



European Union Agency for  
Fundamental Rights (FRA)

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# Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States

## Part II: The Social Situation

SUMMARY REPORT

March 2009

A great deal of information on the European Union Agency for Fundamental Rights is available on the Internet. It can be accessed through the FRA website (<http://fra.europa.eu>).

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## Background

In 1997 Article 13 of the Amsterdam Treaty granted the European Community powers to combat discrimination on the grounds of sexual orientation. The prohibition of sexual orientation discrimination was repeated in the European Union's Charter of Fundamental Rights proclaimed in 2000. The EC Treaty and the Charter are among the few international instruments to explicitly prohibit unequal treatment based on sexual orientation.

Since 2000 the Employment Framework Directive prohibits sexual orientation discrimination, but only in the context of employment and training. In July 2008 a further step was taken by the European Commission to protect the equal treatment of lesbian, gay, bisexual, transsexual and transgender (LGBT) persons through its Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation. This new Directive would extend protection against discrimination on grounds of sexual orientation beyond the area of employment, addressing some of the key challenges currently facing LGBT persons.

It is also worth noting that in the international arena in December 2008 the EU Member States showed their public commitment to combating discrimination against LGBT persons by supporting a Declaration on sexual orientation and gender identity presented for signature before the General Assembly of the United Nations.

However, such achievements must be seen in the context of a worrying social situation. In recent years a series of events in EU Member States, such as the banning of Pride marches, hate speech from politicians and intolerant statements by religious leaders, have sent alarming signals and sparked a new debate about the extent of homophobia and discrimination against lesbian, gay, bisexual, transsexual and transgendered persons in the EU. Such events led the European Parliament to adopt a resolution condemning homophobia and sexual orientation discrimination in 2005.

In 2007 the European Parliament requested the newly established Fundamental Rights Agency to develop a comprehensive comparative report relating to the existence of homophobia and discrimination based on sexual orientation in all EU Member States. In response the Agency carried out a large-scale legal and social research project during 2007 and 2008.

This comprehensive research is published in two parts, a legal and a social analysis both serving as evidence for the need to develop legal and other measures to ensure the respect, protection and promotion of the fundamental rights of LGBT persons in the EU.

The Fundamental Rights Agency published the first part, a comprehensive comparative legal analysis of the situation in the Member States, 'Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States – Part I Legal Analysis' in June 2008. The research was carried out by the FRA's legal experts' network FRALEX.

The second part, 'Homophobia and Discrimination on grounds of Sexual Orientation and Gender Identity in the EU Member States – Part II Social Analysis' published in March 2009 examines the social situation of LGBT persons drawing upon material gathered through fieldwork interviews with LGBT NGOs, Equality Bodies and public authorities in all

Member States and a questionnaire survey of stakeholders. This new data has been combined with existing academic literature and Eurobarometer surveys. The research was carried out by the Danish Institute for Human Rights and COWI.

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## EU anti-discrimination law

The legal analysis examined the hierarchy of discrimination grounds seemingly established under the two Equality Directives adopted in 2000 concluding that this might not be compatible with the status acquired by the prohibition of discrimination on grounds of sexual orientation in international human rights law. Furthermore, in its overview examination of equality bodies set up by the EU Member States in the implementation of the equality directives of 2000, it showed that 18 of them have an equality body whose powers extend to discrimination on grounds of sexual orientation. Finally (in the context of free movement of peoples), it found that differential treatment between married couples and non-married same-sex couples (formally registered or not) could amount to discrimination on grounds of sexual orientation, where marriage was not available for same-sex couples in the host state.

Therefore, the legal analysis concluded that a comprehensive horizontal directive extending the protection of the Race Equality Directive in employment and training, education, social protection (including social security and healthcare), social advantages, membership and involvement in organisations of workers and employers and access to goods and services, including housing, to all grounds of discrimination would offer comprehensive protection in the spirit of the Charter of Fundamental Rights.

### What can be done

The FRA believes that the impact of anti-discrimination law can be strengthened.

