remain engaged in European politics or return to national politics? Any other plans?

My plan for the time being is to finish the things that are planned because I think they are very important and worth it. Starting with this anti-discrimination work through the European Works Council to changes in parental leave and other issues, there is still a lot that needs to be finished. So that is what I am fully concentrating on.

And finally, will you be able to attend our conference in October?

If there is a chance I will participate. There are many meetings and conferences around that time organised by the EU French Presidency and it might be difficult to find time to attend all events.

Thank you !

The interview with Commissioner Špidla was conducted by **JURIS LAVRIKOVŠ**
Czech-English translations by **JANA KUKUCKOVA**



Costly?

No!

Some claim that the new anti-discrimination directive will be too costly. The German government even suggested it would cost nearly 2.58 billion Euro to implement.

But in reality, a new study by the German anti-discrimination authority states the cost of the directive will be **just 1,25%** of the figure originally quoted – 38.2 million Euro.¹

"The law merely requires employers to make decisions on the basis of objectivity rather than prejudice. And that will lead to important advantages for the company: the quality of its employees will improve – leading to the entire enterprise becoming stronger."

Klaus Michael Alenfelder

President, German Society for Anti-Discrimination Law

¹ http://www.upi.com/Top_News/2008/08/15/Study_Anti-discrimination_law_not_costly/UPI-90951218826106/

What it means for national equality bodies and EQUINET

For EQUINET members, the changed legislative landscape proposed in the new directive means that their role and position will necessarily change as they meet the new challenges of broader protection for all.

EQUINET – the European Network of Equality Bodies - was established as a platform for cooperation and peer support among equality bodies from all over Europe. What makes Equinet a unique and important structure is that all of its 28 members have their competences and powers defined by community anti-discrimination legislation. The most important pieces of law laying down the obligation for all EU Member States to set up such specialised equality bodies are the Racial Equality Directive (2000/43/EC), the

Gender Equality Directive (2002/73/EC) and the Gender Directive on goods and services (2004/113/EC).

The current proposed Directive lays down the obligation for all EU Member States to also set up specialised equality bodies on the grounds of disability, religion, age and sexual orientation. According to provisions of EU legislation, equality bodies should be empowered to provide assistance to victims of discrimination, conduct

surveys concerning discrimination and publish reports and make recommendations in relation to unequal treatment. It should be emphasised that all these powers must be performed independently. This independence plays a crucial role in the process of implementation of the equal treatment principle and assures equal opportunities for all.

EQUINET as a network of these unique actors of equality welcomes the new EU

Equality bodies will be one of the key links in the chain of justice and equality.

cross-cutting anti-discrimination initiative. EQUINET hopes that a new equal treatment directive that covers areas outside of the labour market, that encompasses the grounds of disability, religion, age and sexual orientation, will also address the deficits in relation to the gender ground. EQUINET and its members, who play a key role in the implementation of the existing anti-discrimination legislation, recognise and experience in their daily work the need for new initiatives and legal steps to combat discrimination outside the labour market on the grounds of gender, age, religion and belief, disability and sexual orientation. Some specialised equality bodies within EQUINET's membership already have a mandate to combat discrimination and promote equality in areas outside the labour market on (some of) these grounds in relation to access to goods and services, education, housing, health care and social protection etc. The experience and work of these bodies demonstrate the wide range of persisting discriminatory issues and practices experienced by European citizens in these areas and therefore the need to prevent and combat inequality on these grounds through further appropriate legislation.

The newly proposed legislation opens new areas for equality bodies to perform their duties in the field of equality. If the new directive comes into force, most of the national equality bodies will have to redefine their role and prepare themselves for more active work. One of the most important tasks will be the enhancement of cooperation between them and other stakeholders dealing with anti-discrimination, especially NGOs. New competences will demand the elaboration of new and more

effective tools of operating. To properly play their role, and to reach new minority groups exposed to discrimination, equality bodies will have to gain more information about the phenomenon of unequal treatment. Only such a close collaboration and engagement of all stakeholders active in the field of equality can allow for the identification of all gaps and needs.

The new EU initiative to prevent and prohibit discrimination and promote equality in areas outside the labour market on the grounds of age, religion and belief, sexual orientation and disability, is a necessary step to achieving full equality.

EQUINET as the European Network of Equality Bodies will have a key role to play in facilitating this exchange and cooperation between countries.

Under the new legislation, equality bodies will be one of the key links in the chain of justice and equality. That is why, on the one hand, they will have to be more deeply involved in the national context and be more aware of the concrete needs of vulnerable groups, whilst, on the other hand being more active at a European level to cooperate with equality bodies from all over Europe and to exchange their experiences and best practices in the field of equality.

As a European network, EQUINET will have to meet this new reality and ensure that all its members will be provided with the necessary knowledge and skills, which will contribute to ensuring

equality in practice to the highest possible level. EQUINET is already organising regular specialist training for staff and experts from equality bodies to promote further internal capacity building. With the contribution of highly recognised European experts in the field, training for equality bodies is a valuable opportunity for strengthening essential knowledge about effective tools for counteracting discrimination. EQUINET activities also include four Working Groups with the ongoing

participation of national equality bodies, which aim at sharing experiences and best examples as well as elaborating new and progressive opinions with regards to anti-discrimination policy.

In the view of the majority of EQUINET members, the new EU initiative to prevent and prohibit discrimination and promote equality in areas outside the labour market on the grounds of age, religion and belief, sexual orientation and disability, is a necessary step to achieving full equality in practice for groups and citizens experiencing inequality across all these grounds in the reality of today's European Union.

ANNE GASPARD
Executive Director
EQUINET – European Network of
Equality Bodies
www.equineteurope.org

Further improvement required on the labour market

As the negotiations around the directive begin, various voices can be heard claiming that the cost of implementation will be prohibitive for businesses. However, as this article from Adecco demonstrates, it makes good business sense to have diversity in the workforce, and legislation should only be a starting point.

The Adecco Group is the worldwide leader in HR solutions, having 600,000 daily associates, and 30,000 colleagues in 6,000 branches in more than 70 countries and territories. Providing employment to women and men of all skills and giving HR expertise and tailor made solutions to clients makes the Adecco Group a key player in the employment market.

At the Adecco Group in France, which I am entitled to speak for, we employ more than 800,000 associates annually (150,000 daily) throughout our 1,700 branches with more than 10,000 colleagues, with brands such as Adecco, Adia, Altedia, Alexandre Tic and others.

