



Letter to President of the European Commission Ursula von der Leyen,
Vice-President Věra Jourová,
Commissioner Helena Dalli,
Commissioner Didier Reynders.

Brussels, 30 November 2021

Dear Commission President von der Leyen,

As organisations working for an equal and inclusive Europe for lesbian, gay, bisexual, trans and intersex people, we would like to raise our concerns regarding the upcoming initiative of the European Commission on extending the list of EU crimes to all forms of hate crime and hate speech.

In recent years, hate speech and hate crime targeting persons and organisations based on sexual orientation, gender identity, gender expression, and sex characteristics have increased globally, and also across the European Union.

Given this increasingly alarming context, we would like to thank you for your strong message of support for our community and commitment to advancing equality for LGBTI people, from your State of the Union speech last September to the adoption of the first ever EU LGBTIQ Equality Strategy in November. The clear commitments to provide protection from hate crime and hate speech on extended grounds, including hate against LGBTI people are important signals that the European Commission stands firm on the protection of rights LGBTI people.

As the European Commission is at the finalisation stage of the initiative on extending the list of EU crimes to all forms of hate crime and hate speech, ILGA-Europe, TGEU and OII Europe are urging you and the College of Commissioners to stay true to the commitment made by you and Commissioner Dalli on several occasions to ensure the protection of LGBTI people against hate crimes and hate speech, by including the grounds of sexual orientation, gender identity, gender expression and sex characteristics explicitly in the proposed extension. Only by the explicit inclusion can existing protection gaps be closed across the EU and LGBTI phobic hate crime be tackled effectively. In the situation, where bias and discrimination against the group is prevalent in general society, provision of general legal protection often leads to disadvantageous application of the law against these group.

Over the last years, we have been seeing targeted attacks against trans people and their rights, which mis-characterise the fight for equality of trans people as promotion

of so-called “gender ideology”. In a targeted campaign of ultra-conservative forces against women’s rights as well as LGBTI rights, trans people are being targeted and made even more vulnerable, as the unleashing of transphobic hate speech often translates in violence and hate crimes against them. In addition, intersex people and intersex organisations have become increasingly a target of intersexphobic hate speech. These attacks are carried out by the same ultra-conservative actors and focus on the person having a variation of sex characteristics or the organisation working for intersex people’s rights.

The 2019 FRA LGBTI survey, clearly documented the overproportionate rise in hate crimes and hate speech against trans and intersex people. 17% of trans and 22% of intersex respondents experienced physical or sexual attacks, while 48% of trans and 42% of intersex people experienced harassment, registering the highest rates among the LGBTI population. The impact of hate crime and hate speech also proved to be disproportionately harmful for trans and intersex victims: 58% of trans and 54% of intersex respondents reported suffering from psychological problems and 48% of intersex and 39% of trans respondents felt limited in their freedom of movement, as a result of the attack. TGEUs global Trans Murder Monitoring showed that the last year has been the deadliest since the beginning of recordings with 357 reported cases; moreover 96% of murdered trans people globally were trans women and trans feminine persons.

In the light of the extreme rise in transphobia and the well-documented impact it is having on trans and intersex people, it would be a very negative signal if the Commission was to propose an extension of protection against hate crimes which does not explicit include the grounds of gender identity and sex characteristics. It would be a serious disappointment to the communities that are looking to the Commission to finally get protection of their rights, on equal footing with everyone else, following the strong commitments to the protection on trans and intersex rights in the EU LGBTIQ Strategy. It would also send a very dangerous message to all those actors who are fuelling hatred, that trans and intersex people remain a legitimate target of their hateful speech, as trans and intersex people would continue to be unprotected.

The European Commission has shown in the past that it is possible to ensure legal protection of trans and intersex people, by explicitly including gender identity and gender expression in EU legislation. The Victims’ Rights Directive has set the standard, by providing protection to LGBTI victims of crimes beyond sexual orientation by including gender identity and gender expression as protected grounds. FRA has also interpreted the Directive as inclusive of intersex people, which is in line with the core objective of this legal instrument, aimed at protecting all victims of crime, in respect of the non-discrimination principle. The new initiative on the extension of Eurocrimes cannot fall behind the standards previously set, and therefore it needs to explicitly include gender identity, gender expression and sex characteristics. Without recognition of bias-motivated violence and hate speech against LGBTI people, victims of such crimes are left out of the protection.

It is crucial to provide an effective legislative protection for LGBTI people by acknowledging the existing prevalence of the violence and incitement to discrimination against them through naming sexual orientation, gender identity, gender expression and sex characteristics explicitly in the EU level hate crime and hate speech legal initiative.

We are calling up on you to take effective and meaningful action to ensure that safety and dignity of LGBTI people are fully protected in the upcoming hate crime and hate speech initiative of the Commission, adding that we at ILGA-Europe, TGEU and OII Europe remain fully and firmly committed to supporting the European Commission in its work, wherever we can.

Sincerely,



Evelyne Paradis
Executive Director
ILGA-Europe



Dan Christian Ghattas
Executive Director
OII Europe



Masen Davis
Executive Director
TGEU