- ✓ The European Commission's Proposal of 2 July 2008 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 final) would extend the area of application of current EU law to all key areas of social life providing effective protection. The amendments suggested in the European Parliament's Draft Report of 14 January 2009 (PE 418.014) further improve the Commission's Proposal.
- ✓ Member States that have not done so already are encouraged to consider extending the scope of existing Equality Bodies to include discrimination on grounds of sexual orientation within their remit and grant adequate resources to allow the provision of both legal as well as psycho-social support to discrimination victims.
- ✓ Member States are encouraged to develop, or strengthen, existing awareness raising and training initiatives specifically targeting public officials at all levels of government on LGBT topics, and the principles and obligations regarding equal treatment and non-discrimination contained in national legislation, EU law and international human rights instruments (including case-law of the European Court of Justice and the European Court of Human Rights). LGBT organisations should also be involved in the planning and implementation of such actions.
- ✓ Member States are encouraged to conduct '*diversity audits*' and develop equal treatment and diversity policies for all grounds of discrimination in their public

administration at all levels, providing a 'best practice' example to other employers.

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## Attitudes towards LGBT persons

Major differences exist between EU Member States regarding public opinion towards LGBT people and issues. For instance, the Eurobarometer Discrimination Survey in 2006 found that the majority of the population in the Netherlands (82 per cent), Sweden (71 per cent) and Denmark (69 per cent) was in favour of same-sex marriage, but only a small minority was in favour in Romania (11 per cent), Latvia (12 per cent) and Cyprus (14 per cent). Also, while in the Netherlands 91 per cent of the population was comfortable with having a homosexual as a neighbour, in Romania only 36 per cent was of the same opinion. The Eurobarometer Discrimination Survey in 2008, using a ten-point 'comfort scale', produced similar results: Swedes (9.5), Dutch and Danish respondents (9.3) were the most 'comfortable' with the idea of having a homosexual as a neighbour, but a much lower 'comfort' level was recorded in Bulgaria (5.3), Latvia (5.5) and Lithuania (6.1).

It is also worth mentioning variations in public opinion *within* Member States that were made apparent by the Eurobarometer Survey. These concern: (1) those with negative attitudes towards LGBT persons (for example, older people more than young, men more than women, the less-educated more than the well-educated); (2) certain contexts in which LGBT persons tend to be regarded more negatively (for example, the reaction to LGBT persons as carers or teachers of children or as close relatives, is more hostile than the reaction to having LGBT persons as friends or doctors); and (3) those most affected by hate crime and bullying (for example, young people more than older).

In countries with strong legislation protecting the rights of LGB people, including the right for a legal partnership, general attitudes towards LGB people tend to be more positive. Attitudes towards transgender persons are significantly more negative compared to attitudes towards lesbians, gay men and bisexuals.

### What can be done

The FRA believes that measures, such as those noted below, could have a significant impact in changing people's attitudes towards LGBT persons.

- ✓ The European Commission's awareness-raising campaign "*For Diversity. Against Discrimination*" launched in 2003 should be further strengthened and linked to relevant government and civil society activities in the Member States.
- ✓ The Commission should also consider intensifying its efforts to share models of good practice effectively with Member States in the application of the EU's anti-discrimination legislation, particularly through EQUINET, the European network of national Equality Bodies.
- ✓ Member States are encouraged to develop, or strengthen, existing awareness-raising campaigns on LGBT issues. LGBT organisations should be involved in

the planning and implementation of such projects, creating strong multi-agency partnerships.

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## Freedom of Assembly

LGBT persons have exercised their right to freedom of assembly when fighting homophobia and campaigning for LGBT rights - most notably during Pride Parades or similar gatherings and events. In recent years, bans or administrative impediments created problems for the organisation of lawful and peaceful LGBT demonstrations in Estonia, Latvia, Lithuania, Poland, Romania and Bulgaria, although, with the exception of Lithuania, LGBT NGOs were subsequently able to carry out the planned events in those Member States.

In some Member States, public authorities have not been able, or willing, to ensure the safety of participants in LGBT demonstrations from attacks by counter-demonstrators. Within the last five years attacks of this kind have occurred in Bulgaria, Czech Republic, Estonia, Hungary, Italy, Latvia, Poland, Romania and Sweden. Such incidents were often accompanied by homophobic public statements or hate speech. In several Member States (Bulgaria, Czech Republic, Cyprus, Hungary, Italy and Malta), calls for improving the rights of LGBT persons have invariably been met with negative responses from some politicians and representatives of religious institutions or groups.

