



POSITION PAPER

S&D POSITION PAPER ON LGBTI RIGHTS

*ONE EUROPE FOR ALL OF US –
SOLIDARITY, DIVERSITY AND SECURITY*

Stronger rights for LGBTI people

Date: 10 May 2016



Group of the Progressive Alliance of
Socialists & Democrats
in the European Parliament

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INTRODUCTION

LGBTI rights are human rights: according to international human rights standards, every nation is obliged to protect all lesbian, gay, bi-sexual, trans and intersex people (LGBTI) from torture, discrimination and violence. In the European Union, the European Treaties and the Charter of Fundamental Rights of the EU provide for protection of human rights and fundamental freedoms, safeguarding of the rights of minorities and a legal basis for the fight against discrimination.

It is a priority for the S&D Group in the European Parliament to advance these principles. LGBTI people should effectively enjoy the same rights, duties and opportunities as well as the same level of protection as any other person within the EU in all aspects of life.

In 2013 the Council adopted guidelines to promote and protect the enjoyment of all human rights by LGBTI persons¹ in relations with third countries. However, the Council has not yet adopted any such document that concerns the situation within the European Union.

In December 2015, the European Commission published a "List of Actions to advance LGBTI Equality". This list is a good starting point but not the ambitious fully-fledged LGBTI equality strategy the S&D Group has requested for a longtime. S&D Group priorities were reflected most recently in the "Lunacek Report" which was adopted by the plenary in February 2014².

S&D Group now wants to see action: we are pushing for an ambitious EU legislative agenda that ensures equal rights and opportunities for all citizens and a proper transposition and implementation of EU legislation relevant for LGBTI rights. The S&D Group shall ensure consistency through its work also by using EP rules of procedures to advance LGBTI rights, especially in cases of hate speech and discrimination. Existing studies and reports show that the respect for human rights of LGBTI people, and the public's support can be improved in many Member States (e.g FRA studies, Eurobarometer, etc)

1 FIRST: EQUAL RIGHTS AND OPPORTUNITIES FOR ALL WITHIN THE EU

Discrimination against LGBTI persons is unacceptable.

¹ Adopted at Foreign Affairs Council meeting, Luxembourg, 24 June 2013

² "EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity" adopted on 4 February 2014 (A7-0009/0062)

However, a recent online Survey of over 93.000 LGBTI people across the EU reveals widespread bullying and harassment that starts at school, is carried over into discrimination at work, housing, social services and access to other goods and services: about 80% of respondents recalled negative comments or bullying at school and close to 50% of LGBTI said they feel personally discriminated against or harassed on grounds of their sexual orientation. 59% of LGBTI who were attacked or threatened with violence feel that the attack or threat happened partly or entirely because they are perceived to be LGBTI; one in five respondents felt discriminated at their work or when looking for a job. At the same time, only 17 % reported hate-motivated violence to the police, mainly because they believe nothing would happen or change anyway.³

In order to keep coherence between internal and external policies, the EU and the Member States must address internal human rights challenges, including discrimination against LGBTI people, and ensure that any discrimination based on sexual orientation or gender identity is prohibited, not only in the field of employment but also in all sectors of civil rights such as education, social security, health care, access to goods and services (including finance), housing, public procurement, business support, access to culture, etc.

The S&D Group has repeatedly requested the European Commission to use its competences to the fullest extent taking into account the Council of Europe recommendations to fight discrimination of LGBTI persons in the EU. The S&D Group requests that the much awaited completion of the EU anti-discrimination legal framework is put in action promptly:

- the Council must finally de-block the negotiations and adopt the proposed Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (**Equal Treatment Directive**), proposed by the Commission in 2008. Member States should put an end to negotiation strategies that weaken the Directive's scope, i.a. on access to education.
- the Commission must pay special attention to the **monitoring and enforcement of LGBTI-relevant legislative provisions**, such as the Directive on Equal Treatment in Employment and Occupation and the Directives on **Gender Equality in access to goods and services and employment**, which also protect trans-gender people from discrimination (based on the EUCJ extension of the sex/gender characteristics), but also the **Victims Right Directive**. Interpretation guidelines are needed in order to make clear for national authorities that sexual identity is fully covered by the said legislation.

