

**KNOW
Your
Rights!**

**TGEU's Activist's Guide
on Trans People's Rights
under EU Law**

An Overview of Current EU Law Covering
Gender Reassignment, Gender Identity
and Gender Expression

www.tgeu.org/EU-law



KNOW Your Rights!

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TGEU’s Activist’s Guide on Trans People’s Rights under EU Law

An Overview of Current EU Law Covering Gender Reassignment, Gender Identity and Gender Expression

This factsheet provides a basic overview of the four areas of EU law in which trans people are explicitly protected from discrimination and where »gender reassignment«, »gender identity« or »gender expression« are explicitly mentioned. These four areas of law are covered by five directives: ¹

- **Access to and Supply of Goods & Services** | Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services
- **Employment & Social Security** | Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) ²
- **Crime Victims Rights** | Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime
- **Asylum** | Directive 2011/95/EU 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 (recast), **and** Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

EU directives specify the date member states need to adopt or adapt laws that ensure that the content of the directives is implemented in their national law, a process referred to as transposition. If a member state does not transpose a directive fully or correctly, the directive takes precedence over national law in court.

Trans people are covered in these directives on the following grounds:

	Gender reassignment	Gender identity	Gender expression
Goods & Services	✱		
Employment & Social Security	✱		
Asylum		✱	
Victims Rights		✱	✱

Please note that while »gender reassignment« is not explicitly mentioned in the Asylum and Victims Rights Directives, it is implicitly covered through the ground of »gender identity«.

P.v.S. and Cornwall County Council (1996), »gender reassignment« and »gender identity«

In *P.v.S.*, the European Court of Justice (ECJ) ruled that dismissing a person from their work because they are undergoing, intend to undergo or have undergone gender reassignment constitutes discrimination on the grounds of »sex«. The court stated that »The scope of the [previous version of the employment] directive cannot be confined to discrimination based on the fact that a person is of one or the other sex. [...] The scope of the directive is such as to apply to discrimination arising, as in this case, from the gender reassignment of the person concerned. [...] Where a person is dismissed on the ground that he or she intends to undergo, or has undergone, gender reassignment, he or she is treated unfavourably by comparison with persons of the sex to which her or she was deemed to belong before undergoing gender reassignment« (*P.v.S.*, para. 19-24).

The ECJ's decision means that all EU legislation prohibiting discrimination on the grounds of sex, such as the Goods & Services and the Employment & Social Security Directives, also protect trans people. The court did not define, however, what »gender reassignment« is. No reference was made in *P.v.S.*, or in other ECJ cases, to surgery as a necessary condition for protection under »gender reassignment«. This means that there may be room to interpret the term broadly. The EU Commission has commented that »So far the CJEU has only ruled on gender reassignment. There is no case law concerning gender identity more generally speaking as covered by the protection against sex discrimination but the Commission considers that the approach should be materially similar.«³ This means that trans people who do not intend to undergo any kind of medical gender reassignment should still be covered under the ground of sex. The term »gender expression« may still be interpreted as somewhat broader in its coverage.

Goods & Services Directive (2004/113/EC)



The aim of this directive is to combat discrimination based on sex, including discrimination against trans people, in the access to and supply of all goods and services, as defined below.⁴

Definition of »goods« and »services«

Goods and services offered to the public by the public and private sectors are covered if they are:

- against remuneration (i.e. they require a payment, either by the person themselves or by a third party, such as an insurance provider⁵)
- outside of private and family life
- not in the area of public and private education⁶ or content of media and advertising, which are explicitly excluded from this directive (Art 3.3)

The directive includes, but is not limited to, the following goods and services:

- Access to goods and services provided in shops, restaurants, bars, hotels and other venues selling goods or providing services
- Banking and financial services
- Insurance (incl. access to insurance and not having to pay a higher premium because the person is trans)⁷
- Health services, such as health insurance and healthcare⁸
- Housing and accommodation
- Transportation, both public and private such as taxis
- Sports facilities, including gyms
- Goods and services provided through the internet
- Public services for which a payment/fee is required (e.g. passport)

Definition of the types of discrimination covered

- **Direct discrimination** | »where one person is treated less favourably, on grounds of sex, than another is, has been or would be treated in a comparable situation« (Art. 2a)
- **Indirect discrimination** | »where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared⁹ with persons of the other sex (unless that provision, criterion or practice is objectively justified by a

legitimate aim (Art. 4.5)¹⁰, and the means of achieving that aim are appropriate and necessary) (Art. 2b)

