

# Homophobia and genderphobia in the European Union

Policy contexts and empirical evidence



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# Preface

How can the EU affect homophobia? What is the EU's main contribution in this area and what is the situation for lesbian, gay, bisexual, trans and queer (LGBTQ+) people in the European Union?

This report examines two types of homophobia (and genderphobia) indicators: policies and attitudes that can together provide an indication of the respect given to LGBTQ+ people's rights in the European Union. The first part of the report presents an overview of policy developments in areas where the European Union has competence to act regarding LGBTQ rights, as well as the advances in equal treatment policies. The EU has done extensive work in this area, however, the results differ across countries; the EU may act only within the limits of the powers assigned to it, and regarding LGBTQ+ rights the EU only has shared authority with the member states, or the ability only to take supporting, coordinating or supplementary actions.

In the second part of the report, comparative empirical evidence illustrates different levels of the social acceptance of LGBTQ+ people in Europe on the basis of quantitative data.

The report points out that LGBTQ+ rights must be kept on the EU agenda by initiating and re-initiating debates on unresolved issues, such as the proposed horizontal Anti-Discrimination Directive or mutual recognition of the effects of civil status documents, and by producing good quality empirical data about the experiences of, and the attitudes towards, LGBTQ+ people in the EU.

It is also concluded that the potentially socialising effects of the perceived non-heteronormative EU-norms cannot be underestimated: they not only set normative guidelines for candidate countries but also provide a legacy of legislation that is passed in order to join the EU, and the non-heteronormative framing of its diplomacy worldwide.

Eva Sjögren  
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# Executive summary

This report examines two types of homophobia (and genderphobia) indicators: policies and attitudes that can together provide an indication of the respect for lesbian, gay, bisexual, trans and queer (LGBTQ+) people's rights in the European Union. One of the main aims of this work is to help raise awareness – by accumulating information and knowledge – about the importance of respecting LGBTQ+ rights within the European Union. The report also provides information – and guidance – to local and international NGOs dealing with issues relevant to LGBTQ+ people, as well as to all interested EU citizens.

Homophobia is defined here as a specific subset of *genderphobia* – the strategic avoidance of breaking gender(ed)-norms – partly because social rejection of gays, lesbians, queers and non-heteronormatively acting others seems to be part of a broader gender belief system characterised by the (hetero)normatively appropriate and usually quite distinct paths of women and men in society. It is also a common experience that homophobia tends to go together with not only other social phobias, such as xenophobia, but also with traditional views regarding the roles of women and men in society. The term homophobia is used in an interpretational framework, which is more intimately connected to heteronormativity than to the concept of homosexuality, carrying several denotations and connotations of behaviour, identity, performance and history.

The report consists of two main parts: in the first an overview is provided of the EU policy landscape regarding LGBTQ+ people's rights, and in the second comparative empirical evidence is presented mainly from large-scale quantitative cross-national survey findings. These results highlight individual and country level variables – within the European Values Study, the European Social Survey, and the Eurobarometer surveys – that can influence social acceptance of LGBTQ+ people in Europe.

First, we focus on the policy context at the EU level by highlighting the role that EU-policies might play in the equal treatment of LGBTQ+ people. This part of the report presents an overview of policy developments in areas where the EU has authority to act regarding LGBTQ rights, as well as the advance of equal treatment policies since human rights and fundamental freedoms were established as founding principles of the EU (in the Amsterdam Treaty in 1997). A short overview of the institutionalization of same-sex partnership legislation at national levels is also presented. In the second part of the report, comparative

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<sup>1</sup> The term 'LGBTQ+' should be seen as open-ended, with several potential extensions so as to include not only lesbian, gay, bisexual and trans people, but also queer, questioning, intersex and other people.

empirical evidence illustrates different levels of social acceptance of LGBTQ+ people in Europe on the basis of several data sets.

The report ends with conclusions and recommendations, noting that the EU has only limited power regarding LGBTQ+ rights. Social policy, freedom, security, justice, and common safety concerns in public health matters are among those areas where the EU has shared authority with the Member States, while areas where the EU has its own authority to carry out supporting, coordinating or supplementary action include education, and the protection and improvement of human health. The remaining problematic legal issues relating, for instance, to the reproductive and parenting rights of LGBTQ+ people belong to areas such as family policy where the EU does not have authority – but even though family law is outside EU authority, efforts can be undertaken towards strengthening children's rights.

Specific recommendations are also added to each subsection of the conclusions, including the proposals that regular monitoring of LGBTQ+ rights after EU accession should be maintained and the results should be publicised; that the EU should continue to initiate and facilitate active debates concerning the mutual recognition of the effects of civil status documents that could ease and guarantee the free movement of non-heteronormatively formed rainbow families between individual EU member states; and that large scale cross-national surveys should include an increasing number of variables that could be used in assessing different aspects of the everyday life of LGBTQ+ people, as well as the homophobic and genderphobic attitudes of the general population.

The report concludes by reiterating that LGBTQ+ rights must be kept on the EU agenda by initiating and re-initiating debates on unresolved issues, such as the proposed horizontal Anti-Discrimination Directive or mutual recognition of the effects of civil status documents, and by producing good quality empirical data on the experiences of, and the attitudes towards, LGBTQ+ people in the EU. The potentially socialising effects of the perceived non-heteronormative EU-norms cannot be underestimated: it not only sets normative guidelines for candidate countries but it also provides a legacy of legislation that is passed in order to join the EU, and the non-heteronormative framing of its diplomacy worldwide.



# 1 Introduction

This report examines two types of homophobia (and genderphobia) indicators, policies and attitudes, which can together provide an indication of the respect for lesbian, gay, bisexual, trans and queer people's rights in the European Union. The report consists of two main parts: in the first an overview will be provided of the EU policy landscape regarding LGBTQ+ people's rights, and in the second comparative empirical evidence will be presented, mainly from large-scale quantitative cross-national survey findings. These results highlight individual and country level variables – within the European Values Study, the European Social Survey, and the Eurobarometer surveys – that may influence social acceptance of LGBTQ+ people in Europe. Only large-scale quantitative cross-national surveys were selected that follow multistage probabilistic sampling plans, regularly collect data in EU countries and include relevant variables regarding attitudes towards LGBTQ+ people and issues.

One of the main aims of this work is to contribute to raising awareness – in the form of accumulating information and knowledge – about the importance of respecting LGBTQ+ rights within the European Union. The target audience of this report is primarily policy-makers at EU and the national levels (who are said to be known for their “number crunching” tendencies and preferences). The report can also provide information – and guidance, at least to a certain degree – to local and international NGOs dealing with issues relevant to LGBTQ+ people, as well as to all interested EU citizens (and in fact people outside the EU).<sup>3</sup>

## Notes on terminology

Gay movements have been long criticised – especially (but not only) in North-America – for claiming equal rights on the basis of a normalising politics that presents non-heterosexuals as potentially normal, gender conventional, good citizens (Seidman 2002), and since the 1990s, queer activists at least have wondered what was happening to the right to be different. Trans activists make similar claims: for example, Wilchins (2004) sees these normalising tendencies as being part of a *new gay deal*, characterised by *internalized genderphobia*, referring

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<sup>2</sup> Kosovo, Norway, Russia, Switzerland, Turkey and Ukraine are also included in some of the tables.

<sup>3</sup> While the value of qualitative data is undeniable in making and evaluating different policy measures, as well as in the diagnostic process – which can inform decision-makers not just about the existence of a problem but also the details of that problem (and possibly its potential solutions) – collecting and analysing qualitative data on the development and perception of LGBTQ+ rights related EU policies would have overrun the scope of the present report. It would, however, be worthwhile for another project to pursue such goals in the future.

to the strategic avoidance of addressing non-normative gender issues and norms in everyday life as well as in policy-making practices.

Genderphobia – the strategic avoidance of breaking gender(ed)-norms – can be seen as not only a more telling, but also a conceptually broader and more neutral term than homophobia. Since the publication of George Weinberg's book on *Society and the Healthy Homosexual* (1972), it has become widely understood that it is not homosexuality that is a disease, but homophobia, and just a few years later homophobia was proposed as only one of the dimensions constituting 'homonegativism', a larger, multidimensional "domain or catalogue of anti-gay responses" (Hudson and Ricketts 1980: 358). The term homophobia itself – used as the notion of a specific, new kind of phobia, the irrational fear of homosexuals – was heavily criticised from the very beginning in the 1970s (including by Plummer 1975, 1981; Kitzinger 1987) for being a misnomer that directs attention to individual traits, and neglects the socio-cultural contexts where hostility towards homosexuality can be deeply embedded.

Homophobia can be defined as a specific subset of genderphobia partly because social rejection of gays, lesbians, queers and non-heteronormatively acting others seems to be part of a broader gender belief system characterised by the (hetero) normatively appropriate, and usually quite distinct, paths of women and men in society. It is also a common experience that homophobia tends to accompany not only other social phobias, such as xenophobia, but also with traditional views regarding the roles of women and men in society.

I am using the term homophobia in an interpretational framework, which is more intimately connected to heteronormativity than to the concept of homosexuality, carrying several denotations and connotations of behaviour, identity, performance and history (Takács et al. 2012). In this report homophobia is interpreted not as a "homosexual only" issue but as a broader issue, which can affect lesbian, gay, bisexual, trans, queer and other people. Rather than focussing on a specific individual level of irrational fear, being largely disconnected from its specific socio-cultural surroundings, it should be handled as an awareness raising tool for heterosexist, heteronormative oppression operating in Europe.

Throughout the report I will use the abbreviation LGBTQ+ as an umbrella term that covers a heterogeneous group, including lesbian, gay, bisexual and trans people, often used in joint political efforts in the local and international political arena for efficiency: in order to increase social visibility and political support. The term LGBTQ+ should be seen as open-ended, with several potential extensions, to include not only lesbian, gay, bisexual and trans

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<sup>4</sup> Wickberg (2000) notes that in comparison to racism and sexism, homophobia is not a neutral category in the sense that in theory "any discrimination on the basis of race or sex could be seen as racist or sexist; [...] Homophobia on the other hand, designates homosexuals as its objects and victims" (2000:44).

people, but also queer, questioning, intersex and other people. While there can be significant differences between the individuals who are (politically) represented under the LGBTQ+ heading, their main uniting force derives from their membership of a social minority group. LGBTQ+ people are members of relatively powerless social groups, but they differ from "traditional" minorities – such as ethnic minorities – in two main respects: they are usually not marked by their bodies, and thus they are not necessarily recognisable by sight; and their existence is still perceived in many places as challenging the natural order of things (Gross 1991).

## 2 Overview of EU policies regarding the rights of LGBTQ+ people

This chapter focuses on policy context at the EU level by highlighting the role EU-policies might have in the equal treatment of LGBTQ+ people. First the meanings of legal and social discrimination of LGBTQ+ people will be discussed, then a summary of internal and external EU policy developments regarding LGBTQ+ rights will be presented, followed by a brief overview of the institutionalization of same-sex partnership legislation at national levels.

### 2.1 Legal and social discrimination

Discrimination of LGBTQ+ people is a multidimensional issue, the extent of which can be estimated properly only if various potential interpretational frameworks are taken into consideration. Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation describes direct discrimination as occurring when a *"person is treated less favourably than another is, has been or would be treated in a comparable situation"* because of their gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation; and indirect discrimination is defined as occurring when *"an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless the practice can be objectively justified by a legitimate aim"*.<sup>5</sup> Indirect discrimination often overlaps with legal discrimination, to be interpreted in the context of the legal emancipation of relatively powerless social minority group members, while the more subtle indirect forms are often manifested as social discrimination to be interpreted in the context of full social emancipation of social minority group members.

While in Europe the de-criminalisation of same-sex sexual activity between consenting adults has become a legal norm cultivated by the Council of Europe as well as the European Union, there are still some more or less interwoven

<sup>5</sup> The European network of legal experts in the field of gender equality describes four main frameworks within which meanings of equality and non-discrimination can be interpreted according to EU law (McCrudden – Prechal 2009). These can be found in Appendix 1.

<sup>6</sup> Source: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:en:HTML>

<sup>7</sup> See case law of the European Court of Human Rights in *Dudgeon v. UK*, 22 October 1981 (Series A, N°45), *Norris v. Ireland*, 26 October 1988 (Series A, N° 142), *Modinos v. Cyprus*, 22 April 1993, 5 series A, N°259).

problem areas in the field of legal emancipation of LGBTQ+ people, including the legal treatment of LGBTQ+ couples, their parenting rights, and the recognition of transgender people in the law. Same-sex marriage, marriage of trans people, individual adoption by openly gay men, lesbian women or transgender people, or joint adoption by same-sex couples are still controversial legal issues that are addressed in relatively few countries in Europe and worldwide.

In general, the legal emancipation of LGBTQ+ people can be defined as a process characterised by the elimination of discriminative aspects of penal codes as a starting point, leading to anti-discrimination protection and the promotion of equality. Anti-discrimination protection can be analysed at an individual level, where the focus is on the protection of individuals, and at a relational level, where the focus of protection is the individuals' relationships with significant others such as partners and children. Anti-discrimination protection is a very important element of legal emancipation: it is essentially a correcting device to prohibit already existing and usually widespread social practices that can push LGBTQ+ people into disadvantageous situations. This can occur in two main ways: either by the non-recognition of certain rights such as the right to marry a same-sex partner, or by denying access to recognised rights. When Pride marches are banned, for instance, the human right of LGBTQ+ people to freedom of assembly is violated.

The social emancipation of LGBTQ+ people is often interpreted as a consecutive phase of legal emancipation mainly because it is easier to identify and thus fight against legal dispositions than against social practices rooted in institutionalised norms. Legislation can reflect and promote social change, but its effectiveness largely depends on whether people are able to accept (and internalise) the normative expectations it represents.

Social discrimination is more difficult to confront than legal discrimination because it is manifested in more hidden forms. Social discrimination can result from subtle prejudice at the individual level as well as the lack of consideration of the possible negative consequences of certain policies for different social groups on the level of society. The latter is often referred to as indirect discrimination, which is hard to avoid once a discriminatory policy is in operation – but can be prevented with careful examination during the policymaking process.

As well as applying an individual notion of discrimination – an approach usually favoured by anti-discrimination legislation – it is also important to highlight forms of discrimination that are ingrained in the system, and affect LGBTQ+ people as a group. When measuring the level of social discrimination against LGBTQ+ people, a structural concept of oppression (Young 1990) can be applied so as to focus on the disadvantages and injustice suffered by LGBTQ+ people as individuals and also as members of oppressed social groups. These disadvantages are the consequence of everyday practices, resulting from the unquestioned

norms and assumptions that underlie institutional rules. In this context the two main criteria for determining the scope and extent of the oppression of LGBTQ+ people are heteronormative cultural imperialism<sup>8</sup> and heterosexism<sup>9</sup> and systemic violence, consisting of direct victimisation and being liable to violation purely on account of real or attributed identities.

The social emancipation of LGBTQ+ people is also closely connected to the practical application of preventive measures to avoid the occurrence of discrimination. One of the main tools of discrimination prevention is awareness-raising: members of society have to recognise discrimination against LGBTQ+ people as a problem both at an intergroup and at an interpersonal level. The law can be helpful in this respect, too: the fact that anti-discrimination legislation exists can have awareness-raising effects in itself, as it conveys the message that according to the state, discrimination is a wrong social practice with punishable consequences.

Achieving a certain degree of social visibility for social groups suffering from social disadvantages is a precondition for claiming rights, and it is very hard, if not impossible, to articulate the interests and defend the rights of socially invisible actors. The social invisibility of LGBTQ+ people correlates with their level of social exclusion – to be interpreted in this context as a *“process whereby certain individuals are pushed to the edge of society and prevented from participating fully ... as a result of discrimination. This distances them from job, income and education opportunities as well as social and community networks and activities. They have little access to power and decision-making bodies and thus often feel powerless and unable to take control over the decisions that affect their day to day lives”*.

<sup>8</sup> Cultural imperialism is about “how the dominant meanings of a society render the particular perspective of one’s own group invisible at the same time as they stereotype one’s group and mark it out as the Other” (Young 1990; 58-9).

<sup>9</sup> Heterosexism is the belief, stated or implied, that heterosexuality is superior (theologically, morally, socially, emotionally, behaviourally, and/or in some other way) to homosexuality; the presumption that all people are heterosexual (may be conscious or unconscious); the belief that all people should be heterosexual; prejudicial attitudes or discriminatory acts against non-heterosexual individuals, which follow from the above beliefs (these may be conscious or unconscious, overt or covert, intentional or non-intentional, formal or informal) (Roffman 2000). As an institutionalised system of oppression, heterosexism negatively affects LGBTQ+ people as well as some heterosexual individuals who do not subscribe to traditional standards of masculinity and femininity (Zimmerman 2000).

<sup>10</sup> Systemic violence includes “random, unprovoked attacks on their persons or property, which have no motive but to damage, humiliate, or destroy the person” (Young 1990; 61) and “the daily knowledge shared by all members of oppressed groups that they are *liable* to violation, solely on account of their group identity” (Young 1990; 62).

<sup>11</sup> Source: European Commission (2004) Joint report by the Commission and the Council on social inclusion (7101/04) [http://ec.europa.eu/employment\\_social/soc-prot/soc-incl/final\\_joint\\_inclusion\\_report\\_2003\\_en.pdf](http://ec.europa.eu/employment_social/soc-prot/soc-incl/final_joint_inclusion_report_2003_en.pdf) – The full definition is the following: *a process whereby certain individuals are pushed to the edge of society and prevented from participating fully by virtue of their poverty, or lack of basic competencies and lifelong learning opportunities, or as a result of discrimination*.

Social exclusion prevents its victims from enjoying full community membership and citizenship rights. Since the early 1990s various concepts of citizenship – such as feminist citizenship (Walby 1994), sexual citizenship (Evans 1993, Bell-Binnie 2000), intimate citizenship (Giddens 1992; Plummer 2001), and transgender citizenship (Monro-Warren 2004) – were introduced that emphasised the necessity to broaden the scope of modern citizenship to consider the full participation opportunities of social groups, including LGBTQ+ people, that had formerly been deprived of full community membership. At the same time, however, it was also emphasised that rights claims articulated through appeals to citizenship might carry a burden of compromise (Bell-Binnie 2000), especially if social boundaries are inserted between the good citizen insiders and the bad outsider citizens, and if the “good citizens” somehow always tend to be conventionally gendered heterosexual people (Seidman 2002).

## 2.2 Legal framework of LGBTQ+ rights in the EU

By the early 21<sup>st</sup> century “sexuality [had] permeated human rights consciousness” (Stychin 2004: 953), at least in some parts of the world – and in the transnational legal regime of the European Union sexual orientation had become an identity with anti-discrimination rights attachments. The Amsterdam Treaty of 1997 empowered the EU member states to enact legislation for combating discrimination not only on the grounds “of sex, racial or ethnic origin, religion or belief, disability, [and] age” but also on the basis of sexual orientation. This can be seen as the first step in the process of developing an EU-wide concept of sexual citizenship, marked by the articulation of sexuality in the public sphere through claims for rights and participation: “claims which might originally appear to be passive, private and even disciplined have come to possess an active, public, political and even democratic component as they emerge in the political space of the EU” (Stychin 2001: 293).

Today EU legislation guarantees equal treatment for everyone regardless of their sexual orientation and/or gender in the context of employment and vocational training on the basis of three key documents. According to Article 10 of the Treaty on the European Union and the Treaty on the Functioning of the European Union: “In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation; and according to Article 19 the Union...may take appropriate action to combat discrimination based on sex,

<sup>12</sup> In social sciences the modern interpretation of citizenship was greatly inspired by the classic theory of the English sociologist Thomas H. Marshall (1963), who defined citizenship as a status enjoyed by persons who are full members of a community.

