



ILGA-Europe's Memorandum to the Cypriot Presidency of the European Union

July – December 2012

The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) is a European NGO with 359 European, national and local lesbian, gay, bisexual, trans and intersex (LGBTI) member organisations in 44 European countries, and works for human rights and equality for lesbian, gay, bisexual, trans and intersex people at European level.

ILGA-Europe enjoys consultative status at the Economic and Social Council of the United Nations (ECOSOC), participative status at the Council of Europe and receives financial support from the European Commission and other funders. It is also a member of the Platform of Social NGOs. ILGA-Europe was established as a separate region of ILGA in 1996. www.ilga-europe.org

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ILGA-Europe's 4 key priorities for the Cypriot Presidency:

1. The Multiannual Financial Framework Programme (MFF) should ensure that the EU's funding programmes for equality and anti-discrimination is maintainedpg 2
2. Place progress towards the adoption of the Horizontal Anti-Discrimination Directive as a high priority, and clearly include LGBT people's concerns in the Equality Summit's agendapgs 3-4
3. Take leadership in matters of justice and home affairs, freedom of movement and mutual recognition of citizen's civil statuses, the adoption of asylum legislation, and legislation addressing hatred and violencepgs 4-9
4. Stand firm on the need of accession countries to respect their duties on the ground of sexual orientation and their need to adopt the necessary legislation according to the *acquis*.....pgs 9-11

1. Multiannual Financial Framework (MFF)

The finalisation of the negotiation of the next Multiannual Financial Framework is one of the Cypriot Presidency's most pressing priorities. ILGA-Europe is well aware that the programme will come to an end with the current financial framework, and that a programme that will follow it will need to be negotiated from scratch.

ILGA-Europe has been closely monitoring negotiations on the Rights and Citizenship Programme to ensure continued financial support for programmatic activities in the field of fundamental rights and equality. Like other European equality networks, ILGA-Europe has been advocating for a strong programme which clear objectives and predictable allocation of funding. Particular attention has been paid to the level of funding made available for equality and fundamental rights; the worry has been that funding will shrink and render the current human rights framework of the European Union ineffective, with the risk that a number of marginalised and discriminated Europeans will be left behind.

ILGA-Europe's recommendations:

- The Cypriot Presidency should work on the positive work done by the Danish presidency on the Rights and Citizenship Programme and work constructively with the European Parliament to ensure the adoption of a programme which includes concrete policy objectives and effective, predictable and adequate allocation of financial resources.
- The Cypriot Presidency should ensure that the European Commission's commitment to equality, non-discrimination and fundamental rights is clearly and strongly mainstreamed in the new Multiannual Financial Framework (2014+).

2. Equality and anti-discrimination

2.1. Horizontal anti-discrimination directive

The European Commission adopted the *Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation*, COM(2008) 426 on 2 July 2008. ILGA-Europe warmly welcomed the proposed text which would provide for protection against forms of discrimination which LGBT people, among others, face on a daily basis. ILGA-Europe also strongly supports the horizontal approach adopted in this proposed legislation as it would end a *de facto* hierarchy of rights at European level and harmonise protection against discrimination throughout the EU. This being said, ILGA-Europe considers that a number of changes need to be made to the original Commission proposal in order to ensure that the text is fully in line with the minimum standards laid out in the Race Equality Directive (2000/43/EC) and that the proposed Directive provides for effective protection against discrimination for lesbian, gay and bisexual people and other groups.

ILGA-Europe is very concerned by the deadlock in the negotiations at the Council. The European Parliament has overwhelmingly supported the adoption of the Directive through its adoption of the *European Parliament legislative resolution of 2 April 2009 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426 – C6-0291/2008 – 2008/0140 (CNS))*. Furthermore, the Parliament has shown a constant support for the adoption of the Directive through written and oral questions to the Commission and the EU Presidencies; through the organisation of hearings, and inclusion of references to the Directive in reports of the need of its adoption.

It is thus important that the Cypriot Presidency hears the plight of the European Parliament and that of European civil society and trade unions, and sets progress towards the adoption of the Directive as one of its high priorities.

