

November 2009

## **ILGA-Europe's contribution to the consultation on the roadmap for equality between women and men 2006-2010 and follow up strategy<sup>1</sup>**

### **1. Overall assessment of the performance of the Roadmap for equality between women and men 2006-2010**

The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) is firmly committed to the struggle towards gender equality, and over the years, has undertaken numerous initiatives to ensure that this fundamental principle is an integral part of all of its own policies and practices<sup>2</sup>. ILGA-Europe therefore greatly appreciates the contribution of the *Roadmap for equality between men and women* towards narrowing the gender inequality gaps in European societies.

At the same time, both ILGA-Europe and Transgender Europe (TGEU) believe that the follow-up strategy to the Roadmap should tackle particular dimensions that are specific to lesbian and bisexual women and trans people (LBT people) and the multi-faceted discrimination that they experience on the grounds of sex, gender, sexual orientation, gender identity, and/or gender expression. ILGA-Europe and TGEU call on the European Commission to address the rampant discrimination on the grounds of gender identity and gender expression both as part of gender equality and mainstreaming measures, and also as grounds of anti-discrimination in themselves.

### **2. Future challenges for gender equality**

- What are in your view the main medium and long term challenges that a new strategy for gender equality should address?

**The current aims for ILGA-Europe related to the EU agenda of gender equality are:**

- Combating gender-based stereotypes strengthening patterns of patriarchy, homophobia and transphobia, gendernormativity and heteronormativity<sup>3</sup>

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<sup>1</sup> Prepared in full consultation with, and active contribution of Transgender Europe  [www.tgeu.org](http://www.tgeu.org)

<sup>2</sup> Examples of such initiatives include the rules of the organization to ensure gender parity on its Board, and the focus on inclusion and equal representation of women and trans people during activities and events.

<sup>3</sup> *Definition of gendernormativity and heteronormativity:* the practices and institutions that legitimises and privileges (i) those who are comfortable in the gender they were assigned at birth, and (ii) heterosexuality and heterosexual relationships as fundamental and 'natural' within society.

- Ensuring effective legal protection against discrimination based on gender identity and/or expression both through existing and future legislation
- Tackling intersectionality/multiple discrimination on the grounds of gender, including intersectionality between sex, sexual orientation, gender identity and/or gender expression
- Ensuring that policies, including gender equality measures, fully take into consideration the needs of lesbians, bisexual women and trans people

#### A. Short and Medium Term Challenges

- 1) It is important that the new strategy for gender equality takes full account of the 1996 *P v. S and Cornwall County Council*<sup>4</sup> judgement, that explicitly ruled that discrimination arising [ō ] from the gender reassignment of the person+is considered as discrimination on the grounds of sex, and therefore addresses discrimination on the grounds of gender identity as an integral part of all gender equality measures. In addition to the case-law, the Fundamental Rights Agency is also of the opinion that:

The notion of sex or gender should be interpreted more broadly, in order to cover also gender identity . i.e., beyond transgender people as such, cross dressers and transvestites, people who live permanently in the gender opposite to that on their birth certificate without any medical intervention, and all those who wish to present their gender differently. Both these clarifications should be explicitly included in any relevant future EU anti-discrimination legislation, including a possible horizontal anti-discrimination directive.<sup>5</sup>

In line with the above, ILGA-Europe and TGEU propose that the new strategy for gender equality:

- a) Addresses the gaps that exist in terms of the implementation of the current gender equality Directives vis-à-vis trans people in a number of member states.<sup>6</sup>
  - b) Ensures that future legal protection against discrimination on the grounds of sex also effectively addresses discrimination based on the grounds of gender identity and/or expression effectively.<sup>7</sup>
  - c) Embeds the duty that gender mainstreaming measures and gender equality funding programmes also address discrimination against trans people in all spheres of life.
- 2) It is also important to ensure that reconciliation measures take into consideration the diversity of families and hence also the rights of same-sex partners and their children. This is particularly pertinent in legislation regarding parentality, such as the parental leave Directives, and other legislation that may have a bearing on parents and children. To this effect, it is important that the inclusive language is used around maternity and paternity both in legislation and programmes that result from the next strategy.
  - 3) The gender discrimination experienced by trans people and lesbian and bisexual women at the different stages of their lives has been generally absent in the publications and conferences that emanated from the Roadmap for equality between

<sup>4</sup> ECJ, Case C-13/94, *P. v. S. and Cornwall City Council* judgment of 30 April 1996

<sup>5</sup> See European Union Agency for Fundamental Rights (2008) *Homophobia and Discrimination on the Grounds of Sexual Orientation in the EU Member States, Part I - Legal Analysis* p.166

<sup>6</sup> *Ibid* p. 129-132

<sup>7</sup> See *Recommendation No.2 Legislation addressing Multiple Discrimination* in European Commission (2007) *Tackling Multiple Discrimination: Practices, Policies and Laws* p. 53

women and men 2006-2010. It is therefore suggested that the new strategy takes active steps to address the issues of these communities both in the scope of its mandate and in the publications and conferences that emanate from it.