- **Harassment I** »where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment« (Art. 2c)
- **Sexual harassment I** »where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment« (Art. 2d)
- **Instruction to discriminate I** This covers instruction to harass, sexually harass and discriminate (directly and indirectly) (Art. 4.4)
- **Third party harassment I** A goods or service provider could be liable in situations that involve a third-party harasser.¹¹

Examples of different kinds of discrimination

Direct discrimination I A group of trans people have booked a conference room at a hotel over the phone, but when they arrive they are refused access.

Indirect discrimination I A health-insurance company sends regular reminders for pap smears only to those customers who are legally registered as female.

Harassment I While a trans person eats at a restaurant, the service staff make transphobic jokes, laugh and point repeatedly at their table.

Sexual Harassment I At the gym, a trans person overhears staff commenting on their body and discussing whether they would have sex with them.

Instruction to discriminate I The manager of an STI clinic instructs staff not to provide services to trans people.

Employment & Social Security Directive (2006/54/EC)



The aim of this directive, often called the »Gender Recast Directive«, is to combat discrimination based on sex, including against trans people (Recital 3), in employment and social security, including in:

- **Access** | »conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion« (Art. 14.1a)
- **Training** | »access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience« (Art. 14.1b)
- **Conditions** | »employment and working conditions, including dismissals, as well as pay« (Art. 14.1c); see also Art. 4 on the right to equal pay
- **Unions and professional organisations** | »membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations« (Art. 14.1d)
- **Social security** | discrimination in the access to, conditions of and benefits paid through occupational social security schemes, including pensions, sickness, invalidity, industrial accidents and professional diseases and unemployment benefits, as well as all other »occupational social security schemes which provide for other social benefits, in cash or in kind, and in particular survivors' benefits and family allowances« (Art. 7.1)

Definition of the types of discrimination covered

As in the Goods & Services Directive (see definitions above), discrimination is:

- Direct and indirect discrimination ¹² (Art. 2.1a and 2.1b)
- Harassment and sexual harassment (Art. 2.1c and 2.1d)
- Instruction to discriminate (Art. 2.2b)
- In addition: discrimination in the form of »any less favourable treatment of a woman [sic] related to pregnancy or maternity leave« (Art. 2.2c). ¹³

Of particular importance for trans people

- It is illegal to dismiss a trans worker because they are undergoing, will undergo or have undergone gender reassignment treatment (cf. *P. v. S.*)
- The protection against discrimination also applies to partners of workers, so that

discrimination against a trans worker's partner or the trans partner of a worker is illegal, e.g. in widow(er)s' benefits or family allowances¹⁴

Regarding sickness and invalidity leave and benefits, there have not yet been any judgments that clarify the rights of trans people in this complex area. However, at least under certain circumstances, claims could be made that:

- Sickness leave and benefits should cover a trans worker's absence due to medical treatment related to gender reassignment in the same way as other (not trans-specific) medical treatments are covered
- Invalidity benefits should cover the case of permanent incapacitation as a consequence of gender reassignment surgery.

Examples of different kinds of discrimination

Direct discrimination | A trans psychologist is refused membership in the national body of psychologists.

Indirect discrimination | A trans man's application for a position as a police officer is refused because the health-assessment policy for new recruits requires male police officers to have at least one functioning testicle.

Harassment | At a training on customer relationships, the trainer criticises a trans employee's voice and outfit as off-putting to customers.

Sexual harassment | During a job interview, the interviewer keeps looking at a trans woman's chest and asks questions about gender reassignment surgery.

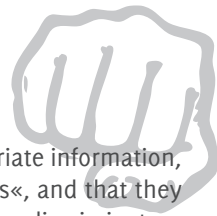
Instruction to discriminate | After an employee comes out as a trans man, a manager sends an email to several employees asking them to report if the person tries to use the men's bathroom and to tell him not to do so.

Discrimination by Association

In *Coleman v. Attridge Law* (2008), the European Court of Justice (ECJ) ruled that discrimination by association is unlawful in the workplace. In this specific case, the court found that Sharon Coleman had been harassed and discriminated against by her employer because she had a disabled son (i.e. because she was associated with a person with a disability).