The new directive doesn't cover employment issues as such. Still, as a company that prides itself on having actively taken the initiative to protect the rights of our lesbian, gay, bisexual and transgender staff and clients, we know that there is extensive evidence of discrimination based on sexual orientation in both access to goods and services as well as access to education, health care, and social

protection. We strongly believe that the EU needs to provide harmonised and equal legal protection against discrimination, including on grounds of sexual orientation, in these areas of life for all its citizens. It would bring legal clarity to employers and employees by setting clear minimum standards that apply to all.

Furthermore, as a company, we want to stress the importance of legislative measures for combating discrimination based on all criteria, including sexual orientation. Unfortunately, there remain strong social divisions on the legitimacy of sexual orientation as a ground of discrimination within the European Union and this discrimination harms both business and LGBT people themselves. In this context, there is a real responsibility in protecting LGBT people from discrimination in all spheres of life.

Within the Adecco Group, we have a strong commitment to non discrimination and promotion of diversity. In fact, it is the bulk of our business to have candidates' skills meet employers' needs. And in our industry, from the social reports, we have some starting points which highlight market realities: 70% of our associates are male workers under 26 in the building or manufacturing industry, 80% of our colleagues in our branches are female, which is an HR profile reality.

The EU needs to provide harmonised and equal legal protection against discrimination, including on grounds of sexual orientation.



The economical approach makes it rather simple to understand: the more candidates we meet, the more employees we will place and recruit for clients, the more turnover and profit we will make.

Certain issues for our business stem from these unbalanced gender figures. We have to find the right candidates to fill job vacancies and opportunities with our clients, and initially we need to attract candidates to our networks, whether online or through our branches all over Europe.

In fact, the economical approach makes it rather simple to understand: the more candidates we meet, the more employees we will place and recruit for clients, the more turnover and profit we will make. So the more diverse a workforce we have, the more profit we should make as a direct result. This is a bit cynical though - we have to *walk the talk* when it comes to diversity management. We behave professionally with HR expertise and know how on client companies' requests for professionals. This is appreciated by our esteemed candidates - skills become the one and only criterion to match people with position requirements.

Of course, firstly, we have to act within a legal framework. For a company like ours, compliance is a key issue to attract and retain all candidates as well as develop expert reputations with clients.

However, we want to get beyond compliance when it comes to non discrimination.

We have built a few items into our policy against discrimination that makes it clear for all in the company. From day one, every colleague in all our offices must sign a code of conduct which refers to our commitment. Then, training on non discrimination is compulsory for all in the sales or recruitment fields. The rules of the company, as well as the tailor made guidelines, are available on the intranet with all the processes to contact a specific dedicated unit. Its role is to coach and help individuals sort



ADIA 2001 anti-homophobia campaign poster: "I'm gay. Well, pofter, queer, fag, as my colleagues say. Terms like those are a big joke! Some days your work can become unbearable. Some days you regret not having chosen to do temping."

It would bring legal clarity to employers and employees by setting clear minimum standards that apply to all.

out cases where risk may occur regarding individuals, and help find the right answer to convince a client to withdraw any discriminatory order.

Social dialogue is also clearly helpful. A social agreement against discrimination was signed in 2007 by the 5 major French Trade Unions, a first of its kind in the company and in the industry. The purpose of this agreement is to have both managers and personal representatives aware of the issue and able to convey messages as well as reporting to specific bodies (fight against discrimination unit, freephone counselling service

Businesses and discrimination



or management committee). It emphasises the responsibility of management and colleagues on this very sensitive issue.

Communication is also at stake with posters in the branches targeted at all our audiences (colleagues, candidates and associates... but also clients). Last but not least 'testings' (discrimination tests) are being conducted in the branches or by sending 'diverse' CVs for vacant positions.

Writing this article for the ILGA-Europe magazine doesn't demonstrate that everything is perfect on the labour market for LGBT people. Even in our group, after all the efforts made in training and explaining diversity and non discrimination, some individuals might still be rude or behave stupidly... but they face some serious trouble if it is brought to the attention of their hierarchy or to the Unit against Discrimination.

Unlike immediately visible criteria such as gender, age or origin, sexual orientation has a private dimension, which the individual will choose to show or hide according to their sensitivity. Still today, sadly, many gays and lesbians choose to hide their sexual orientation as a result of past experiences which have led to a lack of trust. We would hope this is a minority. It is not.

A recent French survey provides figures: 11,6% of homosexual employees are blocked to some extent in their career; even worse: 9 out of 10 are victims of implicit homophobia, through rumours and bad 'jokes' (87%), insults (35%), outing threats (8%) at least once during their professional lives. This occurs for 39% of them in the company where they work.

Moreover, we are still in the Middle Ages, though evolving, when it comes to social insurance, social benefits, having

Unfortunately, there remain strong social divisions on the legitimacy of sexual orientation as a ground of discrimination within the European Union and this discrimination harms both business and LGBT people themselves.

the partner and possible children taken into account by the company.

In order to move forward, companies need to normalise the relationship with all employees, starting of course with all applicants. The change comes through new generations and through outings of executive committee members.

Being exemplary needs a real *walk the talk* attitude, and all mockery should be systematically exposed. Individuals have to realise that these prejudices are counterproductive, as well as inappropriate in the workplace. Also everyone should know who to ask questions to in their working environment: diversity managers, HR, employees' representatives can become allies and fight discrimination in the organisation.

For example, back in 2001, Adia in France had an advertising campaign against homophobia, with posters in all branches and through advertising spaces in main French cities. It mentioned that people who are or feel discriminated against – in this example for their sexual orientation - should turn to professionals who would focus on their skills and behave professionally.

As reputation is really at stake for all businesses, the legal bodies against discrimination all around Europe, such as the French 'Halde', can help recover equality, but they must be used. Class actions and naming and shaming become good solutions to make Executive Committees understand the risks occurring daily in offices and workplaces all over Europe, and in all industries.

The Adecco Group has a motto that speaks for itself: *Better work better life*. By providing better work to our candidates and associates, as well as our colleagues, we contribute to providing them with a better life. This means a lot to us. This means a lot to the people we work with on a daily basis.

BRUCE ROCH

Innovation & Diversity Manager for Adecco Group in France;
Vice-President of the French Association of Diversity Managers (AFMD)



**Isn't
it a national
competence?**

**The EU has powers to
legislate on
anti-discrimination.**

*Some claim that tackling discrimination is not
within the EU mandate.*

In 1997, EU Member States agreed to give European institutions clear authority to legislate in the area of equality.

Article 13 of the Amsterdam Treaty states:

“Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”



Representatives of ETUC at EuroPride March 2008 in Stockholm

Active for LGBT rights

The European trade union movement recommits itself to supporting LGBT people as it continues to fight discrimination on all fronts.