## B. Long Term Challenges

The key long term challenges that are experienced by lesbian and bisexual women and trans people in their achievement of gender equality are: (i) gender-based stereotypes; (ii) patterns of patriarchy; (iii) homophobia and transphobia; and (iv) gender normativity and heteronormativity. On several occasions, LBT peoples do not meet the expected gender presentation, and/or sexuality that is widely shared as natural within society and as a result suffer from significantly higher risks of invisibility and marginalisation, as well as harassment and violence as has been widely documented.

Due to the above, combating gender-based stereotypes should be a key priority in the follow-up gender strategy. Further efforts should be undertaken to address patriarchy, stereotypes against LBT people, gender normativity and heteronormativity and. To this effect, ILGA-Europe and TGEU believe that the new strategy should expressly refer to men and women with a trans identity, and lesbian and bisexual women as communities whose experiences of discrimination needs to be specifically addressed within the larger gender equality framework.

### 3. **Main policy priorities for gender equality**

- Are the six priority areas defined in the Roadmap still relevant (see point 2.1)? Which new priorities should be considered?

#### A. Relevance of the six priority areas defined in the Roadmap

Both ILGA-Europe and TGEU believe that the six priority areas are still relevant for the term 2011-2015. Nonetheless, the approach with which the strategy is implemented will need to be widened so as to make the six priority areas fully inclusive of the full gender spectrum and the multi-dimensionality of people's identities. In practical terms, this means that the grounds of gender identity and gender expression will need to be specifically mentioned in the text of the strategy and the actions proposed will need to tackle gender discrimination in terms of these grounds as well. Moreover, more will need to be done in the fight against multiple discrimination that is experienced by women and men, including on the ground of sexual orientation.

#### B. New priorities that should be considered

##### 1) *Tackling of multiple discrimination*

Multiple discrimination, need to be tackled by both legislative and non-legislative measures thus tackling intersectionality/multiple discrimination against women, including intersectionality between sex, gender, sexual orientation, gender identity and/or gender expression.

This should be taking into consideration in relation to all current policy commitments, especially in relation to the eradication of all forms of gender-related violence, to equal economic independence between women and men, to the promotion of gender equality in external and development policies, and to the representation in decision-making.

##### 2) *Bridging of the education gap in European gender equality legislation*

In addition to the need to duly address discrimination based on gender identity and expression in the European equality legislation, there is a need to ensure effective protection against discrimination on the ground of gender in the area of education. Gender-based harassment in the field of education particularly affects LGBT youths' experience of education and hence their future prospects. Harassment in educational institutions also has a direct bearing on LGBT youths' high risk of recourse to suicide and self-harm<sup>8</sup>. Trans youth also experience significant difficulties in gender segregated schools, often resulting in a disruption of their educational path.

- How can gender mainstreaming and specific actions be made more effective?

The current language and framing of gender mainstreaming is rather problematic from an LBT point of view. This is because gender mainstreaming measures oftentimes do not take into account the multi-dimensionality of discrimination that is likely to act as a significant factor in holding the subject groups in low paid employment, under-represented in decision-making etc. ILGA-Europe therefore proposes that gender mainstreaming measures and equality mainstreaming measures be linked and made to work in parallel.

We also note the impact that funding of LBT projects has had at European, national and local levels and hence urge the European Commission to ensure that a portion of the funding for gender equality projects goes to LBT (inclusive) initiatives.

- In what policy areas could new gender targets be defined? Which targets should be quantified?

Our suggestion for the development of benchmarks is that quantitative and qualitative targets are defined for LBT people for all of the current six policy priority areas of the strategy and any new priority areas within the follow-up strategy.

For example, unemployment is a major concern for trans people. While 72% of men and 57% of women are in employment, the figures drop to 40% and 36% for transmen and transwomen respectively.<sup>9</sup> Similarly it is very likely that lesbian couples (particularly those caring for young children) experience the impact of the gender pay gap in a more pronounced way due to the likely double impact of the gender pay gap on their families.<sup>10</sup>

It would thus be very important to develop the right gender targets to quantify the impact of the discrimination against LBT people for the  $\pm$ Equal economic independence for women and men' priority and follow-up on the findings with targeted measures. Similar approaches towards the definition of gender targets vis-à-vis the other priorities will need to be assessed and developed accordingly.

