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# UN & CoE

January

February

10 March – UN Committee on the Elimination of Discrimination against Women (UN CEDAW) publishes concluding observations on Sweden

14 March – UN CEDAW publishes concluding observations on the Czech Republic

22 March – In *Guberina v. Croatia* (23682/13), the European Court of Human Rights (ECtHR) holds that authorities' disregard of a disabled child's needs when applying rules on tax relief violates the prohibition of discrimination in conjunction with the protection of property (Article 14 of the ECHR and Article 1 of Protocol No. 1 to the ECHR)

23 March – UN Human Rights Council (UN HRC) adopts a resolution on the rights of persons belonging to national or ethnic, religious and linguistic minorities

23 March – UN HRC adopts a resolution on freedom of religion or belief

24 March – UN HRC adopts a resolution on combating intolerance, negative stereotyping and stigmatisation of, and discrimination, incitement to violence and violence against, persons based on religion or belief

March

21 April – Parliamentary Assembly of the Council of Europe (PACE) adopts a resolution on assessing the impact of measures to improve women's political representation

21 April – UN Human Rights Committee (CCPR) publishes concluding observations on Slovenia

26 April – In *Izzettin Doğan and others v. Turkey* (62649/10), the ECtHR holds that refusing to provide a public religious service to followers of the Alevi faith violates the right to freedom of religion and the prohibition of discrimination in conjunction with the right to freedom of religion (Articles 9 and 14 of the ECHR)

28 April – UN CCPR publishes concluding observations on Sweden

April

1 May – European Social Charter (revised) enters into force in Greece

24 May – In *Biao v. Denmark* (38590/10), the ECtHR holds that refusing to grant family reunion to a Danish citizen of Togolese origin and his Ghanaian wife in Denmark violates the prohibition of discrimination in conjunction with the right to respect for private and family life (Articles 14 and 8 of the ECHR)

May

21 June – PACE adopts a resolution on women in the armed forces, promoting equality, putting an end to gender-based violence

30 June – UN HRC adopts a resolution on the elimination of discrimination against women

30 June – UN HRC adopts a resolution on protection against violence and discrimination based on sexual orientation and gender identity

30 June – UN HRC creates the mandate of independent expert on protection against violence and discrimination based on sexual orientation and gender identity

June

1 July – UN HRC adopts a resolution on the role of the family in supporting the protection and promotion of human rights of persons with disabilities

1 July – UN HRC adopts a resolution on mental health and human rights

25 July – UN CEDAW publishes concluding observations on France

July

15 August – UN CCPR publishes concluding observations on Denmark

August

29 September – UN HRC adopts a resolution on the human rights of older persons

29 September – UN HRC adopts a resolution on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

30 September – UN HRC adopts a resolution on equal participation in political and public affairs

September

12 October – PACE adopts a resolution on sport for all, a bridge to equality, integration and social inclusion

13 October – PACE adopts a resolution on female genital mutilation in Europe

October

18 November – UN CEDAW publishes concluding observations on Estonia and on the Netherlands

22 November – UN CCPR publishes concluding observations on Slovakia

23 November – UN CCPR publishes concluding observations on Poland

30 November – Council of Europe (CoE) adopts the Strategy on the rights of persons with disabilities 2017–2023

November

December

# EU

## January

3 February – European Parliament (EP) adopts a resolution on the new strategy for gender equality and women's rights post-2015

## February

8 March – EP adopts a resolution on the situation of women refugees and asylum seekers in the EU

8 March – EP adopts a resolution on gender mainstreaming in its work

## March

19 April – In *Dansk Industri v. Estate of Karsten Eigil Rasmussen (C-441/14)*, the Court of Justice of the European Union (CJEU) rules that the general principle prohibiting discrimination on grounds of age under Directive 2000/78/EC precludes national legislation, including in disputes between private persons, which deprives an employee of entitlement to a severance allowance where the employee is entitled to claim an old-age pension from the employer under a pension scheme the employee joined before reaching the age of 50, regardless of whether the employee chooses to remain on the employment market or take his retirement

28 April – EP adopts a resolution on gender equality and empowering women in the digital age

28 April – EP adopts a resolution on women domestic workers and carers in the EU

## April

26 May – EP adopts a resolution on poverty, a gender perspective

## May

3 June – Council of the EU issues a progress report 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

16 June – In *Lesar v. Telekom Austria AG (C-159/15)*, the CJEU deems compatible with Articles 2(1), 2(2)(a) and 6(2) of Council Directive 2000/78/EC national legislation that does not take into account apprenticeship and employment periods completed by a civil servant before the age of 18 for the purpose of calculating pension entitlements, in so far as that legislation seeks to guarantee, within a civil service retirement scheme, a uniform age for admission to the scheme and a uniform age for entitlement to retirement benefits thereunder

17 June – Council of the EU issues conclusions in response to the European Commission's list of actions to advance LGBTI equality