ILGA-Europe's recommendations:

- The Cypriot Presidency has a great role to play in giving a new impetus to the negotiations. In view of this, we urge the Cypriot Presidency to allocate enough meetings to this file in the framework of the Employment, Social Policy, Health and Consumers Affairs Council, and to work closely with the Parliament rapporteur on the Directive, Raül Romeva i Rueda MEP so as to prepare strategically the Council's meetings on the Directive.
- We support the continuation of negotiation on specific subsections of the Directive, with a clear objective of reaching agreements on important parts of the text. Furthermore, we call on the Cypriot Presidency to consult and inform civil society representatives before and after Council meetings.
- We urge the Cypriot Presidency to support the proposal of an accessibility act, which would ease an harmonious implementation of the UN Convention on the

Rights of Persons with Disabilities at the European level and is likely to accelerate the Council' negotiations on the Horizontal Anti-Discrimination Directive.

Supporting Documents:

ILGA-Europe's webpage dedicated to the Horizontal Anti-Discrimination Directive http://www.ilga-europe.org/home/how_we_work/european_institutions/anti_discrimination_law

2.2. Equality Summit

The Equality Summit 2012 will focus on equality for growth. We acknowledge that equality can be a driver for growth, and discrimination or exclusion may lead to further costs for the whole society. However, we also strongly believe that equality has also a value on its own and it is critical that this summit addresses all types of inequalities and not only the ones that have economic implications. The Summit should therefore not leave behind clear reference to discrimination on the grounds of sexual orientation, gender identity and gender expression.

In addition, the Summit should be used to foster the dialogue between ministers, officials, and other stakeholders – including equality bodies, NGOs and social partners and to take a strong stand in favour of equality and human rights, particularly in the current context of financial and economic downturn.

ILGA-Europe's recommendations:

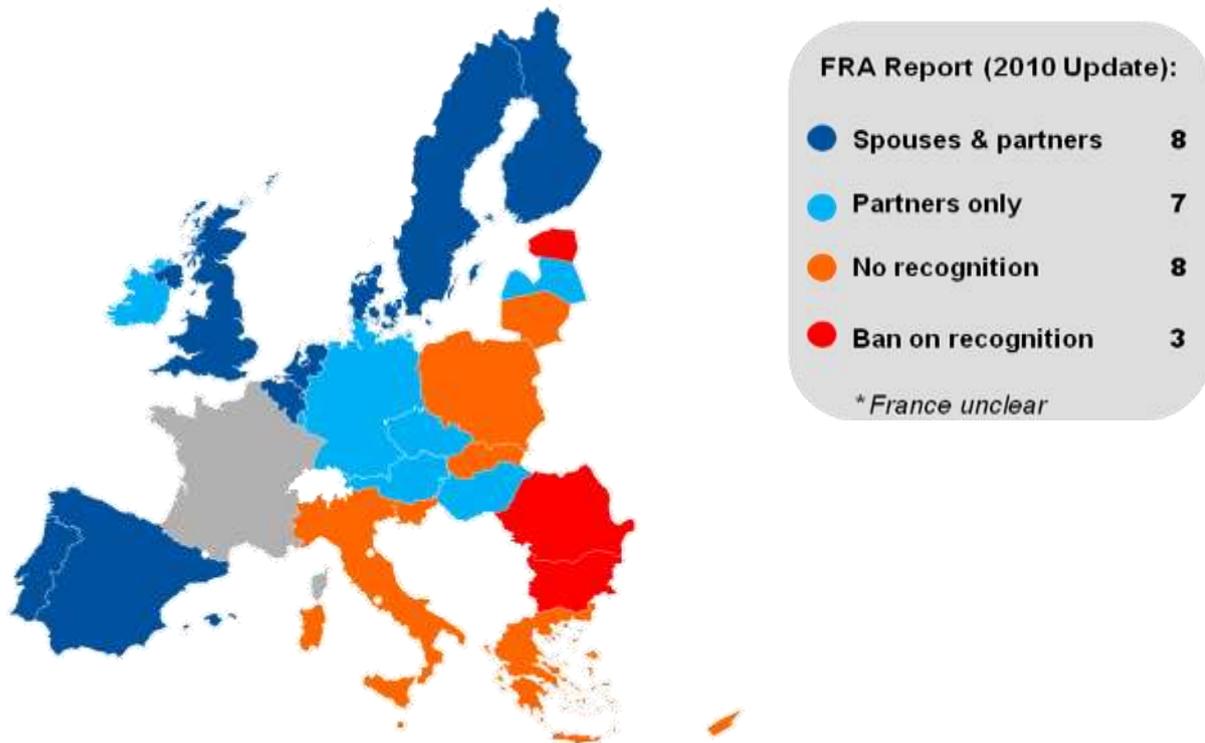
- Address directly and openly discriminatory practices and inequalities affecting lesbian, gay, bisexual, trans and intersex people.
- Ensure high level ministerial representation at the Summit and create space for effective and meaningful dialogue between officials and stakeholders.

