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REPORT

on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity
(2013/2183(INI))

Committee on Civil Liberties, Justice and Home Affairs

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N.B. This unofficial document presents the report as adopted by the Committee on Civil Liberties, Justice and Home Affairs on 17 December 2013, including all amendments. The official version will be available on the website of the European Parliament shortly.

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2013/2183(INI))

The European Parliament,

- having regard to Article 2 of the Treaty on European Union,
- having regard to Articles 8 and 10 of the Treaty on the Functioning of the European Union,
- having regard to the Charter of Fundamental Rights of the European Union and in particular its Article 21,
- having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms,
- having regard to Recommendation CM/Rec(2010)5 of the Committee of Ministers of the Council of Europe to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010,
- having regard to the Communication from the Commission entitled a ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’ (COM(2010)0573),
- having regard to the 2012 Commission Report on the Application of the EU Charter of Fundamental Rights (COM(2013)0271), and to the accompanying staff working documents,
- having regard to the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426) and to its position of 2 April 2009 on that proposal¹,
- having regard to the guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons adopted by the Council of the European Union at its meeting of 24 June 2013,
- having regard to the European Union Agency for Fundamental Rights report of November 2010 on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity,
- having regard to the results of the European Union lesbian, gay, bisexual and transgender survey carried out by the Agency for Fundamental Rights (FRA) and published on 17 May 2013,
- having regard to the FRA opinion of 1 October 2013 on the situation of equality in the

¹ OJ C 241 E, 8.10.2009, p. 68.

European Union 10 years on from initial implementation of the equality directives,

- having regard to its resolution of 24 May 2012 on the fight against homophobia in Europe²,
 - having regard to its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011)³,
 - having regard to its resolution of 14 March 2013 on strengthening the fight against racism, xenophobia and hate crime⁴,
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Women’s Rights and Gender Equality (A7-0000/2013),
- A. whereas the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities;
- B. whereas in defining and implementing its policies and activities, the European Union aims to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;
- C. whereas in June 2013 the Council of the European Union adopted strong guidelines to promote and protect the enjoyment of all human rights by LGBTI persons outside the European Union, and should ensure that they are protected effectively inside the EU;
- D. whereas the European Union already coordinates its action through comprehensive policies in the field of equality and non-discrimination through the ‘Framework strategy for non-discrimination and equal opportunities for all’, in the field of gender equality through the ‘Strategy for equality between women and men 2010-2015’, in the field of disability through the ‘European Disability Strategy 2010-2020’, and in the field of equality for Roma persons through the ‘EU Framework for National Roma Integration Strategies up to 2020’;
- E. whereas in its ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’, the Commission has acknowledged the necessity of developing individual policies concerning certain specific fundamental rights on the basis of the Treaties;
- F. whereas in the 2013 EU LGBT survey, the European Union Agency for Fundamental Rights (FRA) found that across the EU in the year preceding the survey one in two LGBT respondents felt discriminated against or harassed on grounds of sexual orientation, one in three were discriminated against when accessing goods or services, one in four were physically attacked, and one in five were discriminated against in employment or

² Texts adopted, P7_TA(2012)0222.

³ Texts adopted, P7_TA(2012)0500.

⁴ Texts adopted, P7_TA(2013)0090.

occupation;

- G. whereas the FRA recommended that the EU and Member States develop action plans promoting respect for LGBT persons and protection of their fundamental rights;
- H. whereas in May 2013 eleven Equality Ministers⁵ called on the Commission to issue a comprehensive EU policy for LGBT equality, and ten Member States⁶ have already adopted or are discussing similar policies at national and regional levels;
- I. whereas the European Parliament has asked ten times for a comprehensive European Union policy instrument for equality on grounds of sexual orientation and gender identity;

General considerations

- 1. Strongly condemns any discrimination on the basis of sexual orientation and gender identity, and strongly regrets that the fundamental rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people are not yet always fully upheld in the European Union;
- 2. Believes that the European Union currently lacks a comprehensive policy to protect the fundamental rights of LGBTI people;
- 3. Acknowledges that the responsibility to protect fundamental rights lies jointly with the European Commission and Member States; calls on the Commission to use its competences to the fullest extent, including facilitating the exchange of good practices among Member States; calls on Member States to fulfil their obligations under EU law and under the Council of Europe Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity;

Roadmap contents

- 4. Calls on the European Commission, Member States and relevant agencies to work jointly on a comprehensive multiannual policy to protect the fundamental rights of LGBTI people, i.e. a roadmap, a strategy or an action plan featuring the themes and objectives hereunder;
- 5. Underlines that this comprehensive policy must remain within the remit of the European Union, its agencies, and Member States' respective competences;

A. Horizontal actions to implement the Roadmap

- (i) The Commission should work to secure existing rights throughout its work and across all domains in which it is competent by mainstreaming issues linked to the fundamental rights of LGBTI people in all relevant work – for instance when drafting future policies and proposals or monitoring the implementation of EU law,
- (ii) The Commission should facilitate, coordinate and monitor the exchange of

⁵ Austria, Belgium, Croatia, Denmark, Finland, France, Italy, Luxembourg, Malta, the Netherlands, Sweden.