## June

28 July – In *Kratzer v. R+V Allgemeine Versicherung AG (C-423/15)*, the CJEU rules that a situation in which a person who, in applying for a job, does not seek to obtain that post but only the formal status of applicant to seek compensation does not fall within the definition of 'access to employment, to self-employment or to occupation', within the meaning of Article 3(1)(a) of Council Directive 2000/78/EC and Article 14(1)(a) of Directive 2006/54/EC and may, if the requisite conditions under EU law are met, be considered an abuse of rights

## July

5 August – European Commission launches campaign to raise awareness and increase the social acceptance of lesbian, gay, bisexual, transgender and intersex people

## August

15 September – EP adopts a resolution on the application of the Employment Equality Directive

## September

## October

10 November – In *De Lange v. Staatssecretaris van Financiën (C-548/15)*, the CJEU rules that a taxation scheme providing for different levels of deductions for vocational training costs depending on a person's age falls within the material scope of Directive 2000/78/EC, to the extent to which the scheme is designed to improve access to training for young people

15 November – In *Sorondo v. Academia Vasca de Policía y Emergencias (C-258/15)*, the CJEU rules that legislation requiring candidates for police officer posts who are to perform all operational duties incumbent on police officers to be under 35 years of age is compatible with Article 2(2) of Council Directive 2000/78/EC, read together with Article 4(1) of that directive

22 November – Council of the EU issues a progress report 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

22 November – EP adopts a resolution on sign languages and professional sign language interpreters

24 November – In *Parris v. Trinity College Dublin and others (C-443/15)*, the CJEU rules that a national rule which, in connection with an occupational benefit scheme, makes the right of members' surviving civil partners to receive a survivor's benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age, neither constitutes discrimination on grounds of sexual orientation or age nor indirect discrimination from the combined effect of discrimination based on sexual orientation and age

## November

1 December – In *Daouidi v. Bootes Plus SL and others (C-395/15)*, the CJEU rules that, where someone is in a situation of temporary incapacity for work for an indeterminate amount of time due to an accident at work, the limitation of that person's capacity cannot be classified as being 'long-term', within the meaning of the definition of 'disability' laid down by Council Directive 2000/78/EC, read in light of the UN Convention on the Rights of Persons with Disabilities

8 December – Council of the EU issues conclusions on women and poverty

## December



# 2

## Equality and non-discrimination



*EU Member States did not reach an agreement on the proposed Equal Treatment Directive by the end of 2016. Several Member States, however, continued to extend protection against discrimination to different grounds and areas of life. Various domestic court decisions upheld the rights of persons with disabilities, and diverse efforts at international, European and national level sought to advance LGBTI equality. Meanwhile, measures and proposals to ban certain garments sparked debates on freedom of religion and belief, amid fears caused by the threat of terrorism. The year ended with a growing acknowledgement that addressing discrimination based on a single ground fails to capture the different ways in which people in the EU experience discrimination in their daily lives.*

### 2.1. Proposed Equal Treatment Directive still not adopted

People across the EU continue to experience discrimination on a number of grounds and in various areas of life, as the 2016 conclusions of the European Committee on Social Rights show, for example. In conclusions concerning 21 EU Member States, the committee found insufficient protection against discrimination in employment on the grounds of gender or sexual orientation; insufficient integration of persons with disabilities in mainstream education, the labour market and society in general; and insufficient guarantee of equal rights between men and women, in particular as regards equal pay. The EU Member States covered by the 2016 conclusions of the European Committee on Social Rights include **Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Spain** and the **United Kingdom**.

In its 2016 work programme, the European Commission prioritised the adoption of the proposed Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (Equal Treatment Directive). However, the eight-year-long negotiations on the adoption of this directive had not reached a conclusion at the end of 2016. The proposal

is based on Article 352 of the Treaty on the Functioning of the European Union, so requires unanimity for its adoption by the Council of the EU.

The persistence of diverging views became apparent in June, when several Member States again questioned the need for the directive, seeing it as “infringing on national competence for certain issues and as conflicting with the principles of subsidiarity and proportionality”<sup>1</sup>. A number of other Member States continued to view the proposal as too far-reaching because it covers social protection and education. Another two Member States held general reservations towards the proposal by the end of the year, meaning that they would not vote in favour of adopting the directive as things stand.

*“[The European Parliament] stresses how important it is to reach an agreement as soon as possible, and calls on the Council to break the deadlock, in order to move towards a pragmatic solution and speed up without further delay the adoption of the EU horizontal anti-discrimination directive proposed by the Commission in 2008 and voted for by Parliament; [the European Parliament] considers [the proposed directive] a pre-condition to secure a consolidated and coherent EU legal framework, protecting against discrimination on the grounds of religion and belief, disability, age and sexual orientation outside of employment.”*

European Parliament (2016), European Parliament resolution of 15 September 2016 on application of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

**Germany** maintained its general reservation towards the proposal, which it introduced in 2010. In July 2016, a number of parliamentarians asked the federal government to stop blocking the directive.<sup>2</sup> They contended that, since existing national legislation goes beyond the provisions of the proposed directive, there is no reason for the federal government to refuse to adopt it. The federal government had not dealt with this request by the end of 2016.

