

~~forbidden~~
colours

REPORT

Queer Your EU

An evaluation of what EU institutions have done
for LGBTIQ+ people from 2019 to 2024



April 2024



About Forbidden Colours

Forbidden Colours is a Brussels-based civil society organization delivering human rights and democracy for LGBTIQ+ people in Europe. The organization focusses specifically on monitoring anti-rights and anti-democracy actors scapegoating the LGBTIQ+ communities. With extensive contacts all over Europe at the political, media, activist and corporate level, the organization has been instrumental in fighting back against anti-LGBTIQ+ initiatives.

More information at <http://www.forbidden-colours.com>

About the author

Vincent Reillon is the Outreach and Policy Officer at Forbidden Colours. He oversees the policy and advocacy work of the organisation, especially with EU institutions and actors. Prior to joining Forbidden Colours, he has worked as an analyst for the European Parliamentary Research Service. He was also Counsellor for Research and Innovation at the French Permanent Representation to the EU, negotiating files at the Council of the EU.

Support for data collection: Thomas Vandenschrick

© 2024 Forbidden Colours

Citation suggestion: Vincent Reillon (2024). Forbidden Colours. Queer Your EU – An evaluation of what EU institutions have done for LGBTIQ+ people from 2019 to 2024



Brussels, 5 April 2024

Dear EU citizen,

Over the last five years, we have witnessed a worrying trend within our European Union as the LGBTIQ+ communities were being instrumentalised and scapegoated by illiberal or autocratic leaders and governments.

We have seen the introduction of 'LGBT-free zones' in Poland. We have seen the adoption of an 'anti-LGBT propaganda' law in Hungary. We have seen Romania and Bulgaria refusing to recognise rainbow families despite rulings of the Court of Justice of the EU. We have seen mothers losing their parenthood rights in Italy. We have seen hate speech and hate crime on the rise, and waves of disinformation about the LGBTIQ+ communities flooding social media.

These attacks seriously threaten the progress made in the past decades to ensure that every citizen can fully access their most fundamental human rights everywhere in the EU. Yet, beyond their devastating effects on LGBTIQ+ people, these attacks concern all of us. They aim to weaken our democracies and dismantle the rule of law.

To answer these raising threats, we need a European Union firmly committed to defend its core values as defined in the EU treaties. We need strong EU institutions devoted to protecting the fundamental rights of all EU citizens, including LGBTIQ+ people.

In this report, Forbidden Colours decrypts how this could be achieved. We describe what the current competencies of the EU on the matter are. We analyse what each EU institution has done over the last five years when dealing with these issues. Finally, we provide recommendations to strengthen the capacity of the EU to act and protect LGBTIQ+ citizens more effectively.

Your role in this process is crucial. We count on you.

In June 2024, you can participate in the European Elections. Your vote is critical to make sure the European Parliament will be fully supporting the fundamental rights of all EU citizens.

Our findings indicate that over the past five years, more than 25% of Members of the European Parliament (MEPs) have cast votes against LGBTIQ+ fundamental rights. Regarding the forthcoming elections, projections suggest this figure might escalate to more than 40% for 2024-2029.

We must mobilize to prevent this.



In this report you will find all the information you need to make your decision when it comes to elect MEPs that defend the fundamental rights of LGBTIQ+ people. To help you, we analysed the position of each political party at the European and national level based on how their members have voted in the European Parliament over the last five years.

The European elections of June 2024 are a wake-up call for all of us.

We hope that you will stand besides us in making sure that we defeat the current predictions. We hope that you will help us spread the information in this report to your friends, family members and acquaintances to mobilise them to vote to defend democracy, rule of law and human rights.

With us, it is now time to #QueerYourEU!

Rémy Bonny

Executive Director of Forbidden Colours



Key recommendations

① *Voting in the European Elections of June 2024*

Forbidden Colours calls all European citizens to take part in the European elections of June 2024 and cast their vote for the candidates of the political groups that have shown clear and strong support for the fundamental rights of LGBTIQ+ people. Based on the analysis presented in this report, this translates into the support for candidates from the Greens/EFA, Renew Europe, the Left – GUE/NGL or the Socialists and Democrats.

② *EU Commissioner for Equality*

Forbidden Colours calls on the future President of the European Commission to maintain the portfolio for a Commissioner for Equality with clear objectives when it comes to the protection of the fundamental rights of LGBTIQ+ people in the EU.

