

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

January – June 2012

The European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe) is a European NGO with 331 European, national and local lesbian, gay, bisexual, trans and intersex (LGBTI) member organisations in 42 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

ILGA-Europe's European Commission Register of interest representatives ID number is 11977456675-84

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ILGA-Europe's 5 key priorities for the Danish 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.....pg 2-3
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 4-8
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 9-10
5. Include LGBTI issues in the Presidency's agenda.....pgs 10-11

1. Multiannual Financial Framework (MFF)

The negotiation of the next Multiannual Financial Framework is one of the Danish 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.

The worry that ILGA-Europe shares with other European equality networks is that the programme that will follow PROGRESS will shift away from the current focus on equality as a fundamental right and instead link equality firmly and exclusively with economic growth, thus moving away from the original principle and severely narrowing the focus. Another worry is that the amount of the funding made available for equality and fundamental rights 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 Danish Presidency should ensure that the European Commission's commitment to equality, non-discrimination and fundamental rights is clearly and strongly reflected in the new Multiannual Financial Framework (2014+) through concrete policy objectives and effective, predictable and adequate allocation of financial resources.

2. 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 LGBT 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 Danish 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 Danish Presidency has a great role to play in giving a new impetus to the negotiations. In view of this, we urge the Danish representatives to work closely with the Parliament rapporteur on the Directive, Raúl Romeva i Rueda MEP so as to prepare strategically the Council's meetings on the Directive.
- We suggest keeping on negotiating on specific subsections of the Directive, with a clear objective of reaching agreements on important parts of the text. Furthermore, we call on the Danish Presidency to consult and inform civil society representatives before and after Council meetings.
- We urge the Danish 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:

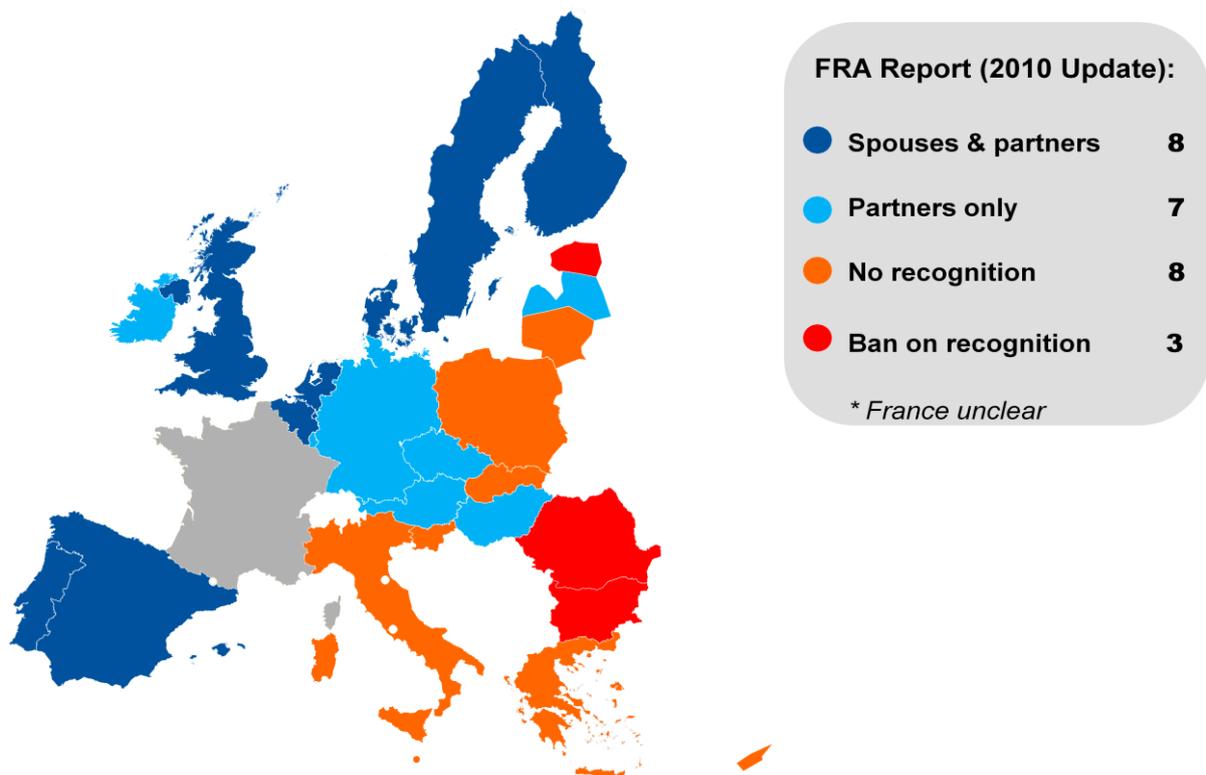
ILGA-Europe's webpage dedicated to the Horizontal Anti-Discrimination Directive http://www.ilga-europe.org/home/how_we_work/european_institutions/anti_discrimination_law

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 new 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 Danish 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 Danish 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 Mutual Recognition

In December 2010, the European Commission launched a Green Paper entitled *Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records*, COM/2010/0747 final. This consultation was aimed at providing insight as to how the European Union should proceed with regard to the recognition of civil status documents across the European Union.