The Commission needs to take its full responsibility to enforce this legislation without exception and to initiate infringement proceedings when Member States do not comply.

³ EU LGBTI Survey 2013, done by "European Union Agency on Fundamental Rights FRA" http://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf

1.1 Equal Rights: not a negotiable principle

The S&D Group welcomes that LGBTI families are now partly covered by the case-law of the European Court Human Rights which states that same sex-couples living in stable relationships are to be considered as "family" and cannot be excluded from rights granted to de facto cohabitants, including in cases of adoption.

While the definition of substantive family legal norms is a national competence, several pieces of EU legislation impact on families' rights of EU citizens and residents. In order to ensure that existing marriages and recognized civil partnerships are not dissolved at the borders, leaving families (including children) in limbo, and to stop discriminatory legal and administrative barriers for citizens who exercise their right to free movement, S&D Group calls for the mutual recognition of civil status documents (including marriage and registered partnership) and including the recognition of their legal effects. The same should also apply for further areas of EU competence, such as family reunification and parental leave following birth.

As an ultimate goal, the S&D Group encourages national governments to recognize equal civil partnerships and marriages throughout EU Member States.

The S&D Group therefore calls for

- mutual **recognition and free circulation of civil status documents** of all individuals, couples and families (including established through marriage and registered partnerships, legal sex changes and adoption and birth certificates) regardless of sexual orientation and gender identity in order to ensure their equal right to **free movement and residence** within the EU.

1.2 Legal gender recognition for transgender persons: Europe cannot wait.

The recognition of a person's legal gender is subject to governed national competence. However, in the EU today 13 Member States are imposing requirements on transgender people such as medical intervention in order to have the changed gender recognized (including in passports and official id-documents) and forced sterilization as a condition for gender reassignment. Such requirements are clearly human rights violations.

The EU cannot be silent on such a situation.

Based on the decisions of ECtHR, the S&D Group requests

- that Member States recognize the change of gender and provide access to quick, accessible and transparent legal gender recognition procedures without

medical requirements, such as surgery or sterilization or psychiatric consent. The choice must be based only on the person's self-determination.

Transgender people must have their new gender recognized in official documents with retroactive effect and full respect of their privacy.

- that Member States provide medical treatment and healthcare that depart from the needs of the individual and that does not prejudge patients based on gender stereotypes.
- The EC should provide guidance to member states on best models of legal gender recognition laws in Europe.

Socialists and Democrats, both in the Council of Europe and in the European Parliament, have contributed to clear positions on this matter in recent years. Under socialist governments, countries like Spain, Portugal, Denmark, Malta and Ireland have become fore-runners in fully complying with these principles.

Furthermore, Socialists and Democrats must continue to put pressure on the World Health Organisation (WHO) towards the **declassification of transgenderism as a mental illness** in the World Health Organisation's International Statistical Classification of Diseases and Related Health Problems, and towards reclassification to ensure that those who seek it have access to trans-specific healthcare.

1.3 Protecting the fundamental rights of intersex people

The S&D welcomes the publication in May 2015 of the Council of Europe Human Rights Commissioner and the EU Fundamental Rights Agency's reports on the human rights of intersex people. These reports show that intersex people, across Europe, continue to face violations of their basic fundamental rights: right to life, right to health, right to education, etc. it is time now for the European Commission to act. The S&D calls on the Health Commissioner to take a strong position against unnecessary medical treatments performed on intersex children without their consent. The European Commission should also collect data on human rights violations faced by intersex people in all areas of life and provide guidance to member states on best practices to protect the fundamental rights of intersex people.

1.4 Hate speech is illegal

It is fundamental for our democratic societies that all persons should be allowed to love who they want and to express their gender identity in public without fear. The S&D Group has continuously been **fighting against homophobia and transphobia** and strongly condemns all kind of **hate crime and hate speech** against LGBTI people.