In some Member States LGBT NGOs have also experienced problems in renting premises for political or cultural activities, and organisers of public LGBT debates have encountered problems in obtaining access to cultural and political venues.

In other Member States, however, LGBT organisations celebrated pride events often with the participation of government ministers, political parties, and, in some cases, religious organisations: in the Netherlands the 2008 Canal Pride in Amsterdam was joined by three government ministers, representing the cabinet, and the mayor of Amsterdam. In Austria, among the 120,000 participants of the 2008 Pride event was the equality body of the city of Vienna; in Sweden, the Minister for EU Affairs opened the 2008 Stockholm EuroPride attracting more than 80,000 participants among which was the country's Lutheran Church; in Spain, the 2008 Madrid Pride was joined by the Equality Minister and hundreds of thousands of participants from all over Europe; in France, more than half a million joined the Paris Gay Pride in 2008 including the Mayor of Paris.

The right to freedom of assembly is enshrined in both the European Convention on Human Rights and the EU's Charter of Fundamental Rights and is closely connected to the right to freedom of expression. The legal analysis highlights that according to the case-law of the European Court of Human Rights freedom of assembly (taken together with the right to freedom of expression) may be subject to certain restrictions, such as a requirement of prior notification in order to allow authorities to take measures ensuring the peaceful exercise of this right. The exercise of the right to freedom of assembly must not, however be restricted arbitrarily or in a disproportionate manner, which could be the case where an LGBT event is banned simply because its message is considered to offend public morality. On the other hand, restrictions on counter-demonstrations which may be seen to incite violence or hatred (as opposed to those, for instance, which merely

demonstrate in favour of the 'sanctity of marriage' or of the 'traditional family') may be justified in order to protect the rights and freedoms of others. Furthermore, the State is under an obligation to take reasonable measures to protect those exercising the right to freedom of assembly where counter-demonstrations interfere with this right due to, for instance, inspiring fear of physical violence.

### What can be done

The FRA believes LGBT events facilitate the visibility and empowerment of LGBT persons and a number of measures could support these efforts.

- ✓ Member States, and particularly local and regional authorities, should facilitate LGBT organisations in their efforts to organise significant events, such as Pride, that create more public awareness on LGBT issues and empower LGBT people, by providing resources and protection against homophobic counter-demonstrations, especially when such organisations receive no financial or other support by the state.
- ✓ Member States, and particularly local and regional authorities should, in this context, have regard to Recommendation 211 (2007) of the Congress of Local and Regional Authorities of the Council of Europe on freedom of assembly and expression for lesbians, gays, bisexuals and transgendered persons calling, inter alia, for: the application of the (forthcoming) Guidelines on Freedom of Peaceful Assembly drafted by the OSCE/ODIHR Expert Panel on freedom of assembly; for rigorous investigation of all cases of violence or hate speech during LGBT or LGBT-related events; for positive measures as required by the European Court of Human Rights to guarantee effective freedom of assembly and expression at state, local and regional level, and for consultation with LGBT groups when reforming legal measures that interfere with freedom of expression or assembly.

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## Hate crime and hate speech

Homophobic hate crime affects LGBT persons in various ways. Verbal aggression is the most commonly experienced type of hate incident, and usually occurs in public spaces. Young people are subjected to assaults more than other age groups (including bullying at school), while lesbian and bisexual women are more likely to experience sexual assaults or assaults in private settings than gay or bisexual men. The perpetrators are usually young men in groups. In recent years there have been several accounts of deadly assaults on transgender persons.

Underreporting is a key feature of homophobic and transphobic crime, as with other forms of hate crime. Most Member States lack the necessary tools for reporting such incidents to the police, such as self-reporting forms or third party and assisted reporting. Police officers in most Member States are not adequately trained to identify and deal with hate crime.



Underreporting is also explained by the reluctance of most LGBT victims to disclose their sexual identity, often because authorities are not sensitive to their situation or because they are not trained to deal with such incidents in support of the victim. Underreporting is a serious problem because it results in official figures that do not reveal the real extent of the problem. Additionally, across the EU there is little research on the numbers, character, perpetrators or victims of homophobic or transphobic hate crimes.

Attacks on LGBT venues are a problem in some Member States. LGBT NGO premises have been vandalised, and other meeting places have been burnt down or the clientele seriously harassed or assaulted.