ILGA-Europe is pleased to see that the European Commission has included in its Work Programme for 2012 a mutual recognition legislative proposal that takes into account the submission that were made to the Green Paper.

ILGA-Europe's recommendations:

- The Danish Presidency should ensure that the best legislative proposal is tabled by the European Commission addressing existing lack of civil status recognition of same-sex spouses; same-sex registered partners and cohabitantes; children of same-sex partners' link to their parents; and trans people's legal gender recognition.

Supporting Documents:

ILGA-Europe's contribution to the Green Paper - April 2011 http://www.ilga-europe.org/home/publications/policy_papers/green_paper_april_2011

3.1.3 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.

ILGA-Europe's recommendations:

- The Danish Presidency should ensure that the two sets of Regulations continue to be debated as a package and progress towards their adoption in tandem.
- The Danish 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

3.2 Asylum

3.2.1 Asylum Package

The Danish 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, and that the Parliament is also able to adopt a position when it comes to parts of the directives where the Commission's amended proposals of June 2011 significantly differ from the initial proposals published in 2008 (Reception Conditions Directive) and 2009 (Procedure Directive).

ILGA-Europe recommendations:

- In this debate, particular attention should be paid to the establishment of relevant identification mechanisms covering both asylum seekers' potential special procedural needs and their special reception needs (Article 24 of the Procedure Directive; Article 22 and Annex 1 of the Reception Conditions Directive);
- The Commission's text should also be improved in article 18(3) and 18(4) of the Reception Directive on modalities for material reception conditions. These paragraphs are provisions about the specific concerns and the situation of vulnerable persons in the premises and accommodation centres, and about

prevention of violence in these centres. The text mentions only gender and age specific concerns, and gender based violence. These two paragraphs should be improved to explicitly include all specific concerns and all forms of violence, in particular violence based on ethnicity, gender, sexual orientation, gender identity, disability, religion or belief, age, sexual assault or a multiplicity of these characteristics. All these forms of violence can have harmful consequences on asylum seekers and may prevent their claims from being adequately dealt with by the asylum authorities.

- Finally, 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 Danish 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, in particular in implementation of the Office's missions as regards:

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 Package, which includes a first reference to "bias crime". The Danish 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 Danish 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 vulnerable victims (Article 18, Recitals 17 and 18) should be paid a particular attention, and that the reference to an individual vulnerability 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), (c) and (d)) 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 LGBT-phobic violence

The Danish 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 Danish 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 Danish 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 that is needed for the legislation to be effective. Additionally, the judicial prosecution of acts of discrimination against LGBT people is not in line with EU standards.

On 12 October 2011 the European Commission recommended that Serbia is awarded a candidate status of EU membership. In the light of the pending decision of the Council on this application, we would like to draw the attention of the Danish 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 continually victims of severe discrimination and violence.

ILGA-Europe Recommendations:

- The Danish 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 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 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>

5. LGBTI impetus

During 2012, both the United Nations and the Council of Europe are giving particular attention to the rights of lesbian, gay, bisexual, trans and intersex people. ILGA-Europe calls on the Danish Presidency to actively support both institutions in their work and to ensure that the EU demonstrates leadership at international level and to ensure that coherent strategies are put in place by all international actors.

5.1 United Nations' forthcoming report on sexual orientation and gender identity

On 17 June 2011, the United Nations Human Rights Council (HRC) adopted a resolution on *Human rights, sexual orientation and gender identity A/HRC/17/L.9/Rev.1*. The Resolution is the first of its kind and expresses grave concern about acts of violence and discrimination against individuals because of their sexual orientation and gender identity. It calls on the UN High Commissioner for Human Rights to commission a global study to document discrimination and violence on the grounds of sexual orientation and gender identity. A panel discussion informed by this study is also expected to take place at the nineteenth session of the HRC in 2012.

ILGA-Europe's recommendations:

- The Danish Presidency should take this opportunity to demand greater commitment from EU Member States to address discrimination and violence on the grounds of sexual orientation and gender identity.
- The Danish Presidency should also use the leadership on the European Union to call for an end of criminalisation of LGBTI identities and the repeal of all discriminatory legislation around the world.

3.2 United Kingdom's Chairmanship of the Committee of Ministers of the Council of Europe

The United Kingdom has taken the Chairmanship of the Committee of Ministers of the Council of Europe on 7 November 2011 and has placed "*combating discrimination on the grounds of sexual orientation and gender identity*" amongst its six particular focuses. Such an express reference to sexual orientation and gender identity in the priorities of the Chairmanship of the Committee of Ministers is a first in the history of the Council of Europe, and hence the Danish Presidency should support the UK in making sure that this focus will have the desired impact.

ILGA-Europe's recommendations:

- The Danish Presidency should take this opportunity to work closely with the UK Chairmanship of the Committee of Ministers, placing a particular focus on the full implementation of the Committee of Ministers Recommendations on the grounds of sexual orientation and gender identity by the EU Member States.

- The Danish Presidency is also urged to work with the UK Chairmanship to raise the profile of LGBTI issues at both the Council of Europe and the European Union, bringing about greater cooperation between the two regional institutions on human rights matters that are relevant for lesbian, gay, bisexual, trans and intersex people.