The ETUC and its affiliates have campaigned for equality for many years, first on the grounds of gender equality and more recently on other grounds, including sexual orientation and gender identity. We consider our role as a social partner to be crucial in pushing for an integrated approach to equality and in ensuring that all groups of workers that face discrimination and inequality are able to claim their rights to equality and social justice. They should all work in workplaces that are free from harassment and discrimination, and live in a society that respects their identity and values diversity.

Equality on the grounds of sexual orientation and gender identity has in recent years become a priority for many trade unions. Often working in collaboration with NGOs, LGBT trade

union and community based activists have been arguing that LGBT rights are also trade union rights and that LGBT equality issues are dealt with in the workplace.

In 2008 the ETUC, in partnership with ILGA-Europe, developed a project on the rights of LGBT workers, resulting in a European conference and a report. The project *Extending equality: trade union actions to organise and promote equal rights, respect and dignity for workers regardless of their sexual orientation and gender identity*, started from the position that LGBT rights need to be progressed in the workplace and within trade unions.

As John Monks, the General Secretary of the ETUC, said in the opening session of the ETUC's conference on extending

equality: "Equality is central to the trade union agenda. The union as a whole suffers if there is inequality and combating discrimination is as important as other areas of trade union work. Any union that treats another as second class suffers".

However, as trade unions, we also strongly believe that LGBT rights should be seen as part of a range of rights to equality that cut across gender, race, ethnicity, religion, disability and age. This is why we have joined ILGA-Europe and other NGOs in their call on the Commission to come up with a proposal for a single new Directive to deal with discrimination in areas other than employment (insurance, services, housing, etc.). The fact that this proposal now covers all grounds that are not yet covered by other Directives in one single piece of legislation is, in our view, important to promote coherence and to avoid different rules governing different grounds of discrimination. It will also help to deal with multiple discrimination.

As the ETUC argued in its LGBT project, there is a close connection between inequality in the workplace and in society at large. Non-discrimination outside employment is often a pre-condition for equality in the workplace, a culture of non-discrimination and integration inside the workplace promotes a similar culture outside the workplace and *vice versa*, 'services' are companies and workplaces too, and managers and workers participate in the world 'outside' the workplace. The ETUC is therefore of the opinion that social partners have an important role to play in this area. Equality legislation is important, but not enough. We need to ensure that workplaces are non-discriminatory and inclusive, that employers are pro-active in progressing equality and take

action against harassment, that collective agreements reflect the increasing diversity in the workplace and take different needs of different groups into account, and that social policies are developed in non-discriminatory ways.

There continue to be many barriers to LGBT visibility, and many LGBT people experience inequality, harassment and homophobia in the workplace. In many countries there are still significant problems in progressing LGBT rights in society at large and in the workplace. The ETUC and its affiliates are increasingly bringing LGBT rights, along with the rights of other groups facing discrimination, onto trade union agendas and into collective bargaining, and including them as key elements of union recruitment and organising work. Many trade unions argue that LGBT rights should be explicitly addressed as part of a broader equality and trade union agenda and that this requires a clear commitment from unions at all levels.

To make this commitment very clear, I represented the ETUC this year in the EuroPride March in Stockholm, together with Wanja Lundby-Wedin, president of the Swedish LO and also president of the ETUC, and other trade union colleagues from Sweden, Ireland, France, and Italy.

At EU level, we have greatly benefited from our cooperation with ILGA-Europe in developing our project. It is now time to promote further action and activity at national, local and workplace level, and to encourage our mutual members and affiliates to cooperate there as well.

CATELENE PASSCHIER

Confederal Secretary ETUC

www.etuc.org



Representatives of ETUC at EuroPride March 2008 in Stockholm



Yet another EU law?

EU legislation on this matter is essential.

Some claim there is no need for the EU action on equality and EU Member States are better placed to deal with it.

EU Member States currently have different equality laws and there is no clarity on who, where and how the law protects against discrimination.

EU legislation would set minimal standards and a common denominator to introduce common understanding across the EU for citizens, workers, businesses and governments.

This way everyone in the EU will know exactly what their rights are regardless of where in the EU they reside and work.

“Leave, our place is not for people of your kind!”

A part of an interview, which was originally published in Slovene Revija Narobe - Revija kjer je vse prav, illustrates a somewhat unimaginable and shocking reality – you can be refused bar service simply because of your sexual orientation!

Can you briefly describe what actually happened on 10 October 2007 in the Orto bar?

Petra: On that day we experienced intolerance by a bouncer and also the owner of the establishment. We kissed in the bar, which the bouncer saw on a camera. When he approached us, he unconditionally demanded we leave the premises, and go to ‘such’ a place where people do ‘that’. We complained to the owner who went to the bouncer and told him he had acted wrongly. We were assured we could return to the bar. During the conversation the owner said that Orto bar is a heterosexual establishment. He did not regret the incident; he believed that such a reaction is understandable, because people are not used to seeing such a type of diversity.

Were you alone or with someone else? Did any of the guests complain or stand in your way?

Petra: We attended a concert in Orto bar together with friends. When we were told to leave the bar, we ‘suspected’ the bouncer was homophobic. We were shocked and exasperated. The owner tried to calm us down by claiming it’s understandable since it is a heterosexual bar, and offered us the opportunity to return inside as if nothing happened! Of course we didn’t return, but stood in front of the bar because we were completely stunned. On the way home we analysed what had happened. The more we considered it from all possible angles we knew we would not easily forget it.

What did you feel and think about when you were sent out?

Simona: I was in complete shock for about half an hour. Thoughts were running through my mind, but I remember one especially: how can this be? I was hurt. It was clear to me we were treated unfairly. I was angry about the intolerance of the staff. I was livid. I was even more upset because my friends, who witnessed the incident, forgot about it after a few minutes as life moved on.



Orto bar in Ljubljana

Has anything similar ever happened to you anywhere else?

Petra: Getting kicked out because we are lesbians – that hasn’t happened yet! Of course, on the streets people stare or even say something – people are adjusting slowly – but those are trivial things in comparison to this. It is unacceptable that organisers in a public place take the right to choose who can attend an event and who can’t!

This interview by
SUZANA TRATNIK

was originally written for and printed in Revija Narobe - Revija kjer je vse prav (December 2007)
Adaptation of the text: Jasna Magic
Translation by Sabina Avsec

“Sorry, you are not really a family”

Sara Martinho and Rita Paulos



This story provides yet more proof that discrimination on the basis of sexual orientation exists in relation to issues most of us take for granted and that the new anti-discrimination directive would provide a practical tool to challenge it.

