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KEY ACTION ITEMS FOR TRANS PEOPLE: WHAT THE EUROPEAN COMMISSION COMMITTED IN SUPPORT OF TRANS PEOPLE IN THE EU LGBTIQ STRATEGY 2020-2025



Key action items for trans people: what the European Commission committed in support of trans people in the EU LGBTIQ Strategy 2020-2025

And what we know so far

by Transgender Europe (TGEU)

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And what we know so far

“Being yourself is not an ideology. It’s your identity. And no-one can ever take it away.”

EU Commission President Ursula von der Leyen, State of the Union 2020¹

In a nutshell

In November 2020 the EU Commission published its first comprehensive strategy for advancing the rights for lesbian, gay, bisexual, trans, intersex and queer people in the European Union, the EU LGBTIQ Strategy 2020-2025. The strategy sets out a set of actions and commitments under five headlines:

1. Tackling discrimination against LGBTIQ people
2. Ensuring LGBTIQ people’s safety
3. Building LGBTIQ inclusive societies
4. Leading the call for LGBTIQ equality around the world
5. Delivering on the strategy: making full use of EU initiatives

This document will address how the Strategy is relevant for trans people and how trans activists can engage with the implementation of the Strategy. It starts with the highlights of the Strategy and is then followed by a detailed overview per topic with a comment from TGEU.

¹ ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

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Biggest overall highlights

These are the flagship projects under the Strategy.

Key actions by the European Commission:

- proposal to extend the list of ‘EU crimes’ (Article 83 TFEU) to cover hate crime and hate speech, including when targeted at trans people;
- funding for initiatives that aim to combat hate crime, hate speech, violence and other harmful practices against trans people and promote the rights of trans victims of crime;
- review the 2009 guidelines on free movement to reflect the diversity of families and ensure freedom of movement for rainbow families;
- legislative on the mutual recognition of parenthood between Member States;
- propose EU legislation strengthening the role of equality bodies, following up to the report on the implementation of the Employment Equality Directive;
- support Member States put in place accessible legal gender recognition legislation and procedures.

Legislation

Theme	Proposal	Timeline	Status
Violence	Extend EU crimes to include Hate Speech and Hate Crime	2021	Proposal made ²
Rainbow families	Mutual recognition of parenthood	2022	Public Consultation in Q2 2021, Proposal for legislation expected Q3 2022 ³
Non-discrimination	Strengthening equality bodies	2022	Proposal for two directives expected end of 2022 ⁴

² Status can be found here: europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-hate-crimes-and-hate-speech

³ Status can be found here: europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-recognition-of-parenthood-between-member-states

⁴ Status can be found here: europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-strengthening-the-role-of-equality-bodies

Other positive elements of the strategy:

- Mainstreaming of LGBTIQ issues through all European Commission work;
- Intersectionality as a core principle;
- Mentions trans people and their specific experiences and needs throughout;
- Other units and Directorates General (DG) at Commission involved beyond DG Justice;
- LGBTIQ Equality Subgroup established to support and monitor progress towards the goals of the strategy;
- Attention to strengthening asylum standards to support those seeking asylum on grounds of gender identity and gender expression;
- Commits to supporting Member States end forced medicalisation of trans people;
- Although outside the Commission's direct competence, contains many references to legal gender recognition based on self-determination and includes exchange of best practice and support for Member States in putting this in place;
- Acknowledges disproportionate socio-economic inequalities experienced by trans and LGB people, including access to the labour market and homelessness.

All action items in support of trans people, divided by focus area

1. Tackling discrimination

Key actions by the European Commission for trans people:

- propose EU legislation strengthening the role of equality bodies, following up to the upcoming report on the implementation of the Employment Equality Directive.

>> TGEU comments:

20 EU Member States have Equality Bodies that include trans people in their mandate. Stronger Equality Bodies with a clear mandate including *gender identity* could support trans people to better know and attain their rights in areas such as employment, access to goods and services, hate speech, and beyond in all countries of the EU.

Asylum

- ensure appropriate protection of vulnerable (including trans) applicants in the context of the common European asylum system and its reform;
- ensure support for LGBTIQ equality in action under the Asylum and Migration Fund.