Hate speech against LGBT persons takes place in, among other contexts, political debates concerning LGBT rights or during counter-demonstrations at public LGBT events such as Pride. Homophobic statements by political and religious figures appear in the media. In such statements, LGBT persons are often depicted as unnatural, diseased, deviant, linked to crime, immoral or socially destabilising.

The Internet, as a platform for the publication of hate speech, is an area of particular concern. During the fieldwork research LGBT NGOs and National Equality Bodies stressed that, due to the nature of the internet, perpetrators are not easily found or prosecuted.

The legal analysis noted variations across the Member States in the criminal law on hate speech of a homophobic nature or homophobic intent as an aggravating circumstance for sentencing purposes. Existing criminal law in Bulgaria, Italy, Malta and Austria explicitly restricts offences of hate speech to groups other than LGBT persons. 12 Member States (Belgium, Denmark, Germany, Estonia, France, Ireland, Lithuania, Netherlands, Portugal, Romania, Spain and Sweden) provide for a specific offence in national law while generally worded provisions may serve to protect LGBT persons in the remaining States. In only 10 Member States (Belgium, Denmark, Finland, France, Netherlands, Portugal, Romania, Spain, Sweden, and parts of the United Kingdom) is a homophobic intent an aggravating circumstance in the commission of a criminal offence.

### *What can be done*

The FRA believes that hate crime can be tackled more effectively and its reporting improved through measures, such as the following.

- ✓ Member States should consider developing simple and inclusive operational definitions of hate crime for use by the public in reporting such crimes, and for the police in recording them. In addition, effective tools should be developed to facilitate reporting, such as self-report forms and third party reporting facilities, giving the public the ability to report hate crime at locations other than police stations.
- ✓ Member States should take practical measures to raise awareness among law enforcement authorities on LGBT issues, and to provide adequate training to police in dealing effectively with hate crime incidents, particularly concerning victim support and the systematic recording of incidents. In this regard, the extensive work of the OSCE on hate crime and the Handbook developed by

ILGA-Europe on monitoring and reporting homophobic and transphobic incidents could be drawn upon.

- ✓ Member States should ensure that law enforcement officers investigate homophobic crime to the same high standard as other forms of crime. Closer cooperation through, for example, multi-agency partnerships actively involving LGBT organisations, especially in victim support, will facilitate policing by building up the trust needed to improve reporting of homophobic crime.

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## The Media

Incidents of homophobic speech can still be found in the media in some Member States, while homosexuality is still considered a taboo to varying degrees. Across the EU LGBT persons lack media visibility, although gay men are more visible than lesbians or transgender persons.

LGBT persons are subject to various forms of media stereotyping. The use of semi-erotic illustrations on articles covering topics of great concern to LGBT persons contribute to prejudice and reinforce the idea that sexual orientation is only about sexual activity and preferences. Journalists across the EU would benefit from a better understanding of LGBT issues in order to report in a representative and balanced way.

However, there is also evidence that things are slowly changing and already some studies note an increase in media depictions across the EU that include a more nuanced and informed perspective on LGBT persons and issues.

### What can be done

The FRA believes that the media have a crucial role to play in improving reporting on and the public perception of LGBT people.

- ✓ The media are encouraged to include in their practice/conduct codes reference to LGBT persons and issues, and provide formal and informal diversity training to journalists, so as to raise awareness on LGBT issues and avoid hate speech. In this regard the recent Council of Europe Manual on Hate Speech provides useful guidance.
- ✓ Inspiration could be drawn from the example of the UK Press Complaints Commission and its Code of Practice. The existence of an independent body which may handle complaints against the media for prejudicial or pejorative references to individuals based on their sexual orientation may encourage better informed public debate and portrayals of LGBT issues.
- ✓ Inspiration could be drawn from the example of Denmark where public service broadcasting agreements may stipulate that programming should: reflect the diversity of cultures and outlooks existing in society, including LGBT issues; and refrain from inciting hatred on grounds of sexual orientation.

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## The Labour Market

The invisibility of LGBT persons and the relatively low level of recorded complaints make the true extent of homophobia, transphobia and discrimination based on sexual orientation and gender identity difficult to measure. A general lack of rights awareness coupled with the reluctance of LGBT persons to acknowledge their sexual orientation, gender identity or gender expression in a public trial, may partly explain this phenomenon. However, research and NGO reports suggest that LGBT persons are often subject to homophobia and discrimination at work in a number of ways: direct discrimination, harassment, bullying, ridicule and being socially 'frozen-out'.