Although there have not been any rulings on discrimination by association based on other grounds, such as gender reassignment or gender identity, this judgment would also apply to such cases, e.g. an employee being discriminated against because of their association with a trans person, as well as to cases of discrimination by association in the provision of goods and services.

Victims Rights Directive (2012/29/EU)



The aim of the directive is to ensure that »victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings«, and that they are »treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority« (Art. 1.1). In particular, the directive states that all victims have to be treated *without discrimination of any kind, including on the grounds of gender, gender identity and gender expression* (Recital 9).

It is important to note that this directive is *not a piece of criminal law, and in particular it is not a hate-crime law*. It does not provide EU standards defining a hate crime, and it only covers the rights of victims of *criminal* offenses according to the laws of the respective member states (i.e. if there is no national law criminalising hate speech, victims thereof are not protected under this directive).

The rights set out in the directive that apply to all victims are the following:

Rights to Provision of Information and Support (Arts. 3-9)

- The right to receive information in an understandable, simple way, and to receive, if necessary, free translation and interpretation throughout criminal proceedings and when making complaints (Arts. 3, 5, 7)
- The right to receive information on all available support, including e.g. victim support, protection, legal aid and procedures (Art. 4)
- The right to know about the status of criminal proceedings (Art. 6)
- The right to access and receive free victim support services, including information on compensation schemes, emotional and psychological support, advice on financial and practical issues and advice on preventing repeat victimisation, intimidation or retaliation (Arts. 8-9)

Rights to Participation in Criminal Proceedings (Arts. 10-17)

- The right to be heard in proceedings and to provide evidence (Art. 10)
- The right to a review of a decision not to prosecute the offender (Art. 11)
- The right to consent and safety in restorative justice proceedings (Art. 12)
- The right to legal aid, reimbursement of expenses, return of any property seized (e.g. as evidence) and a decision on compensation (Arts. 13-16)
- The right to report a crime in the victim's member state of residence or the member state where the crime was committed (Art. 17)

Protection of Victims (Arts. 18-21)

- The right to protection from secondary and repeat victimisation, intimidation and retaliation and to the protection of dignity during questioning and when testifying (Art. 18)
- The right to avoid contact with the offender during proceedings (Art. 19)
- The right to be interviewed without delay and only as many times as strictly necessary, and to be accompanied by a legal representative (Art. 20)
- The right to protection of privacy by authorities and in the media (Art. 21)

The Rights of Victims with Specific Protection Needs, including Trans Victims of Gender-Based Violence and Bias or Hate Crimes (Arts. 22-23)

In addition to the rights set out above, the directive stipulates that an individual risk assessment has to be carried out for all victims of crime, in order to »identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings [...] due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation« (Art. 22.1). This should include protecting the victim from secondary and repeat victimisation by the police and others who interact with the victim during criminal proceedings. The individual assessment has to take into account the personal characteristics of the victim, the type or nature of the crime, and the circumstances of the crime (Art. 22.2-3), including:

- The gender identity and gender expression of the victim
- Whether it was a hate or bias-motivated crime or a crime with a discriminatory motive, including transphobic bias, hate or discrimination
- Whether the victim was subjected to gender-based violence, which is defined as »violence that is directed against a person because of that person’s gender, gender identity or gender expression or that affects persons of a particular gender disproportionately« (Recital 17)

The individual assessment should identify specific protection needs and special protection and support measures to be taken, including:

- Specialist support services, such as shelters or interim accommodation and targeted support for victims of gender-based and sexual violence, including trauma support and counselling (Art. 9.3)¹⁵
- Interviews being carried out in suitable premises by the same, trained, professionals, who, if the victim so wishes, are of the same sex as they are (Art. 23.2)
- Measures to avoid visual contact with the offender, to avoid court appearance to provide evidence, to prevent unnecessary questioning related to the victim’s private life and to conduct the court hearing without the presence of the public (Art. 23.3)

Child victims of crime have additional protection rights as set out in Art. 24.