- How can complementarities and synergies between the Commission's initiatives, the

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<sup>8</sup> See Takács J. (2006)  $\pm$ Social Exclusion of young lesbian, gay, bisexual and transgender (LGBT) people in Europe' Brussels: ILGA-Europe & IGLYO. [http://www.ilga-europe.org/europe/publications/non\\_periodical/social\\_exclusion\\_of\\_young\\_lesbian\\_gay\\_bisexual\\_and\\_transgender\\_people\\_lgbt\\_in\\_europe\\_april\\_2006](http://www.ilga-europe.org/europe/publications/non_periodical/social_exclusion_of_young_lesbian_gay_bisexual_and_transgender_people_lgbt_in_europe_april_2006) and Whittle S., Turner L., Al-Alami M. (2007)  $\pm$ Engendered Penalties: Transgender and Transsexual People's Experience of Inequalities and Discrimination' pp. 62-67 [www.pfc.org.uk/files/EngenderedPenalties.pdf](http://www.pfc.org.uk/files/EngenderedPenalties.pdf)

<sup>9</sup> See Commissioner for Human Rights Thomas Hammarberg (2009)  $\pm$ Human Rights and Gender Identity Issue Paper' pp. 29

<sup>10</sup> Unfortunately, no European research on gender pay gap has yet looked at the impact on lesbians so it is not yet possible to quantify the problem. See Miles, N., (2008)  $\pm$ The Double-Glazed Glass Ceiling: lesbians in the workplace' London: Stonewall <http://www.stonewall.org.uk/workplace/2430.asp>

actions by the Member States, the actions by Social Partners and organisations representing civil society, both at European and national level, be achieved?

#### A. Harmonised European Union strategy

There are a growing number of initiatives that European Institutions, member states and social partners have launched to tackle multiple discrimination and/or specific aspects of discrimination that are experienced by LBT people. This was particularly evident during the recently organized *Trans Rights Conference*<sup>11</sup> in Malta during which various European Institutions (including the European Commission) and member states presented the specific actions that they are carrying out towards trans equality.<sup>12</sup>

What is lacking at the moment though is a harmonized European Union strategy that expressly deals with the discrimination experienced by LBT people across Europe. The absence of gender identity and gender expression as grounds of anti-discrimination in European gender equality legislation, for instance, results in great discrepancies in the way that member states deal with such discrimination.<sup>13</sup> The same holds true for the multi-dimensionality of discrimination that is often experienced by LB women amongst others.

#### B. Complementarities and Synergies

The financial assistance that the European Commission provided to the ETUC towards their *Extending Equality* project<sup>14</sup>, and the project's impact on both the European and national levels during the past two years was a very good example of the sort of complementarities and synergies that ILGA-Europe would like to see happen more often. ILGA-Europe and TGEU also note with satisfaction EQUINET's intention to raise awareness amongst its membership of the right ways of tackling cases on the ground of gender identity.<sup>15</sup> Ideally, a similar model of partnership will be set up to guide member states towards including LBT people's concerns in their gender mainstreaming plans and annual gender budgeting.

- What types of improvements should be aimed at concerning the monitoring and the reporting on progress made?

The Fundamental Rights Agency, in both of its *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in EU Member States*, has identified the data gap

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<sup>11</sup> A one-day conference organised by ILGA-Europe in partnership with Transgender Europe's Steering Group on 28 October 2009. See [http://www.ilga-europe.org/europe/media/european\\_institutions\\_make\\_commitments\\_to\\_fight\\_discrimination\\_against\\_trans\\_people](http://www.ilga-europe.org/europe/media/european_institutions_make_commitments_to_fight_discrimination_against_trans_people)

<sup>12</sup> Good practice examples were presented by Scotland, Sweden, Belgium and the Netherlands and ranged from the work of governments to introduce legislation fighting discrimination and hate crimes against trans people, to the work of equality bodies in reaching out to the trans communities, and to processing of cases brought forward on the grounds of gender identity and gender expression.

<sup>13</sup> See European Union Agency for Fundamental Rights (2009) *Homophobia and Discrimination on the Grounds of Sexual Orientation and Gender Identity in the EU Member States*, Part II. The Social Analysis pp.109-111

<sup>14</sup> ILGA-Europe was a partner throughout the project and is still working in partnership with ETUC on the follow-up actions. See ETUC LGBT webpage <http://www.etuc.org/r/1355>

<sup>15</sup> Initial discussions between EQUINET and ILGA-Europe took place during 2009 and the dialogue is set to continue during 2010.

as a significant obstacle in the achievement of LGBT equality<sup>16</sup>. Therefore, a practical improvement in the implementation of the new strategy would be the creation of distinct categories in monitoring and reporting systems that address:

- a. the impact of gender equality and gender mainstreaming measures on the LBT communities.
- b. the impact of any LBT specific measures that are included within the larger gender equality and gender mainstreaming framework.

We encourage the European Commission to discuss with the FRA what are the key data gaps vis-à-vis trans issues, and other matters that are pertinent to lesbian and bisexual women, and identify the right research tools to address them.

## **Conclusion**

ILGA-Europe and TGEU look forward to work with the European Commission to effectively introduce the areas of work presented above into the 2011-2015 follow-up strategy, and to provide any assistance that may be needed along the way.

## **ANNEX**

- Declaration of the Trans Right Conference (28<sup>th</sup> October 2009, Malta)

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<sup>16</sup> See European Union Agency for Fundamental Rights (2008) *Homophobia and Discrimination on the Grounds of Sexual Orientation in the EU Member States, Part I - Legal Analysis* p.163 *and* European Union Agency for Fundamental Rights (2009) *Homophobia and Discrimination on the Grounds of Sexual Orientation and Gender Identity in the EU Member States, Part II . The Social Analysis* p.128-129