In September, **Poland** withdrew its support for the proposal, arguing that national legislation provides protection against discrimination. In addition, the government asserted that the proposed directive does not comply with the principle of subsidiarity, contradicts provisions of the Polish Constitution and could limit the freedom of economic activity because of the impact that positive action could have on the freedom of businesses and entrepreneurs to enter into contractual agreements.<sup>3</sup>

In the words of the Slovak Presidency of the Council of the EU, “it is clear that there is still a need for further work and political discussions before the required unanimity can be reached in the Council.”<sup>4</sup>

## 2.2. Member States broaden scope of non-discrimination laws

Despite lack of progress at the EU level, Member States continued to introduce changes in national law relevant to equality and non-discrimination. Such efforts are in line with FRA’s opinion, expressed in its *Fundamental Rights Report 2016*,<sup>5</sup> that Member States should consider extending protection against discrimination to different areas of social life to ensure more equal protection against discrimination.

Some Member States added grounds of protection against discrimination to their legislation in 2016, including as regards a person’s socio-economic status. This was the case in **France**,<sup>6</sup> where being in a socially precarious situation and vulnerability due to a person’s economic situation became protected characteristics. Similarly, in **Ireland**,<sup>7</sup> individuals who receive housing assistance benefit from protection against discrimination in the provision of accommodation since 1 January 2016. The Protection against Discrimination Act adopted in **Slovenia** in May includes sexual orientation, gender identity and gender expression as protected characteristics.<sup>8</sup> Protection against discrimination in **Greece** was extended in December – to include the grounds of chronic disease, family or social status, sexual orientation, gender identity and sex characteristics in the fields of labour and employment; and the grounds of colour, descent and national origin in the field of

labour and employment, social protection, education and provision of goods and services. Furthermore, the denial of reasonable accommodation is considered discrimination under the new law.<sup>9</sup>

Legislation enacted in **Luxembourg** in June makes discrimination on the ground of ‘sex reassignment’ equivalent to discrimination on the ground of sex.<sup>10</sup> In April 2015, the national equality body questioned the use of the term ‘sex reassignment’ rather than ‘gender reassignment’, maintaining that this terminology makes it unclear whether the law would apply only where there has been a medical or legal change in a person’s sex, or also when a person self-identifies with a gender other than that assigned at birth.<sup>11</sup>

Legislation passed in **Lithuania** in June 2016 introduced protection in the area of consumer protection to ensure equal conditions for buying goods and services, without discrimination on the ground of sex. The law also prohibits less favourable treatment of pregnant women, those who recently gave birth and those who are breastfeeding.<sup>12</sup>

*“Highlighting persisting barriers to employment, education, housing and health services, this report also reveals that four out of 10 Roma surveyed felt discriminated against at least once in the past five years – yet only a fraction pursued the incident. With most Roma unaware of laws prohibiting discrimination, or of organisations that could offer support, such realities are hardly surprising. But they do raise serious questions about the fulfilment of the right to non-discrimination guaranteed by the Charter of Fundamental Rights of the European Union (EU) and the Racial Equality Directive.”*

*Michael O’Flaherty, FRA Director, Foreword, Second European Union Minorities and Discrimination Survey, Roma – Selected Findings (2016)*

Other relevant legislative changes relating to discrimination in employment on the grounds of age and religion took effect on 1 January 2016. Concerning age, employers in **Denmark** cannot include redundancy clauses in individual contracts or in collective agreements any more, meaning that people can no longer be made redundant because they have reached a certain age.<sup>13</sup> Employers in **Ireland** can offer fixed-term contracts to persons over the compulsory retirement age only if this is objectively and reasonably justified by a legitimate aim, and if the means of achieving that aim are appropriate and necessary. In addition, employers can set a compulsory retirement age only if they can objectively justify the fixed age limit.<sup>14</sup>

Following entry into force of the Equality (Miscellaneous Provisions) Act on 1 January 2016 in **Ireland**,<sup>15</sup> an institution in receipt of public money is no longer permitted to discriminate favourably on the ground of religion, if such treatment also constitutes discrimination on any other ground and the religion or belief of the employee does not constitute a genuine occupational requirement having regard to the institution’s ethos.

## Promising practice

## Raising awareness of discrimination in the labour market

Unia, the equality body in **Belgium**, launched a campaign to address age stereotyping in the area of work, with posters and banners distributed in places visited by job seekers. The awareness-raising campaign aims to inform people of support available to them from Unia if they face discrimination based on age in the employment field.