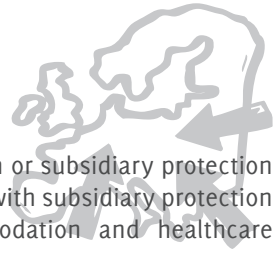
Further important points:

- The right to protection of privacy includes personal characteristics taken into account in individual assessments, including gender identity and expression (Art. 21)
- It is illegal for medical examinations to be conducted in order to establish a victim's gender, as member states have to ensure that »medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings« (Art. 20)
- Family members, especially of a victim who died as a result of the crime, also have rights under this directive. Family members include »the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis« (Art. 2.1b)
- The right to victim support should not be dependent on reporting the crime to the police (Rec. 40), and delayed reporting should not result in refusing the complaint and the corresponding rights (Rec. 25)
- All rights also apply to people who are not citizens or residents of the EU, i.e. these rights are not »conditional on the victim's residence status in their territory or on the victim's citizenship or nationality« (Rec. 10)

Transposition of the Victims Rights Directive

The directive has to be transposed by member states by 16 November 2015 (Art. 27). By November 2017, member states have to submit statistics to the Commission on how many victims have accessed their rights (Art. 28). For more information, see ILGA-Europe's transposition guidelines at www.ilga-europe.org/home/publications/reports_and_other_materials.

Asylum



Qualification Directive (2011/95/EU)

This directive specifies, in great detail, *who* qualifies for asylum or subsidiary protection in the EU (Arts. 2-19), as well as the rights of refugees or people with subsidiary protection status in the EU, including access to education, accommodation and healthcare (Arts. 20-35).^{16,17}

The key points to highlight for trans applicants are the following (explicit reference in Recital 30 and Art. 10.1d):

Definition of refugee and social group

The directive defines »refugee« according to the Geneva Convention, i.e. a »third-country national [or stateless person] who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or *membership of a particular social group*, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country« (Art. 2d).¹⁸

Importantly, the directive clarifies that »Gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group« (Art. 10d). This means that a person who is persecuted because of their gender identity¹⁹ can qualify for protection because this gender identity makes them part of a »particular social group«.

The directive also states that »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« (Recital 30).

Activities engaged in after leaving the country of origin

A fear of persecution because of acts engaged in after leaving the country of origin can suffice for qualifying for protection status, as long as these activities »constitute the expression and continuation of convictions or orientations held in the country of origin« (Art. 5.2). For example, if an applicant has only come out as trans or accessed gender reassignment treatment after arriving in the EU, the fact that they are trans must still be taken fully into consideration fully when assessing if there is a well-founded fear of persecution.

X, Y, Z v. Minister voor Immigratie en Asiel (2013)

In this case, the ECJ considered whether three gay men, from Senegal, Sierra Leone and Uganda, should be given asylum in the Netherlands. Even though this case dealt with sexual orientation, the conclusions should also be applied to trans applicants persecuted because of their gender identity. The court ruled that criminalisation laws alone are not sufficient to constitute persecution, but that they need to be applied in the home country and that they need to carry severe penalties (e.g. imprisonment or death). However, it indicated that the existence of such a law, irrespective of its actual application, has to be part of the assessment of whether LGBT communities form a »particular social group«, which is the first step in the assessment of asylum claims based on sexual orientation or gender identity. It also ruled that asking applicants to return and be »discreet« about their sexual orientation (or, by implication, gender identity) is not permissible. For more details on what constitutes »persecution« in the context of asylum law, see ILGA-Europe’s guidelines on the Qualification Directive at www.ilga-europe.org/home/publications/reports_and_other_materials.

Common Procedures Directive (2013/32/EU)

This directive outlines in great detail which procedures have to be followed when EU member states²⁰ assess applications for asylum or subsidiary protection and the rights of applicants, including the right to receive information, interpretation, legal assistance and representation.²¹

The key points to highlight for trans applicants are the following (explicit reference in Recital 29, Art. 11 & Art. 15):

Special procedural guarantees

- Applicants can qualify for »special procedural guarantees« due to »individual circumstances« (Art. 2.d), such as their gender identity (Rec. 29), which means that these »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« (Recital 29)
- Such applicants should be exempted from accelerated or border procedures where adequate support cannot be provided (Recital 30)
- Applicants in need of special procedural guarantees should be identified before a first-instance decision is taken (Recital 29), but a need for special procedural guarantees must also be addressed if that a need only becomes apparent at a later stage of the procedure (Art. 24.4)

Interview procedures

- Staff examining applications and taking decisions should be able to »seek advice, whenever necessary, from experts on particular issues, such as [...] gender issues« (Art. 10)
- The persons conducting interviews have to be »competent to take account of the personal and general circumstances surrounding the application, including the applicant's [...] gender identity« (Art. 15)
- Procedures and interviews should be »gender-sensitive« (Recital 32)

