

## TRANS EMPLOYMENT RIGHTS IN THE EUROPEAN UNION

### 10 THINGS THE EU CAN DO<sup>1</sup>

1. Ensure that the current legal protection granted by EU law to those who intend to undergo, are undergoing, or have undergone gender reassignment is extended to all trans persons in all EU member states, including through a harmonised implementation of the cases *P v. S and Cornwall County Council*, *K.B. v National Health Service Pensions Agency*, and *Sarah Margaret Richards v. Secretary of State for Work and Pensions*, as well as the Gender Recast Directive (2006/54/EC).
2. Consider gender identity and gender expression as protected sub-categories of the rights regarding sex (with a status equivalent to pregnancy and maternity) and name them expressly in legislation, strategies, policies, action plans, and awareness-raising campaigns. This should be extended to any future legislation tackling employment equality between women and men, follow-up strategies to the Strategy for Equality between Women and Men 2010-2015, and any other gender equality measure, including those combating gender stereotypes.
3. Adopt specific measures to tackle transphobia and discrimination on the grounds of gender identity and gender expression in order to mitigate the high levels of discrimination suffered by trans people, as repeatedly confirmed by the reports published by FRA, most notably: *Being Trans in the European Union - Comparative analysis of the EU LGBT survey data (2014)*.
4. Adopt an LGBTI equality strategy with a strong commitment to trans equality, including specific measures and targets in line with the Call for a Comprehensive Policy Approach at European Union Level and across the European Union on LGBT Issues, which was signed by several member states.
5. Take up the request of the Call for adequate 'follow up [of] the Council of Europe Ministers' Recommendations on measures to combat discrimination on grounds of sexual orientation and gender identity', the Recommendations of which include a commitment to:
  - i. A review of national gender recognition legislation 'in order to remove abusive requirements'; and
  - ii. The possibility of a 'change of name and gender in official documents in a quick, transparent and accessible way' including with regard to documents issued by non-state actors such as 'educational or work certificates'.
6. Ensure that member states do not impede the freedom of movement of their trans nationals due to direct or indirect discriminatory provisions in access to identity cards or passport, including due to a misrepresentation of their true identity.
7. Ensure that member states fully recognise documents and decisions issued by other EU member states legally recognising gender identity to facilitate the enjoyment of trans persons' right to freedom of movement in the EU.
8. Issue guidelines indicating how EU employment rights and the principle of freedom of movement need to be guaranteed for trans people irrespective of national gender recognition legislation; and use the open method of coordination or other available methods, to facilitate a process intended to assist member states to align their national gender recognition legislation with current human rights standards.
9. Show leadership by including the grounds of gender identity and gender expression in the Staff Regulations' non-discrimination article, as well as the privacy clause.
10. Issue calls for proposals under the Rights, Equality and Citizenship Programme 2014-2020 that include trans equality initiatives within their scope, including express reference to the field of employment and/or legal gender recognition.

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**Recommendations include the opinions expressed by in Supra Note No. 5 FRA Trans Report (2014); and Supra Note No. 45 the Call for a comprehensive policy approach at European Union level and across the European Union on LGBT issues (2013)**

signed by fourteen EU member states [as of December 2014]