Many workplaces are not considered 'safe' for LGBT staff. Although data varies according to national context, studies and fieldwork interviews demonstrate that the majority of LGBT persons are generally reluctant to reveal their sexual orientation in their place of work.

Past negative experiences, fear of discrimination, the risk of dismissal and the quality of the working environment all play a role in determining LGBT persons' decisions about openness, and there is evidence that closeted sexual orientation can affect the health and well-being of LGBT staff in a negative way.

The existence of equal treatment and diversity policies in the workplace and the decisive role of management in implementing such policies determine whether LGBT persons will perceive their work environment as safe and inclusive. Evidence shows that effective employment equality legislation empowers LGBT persons to complain formally in cases of discrimination.

As noted above, the legal analysis observed that in 18 Member States (Austria, Belgium, Bulgaria, Czech Republic, Finland, Germany, Ireland, Hungary, Latvia, Lithuania, Luxembourg, Netherlands, Romania, Slovenia, Slovakia, Spain, Sweden and the United Kingdom) legislation exists for protection from discrimination on the grounds of sexual orientation in areas beyond work and employment. Furthermore, the majority of Member States (Austria, Belgium, Bulgaria, Cyprus, Denmark, Germany, Greece, France, Ireland, Latvia, Lithuania, Luxembourg, Hungary, The Netherlands, Romania, Slovenia, Slovakia and the United Kingdom) have also established equality bodies competent to deal with discrimination on the grounds of sexual orientation, with a further four Member States moving towards a single equality body for all types of discrimination including sexual orientation.

### *What can be done*

The FRA believes that beyond the significant positive steps already undertaken some additional measure, facilitated particularly by trade unions and employers' organisations, could further improve the situation on the ground.

- ✓ Social partners should facilitate the active participation of LGBT persons in their organisations and encourage public and private sector employers to adopt and implement diversity and equal treatment policies in the workplace.

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## Education

Incidents of bullying and harassment of LGBT persons are reported in educational settings across the EU. Verbal expressions of homophobia and transphobia are commonplace, and the word 'gay' is commonly used in a derogatory way.

Bullying and harassment have significant consequences for LGBT youth, affecting school performance and well-being. Such experiences can lead to social marginalisation, poor health or dropping out of school. Existing research and interviews with LGBT NGOs demonstrate that school authorities across the EU pay little attention to homophobia and LGBT bullying. Research also shows that teachers lack the awareness, incentives, skills and tools to recognise and tackle such problems.

The lack of recognition, representation and positive LGBT images in education in the majority of EU Member States is another concern raised by NGOs, as it contributes to a lack of awareness, sensitivity and understanding conducive to the social isolation of LGBT students. Teachers are rarely trained, prepared or inclined to discuss the issue of sexual identity and orientation.

### *What can be done*

The FRA believes that a number of measures at both EU and national level could enhance the visibility, combat discrimination and improve the situation of LGBT persons in education.

- ✓ The European Commission should consider applying the Open Method of Coordination to facilitate the exchange of good practices regarding strategies and policies tackling school drop-out rates and the social marginalisation of LGBT young people related to bullying, discrimination and exclusion.
- ✓ The European Commission should also consider applying the Open Method of Coordination to facilitate an exchange of practices and policies developed by Member States which have adopted LGBT specific policies in the field of education, such as Ireland, Sweden and the United Kingdom.
- ✓ Member States should ensure that schools provide a climate of safety, support and affirmation for LGBT youth, combating stigmatisation and marginalisation of homosexuality and different gender identities. In this respect, school authorities should put in place concrete anti-bullying policies stating clearly that homophobic name-calling, bullying and harassment will not be tolerated. School authorities should also provide access to support mechanisms and information for young people identifying themselves as LGB.
- ✓ Member States should ensure that school curricula do not ignore issues of sexual orientation, and that LGBT persons are represented with respect and dignity in accordance with the European Union's fundamental values of equal treatment, non-discrimination and respect for diversity. In this respect, school authorities should further develop their formal and informal human rights education components, guided by the Council of Europe's human rights education manual '*COMPASS*'.