The S&D Group therefore calls for

- **reviewing the Council Framework Decision on combatting certain forms and expressions of racism and xenophobia** so that hate crimes and violence against LGBTI people are also covered by this rule
- full implementation of the obligations and tools that are in the Framework Decision, and take additional positive measures such as police training, data collection mechanisms
- the EC, the FRA and CEPOL to deepen their work on this and integrate the fight against homophobic and transphobic hate crime and hate speech in their work

1.5 **Legislation alone does not change society**

Beyond legislation, we see the urgent need to ensure that equality becomes a commonly accepted and respected standard in people's lives. Since **educational measures, media and awareness** campaigns are an important tool to combat gender stereotypes. The S&D Group very much welcomes the Commission's launch of a broad communication campaign to fight stereotypes and improve the social acceptance of LGBTI in its List of Actions to advance LGBTI, also as a means to further promote initiatives in the member states.

Such campaigns should address all areas where LGBTI persons are discriminated and subject to harassment and special attention should be put on young LGBTI, and transgender and intersex people. Special focus must be put on homophobia in sports, young LGBTI and bullying at school.

The S&D Group urges the Commission to promote and facilitate the exchange of good practices among member states, through the Open Method of Coordination to achieve equal rights for LGBTI persons and to take preventive action against hate speech and hate crime.

Support, including financial support, must be assured to grassroots actors that are combating intolerance and framing inclusive narratives.

2 SECOND: LGBTI RIGHTS ABROAD - WE WANT EUROPE TO BECOME A GLOBAL LEADER AGAIN

The EU must apply its values of respect for human rights and fundamental rights for LGBTI persons also when working with third countries.

The EU's obligations in relation to the right to **asylum need to be fully enforced by the Member States**. The EU needs to use its tools in the **area of foreign policy in a proactive manner**.

The S&D Group calls on

- The EU Member States must live up to their legal obligation to recognize sexual orientation and gender identity as valid grounds for fear and provide adequate training for asylum professionals (such as interviewers and interpreters) in order to identify grounds for asylum that are specifically to LGBTI persons
- Member states must make sure that they are capable of recognizing the need of special procedural and reception guarantees based on applicants' personal characteristics
- Member States to ensure that the complexity of LGBTI-related claims be properly taken into account in procedures based on the concept of safe third country, the concept of safe country of origin, the concept of first country of asylum or the notion of subsequent applications. This implies among others a thorough assessment taking into account the general situation of LGBTI persons in the third countries concerned. It is important that, where an applicant shows that there are valid reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.

Furthermore, greater consideration should be paid to the situation of **LGBTI victims of human trafficking**, who often experience additional discrimination, stigmatisation and threats of violence because of their sexual orientation and gender identity. Member States should take into account this factor of vulnerability when they conduct individual risk assessment so as to ensure victims of trafficking receive appropriate protection and care. They should also provide adequate training for officials, likely to come into contact with victims or potential victims of trafficking in human beings, on the specificities of LGBTI victims, so as to be able to identify them more proactively and adapt assistance services to meet their needs.

We welcome the **Action Plan on Human Rights and Democracy (2015-2019)** and the **LGBTI Guidelines adopted by the Council in 2013** which provide the tools to mobilize the European External Action Service and national governments to promote LGBTI rights in their relations to third countries.

We call on the Commission and the EEAS to raise the issue of LGBTI rights in political and human rights dialogues and to use the EIDHR to support organisations defending LGBTI rights. This should be done by empowering them to challenge homophobic and transphobic laws and discrimination against LGBTI people as well as raising awareness among the general public of the discrimination and violence experienced by people of different sexual orientations and gender identities;

These aims must now be advanced through

- diplomacy work by EU Delegations and Member States abroad to abolish legislation which could result in the discrimination, prosecution and punishment of people solely for their sexual orientation or gender identity empowering and supporting LGBTI Human Rights defenders
- mainstreaming LGBTI rights in the Human Rights Country Strategies

The S&D Group calls on the EU to mainstream human rights and the situation of LGBTI people in all external policy action including in **trade agreements and other areas such as accession and police cooperation and visa liberalization agreements**. The S&D Group insists that the principle of conditionality regarding the respect of Human Rights is applied when such agreements are concluded