3. Justice and Home Affairs

3.1 Freedom of movement, mutual recognition and property regime regulations

3.1.1 Freedom of Movement of same-sex partners

In 2004, the European Union adopted a Directive on the right to free movement and it entered into force on 30 April 2006. However, in spite of the fact that the Directive covers same-sex spouses and registered partners, and the fact the Directive has been in force for more than 5 years, the right to freedom of movement of same-sex partners remains severely restricted. The map below is based on the information collected by the Fundamental Rights Agency and published in its *Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity - 2010 Update: Comparative Legal Analysis* and indicates the several gaps that remain.



In 2013, the European Commission is expected to produce a report on the current implementation of the Directive.

ILGA-Europe's recommendations:

- In view of the above, it is thus important that the Cypriot Presidency calls on the European Commission to specifically look at the restrictions that still apply at national level against the freedom of movement of same-sex couples and addresses them adequately in its forthcoming report.
- It is equally important that the Cypriot Presidency calls on the Council and EU Member States to take action on restrictions that effectively still apply to same-sex couples' freedom of movement; while supporting the Commission to examine difference of treatment between different-sex and same-sex couples with strict scrutiny – expressly examining indirect discrimination and unjustified disparate administrative burdens placed on couples and/or individuals.

Supporting Documents:

Lesbian, Gay, Bisexual and Transgender Families and the Free Movement Directive: Implementation Guidelines (January 2009) http://www.ilga-europe.org/home/publications/reports_and_other_materials/lesbian_gay_bisexual_and_transgender_families_and_the_free_movement_directive_implementation_guidelines_january_2009

Homophobia, Transphobia and Discrimination on Grounds of Sexual Orientation and Gender Identity - 2010 Update: Comparative Legal Analysis. <http://www.fra.europa.eu/fraWebsite/attachments/FRA-LGBT-report-update-corr2010.pdf>

3.1.2 Property Regime Regulations

In March 2011, the European Commission launched a communication proposing two regulations dealing with property rights for bi-national married and registered couples. These proposals do not encroach on EU Member States sovereignty on domestic family law matter, but merely provide a framework for the applications of existing law on property regimes alone.

ILGA-Europe welcomed the two proposed regulations but remains concerned that the text of the Regulations dealing with registered partners' property regime may be weakened or abandoned as a result of the negotiations that are currently taking place in Council. Our concern was proved to be founded by the Fundamental Rights Agency in its opinion on proposed EU regulation on property consequences of registered partnerships (June 2012).

ILGA-Europe's recommendations:

- The Cypriot Presidency should ensure that the two sets of Regulations continue to be debated as a package and progress towards their adoption in tandem.
- The Cypriot Presidency should also ensure that Member States abide by their obligation to respect Article 19 of the Treaty of the European Union and the Charter of Fundamental Rights, whereby no direct or indirect discrimination on the ground of sexual orientation is allowed, and that hence there should be no differential treatment between marriages and registered partnerships.

Supporting Documents:

ILGA-Europe's reaction to the European Commission's proposal on property right of married and registered couples: cautious welcome http://www.ilga-europe.org/home/news/for_media/media_releases/ilga_europe_s_reaction_to_the_european_commission_s_proposal_on_property_right_of_married_and_registered_couples_cautious_welcome

FRA opinion on proposed EU regulation on property consequences of registered partnerships http://fra.europa.eu/fraWebsite/research/opinions/op-property-regimes_en.htm

3.2 Asylum

3.2.1 Asylum Package

The Cypriot Presidency should facilitate the negotiation on the recasting of the Procedure Directive (2005/85/CE) and Reception Conditions Directive (2003/9/CE) in order to deliver on the commitment to reach a Common European Asylum System within 2012. In that process, it will be relevant to make sure that the *European Parliament legislative resolution of 6 April 2011 on the proposal for a directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast) (COM(2009)0554 – C7-0248/2009 – 2009/0165 (COD))* is fully considered.

ILGA-Europe recommendations:

- In this debate, particular attention should be paid to the need to ensure a real identification of both asylum seekers' potential special procedural needs and their special reception needs. For that purpose, the Parliament's position should be considered seriously (Article 24 of the Procedure Directive; Article 22 and Annex 1 of the Reception Conditions Directive);
- Two amendments of the European Parliament's report on the Procedure Directive could be more clearly included in the Directive: the inclusion of training requirements on the situation of applicants in need of special procedural guarantees, as defined in article 2 (d) of the Commission's proposal (Article 4(3)); and the possibility for the personnel examining applications to seek advice, whenever necessary, from experts on particular issues, including sexual orientation and gender identity (Article 10(3)(d)).