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## Health care

Some research indicates that LGBT persons experience discrimination in health care. Negative experiences include labelling their sexual orientation as a disturbance or a sickness. However, it is difficult to determine the real extent of discrimination against LGBT persons in health care, as they tend to conceal their sexual orientation.

Studies and fieldwork interviews reveal both positive and negative reactions from health care personnel when an LGBT person discloses their sexual orientation or gender identity. Negative attitudes towards LGBT people or the perceived risk of encountering such attitudes can lead some LGBT persons to avoid seeking health care.

Additionally, the general health status of LGBT persons is a major concern. Existing research correlates homophobia, transphobia, harassment or marginalisation with a generally poorer mental and physical health of LGBT persons. The LGBT NGOs and public authorities interviewed reported higher rates of poor mental health, suicide and substance abuse among LGBT persons.

Finally, lack of recognition of same-sex partners as *'next of kin'* creates difficulties regarding access to information and decision-making about a partner's health and treatment, as well as problems with hospital visitation.

The legal analysis noted that in certain Member States (Denmark, Spain and Romania) law-makers and the courts have moved towards the removal of barriers to reproductive health services for LGBT persons, permitting access for individuals regardless of marital status or sexual orientation.

### What can be done

The FRA believes that measures, such as those proposed below could significantly improve the situation of LGBT people when using health services.

- ✓ Member States should encourage competent organisations and institutions to include an LGBT perspective in national health surveys.
- ✓ Member States should examine the situation regarding access to health services and the specific issues facing LGBT persons, particularly their ability to claim 'next of kin' status, together with representatives of healthcare professionals and LGBT organisations. In this respect such multi-agency partnerships would facilitate the development of targeted policies to provide quality health care corresponding to the specific needs of LGBT persons.
- ✓ Member States should also ensure that health care providers inform and train their medical and non-medical staff on ethical and diversity issues in order to raise their awareness of LGBT issues, and improve the provision of services to LGBT persons.
- ✓ Member States should ensure all rights to informed consent are respected in regard to procedures on intersex children. Medical associations should ensure that their members are fully informed on current trends in ethics, therapy and care for intersexual persons.

- ✓ Member States are encouraged to take account of the circumstances and specific problems of LGBT seniors within the framework of activities and policies for the improvement of the life of senior citizens.

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## Religious institutions

Responses of religious institutions towards LGBT persons and rights vary considerably. In several Member States church representatives actively engage in political debates concerning LGBT rights, often mobilising and lobbying against the adoption of such rights. In some cases religious groups have also campaigned against LGBT events. As employers, religious institutions occasionally used exemptions in anti-discrimination legislation against LGBT employees.

On the other hand there are also examples of religious institutions and organisations that have reached out to LGBT people.

### What can be done

- ✓ Examples of religious institutions and organisations reaching out to LGBT persons could be more widely shared and used as a source of inspiration for dialogue. As an illustration, in the Netherlands by 1995 the synod of the Netherlands Reformed Church had already issued a statement that members of the church have equal rights, regardless of their sexual orientation or way of life. In Finland, reportedly since 1999 the Kallio parish (Kallion seurakunta) in Helsinki has embraced "rainbow people" and "Rainbow Masses" have been held in connection with Gay Pride events in Vaasa, Helsinki and Tampere. In Sweden, the Church participated in the 2008 Pride events.
- ✓ If national human rights institutions and national equality bodies were to consider engaging in dialogue with religious institutions this may serve to clarify the purpose and meaning of exemptions in anti-discrimination legislation and its application to LGBT employees.
- ✓ Dialogue between LGBT groups and religious institutions based on mutual respect should be encouraged in order to better inform public debate on LGBT issues.

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## Sports

Homophobia is found in sporting contexts and there appear to be significant challenges related to being an openly LGBT person in sports. Homophobia is expressed in different ways, both in fan culture and among athletes, and when homophobic language is used to ridicule opponents or referees.

A key finding regarding sport is the significant lack of LGBT visibility. LGBT persons are perceived to have few possibilities to be 'out' in sports due to risk of harassment, homophobia or rejection from fellow club members.

LGBT NGOs in Spain and the United Kingdom note that sports associations have only a limited focus on placing homophobia on the anti-discrimination agenda especially compared to efforts to tackle racism in sport.