Health

- support health research for trans communities through HORIZON Europe;
- organise a conference on the EU Health Policy Platform;
- promote EUC training materials (HEALTH4LGBTI) and organise best practice exchanges on mental health;
- encourage Member States to organise training for healthcare professionals to raise awareness of the health needs of trans people and to avoid discrimination and stigmatisation in access to health services.

>> TGEU comments:

Many trans groups and allies already provide high-quality research to match the gross lack in data on trans people's experiences. HORIZON Europe (2021-2027 budget of 95,5€ billion) can be an attractive source to support very different sets of collaborations, ranging from cooperation with start-ups, SMEs⁵, to universities, ministries, law enforcement organisations, and research organisations or large companies. However, competition is strong, and funding is reserved for innovative research only. For potential EU funding for civil society activism look further below.

The EU Health Policy Platform is a key tool for the EU to bring together professionals, activists and policy makers in the area of health policy. It seems a particular fruitful platform to use the momentum of the depathologisation of trans identities and push for reform on how trans-specific healthcare is organised in EU member States.

The HEALTH4LGBTI training materials (module 4 on trans and intersex health)⁶ need to be updated and expanded to reflect the decision of the World Health Organisation to depathologise trans identities.

The EU has only limited competence in the area of health. Nonetheless, the proposed best practice exchange can have a considerable impact, given the ability of the EU health networks to reach health professionals, policy makers and trans health activists.

⁵ SME - Small- and medium sized enterprises

⁶ ec.europa.eu/health/social_determinants/projects/ep_funded_projects_en#fragment2 trans and intersex health module 4: ec.europa.eu/health/sites/health/files/social_determinants/docs/2018_lgbti_module4_en.pdf

Socio-economic position

- promote the use of the European Social Fund Plus (ESF+) to improve the socio-economic position of the most marginalised LGBTIQ people;

>> TGEU comments:

The ESF+ provides large structural funds to EU member States. It is important that such structural funds are used in a way that directly benefits those trans people with a particular difficult socio-economic position. These are, according to the FRA Survey 2019, trans people who are disabled, poor, unemployed, or for a long time absent from the labour market. Additionally, TGEU has identified trans sex workers, migrants, persons of colour and the elderly as key target groups.

Promoting the usage of ESF+ for trans people and a dedicated trans initiative can be important tools to encourage public authorities to develop and implement projects supporting trans people's socio-economic position. Here, it is important that representatives of trans civil society are involved in a meaningful way from the planning to the implementation of such projects.

- research into the barriers to full equality experienced in employment and social protection for trans people and give guidance for Member States and businesses on enhancing trans people's participation in the labour market;

>> TGEU comments:

EU Commission Guidelines are not binding but can help raise awareness on the issue, present innovative ideas on how to overcome barriers to the labour market and support demands from trans activists towards their governments for action to improve trans people's position in the labour market.

Good practice exchanges bring together and support already motivated member states and can help fast-track new initiatives, avoid mistakes, and encourage mutual accountability.

- support measures under the gender equality strategy intended to improve the socio-economic position of all women, including trans women

>> TGEU comments:

The EU is a driver and sets standards in gender equality. Here, important areas such as employment and access to goods and services need to at least be implemented with a view to those trans people who (plan to) transition.

It will be important to analyse which specific EU gender equality measures have the biggest impact to reach trans women and improve their legal and socio-economic position. Implementation needs to encompass all trans women, irrespective of their legally recognised gender or gender reassignment status. At the same time, EU gender equality measures need to encompass also trans men and non-binary people where they are affected by structural discrimination on grounds of the sex assigned at birth. For example, early career choices, (lacking) education, and continued discrimination, based on the female sex assigned at birth can have long-lasting effects on trans men's and non-binary persons' labour market position. This can take effect even if they are socially and legally recognised in their male gender identity.

It is important – including for non-binary persons but not only – to ensure that gender equality measures do not reinforce the gender binary or an essentialist view on gender.