<sup>13</sup> Source: [http://europa.eu/eu-law/decision-making/treaties/pdf/treaty\\_of\\_amsterdam/treaty\\_of\\_amsterdam\\_en.pdf](http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_of_amsterdam/treaty_of_amsterdam_en.pdf)



*racial or ethnic origin, religion or belief, disability, age or sexual orientation*". Article 21 of the Charter of Fundamental Rights of the EU (2000/C 364/01) also calls for the EU to be proactive in fighting discrimination based on sexual orientation: *"Any 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 shall be prohibited"*. According to Article 1 of Chapter 1 of the Employment Equality Directive, the *"purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment"*.

### 2.3 Limited power of the EU regarding LGBTQ+ rights

The EU may, however, act only within the limits of the powers assigned to it, and regarding LGBTQ+ rights the EU has only shared authority with the Member States, or authority only to take supporting, coordinating or supplementary actions – and even when the EU has authority to act, these actions have to comply with the principle of subsidiarity (i.e. EU actions can be initiated only in the case when issues cannot be dealt with effectively at national, regional or local levels). According to a study commissioned by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs in the course of preparing an EU roadmap for equality on the grounds of sexual orientation and gender identity (Leigh et al. 2012), social policy, freedom, security, justice, and common safety concerns in public health matters are among those areas relevant to LGBTQ+ rights where the EU has shared authority with the Member States, while areas where the EU has authority to carry out supporting, coordinating or supplementary action include education and the protection and improvement of human health.

Many of the EU's social objectives are therefore met through the implementation of non-binding 'soft' policies, including recommendations and resolutions that do not have the same legal status as EU directives. Left to each individual state to interpret and implement these non-binding policies we can see conceptual

<sup>14</sup> Source: 2010/C 083/01 Treaty on the European Union and the Treaty on the Functioning of the European Union – [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2010.083.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2010.083.01.0001.01.ENG)

<sup>15</sup> Source: 2000/C 364/01 Charter of Fundamental Rights of the European Union – [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>16</sup> Source: Council Directive 2000/78/EC of 27 November 2000 – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2000:303:0016:0022:EN:PDF>

<sup>17</sup> The treaties are binding agreements between EU member states: their goals are achieved by (also binding) *regulations and decisions* as well as *directives* that set out goals to be achieved, while *recommendations and opinions* can be seen as mere suggestions. Non-binding acts also include *conclusions and resolutions*. Source: Rules of Procedure of the European Council 2009 [http://europa.eu/eu-law/decision-making/procedures/pdf/rules\\_of\\_procedure\\_of\\_the\\_council/rules\\_of\\_procedure\\_of\\_the\\_council\\_en.pdf](http://europa.eu/eu-law/decision-making/procedures/pdf/rules_of_procedure_of_the_council/rules_of_procedure_of_the_council_en.pdf)



tensions between member states regarding the way they address and frame the potentially very different meanings of equality and non-discrimination.

2008 was the last time the European Commission proposed a binding policy in connection with LGBTQ+ rights. This was the proposal for the Horizontal or Anti-Discrimination Directive that would have banned discrimination on the grounds of age, disability, religion or belief and sexual orientation, not only in employment and occupation but in all areas of EU authority, including the areas of social protection, social advantage, and access to goods and services: *"The aim of this proposal is to implement the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market. It sets out a framework for the prohibition of discrimination on these grounds and establishes a uniform minimum level of protection within the European Union for people who have suffered such discrimination. This proposal supplements the existing EC legal framework under which the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation applies only to employment, occupation and vocational training."*<sup>18</sup> The introduction of such a directive would obviate the hierarchy of rights that currently exists in the EU by giving the grounds of age, disability, religion or belief and sexual orientation exactly the same protection that is guaranteed under the Racial Equality Directive.<sup>19</sup> The 2008 Anti-Discrimination Directive proposal, however, aiming to provide a comprehensive protective framework against discrimination on all grounds equally, has remained stalled to this day.

#### 2.4 Addressing LGBTQ+ human rights in EU foreign policy

In this subchapter the recent foreign policy developments of the EU will be briefly reviewed from the perspective of their potential effect on the advance of LGBTQ+ rights. EU foreign policy definitely encompass(ed) a certain level of concern regarding LGBTQ+ rights, which can and did play a determining role in the process of the EU enlargement negotiations.

The EU enlargement negotiations can be seen as specific circumstances when resolutions could gain binding effect: for example, in 1998 the European Parliament (EP) issued a general warning that it would not give its consent to the accession of any country that *"through its legislation or policies violates the human*

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<sup>18</sup> Source: Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation 2008/0140 (CNS) – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF>

<sup>19</sup> Source: Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0043:en:HTML>

rights of lesbians and gay men". In March 2000, the EP in its resolution on respect for human rights in the European Union, called on Bulgaria, Cyprus, Estonia, Hungary, Lithuania and Romania to *"remove from their penal codes all laws which entail discrimination against lesbians and homosexuals"*.

LGBTQ+ populations of the accession countries the EU could be seen (and for the potential accession countries it can still be seen) as *a new source of rights*, even though there have never been any specific communications issued that could help to specify the minimum standards regarding EU requirements of the applicant countries in their treatment of LGBTQ+ persons. A few years before the 2004 accession of the ten new EU member states, Mark Bell, a legal expert on behalf of ILGA-Europe emphasised that the enlargement process would provide an ideal opportunity for starting a dialogue on how the equality principle might be secured across Europe and across all types of discrimination.

*"[u]ndoubtedly, homosexuality and transsexuality are issues with the potential to provoke strong differences of opinion both within the existing EU states and also between the EU and the applicant states. Nonetheless, simply because it is more difficult to find agreement should not mean that these issues are left off the agenda. The Charter of Fundamental Rights provides a clear lead in signalling that sexual orientation discrimination is as unacceptable as any other form of discrimination"*

(Bell 2001: 89). Indeed, the 2002 Brok report on the state of enlargement negotiations called on the governments concerned to *"continue their efforts to repeal legislation discriminating against homosexuals (in Bulgaria, Hungary and Cyprus)"*<sup>25</sup> and for example, the issue of unequal ages of consent entered the agenda of relationships with the European Union in 2001 when the Commission's annual report criticised Hungary for not adopting an equal age of consent.

The EU continues to address LGBTQ+ human rights in its foreign policy very actively. For example, significant advances were achieved in asylum law with the

<sup>20</sup> Source: Resolution on equal rights for gays and lesbians in the European Community; 17/09/1998. [http://www.europarl.europa.eu/omk/omnsapir.so/pv2?PRG=CALDOC&FILE=980917&LANGUAGE=EN&TPV=DEF&SDOCTA=10&TXTLST=7&Type\\_Doc=RESOL&POS=1](http://www.europarl.europa.eu/omk/omnsapir.so/pv2?PRG=CALDOC&FILE=980917&LANGUAGE=EN&TPV=DEF&SDOCTA=10&TXTLST=7&Type_Doc=RESOL&POS=1)

<sup>21</sup> Source: European Parliament resolution on respect for human rights in the European Union (1998-1999), OJ [2000] C 377/344, 16/03/2000 – quoted by Bell (2001:88).

<sup>22</sup> ILGA-Europe is the European regional group of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (See: <http://www.ilga-europe.org/>).

<sup>23</sup> Report on the state of enlargement negotiations, Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy of the European Parliament, 24 May 2002. – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2002-0190+0+DOC+XML+V0//EN>

<sup>24</sup> The 2001 *Regular Report on Hungary's Progress towards Accession*: in the *Human Rights and the Protection of Minorities* subchapter under the heading of *Civil and Political Rights* it was specifically pointed out that "Homosexual (male or female) relations with minors of 14 years or over are punishable under the criminal law, whereas heterosexual relations with the same age group are not if there is consent. Therefore a difference in the age of consent, depending on sexual orientation, remains in place". Source: 2001 *Regular Report on Hungary's Progress towards Accession*, Commission of the European Communities, 13 November 2001. [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2001/hu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/hu_en.pdf)

adoption of the 2011 recast *Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection* (also known as the Qualification Directive) and the 2013 recast *Directive on common procedures for granting and withdrawing international protection*.

The Qualification Directive is the first piece of EU legislation that explicitly refers to gender identity as a recognised reason for persecution: it is *"equally necessary to introduce a common concept of the ground for persecution 'membership of a particular social group'. For the purposes of defining a particular social group, issues arising from an applicant's gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced abortion, should be given due consideration in so far as they are related to the applicant's well-founded fear of persecution"*.

According to the 2013 recast *Directive on common procedures for granting and withdrawing international protection* (which should guide the update of the national legislative systems by 2015) certain asylum applicants *"may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence"*. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection"; and in Article 15 on the Requirements for a personal interview it is also pointed out that member states should *"ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability"*.

In 2013, at the Foreign Affairs Council meeting in Luxembourg, the EU introduced new, comprehensive and binding guidelines for EU diplomats to promote and protect the enjoyment of all human rights by LGBTI (lesbian, gay, bisexual, transgender and intersex) persons: *"These guidelines aim to provide officials of EU institutions and EU Member States, with guidance to be used in contacts with third countries and with international and civil society organisations,*

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<sup>25</sup> Source: Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted – <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32011L0095>

<sup>26</sup> Source: Directive 2013/32 on common procedures for granting and withdrawing international protection (recast) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>

*using a case-by-case approach, in order to promote and protect the human rights of LGBTI persons within its external action. They seek to enable the EU to proactively promote the human rights of LGBTI persons, to better understand and combat any structural discrimination they might face, and to react to violations of their human rights. In doing so, they will further contribute to reinforcing and supporting the EU's human rights policy in general.*<sup>27</sup> This document replaced the previous non-binding toolkit – an operational set of tools to be used in communications with third countries, as well as with international and civil society organisations, in order to promote and protect the human rights enjoyed by LGBTQ+ people within its external action – and instructed EU diplomats to work towards eliminating discriminatory laws, combating state and non-state violence against LGBTI people, and supporting and protecting human rights defenders.

In 2014 the EU introduced a regulation that established a “*European Instrument for Democracy and Human Rights (EIDHR) for the period 2014-2020 under which the Union shall provide assistance to the development and consolidation of democracy and the rule of law and of respect for all human rights and fundamental freedoms*”. The EIDHR explicitly refers to funding to be provided for actions to support “*the rights of LGBTI persons, including measures to decriminalise homosexuality, combat homophobic and transphobic violence and persecution, and promote freedom of assembly, association and expression for LGBTI persons*”.

All these foreign policy initiatives demonstrate a solid commitment on the part of the EU to taking the rights of LGBTQ+ people outside the EU seriously. Paradoxically however, due to the limited EU authority, the rights of LGBTQ+ people cannot be guaranteed uniformly in all member states of the EU.

## 2.5 Inconsistency between external and internal EU policy aspects

Looking through the latest foreign policy developments of the EU regarding LGBTQ+ rights, the inconsistency between the external and internal policy aspects is even more salient. For example, in 2011 the legal proposal regarding the mutual recognition of the effects of civil status documents – which could

<sup>27</sup> Source: Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. Foreign Affairs Council meeting, Luxembourg, 24 June 2013 – [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/137584.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137584.pdf)

<sup>28</sup> Source: Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People – 2010 [http://eeas.europa.eu/human\\_rights/LGBTQ+/docs/toolkit\\_en.pdf](http://eeas.europa.eu/human_rights/LGBTQ+/docs/toolkit_en.pdf)

<sup>29</sup> Source: Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 – <http://www.eidhr.eu/files/dmfile/EIDHR.2014-2020.pdf>

also have helped facilitate the free movement of rainbow families<sup>30</sup> between the EU member states – were not passed into law, and there have been no further developments in this field since then. According to the text of this proposal:

*Of all public documents, civil status records give rise to a specific problem linked to their effects.*

*Civil status, for which each Member State has developed its own concept, based for instance on its history, culture and legal system, makes it possible to find out the status of a person and determine his or her position in society. It forms the basis of his or her legal status. Civil status records are records executed by an authority in order to record the life events of each citizen such as birth, filiation, adoption, marriage, recognition of paternity, death and also a surname change following marriage, divorce, a registered partnership, recognition, change of sex or adoption.*

*In a crossborder situation, the main question is whether a legal situation recorded in a civil status record in one Member State will be recognised in another<sup>31</sup>.*

In the green paper the limited EU competencies were also emphasised: “*in this context, it is important to stress that the EU has no competence to intervene in the substantive family law of Member States. Therefore, the Commission has neither the power nor the intention to propose the drafting of substantive European rules on, for instance, the attribution of surnames in the case of adoption and marriage or to modify the national definition of marriage. The Treaty on the Functioning of the European Union does not provide any legal base for applying such a solution*”. Thus even though these situations were recognised as *extremely unsatisfactory and incompatible* with the concepts of EU citizenship and a genuine internal market, there was little that could be done.

## 2.6 The widening scope of the EU anti-homophobia resolutions

It can be said that by the early 21<sup>st</sup> century the decriminalization of same-sex sexual activity by consenting adults had become a legal norm cultivated by the European Union and the Council of Europe. In January 2006 the European Parliament issued a (non-binding) resolution on homophobia, calling on the

<sup>30</sup> Rainbow families can be defined by “the presence of two or more people who share a same-sex orientation (e.g., a couple) or by the presence of at least one lesbian or gay adult rearing a child” (Allen – Demo 1995: 113). In a 2010 European research report on families and family policies “rainbow families” were listed under the heading of new and rare types of families as one of the still small but increasing family forms, research on which had “high potential for scientifically understanding families” (Kuronen 2010: 32). In the recently published “White Paper: Rights on the Move – Rainbow Families in Europe” legal report, rainbow families were defined as “families wherein persons of the same legal gender play the parental roles” (Kogovšek-Šalamon 2015:6).

<sup>31</sup> Source: Green Paper: Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records, COM(2010) 747 final of 14 December 2010. <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:52010DC0747>

<sup>32</sup> Ibid.

member states of the European Union to ensure that lesbian, gay, bisexual and transgender people were protected from homophobic hate speech and violence, and that same-sex partners enjoy the same respect, dignity and protection as the rest of society. The resolution defined homophobia *as an irrational fear of and aversion to homosexuality and to lesbian, gay, bisexual and transgender (LGBT) people based on prejudice and similar to racism, xenophobia, anti-Semitism and sexism, which can manifest itself in the private and public spheres in different forms, such as hate speech and incitement to discrimination, ridicule, and verbal, psychological and physical violence, persecution and murder, discrimination in violation of the principle of equality and unjustified and unreasonable limitations of rights, which are often hidden behind justifications based on public order, religious freedom and the right to conscientious objection.*

In 2012, the European Parliament issued another resolution on the fight against homophobia in Europe, where the fact that *the fundamental rights of LGBT people are not yet always fully upheld* in the European Union was acknowledged. The 2012 resolution includes references to previous resolutions adopted between January 2006 and May 2012 that have significance for protecting LGBTQ+ rights, including the resolution of 18 April 2012 on the Annual Report on Human Rights in the World and the European Union's policy on the matter; that of 14 December 2011 on the upcoming EU-Russia Summit of 28 September 2011 on human rights, sexual orientation and gender identity at the United Nations;<sup>33</sup> two resolutions about Lithuania (one in 2009<sup>34</sup> and another one in 2011<sup>35</sup>), and previous resolutions on homophobia, including the already mentioned resolution of 18 January 2006 and two others: that of 26 April 2007

<sup>33</sup> Source: European Parliament resolution on homophobia in Europe – 18 January 2006: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0018+0+DOC+XML+V0//EN>

<sup>34</sup> Source: European Parliament resolution of 24 May 2012 on the fight against homophobia in Europe: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0222&language=EN>

<sup>35</sup> Source: European Parliament resolution of 18 April 2012 on the Annual Report on Human Rights in the World and the European Union's policy on the matter, including implications for the EU's strategic human rights policy – <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-126>

<sup>36</sup> Source: European Parliament resolution of 14 December 2011 on the upcoming EU-Russia Summit on 15 December 2011 and the outcome of the Duma elections on 4 December 2011 – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0575+0+DOC+XML+V0//EN>

<sup>37</sup> Source: European Parliament resolution of 28 September 2011 on human rights, sexual orientation and gender identity at the United Nations – <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0427&language=EN>

<sup>38</sup> Source: European Parliament resolution of 17 September 2009 on the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information – <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2009-0019&language=EN>

<sup>39</sup> Source: European Parliament resolution of 19 January 2011 on violation of freedom of expression and discrimination on the basis of sexual orientation in Lithuania – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0019+0+DOC+XML+V0//EN>



on homophobia in Europe<sup>40</sup> and that of 15 June 2006 on the increase in racist and homophobic violence in Europe<sup>41</sup>. While there are some overlapping points in the contents of the 2006 and 2012 resolutions on homophobia, the scope of the 2012 resolution is extended by specific references to issues, including the respect for freedom of demonstration and the importance of legal institutions such as cohabitation, registered partnership or marriage in safeguarding LGBTQ+ people's fundamental rights<sup>42</sup>, even though the EU has no authority to intervene in the area of family law, there is a clear preference for establishing these legal institutions.

## 2.7 Institutionalisation of same-sex partnerships at the national level

The legal landscape in EU member countries regarding same-sex marriage, registered partnerships and joint adoption rights for same-sex couples is varied: today the legal institution of same-sex marriage exists in eleven European countries and a growing number of countries offer registered partnerships as a legal option for same-sex couples. Adoption by same-sex couples is also available with certain caveats in some cases, in a growing number of countries. Table 1 provides an overview of the introduction of same-sex marriage, registered partnership and joint adoption in 21 European countries, where at least one of these legal institutions exists.

Same-sex marriage and joint adoption by same-sex couples became possible for the first time in Europe in 2001 in the Netherlands, when that country legislated that the institution of marriage be equally open to same-sex as well as different-sex couples. This new legal framework automatically provided married same-sex couples with joint adoption rights in the Netherlands (and same-sex couples, who had previously entered into same-sex registered partnerships, introduced in 1998, could easily "upgrade" the legal status of their registered partnerships to marriage). In Portugal, however, for example, the introduction of same-sex marriage in 2010 did not lead immediately to same-sex parenting rights.

<sup>40</sup> Source: European Parliament resolution of 26 April 2007 on homophobia in Europe – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0167+0+DOC+XML+V0//EN>

<sup>41</sup> Source: European Parliament resolution on the increase in racist and homophobic violence in Europe – <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2006-0273+0+DOC+XML+V0//EN>

<sup>42</sup> The resolution urges the Member States and the Commission to ensure that freedom of demonstration – as guaranteed by all human rights treaties – is respected in practice.

<sup>43</sup> See Points 4 and 9 of the resolution: 4. *Calls on the Commission and the Member States to ensure that Directive 2004/38/EC on free movement is implemented without any discrimination based on sexual orientation, and calls on the Commission to propose measures to mutually recognise the effects of civil status documents on the basis of the principle of mutual recognition; [...]* 9. *Considers that LGBTQ+ people's fundamental rights are more likely to be safeguarded if they have access to legal institutions such as cohabitation, registered partnership or marriage; welcomes the fact that 16 Member States currently offer these options, and calls on other Member States to consider doing so.*

<sup>44</sup> In the Dutch legal text they use the term "Wet openstelling huwelijk" (Law No. 26.672 of 2001), i.e. the "law to make marriage open".

The existence of these legal institutions is very important not only at the interpersonal level of those who want to marry, register a partnership or adopt children, but also in a broader social context, because it can be expected that in countries having, for instance, same-sex marriage, people are more likely to directly encounter manifestations of LGBTQ+ “modes of existence” (Bech 1997) in public space as ordinary facts of everyday life. It can also be assumed that these personal encounters will most probably help to form less ignorant and prejudiced opinions on the lived realities of LGBTQ+ people in the given societies. In addition to the normative message of the state (when including same-gender partnerships and parenting into the legal system, a set of officially codified norms), the introduction of these legal institutions can thus have longer-term socialisation effects that potentially contribute to decreasing levels of homophobia and genderphobia in a given country.