### What can be done

The FRA believes that several measures, such as those proposed below, could encourage respect for LGBT persons and allow them to be open about their sexual orientation in sports.

- ✓ Member States are encouraged to work with sports organisations and fan clubs to combat homophobic incidents and hate speech in sporting events, supporting them in developing awareness-raising campaigns and applying the rule of 'zero tolerance for hate incidents'.
- ✓ Sports organisations or institutions should consider developing awareness raising programmes on LGBT issues for staff, coaches and athletes, as well as diversity policies and, in particular, harassment policies in relation to sexual orientation and gender identity.
- ✓ Sports organisations or institutions should take the necessary measures to ensure that LGBT athletes and coaches feel safe to be open about their sexual identity, if they choose to do so, without fear of negative consequences.
- ✓ Sports organisations or institutions should ensure that the sexual orientation or gender identity of coaches or athletes is not a factor in determining eligibility for teams, coaching positions or athletic awards.

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## Asylum

LGBT persons face particular difficulties in the asylum seeking process, as intimate, sexual or taboo information can be difficult to present openly to public authorities. Moreover, staff and interviewing techniques often do not recognise this difficulty. The authorities' knowledge, used to determine refugee status, about the conditions for LGBT people in countries of origin is often skeletal.

Several LGBT asylum seekers have been rejected either because their claim to a homosexual orientation was regarded as untrustworthy or because they were expected to be able to live in their country of origin 'privately' as homosexuals (i.e. remain closeted).

LGBT asylum seekers in detention centres lack information and may experience social isolation and abuse because of their sexual orientation or gender identity.

As the legal analysis observed, all Member States recognise persecution on grounds of sexual orientation and gender identity as a valid ground for the grant of asylum. However, the explicit inclusion of sexual orientation as an accepted source of persecution for the purposes of granting asylum is not present in the legislation of 7 Member States (Estonia, Greece, Latvia, Malta, Portugal Spain, and the United Kingdom). Some Member States regard criminalisation of homosexuality as sufficient for a grant of refugee status, while others do not. Some Member States will only grant asylum where the applicant lived openly as a homosexual in their country of origin.

### *What can be done*

The FRA believes that measures, such as those below, can improve the handling of asylum cases on grounds of sexual orientation and allow such asylum seekers to feel safe and respected.

- ✓ Member States should develop concrete criteria and guidelines for the treatment of LGBT asylum seekers and for the handling of issues of sexual orientation and gender identity in the application procedures. In this respect authorities could be guided by the UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity published on 21 November 2008, which is particularly useful.
- ✓ Member States should ensure that officials dealing with LGBT immigrants and asylum seekers are aware of issues of sexual orientation and gender identity and appropriately trained to deal with these persons.
- ✓ Member States should pay particular attention to the special needs and issues of LGBT persons held in detention centres.

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## Multiple Discrimination

LGBT persons constitute a diverse group and may risk discrimination on two or more grounds. Discrimination and exclusion can be compounded by a disabled, elderly or ethnic/religious minority status combined with LGBT identity.

Ethnic minorities risk discrimination on grounds of sexual orientation or gender identity within their ethnic minority communities and discrimination on grounds of race or ethnic background in the LGBT community.

Disabled LGBT persons may experience '*asexualisation*' by, among others, carers and members of the LGBT community itself. Furthermore, inaccessible LGBT venues, bars



and meeting places create physical obstacles for disabled LGBT persons attempting to participate in the LGBT community.

Some LGBT persons in care facilities and care homes for the elderly face social isolation and stereotyping from personnel and other residents.

### What can be done

- ✓ Awareness-raising activities highlighting that LGBT persons can face multiple discrimination could be encouraged among national authorities and civil society organisations, dealing with discrimination on grounds such as race and ethnicity, disability, religious belief, gender and age.
- ✓ Where Member States have multiple national equality bodies for different grounds of discrimination, strategies could be developed for dealing effectively and appropriately with complaints on multiple grounds.
- ✓ Cooperation between civil society groups dealing with different grounds of discrimination should be encouraged. Inspiration should be drawn from examples of good practice, such as joint activities between NGOs in the Netherlands, or the creation of multiple-ground NGOs.