We did not think that health insurance could be political or controversial. All we wanted was to obtain joint health insurance. However, our sexual orientation became the reason for the discrimination we experienced. Were we a married woman and a man, this would not happen to us. But because we were two women in a civil union – the providers refused us their service.

On September 15th 2004, my partner Rita and I went to the bank (Caixa Geral de Depósitos – CGD) where we had a joint account, in order to get health insurance. We explained that we were a couple in a civil union and the clerk that was helping us was very nice and explained that there would be no problems. CGD's health insurance is provided by Multicare and Multicare apparently recognised civil unions. We were very happy with that information and we immediately wanted to fill in all the necessary paperwork for the contract. After doing that, we were then supposed to wait for the contract to be mailed to our address.

However, about a month later, we did not receive a contract but instead got another letter. Here's what it said:

October 20th 2004

Dear Sir/Madam

Following the Insurance Proposal that you sent us, and to which we paid close attention, we hereby inform you that after careful analysis by our Technical Department, it is not possible to accept the proposed Insurance because the degree of relatedness does not fit our definition of family in the conditions of the contract.

We therefore regret to inform you that it is not possible to grant the policy and the Proposal is therefore null.

However, you can always get insurance policies; in order to do that, you should send us two different proposals.

If you have any questions, you can contact our Sales Assistance at 21 780 57 57, at our Multicare Customer Center.

Yours respectfully,

Nuno Fonseca

[Div. Acceptance and Production]

We were very distraught about this refusal – and we also felt bullied by this institutional homophobia. Rita and I couldn't have joint insurance because we do not fit the insurance company's definition of a family.

Even though CGD (the bank) is known to be LGBT-friendly (unlike other Portuguese banks), their health insurance partner Multicare did not think that our civil union was good enough, acceptable enough or even true enough to be considered a family, suggesting individual contracts. We never followed their suggestion, of course – but unfortunately we never filed a complaint. We did end up with another joint health insurance policy (with AMI), and we have had that for three years. For sure, we decided to boycott firms that do not respect the LGBT population and endorse social exclusion and discrimination.

We later learned that many other firms (and even public bodies) also discriminate between same-sex and different-sex civil unions. There is a legal provision about civil unions that speaks of couples whose lives are “analogous to those of married couples”. Since same-sex marriage still does not exist in Portugal, the twisted argument is that no analogy can be drawn and that therefore benefits of civil unions should not be extended to same-sex couples – even though the law itself makes no such distinction! We clearly need this situation to be solved quickly – and to end all these bad excuses for discrimination.

SARA MARTINHO

School bullying which led to suicide

A tragic story of a 16-year-old boy who committed suicide because of persistent bullying at school. Despite the fact that the school was aware that he was subjected to bullying, it was not under a duty to act and it didn't...

April 2007. Matteo Maritano, a 16-year-old born in the Philippines, tormented by his schoolmates in Turin for allegedly being too girlish, committed suicide. His mother Priscilla revealed the story by reporting the reasons of his suicide to the police and to the press: "Why did they treat him like that? He was marginalised and mocked by his mates. They were telling him 'you're gay! You like boys!'".



Matteo also received more insults on his mobile. His mother found a text message and read 'when you're back you are going to pay!' "At a certain point he didn't even want to go to school, he attended classes but his mates isolated him, like he was different. I was worried. I asked him if he wanted to see a psychologist, but he said no".

The headmaster of the high school "Sommelier" in Turin, rejected the accusation of disinterest and defended Matteo's classmates "they made bad jokes about him but they didn't mean to denigrate or persecute him". For the first time in Italy the issue of homophobic bullying appeared in the media and ARCIGAY, the Italian LGBT association, called for a campaign against homophobia in school.

"Last Monday Matteo came home saying that he felt tired and that he just wanted to go to sleep. The day after he should have gone to school, but he asked me to stay home, to rest and to study. I went out then and after a while his brother called me". Matteo threw himself out of a window from the fourth floor.



"I knew Matteo was bullied, because he shared that with me more than a year before. He said they were mocking him, calling him gay". His mother had eventually reported these facts to the headmaster of his school but no real initiative was taken to prevent him from being bullied.

The then Minister for Education, Mr. Giuseppe Fioroni, never mentioned homophobia or discrimination as a possible source of violence or marginalisation which students may encounter in school. Nevertheless he sent

his inspector to Turin to report on the case.

Matteo's death was cited in the European Parliament's resolution on homophobia passed the same month. No public initiative has been taken in Italy on homophobic bullying since this case. Moreover the media started to speculate on different reasons for Matteo's suicide, focussing on his parents' divorce and on less obvious

LGBT organisations have continued demanding attention for students bullied

in school for homophobic reasons (regardless of their real or supposed sexual orientation), but have been accused of exploiting Matteo's death. In September the Minister's inspector filed the case and didn't charge the school with any responsibility for the suicide.

Priscilla commented: "There is no justice for us. It's because we are poor and Filipino. I am a cleaning lady and I am sure there is more justice for those who are less poor than me".



FABIO SACCA

Arcigay



Together we can achieve it!



If adopted, the new EU anti-discrimination directive will not only significantly improve the lives of lesbian, gay and bisexual people in Europe, the proposed directive will also enhance protection against discrimination on the grounds of ethnicity, race, and abilities for people of different genders, ages and ability.

ILGA-Europe has been working side by side with other European networks representing and working for equality for these groups and therefore we want to provide space for the voices of these networks to highlight their assessment and concerns regarding the proposed directive. But most importantly, we want to show that the proposed directive is indeed a major piece of European legislation which is welcomed and needed by millions of people in Europe and, if adopted, will have historical significance.

New EU anti-discrimination proposal: an opportunity to achieve equal rights for all

- From the European Network Against Racism's (ENAR) perspective, extending protection against religious discrimination in access to goods and services is particularly important. Discrimination against religious minorities is widespread across the EU. These manifestations reflect an increasing overlap between racial and religious discrimination. Racism is not limited to discrimination based on the ethnic or racial origin of a person but also on the basis of all aspects of an individual's or community's culture or identity, including religion or belief. Thus the lack of comprehensive protection against religious discrimination leads to a lack of protection against racial discrimination as convictions are often used to justify racial discrimination or to obscure racist motivations.

- ENAR welcomes the fact that the new proposal builds on the foundation of the existing protection against discrimination on grounds of racial or ethnic origin. The proposed directive includes within its scope and legal concepts important protections already found in European law for other grounds of discrimination, such as the prohibition on discrimination in housing, health and education.