*For more information, see Belgium, Unia (2016), Trop jeune? trop vieux? Unia lance une campagne contre les préjugés liés à l'âge dans l'emploi or Te jong? te oud? Unia start een campagne tegen vooroordelen leeftijd*

### 2.3. Bans on select clothing trigger debate on freedom of religion and belief

Measures and proposals to ban certain garments sparked debates on freedom of religion and belief in the EU, against the backdrop of heightened tension prompted by the threat of terrorism. Two opinions of Advocates General of the Court of Justice of the European Union (CJEU), as well as cases dealt with by national courts in 2016, illustrate the complexities inherent in balancing freedom of religion or belief with the notion of 'living together' or the interests of national security. Any limitation of these freedoms must respect the principles of legality, necessity and proportionality.

In her opinion of May 2016, Advocate General Kokott stated that banning Muslim women from wearing headscarves at work may be permissible if general company rules prohibit ostentatious symbols of religion or belief: "such a ban may be justified if it enables the employer to pursue the legitimate policy of ensuring religious and ideological neutrality."<sup>16</sup> In an opinion issued in the context of another case in July 2016, Advocate General Sharpston contended that "requiring an employee to remove her Islamic headscarf when in contact with clients constitutes unlawful direct discrimination."<sup>17</sup> According to this opinion, such a ban would nevertheless be justified if it is in the interests of the employer's business and proportionate. The CJEU had not ruled on either case by the end of the year.

In May 2016, the **Austrian** Supreme Court ruled that a Muslim woman was discriminated against when her employer reduced her contact with customers because she wore a hijab and abaya (Muslim veil and robe). The court also ruled, however, that wearing a niqab (face veil) negatively affected how she communicated and

interacted with clients of the notary office at which she worked. The court ruled that prohibiting the face veil was proportionate to the needs of the employer, and that not covering one's face was a genuine and determining occupational requirement.<sup>18</sup>

Other court decisions issued in 2016 in **Bulgaria**, **France** and **Germany** further illustrate the difficulties inherent in ensuring a balance between all the interests at stake when considering courses of action that could lead to restricting freedom of religion or belief.

The Supreme Administrative Court in **Bulgaria** ruled that a pupil who was suspended from a secular public school because she wore religious clothing was not discriminated against. This was because her clothing went against internal school rules prohibiting pupils from expressing their faith through their clothing. The court ruled that "the school's internal rules are an adequate and proportionate measure intended to defend the values of pluralism, acceptance and tolerance, respect for the rights of others and equality."<sup>19</sup>

**Bulgaria** is the only EU Member State that enacted legislation in 2016 to ban wearing in public spaces clothing that entirely or partly conceals the face. **Belgium**, **France** and **Spain** have similar bans in place. The bans in Bulgaria and France do not apply to houses of prayer of registered religions; when full-face covering is needed for health or professional reasons; or in the context of sport, cultural, educational and other occasions. The first violation of the ban introduced in Bulgaria incurs a fine of BGN 200 (€ 100), with public officials subject to a higher fine of BGN 500 (€ 250). Subsequent violations incur a fine of BGN 1,500 (€ 750), rising to BGN 2,000 (€ 1,000) for public officials.<sup>20</sup>

In October, the **German** Federal Constitutional Court issued a decision on blanket bans on certain religious expression by educators. Overturning the decision of three lower courts, the Constitutional Court found that a Muslim childcare worker's right to freedom of religion was violated when the city administration of Sindelfingen sent her a disciplinary warning letter because she wore a headscarf at work. The court concluded that the children's right to freedom of religion and belief could not be considered to be at risk simply because the childcare worker wore a headscarf, as prescribed by her religious beliefs. The German Basic Law protects the right to exercise religion as long it does not "threaten the peace". Since the childcare worker did not actively try to influence the children's religious beliefs, she could not be considered to have threatened the peace of the nursery.<sup>21</sup>

On 14 July, a terrorist attack in Nice claimed by the so-called Islamic State killed more than 80 people and injured scores of others. Although not as a direct

consequence of this attack, more than 30 municipalities in **France** sought to enact by-laws prohibiting the so-called 'burkini', a swimsuit designed for women that covers their entire body, save for their face, hands and feet. Justifications for such bans tend to argue that the burkini runs counter to moral standards, French secularism (*laïcité*), rules of hygiene and to swimming safely.