Privacy and Consent

- Decisions on applications should be issued without disclosing an applicant's gender identity to other persons (Art. 11.3)
- Medical procedures should only be conducted to show signs of »past persecution or serious harm«, and only with the consent of the applicant (Art. 18)

Implementation of EU Law

The directives contain provisions that can help ensure that EU law is properly implemented and enforced in the member states, and which may provide an entry point for advocacy. Member states are obliged or encouraged to:

- **Disseminate information and raise awareness about the content of the directives and the rights set out in them**
Goods & Services (Art. 15); Employment (Art. 30); Victims Rights (Art. 26)
- **Engage in dialogue and work with non-governmental organisations and stakeholders with a legitimate interest**
Goods & Services (Art. 11); Employment (Art. 22); Victims Rights (Recital 62)
- **Ensure that non-governmental organisations can support complainants in judicial and administrative procedures provided for the enforcement of obligations under the directives (e.g. in legal cases)**
Goods & Services (Art. 8.3); Employment (Art. 17.2); Asylum Procedures (Arts. 21.1 & 22.2)
- **Take positive action to prevent or compensate for disadvantages linked to sex and to ensure full equality in practice**
Goods & Services (Art. 6); Employment (Art. 3)
- **Train practitioners likely to come into contact with rights holders**
Victims Rights (Art. 25); Asylum Procedures (e.g. Recitals 16, 26)
- **Collect statistics on numbers and types of crime and gender of victims**

Equality Bodies

The Goods & Services Directive (Art. 12) and Employment & Social Security Directive (Art. 20) require member states to set up equality bodies »for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex« (Employment Directive Art. 20.1). Equality bodies have to assist victims of discrimination in pursuing complaints, and to conduct surveys, publish reports and make recommendations on discrimination related to sex (Employment Directive Art. 20.2). As »sex« includes »gender reassignment«, equality bodies should include trans discrimination in their mandate.

Further Resources

The full texts of the directives in all EU languages and links to further resources on EU law are available at www.tgeu.org/EU-law.

A compilation of European and national legal cases relating to the directives and trans people's rights in Europe more generally are available at www.tgeu.org/toolkit_legal_gender_recognition_in_Europe.

ILGA-Europe's implementation and transposition guidelines of the Victims Rights, Asylum Qualification, Asylum Procedures and Employment Directives are available at www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials.

EQUINET, the European Network of Equality Bodies, offers further resources on equality bodies' roles and obligations at www.equineteurope.org.

If you wish to make a complaint to the EU commission, we encourage you to contact TGEU for a joint submission at tgeu@tgeu.org.