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## Transgender persons

Transgender persons include those who have a gender identity which is different than the gender assigned at birth and those who wish to portray their gender identity in a different way than the gender assigned at birth. It also includes persons who present themselves as contrary to the expectations of the gender role assigned to them at birth, whether through clothing, accessories, cosmetics or body modification. This includes, among many others, transgender persons between male and female, transsexuals, transvestites and cross-dressers.

The legal analysis highlighted differences of approach between Member States as regards the legal protection of transgender persons against discrimination. 13 Member States treat such discrimination as a form of sex discrimination (Austria, Belgium, Denmark, France, Ireland, Italy, Latvia, Netherlands, Poland, Finland, Sweden, Slovakia and the United Kingdom) while 2 treat it as sexual orientation discrimination (Germany and Estonia). In Hungary this form of discrimination is covered under a distinct head of sexual identity. However, in 10 Member States (Bulgaria, Cyprus, Czech Republic, Greece, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovenia) discrimination on grounds of transgender is treated neither as sex discrimination nor as sexual orientation discrimination, resulting in a situation of uncertainty.

The social analysis shows that transgender persons face transphobia and discrimination on grounds of their gender identity and expression and not necessarily because of their sexual orientation. Transgender persons can be heterosexual, homosexual or bisexual.

Discrimination against transgender persons occurs in all areas investigated for this report and they are especially affected by hate crime and hate speech, although discrimination in health and employment is more pronounced. Surveys also show that transgender people face more negative attitudes than LGB people. In this context many of the measures proposed under the different headings above are also relevant to transgender persons.

### *What can be done*

- ✓ Member States should consider introducing and/or improving legislation and practice in order to properly ensure the full legal recognition of the new gender including change of forename, social security number and other possible gender indicators.
- ✓ Dialogue between legislators, the judiciary, national equality bodies and national human rights institutions could serve to facilitate clarification of the grounds upon which discrimination against transgender persons is covered at the national level.
- ✓ Awareness-raising activities should be considered in order to inform public attitudes towards transgender persons.
- ✓ Special consideration should be given to the challenges facing transgender persons when developing strategies to combat discrimination against LGBT persons in general. Since discrimination against and attitudes towards transgender persons in several areas are worse than those for LGB persons, further or alternative measures should be put in place specifically for transgender persons. Consideration should also be given to the fact that measures adopted to ensure equality for LGB persons may not be adequate or appropriate for transgender persons in the sense that transgenderism is primarily an issue of gender identity or sexual identity and does not necessarily implicate sexual orientation.

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## **Improving knowledge through research and data collection**

Relatively few statistical data could be found through our research. This could, in part, be due to the fact that sexual orientation is still an emerging issue, which had been largely ignored in public discussion and public policies until the beginning of this decade – which may explain that research and data collection in this field is only in its infancy. The social analysis examines the factors contributing to this apparent lack of data, which, as the legal analysis noted is partly attributable to misunderstandings about the restrictions imposed under personal data protection legislation, to the processing of data related to sexual orientation.

### What can be done

Effective policies are evidence-based. The FRA believes that the improvement of our knowledge base can be achieved by supporting research at both EU and national level.

- ✓ The European Commission is encouraged to promote more research into LGBT issues in the context of its Seventh Framework Programme for research and technological development (2007-2013) under its socio-economic sciences and humanities programme, and consider developing a specific area for LGBT and transgender focused research in the Eighth Framework Programme (2014-2020). It should be noted that as LGBT research can be 'blind' to transgender issues, these transgender-specific problems (such as gender recognition) should be given special attention.
- ✓ Member States should encourage and appropriately fund qualitative and quantitative research on discrimination on grounds of sexual orientation, gender identity and gender expression in all spheres of life and on the extent, nature, causes and impacts of homophobia and transphobia.

European Union Agency for Fundamental Rights (FRA)

**Homophobia and Discrimination on Grounds of Sexual Orientation  
and Gender Identity in the EU Member States**

**Part II: The Social Situation**

**Summary report**

2009 – 19 p. – 21 x 29,7 cm

ISBN-13: 978-92-9192-393-9

TK-30-08-003-EN-C

A great deal of information on the European Union Agency for Fundamental Rights is available on the Internet. It can be accessed through the FRA website (<http://fra.europa.eu>).

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