**Table 1 Introduction of same-sex marriage, registered partnership and adoption by same-sex couples in 22 European countries (1989–2014)**

<i>Countries</i>	<i>Same-sex marriage</i>	<i>Registered partnership</i>	<i>Adoption by same-sex couples</i>
<b>Austria</b>		2010	2013 <sup>5</sup>
<b>Belgium</b>	2003	2000	2006
<b>Croatia</b>		2014 <sup>6</sup>	
<b>Czech Republic</b>		2006	
<b>Denmark</b>	2012	1989	2007/2009 <sup>7</sup>
<b>Estonia</b>		(2016) <sup>8</sup>	
<b>Finland<sup>9</sup></b>		2002	2009 <sup>0</sup>
<b>France</b>	2013	1999 (PACS)	2013
<b>Germany</b>		2001	2004 <sup>1</sup>
<b>Hungary</b>		2009 <sup>2</sup>	
<b>Iceland</b>	2010	1996	2006
<b>Ireland</b>		2010/201 <sup>3</sup>	
<b>Luxembourg<sup>4</sup></b>	2014/2015	2004	2014/2015
<b>Malta</b>		2014 <sup>5</sup>	2014
<b>The Netherlands</b>	2001	1998	2001
<b>Norway</b>	2008/2009 <sup>6</sup>	1993	2009
<b>Portugal<sup>7</sup></b>	2010		
<b>Slovenia<sup>8</sup></b>		2005	201 <sup>9</sup>
<b>Spain</b>	2005		2005
<b>Sweden</b>	2009	1994	2003
<b>Switzerland<sup>10</sup></b>		2004	
<b>United Kingdom</b>	2013	2005	2002/2008 <sup>11</sup>

For footnotes, please see page 24.



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- <sup>45</sup> Only second-parent (or step-parent) adoption, i.e. adoption of the biological child(ren) of one's partner.
- <sup>46</sup> The Croatian Parliament enacted the Life Partnership Act, a law on same-sex registered partnership in July 2014, including the creation of a new institution of partner-guardianship, similar to second-parent (or step-parent) adoption. ([http://news.err.ee/v/main\\_news/f238f529-5b94-4f66-b7be-ad5d21566cc5](http://news.err.ee/v/main_news/f238f529-5b94-4f66-b7be-ad5d21566cc5) – 2014-07-15).
- <sup>47</sup> Only second-parent adoption was introduced at first, followed by the introduction of joint adoption rights for same-sex couples.
- <sup>48</sup> The Estonian Parliament enacted the Cohabitation Act (allowing cohabitating couples, irrespective of the gender of either partner, the right to register their relationship at a notary and enjoy the kinds of financial benefits conferred by marriage) in October 2014, and this will come into effect in January 2016. ([http://news.err.ee/v/main\\_news/f238f529-5b94-4f66-b7be-ad5d21566cc5](http://news.err.ee/v/main_news/f238f529-5b94-4f66-b7be-ad5d21566cc5) - 2014-10-09).
- <sup>49</sup> The Finnish Parliament approved a bill allowing same-sex marriage on November 28, 2014 – however, the legal institution of same-sex marriage will not be introduced until 2016 at the earliest.
- <sup>50</sup> Only second-parent (or step-parent) adoption, i.e. adoption of the biological child(ren) of one's partner.
- <sup>51</sup> Only second-parent (or step-parent) adoption, i.e. adoption of the biological child(ren) of one's partner.
- <sup>52</sup> In Hungary the legal institution of registered partnership for same-sex and different-sex couples had been introduced in 2007, but only same-sex registered partnership came into operation in July 2009.
- <sup>53</sup> In the Republic of Ireland the legal institution of same-sex registered partnership was introduced in 2010 (Civil Partnership and Certain Rights and Obligations of Cohabitants Act), being in effect from January 2011.
- <sup>54</sup> Parliament enacted a same-sex marriage law, including joint adoption rights, in June 2014, which comes into operation in January 2015.
- <sup>55</sup> The Civil Union bill was first introduced in 2013, it was enacted in 2014, and the first same-sex civil union was performed in June, 2014.
- <sup>56</sup> The Norwegian Parliament enacted a gender neutral marriage law in June 2008, which came into operation in January 2009.
- <sup>57</sup> In May, 2013 the Portuguese Parliament approved the “co-parenting” bill to recognise second-parent (or step-parent) adoption rights for same-sex couples in the first reading, however in March 2014 the proposal was rejected.
- <sup>58</sup> The Slovenian Parliament approved a bill allowing same-sex marriage on March 3, 2015 – however, it is not yet clear when same-sex marriage and adoption by same-sex couples will come into operation (<http://www.reuters.com/article/2015/03/04/us-slovenia-gaymarriage-idUSKBN0M00ZP20150304>).
- <sup>59</sup> Only second-parent (or step-parent) adoption, i.e. adoption of the biological child(ren) of one's partner. It is a special case because there was no new legislation introduced, but in 2011 Slovenian legal experts successfully used the old adoption legislation (originally introduced in 1976 with no specific reference to the gender of adoptive parents) to show that second-parent adoption is in fact legal (Source: [http://www.b92.net/eng/news/globe-article.php?yyyy=2006&mm=07&dd=25&nav\\_category=123&nav\\_id=35807](http://www.b92.net/eng/news/globe-article.php?yyyy=2006&mm=07&dd=25&nav_category=123&nav_id=35807) – 2006-07-25).
- <sup>60</sup> Adoption & Children Act – England & Wales 2002; Scotland 2008.

### 3 Comparative empirical evidence on homophobic attitudes in Europe

In this section comparative empirical evidence will be presented about the extent and the main determinants of homophobic and genderphobic attitudes in EU member countries on the basis of large-scale quantitative cross-national survey findings. These results can highlight certain individual and country level variables – within the EVS, ESS, ISSP and Eurobarometer surveys – that can influence the social acceptance of LGBTQ+ people in Europe. Only large-scale quantitative cross-national surveys were selected that followed multistage probabilistic sampling plans, regularly collected data in (most) EU countries and included relevant variables regarding attitudes towards LGBTQ+ people and issues.

It is important to note that researchers rarely have the chance to follow the “genealogy” of the survey variables they use, when in many cases it would be instructive to be able to reconstruct the processes of meaning attribution and the assumptions on the basis of which the questionnaire developers worked. We should also admit that we can never be really sure about the exact understanding of our respondents, regarding the potential denotations and connotations of the survey questions (although to a certain extent this also applies to qualitative research): one can say that a general weakness, and at the same time a general strength, of survey research derives from the fact that researchers do not have the opportunity to ask respondents the famous ethnomethodological ‘what do you mean?’ questions, while conducting their surveys. Survey data can, however, be successfully applied to show larger patterns and longitudinal changes in attitudes. It can also help to identify factors with statistically significant effects on attitudes of larger populations – and we all know that the “bureaucratic mind does like to deal with statistics”.

#### 3.1 Cross-national survey (EVS, ESS, ISSP and Eurobarometer) findings

There has been extensive research focusing on public attitudes towards gays and lesbians, highlighting the relationship between tolerance towards gays and lesbians

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<sup>61</sup> Non-EU member states, such as Kosovo, Norway, Russia, Switzerland, Turkey and Ukraine, are included in some of the figures.

<sup>62</sup> Adding that “if you are running government policy... you want to have some sort of statistical basis upon which you can say therefore we have to do this” – Takács (2007:105) quotes Barry Fitzpatrick, former Head of Legal Policy and Advice at the Equality Commission for Northern Ireland.

and basic demographic variables such as gender, age, education (including Herek 1984, 2002; Agnew et al. 1993; Steffens – Wagner 2004; Andersen – Fetner 2008; Schwartz 2010; Takács – Szalma 2011, 2013), religiosity (including Larsen et al. 1983, Herek 1984, Agnew et al. 1993, Štulhofer – Rimac 2009, Gerhards 2010, Schwartz 2010; Takács – Szalma 2011; van den Akker – van der Ploeg – Scheepers 2013), traditional gender role beliefs and heterosexism (including Simon 1998, Kite – Whitley 1998, Hetzel 2011), attitudes on gender equality and abortion rights (Hicks – Lee 2006), moral and political views (including Herek 2004, Kon 2010; Gaines – Garand 2010; Schwartz 2010; Lee – Hicks 2011; Hadler 2011). The homophobic tendencies of right-wing extremists had already been highlighted in previous research (Herek, 2004; Kon, 2010): for example, Haddock and Zanna (1998) emphasised the connection between the homophobic attitudes of right wing authoritarians and their perceptions of gay men and lesbian women violating values seen by them as inviolable. The relationship between homophobia and racism, as well as attitudes towards other outgroups such as immigrants, have been also established by previous research (Larsen et al., 1983; Agnew et al., 1993; Herek, 2004; Ward, 2005; Kon, 2010). There have also been studies focusing on specific issues affecting attitudes towards same-sex marriage, including gender, religiosity and the level of homophobia in respondents (Herek 2002; Olson – Cadge – Harrison 2006; Moskowitz – Rieger – Roloff 2010).

Previous comparative European findings also indicated that respondents' gender, age, educational level, religious background and political orientation strongly influenced whether they supported same-sex marriage and/or "homosexual adoption": women, younger people, and those with higher educational level, non-religious background and left-wing political orientation tended to be more supportive than others. The level of supportive attitudes also varied in accordance with current national legislation: countries having already adapted their laws, or in the stage of doing so, received firm support according to their respective public opinions (EOS Gallup 2003). The least disapproval of homosexuality was found in European countries with legislation permitting homosexuals to marry or to adopt children (van den Akker – van der Ploeg – Scheepers 2013). In the Netherlands, a pioneering country in the advance of gay and lesbian rights worldwide, where different attitudinal dimensions of homophobia – including general acceptance of gays and lesbians, equal rights and antidiscrimination reactions to public display of same-sex attraction, and reactions to homosexuality in the immediate setting such as having gay or lesbian neighbours – could be compared, it was found that responses to general acceptance questions (such as level of agreement with the statement that gays and lesbians should be free to live their lives as they wish) indicated the highest level of public support in comparison with questions on specific gay and lesbian rights, such as same-sex adoption (Keuzenkamp 2011).

### 3.1.1 Social acceptance of homosexuality, homosexual neighbours, gays and lesbians

Variables measuring various aspects of homophobia in Europe can be found in a few large-scale quantitative cross-national surveys that follow multistage probabilistic sampling plans. The first attempt to measure homophobic attitudes worldwide was provided by the first wave of the World Values Survey (WVS) and the European Values Study (EVS), where the following variable was used in 1981: *Please tell me whether you think homosexuality can always be justified, never be justified, or something in between*. Since then this question has been included in all the EVS (1981, 1990, 1999, 2008) and WVS (1981-1984, 1989-1993, 1994-1999, 1999-2004, 2005-2008, 2010-2014) data collection rounds, which enables researchers to examine longitudinal changes in homophobic attitudes in several European and non-European countries.

The first three waves of EVS (1981, 1990, 1999) and two variables measuring attitudes related to homosexuality and homophobia: a rather ambiguously phrased general acceptance question about the “justification of homosexuality”; and another measuring reactions to homosexuality in the immediate setting: *“On this list are various groups of people (including people with a criminal record, left wing extremists, heavy drinkers, right wing extremists, people with large families, emotionally unstable people, Muslims, immigrant social workers, people who have AIDS, drug addicts, homosexuals, Jews, Gypsies, Christians). Could you please sort out any that you would not like to have as neighbours?”* Diagram 1 provides an overview of the changes over time in the mean values of the “justification of homosexuality” EVS variable between 1981 and 2008.

Diagram 2 shows the evolution in the mean values of the non-preference for homosexual neighbours EVS variable between 1990 and 2008. Even though in 1981 there were only 14 participating countries in the EVS, the longer term trends reflect a general decrease in homophobic attitudes.

We can see a significant increase in levels of acceptance, especially regarding homosexual neighbours, between 1990 and 1999 in post-socialist countries, including the Czech Republic, Estonia, Hungary, Latvia and Poland. In fact, these results reflect a more dynamic decrease in the issue of social distance and homophobia (willingness to have gay or lesbian neighbours) in the post-socialist countries than in the non-post-socialist countries. To be fair, we have to note that the levels of non-preference for homosexual neighbours were much higher in post-socialist countries around 1990 than in most of the northern and western European countries.

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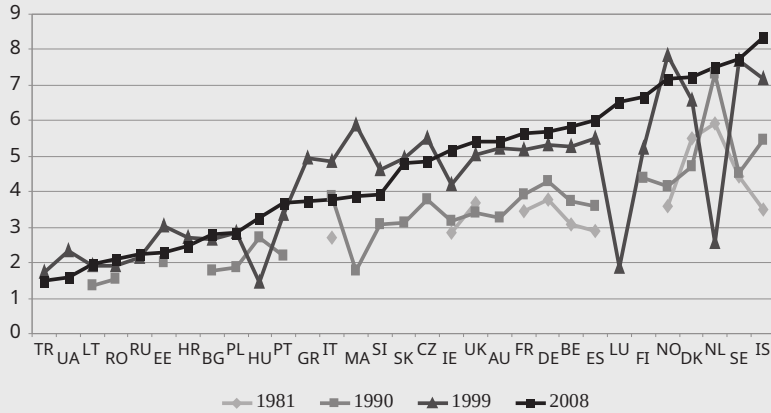
<sup>63</sup> Source: <http://www.worldvaluessurvey.org/>

<sup>64</sup> Source: <http://www.europeanvaluesstudy.eu/>

<sup>65</sup> Belgium, Denmark, France, Germany, Iceland, Ireland, Italy, Malta, the Netherlands, Norway, Spain, Sweden, Great Britain, Northern Ireland.

**Diagram 1: "Justification" of homosexuality in Europe between 1981 and 2008**

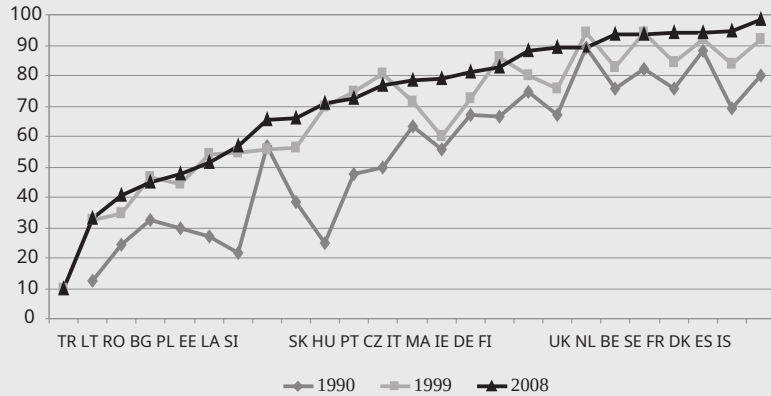
(1 = 'homosexuality can never be justified'; 10 = 'homosexuality can always be justified')



Source: EVS 1981, 1990, 1999, 2008

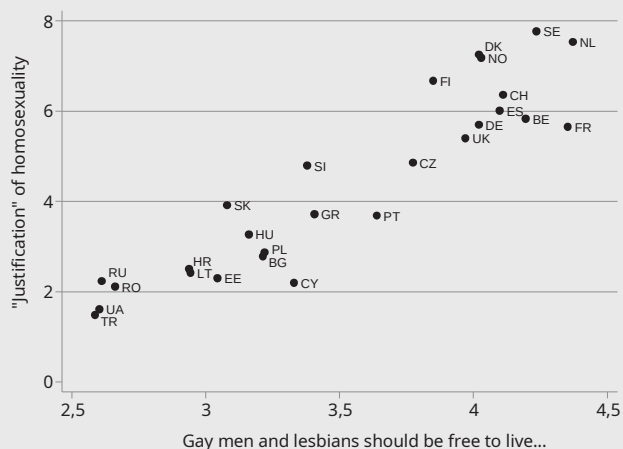
**Diagram 2: (Non-)Preference for homosexual neighbours in Europe between 1990 and 2008**

(Percentage of those who indicated that they would not be unwilling to have homosexual neighbours)



Source: EVS 1990, 1999, 2008

**Diagram 3: Relationship between the variables “justification” of homosexuality (EVS) and social acceptance of gay men and lesbian women (ESS) in 23 European countries**



Source: EVS 2008, ESS 2008

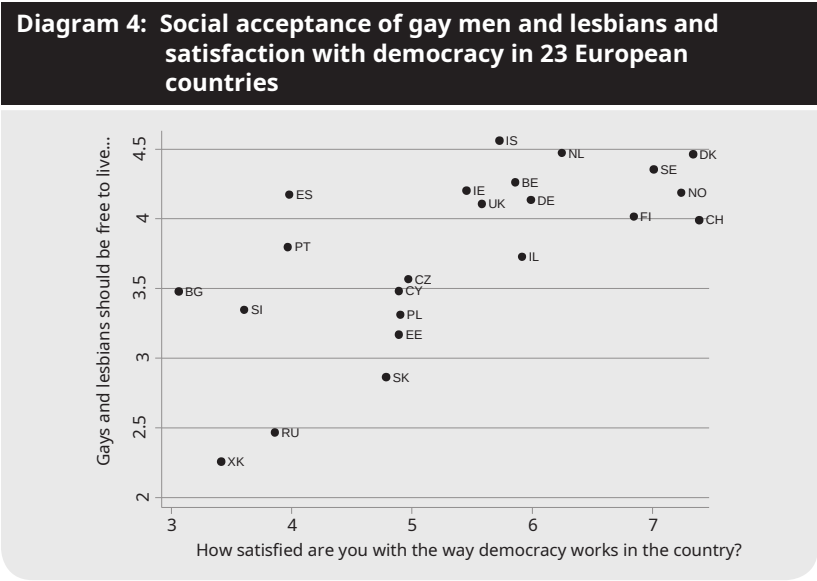
Diagram 3 illustrates the relationship between the variables “justification of homosexuality” (EVS) and the acceptance of gay men and lesbian women (ESS). The ESS (European Social Survey) was initiated in 2002 by the European Science Foundation in order to study changing social attitudes and values in Europe. The ESS is a repeat cross-sectional survey, administered every two years, that consists of a core module and a module focusing on specific academic and policy issues that change in each round of data collection. The ESS core module includes one general acceptance question about the level of agreement with the statement that *gay men and lesbians should be free to live their own life as they wish* (where freedom of lifestyle is meant as being free and/or entitled to live as gays and lesbians). It has been included in the core module of the main ESS questionnaires since 2002 in all data collection waves already completed (2004, 2006, 2008, 2010, 2012). The 2008 combined ESS and EVS results include Turkey, Ukraine, Russia, Romania, Croatia, Lithuania and Estonia among the countries characterised by highly homophobic attitudes, while the Netherlands, Sweden, Norway and Denmark can be found among those characterised by the least homophobic attitudes.

There also appears to be a relationship between satisfaction with democracy and social attitudes toward gays and lesbians. ESS data gathered in 2012 from 23

<sup>66</sup> Source: <http://www.europeansocialsurvey.org/>

European societies, shows that the democracy deficit – expressed predominantly in the former state-socialist countries that are also characterised by a lack of same-sex partnership legislation – may contribute to the development of homophobic social environments (see Diagram 4). Conversely, satisfaction with the functioning of the democratic system appears to be correlated with a higher level of social acceptance of lesbians and gays. In addition to higher levels of social acceptance, these countries, including Denmark, the Netherlands, Sweden, Switzerland, Norway, and Finland, also have institutionalised forms of same-sex partnerships.