Children

- development of the 'Strategy for the Rights of the Child'⁷ ensure indiscriminate access to rights, protection and services also for LGBTIQ children through its upcoming comprehensive Strategy for the rights of the child;

Other discrimination

- address bias and unjustified discrimination in high-risk Artificial Intelligence (AI) systems, including biometric systems;

Funding

- enhance LGBTIQ equality mainstreaming in relevant employment, education and health initiatives and EU funding programmes; and
- fund projects that tackle intersectional discrimination and inequality experienced by LGBTIQ people, gender biases and other stereotypes through the 'Citizens, Equality, Rights and Values' programme.

⁷Available here: ec.europa.eu/info/sites/default/files/ds0821040enn_002.pdf

>> TGEU comments:

The 'Citizens, Equality, Rights and Values' programme⁸ (2021 – 2027 budget €1.56 billion) funds civil society initiatives that are defending fundamental rights, equality, non-discrimination, gender equality, promote citizen engagement and participation or combating gender-based violence.

The Commission will support cultural projects addressing discrimination and promoting full LGBTIQ equality and commits to making its youth volunteering programme European Solidarity Corps Programme more inclusive and reach more young people with less opportunities.

The European Commission will support EU Member States to:

- ensure legal protection against discrimination on the grounds of gender identity and expression;

>> TGEU comments:

Learn more which legal protections for EU member States must implement already following out of EU law in the TGEU Guides on EU Law: tgeu.org/tgeu-guides-eu-law

Education

- improve safe and inclusive education for trans children and youth by creating an expert group and ensure an inclusive Strategy for the Rights of the Child;
- Mainstream LGBTIQ equality in education initiatives and funding programmes, such as Erasmus+.⁹

>> TGEU comments:

The EU Strategy on the rights of the Child was published on 24 March 2021. In it, the Commission commits to tackling cyber harassment also of trans children through its Better Internet for Kids Strategy (2022).

Mainstreaming trans perspectives in Erasmus+ can increase mobility and education of trans students. TGEU invites trans groups to become as host or sending organisations. Lots of trans activism can be covered under the programme's focus areas of education, adult education, youth or sports.

⁸ ec.europa.eu/info/funding-tenders/opportunities/portal/screen/programmes/cerv

⁹ erasmus-plus.ec.europa.eu/about-erasmus/what-is-erasmus

Asylum

- address the specific needs of trans applicants for international protection while ensuring safe reception, detention and accommodation conditions;
- improve the training of protection officers and interpreters dealing with asylum claims by trans people.

>> TGEU comments:

TGEU is alarmed at the failure of the “New Pact for Migration” to mention LGBTIQ people as a vulnerable group. Moreover, plans to introduce pre-entry screening, border procedures, extend fast-track procedures and “safe country” lists have the potential to significantly decrease the chances of trans asylum people to enter the EU safely and have a fair application process. Therefore, all efforts need to be focused on preventing a further deterioration of general and trans-specific rights in the reform process.

For detailed trans and LGBTIQ specific recommendations on the reform of the Common European Asylum system see these policy briefings:

ilga-europe.org/resources/policy-papers/policy-briefing-lgbti-refugees-and-eu-asylum-legislation

ilga-europe.org/sites/default/files/overview_of_the_ceas_reform_-_ilga-europe_tgeu.pdf

Best practice exchanges and trainings on LGBTIQ asylum seekers as mentioned in the Strategy remain voluntarily for member states and risk not reaching decision makers in member States where the situation is particularly grave for trans asylum seekers.

TGEU encourages trans organisations to ask their asylum authorities to ensure case workers and interpreters are sensitised and regularly trained on the needs and perspectives of trans asylum seekers.

2. Ensuring Safety

Key actions by the European Commission for trans people:

Hate crime

- proposal to extend the list of ‘EU crimes’ (Article 83 TFEU) to cover hate crime and hate speech, including when targeted at trans people;
- provide funding opportunities for initiatives that aim to combat hate crime, hate speech, violence and harmful practices against LGBTIQ people (‘Citizens, Equality,

Rights and Values' programme) and promote the rights of victims of crime, including LGBTIQ people ('Justice' programme);

- a Recommendation on the prevention of harmful practices against women and girls;
- support training to help law enforcement personnel identify and record LGBTIQ-phobic bias and increase crime reporting; and
- foster Member States' exchange of good practice on ending forced medicalisation of trans people

The European Commission will support EU Member States to:

- exchange best practice on protection against hate speech and hate crime against LGBTIQ people;
- promote a safe and supportive environment for LGBTIQ victims of crime;
- improve training and capacity-building for law enforcement to better identify and record LGBTIQ-phobic bias and increase crime reporting.