- Nevertheless, the proposal repeats what ENAR believes to have been the mistakes of the past, including the exclusion of nationality or matters related to immigration. At the time of passing the Race Equality Directive, such a limitation at least had a logical basis, considering how recently the EU had acquired competence in this area. But now that that competence is firmly established and the dialogue has moved to the development of a common European immigration and asylum policy, it is no longer legitimate.

- The proposal also includes blanket exceptions in key areas, notably education. This is a sensitive but important area, where extra care has to be taken to ensure that exceptions achieve their stated goal and do not go further than is necessary. The EU has a vital role in ensuring that the right to education is enjoyed by all children in a non-discriminatory way. The way in which the proposal is currently drafted would mean that if a religious school is the only school in a particular area and it is allowed to refuse all children of a different faith, those children would have no access to education. ENAR agrees that a restriction is legitimate. But that restriction should not be absolute, and must never lead to a child being denied an education.

European Network Against Racism



Praïlle Isabelle Soumaya

Testimony: religious discrimination in education

I am a Belgian citizen and converted to Islam about 20 years ago. I wear a hijab (veil). In 2005-06, I decided to undertake an undergraduate course in elimination of illiteracy. However, my registration was refused, despite the fact that my profile fulfilled the criteria for undertaking this course, because wearing a veil was prohibited by the college's rules. The director refused to put the decision in writing, which showed implicit recognition of the discrimination.

I have, for several years, been involved in various citizens' initiatives aiming to reduce inequalities and discrimination, but this manifestation of discrimination shows that our society has still not evolved...

It is time that public authorities promote policies that are truly intercultural in the fields of education, employment and others in order to guarantee equal rights for all and recognise our society's diversity.

PRAILLE ISABELLE SOUMAYA

Belgium

European Women's Lobby

Do not forget women in the fight against discrimination on all grounds

"When the EU adopted in 2004 the directive on gender equality covering only goods and services, our members and women's organisations, were strongly disappointed by the narrow material scope of the directive, but hoped that this was the first of a series of legal texts prohibiting sex-based discrimination in all areas of life. The absence of any proposal from the EC to level-up European gender equality legislation since then gives us the feeling that the European Commission has forgotten its commitment to ensure real equality for all. The draft directive of June 2008, when adopted will make sex the least protected ground of discrimination in EU legislation. We are wondering for how long it will still be considered normal to discriminate against women in different areas of life including education and media".

MYRIA VASSILIADOU
EWL Secretary General

The European Women's Lobby (EWL), which represents thousands of women's organisations throughout the European Union, welcomes the proposal by the European Commission for a comprehensive anti-discrimination directive that will aim at combating discrimination based on age, disability, sexual orientation and religion or belief.

However, the **EWL is very concerned by the unequal protection that sex-based discrimination will be facing in the future in relation to a number of areas including education**, despite the commitment made by President Barroso in 2004 to initiate new legislation to ensure protection against all forms of discrimination, including in relation to gender.

EWL also notes that the **proposed Directive contains a number of exceptions** which are left to decisions by Member States, for example the organisation of school systems (in relation to education), the relationship between state and church, and matters related to marital and family status, including adoption and reproductive rights. There is a risk that reproductive health services are also excluded from the scope of the Directive. These matters must therefore be clarified. The EWL also stresses that the fight against discrimination on the basis of religion should not be used as a pretext to justify violations of women's rights, be they open, subtle, legal or illegal.

The European Women's Lobby calls on the European Commission to:

- **Commit to a precise calendar to level up and complement the existing European gender equality legislation by 2010 at the latest**, in order to ensure that the protection against sex discrimination is on an equal footing with what exists for other forms of discrimination in the EU.
- **Address and define multiple discrimination** in the new directive in order to ensure an effective level of protection for victims of multiple discrimination, including sex-based discrimination.
- **Clarify the implications of the exceptions** which are left to decisions by Member States, for example the organisation of school systems (in relation to education), the relationship between state and church, and matters related to marital and family status, including adoption and reproductive rights, and reproductive health services.
- **Ensure an effective mainstreaming of gender in the directive.**
- **Clarify the material scope of Directive 2004/113** on equal treatment between women and men in access to and supply of goods and services in particular with regards to social protection including social security and health care and social advantages.

¹ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

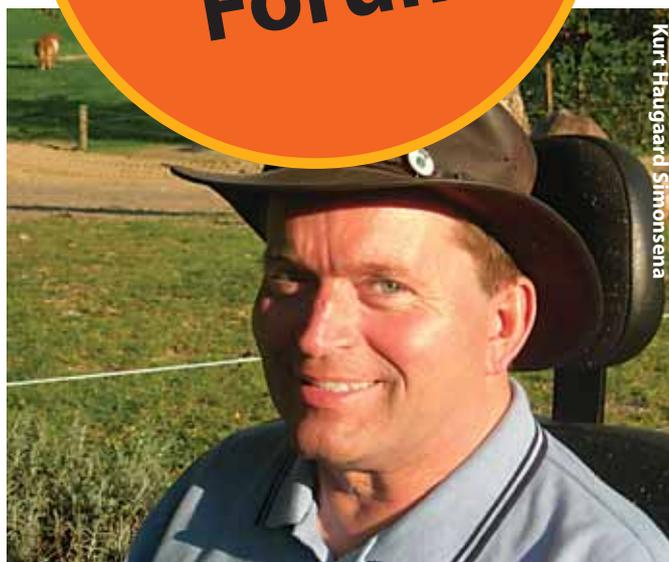
EDF **welcomes:**

- The suggestions for the broad scope of the directive in Art. 3 (1), including social protection, social advantages, health care, education, access to and supply of goods and services, the definition of the denial of reasonable accommodation as a specific form of unlawful discrimination Art. 2 (5), the imposition of an anticipatory duty to provide measures to ensure equal access of persons with disabilities to all rights in Art. 4(1) and the introduction of a duty to create an equal treatment body for all grounds in Art. 12.

EDF has the following **important concerns:**

- In Art. 4 “Equal treatment of persons with disabilities” there is confusion between accessibility, which applies to all people by anticipation, and reasonable accommodation, responding to individual needs. This preempts the application of the article and may challenge existing national laws on accessibility. In addition, the concept of disproportionate burden is very restrictive and should only apply to reasonable accommodation and not to accessibility measures. Neither the concept of ‘Design for All’ nor ‘accessibility’ is defined in the proposal. It does not contain a reference to ‘standards’ that have proved to be very beneficial in making goods and services accessible, available and affordable to people with disabilities. In addition, the proposal for a Directive explicitly exempts Member States from an obligation to introduce fundamental alteration (the concept that is not defined in the Directive!) to social protection, social advantages, healthcare, education or goods and services, even if these are inherently discriminatory and inaccessible to people with disabilities. Therefore Art. 4, which states that the access of persons with disabilities to all of the above shall be provided by anticipation and if it does not cause disproportionate burden, needs complete redrafting.
- The assessment of risk for people with disabilities (usually based on a medical assessment) by financial institutions (Art. 2 Concept of Discrimination – Financial Services) may deprive them of the possibility of getting life insurance, which is often a precondition for owning property or a car.
- Article 3(3) effectively excludes many people with disabilities from protection from discrimination regarding the right to education and the provision of special needs education. This will also have an impact on existing legislation such as racial equality law which does not foresee these exceptions.