③ *Compliance with EU laws & rulings from EU Court*

Forbidden Colours expects the European Commission to increase the monitoring and reporting on Member States' compliance with EU laws, directives and jurisprudence of the Court of Justice of the EU concerning the fundamental rights of LGBTIQ+ people and to initiate infringement procedures with greater promptness when needed.

④ *LGBTIQ+ Equality Strategy 2025-2030*

Forbidden Colours calls on the Commission to develop a new LGBTIQ+ Equality Strategy for 2025-2030 in close collaboration with a wide range of stakeholders, including EU Member States, a large range of LGBTIQ+ civil society organisations and advocacy groups working at the EU and national level, academia, and other international partners.



5 *EU funding programmes*

Forbidden Colours calls on the Commission to ensure more coherence between the different EU programmes supporting the fundamental rights and the needs of LGBTIQ+ people. It also urges the European Commission and the Member States to introduce specific calls for projects from civil society organisations aiming at monitoring and countering the so-called ‘anti-gender’ and anti-rights movement.

6 *Adoption of EU laws by the Council of the EU*

Forbidden Colours calls on the current and upcoming presidencies of the Council to make sure that the proposals currently blocked or discussed – the horizontal equality directive, the introduction of hate crime and hate speech as EU crimes, or the directive on parenthood – are adopted as soon as possible.

7 *Resolutions by the European Parliament*

Forbidden Colours calls on the European Parliament to continue adopting resolutions and reports that highlight issues related to the fundamental rights of LGBTIQ+ people and request action from the Commission, the Council, and the Member States.

8 *Modification of the EU treaties*

Forbidden Colours calls on all the EU institutions and the Member States to work together in a modification of the EU treaties to ensure better protection of the fundamental rights of LGBTIQ+ people at the EU level. These modifications should introduce in the treaties gender identity, gender expression and sex characteristics as grounds for discrimination alongside sexual orientation. The competences of the EU should be extended when it comes to the protection of LGBTIQ+ people against discrimination and the ordinary legislative procedure should be used for any piece of EU legislation dealing with the fundamental rights of LGBTIQ+ people, breaking the unanimity currently required in the Council.

Check all the recommendations on page 53.



Outline

Part 1 – Functioning of the EU and EU competencies regarding the rights of LGBTIQ+ people	8
1.1 – The different EU institutions and their role	8
The European Commission	9
The European Parliament	9
The Council of the EU	9
The other EU institutions and EU agencies	10
1.2 – The competences of the EU regarding discrimination	11
1.3 – The adoption of EU laws	12
The ordinary legislative procedure	12
The special legislative procedures	14
The legislative procedures regarding discrimination	15
1.4 – EU legislation, EU programmes and case law	15
EU legislation and programmes	15
Case law from the Court of Justice of the EU	16
Part 2 - EU institutions’ actions on LGBTIQ+ topics in the last 5 years	19
2.1 - Key events in the EU in the last 5 years	19
2.2 – The LGBTIQ Equality Strategy 2020-2025	20
2.3 - Legislative proposals	22
Extend the list of EU crimes to add hate speech and hate crime	22
The Equality Package	23
Equality bodies	23
Parenthood	24
Strategic lawsuits against public participation	26
The Equality Directive of 2008	27
2.4 - Non-legislative actions	28
The European Council	28
The European Commission	29
The Council of the EU	32
The European Parliament	34



Part 3 – Analysis	41
3.1 - Analysis of the situation in the European Commission	41
3.2 - Analysis of the situation in the Council of the EU	42
3.3 - Analysis of the situation in the European Parliament	43
Methodology to analyse the votes of MEPs.....	43
Results	44
Part 4 - Recommendations	53
Recommendations for EU citizens and European political groups.....	53
Recommendations for the next European Commission 2024-2029	54
Recommendations for the Council of the EU & the European Council.....	57
Recommendations for the European Parliament.....	57
Recommendations on the modification of EU treaties	58
Annex 1 – Political groups’ vote on key LGBTIQ+ texts	59



Part 1 – Functioning of the EU and EU competencies regarding the rights of LGBTIQ+ people

To evaluate the actions taken by the different institutions of the European Union (EU) over the last 5 years, it is important to be aware of the role that the EU can play on the inclusion and equality for LGBTIQ+ people. This requires understanding the role played by each EU institutions, the competences of these institutions on the different issues faced by LGBTIQ+ people and the processes through which EU laws are adopted.