Diagram 5 shows changes over time in the mean values of the ESS variable *gay men and lesbians should be free to live their own life as they wish* between 2002 and 2012 (in only those countries that took part in at least three ESS rounds). We can see a general decrease in homophobic attitudes here, too, however, we should call attention to the Russian results, indicating not only the lowest levels of tolerance towards gay men and lesbian women among the examined societies in all ESS rounds but also manifesting a trend counter to most of the other European countries. In 2012 the Russian results – similarly to those of the Czech Republic, a post-socialist country characterised by less homophobic attitudes – reflected a lower level of acceptance than in the previous years, while Slovenian and Polish respondents expressed higher levels of acceptance than in the previous ESS round of 2010. On the other hand, we should also take note of the long-

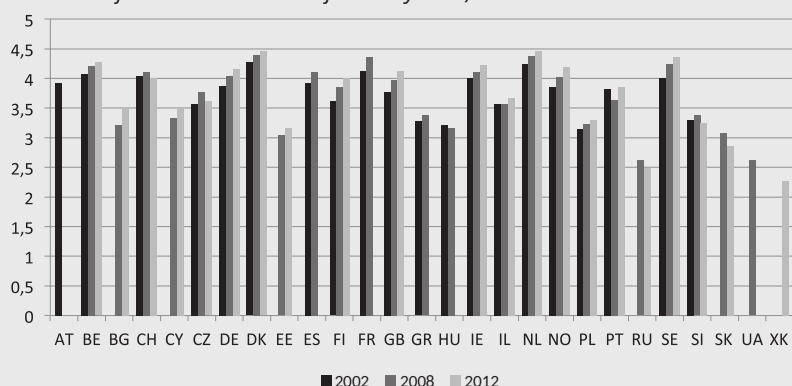


Source: ESS 2012

<sup>67</sup> In 2012 Kosovo (XK) was included in the ESS for the first time.

**Diagram 5: Social acceptance of gay men and lesbian women in Europe (2002-2012)**

(1 = strong disagreement; 5 = strong agreement with the statement that *gay men and lesbians should be free to live their own life as they wish*)



Source: ESS 2002, 2008, 2012

term presence of Denmark and the Netherlands at the least homophobic end of the social acceptance axis.

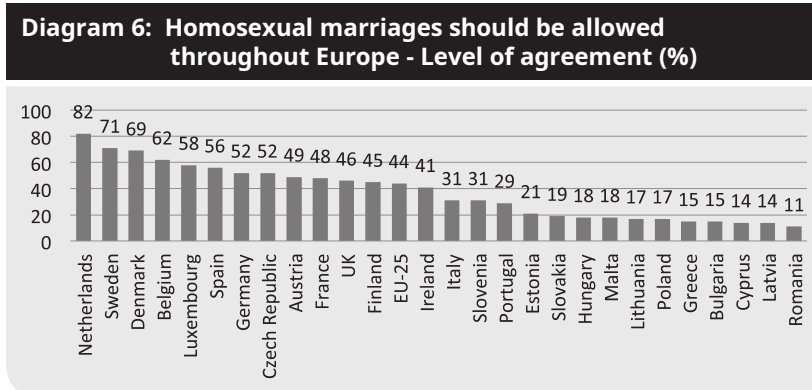
If we focus on the latest ESS results, we should point out that in 2012, among the 23 examined countries, there were only two countries with a median value of two: Russia and Kosovo (where 1 meant strong disagreement and 5 meant strong agreement), which means that in these countries the majority of respondents disagreed with the statement that *gay men and lesbians should be free to live their own life as they wish*; while in two other countries, Slovakia and Estonia, the median value was three, expressing neither agreement or disagreement. At the same time Iceland, the Netherlands, Denmark, Sweden and Belgium were characterised by a median value of five, reflecting much higher levels of general social acceptance towards gays and lesbians. Note that non-EU member countries, such as Russia, Ukraine and Kosovo, tend to have low values in several of the diagrams.

### 3.1.2 Measuring attitudes about same-sex partnership and parenting issues

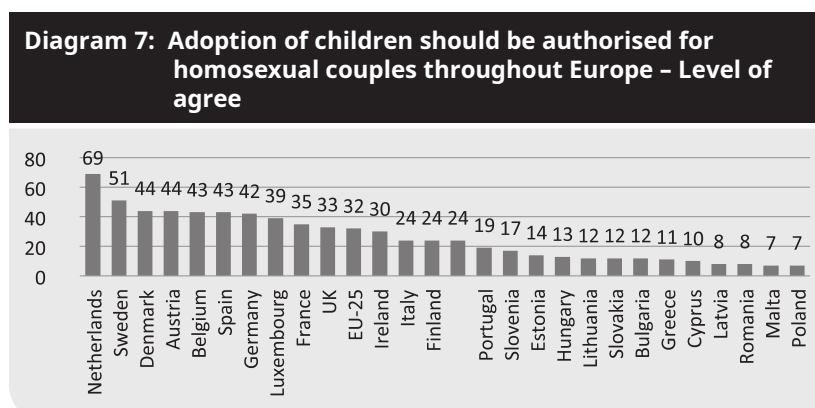
In 2000 the panel surveys of the Generations and Gender Programme (GGP) were initiated and conducted since then in 15 countries (Australia, Austria, Belgium, Bulgaria, Estonia, France, Georgia, Germany, Hungary, Italy, Lithuania, the Netherlands, Norway, Romania, and the Russian Federation). The GGP survey includes a question that measures the agreement level with the

<sup>68</sup> Source: <http://www.ggp-i.org/>





Source: Eurobarometer 66 (2006)



Source: Eurobarometer 66 (2006)

following statement: *Homosexual couples should have the same rights as heterosexual couples do*. As this is only an optional question in the GGP surveys, however, not all of the participating countries include this variable in their questionnaires.

In 2006 the Eurobarometer public opinion survey, conducted in 25 European Union member states and two candidate countries (Bulgaria and Romania), involving the population aged 15 years and over (N=29.152), included the following questions: *For each of the following propositions, tell me if you absolutely agree, rather agree, rather disagree or absolutely disagree: Homosexual marriage should be allowed throughout Europe; Adoption of children should be authorized for homosexual couples throughout Europe* (European Commission 2006). According

<sup>69</sup> For example, this variable was not included in the Hungarian GGP surveys.

to the findings an average of 44% of the respondents agreed that homosexual marriages should be allowed throughout Europe. There is great variation among the different countries, however (see: Diagram 6): the Netherlands (82%), Sweden (71%), and Denmark (69%) were characterised by the highest levels of acceptance, while responses from Cyprus (14%), Latvia (14%) and Romania (11%) indicated the lowest levels of acceptance towards same-sex marriage.

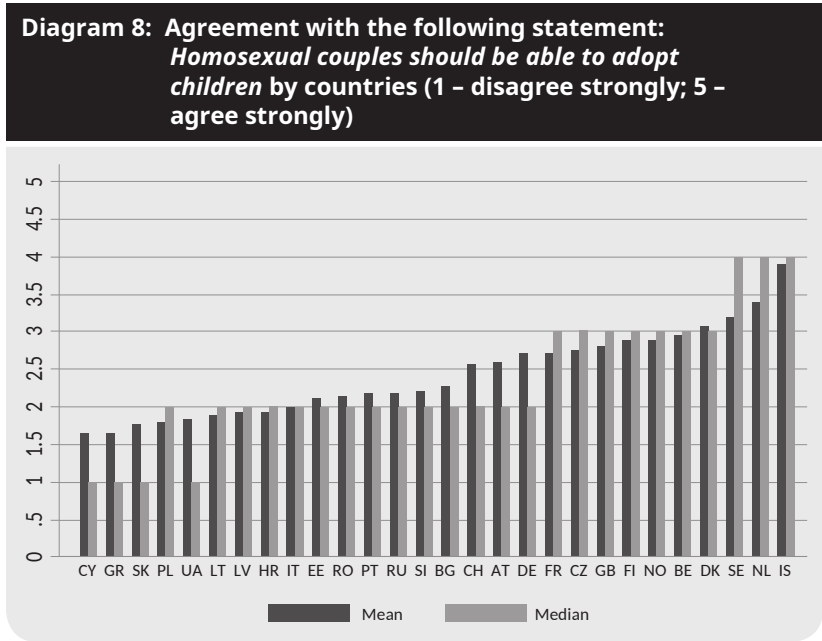
At the same time the Netherlands (69%), Sweden (51%), and Denmark (44%) were characterised by the highest levels of acceptance towards legalizing adoption by same-sex couples, while responses from Malta (7%) , Poland (7%) and Romania (8%) indicated the lowest level of acceptance (see: Diagram 7).

In the fourth wave of the European Values Study, conducted between 2008 and 2010, a third homosexuality-related variable was introduced, measuring agreement levels with the statement that *homosexual couples should be able to adopt children* on a one-to-five scale. A score of one meant strong disagreement, signalling a low level of social acceptance of adoption by gay and lesbian couples, while a score of five meant strong agreement, signalling a high level of acceptance towards adoption by same-sex couples. Diagram 8 shows the mean and median values of this variable in 29 countries. Findings regarding European attitudes to joint adoption by same-sex couples indicate that even though same-sex adoption issues can be seen as part of a wider gay and lesbian rights agenda and thus can hardly be completely separated from attitudes about homosexuality or social acceptance of gays and lesbians in general, attitudes toward same-sex adoption can be influenced by many factors, including views on (traditional) family formation practices and gender equality related issues, both issues generally reflecting the rigidity of normative gender roles in a society.

In 2012 the fourth Family, Work and Gender Roles module of the International Social Survey Programme (ISSP) also extended with two new variables that are relevant to our present report – previous ISSP Family, Work and Gender Roles modules were conducted in 1988, 1994 and 2002 but these did not include variables that could be used for measuring homophobic attitudes. The new variables measured agreement levels with the statements that *A same-sex female couple can bring up a child as well as a male-female couple*, and *A same-sex male couple can bring up a child as well as a male-female couple* on a one-

<sup>70</sup> Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Ukraine, and Great Britain. (In two European countries a basic methodological problem makes the international comparison of the responses regarding this question impossible: in the Hungarian and the Spanish version of the 2008 EVS questionnaire the following question was included: "Homosexual couples *should* not be able to adopt children" instead of the original question: "Homosexual couples *should* be able to adopt children"

<sup>71</sup> Source: <http://www.issp.org>



Source: EVS 2008

to-five scale. A great advantage of these new variables was that they enabled the examination of attitudes towards same-sex parenting in a gender specific way: ISSP findings suggest that there are higher levels of acceptance of parenting practices of same-sex female couples than of parenting practices of same-sex male couples in all the examined countries.

### 3.1.3 Perceptions of discrimination based on sexual orientation and gender identity

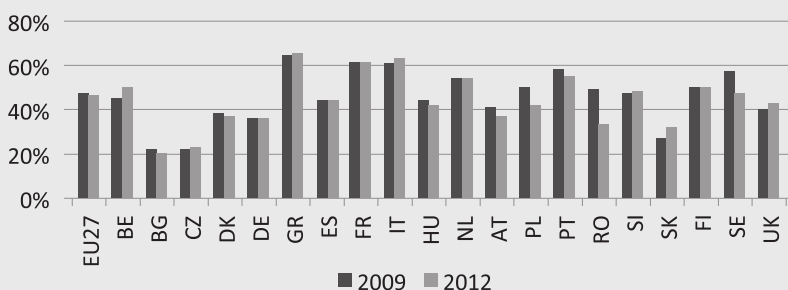
There is also comparative European data available on discrimination based on sexual orientation and gender identity in the Special Eurobarometer large scale general population surveys, conducted in 2008, 2009, and 2012 within all European Union member states. Diagram 9 provides an overview of the perceived prevalence of sexual orientation based discrimination within 20 selected European countries in 2009 and 2012.

<sup>72</sup> Source: <http://www.gesis.org/en/issp/issp-modules-profiles/family-and-changing-gender-roles/>

<sup>73</sup> For more details on the ISSP findings see Appendix 2.

<sup>74</sup> More precisely: data on gender identity based discrimination can be found only in the last – Special Eurobarometer 393 – survey (2012).

**Diagram 9 <sup>75</sup>: Perceived prevalence of sexual orientation based discrimination (2009, 2012)**



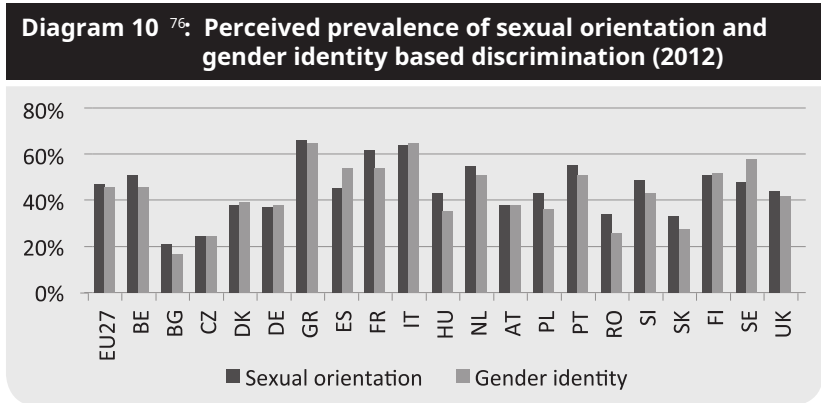
Source: Special Eurobarometer 317, 393 (2009, 2012)

Diagram 10 presents 2012 data from the same countries on discrimination based on the perceived prevalence of sexual orientation as well as gender identity. We must be careful when interpreting these results, however, we should bear in mind that these are perceptions that can reflect the levels of discrimination-awareness (largely dependent on the specific socio-cultural norms and practices of the examined societies) rather than the actual scope of discrimination.

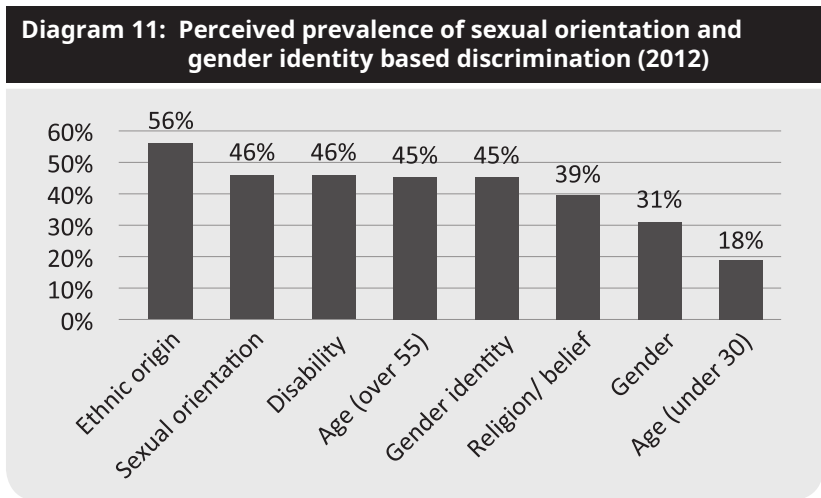
Diagram 11 provides an overview of the perceived prevalence of discrimination on eight grounds: ethnic origin, age in two dimensions (being older than 55 and being younger than 30), disability, gender, gender identity, sexual orientation, and religion or belief. Discrimination on the grounds of gender identity and younger age (being under 30) were examined for the first time in the Eurobarometer survey in 2012. The average values of the European results suggested that discrimination related to ethnic origin was perceived as being most widespread (56%), but discrimination on the grounds of sexual orientation (46%) and gender identity (45%) were also seen as prevalent phenomena.

Diagram 12 summarises the number of respondents who reported having transsexual or transgender and lesbian, gay or bisexual friends or acquaintances in 2012. According to the Eurobarometer findings direct social contact with citizens from social minority groups can have a positive effect on discrimination awareness: thus a higher awareness of discrimination based on sexual orientation can be expected in countries where people have more gay, lesbian, bisexual, transsexual or transgender friends and acquaintances. In 2008 an average of 34% of European respondents reported having homosexual friends or acquaintances. By 2012 this rate had increased to 41%. On the basis of these results it can be

<sup>75</sup> "Very widespread" and "fairly widespread" answers to the question of how widespread or rare sexual orientation based discrimination is in a given country.



Source: Special Eurobarometer 393 (2012)

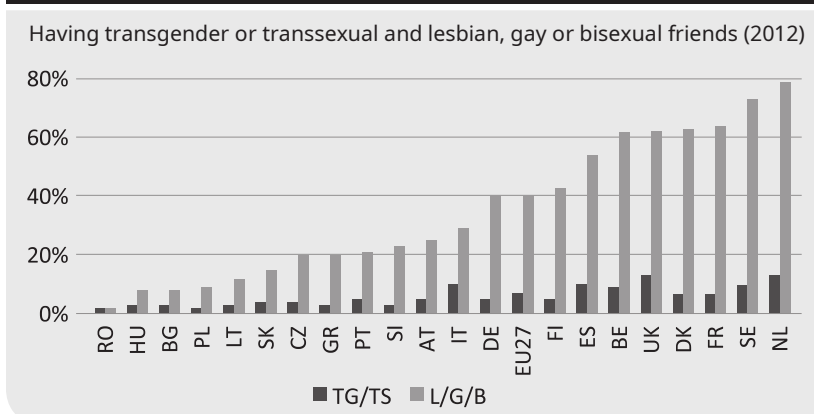


Source: Special Eurobarometer 393 (2012)

assumed that in post-socialist countries such as Romania, Lithuania, Hungary, Bulgaria, Poland, Slovakia and the Czech Republic there is very low level of awareness regarding sexual orientation based discrimination in comparison with western and north European countries, such as the Netherlands or Sweden. Regarding transsexual or transgender friends and acquaintances the figures are even lower than for lesbian, gay or bisexual friends: in 2012 only 7% of European respondents reported having transsexual or transgender friends. This result suggests very limited awareness of the situation of trans people in the EU, even more so than in the case of lesbian, gay or bisexual people.

<sup>76</sup> “Very widespread” and “fairly widespread” answers to the questions of how widespread or rare sexual orientation and gender identity based discrimination is in a given country.

**Diagram 12: Having transsexual/transgender and lesbian, gay or bisexual friends or acquaintances** <sup>77</sup>



Source: Special Eurobarometer 393 (2012)

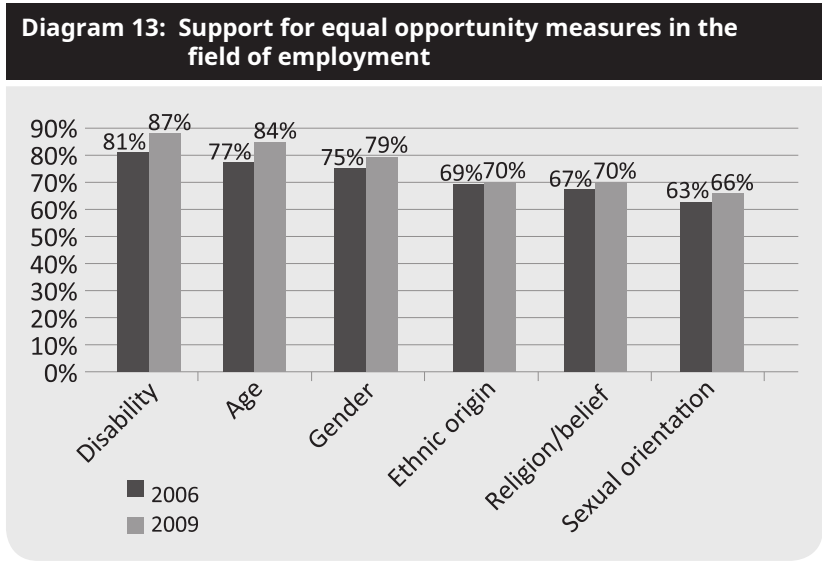
### 3.1.4 LGBTQ+ employment related discrimination

The 2009 Eurobarometer survey also examined the degree to which degree specific measures aimed at providing equal opportunities in the field of employment were supported (according to six grounds: gender, age, disability, sexual orientation, ethnic origin and religion or belief). As these questions were included in a previous survey conducted in 2006, we can compare how the views of European respondents changed in the period between 2006 and 2009. Diagram 13 shows a slight increase in support for these measures, and the ranking of the different grounds for special measures remained identical in both surveys. We can see that in 2006 63%, and in 2009 66%, of the European respondents (EU 27) were in favour of introducing measures aimed at providing equal opportunities in the field of employment regarding sexual orientation.