European Disability Forum



Kurt Haugaard Simonson

I am a member of a political party and some months ago I wished to participate in their Annual General Assembly. The place the meeting was held was in a conference room in the local sports arena. When we arrived and entered the hall, we discovered that the lift to avoid the six steps of a staircase was broken. That was the first obstacle. But even if the lift had been working, I would have avoided those stairs only to discover that there were another 10 stairs to enter the conference room and this time there was no lift!

The board members of the political party know very well that I use an electric wheelchair. The Annual General Assembly is open to all members of the local political party and there is no advance registration for the meeting. Some years ago I signed up for a similar meeting with the same party and the meeting was not held in an accessible conference room. Therefore you would think they would be prepared this time, but that wasn't the case.

The experience made me so cross that I contacted two local newspapers, who both published long articles about the episode.

KURT HAUGAARD SIMONSEN
Denmark

The European Older People's Platform



Image by Age Concern

AGE welcomes the proposed EU directive but has some reservations concerning Articles 2.6 and 2.7

AGE welcomes the Commission's legislative proposal which seeks to eradicate discrimination in access to goods and services, in particular in access to financial products, travel insurance, and healthcare - as these are where age discrimination appears to be most entrenched. The adoption of this proposal would enable a broad approach to be taken to tackling non discrimination in the EU and would create the opportunity to establish a culture of equality and rights which would engage the whole population. AGE members are particularly pleased that age is one of the grounds on which discrimination would be banned, given the extensive evidence of the damaging effects of age discrimination, and they see many advantages in the proposed legislation.

AGE's reservations

Although AGE considers that significant and welcome steps have been taken in the fight against discrimination within the proposed text, we are concerned that the proposal fails to adequately address the rights of older people to equality and that it gives a free hand to Member States to opt in or out of the legislation with regard to age in the areas most relevant to older people such as access to financial services and health care.

In particular, AGE is concerned that, unless its wording is strengthened, the draft directive will lead to different interpretations by Member States of the exemption clause on preferential treatment contained in Article 2.6. Article 2.7, which allows for differences of treatment on the ground of age in financial products, is also disappointing and means that older people will continue to suffer discrimination in access to financial products. Furthermore, the insurance clause in the Gender Equality Directive in access to goods and services

(2004/113/EC) is much stricter than in the new proposal. This discrepancy conveys the message that age equality is not considered to be a priority in the hierarchy of rights.

Case example: age discrimination in breast cancer screening

Our members report pervasive age discrimination and rationing of the health care resources devoted to older people. For instance, upper age limits are applied in access to free breast cancer screening programmes in several countries resulting in direct discrimination against women above a certain age. In the UK only the group aged 50 to 70 receives reminders. This self-referral system does not deliver and the fact that older women above 70 no longer receive reminders sends the wrong message that they are no longer at risk. This is a clear case of indirect age discrimination whose effect is similar to an explicit age limit.

Case example: age is not a proxy for financial risk

In the Netherlands, one of AGE's members who wanted to buy a new refrigerator was offered a 10% reduction on the condition that he would agree to sign up for a new credit card. The gentleman, who already held a credit card, first declined the offer but was persuaded by the sales person who pointed out that the customer could simply use it to make the purchase and then destroy the card, thereby obtaining the 10% price reduction. The gentleman finally decided to take up the offer and was asked to complete a form. However, when he was asked to give his date of birth, he was told that he was ineligible to benefit from this special rebate as he was above the retirement age. AGE does not believe that the state retirement age is a relevant criterion in identifying the financial risk of an individual.



Young activists at seminar on multiple discrimination

European Youth Forum

The European Youth Forum (YFJ) believes that the Proposal for a New Directive implementing the principles of equal opportunities is a crucial step in fighting against discrimination on the ground of age in the European Union.

Indeed, the current European anti-discrimination legal framework has many flaws; in particular it establishes hierarchies among both grounds and areas of life where discrimination takes place. If protection against age-discrimination is ensured in the area of employment and occupation, young people are discriminated against in many other areas of life such as education, access to goods and services, health and housing where no legal protection is provided at the EU level.

Since the Proposal for a New Directive provides legal protection in key areas where young people face discrimination, its adoption is really needed to foster legal equality for all young people in Europe.

Statistics clearly show that discrimination on the ground of age is a widespread phenomenon, occurring in all EU countries and in all areas of life. According to a survey carried out in January 2008, 6% of the respondents claimed to have been the victim of discrimination on the ground of age in the previous 12 months, this percentage being the highest when compared to other grounds. More than 16% of respondents perceived that young people are often discriminated against at school because of their age.

Although the new Directive will contribute to bridging some of

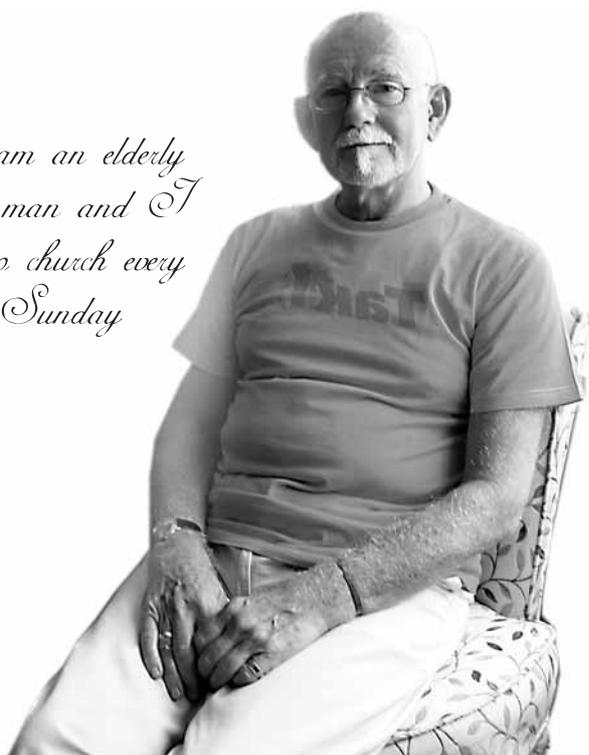
the existing legal gaps, it alone will not bring solutions to some of the dynamics which maintain discrimination against young people, namely the widespread stereotypes and prejudices about young people, which, for example, lead to discomfort in society when a young person is willing to actively take part in political life. Therefore, non-legal initiatives, including non-formal education and awareness-raising activities will definitely be needed to ensure *de facto* equality for all young people.