The competences of the EU refer to the areas and fields in which the EU is authorized to adopt legislation. These competences are divided into three main categories:

- exclusive competences: areas where only the EU can legislate,
- shared competences: areas where both the EU and the Member States can legislate, with varying degrees of possibilities, and
- supporting competences: areas where the EU can only act to support, coordinate, or supplement Member States' actions.

The distribution of these competences is outlined in the EU treaties, defining the scope and limits of the EU's authority.¹

1.1 – The different EU institutions and their role

Beyond the competences of the EU, the Treaties define the powers, duties, and operational protocols for the seven EU institutions in charge of developing and implementing the objectives of the European Union. Three of these institutions have a key role in adopting EU laws: the European Commission, the European Parliament, and the Council of the EU.

¹ EUR-LEX. Division of Competences within the European Union. Retrieved from <https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html> on 26 March 2024



The European Commission

The *European Commission* is the executive body of the European Union. This institution proposes new laws and makes sure the adopted laws are enforced. The Commission also manages EU policies and budgets by overseeing the different European programmes such as the programmes for regional development (Structural Funds), for research and innovation (Horizon Europe) or for mobility in education (Erasmus+). Finally, it represents the EU internationally, notably through the European External Action Service (EEAS) which serves as the EU's diplomatic service.

The European Commission is led by 27 EU commissioners nominated by each of the Member States of the EU. One of them is chosen to preside the institution – currently Ursula von der Leyen from Germany – while each of the others supervises a policy sector such as environment, equality, or justice. The president of the Commission is nominated by the European Council and is approved by the European Parliament. The 26 other commissioners are also individually confirmed for their respective portfolios by the European Parliament after a hearing.

The European Parliament

The *European Parliament* is the first of the two legislative bodies of the EU, the one that is directly elected by the citizens of the EU. It is composed of 705 members – 720 members as of 2024 – called Members of the European Parliament or MEPs. These are elected every five years in each EU Member State through the European elections. The European Parliament is led by its president – currently Roberta Metsola from Malta – who is elected by the MEPs.

The European Parliament discusses and amends the legislative proposals put forward by the European Commission before adopting them, depending on the legislative procedure. Besides the adoption of EU laws, the European Parliament can adopt non-legislative resolutions and reports. In these documents, it expresses its position on a topic with the aim of asking the European Commission to put forward legislative proposals as the Parliament itself does not have the possibility to propose EU laws. The parliament also oversees the EU budget and scrutinizes the work of the other EU institutions.

The Council of the EU

The *Council of the EU* is the second legislative body of the EU, the one that represents the Member States of the Union. It sits in 10 different thematic configurations, such as competitiveness or environment, composed each time by the ministers of the 27 Member States responsible for a corresponding policy area. Hence, the Foreign Affairs Council is composed of the 27 ministers for foreign affairs of the EU Member States. Before a text is



submitted to the ministers for adoption by the Council of the EU, it is negotiated and discussed by national experts and diplomats from each of the Member States.

The Council of the EU discusses and amends the legislative proposals put forward by the European Commission to adopt them. It can also discuss ‘Council Conclusions’ which are declarations stating the position of the Council of the EU on a certain policy area. In these conclusions always adopted at unanimity, the Council can for example ask the European Commission to put forward some legislative proposals as the Council cannot propose EU laws.

Every six months, one Member State – currently Belgium for the first half of 2024 – assumes the presidency of the Council of the EU. This means that during this period this Member State organises the discussions to find a compromise among the Member States for the adoption of the conclusions and legislative texts by the Council of the EU.

The other EU institutions and EU agencies

The *European Council* is another key institution of the European Union composed of the heads of state or government of the 27 Member States. This institution acts as a collective presidency of the European Union. It adopts conclusions that set priorities for the EU and provide a political and strategic direction for the work of the European Commission. The European Council is led by its president – currently Charles Michel – and the president of the European Commission takes part in its meetings referred to as EU summits. The President of the European Parliament is only entitled to attend the beginning of each European Council meeting to present the views of the European Parliament on the topics on the European Council's agenda.