Two civil society organisations (*Ligue des droits de l'homme* and *Collectif contre l'islamophobie en France*) appealed against the first such by-law to be proposed, in Villeneuve-Loubet. The Nice administrative court rejected the appeal on the grounds that "beaches are not a suitable place to express one's religious convictions in an ostentatious way" and that "following the succession of Islamic extremist attacks in France" the wearing of the burkini poses "a risk to public law and order".<sup>22</sup>

This prompted the *Ligue* and *Collectif* to lodge an appeal with the Council of State. In its decision, issued in late August, the Council of State held that banning a woman from wearing such a swimsuit, which identifies her as belonging to a religion, could only be justified on the grounds of safeguarding the public order. The prohibition cannot be based on any other considerations and any restriction on individual freedoms must be justified by proven risks to the public order. The Council of State ruled that, "in the absence of such a risk, the emotion and concerns resulting from terrorist attacks, and in particular from the attack carried out in Nice on 14 July, are not sufficient to legally justify the contested banning measure".<sup>23</sup>

On 6 September, however, the administrative court of Bastia issued an ordinance upholding a by-law adopted by the municipality of Sisco on 16 August.<sup>24</sup> The reason was that there had been a violent confrontation on the beach in Sisco, allegedly sparked by reactions to the unconfirmed presence on the beach of a woman wearing a full-body bathing suit. The by-law was temporary and expired on 30 September.

## 2.4. Domestic courts uphold rights of persons with disabilities

By 2016, the EU and 27 of its Member States had ratified the UN Convention on the Rights of Persons with Disabilities (CRPD), whose full and correct implementation can help ensure that people with disabilities participate fully and effectively in society on an equal basis with others. (For more information on CRPD implementation, ▶ see [Chapter 9](#)). Throughout the year, domestic courts in **Finland** and **Poland** issued decisions relating to several articles of this important convention.

The Constitutional Tribunal of **Poland** deemed unconstitutional certain provisions of the Act on mental health protection<sup>25</sup> regulating persons with disabilities' placement in nursing homes by their guardians – particularly with regard to the rights to personal freedom, dignity and access to a court.<sup>26</sup> The disputed provisions stipulated that such placements are to be considered voluntary when authorised by guardianship courts, even if any review of the reasonableness or legality of such placements takes place after they occurred. The court found that such practices do not offer procedural guarantees to persons with disabilities, since they are seldom heard when such decisions are made, are not given sufficient opportunities to appeal against placement orders, and courts rarely review placement orders. Although not explicitly mentioned in the judgment, it can be noted that Article 12 of the CRPD provides that "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life."

**Finland's** Non-discrimination and Equality Tribunal found that the national railways discriminated against persons with disabilities because they had to confirm that they have a disability when buying online tickets for any persons accompanying them.<sup>27</sup> In another case, the tribunal held that a restaurant that did not provide an accessible toilet in accordance with building regulations discriminated against persons with disabilities.<sup>28</sup> This tribunal specifically referred to Article 5 of the CRPD, which provides that "States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds" and that they have to ensure that reasonable accommodation is provided to persons with disabilities.

### Promising practice

#### Facilitating persons with disabilities' participation in society

In April of 2016, the government of **Portugal** introduced so-called 'inclusion desks' (*balcões da inclusão*) within social security centres in six pilot localities across the country (Lisbon, Faro, Setúbal, Porto, Viseu and Vila Real). These desks provide persons with disabilities and their families with specialised assistance and information on residential homes, centres for occupational activity, rehabilitation centres, employment issues, social benefits and technical aids. Assistance and information are also available in sign language and braille.

*For more information, see Government of Portugal (2016), 'First inclusion desk of a national network opened in Lisbon' (Primeiro balcão da inclusão da rede nacional inaugurado em Lisboa)*



## 2.5. Taking steps to advance LGBTI equality

Throughout 2016, the United Nations (UN), the EU and its Member States took various steps to safeguard the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.

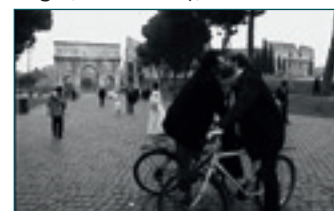
In June, the UN Human Rights Council established the mandate of an independent expert on protection against violence and discrimination based on sexual orientation and gender identity.<sup>29</sup> The first independent expert took up the mandate on 1 November, nearly 10 years after adoption of the Yogyakarta principles on the application of international human rights law in relation to sexual orientation and gender identity.<sup>30</sup> The independent expert's role will be to assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity; to raise awareness of violence and discrimination against these persons; and to identify and address the root causes of such violence and discrimination.