Since it is not being tackled by the Proposal, multiple discrimination will continue to have a strong impact on the lives of young people, especially in areas such as employment, education and health where multiplication and intersection between age and other grounds often occur. For example, the unemployment rate in Britain for young black men is 35% compared to 13% of young white men, and to 5,2% of the entire population.

The need for justice for the whole person

As work on the anti-discrimination directive gains momentum, the various issues that will need to be addressed in the longer term become clearer. Now and in the future multiple discrimination will impact on many of those for whom the current proposal is but one piece in a mosaic of prejudice. Understanding the legal context within which it is perpetuated is a first step in bringing it to an end.

*I am an elderly
gay man and I
go to church every
Sunday*



There is now an increasing realisation within Europe of the complexity of the operation of discrimination within our society. People do not simply fit into single issue categories as black, disabled or gay. They are diverse, complex and multi-layered, and sometimes they are treated badly for more than one reason. However, too often equality law assumes that the treatment of people should be analysed by reference to a single characteristic at a time. It may not be possible to separate different aspects of a person's identity; the discrimination that a lesbian experiences, for example, may be wholly different from that experienced by a gay man or a straight woman. Yet multiple identities are part of the diversity of our society. Sandra Fredman has observed 'The more a person differs from the norm, the more likely she is to experience multiple discrimination, the less likely she is to gain protection.'¹

Recognising this kind of diversity is an important step in the promotion of social inclusion for the most disadvantaged. The European Commission recognised multiple discrimination as a problem and commissioned research on this during 2007 as part of their activities for the Year of Equal Opportunities for All. This research has been published in the report *Tackling Multiple Discrimination: practices, policies and laws*.² Their research across ten European Member States concluded:

*It is evident that Multiple Discrimination exists. However, a lack of documentation and statistical data makes the phenomenon of Multiple Discrimination less visible.*³

What is multiple discrimination?

'Multiple' discrimination occurs when someone experiences discrimination on more than one ground, for instance, by being treated less favourably not only on grounds of sexual orientation but also because of their race, gender or disability. There are broadly three ways in which multiple discrimination may manifest itself.

Firstly, it occurs when someone experiences discrimination on different grounds on separate occasions. For example, when a lesbian is passed over for promotion because her employers want a man to take the lead, and, on another occasion, she is excluded from a works party because she is not allowed to bring her partner. Here the current laws are adequate, because a single aspect of a multiple identity is relevant to each occasion.

Secondly, it can be additive. Such a case arises where there are, for instance, a series of requirements, perhaps in a job description, so the lack of one decreases the chance of success in getting the job, and the lack of a further characteristic decreases it further. For example, in *Perera v Civil Service*

Multiple discrimination



*I am a Thai
trans woman and
I aspire to become
a teacher*

*Commission (no 2)*⁴ a man was turned down for a job because of a variety of factors – his experience in the UK, his command of English, his nationality and his age. In cases of ‘additive discrimination’ the steps in the overall treatment can be analysed separately so it will normally be adequately dealt with by the existing legal provisions.

The third type occurs when the discrimination involves more than one ground and the grounds interact with each other in such a way that they are completely inseparable. This is often called ‘*intersectional discrimination*’.

For example, a gay male teacher complains of direct discrimination when he is refused a teaching post. The employer argues that it does employ both lesbians and male teachers. But, this only shows that lesbians or men are not always excluded. The man may be able to show that it is the fact of the combination that was critical. The treatment may be simply about gay men. To show the full extent of the discrimination that he experiences it is necessary to consider the combined effect of both his sexuality and his gender.

Although this problem of intersectional discrimination is widespread there have been few cases where it has been raised directly. In practice, lawyers will tend to take up cases on the strongest ground available to them and ignore the other aspects. They will craft the case to meet the limitations of the law.

European law

So far EC legislation has not explicitly legislated to prohibit multiple discrimination. However, the existing equality directives

whilst they do not expressly provide for the consideration of multiple discrimination, do not exclude it and do obliquely acknowledge its existence. Both the race and gender employment directives recognise that different grounds may intersect. Thus Recital 14 of the Race Directive, for instance, says:

In implementing the principle of equal treatment irrespective of racial or ethnic origin, the Community should, in accordance with Article 3(2) of the EC Treaty, aim to eliminate inequalities, and to promote equality between men and women, especially since women are often the victims of multiple discrimination.

Germany, for example, in implementing its obligations under the equality directives has permitted consideration of cases of multiple discrimination. Romania has also made provision for additional grounds to be considered as an ‘aggravating circumstance’.

However, as only race and sex discrimination are addressed outside the employment field, multiple discrimination cases involving access to goods, facilities and services on grounds other than race or sex are excluded. This will be remedied by the proposed new equality directive.

What changes are needed?

The current legal provisions should be amended to ensure that multiple comparisons are expressly permitted and where there are any differential provisions, for example, any specific justifications, exceptions or genuine occupational requirements that apply to one ground for discrimination these should, in effect, be treated as cumulative. Such provisions are not included in the draft proposed equality directive and they are clearly needed.

GAY MOON



*I am a young
Indian man and
work as a police officer*

¹ Double trouble: multiple discrimination and EU law, Sandra Fredman, European Anti-Discrimination Law Review, Issue no 2, 2005, p13-18 at p14.

² Tackling Multiple Discrimination: practices, policies and laws, European Commission, 2007.

³ Ibid p48.

⁴ [1983] IRLR 166.

I am a lesbian queer trans-woman and I would like my rights to be fully acknowledged and equally protected like everyone else's.



A case for full transgender equality

This article shows that the current wording referring to transgender people in EU legislation is unsatisfactory, and lays down an argument for the express inclusion of the grounds of gender identity and gender expression in the future reopening/s of Gender Equality Directive/s.

In the Shadow Directive¹ that ILGA-Europe submitted to the European Commission, we called for a clarification whereby “discrimination on grounds of gender identity is treated as an aspect of gender equality law by the European Union” as was expressly acknowledged in Recital 3 of the Recast Gender Employment Directive 2006/54/EC. The reason for this request stemmed from the fact that to this day – regrettably – the grounds of ‘gender identity and gender expression’ are still not very well understood. Many wrongly believe that EU law covers these grounds under ‘sexual orientation’ rather than ‘sex’ (gender), and the lack of awareness surrounding these grounds within European societies remains one of the key obstacles for transgender people’s access to justice. In addition, the extent to which the current legislation covers ‘gender expression’ (if at all) remains unclear as there has not been a single ECJ case referring to this ground and therefore EU legislation tends to only refer to ‘gender reassignment’ as in the case of *P v S and Cornwall County Council*.