In the 2012 survey three aspects of equal opportunities in employment were examined: factors that can put job applicants at a disadvantage; support for measures to promote diversity in the workplace; and perceptions about whether enough is being done to promote diversity. In order to test perceptions of equal opportunities in access to employment, respondents were asked which factors might put job applicants at a disadvantage if a company had to choose between two candidates with otherwise equal skills and qualifications. These

<sup>77</sup> "Yes" answers to the questions "Do you have friends or acquaintances who are transsexual or transgender?" and "Do you have friends or acquaintances who are lesbian, gay or bisexual?" (2012).

<sup>78</sup> The question was the following: "When a company wants to hire someone and has the choice between two candidates with equal skills and qualifications, which of the following criteria may, in your opinion, put one candidate at a disadvantage?" (2012).

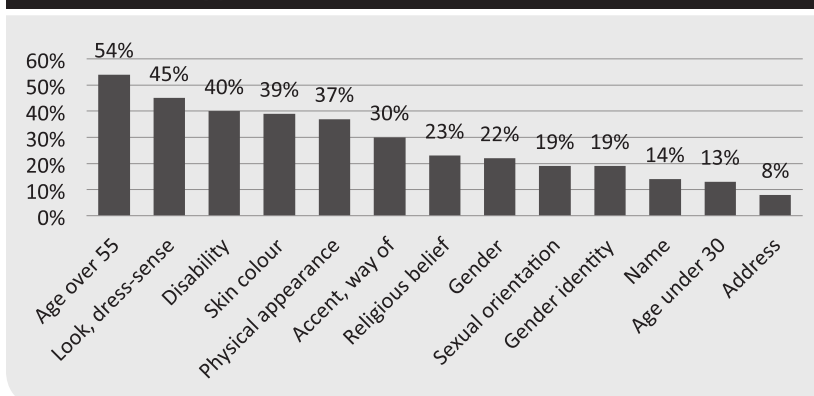


Source: Special Eurobarometer 317 (2009)

factors included the job applicant’s age (being over 55 or being under 30), look (manner of dress or presentation), disability, skin colour or ethnic origin, physical appearance (size, weight, face etc.), way of speaking (accent), expression of a religious belief (such as wearing a visible religious symbol), gender, sexual orientation, gender identity, name, and address. In comparison to the 2009 Eurobarometer questionnaire, where smoking was still included among the potentially disadvantageous factors, in 2012 three new factors were added: age over 50 and age under 30 replaced “age”, and it was the first time that gender identity was included into this question. Diagram 14 provides an overview of the European results of 2012: it shows that 19% of European respondents thought that a candidate’s sexual orientation would put the job applicant at a disadvantage, and 19% thought the same regarding gender identity.

In order to examine the level of public support for training and monitoring measures to promote diversity in the workplace respondents were also asked to indicate whether they support the following measures: “Training on diversity issues for employees and employers” was supported by 79% of the respondents in the EU member states; “Monitoring recruitment procedures to ensure that candidates from groups at risk of discrimination have the same opportunities as other candidates with similar skills and qualifications” was supported by 76% of them; and “Monitoring the composition of the workforce to evaluate the representation of groups at risk of discrimination” was supported by 69% of the respondents. These results reflect a generally high level of support for training and monitoring measures to promote diversity in the workplace in the EU, however, as the questions were not broken down according to the different grounds, it is

**Diagram 14: Potentially disadvantageous factors for job applicants in the EU**



Source: Special Eurobarometer 396 (2012)

hard to say how respondents interpreted the content of the proposed measures and whether they would equally support the implementation of training and monitoring measures regarding all grounds, including gender, age, disability, sexual orientation, ethnic origin and religion or belief.

In both 2009 and 2012 the Eurobarometer surveys included questions on the perceived effects of the economic crisis on discrimination in the labour market, as well as policies promoting equality and diversity. In 2009, 37% of the European respondents thought that the economic crisis would contribute to an increase of discrimination on the basis of sexual orientation in the labour market. In 2012, 36% of the respondents thought that the economic crisis was indeed contributing to an increase in this specific form of discrimination, while 41% thought the same regarding gender identity based discrimination. In 2012 the majority of respondents (54%) shared the view that due to the economic crisis, policies promoting equality and diversity are regarded as less important and receive less funding. When the respondents were also asked to rate the effectiveness of efforts made in their country to fight all forms of discrimination, they seemed to be quite satisfied with the developments in this field: only 31% said that the efforts to fight discrimination were ineffective, and 22% reported that they were very effective.

### 3.2 Individual and country-level homophobia factors

On the basis of the empirical evidence presented we can see several factors that may influence levels of homophobia or genderphobia, and how accepting or rejecting European respondents are of LGBTQ+ people. On the individual level, basic socio-demographic variables such as gender, age, educational level, religious background and political orientation seemed to be the determining



factors in supporting these issues: women, younger people, those with higher educational levels, non-religious or moderately religious backgrounds, and left-wing political orientation tended to be more supportive of the issues than others

We should add here that there are usually three dimensions of religiosity that can be taken into consideration: religious self-identification (regardless whether one belongs to a particular religion), belonging to a particular denomination, and frequency of attending religious services. Of these three dimensions, the frequency of attending religious services seems to be the strongest predictor: in comparison to non-regular church goers (who might identify as being religious "in their own way") a high frequency of attending religious services tends to correspond with significantly higher levels of expressing homophobic views. For example, according to the fourth round of ESS data in 26 European societies, Protestants (72%) and those not belonging to any denomination (73%) expressed the highest levels of agreement with the statement that *gay men and lesbians should be free to live their own life as they wish*, while Muslims (43%) and followers of the Eastern Orthodox Church (42%) expressed the lowest levels of agreement (Takács – Szalma 2011).

There is another individual level factor that should be carefully taken into consideration: the type (or size) of settlement, the respondents' place of living. There is a general assumption that in comparison to living in smaller rural settlements, living in more urbanized, larger settlements characterised by less direct social control might lead to more tolerant views toward LGBTQ+ people. On the basis of examining the fourth round of ESS data in 26 European societies, however, large city dwellers expressed the lowest level of acceptance towards gays and lesbians (Takács – Szalma 2011). This might be interpreted as a reaction to the concentration of a gay and lesbian population in the less directly controlled urban environments, a more developed infrastructure for gay and lesbian social life, characterised by an increasing visibility, especially of the gay male subculture in larger Western cities since the 1970s (D'Emilio 1993, Castells 1997); while for similar reasons – because of less direct social control and better infrastructure for maintaining social ties – there is also a growing concentration of immigrants in larger Western cities, some of whom might be characterised by views rejecting gays and lesbians that are deeply embedded in their cultural, religious background. This issue should be examined more thoroughly in order to provide a satisfactory explanation.

We could also detect the potentially determinant effects of individual gender role beliefs and family formation preferences, attitudes on gender equality, xenophobia and rejection towards members of other social outgroups. It should be pointed out that gender issues seemed to be operating in more than one dimension, as it is not only more likely that women are more open-minded towards LGBTQ+ issues in general than men, but, for example, that people tend to express higher levels of acceptance towards the parenting practices of same-s

female couples than towards the parenting practices of same-sex male couples in all the countries for which we have data.

It is also possible to identify country-level homophobia indicators, connected not only with the personal traits of individuals but also with characteristic features of the examined societies. The most important empirically tested indicators included the institutionalisation level of same-sex partnerships, whether the legal institutions of same-sex marriage and/or registered partnership exist in the given country (and levels of support towards LGBTQ+ issues tend to vary in accordance with the current national legislations); and gender equality practices and beliefs such as the acceptance of traditional gender roles (where social acceptance or rejection of LGBTQ+ people is rooted in a broader gender belief system focusing on the appropriate, and usually not at all overlapping, paths of women and men in society).

We could see that democracy deficit, or satisfaction with democracy, can also be a suitable indicator to predict the level of homophobia in a given country, as the non-oppression and recognition of social minorities are basic democratic principles. In a recent article the late Igor Kon (2010), a leading Russian researcher on sexuality, referred to homophobia as a litmus test for democracy and tolerance in Russia, and interpreted sexual minority rights as contributing to the well-being of all citizens, irrespective of their sexual orientation. On the basis of the empirical results presented we can say that this litmus test can surely be applied to EU member countries, too.

### 3.2.1 The potential awareness raising functions of survey variables

We have witnessed the development of an increasingly refined toolkit to measure the scope and main determinants of homophobic attitudes in the EU between the appearance of the first survey question about homosexuality-related general acceptance in 1981 and the introduction of the most recent ISSP questions on gender-specific same-gender parenting practices in 2012.

The first homosexuality-related general acceptance question was included in the 1981 EVS (and WVS) questionnaires: *Please tell me whether you think homosexuality can always be justified, never be justified, or something in between.* Another measured reactions to homosexuality in the immediate setting: *On this list are various groups of people* (including people with a criminal record, left wing extremists, heavy drinkers, right wing extremists, people with large families, emotionally unstable people, Muslims, immigrant social workers, people who have AIDS, drug addicts, *homosexuals*, Jews, Gypsies, Christians). *Could you please sort out any that you would not like to have as neighbours?*

Unfortunately, answers to the “justification of homosexuality” variable are difficult to interpret as it is hard to deduce what kinds of concept, behaviour,

and identity the respondents might have had in mind when answering. In the context of trying to interpret the “justification of homosexuality” variable it should be noted that social attitudes towards homosexuality can be categorised into five main models or frameworks, entailing both a basic understanding of what homosexuality is, and how individuals and social institutions should relate to homo- and bisexual people (Takács et al. 2012). Even though the following frameworks can be seen as representative of certain historic periods, these basic attitudes are also observable at any given time in the cross-section of the population:

- The *morality framework* interprets homosexuality as an individual choice that should be evaluated in moral terms. According to this model, homosexuality is a sin that violates the religious or social laws of society. Since homosexuality is a sin, it should be punished or at least condemned.
- The *sickness framework* considers homosexuality as a medical condition resulting from a childhood trauma or bad socialisation, something that is beyond the control of the individual. Since it is not an individual choice to become homosexual, homosexuals should not be punished or condemned, but rather helped and cured; people should turn to homosexuals with sympathy and pity.
- The *deviance framework* approaches homosexuality as a form of behaviour deviating from widely accepted social norms and rules, and usually implies choice on behalf of the individual, although it does not necessarily imply moral condemnation: it might consist of a “cold and factual” (value-free) attitude towards homosexuality.
- The *privacy framework* brackets the question of what causes homosexuality and focuses on the fact that the state and society should not intervene in activities that do not cause harm to others, therefore homosexuals should do whatever they want in private freely. The public affirmation of homosexuality, however, is seen as highly problematic as it widens the circle of people affected by it and might cause harm to others, especially impressionable minors.
- The *human rights framework* derives from the claim that sexual orientation is an integral aspect of personality. In this context homosexuality is usually seen as a “variant of human sexuality”, resulting from a genetic or other non-alterable biological, non-pathological predisposition. Since homosexuality is morally arbitrary (similarly to other integral aspects of the personality such as gender, ethnicity, religion), the state should protect homosexuals from discrimination and promote their equality.

The “(non-)preference for homosexual neighbours” variable is much clearer because at least it is about people, neighbours who happen to be homosexual, however, it should also be noted that in present day survey research using the terms *homosexuality* or *homosexual* can be problematic for several reasons. These terms can refer to specific forms of homosexual behaviour and identity at the same time, when there is no necessary connection between the two: there are homosexually active people who do not identify as gay or lesbian (Weeks 1987),

and there are (homo)sexually inactive people with gay, lesbian or bisexual identities. There is also a possibility that the use of 'homosexual' as wording will lead respondents to think mainly of males (Herek 1984). Even though the term homosexual was originally coined in the context of political resistance, became heavily medicalised from the 19th century, reflecting a pathological perception of homosexuality and people labelled by others as homosexual. The present day use of such a loaded term might thus be interpreted as a lack of respect for the self-definition of people with same-sex attraction.

Reference to "homosexual couples" was first made in 2000 in the survey of the Generations and Gender Programme, which included the variable: *Homosexual couples should have the same rights as heterosexual couples do*.

Since the first round of the ESS in 2002 its core questionnaire has included a general acceptance question: *Gay men and lesbians should be free to live their own life as they wish* (where freedom of lifestyle is meant as being free and/or entitled to live as gays and lesbians). This variable is the first in the history of large scale European cross-national survey research that refers to gays and lesbians instead of homosexuals. In 2014 a new ESS module (that change in each round of data collection) on *Sexual attitudes, behaviours, and sexual health* was proposed by Aleksandar Štulhofer and his team, to be included in ESS round 8 (if it is accepted).

In the first decade of the 21st century we are also able to see the emergence of variables reflecting the acknowledgement of non-heteronormative partnership and family practices in large-scale international survey questionnaires. Legal institutions such as same-sex marriage and adoption-related questions gained widespread social visibility first in 2003 when EOS Gallup Europe conducted a large scale (N=15,074) opinion poll concerning the authorisation of homosexual marriage and the adoption of children by homosexual couples in 30 European countries. In the 2006 Eurobarometer the same questions reappeared in the form of the following variables: *Homosexual marriages should be allowed throughout Europe; Adoption of children should be authorized for homosexual couples throughout Europe*. In 2008 the EVS also introduced a new variable in the "family life and marriage" section of its questionnaire: *Homosexual couples should be able to adopt children*; and in 2012 the Family, Work and Gender Roles

<sup>79</sup> The word 'homosexual' (a combination of "homo" being Greek for "same", and the Latin "sexus" referring to sex, males or females collectively) was coined by Károly Mária Kertbeny, a Hungarian-German translator and writer in 1868 in a very modern human rights context. Kertbeny emphasised that the state should not intervene in the private lives of individuals and wrote in 1868: "we should convince our opponents that exactly according to their legal notions they do not have anything to do with this inclination, let it be innate or voluntary, because the state does not have the right to intervene in what is happening between two consenting people aged over 14, excluding publicity, not hurting the rights of any third party" (Takács 2004).

<sup>80</sup> Unfortunately the results are no longer publicly available (at least not at [www.eosgallupeurope.com/homo/index.html](http://www.eosgallupeurope.com/homo/index.html) where the findings were published in 2003).

module of the ISSP introduced two variables – *A same-sex female couple can bring up a child as well as a male-female couple*, and *A same-sex male couple can bring up a child as well as a male-female couple* – which enable the examination of attitudes towards same-sex parenting in a gender specific way.

The 2012 Eurobarometer was the first survey that included questions related to gender identity, such as those about different aspects of discrimination based on gender identity, and asked respondents whether they had friends or acquaintances who are transsexual or transgender. The 2012 Eurobarometer questionnaire also changed its wording in comparison to the 2008 version, thus the “Do you have friends or acquaintances who are homosexual?” question was replaced by “Do you have friends or acquaintances who are lesbian, gay or bisexual?”.

In summary, these variables can be seen as not only measuring the scope and main determinants of homophobic and genderphobic attitudes in the EU but also as increasingly contributing to raising awareness of LGBTQ+-issues such as same-gender adoption and parenting practices, as well as different forms of discrimination based on gender identity.

### 3.3 Experiences of homophobia and genderphobia from the perspective of LGBTQ+ people

In addition to the findings of the previously discussed large-scale cross-national surveys we should also take into consideration the perception of LGBTQ+ people themselves, regarding sexual orientation and gender identity based discrimination. Before giving a brief overview of the latest results of the EU LGBTQ+ survey, commissioned by the European Union Agency for Fundamental Rights (FRA), we should address some potentially problematic issues regarding the collection of data on discrimination against LGBTQ+ people.

#### 3.3.1 Collecting data on discrimination against LGBTQ+ people

The main question, when collecting data on discrimination against LGBTQ+ people, is rarely about the existence of discrimination. The starting point is usually that discrimination against LGBTQ+ people does exist, and thus the focus is the content, scope and extent of discrimination. At first sight it seems that the target population can be taken for granted: LGBTQ+ people, where “LGBTQ+” is an umbrella term of political significance, as was pointed out earlier, including very heterogeneous groups of lesbian, gay, bisexual, trans people and others. In the context of empirical work it can be useful to break the category of LGBTQ+ people down into subcategories first and seek separate sets of data on more specifically defined segments of the “general LGBTQ+ population” according to other characteristic features (such as married bisexuals, gay men of ethnic minority origin, lesbian mothers or young trans people). Depending on the nature of the research, the relevance of identities may be less, and the pertinence of practices may be greater. For example, in the context

of HIV/AIDS prevention research, sexual practices can be much more relevant than sexual identities.

One of the main problems with collecting data on discrimination against LGBTQ+ people involves sampling issues. Sampling is basically about trying to find out something that will apply to everything of a certain kind by studying a few examples so that the results of the study are generalizable to all members of that class of matter (Becker 1998). In the case of studying LGBTQ+ people, however, it is always challenging to select those few who will compose a “good enough sample” from which findings can be obtained that are generalizable to “all LGBTQ+ people”.

The aim of researchers involved in policy-oriented data collection is to work with a representative sample where a smaller number of people are (randomly) selected to represent a larger population according to certain statistically registered and officially knowable characteristics such as age, gender, place of residence, educational background and so on. The problem is that LGBTQ+ status/identity (similarly to other identity-related and/or otherwise “fluid” categories such as belief or in some cases ethnic origin or disability) is not an officially recorded, and not at all strictly recordable, personal characteristic of people. The “proper representation” of LGBTQ+ people is therefore very problematic, if not impossible, especially in large scale quantitative research. Such results seem to be more convincing, however, and thus preferred by policy-makers, than findings gained from smaller scale qualitative research. This preference is reflected in the Directives 2000/43/EC and 2000/78/EC where there is direct reference to the importance of “statistical evidence” when inferring discrimination.

Among the grounds of discrimination defined by Article 13 of the Amsterdam Treaty, studying age or sex based discrimination (more easily determined by quantitative indicators) seems to be much less problematic than studying, for example, discrimination based on religion, sexual orientation or gender identity. In this context research data on LGBTQ+ people can be an important means of providing evidence to convince policy makers, funding agencies and service providers that change is needed and how it should happen (McLean – O’Connor 2003; 2). Most of the time it would thus be necessary to come up with strong convincing arguments from the examination of a sample representing the whole

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<sup>81</sup> “The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide, in particular, for indirect discrimination to be established by any means including on the basis of statistical evidence.” – Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation – [http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/L\\_303/L\\_30320001202en00160022.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2000/L_303/L_30320001202en00160022.pdf)

<sup>82</sup> These are the following: discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation – <http://europa.eu/scadplus/leg/en/lvb/a10000.htm#a10005>



“theoretical population” of LGBTQ+ people, all of whom would be impossible to access.