>> TGEU comments:

Every third trans person has experienced physical or sexual attacks¹⁰ and an extraordinary 60% of trans people experienced in-person harassment. Since 2008, we know of at least 176 trans and gender non-conforming people in 19 European and Central Asian countries who have been killed. In 2021, of those killed globally, 96% were trans women or transfeminine people, and of those whose profession was known, 58% were trans sex workers. In Europe, 14 trans people were murdered with nearly every second person (43%) being a migrant. Any extension of the list of EU Crimes needs to be done in such a way that transphobic violence is explicitly covered. Moreover, EU member States need to be held accountable for a trans-sensitive implementation of the Victims' Rights Directive.

Read more on what actions from EU and national policy makers are needed to curb anti-trans violence in the Policy Brief on the occasion of the Trans Day of Remembrance 2021:

tgeu.org/wp-content/uploads/2021/11/TGEU-TDoR2021-policy-brief-EN.pdf

¹⁰ Fundamental Rights Agency 2019 LGBTI Survey <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>

Robust data is key for driving policy measures. Read more on how to document anti-trans violence in TGEU's resources:

transrespect.org/wp-content/uploads/2020/09/TvT-PS-Vol21-2020_EN.pdf

tgeu.org/wp-content/uploads/2013/11/Monitoring_Transphobic_Incidents_final.pdf

TGEU encourages trans groups interested to support the adoption and implementation of EU legislation and/or to document anti-trans violence to reach out to tgeu@tgeu.org.

3. Building Inclusive Societies

Key actions by the European Commission for trans people:

Rainbow Families

- review the 2009 guidelines on free movement in 2022 to reflect the diversity of families and contribute to facilitating the exercise of free movement rights for all families, including rainbow families;
- propose a horizontal legislative initiative on the mutual recognition of parenthood between Member States;
- explore possible measures to support the mutual recognition of same-gender partnership between Member States;
- make funding opportunities available, in particular through the 'Citizens, Equality, Rights and Values' programme.
- gather evidence of the issues experienced in reality by LGBTIQ people and their families in cross-border situations;
- will ensure the rigorous application of cross-border family law[s] vis-à-vis rainbow families by strengthening its focus on this group in monitoring their implementation;

>> TGEU comments:

TGEU encourages trans groups to submit cases and testimonies of trans families to the petitions committee (PETI) of the European Parliament.¹¹

Learn more about the issue and what you can do to support trans families in TGEU's report "Stuck on the swing: experiences of trans parents with freedom of movement in the EU": tgeu.org/trans-parenthood-and-freedom-of-movement-in-the-eu

If you are interested in submitting a case reach out to tgeu@tgeu.org.

¹¹ europarl.europa.eu/petitions/en/faq/det?questionor=2§ionor=1

Legal Gender Recognition

- will foster best practice exchanges between Member States on how to put in place accessible legal gender recognition legislation and procedures based on the principle of self-determination and without age restrictions;
 - Some Member States retain a number of requirements for the purpose of recognition of trans and non-binary people's gender. These may not be proportionate, and may violate human rights standards, as decided by the European Court of Human Rights in case of surgical and sterilisation requirements.

>> TGEU comments:

Having documents matching one's gender identity is for many trans people the key to accessing basic rights and freedoms, such as renting an apartment, opening a bank account, getting a job, crossing a border, taking out a loan or showing a proof of vaccination. TGEU regrets that procedures to adapt a trans person's documents (legal gender recognition) are still considered to be the exclusive responsibility of member States.