⁶ Belgium, Croatia, France, Germany, Italy, Malta, the Netherlands, Portugal, Spain, United Kingdom.

good practice among Member States via the open method of coordination,

- (iii) Relevant European Union agencies, including the European Union Agency for Fundamental Rights (FRA), the European Institute for Gender Equality (EIGE), the European Foundation for the Improvement of Living and Working Conditions (Eurofound), the European Police College (CEPOL), the European Union's Judicial Cooperation Unit (Eurojust), the European Judicial Network (EJN) and the European Asylum Support Office (EASO), should mainstream issues related to sexual orientation and gender identity in their work, and continue to provide the Commission and Member States with evidence-based advice on the fundamental rights of LGBTI people,
- (iv) The Commission and Member States should be encouraged to regularly collect relevant and comparable data on the situation of LGBTI persons in the EU together with relevant agencies and Eurostat, while fully respecting EU data protection rules,
- (v) Together with relevant agencies, the Commission and Member States should encourage 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,
- (vi) Together with relevant agencies, the Commission and Member States should seek to make citizens aware of the rights of LGBTI persons;

B. General provisions in the field of non-discrimination

- (i) Member States should consolidate the existing EU legal framework by working to adopt the proposed Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, including by clarifying the scope and associated costs of its provisions,
- (ii) Stresses that lesbians often suffer discrimination on a multiple basis (for being women and for being lesbians) and that actions in support of equality for LGBT persons must go hand in hand with actions for equality for women and girls in order to achieve equality, non-discrimination and a life free from violence for lesbians;

C. Non-discrimination in employment

- (i) The Commission should include a specific focus on sexual orientation when monitoring the implementation of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, and on gender identity when monitoring the implementation of 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,
- (ii) Together with the relevant agencies, the Commission should issue guidelines specifying that transgender and intersex persons are covered 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,

- (iii) Equality bodies should be encouraged to inform LGBTI persons, as well as trade unions and employer organisations, about their rights;

D. Non-discrimination in education

- (i) The Commission should promote equality and non-discrimination on grounds of sexual orientation and gender identity throughout its youth and education programmes,
- (ii) The Commission should facilitate the sharing of good practice in formal education, including teaching materials, anti-bullying and anti-discrimination policies, among Member States through the open method of coordination,
- (iii) The Commission should facilitate the sharing of good practice throughout Member States' youth and education sectors, including youth welfare services and social work, among Member States through the open method of coordination;

E. Non-discrimination in health

- (i) The Commission should place LGBTI health concerns within relevant wider strategic health policies, including access to health care, equality in health, and the EU's global voice in health-related matters,
- (ii) 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 in the negotiations on the 11th version of the International Classification of Diseases (ICD-11),
- (iii) The Commission should support Member States in the training of health professionals,
- (iv) The Commission and Member States should undertake research on health issues specific to LGBTI persons,
- (v) Member States should take account of LGBTI people within national health plans and policies, ensuring training curricula, health policies and health surveys take specific LGBTI health issues into account,
- (vi) Member States should introduce or review legal gender recognition procedures so they fully respect transgender people's right to dignity and bodily integrity;

F. Non-discrimination in goods and services

- (i) The Commission should include a specific focus on access to goods and services by transgender persons when monitoring the implementation of

Directive 2004/113/EC on implementing the principle of equal treatment between men and women in the access to and supply of goods and services;

G. Action specific to transgender and intersex persons

- (i) The Commission should ensure gender identity is included among prohibited grounds of discrimination in any future equality legislation, including any recasts,
- (ii) The Commission should mainstream issues specific to transgender and intersex people throughout the relevant EU policies, mirroring the approach adopted in the Gender Equality Strategy,
- (iii) Member States should ensure equality bodies are informed and trained about the rights and specific issues pertaining to transgender and intersex people,
- (iv) Highlights the invisibility of intersex people in European and national legislation and the lack of knowledge and research in this area; calls, in this context and in particular with respect to gender identity, for efforts in making equality legislation work to be stepped up;

H. Citizenship, families and freedom of movement

- (i) The Commission should produce guidelines to ensure the implementation of Directive 2004/38/EC on the right of Union citizens 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, respect all forms of families legally recognised under Member States' national laws,
- (ii) The Commission should, as a priority, make proposals for the mutual recognition of the effects of all civil status documents across the EU, including registered partnerships, marriages and legal gender recognition, in order to reduce discriminatory legal and administrative barriers for citizens and their families who exercise their right to free movement,
- (iii) The Commission and Member States should study whether restrictions in place for the change of civil status and identity documents for transgender people harms their ability to enjoy their right to free movement,
- (iv) Member States which have adopted legislation on cohabitation, registered partnerships or marriage for same-sex couples should recognise similar provisions adopted by other Member States;