Supporting Documents:

The recast of the EU asylum Procedure and Reception Directives, July 2011 http://www.ilga-europe.org/home/publications/policy_papers/the_recast_of_the_eu_asylum_procedure_and_reception_directives_july_2011

3.2.2 European Asylum Support Office (EASO)

Following the recent establishment of the Office, the Cypriot representatives within the Management Board should proactively work to ensure that the work conducted is fully inclusive of gender, sexual orientation and gender identity dimensions. It is in particular important to make sure that the work methodologies of the Office clarify the way civil society organisations can make available to the EASO the relevant information they are in a position to share, as regards the implementation of the following Office's missions:

ILGA-Europe recommendations:

- Pooling of good practices of asylum authorities in Europe;
- Training activities and follow up on the European Asylum Curriculum;
- Development of country of origin (COI) information at European level.

Supporting Documents:

"En-gendering the European Asylum Support Office" – Recommendations for the integration of a gender perspective into the work of the European Asylum Support Office http://www.ilga-europe.org/media_library/ilga_europe/news_item_files/digest_recommendations_to_easo_may2011_final

3.3 Combating homophobic and transphobic violence

Although all EU Member States have subscribed, at the Council of Europe, to detailed commitments on tackling homophobic and transphobic violence by means of criminal law and other targeted policies, the European Union still falls short of adopting instruments promoting a consistent response to discriminatory violence. To address this gap, it will be important to support the adoption of the Victims' Rights Directive, which includes a reference to "bias crime" and an inclusive list of personal characteristics to be taken into account in the individual assessment of specific protection needs offered to all victims of

crimes. The Cypriot Presidency is also in the position to start paving the way towards EU criminal law standards as regards the definition of discriminatory violence, and to make sure that this issue is addressed in the work of European police agencies.

3.3.1 Victims' Rights Package

The Cypriot Presidency should facilitate the negotiations and the adoption of the *Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime*, COM(2011) 275 final of 18 May 2011. ILGA-Europe considers that the identification of victims' specific protection needs (Article 18, Recitals 17 and 18) should be paid a particular attention, and that the reference to an individual assessment taking into consideration personal characteristics of the victim as well as the circumstances and nature of the crime should be adopted in its current formulation. The definition of family members (article 2 (b)) is inclusive of registered partners and non-marital cohabitants, and should also be adopted in its current formulation.

Supporting Documents:

ILGA-Europe's position paper on the Victims ' Rights Package http://www.ilga-europe.org/home/publications/policy_papers/victims_rights_package

3.3.2 Criminal legislation addressing bias crimes, including LGBT-phobic violence

The Cypriot Presidency should also be proactive in exploring the possibility to build a coalition of Member States in favour of EU criminal legislation measures to establish minimum rules concerning the definition of criminal offences and sanctions in the area of violence or hatred directed against a group of persons defined by reference to sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or gender identity ("hate crime"). According to article 76 of the Treaty on the Functioning of the European Union, legislative initiative in this area belongs to the Commission or to a coalition of a quarter of the Member States.

Supporting Documents:

The legal grounds for inclusive EU legislation against bias violence and hatred (October 2011)
http://www.ilga-europe.org/home/publications/reports_and_other_materials/research_legal_grounds_2011

Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (March 2010)
<https://wcd.coe.int/ViewDoc.jsp?id=1606669>

3.3.3 European Police College (CEPOL)

The Cypriot Chairmanship of CEPOL's Governing Board should be an opportunity for this body to move towards the adoption of a new training curriculum on prevention and investigation on hate related offences. At the same time, this issue should also be addressed in the framework of existing exchange programmes. Finally, the Governing

Board should look into mainstreaming of LGBT rights in the existing training curricula, such as the curricula on Management of Diversity and on Domestic Violence.

Supporting Documents:

ILGA-Europe toolkit for training police officers on tackling LGBTI-phobic crime (October 2011)
http://www.ilga-europe.org/home/publications/reports_and_other_materials/training_toolkit_police_2011

4. EU Enlargement

ILGA-Europe would like to bring to the attention of the Cypriot Presidency the fact that *sexual orientation* has been omitted from the anti-discrimination law of the FYR Macedonia and from the draft anti-discrimination law of Turkey as a ground for discrimination. As candidate countries to EU membership both Turkey and FYR Macedonia are expected to introduce comprehensive anti-discrimination laws providing protection from discrimination on the grounds of age, ethnic origin, disability, religion, race and sexual orientation.