Data collection methods that have been practically applied to measure discrimination – not only in legal proceedings or monitoring workplace practices but also at a more general level – include the following (Makkonen 2007):

- Examination of official social, economic and demographic statistics, such as population censuses, household surveys and administrative records (collected, for example, by national statistical institutes).
- Collecting complaint data found in police files, prosecution files, court case files and files of various bodies handling complaints such as equality authorities (This type of data collection is limited in the sense that it only considers reported cases, however, which are likely to be under-reported due to the lack of awareness of discrimination as well as fear of disclosing sexual orientation, gender identity or, for example, HIV-status in the process.)
- Collecting victim survey data about the kind of discrimination that members of groups exposed to discrimination have experienced. (Similar to the case of complaint data, victim surveys can only reveal the experiences of the actual respondents and cannot provide information on the prevalence of discrimination.)
- Conducting self-report attitude surveys targeted at the general population or certain population segments. (This includes providing data about the prevalence of prejudices towards groups vulnerable to discrimination or the awareness of the existence of equal treatment policies and sensitivity of the population at large towards discrimination.)
- Applying situation or discrimination testing. (This approach is characterised by well-developed methods, applied for several decades, but it has a limited scope of application as it may measure the prevalence of discriminatory practices mainly in the “market place” among certain employers and service providers. Situation testing has been applied in several countries including France, Germany, Italy, Spain, the Netherlands and the UK in fields such as renter- and owner occupied housing, homeowner’s insurance, mortgage lending, car sales, access to hotels, banks, health club membership etc. It is not a widely used practice in countries characterised by less developed market economy and lower levels of awareness of consumer and employee rights.)

Qualitative data can also be gained through personal interviews and self-administered questionnaires – but this approach most often requires direct contact with LGBTQ+ people, and in this context the cooperation of LGBTQ+ organisations and researchers seems to be inevitable.

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<sup>83</sup> Previous research findings (on the US, Canada, Australia, the UK and the Netherlands) indicate that sensitivity towards discrimination can vary considerably depending on the grounds: while ethnic and racial discrimination is unanimously condemned, sexual orientation does not benefit from the same level of acceptance and protection (Simon 2004:10).

Many previous studies were conducted with the help of national and international LGBTQ+ organisations, and in some cases LGBTQ+ media producers, however, it has also been shown that recruitment through LGBTQ+ organisations and media tends to bias the sample towards the younger, well-educated, middle class, motivated and 'on scene' male respondents (McManus 2003). Thus in these cases it is important to pay special attention to including people who represent the diversity of the LGBTQ+ populations to be examined: for example, reaching out to women, bisexuals, people living in rural areas or transgender people, who tend to be under-represented in LGBTQ+ community samples.

### 3.3.2 The FRA's EU LGBTQ+ survey

The EU LGBTQ+ survey, commissioned by the European Union Agency for Fundamental Rights (FRA), was conducted in 2012 in 27 EU member states and Croatia by Gallup Europe with the active cooperation of ILGA-Europe (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association) and its member organisations. It was an online survey with a huge (N=93,076) self-selected sample of persons aged 18 years or over, who self-identified as being lesbian, gay, bisexual or transgender. Transgender responses (n= 6,771) were analysed within the larger LGBT dataset as well as by themselves: the report *Being Trans in the European Union: Comparative Analysis of EU LGBT survey data* was published in 2014.

Despite potentially large numbers of respondents, self-selected or community samples do not have the validating force of a statistically representative sample. On the other hand, as mentioned earlier in this report, LGBTQ+ status is not an officially recorded and not at all strictly recordable personal characteristic of people, thus, statistically, the "proper representation" of LGBTQ+ people is highly problematic, if not impossible. It can also be assumed that LGBTQ+ samples like that of the FRA's EU LGBTQ+ survey include more people who frequent virtual community venues, discussion and internet forums, and more people who are leading a less hidden LGBTQ+ life; in this case for example, highly educated gay city dwellers were over-represented among respondents. international research findings have also shown (McManus 2003; Castells 1997; D'Emilio 1993) that older LGBTQ+ people with lower educational background living in rural areas are especially difficult for researchers to reach, which can be explained by the advantages provided by more tolerant, less controlled urban environments with a more developed LGBTQ+ infrastructure, and/or the camouflage life strategies of older LGBTQ+ people growing up in a less accepting social climate, as well as the higher awareness level that often accompanies higher educational attainment.

<sup>84</sup> Source: <http://fra.europa.eu/DVS/DVT/LGBTQ+.php>

<sup>85</sup> Source: [http://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative_en.pdf)

<sup>86</sup> The total sample size was 93,079, including 15,236 lesbian women, 57,448 gay men, 6,424 bisexual women, 7,200 bisexual women, and 6,771 transgender people. Source: [http://fra.europa.eu/sites/default/files/eu-LGBTQ+-survey-technical-report\\_en.pdf](http://fra.europa.eu/sites/default/files/eu-LGBTQ+-survey-technical-report_en.pdf)



The FRA's EU LGBTQ+ survey results can nevertheless clearly illustrate certain trends, as well as their local variations, regarding the discrimination experiences and perceptions of LGBTQ+ people in Europe. For example, according to an average of 16% of the European respondents (24% of the Hungarian, and 4% of the Swedish) offensive language about LGBTQ+ people by politicians is widespread in their own country. According to 34% of the European respondents (47% of the Hungarian, and 21% of the Swedish) casual jokes in everyday life about LGBTQ+ people are widespread in their own country. According to 15% of the European respondents (30% of the Hungarian, and 3% of the Swedish) expressions of hatred and aversion towards LGBTQ+ people are widespread in their own country (see Diagram 19).

Fifty percent of the European respondents (68% of the Hungarian, and 38% of the Swedish) respondents had avoided certain places or locations for fear of being assaulted, threatened or harassed because of being LGBTQ+, and 26% of the European respondents (28% of the Hungarian, and 27% of the Swedish) had been physically and/or sexually attacked or threatened with violence for some reason, at home or elsewhere (on the street, on public transport, at the workplace), within the last 5 years.

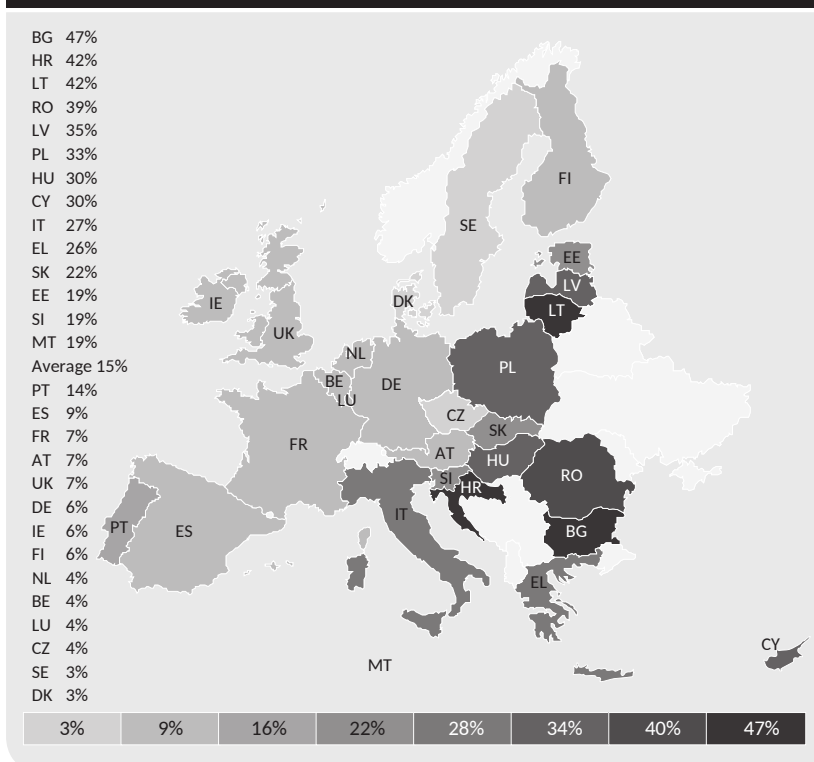
Only 3% of the European respondents (1% of the Hungarian, and 10% of the Swedish) said that openly LGBTQ+ public figures in politics, business, sports were a widespread phenomenon in their own country. Positive measures promoting respect for the human rights of lesbian, gay and bisexual people were seen as a common feature of their country by only 7% of the European respondents (1% of the Hungarian, and 23% of the Swedish), and these rates were even lower for the prevalence of positive measures promoting respect for the human rights of transgender people, with an average of 3% of the European respondents (0% of the Hungarian, and 9% of the Swedish).

We can also examine the views of European respondents regarding certain measures that can potentially contribute to people having a more comfortable life as a lesbian, gay or bisexual person in their own country. Among the first three most important such measures we find *recognition of same-sex partnerships across the European Union* (83%), *measures implemented at school to respect lesbian, gay and bisexual people* (71%) and *better acceptance of differences in sexual orientations by religious leaders* (71%). On average more than half the European respondents strongly agreed that the following measures would be advantageous for them: *public figures in politics, business, sports, etc. openly speaking in support of lesbian, gay and bisexual people* (61%), *training of public servants (such as police, teachers) on the rights of lesbian, gay and bisexual people* (61%), *potential to marry and/or*

<sup>87</sup> Presenting the Hungarian and the Swedish results indicates the potentially huge variations regarding these questions within Europe.

<sup>88</sup> These are the rates of respondents who expressed strong agreement.

**Diagram 15: Daily Life / How widespread are expressions of hatred and aversion towards lesbian, gay, bisexual and/or transgender in public**



Source: FRA EU LGBTQ+ Survey (2012)

register a partnership (64%), institutional authorities promoting the rights of lesbian, gay and bisexual people (60%), possibility to foster and/or adopt children (57%); while only 43% of respondents expressed strong agreement about the usefulness of anti-discrimination policies referring to sexual orientation at the workplace.

At the top of this list we find three items that are probably the measures most acutely missed by the European LGB respondents: recognising same-sex partnerships across the European Union would have many practical advantages beyond its potentially great symbolic significance. The importance of LGBTQ+ inclusive school programmes and curricula in the socialisation process of LGBTQ+, and non-LGBTQ+ pupils and students, has been well established by several previous international research findings. Better acceptance by religious

<sup>89</sup> Male LGBTQ+ respondents: 58%, female LGBTQ+ respondents 69%.

<sup>90</sup> Male LGBTQ+ respondents: 51%, female LGBTQ+ respondents 71%.

leaders is also a well-known wish, mainly (but not only) for religious LGBTQ+ people. On the other hand, the fact that *anti-discrimination policies referring to sexual orientation at the workplace* is at the end of the list may also be because this measure is in operation in most places (due to the Employment Directive of 2000). Similarly, the possibility of same-sex marriage and/or registered partnership seemed to be much less desired in countries where it has already been introduced: for example, in the Netherlands only 24% of respondents expressed strong agreement about this issue (and 33% in Sweden), while in Poland it was 78% and in Hungary it was 69%.

Discrimination based on sexual orientation was seen as a (very or fairly) widespread phenomenon by 72% of the European LGBTQ+ respondents according to the FRA's EU LGBTQ+ survey, while (as was mentioned earlier in this subchapter) the 2012 Eurobarometer results showed a mean value of 46%. The FRA survey also allowed for more detailed examination of answers within the field covered by sexual orientation based discrimination: the perceived prevalence of discrimination on the basis of "being lesbian" was seen as a (very or fairly) widespread phenomenon by 52% of the European LGBTQ+ respondents (and 66% of the lesbian respondents); the perceived prevalence of discrimination on the basis of "being gay" was seen as a (very or fairly) widespread phenomenon by 73% of the European LGBTQ+ respondents (and 68% of the gay respondents); the perceived prevalence of discrimination on the basis of "being bisexual" was seen as a (very or fairly) widespread phenomenon by 46% of the European LGBTQ+ respondents (and 50% of the female bisexual and 47% of the male bisexual respondents). The perceived prevalence of discrimination on the basis of "being trans" was seen as a (very or fairly) widespread phenomenon by 83% of the European LGBTQ+ respondents (and 85% of the trans respondents) and only 45% of the Eurobarometer respondents.

Finally, it should be pointed out again that the figures regarding the perceived prevalence of discrimination reflect the levels of discrimination-awareness more than the actual scope of discrimination. We must take into consideration that since not everyone can afford to come out, discrimination against LGBTQ+ people will remain hidden in many instances. Social visibility can make LGBTQ+ individuals vulnerable and exposed to violent responses from certain groups in society, and at times even by public authorities, police or civil servants. The "iceberg nature" of discrimination against LGBTQ+ people can be explained, on the one hand, by the preference of victims of discrimination to avoid publicity at the individual level, where fear of humiliation is an important factor. On the other hand, it can also be explained by the lack of appropriate responsiveness and incentives at the institutional level: institutions may exist but function inefficiently and this can also mean that certain forms of discrimination remain hidden.

## 4 Conclusions and recommendations

On the basis of the information presented in this report several recommendations can be drafted for policy-makers at the EU and national levels. I will start with pre-existing recommendations that could very well be applied in the context of confronting homophobia and genderphobia, as well as combating discrimination against LGBTQ+ people in the European Union. This will be followed by conclusions and recommendations based on the present report.

### 4.1 Pre-existing recommendations

One of the most recent EU initiatives regarding LGBTQ+ equality is the *Resolution on the EU Roadmap against homophobia and discrimination on the grounds of sexual orientation and gender identity*.<sup>91</sup> The starting point is that the European Union currently lacks a comprehensive policy to protect the fundamental rights of LGBTQ+ people, being the joint responsibility of the EU and the Member States, while the resolution itself can be seen as being part of the work towards a comprehensive EU policy for LGBTQ+ equality.

In this document LGBTI equality is contextualized as a human rights and minority issue: LGBTI rights are discussed as deserving the same level of protection as the other grounds specified in the Amsterdam Treaty. The resolution calls attention to the inconsistency between the external and internal aspects of EU policy: on the one hand, the strong guidelines that promote and protect the enjoyment of all human rights by LGBTI persons outside the European Union, and on the other hand, the lack of a comprehensive policy for LGBTI equality inside the EU. It also refers to the alarming findings of the FRA EU LGBTQ+ survey regarding the high proportions of discrimination and harassment experienced by LGBTQ+ respondents within the EU, and the FRA recommendations for the EU and Member States to develop action plans promoting respect for LGBTQ+ persons and protection of their fundamental rights.

I will briefly summarise those Roadmap contents that I would also recommend:

The resolution specifies six horizontal actions, including the following:

- the mainstreaming of issues linked to the fundamental rights of LGBTI

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<sup>91</sup> European Parliament, *Resolution 4 February 2014 on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity* (2013/2183(INI)) – <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0062>

<sup>92</sup> Since 2012 some EU policy documents have used the more inclusive LGBTI (lesbian, gay, bisexual, trans and intersex) abbreviation instead of LGBT (Leigh et al. 2012).

- people in all relevant work – for instance when drafting future policies and proposals or monitoring the implementation of EU law;
- facilitating the exchange of good practice among Member States; regular data collection on the situation of LGBTI persons in the EU;
- continuous training and capacity-building for national equality bodies, national human rights institutions and other organisations tasked with the promotion and protection of the fundamental rights of LGBTI persons;
- awareness raising of citizens regarding the rights of LGBTI persons.

In the field of non-discrimination, the existing EU legal framework should be consolidated by adopting the new (horizontal or general anti-discrimination) directive that was proposed in 2008.<sup>93</sup> Specific focus on sexual orientation and gender identity should be introduced when monitoring the implementation of the Employment Directive; guidelines should be issued specifying that transgender and intersex persons are included under 'sex' in *Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation*.

In the field of education, equality and non-discrimination on the grounds of sexual orientation and gender identity should be promoted throughout youth and education programmes: sharing of good practice in formal education, including teaching materials, anti-bullying and anti-discrimination policies; and the sharing of good practice throughout Member States' youth and education sectors, including youth welfare services and social work.

In the field of healthcare, LGBTI health concerns should be placed within relevant wider strategic health policies, including access to health care and equality in health; the Commission should continue working within the World Health Organisation to withdraw gender identity disorders from the list of mental and behavioural disorders and to ensure a non-pathologising reclassification of ICD-11.<sup>94</sup> Research on health issues specific to LGBTI persons should be supported; gender recognition procedures should fully respect transgender people's right to dignity and bodily integrity.

Regarding the rights of transgender and intersex persons, gender identity should be included among the prohibited grounds for discrimination in any future equality legislation. The current lack of knowledge, research and relevant legislation for the human rights of intersex people should be addressed and issues specific to transgender and intersex people should be mainstreamed throughout the relevant EU policies.

<sup>93</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation 2008/0140 (CNS) – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0426:FIN:EN:PDF>

<sup>94</sup> 11th version of the International Classification of Diseases.

Regarding citizenship, families and freedom of movement issues, guidelines should be produced to ensure that Directive 2004/38/EC (on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States) and Directive 2003/86/EC (on the right to family reunification) are both implemented so as to ensure respect for all forms of families legally recognised under Member States' national laws; proposals should be made for the mutual recognition of the effects of all civil status documents across the EU, in order to reduce discriminatory legal and administrative barriers for citizens and their families who exercise their right to free movement; Member States that have adopted legislation on cohabitation, registered partnerships or marriage for same-sex couples should recognise similar provisions adopted by other Member States.

Rights to freedom of expression and assembly should also be guaranteed, particularly with regard to Pride marches and similar events; Member States should refrain from adopting laws and reconsider existing laws which restrict freedom of expression in relation to sexual orientation and gender identity.

Regarding hate speech and hate crime, the Commission should propose the rewriting of the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, including other forms of bias crime and incitement to hatred, on grounds of sexual orientation and gender identity; the training and education of police forces, prosecution services, judges and victim support services should be supported; the collection of EU-wide comparable data about homophobic and transphobic hate crime should be improved.

Specific issues linked to sexual orientation and gender identity should be included in the implementation and monitoring of asylum legislation; asylum professionals should receive adequate training in how to handle issues relating specifically to LGBTI persons; the legal and social situation of LGBTI persons in countries of origin should be documented systematically and such information should be made available to asylum decision-makers as part of Country of Origin Information.

The current monitoring of issues linked to sexual orientation and gender identity should continue in accession countries; information obtained from EU delegations on the situation of LGBTI persons in third countries should be provided for the European Asylum Support Office and Member States.

A recently published White Paper on Rainbow Families in Europe – which included several recommendations concerning the fields of legal recognition of relationships (marriages and same-sex partnerships), divorce and separation;

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<sup>95</sup> A list of these specific recommendations can be found in Appendix 3.

immigration; adoption; reproductive rights; children's rights and parental responsibilities; employment benefits and pension; property regimes; inheritance; intersexuality recognition; transgender recognition; victims of gender-based and homophobic violence – concluded that “the legal problems encountered by rainbow families that are described in this White Paper show a clear demand for EU action now” (Kogovšek-Šalamon 2015:48).

In addition to initiatives at the EU-level, we should also take into consideration initiatives at the national level that can make use of broader European policy frameworks. For example, there are potentially very efficacious recommendations listed in the *report about the implementation of the Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity in Hungary*, highlighting potential problem areas in need of governmental intervention. These specific recommendations are addressed to the Hungarian government as the purpose of the report was to assess the progress that has been made by Hungarian authorities in implementing the 2010 Council of Europe Recommendation and, to highlight areas where further action was necessary. The Hungarian report's recommendations covered 15 specific areas – including hate crimes and other hate-motivated incidents, hate speech, freedom of association, freedom of expression, freedom of peaceful assembly, respect for private and family life, employment, education, respect for private and family life and access to health care for transgender persons, health (other than transgender specific health issues), housing, sports, the right to seek asylum, national human rights structures – where immediate, short-term and/or longer term intervention would be necessary.

#### 4.2 Conclusions and recommendations based on the present report

This report examined two types of homophobia (and genderphobia) indicators: policies and attitudes that can together provide an indication of the respect for lesbian, gay, bisexual and trans\* (LGBTQ+) people's rights in the European Union. Homophobia was interpreted in this report as a specific subset of genderphobia, the institutionalised and often internalised fear of breaking gender norms – thus it should not be seen as a “homosexual only” but as a broader issue which can affect LGBTQ+ and other people, too. The term LGBTQ+ is an open-ended one with several potential extensions to include not only lesbian, gay, bisexual and trans people, but also queer, questioning, intersex and other people.