Notes

- 1 | A directive is a legally binding EU law that specifies a particular result that member states have to achieve (e.g. combat discrimination). States usually need to pass new national laws or adapt laws (a process called transposition) in order to comply with the directive.
- 2 | This directive (2006/54/EC) is often referred to as the »Gender Recast Directive«. Other EU directives in the area of employment and occupation exist, but in this factsheet, »Employment & Social Security Directive« always refers to Directive 2006/54/EC. A recast directive is a directive that is a revision of one or several earlier pieces of legislation and their amendments.
- 3 | See the EU Commission's »Report on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services«, 5 May 2015, p.4, available at www.tgeu.org/EU-law.
- 4 | As explicitly stated in the 2606th meeting of the Council of the European Union (Employment, Social Policy, Health and Consumer Affairs), held on 4 October 2004, p. 7 www.consilium.europa.eu/register/en/content/out/?typ=ENTRY&i=MING&DOC_ID=ST-13369-2004-INIT.
- 5 | The service obtained does not necessarily have to be paid for the person whom it is provided, e.g. in the case in which health insurance pays for a treatment.
- 6 | However, the Employment & Social Security Directive prohibits discrimination with regards to vocational training and retraining (Art. 14.1b). Definitions of »education« and »vocational training« are not provided in the directives and depend on national legislation/definitions.
- 7 | Art. 5.2 of the directive allowed »proportionate differences in individuals' premiums and benefits where the use of sex is a determining factor in the assessment of risk based on relevant and accurate actuarial and statistical data«. In 2011, in *Test-Achats v. Council of Ministers*, the ECJ ruled that the article violates the EU's Charter of Fundamental Rights and is void. »Sex« may therefore not be used in determining risk and corresponding premiums or benefits of any kind of insurance.
- 8 | The directive does not mandate which healthcare treatments, e.g. for gender reassignment, have to be provided or paid for by insurance. However, according to the directive, it would be discriminatory if some medical treatments were only made available to non-trans people or if breast removal was covered for trans men while breast augmentation for trans women was not (indirect discrimination). For more details on this point, see www.equineteurope.org/IMG/pdf/wg_dynamic_interpretation_full.pdf.
- 9 | Based on ECJ case law, it is not entirely clear what the appropriate comparator is in cases of discrimination against trans people. In *P. v. S.* the court seems to have made an intra-person comparison (comparing the employer's perception of the applicant as a non-transsexual man to the perception of the applicant as a transsexual woman once she announced her intention to undergo gender reassignment). But in *K. B. v. NHS Pensions Agency and Richards v. Secretary of State for Work and Pensions*, the court made an inter-person comparison between a trans and a cis (i.e. non-trans) person of the same gender. For more details, see the EU Commission Report »Trans and intersex people«, pp.38-43, available at www.tgeu.org/EU-law. For details on trans-related ECJ cases, see www.tgeu.org/toolkit_legal_gender_recognition_in_Europe.
- 10 | Recital 16 defines »legitimate aims« as, for example, »the protection of victims of sex-related violence (in cases such as the establishment of single sex shelters), reasons of privacy and decency (in cases such as the provision of accommodation by a person in a part of that person's home), the promotion of gender equality or of the interests of men or women (for example single-sex voluntary bodies), the freedom of association (in cases of membership of single-sex private clubs), and the organisation of sporting activities (for example single-sex sports events)«. Budgetary constraints are not considered a legitimate aim. For more information on the definition of »legitimate aim« please consult the EU Commission's »Report on the application of Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services«, 5 May 2015, pp.6-7, available at www.tgeu.org/EU-law.

- 11 | On this question, the EU Commission has stated that »The question of the liability of a service provider for third party harassment could be relevant in particular where the core service is providing a platform for communication between clients in the use of which the harassment occurs, for example on the internet.« See the report cited in footnote 8, p.5.
- 12 | See also footnote 7 for the definition of »legitimate aim« with regards to indirect discrimination, as »legitimate aim« is not defined in the Employment Directive. However, Recital 19 states: »Ensuring equal access to employment and the vocational training leading thereto is fundamental to the application of the principle of equal treatment of men and women in matters of employment and occupation. Any exception to this principle should therefore be limited to those occupational activities which necessitate the employment of a person of a particular sex by reason of their nature or the context in which they are carried out, provided that the objective sought is legitimate and complies with the principle of proportionality«. An example could be employing a woman to work with female victims of sexual assault.
- 13 | Even though the reference is only to a pregnant »woman«, it could be expected that this protection would also cover pregnant trans men and others who do not identify as women. However, this has not yet been tested in courts and may also be subject to the restrictions of the term »gender reassignment« as introduced in *P. v. S.*
- 14 | See also *K. B. v. NHS Pensions Agency* (2004), in which the ECJ ruled that because under national law it was impossible for trans people to marry, the fact that one employer's widow(er)s' pension scheme was only accessible to married people constituted discrimination. In the specific case, a cis female employee was unable to marry her trans male partner and therefore unable to qualify for the pension scheme.
- 15 | If these are offered as gender-specific services, e.g. single-sex shelters, trans people should have access to them as well in a non-discriminatory manner.
- 16 | Denmark, the UK and Ireland are not bound by this directive.
- 17 | For a brief overview of these rights consult TGEU's Know Your Rights Guide, available at www.tgeu.org/EU-law, or ILGA-Europe's materials on asylum at www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials.
- 18 | Emphasis added.
- 19 | Or because they are perceived by the persecutor as having a certain gender identity, whether or not this is in fact correct (Art. 10.2).
- 20 | Denmark, the UK and Ireland are not bound by this directive.
- 21 | For a brief overview of these rights consult TGEU's Know Your Rights Guide, available at www.tgeu.org/EU-law, or ILGA-Europe's materials on asylum at www.ilga-europe.org/resources/ilga-europe-reports-and-other-materials.

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TGEU's Activist's Guide on Trans People's Rights under EU Law

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