I. Freedom of assembly and expression

- (i) Member States should ensure the rights to freedom of expression and assembly are guaranteed, particularly with regards to pride marches and similar events, by ensuring these events take place lawfully and by guaranteeing participants' effective protection,
- (ii) Member States should refrain from adopting laws and reconsider existing laws

which restrict freedom of expression in relation to sexual orientation and gender identity,

- (iii) The Commission and the Council of the European Union should consider that Member States adopting laws to restrict freedom of expression in relation to sexual orientation and gender identity breach the values on which the European Union is founded, and react accordingly;

J. Hate speech and hate crime

- (i) The Commission should monitor and provide Member States assistance with issues specific to sexual orientation, gender identity and gender expression when implementing Directive 2012/29/EU on the rights, support and protection of victims of crime, in particular when committed with a bias or discriminatory motive which could be related to their personal characteristics,
- (ii) The Commission should propose a recast 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, including on grounds of sexual orientation and gender identity,
- (iii) Together with relevant agencies, the Commission should facilitate Member States' exchange of good practice by Member States pertaining to the training and education of police forces, prosecution services, judges and victim support services among Member States,
- (iv) The Fundamental Rights Agency should assist Member States in improving their collection of comparable data about homophobic and transphobic hate crime,
- (v) Member States should register and investigate hate crimes against LGBTI people, and adopt criminal legislation prohibiting incitement to hatred on grounds of sexual orientation and gender identity;

K. Asylum

- (i) Together with EASO and relevant agencies, and within the remit of existing EU legislation and jurisprudence, the Commission should include specific issues linked to sexual orientation and gender identity in the implementation and monitoring of asylum legislation, including Directive 2013/32/EU on common procedures for granting and withdrawing international protection, and Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection,
- (ii) Together with relevant agencies, the Commission and Member States should ensure encourage adequate training—including existing training—for asylum professionals are trained adequately, including interviewers and interpreters to handle issues related specifically to LGBTI persons,
- (iii) Together with EASO and in cooperation with the EEAS, the Commission and

Member States should ensure that the legal and social situation of LGBTI persons in countries of origin is documented systematically and that such information is made available to asylum decision-makers as part of Country of Origin Information (COI);

L. Enlargement and external action

- (i) The Commission should continue its current monitoring of issues linked to sexual orientation and gender identity in accession countries,
- (ii) The Commission, the European External Action Service, the EU Special Representative for Human Rights and Member States should systematically use the Council Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons, and maintain a unified position when responding to violations of these rights,
- (iii) The Commission and the European External Action Service should provide information obtained from EU delegations on the situation of LGBTI persons in third countries to the European Asylum Support Office and Member States;

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5. Instructs its President to forward this resolution to the Council of the European Union, the European Commission, the European External Action Service, the governments and parliaments of Member States, all agencies cited herein, and the Council of Europe.

EXPLANATORY STATEMENT

The European Union has the obligation to combat discrimination when defining and implementing its activities (Article 10 TFEU). This obligation is materialised by existing comprehensive policies to combat discrimination based on sex (through the Strategy for equality between women and men 2010-2015), disability (through the European Disability Strategy 2010-2020), and affecting Roma people (through the EU Framework for National Roma Integration Strategies up to 2020).

The European Parliament is of the opinion that such a comprehensive policy instrument is required to combat discrimination on grounds of sexual orientation and gender identity. Since January 2011, it has made this request ten times in various resolutions, asking the European Commission to produce a roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity. This report sets out a draft canvas for such a comprehensive policy.

There are three strong legal, political and policy cases for such a roadmap. **Legally**, the European Union is required to combat discrimination when defining and implementing its policies and activities (Art. 10 TFEU), and prohibits discrimination on any ground (Art. 21 Charter of Fundamental Rights). This legal requirement is already materialised by comprehensive policies in the field of gender equality, disability and Roma integration; it must now be materialised for grounds of sexual orientation and gender identity.

Politically, support exists in the European Parliament as well as among Member States, eleven of which have officially called for such a roadmap in May 2013. The European Commission has responded that actions were already undertaken to ensure equality on grounds of sexual orientation and gender identity, but these actions are substandard compared to the comprehensive approach other groups benefit from. Furthermore, Member States are increasingly adopting similar plans at national level (Belgium, France, Italy, the Netherlands, United Kingdom, and under discussion in Latvia), as part of wider national equality plans (Croatia, Portugal), or at regional levels (Belgium, Germany, Spain).

Finally, **policy** data show such a roadmap is necessary. The LGBT survey published by the Agency for Fundamental Rights in 2013 indicates that **47% of LGBT people felt discriminated against or harassed in the last year**, with lesbian women (55%), young people (57%) and poorer LGBT people (52%) the most likely to be discriminated against; **26% were attacked or threatened with violence** because of their sexual orientation or gender identity (35% among transgender people); **only 10% feel confident enough to report discrimination to the police**, and only 22% report violence or harassment; **32% are discriminated against in housing, education, or when accessing healthcare, goods or services**; and **20% are discriminated against in employment or occupation** (29% among transgender people).