<sup>96</sup> Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (adopted on 31 March 2010) – <https://wcd.coe.int/ViewDoc.jsp?id=1606669>

<sup>97</sup> The list of these specific recommendations can be found in Appendix 4.



Although in Europe the de-criminalisation of same-sex sexual activity between consenting adults has become a legal norm, there are still some, at least partly interwoven, problem areas in the field of the legal emancipation of LGBTQ+ people, including the legal treatment of LGBTQ+ couples, their reproductive and parenting rights, and the recognition of transgender people in the law. Social discrimination – resulting from subtle prejudice at the individual level as well as the lack of consideration of the possible negative consequences of certain policies for different social groups at the level of society – is more difficult to confront than legal discrimination because it is manifested in more hidden forms.

In the early 21<sup>st</sup> century sexual orientation and gender identity have become identities with anti-discrimination rights attachments in the European Union: this process started in 1997 with the Amsterdam Treaty. The EU has only limited power regarding LGBTQ+ rights, however: social policy, freedom, security and justice, and common safety concerns in public health matters are among those areas relevant to LGBTQ+ rights where the EU has shared authority with the Member States, while areas where the EU has authority to carry out supporting, coordinating or supplementary action include education and the protection and improvement of human health. The remaining problematic legal issues relating, for instance, to the reproductive and parenting rights of LGBTQ+ people belong to areas such as family policy where the EU does not have authority. As it has been pointed out in a recently published White Paper on rainbow families: even though family law is outside EU authority, efforts can be undertaken towards strengthening children's rights, and there should be "a commitment to upholding the consideration of their well-being generally, but also specifically in the context of children of same-sex partners" (Kogovšek-Šalamon 2015:32). It is probably not a coincidence that the 2008 Anti-Discrimination Directive proposal, aiming to provide a comprehensive protective framework against discrimination on all grounds equally, including sexual orientation, has remained stalled to this day.

**Recommendation** A horizontal Anti-Discrimination Directive that would provide a comprehensive protective framework against discrimination on all grounds equally should be introduced – or at least discussions about this proposal should again be put on the EU agenda.

When monitoring the foreign policy developments of the EU from the perspective of their potential effect on the advance of LGBTQ+ rights, one might have the impression that the EU is more active outside its external borders than inside. Recent foreign policy initiatives demonstrate a solid commitment on the part of the EU to take the rights of LGBTQ+ people outside the EU seriously – paradoxically however, due to limited EU authority, the rights of LGBTQ+ people cannot be guaranteed uniformly in all member states of the EU. To be fair, it should be noted that some of the most advanced countries in the world regarding respect for LGBTQ+ people's rights are in fact EU countries. EU foreign policy encompasses a certain level of concern regarding LGBTQ+ rights, which can play a determining role in the process of the EU enlargement



negotiations. The EU can be seen as a new source of rights for the LGBTQ+ populations of potential accession countries, even though the specification of minimum standards regarding EU requirements of the applicant countries in their treatment of LGBTQ+ persons is still missing.

**Recommendation 2:**

- Minimum standards regarding EU requirements of the applicant countries in their treatment of LGBTQ+ persons should be specified and formalised.
- Regular monitoring of LGBTQ+ rights after EU accession should be maintained and the results should be publicised.

The EU has been known to address LGBTQ+ human rights in its foreign policy not only very actively but also inventively. For example, the 2011 *Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection* was the first ever piece of EU legislation that explicitly referred to gender identity as a recognised reason for persecution (in the context of "*issues arising from an applicant's gender, including gender identity and sexual orientation*").

**Recommendation 3:** The EU should continue to actively address LGBTQ+ human rights in its foreign policy.

In comparison to the foreign policy developments of the EU regarding LGBTQ+ rights, aspects of its internal policy seem to be inconsistently developed in a lot of respects. For example, the EU member states haven't been able to achieve agreement concerning the mutual recognition of the effects of civil status documents recording life events such as birth, adoption, marriage. This problem is partly rooted in the lack of common legal definitions of life events within the member states, especially concerning the recognition of same-sex marriage and adoption by same-sex partners, and partly in the fact that the EU has no authority to intervene in the substantive family law of the member states.

**Recommendation 4:** The EU should continue to initiate and facilitate active debates concerning the mutual recognition of the effects of civil status documents that could ease and guarantee the free movement of non-heteronormatively formed rainbow families between individual EU member states.

Since 2006 the EU has continues to give out strongly supportive signals towards LGBTQ+ people, including an increasing number of anti-homophobia resolutions. These resolutions are not binding legal instruments, they only call on the member states to ensure that LGBTQ+ rights are protected and there are

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<sup>98</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for the uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted – <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32011L0095>

no legal or other sanctions if the member states do not follow direction, but they can raise awareness of important LGBTQ+ rights issues. For example, the most recent EU anti-homophobia resolution in 2012 emphasised the importance of legal institutions such as registered partnership or marriage in safeguarding LGBTQ+ people's fundamental rights.

**Recommendation 5:** The EU should continue to be clearly supportive of LGBTQ+ people's fundamental rights in the form of awareness raising material that can also take the form of anti-homophobia resolutions.

Since 1989, when Denmark introduced same-sex registered partnership, an increasing number of European countries have introduced legal institutions, including same-sex marriage and adoption by same-sex partners, facilitating the formation of rainbow families. The existence of these legal institutions – In addition to their importance in the lives of people who directly use them – can have significant long-term socialisation effects by providing a chance for citizens to encounter manifestations of LGBTQ+ life events in public space as ordinary facts of everyday life.

**Recommendation 6:** Each EU member state should provide some form of legal institution that would facilitate the family formation rights of LGBTQ+ people (including rights and responsibilities provided by the institution of marriage in the given country). The EU should continue to emphasise the importance of legal institutions such as registered partnership or marriage in safeguarding LGBTQ+ people's fundamental rights.

It was shown in the comparative empirical evidence about the extent and the main determinants of homophobic and genderphobic attitudes in Europe presented earlier on the basis of cross-national survey findings, that at the individual level basic socio-demographic variables such as gender, age, educational level, religious background and political orientation seem to be very influential factors. Additional individual-level determinants of homophobia included individual gender role beliefs and family formation preferences, attitudes towards gender equality, xenophobia and rejection of members of other social outgroups, while the most important empirically tested country-level homophobia indicators included the institutionalisation level of same-sex partnerships, gender equality practices and beliefs, and satisfaction with democracy (or democracy deficit). It was also indicated in the report that the survey variables examined (ESS, EVS, Eurobarometer) could be seen as not only measuring the scope and main determinants of homophobic and genderphobic attitudes in Europe but also as increasingly contributing to raising awareness of LGBTQ+ issues such as same-gender adoption and parenting practices as well as different forms of discrimination based on gender identity.

**Recommendation 7:** Large scale cross-national surveys should include an increasing number of variables that could be used in assessing different aspects of the everyday life of LGBTQ+ people, as well as homophobic and genderphobic attitudes of the general population.

In addition to the findings of large-scale cross-national surveys, another important source of information about homophobia and genderphobia are LGBTQ+ people themselves. Their perceptions of discrimination based on sexual orientation and gender identity were recorded in large numbers in the 2012 EU LGBT survey that was commissioned by the European Union Agency for Fundamental Rights. Even though there were more than 90,000 respondents, this remains a self-selected community sample that cannot have the validating force of a statistically representative sample, however, the results can be used to illustrate certain trends as well as their local variations regarding the discrimination experiences and perceptions of LGBTQ+ people in Europe. For example, by examining the views of European LGBTQ+ respondents regarding certain measures that can potentially contribute to a more comfortable life for lesbian, gay or bisexual persons in their own country, the three most important such measures included *recognition of same-sex partnerships across the European Union* (supported by strong agreement of 83% of the respondents), *measures implemented at school to respect lesbian, gay and bisexual people* (71%) and *better acceptance of differences in sexual orientations by religious leaders* (71%).

It was also pointed out that figures regarding the perceived prevalence of discrimination reflect the levels of discrimination-awareness more than the actual scope of discrimination: thus lower rates of perceived discrimination do not necessarily mean lower rates of actual discrimination, rather they reflect lower levels of discrimination awareness (and the other way around). We should also be aware of the high latency in this field: since social visibility can make LGBTQ+ individuals vulnerable and exposed to violent responses from certain groups in society, not everyone can afford to come out – thus discrimination against LGBTQ+ people will remain hidden in many instances.

#### **Recommendation 8:**

- The European Union Agency for Fundamental Rights should continue to collect and analyse data about the discrimination of LGBTQ+ people with the contribution of LGBTQ+ people.
- There should be more intersectional analyses provided by the FRA reports linking sexual orientation and gender identity based discrimination to other protected categories.
- There should be more data collected on previously under-researched segments of the LGBTQ+ populations, especially regarding the rights of intersexual children and adults.

In summary, it can be pointed out again that social policy, freedom, security and justice, and common safety concerns in public health matters are among those areas where the EU has shared authority with the Member States, while areas where the EU has authority to carry out supporting, coordinating or supplementary action include education and the protection and improvement of human health. The remaining problematic legal issues relating, for instance, to the reproductive and parenting rights of LGBTQ+ people belong to areas such as family policy where the EU does not have authority – but even though

family law is outside EU authority, efforts can be made towards strengthening children's rights.

The EU might have only limited authority over many LGBTQ+ rights related fields, but its pro-LGBTQ+ stances reflected, for example, in several EU foreign policy initiatives can send out powerful messages to third countries about the importance of respecting the rights of LGBTQ+ people in and outside the EU. The potentially socialising effects of perceived non-heteronormative EU-norms cannot be underestimated: they not only set normative guidelines for candidate countries but also provide a legacy of legislation to be passed in order to join the EU and a non-heteronormative framing of its diplomacy worldwide. The EU as a political entity, when compared with other powerful global political agents, has the least "heteronormative air", but at the same time the EU as a whole seems to be still less heteronormative than some of its Member States.

Future steps contributing to the decrease of homophobia and genderphobia within the EU can be expected to be quite slow (and with an increasing number of member states even slower) – but LGBTQ+ rights must be kept on the EU agenda by initiating and re-initiating debates on unresolved issues, such as the proposed horizontal Anti-Discrimination Directive or the mutual recognition of the effects of civil status documents, and by producing good quality empirical data on the experiences of and the attitudes towards LGBTQ+ people in the EU.

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# Appendix 1

## Interpretational frameworks of equality and non-discrimination

The European network of legal experts in the field of gender equality describes four main frameworks within which meanings of equality and non-discrimination can be interpreted according to EU law. These are the following (McCrudden – Prechal 2009):

1. Equality and rationality: *"Equality, in this first meaning, requires that, save where there is an adequate justification, like cases must not be treated differently, and different cases must not be treated in the same way. This implies that where two categories are treated differently, the first issue is whether the categories involved are similar or not. If they are not, there is nothing wrong with treating them differently. If they are, the question is whether the difference in treatment can be justified. In this first meaning of equality, the justification that is required in order to be accepted may often be highly deferential to decisions taken by public bodies: if the action taken is 'rational', that may be enough"* (2009: 11).
2. Equality as protective of prized public goods: *"In the second meaning, the non-discrimination principle becomes an adjunct to the protection of particularly prized 'public goods'. Such 'prized public goods' should in principle be distributed to everyone without distinction. In the distribution of the 'public good', equals should be treated on a non-discriminatory basis, except where differences can be justified. The justification standard to be satisfied is often stricter in this context than is the case where 'equality as rationality' is concerned"* (2009:17).
3. Non-discrimination, particular characteristics, and the 'grounds' of discrimination: *"According to the third meaning of equality, it is not permitted to make a distinction on the basis of a group characteristic that is considered to be irrelevant or otherwise unacceptable, unless there is a justification. In this type of case, the group characteristics that may not lead to a distinction, such as nationality, race and sex, have often been set out in the text of the legal instrument (such as the Treaty, a Constitution, or other legislation). In this context, the justification of the difference in treatment will, in general, be scrutinized with considerable thoroughness, and the standard to be satisfied will often be high, but that standard may differ depending on the group characteristic under consideration"* (2009:23).
4. Equality as the positive duty to promote equality of opportunity and de facto equality: *"In the fourth meaning of equality, certain public authorities (and some private actors) are placed under a duty actively to take steps to promote greater equality of opportunity (the legal meaning of*

*which are yet to be fully articulated) for particular groups. In that sense, it is a further development of the third ('status-based') meaning. However, the concept of 'equality of opportunity' goes beyond any of the concepts of discrimination characteristic of the previous meanings, and the duty shifts from being essentially negative, to become a positive duty. This positive duty may include a duty to engage in positive action, unlike under the third meaning where it is often permitted to engage in positive action but not required" (2009: 41).*

It should also be added that what once was considered an appropriate approach to discrimination can shift over time: for example, the approach taken to discrimination based on sexual orientation has shifted from being assessed according to the *equality and rationality* framework to being assessed within the *non-discrimination* framework (McCrudden – Prechal 2009).

# Appendix 2

## ISSP findings <sup>99</sup>

ISSP data is available for 18 European countries, including *Bulgaria, Czech Republic, Denmark, Finland, France, Ireland, Latvia, Lithuania, Norway, Poland, Slovakia, Slovenia, Sweden, Switzerland, (West and East) Germany and the UK.*

The mean and median values of these variables are shown in Diagrams 4 and 5, where we can see that respondents in Eastern-European countries do not agree with the proposition that same-sex couples can bring up a child as well as male-female couples. People particularly disagreed with these statements in Latvia, Bulgaria and Lithuania, where not only are the mean values under 2, but the median values are also under 1. The northern European countries (Norway, Sweden and Denmark) and Germany can be found at the other end of the scale and they are followed by western European countries. These descriptive snapshots shed light on the greater difference between eastern and north-western Europe regarding acceptance of same-sex parenting practices than, for example, between eastern European countries and non-European countries such as Columbia, Japan, Mexico or Chile.

We can also see that respondents expressed higher levels of acceptance towards the parenting practices of same-sex female couples than towards the parenting practices of same-sex male couples in all the examined countries. The difference is the greatest in Poland, Slovakia and Slovenia.

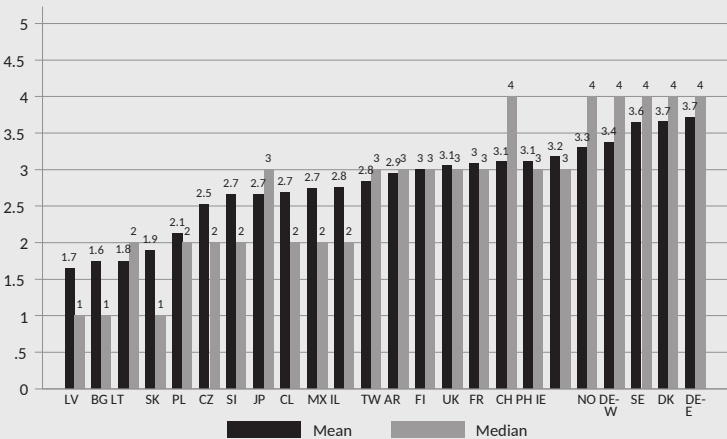
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<sup>99</sup> the valuable help of Ivett Szalma is kindly acknowledged regarding the ISSP findings.

<sup>100</sup> Hungary and Spain had to be omitted in these two variables due to methodological problems: in these countries they were asked the same questions on a 4-point scale instead of a 5-point scale.

**Diagram I: Agreement with the following statement: A same-sex female couple can bring up a child as well as a male-female couple**

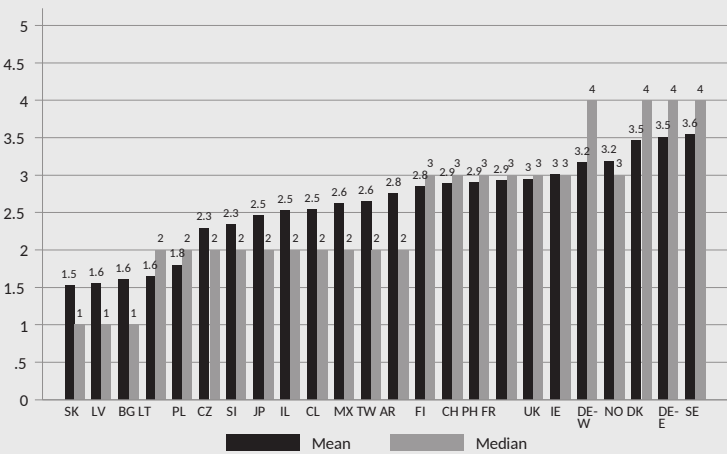
(1=Strongly disagree; 5=Strongly agree)



Source: ISSP 2012

**Diagram II: Agreement with the following statement: A same-sex male couple can bring up a child as well as a male-female couple**

(1=Strongly disagree; 5=Strongly agree)



Source: ISSP 2012

# Appendix 3

Recommendations included in the White Paper:  
Rights on the Move – Rainbow Families in Europe <sup>101</sup>

Legal recognition of relationships (marriages and same-sex partnerships), divorce and separation

- To continue the efforts of the European Commission in relation to the preparation of legislation on mutual recognition of public documents related to civil status.
- To ensure that documents concerning marriage and partnership registration related to same-sex partners are included in this legislation, and that the particular needs of same-sex spouses and partners in this respect are covered.
- To define the term “spouse” in the Citizens Directive to include married same-sex couples. Such amendments would prevent the downgrading of the civil status of married couples to registered couples (where the host member state provides for registered partnerships). Downgrading of a civil status from marriage to registered partnership due to exercising citizens’ free movement rights should be prevented.
- To unconditionally include registered and unregistered (co-habiting) same-sex partners among family members of European Union citizens.
- Possible amendments to the Citizens Directive should take as a starting point the home Member State principle (as opposed to the host Member State principle), meaning that if same-sex marriage is allowed in the home Member State, in line with the principle of mutual recognition the host Member State should recognise married partners as spouses even if the host Member State does not provide for same-sex marriage. Such amendments are required from the perspective of facilitating free movement, ensuring legal certainty and the respect of non-discrimination on the grounds of sex and sexual orientation. Regulation in this field would also make it possible for the interested parties to avoid unnecessary litigation. Similarly, the amendment should be clear that the home member state principle would not apply in cases where registered same-sex couples moving from an area with weak partnership laws to an area with strong partnership laws would have the effect of denying the couple the full protection of the new host member state’s laws. In such a circumstance, the couple would enjoy the full protection of the stronger partnership laws. In such a

<sup>101</sup> Source: Kogovšek-Šalamon (2015)

<sup>102</sup> The “home Member State” is where the partners concluded marriage or registered partnership, while this is not necessarily the state of the partners’ nationality.

case, Member States could be free to choose whether the protection of stronger host state laws would travel back with the couple if they returned to their home state with weaker partnership laws.

- To define explicitly whether Regulation 2201/2003<sup>103</sup> applies to divorce and annulment of same-sex marriages and whether legal separation applies to registered same-sex partnerships.

## Immigration

- To continue the efforts of the European Commission in relation to the preparation of legislation on the mutual recognition of public documents related to civil status.
- To ensure that documents concerning marriage and partnership registration related to same-sex partners are included in this legislation, and that the particular needs of same-sex spouses and partners in this respect are covered.
- To define the term “spouse” in the Family Reunification Directive to include married same-sex couples of the third country national (sponsor).
- To unconditionally include registered and unregistered (co-habiting) same-sex partners among the family members of third country nationals (sponsors) and ensure their right to family unity is respected.
- To ensure that the home state principle is relied upon in relation to third country nationals that are registered partners and co-habiting partners who are in a duly attested long-term relationship with the sponsor. In other words, if a same-sex couple is married but the host Member State provides only for registered partnership, their civil status should not be downgraded to registered partnership. Similarly, if a host member state does not provide for registered partnership or marriage, they should not be regarded as not being in a legally recognised relationship at all.
- For second recognition of third-country statuses a European Multilingual standard form ... could be used in order to later make recognition in another EU Member State easier. By using this form the host Member State that does not provide for marriage but only for registered partnership, would not be required to grant the rights attached to marriage, but only the rights attached to registered partnership. While this would still amount to downgrading, it would lessen the burden for further recognition if the couple decides to move to another Member State.