It is generally acknowledged that within Europe we enjoy extensive equality legislation, thanks to both the ECHR and EU legislation and case-law. EU legislation has provided for significant improvements in the national legislation of the EU-27 and EEA countries, not least because of the impressive body

of law that has been adopted with regard to the ground of anti-discrimination since the adoption of Article 13. However, when assessing the adequacy of this legislation it is important to consider the legal certainty that it provides and the impact of the legislation on the daily lives of the persons that it protects. In the case of transgender people, unfortunately, the room for legal debate around who is actually covered by ‘gender reassignment’ compromises this certainty. In addition, the likelihood that current legislation will lead to a change in European culture vis-à-vis transgender people’s human rights is slim as they are virtually invisible in the texts of the law. Just like a clear decision in *P v S* was necessary for the adoption of adequate legislation in the UK, equal rights for transgender people across the EU can only be achieved through equally unequivocal EU level legislation. Gender equality legislation will need to address all areas of life of transgender people too, not least the inadequacy of health services².

It is a known fact that the adoption of the new anti-discrimination directive will paradoxically leave gender³ as the least legally protected ground. To remedy this gap, the Commission may reopen the Gender Directives during 2010⁴. ILGA-Europe shall surely participate in the consultation process

to ensure that the current gaps in EU gender equality legislation are closed. We are of course aware that unlike other grounds, 'gender expression and gender identity' were not clearly listed in Article 13 and this fact may present some obstacles. Nonetheless as the ECJ has shown in the case of *P v S* "the right not to be discriminated against on grounds of sex cannot be confined simply to discrimination based on the fact that a person is of one or other sex". This decision has now been acknowledged with regard to two EU gender equality directives and therefore the absence of express reference to 'gender identity and gender expression' in Article 13 should not in itself present an insurmountable stumbling block. Moreover, we believe that it would be inappropriate for the Commission to yet again refer to 'gender reassignment' rather than 'gender identity and gender expression'. The reasons for

this are twofold. The first is that 'gender reassignment' refers to a transitory medical process and is not in itself a ground of anti-discrimination, and the second is that this reference may leave transgender people who do not intend to undergo gender reassignment in a legal limbo.

This article is an open invitation for a debate towards ensuring that future gender equality legislation is effective in countering discrimination against every personal gender characteristic that fits a European society that truly celebrates its inclusive and diverse cultures. It calls on the EU Commission to once again be strong and do the right thing when it decides to reopen the Gender Directives.

SILVAN AGIUS

Policy & Programmes Officer
ILGA-Europe

Current EU gender equality legislation

Recital 3 of the *Recast Gender Employment Directive 2006/54/EC* refers to the ECJ decision in *P v S and Cornwall County Council* and states, that "the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex" and that therefore "it also applies to discrimination arising from the **gender reassignment** of a person".

The text of the Goods and Services Directive 2004/113/EC does not refer to gender identity or gender expression in any way. The Minutes of the 2606th meeting of the Council of the European Union, however, state that Article 3 is applicable to "**transsexuals**" in line with the *P v S* decision.

Difficulty with the current legislation

Gender reassignment refers to the medical treatments by which transsexual people align their physical sex with their psychological gender. It does not adequately cover the ground of gender expression.

The absence of references to transgender people within the text of the *Directive 2004/113/EC* make it unlikely that any providers of goods and services have taken transgender people into account during implementation.

ILGA-Europe's advice for future legislation

Expressly refer to the grounds of '**gender identity and gender expression**'.

Wording should be inclusive and refer to '**gender equality**' rather than '**equality between men and women**' as the latter may seem to suggest that the persons protected are of "one or other sex".

¹ See ILGA-Europe's Shadow Directive at http://www.ilga-europe.org/europe/campaigns_projects/campaign_for_new_european_anti_discrimination_legislation/what_is_ilga_europe_s_position/ilga_europe_s_shadow_directive

² See Transgender Eurostudy: Legal Survey and Focus on the Transgender Experience of Health Care at http://www.ilga-europe.org/europe/publications/non_periodical/transgender_eurostudy_legal_survey_and_focus_on_the_transgender_experience_of_health_case_april_2008

³ And therefore also gender identity and gender expression.

⁴ As indicated in the Explanatory Memorandum of the proposed anti-discrimination directive.



Why not later?

**Because the wait is
expensive!**

*Some claim now is not a good time to adopt
a new EU anti-discrimination directive.*

It's much more effective to implement similar laws in one go. There has already been considerable learning from the implementation of the first EU equality Directives which can immediately be used to put new laws into practice.

But more importantly, new EU law is needed **now** because discrimination continues to take place and people should not have to wait to get protection. Not to mention that inequality itself has a high social, political and economic cost!

LOVE OF
FREEDOM
FREEDOM
TO LOVE

COPENHAGEN 2009
worldOutgames

**40 years after Stonewall -
Conference on LGBT Human Rights
27-29 July 2009**

The 2nd World Outgames international conference on LGBT rights will be held in Copenhagen, Denmark from 27-29 July in 2009

Under the banner "Love of Freedom. Freedom to Love", a major objective of the World Outgames international conference on LGBT rights in Copenhagen will be to gather and disseminate best practices and tools for promoting diversity and tolerance.

Among the wide range of important topics and themes concerning LGBT rights to be covered are being out in sports and business, recognition of same-sex partnerships and marriage, parenting rights including adoption and medically assisted insemination, and LGBT history and heritage.

The conference program will be finalised by World Outgames 2009 in co-operation with co-presidents Rebeca Sevilla from Peru and Svend Robinson from Canada, along with an international advisory group consisting of 15 members from all over the world.

Further information:

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Do you know that if a new EU anti-discrimination directive is adopted, lesbian, gay and bisexual people will be protected from...



...being bullied at school?



...being insulted by a doctor?



...being refused entry to a restaurant or a hotel?



...being denied pensions and social benefits?

On 2 July 2008 the European Commission has proposed a single anti-discrimination directive which would prohibit discrimination on the grounds of age, disability, sexual orientation and religion or belief in the areas of social protection, including social security and health care, education and access to and supply of goods and services which are commercially available to the public, including housing.

Help to make sure this proposal becomes a law, support our campaign:

www.ilga-europe.org