The EU's commitment to promoting the fundamental rights of LGBTI persons is evidenced in Council conclusions issued in June 2016 in response to the list of actions to advance LGBTI equality published by the European Commission in December 2015.<sup>31</sup> The Council called on the Commission "to step up efforts in the field[s] of comparative data collection on the discrimination of LGBTI persons in the EU", awareness raising and under-reporting of incidents of discrimination. It also called on FRA to compile statistics on the situation of LGBTI persons, such as those collected through the agency's EU-wide lesbian, gay, bisexual and transgender survey, which it will repeat in the coming years.<sup>32</sup> In December, the European Parliament also called on the Commission and EU agencies to collect data and information on violations of the fundamental rights of LGBTI persons, and encouraged Member States to inform them of their rights.<sup>33</sup>

In that respect, Member States could take inspiration from the proceedings of the Council of Europe's December 2015 seminar on 'National Action Plans as effective tools for the promotion and protection of human rights of LGBT people', published in June 2016. Six EU Member States had such action plans in place at the time of the seminar, namely **Denmark, France, Italy, Malta, the Netherlands** and the **United Kingdom**.<sup>34</sup> The proceedings of the seminar provide guidance to states on how to develop such action plans. This guidance can be complemented with the Council of Europe's *Compendium of Good Practices on Local and Regional Level Policies to Combat Discrimination on*

*the Grounds of Sexual Orientation and Gender Identity*, also published in June.<sup>35</sup>

Throughout the year, a number of EU Member States did take steps to advance LGBTI equality. These involved the status of same-sex partnerships (**Czech Republic, Greece, Italy, Portugal, Slovenia**); the de-pathologisation of sexual orientation, gender identity and gender expression (**Denmark, Malta**); and putting a stop to unnecessary surgical interventions on intersex children (**Finland**).



Concerning partnerships, legislation allowing for same-sex marriages came into force in **Italy** in June.<sup>36</sup> In **Greece**, a circular of 2016 clarifies that persons in civil partnerships and married persons have equal rights to social insurance, labour legislation and the health and welfare system. The **Slovenian** Partner Relationship Act will make same-sex registered partnerships largely equivalent to marriage as of February 2017.<sup>37</sup> Significant differences remain, however; same-sex partners will still not be allowed to adopt children or be entitled to assisted reproduction.

This is not the case in **Portugal**. In that country, married or cohabitating heterosexual or lesbian couples, as well as all women – irrespective of their civil status or sexual orientation – are entitled to assisted reproduction since June 2016.<sup>38</sup> In February, it also became possible for same-sex couples in Portugal to jointly adopt children.<sup>39</sup> As of the end of 2016, this was also the case in **Austria, Belgium, Denmark, France** (for married couples), **Ireland** (for married couples), **Luxembourg, Malta, the Netherlands, Spain, Sweden** and the **United Kingdom**.<sup>40</sup> In a similar development, in June, the Constitutional Court of the **Czech Republic** abolished the statutory ban on adoption for same-sex partners in registered partnerships. The court deemed the ban unconstitutional and incompatible with the right to human dignity.<sup>41</sup>

In December, the **Maltese** president assented to Act No. LV of 2016 – Affirmation of sexual orientation, gender identity and gender expression,<sup>42</sup> as well as to the Gender Identity, Gender Expression and Sex Characteristics (Amendment) Act.<sup>43</sup> These acts de-pathologise a person's sexual orientation, gender identity and gender expression. The acts also outlaw and criminalise any conversion practices seeking to change a person's sexual orientation, gender identity or gender expression. As of 1 January 2017, 'transsexualism' has been removed from the section on psychical diseases and behavioural disorders of the **Danish** health administration system, following a communication to that effect by the Minister for Health in December 2016.<sup>44</sup>

The right to self-determination of intersex persons was at the centre of position papers published by the national equality body of **Cyprus**<sup>45</sup> and by the National Advisory Board on Social Welfare and Health Care Ethics, within the Ministry of Social Affairs and Health, in **Finland**.<sup>46</sup> Both bodies stress that operations that change a child's sex characteristics require consent, and that unnecessary operations should be avoided. In addition, the Finnish Ombudsman for Children called for the establishment of guidelines on the treatment of intersex children.<sup>47</sup>

## 2.6. Fostering equal treatment by tackling multiple discrimination

People with widely differing backgrounds face multiple discrimination in the EU, evidence collected by FRA shows consistently.<sup>48</sup> It is slowly coming to be recognised that addressing discrimination from the perspective of a single ground fails to capture or tackle adequately the various manifestations of unequal treatment that people may face in their daily lives.<sup>49</sup>

Discrimination can be based on more than one ground and manifest itself in different forms: intersectional discrimination; compound, aggravated or additive discrimination; and sequential or consecutive discrimination. Intersectional discrimination arises out of the combination of two or more inseparable grounds. Compound or additive discrimination refers to cases where one ground adds to another ground. Consecutive discrimination occurs when someone is affected by discriminatory practices on separate grounds at different times.<sup>50</sup>

*“Intersectionality highlights the flaws in discrimination laws which focus on one ground at a time. Firstly, focussing on single grounds at a time ignores the fact that everyone has an age, a gender, a sexual orientation, a belief system and an ethnicity; many may have or acquire a religion or a disability as well. Secondly, it assumes that everyone within an identity group is the same, obscuring real differences within groups. Thirdly, it ignores the role of power in structuring relationships between people. Discrimination is not symmetrical; it operates to create or entrench domination by some over others.”*