<sup>103</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R2201:EN:HTML> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000

## Adoption

- To continue the efforts of the European Commission in relation to preparation of legislation on the mutual recognition of public documents related to civil status.
- To ensure that documents concerning parental ties obtained through adoption related to same-sex partners are included in this legislation and that their particular needs in this respect are covered.

## Reproductive rights

- The directive definition of medical services should be broadened to explicitly include assisted reproductive technologies.
- To explore the possibility that same-sex spouses, as well as registered and unregistered same-sex partners, be afforded access to ART.
- To codify the home member state principle such that children born to same-sex couples that were conceived through ART or surrogacy are given equal legal protection in their new host Member State. This should include the guarantee that civil status documents (i.e. birth certificates) of children born with ART or surrogacy are recognised in all Member States, regardless of whether the host member State provides for such services and access of same-sex couples to them. This should also include the right of a child to access the citizenship of their parents under the same conditions as other children, as well as the right to obtain a passport and other identity documents.

## Children's Rights and Parental Responsibilities

- Even though family law is outside EU authority, there should be endeavours to strengthen children's rights, or a commitment to upholding the consideration of their well-being generally, but also specifically in the context of the children of same-sex partners.
- The European Commission should clarify when and in what contexts children's opinions regarding their own well-being should be taken into account in order to ensure that they are heard in all matters that concern them, including matters that concern them by way of affecting their (LGBT) parents. This would bolster the EU's commitment to safeguarding children's best interests and recognising their right to be heard. In addition, the Commission should embrace the approach advocated in Zambrano [i.e. legal measures aimed at parents can impermissibly interfere with children's fundamental rights] and allow people to bring actions directly before courts to redress violations of fundamental rights set forth in the Charter without requiring a directly applicable Treaty provision or secondary legislation. This would facilitate the development of case law regarding the extent to which Member State legislation that affects LGBT families leads to impermissible violations of children's rights.
- Lastly, the Commission should conduct a study that examines both



the affects that legal stigmatisation of same-sex couples has on their children, and the relative well-being of children of same-sex couples whose union is recognised as equal under the law. This will invariably lead to more informed policymaking regarding the best interests of children.

#### Employment Benefits and Pension

- The European Union should extend the applicability of Directive 2000/78 to cover statutory schemes of social security to truly protect the social rights of same-sex couples. This has already been attempted with the proposal of the so-called 'horizontal directive'.<sup>104</sup> The intention was to extend the prohibition of discrimination to the fields outside employment. Even though the prospects for the adoption of the horizontal directive are unsure, the European Commission should continue with endeavours to achieve its adoption.

#### Property regimes

- Make clear that, even in Member States that do not legally recognise same-sex partnerships, sexual orientation cannot be a public policy grounds for judicial decisions on matrimonial property.
- Make clear that the proposed Council Regulations apply equally to same-sex couples as they do to opposite-sex couples.

#### Inheritance

- When no choice of law is specified in a will, the laws of the Member State to which either same-sex partner has a connection that would afford the surviving spouse the greatest material benefit will apply.
- In cases of intestacy, registered and unregistered same-sex partners should be treated the same as opposite-sex spouses or co-habiting partners, respectively. That is to say, if the laws of a member state grant, for example, the right of continued tenancy to surviving opposite-sex common law partners or dependent domiciliaries, that same right should be extended to unregistered same-sex partners.

#### Intersexual recognition

- Clarify the definition of prohibited discrimination to explicitly include discrimination based on any gender expression.
- Codify the home Member State principle in such a way that guarantees that intersex persons are not forced to submit to a binary sex model when moving between EU Member States.

<sup>104</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM/2008/0426 final).

### Transgender recognition

- Similar to the recommendation of the previous section, to clarify the definition of prohibited discrimination to include explicitly discrimination based on any gender expression, trans or otherwise.

### Victims of gender-based and homophobic violence

- Clarify that Directive 2012/29/EU covers both registered and unregistered same-sex partners.
- Ensure that the Directive's definition of 'particularly vulnerable' persons includes gay, lesbian, bisexual, transgender, and intersex persons.

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<sup>105</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>  
Directive... establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

# Appendix 4

## Recommendations to the Hungarian Government <sup>106</sup>

### 1. General recommendations

- Adopt a national action plan on equality based on sexual orientation and gender identity regarding all areas covered by the Recommendation and its Appendix.
- Extend the mandate of the Department of Equal Opportunities at the Ministry of Human Resources to specifically include sexual orientation and gender identity.
- Conduct regular national and sector-specific surveys to monitor attitudes towards LGBTQ+ persons.
- Introduce regular consultation with LGBTQ+ stakeholders in the legislative process; and conduct impact assessment of new legislation and policy measures that specifically cover their impact on LGBTQ+ persons.

### 2. "Hate crimes" and other hate-motivated incidents

- Amend the Criminal Code to take hate motivation into consideration in cases of stalking and crimes against property.
- Introduce a comprehensive definition for hate crimes, including homicide, crimes against property, blackmail, stalking, and violence against a member of a community.
- Publish the comprehensive definition of hate crime on the websites of police, courts, prosecution and victim support services.
- Disseminate comprehensive and accessible guides to potential victims of hate crimes on available legal remedies and support services.
- Adopt a police protocol on responding to and investigating hate crimes, explicitly including homophobic and transphobic hate crimes.
- Introduce training modules on hate crimes specifically including homophobic and transphobic hate crimes in the curricula of basic and in-service police training and legal education.
- Introduce sensitising training for police, courts, prosecution, victim support services and prison staff on discrimination against and the specific needs and concerns of LGBTQ+ persons.
- Establish a network of specifically trained hate crime specialists at law enforcement authorities.
- Establish reference groups with the participation of civil society representatives to monitor procedures in individual cases of hate crime.

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<sup>106</sup> Source: Dombos – Polgári (2013:6-11).

- Extend the mandate of minority liaison officers to cover sexual orientation and gender identity, or introduce specific LGBTQ+ liaison officers.
- Reform data collection on hate crimes to cover all cases falling under the comprehensive definition, so that it allows cases to be followed from reporting to sentencing, disaggregated by hate motivation grounds.
- Introduce risk assessment prior to placement in pre-trial detention and prison cells with specific information gathering on attitudes towards social minorities, including those based on sexual orientation and gender identity, and previous involvement in hate motivated incidents against them.

### 3. Hate speech

- Amend the Media Constitution to explicitly prohibit incitement to hatred based on sexual orientation and gender identity.
- Extend the internet hotline hosted by the National Media Information-Communication Authority to explicitly cover homophobia and transphobic speech.
- Include a section in the Public Service Code on the duty to avoid stereotyping based on sexual orientation and gender identity, and on appropriate language use with regard to LGBTQ+ persons.
- Include coverage of sexual orientation and gender identity issues in regular media monitoring.

### 4. Freedom of association

- Provide earmarked funding for public services offered by LGBTQ+ civil society actors, including but not limited to health development and prevention, education, victim support, and training of public officials.
- Introduce a specific funding scheme for human rights civil society actors, including organisations working in the field of LGBTQ+ human rights.
- Explicitly include sexual orientation and gender identity in funding schemes promoting equal opportunities for vulnerable groups.
- Maintain a transparent database on public funding that allows for tracing the funds allocated to different equality causes.
- Build strategic partnerships with civil society organisations representing LGBTQ+ interests.

### 5. Freedom of expression

- Amend the Media Act to allow civil society organisations representing LGBTQ+ interests to delegate member(s) to the Board of Public Services.
- Include LGBTQ+ issues in mainstream news programmes; and offer

targeted radio and television programmes for LGBTQ+ persons on social, political and cultural issues affecting the community.

- Reflect the social and cultural diversity of Hungarian society, including sexual and gender diversity, in all production genres in the public media.
- Provide funding for print media for minority audiences, including LGBTQ+ persons.

#### 7. Freedom of peaceful assembly

- Stop the discriminative police practice of banning Pride Marches on the basis of disproportionate traffic disruption.
- Refrain from the discriminatory practice of referring to public morals selectively in connection with LGBTQ+ assemblies.
- Provide sufficient security measures to protect participants of LGBTQ+ assemblies prior as well as after the events.

#### 8. Respect for private and family life

- Abolish the discriminatory provisions in the Registered Partnership Act concerning taking the partner's name and parenting.
- Abolish the discriminatory provision in the new Criminal Code regarding sanctioning double marriage but not double registered partnership.
- Abolish discrimination of lesbian couples in access to assisted reproductive technology.
- Provide an inclusive definition of family, covering same-sex registered and *de facto* partners in the Family Protection Act.
- Introduce publicly available guidelines on adoption suitability criteria including the principle of non-discrimination based on sexual orientation and gender identity.
- Give due attention to same-sex families in legal studies, psychology, medicine, sociology and social work university curricula.
- Introduce sensitising and accredited in-service training covering same-sex families for social professionals working in the field of child protection.

#### 9. Respect for private and family life and access to health care for transgender persons

- Codify currently existing practice regarding gender recognition.
- Provide full funding for gender reassignment treatments by public health insurance.
- Introduce medical protocols for the diagnosis and treatment of trans persons in line with WPATH's Standard of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People.
- Publish a client-oriented guide on the medical treatment and social services available to trans persons and their families.

- Establish medical centres specialising in trans health with full medical teams, including psychiatrists, endocrinologists, surgeons, and social workers.
- Publish a description of the gender recognition procedure on the government's internet portal.
- Include information on the social situation, and special health needs and concerns of trans persons in the medical university curricula.
- Ensure- either through legislation or interpretation that the definition of sensitive data covers gender identity and information on past gender recognition.

## 10. Employment

- Extend the requirement to adopt equal opportunity plans to all public employers regardless of the number of employees and to private employers with more 20 employees.
- Remove from the relevant legislation references to transsexualism (F64.00) as a mental condition disqualifying transgender persons from serving in the police and armed forces.
- Issue guidelines on the content of equal opportunity plans with specific reference to the needs of LGBTQ+ employees.
- Issue guidelines to employers on the implementation of data protection legislation with regards to gender recognition in the context of employment.
- Issue a model code of conduct and non-discrimination policy with specific reference to sexual orientation and gender identity.
- Develop specific programmes improving the employability of trans persons to prevent long-term unemployment including training and financial incentives to employ them.
- Introduce financial incentives for employers to provide diversity trainings for their employees specifically including issues concerning sexual orientation and gender identity.
- Include information on equal treatment procedures and discrimination based on sexual orientation and gender identity in publicly funded materials on employees' rights distributed amongst the general public.
- Integrate equal treatment issues covering sexual orientation and gender identity into the work of publicly funded employment legal aid services.

## 11. Education

- Amend the legislation on the National Basic Curriculum and the Framework Curricula to specifically include information on sexual orientation and gender identity.
- Ensure that all textbooks and other educational materials authorised for use in public education cover sexual orientation and gender identity in an objective manner, and promote tolerance and respect for LGBTQ+ persons.

- Issue a model policy of non-discrimination and anti-bullying for educational institutions with specific reference to sexual orientation and gender identity.
- Integrate issues of homophobic and transphobic bullying into anti-violence and safe school programmes.
- Include information on the social situation of LGBTQ+ persons and the specific needs and concerns of LGBTQ+ youth in teachers' training curricula.
- Introduce sensitising and accredited in-service training for teachers, school counsellors, school nurses and school psychologists covering sexual orientation and gender identity.
- Include information on sexual health concerns of LGBTQ+ persons in compulsory sexual education in schools.
- Provide moral and financial support for awareness raising school programmes provided by LGBTQ+ civil society actors.

## 12. Health - other than transgender specific health issues

- Introduce sensitising training for doctors and other medical staff, on discrimination against, and the specific health needs and concerns of, LGBTQ+ persons as part of basic and in-service training.
- Increase public funding for the prevention of HIV/AIDS and other sexually transmitted diseases and include men who have sex with men (MSM) and trans women as specific target groups for prevention campaigns.
- Include LGBTQ+ persons as a specific target group in suicide prevention programmes.
- Include questions concerning sexual orientation and gender identity in health surveys; and publish the results in a format allowing for comparison between the LGBTQ+ and the general population.
- Integrate the needs and concerns of LGBTQ+ persons into national and local health plans and comprehensive health test programmes.
- Introduce a standardised satisfaction questionnaire for health care providers including questions on sexual orientation and gender identity.
- Adopt official guidelines on the treatment of intersex children emphasising the importance of free and informed consent.
- Prepare educational materials targeting parents of intersex children to assist them in accepting gender variance.

## 13. Housing

- Introduce sensitising training for social workers on discrimination against and the specific health needs and concerns of LGBTQ+ persons as part of basic and in-service training.
- Issue guidelines for homeless shelters on the specific needs and concerns of LGBTQ+ persons and same-sex couples.

- Commission research into the factors putting LGBTQ+ persons at a higher risk of homelessness.

#### 14. Sports

- Amend provisions on hate speech in the Sports Act to include the prohibition of homophobic and transphobic chanting.
- Include LGBTQ+ persons and their sport clubs as a specific target group in funding earmarked for the sport of vulnerable people.
- Take measures to facilitate the participation of transgender and intersex persons in sports according to their preferred gender.

#### 15. Right to seek asylum

- Amend the Asylum Act to include gender identity as a separate ground for persecution.
- Recognise LGBTQ+ asylum seekers as a specifically vulnerable group during the asylum procedure.
- Adopt guidelines for the assessment of sexual orientation and gender identity related asylum claims.
- Accept the existence of any criminal sanction based on sexual orientation and gender identity as conclusive evidence for persecution; and allow for the individual assessment of the existence of persecution even if no criminal sanction exists.
- Abandon the practice of rejecting asylum claims with the argument that persecution can be avoided by leading a discrete lifestyle.
- Abolish the use of psychiatric assessments as a proof of sexual orientation and gender identity.
- Introduce sensitising training for the staff of the Office of Immigration and Nationality on discrimination against, and the specific needs and concerns of, LGBTQ+ immigrants and asylum seekers as part of basic and in-service training.
- Introduce risk assessment prior to placement in reception and detention centres with specific information gathering on attitudes towards other social groups, including those based on sexual orientation and gender identity.

#### 16. National human rights structures

- Strengthen the institutional position, independence and financial situation of the Commissioner for Fundamental Rights and the Equal Treatment Authority.
- Encourage national human rights structures to play a more active role in the legislative process concerning the fundamental rights of LGBTQ+ persons, and speak out publicly in support of LGBTQ+ rights.
- Conduct awareness raising and campaigns amongst the general public on issues relating to sexual orientation and gender identity.



- Organise in-house training for the staff of national human rights structures on the specific needs and concerns of LGBTQ+ persons.

# Svensk sammanfattning

Den här rapporten granskar två typer av indikatorer för homofobi (och transfobi): politiska ställningstaganden och allmän social acceptans för hbtq-personer. Tillsammans kan dessa indikatorer åskådliggöra graden av respekt för homosexuellas, bisexuellas och trans- och queerpersoners (hbtq) rättigheter i Europeiska unionen. Ett syfte med publikationen är att bidra till ökad medvetenhet – genom att samla information och kunskap – om betydelsen av respekt för hbtq-personers rättigheter. Den erbjuder dessutom information och vägledning till såväl frivilligorganisationer som till alla andra EU-medborgare som är engagerade i hbtq-frågor.

Homofobi definieras i rapporten som en benägenhet att medvetet undvika att bryta mot könsnormer. Socialt avståndstagande från homosexuella, queerpersoner och icke-heteronormativa förefaller vara en del av ett bredare synsätt där det heteronormativa sätter tydliga gränser för kvinnor och män i samhället. Det är också en utbredd erfarenhet att homofobi går hand i hand med andra fobier som xenofobi och med traditionella uppfattningar om kvinnors och mäns roller i samhället. Termen homofobi används på ett sätt som är mer sammanbundet med det heteronormativa än med begreppet homosexualitet, och den för med sig ett flertal beteckningar och bibetydelser när det gäller beteende, identitet, uppträdande och historia.

Rapporten består av två huvuddelar: i den första ges en översikt över EU:s linje vad gäller hbtq-personers rättigheter, i den andra presenteras jämförande data över den faktiska situationen i olika europeiska länder. Dessa data belyser individuella och nationella variabler – baserade på uppgifter hämtade från European Values Study, European Social Survey och Eurobarometer – som kan påverka den sociala acceptansen för hbtq-personer i Europa.

Till att börja med koncentrerar vi oss på EU-nivån, genom att uppmärksamma den roll EU kan ha när det gäller likabehandling av hbtq-personer. I den delen av rapporten presenteras en översikt över utvecklingen på de områden där EU har kompetens att agera när det gäller hbtq-rättigheter och över de framsteg som har skett beträffande likabehandling (mänskliga rättigheter och grundläggande friheter blev grundläggande EU-principer och med Amsterdamfördraget 1997). Dessutom ges en kort översikt över lagstiftningen på nationell nivå när det gäller samkönade partnerskap. I rapportens andra del används jämförande empiriska data för att illustrera de olika nivåerna av social acceptans för hbtq-personer i Europa.

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<sup>107</sup> Begreppet hbtq ska uppfattas som öppet och möjligt att omfatta inte enbart homosexuella, bisexuella, trans- och queerpersoner utan även intersexuella och andra.

Rapporten avslutas med slutsatser och rekommendationer som lyfter fram det faktum att EU bara har begränsade möjligheter när det gäller hbtq-personers rättigheter. Socialpolitiska delar som omfattas av fördraget hör till sådant där EU delar befogenhet med medlemsländerna. När det gäller exempelvis utbildning och skydd och förbättring av människors hälsa inskränker sig EU:s möjligheter till att stödja, samordna eller komplettera medlemsländernas åtgärder. En alltså olöst fråga är till exempel den om hbtq-personers föräldraskap och reproduktiva rättigheter, en fråga som hör till ett område (familjerätt) där EU saknar befogenheter. Men även om familjerätt ligger utanför EU:s kompetens kan man vidta åtgärder som syftar till att stärka barns rättigheter.

Till slutsatserna hör också specifika rekommendationer, bland annat förslag om övervakning av hur hbtq-rättigheter respekteras *efter* det att ett land har blivit EU-medlem. Rekommendationerna visar också att EU bör fortsätta initiera och underlätta diskussioner om ömsesidigt erkännande av dokument rörande civilstånd, i syfte att underlätta den fria rörligheten mellan enskilda EU-länder för icke-heteronormativa regnbågsfamiljer. Här återfinns också förslaget att flernationella undersökningar bör innehålla fler variabler som kan användas för att bedöma såväl olika aspekter av hbtq-personer dagliga liv som homofobiska och transfobiska attityder hos befolkningen i allmänhet.

Rapporten avslutas med påpekande att hbtq-rättigheterna måste fortsätta att stå på EU:s dagordning och att alltså olösta frågor måste fortsätta att debatteras. Några exempel på sådana frågor är det föreslagna horisontella antidiskrimineringsdirektivet, det tidigare nämnda ömsesidiga erkännandet av dokument rörande civilstånd samt framtagandet av empiriska data över hbtq-personers erfarenheter och attityder till dessa personer i EU. De inneboende socialiserande effekterna av EU:s politik får heller inte underskattas. De anger normativa riktlinjer för kandidatländer och skapar på sikt ett samlat regelverk som anger kraven för EU-anslutning.

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“The EU as a political entity, when compared with other powerful global political agents, has the least ‘heteronormative air’, but at the same time the EU as a whole seems to be still less heteronormative than some of its Member States.”

Judit Takács



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