In the Western Balkan countries (Albania, Bosnia and Herzegovina, Croatia, Kosovo^[1], Montenegro and Serbia) the enacted anti-discrimination laws in principle comply with the EU *acquis*. However, the actual implementation of the legislation lacks the infrastructure and/or awareness needed for the legislation to be effective. Additionally, the judicial prosecution of acts of discrimination against LGBT people is not always in line with EU standards.

On 1 March 2012, the European Union leaders have granted Serbia candidate status of EU membership following the recommendations made by the European Commission in October 2011. The European Commission and the Member States have agreed that Serbia has made series of democratic reforms. However, we would like to draw the attention of the Cypriot Presidency to the fact that Belgrade Pride 2011 was banned by Serbian authorities. The banning of the Belgrade Pride 2011 was a clear failure of the government of Serbia to guarantee the constitutional right of LGBT people to freedom of assembly.

We would also like to highlight that in all Western Balkan countries and in Turkey LGBT people are victims of very frequent instances of discrimination and violence.

ILGA-Europe Recommendations:

- The Cypriot Presidency should emphasise the obligation of the governments of the FYR Macedonia and Turkey to align their national anti-discrimination legislation with the EU *acquis* and to include express protection from discrimination on the ground of sexual orientation.

^[1] Under UNSCR 1244/1999

- Encourage the governments of Albania, Bosnia and Herzegovina, Croatia, Kosovo*, Montenegro and Serbia to level up the implementation of anti-discrimination legislation and provide adequate infrastructure and information for LGBT people to be able to lodge complaints and have them processed according to EU law.
- Call on Serbian authorities to take all necessary measures to safeguard the right to freedom of assembly for LGBT people, to adequately protect Belgrade Pride 2012 and to tackle the elevated levels of homophobia and transphobia in Serbian society.

Supporting Documents:

ILGA-Europe's reports on the human rights situation LGBT people in the **Western Balkans** and **Turkey** as submissions to EC 2011 Progress Reports http://ilga-europe.org/home/how_we_work/european_institutions/enlargement/submissions

Further country specific information:

FYR Macedonia's removal of sexual orientation ground from anti-discrimination law:

1. ILGA-Europe's letter to the Government of Macedonia http://ilga-europe.org/home/guide/country_by_country/fyr_macedonia/ilga_europe_s_letter_to_the_government_of_macedonia_english
2. Response from the European Commission on letter from ILGA-Europe of 1 February 2010 http://ilga-europe.org/home/guide/country_by_country/fyr_macedonia/response_from_the_european_commission_on_letter_from_ilga_europe_of_1_february_2010
3. Open letter by Euro MPs to Macedonian Parliament: Don't vote a deficient anti-discrimination law http://ilga-europe.org/home/get_involved/your_space/resources/open_letter_by_euro_mps_to_macedonian_parliament_don_t_vote_a_deficient_anti_discrimination_law

Serbia's ban of Belgrade Pride 2011:

1. ILGA-Europe urges Serbian authorities to ensure the necessary protection and support to Belgrade Pride 2011 http://ilga-europe.org/home/news/latest_news/statement_belgrade_pride
2. Open letter calling Serbian authorities to support and protect Belgrade Pride 2011 http://ilga-europe.org/home/guide/country_by_country/serbia/open_letter_belgrade_pride_2011
3. Written Declaration PACE - banning of the Belgrade Pride 2011 http://ilga-europe.org/home/guide/country_by_country/serbia/written_declaration_pace_banning_of_the_belgrade_pride_2011
4. ILGA-Europe's Feedback on the European Commission's 2011 Progress Reports http://ilga-europe.org/home/how_we_work/european_institutions/enlargement/feedback/ilga_europes_feedback_on_the_european_commissions_2011_progress_reports

Turkey's removal of the ground of sexual orientation from the draft anti-discrimination law:

1. ILGA-Europe's letter to Commissioner Füle - January 2011 http://ilga-europe.org/home/guide/country_by_country/turkey/ilga_europe_letter_to_commissioner_fuele_january_2011

2. Amnesty International's report on Turkey *Not an Illness Nor Crime*.
<http://www.amnesty.org/en/library/asset/EUR44/001/2011/en/aff47406-89e4-43b4-93ed-ebb6fa107637/eur440012011en.pdf>