*European Network of Legal Experts in Gender Equality and Non-discrimination (2016), Intersectional Discrimination in EU Gender Equality and Non-discrimination Law, p. 8*

Discrimination on the ground of gender combined with ethnicity has to date received the most attention among policy actors, although only superficially so. For example, a report on the implementation of Directive 2010/41 on the application of the principle of equal treatment between self-employed men and women, commissioned by the European Commission and published in 2015,

mentions ‘intersectional discrimination’ only once, when referring to the experiences of self-employed migrant women.<sup>51</sup> The directive itself does not mention multiple discrimination, nor does any other gender equality directive or related implementation report.<sup>52</sup> This gap is noted in a publication on intersectional discrimination in EU gender equality and non-discrimination law prepared for the European Commission and released in May 2016.<sup>53</sup>

The Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC) each mention multiple discrimination only once, without defining the concept, merely stating in their recitals that “women are often the victims of multiple discrimination”. The same is true of the draft proposal for an Equal Treatment Directive published in December 2016.<sup>54</sup>

It is therefore not surprising that multiple discrimination rarely figures in important EU policy instruments used to counter discrimination and foster equal treatment. An exception is the European Commission's 2016 annual Communication on effective measures of Roma integration, which stresses that Roma women “face multiple forms of discrimination (violence, trafficking in human beings and underage and forced marriages, and begging involving children)”.<sup>55</sup> For more information on Roma integration and their experiences with discrimination, see [Chapter 4](#).

The European Parliament adopted five resolutions that mention multiple discrimination in 2016.<sup>56</sup> The EU's *Strategic Engagement for Gender Equality 2016–2019*,<sup>57</sup> however, makes no direct reference to this issue, nor does the European Commission's list of actions to advance LGBTI equality<sup>58</sup> or the European Disability Strategy 2010–2020.<sup>59</sup> This contrasts with the Council of Europe's strategy on the rights of persons with disabilities 2017–2023. Adopted in November 2016, this strategy stipulates that multiple discrimination must be acknowledged “in all the work and activities within the Council of Europe and at the national and local levels, including in the work of independent monitoring mechanisms.”<sup>60</sup>

The UN Committee on the Rights of Persons with Disabilities, for its part, recommended that the EU “ensure that discrimination in all aspects on the grounds of disability is prohibited, including multiple and intersectional discrimination”.<sup>61</sup> The committee further addressed multiple and intersectional discrimination in two general comments it released in 2016 – on women and girls with disabilities<sup>62</sup> and on inclusive education.<sup>63</sup>

In its concluding observations on **Lithuania**<sup>64</sup> and **Portugal**,<sup>65</sup> the UN Committee on the Rights of Persons with Disabilities also called for these countries to adopt specific measures to address multiple and intersectional discrimination faced by women and girls with disabilities. In its recommendations to **Italy**,

the committee raised its concern “about the absence of legislation and mechanisms with a mandate that addresses multiple discrimination, including effective sanctions and remedies”.<sup>66</sup> This recommendation appears to contradict findings of the European Network of Legal Experts in Gender Equality and Non-Discrimination, according to which Italy explicitly mentions multiple discrimination in its legislation.<sup>67</sup>

The UN Human Rights Council passed a resolution in July to address the impact of multiple and intersecting forms of discrimination and violence in the context of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of all human rights by women and girls. The Human Rights Council also asked the High Commissioner for Human Rights to prepare a report on the issue, which will be released in 2017.<sup>68</sup>

In March, the UN Committee on the Elimination of Discrimination against Women addressed multiple discrimination in its general comment on the rights of rural women.<sup>69</sup> The UN Working Group on discrimination against women issued a report on discrimination against women in the area of health and safety in April. The working group recommends that States “[p]rovide special protection and support services to women facing multiple forms of discrimination,” with a particular focus on women with disabilities, migrant women, lesbians, bisexuals and transgender persons.<sup>70</sup>

Similarly, the UN Committee on Economic, Social and Cultural Rights acknowledged, in its general comment on the right to sexual and reproductive health, that LGBTI persons and persons with disabilities face multiple discrimination. The committee called for “[m]easures to guarantee non-discrimination and substantive equality [...] to overcome the often exacerbated impact that intersectional discrimination has on the realisation of the right to sexual and reproductive health.”<sup>71</sup>

By the end of 2016, attention to multiple discrimination had gained momentum among equality bodies. Equinet, the European network of equality bodies,

published a specific report on the activities of equality bodies in this area in November.<sup>72</sup> Twenty-two equality bodies from 19 Member States responded to Equinet’s survey. Of these, five reported that current national legislation contains provisions on multiple discrimination: **Austria, Bulgaria, Croatia, Germany and Sweden**. Despite limited coverage in national legislation, 17 equality bodies in 16 Member States reported that they work on issues of intersectionality: **Austria, Belgium, Bulgaria, Croatia, the Czech Republic, France, Germany, Greece, Hungary, Ireland, Malta, Poland, Portugal, Slovakia, Sweden and the United Kingdom**. The activities covered by equality bodies in this area include advocating the adoption of national legislation addressing intersectionality and raising awareness on the issue. “The dominant area of work by equality bodies on intersectionality is research, with an emphasis on building a knowledge base for work on intersectionality and bringing this into public and political debate.”<sup>73</sup>