TGEU encourages trans groups to reach out to their respective ministry responsible for legal gender recognition and have the ministry request support from the EU Commission in improving national legal gender recognition procedures to match international recognised standards: quick, transparent, and accessible and based on self-determination.

Learn more about legal gender recognition at: tgeu.org/issues/legal-gender-recognition

Cross-sectoral Dialogue

- will launch a cross-sectoral dialogue with diverse stakeholders, including the Member States, businesses, and healthcare professionals, to raise awareness of trans and non-binary identities, and intersex people, and encourage inclusivity in all relevant actions and procedures.

The European Commission will support EU Member States to:

- put in place accessible legal gender recognition legislation and procedures;
- improve the inclusion of trans, non-binary and intersex people in relevant documentation, applications, surveys and processes;
- rigorously apply the right to free movement and EU rules on family law

4. Leading the Call for Equality around the World

Key actions by the European Commission for trans people:

- press for LGBTIQ equality in the political dialogue and support measures to tackle violence, hatred and discrimination against LGBTIQ people including support for civil society organisations;
- implement actions supporting LGBTIQ rights in line with the 2020-2024 Action Plan on Human Rights and Democracy¹² and with the EU Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons¹³;
- promote and uphold LGBTIQ rights in international fora, such as the UN, and through international cooperation;
- ensure support for LGBTIQ equality under in EU pre-accession countries and globally through its Neighbourhood, Development and International Cooperation Instrument (NDICI),¹⁴ the Instrument for Pre-accession Assistance (IPA) funds¹⁵ and the Gender Action Plan III;¹⁶
- provide ad-hoc support for trans LGBTIQ human rights defenders at risk in its rapid response programme.

>> TGEU comments:

Activists in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia, and Turkey are encouraged to document and submit testimonies on the human rights situation of trans people to the annual progress reports of the European Commission. See for example the joint submission by TGEU and Trans Network Balkans.

The EU External Action Service is leading the EU's work on advancing the rights of LGBTIQ people in non-EU countries and in international fora. Activists in non-EU countries are encouraged to reach out and establish early-on contact with the human rights desk officer at their respective EU mission.

¹² eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020JC0005&from=EN

¹³ data.consilium.europa.eu/doc/document/ST-11492-2013-INIT/en/pdf

¹⁴ ec.europa.eu/info/funding-tenders/find-funding/eu-funding-programmes/global-europe-neighbourhood-development-and-international-cooperation-instrument_en

¹⁵ ec.europa.eu/neighbourhood-enlargement/enlargement-policy/overview-instrument-pre-accession-assistance_en

¹⁶ eeas.europa.eu/topics/human-rights-democracy/89112/gender-action-plan-iii-towards-gender-equal-world_en

5. Delivering on the Strategy: Making full use of EU initiatives

Key actions by the European Commission for trans people:

- assess and monitor the fulfilment of the enabling condition related to the Charter of Fundamental Rights, as provided in the Commission's proposal for a new Common Provisions Regulation (CPR);
- set up an LGBTIQ equality subgroup under the High-Level Group on non-discrimination, equality and diversity¹⁷ to support and monitor progress in the Member States;
- monitor the implementation of EU-funded programmes to ensure that they respect equality principles and comply with EU law, including the Treaties and the Charter of Fundamental Rights.

Data Collection

- invite the EU Fundamental Rights Agency (FRA) and the EU Gender Equality Institute (EIGE) to support Member States in the design and implementation of data-collection exercises on LGBTIQ people;
- A new Eurobarometer on discrimination in the EU will be published in 2023;
- The Commission will encourage the FRA to conduct a comprehensive LGBTIQ survey in 2024.

The Commission will support Member States to:

- develop national plans on LGBTIQ equality.

>> TGEU comments:

In 2021, the EU Commission has been working with EU member States on the development of guidelines for national LGBTIQ action plans. National action plans should meet minimum standards, such as a featuring a timeline, measurable goals, allocation of resources, clear responsibilities and the set-up of a monitoring mechanism. Now is a good moment for civil society to reach out to its respective ministries and advocate for national action plans on trans and LGBTIQ equality that meet those standards.

¹⁷ ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?do=groupDetail.groupDetail&groupID=3328