Information is also available on Member States not covered by Equinet’s survey. Evidence published by FRA in 2012 and 2013 shows that **Greece, Italy and Romania** cover multiple discrimination in national legislation.<sup>74</sup> In May 2016, **Slovenia** adopted its Act on Protection against Discrimination,<sup>75</sup> subsuming multiple discrimination under a new concept of ‘severe forms of discrimination’. By the end of 2016, nine EU Member States explicitly covered multiple discrimination in national legislation: **Austria, Bulgaria, Croatia, Germany, Greece, Italy, Romania, Slovenia and Sweden**.

Notably, **Germany** and **Malta** in 2016 introduced national legislation on disability that mentions multiple discrimination. The Maltese Equal Opportunities (Persons with Disabilities) Act prohibits discrimination in a “multiple manner” of people with disabilities.<sup>76</sup> The German Act on the Further Development of the Right to Equality of People with Disabilities recognises that they can experience multiple discrimination on all protected grounds.<sup>77</sup>

## FRA opinions

Negotiations 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 – the Equal Treatment Directive – entered their eighth year in 2016. Adopting this directive would guarantee that the EU and its Member States offer a comprehensive legal framework against discrimination on these grounds on an equal basis. By the year's end, the negotiations had not reached the unanimity required in the Council of the EU for the directive to be adopted, with two Member States holding general reservations towards the proposal. As a result, EU law is still effectively marked by a hierarchy of grounds of protection from discrimination.

Article 21 (principle of non-discrimination) of the EU Charter of Fundamental Rights prohibits discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Article 19 of the Treaty on the Functioning of the European Union holds that the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

### FRA opinion 2.1

*The EU legislator should consider all avenues to ensure that the proposed Equal Treatment Directive is adopted swiftly to guarantee equal protection against discrimination on the grounds of religion or belief, disability, age or sexual orientation across key areas of life.*

As in previous years, EU Member States extended protection against discrimination to additional grounds and different areas of life in 2016. For instance, some Member States introduced a person's socio-economic status or gender reassignment as protected grounds in their national legislation. Other Member States extended non-discrimination law to areas such as consumer protection, age redundancy clauses and retirement age. Such steps further contribute to tackling discrimination and fostering equal treatment across a broad range of key areas of life.

### FRA opinion 2.2

*EU Member States should consider adding grounds of protection against discrimination to broaden the scope of national anti-discrimination legislation.*

Against a backdrop of heightened tension caused by the threat of terrorism in the EU in 2016, national courts dealt with the question of when it is acceptable to ban particular types of clothing, with related cases pending before the Court of Justice of the EU (CJEU). These cases revealed that the introduction of such bans risks disproportionately affecting and leading to discrimination against Muslim women who choose to wear certain garments as an expression of their religious identity or beliefs. Article 10 of the EU Charter of Fundamental Rights guarantees everyone's right to freedom of thought, conscience and religion. This right includes the freedom to change religion or belief and the freedom to manifest religion or belief in worship, teaching, practice and observance, either alone or in community with others. Article 21 of the EU Charter of Fundamental Rights prohibits any discrimination on the ground of religion or belief. Article 22 of the EU Charter of Fundamental Rights further provides that the Union shall respect cultural, religious and linguistic diversity.

### FRA opinion 2.3

*EU Member States should pay utmost attention to the need to safeguard fundamental rights and freedoms when considering any bans on symbols or garments associated with religion. Any legislative or administrative proposal to this end should not disproportionately limit the freedom to exercise one's religion. When considering such bans, fundamental rights considerations and the need for proportionality should be embedded from the outset.*

The year 2016 saw a growing acknowledgement that addressing discrimination from the perspective of a single ground fails to capture the different ways in which people experience discrimination in their daily lives. This is evidenced in the continued trend at national level to enlarge the scope of anti-discrimination legislation by adding protected grounds and/or areas of life in relevant national legislation. Yet, the EU and its Member States still tend not to deal explicitly with multiple discrimination when developing legal and policy instruments. By the end of 2016, only nine EU Member States explicitly covered multiple discrimination in national legislation. Such an approach can lead to better recognition of how people experience discrimination in their daily lives and enable devising courses of action that would truly foster inclusion.

### FRA opinion 2.4

*The EU and its Member States should acknowledge multiple and intersectional discrimination when developing and implementing legal and policy instruments to combat discrimination, foster equal treatment and promote inclusion.*

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