The *Court of Justice of the EU* ensures that EU laws are implemented. When legal disputes arise between the European Commission and the Member States for example, the Court rules by interpreting the EU treaties and EU law. These rulings known as case law can have a strong impact when protecting the rights of LGBTIQ+ people in the Union as it will be discussed further.

The last two institutions of the EU are not engaged directly in issues related to LGBTIQ+ people. They are:

- the *European Central Bank* which oversees the monetary policy of the Eurozone; and
- the *European Court of Auditors* which monitors the EU financial management making sure that of the transparency and accountability of the spending of the EU budget.

Beyond the seven EU institutions, two EU agencies play an important role in monitoring and securing the fundamental rights of LGBTIQ+ people in the EU:

- the *Fundamental Rights Agency (FRA)*, established in 2007 and located in Vienna, ‘help safeguard the rights, values and freedoms enshrined in the EU’s Charter of



Fundamental Rights'.² In 2012 and 2019, the FRA conducted an EU-wide survey on LGBTIQ+ people.³ The survey was conducted again in 2023 and its results are expected to be published in 2024.

- the *European Institute for Gender Equality (EIGE)*, established in 2010 and located in Vilnius, provides research, data, and good practices to achieve gender equality within the EU.

1.2 – The competences of the EU regarding discrimination

The competences of the EU have been defined by the Member States in the treaties creating the EU which have been reviewed a few times till the adoption in 2007 of two treaties:

- the *Treaty on the European Union (TEU)* that sets the objectives and principles of the EU and
- the *Treaty on the Functioning of the European Union (TFEU)* which describes how the EU works and adopts laws.

Together with the treaties, the Member States adopted a *Charter of Fundamental Rights* that clearly states the rights of every citizen to be protected in the EU.

The article 2 of the Treaty on the European Union states that 'The 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.' The following article 3 states that the aim of the Union is to promote peace, these values, and the well-being of its peoples.

Article 10 of the Treaty on the Functioning of the European Union states that 'In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.'

Article 19 of the same treaty indicates that the Council 'may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.' The same article contains the provisions for the adoption of an EU programme supporting the fight against discrimination. The TFEU also provides competence to the EU for its external policy and for all aspects of the free movement of citizens within its territory.

These articles from the treaties form the bedrock of the action of the EU regarding the protection of the fundamental rights of LGBTIQ+ people. They are complemented by Article 21 of the Charter of Fundamental Rights of the EU that states that 'any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language,

² As mentioned on the website of the FRA: <https://fra.europa.eu/en/about-fra/what-we-do>

³ A long way to go for LGBTI equality, FRA, 14 May 2020 - <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>



religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.’

Yet, even if the values and missions of the EU cover the respect of human rights and the fight against discrimination, the Union ends up having a limited capacity to act when defending the fundamental rights of LGBTIQ+ people.

First, the EU has no competence when it comes to family law or education and limited competence when it comes to social affairs. This means for example that the introduction of legislation regarding same-sex marriage and partnerships or adoption by same-sex couples remain a responsibility of the Member States.

Second, article 10 TFEU only mentions discrimination based on sexual orientation. It does not cover explicitly discrimination based on gender identity, gender expression or sex characteristics, even if Article 21 of the Charter of Fundamental Rights prohibits any discrimination on any ground.

This means that over the last 25 years, the EU has only adopted a limited number of directives and decisions combating discrimination against LGBTIQ+ people.

1.3 – The adoption of EU laws

The adoption of an EU law can follow different legislative procedures depending on what has been agreed in the EU treaties for different topics and policies. The procedures have been agreed by the Member States making sure that they would keep maximum control over the EU. This means that the Council of the EU, representing the Member States, has a larger role in the processes than the European Parliament representing the citizens.

The legislative processes always start with the adoption of a proposal for a new EU law by the European Commission as only the Commission can put forward new EU laws. This proposal is then sent to the two legislative bodies: the European Parliament and the Council of the EU.

The ordinary legislative procedure

The ordinary legislative procedure gets its name from the fact that it has become the most frequent legislative procedure. Within this procedure, the European Parliament and the Council are on equal footing to amend and adopt the law. Each institution will discuss the proposal from the Commission separately, adopting their own amended version of the law. Once this is done, the two institutions usually come together with the European Commission – in a process known as the trilogue – to work out the differences in their respective positions.

During the trilogue, each of the two legislative institutions tries to convince the other one to adopt their version of the text, while the European Commission is there to defend its original

proposal. In the end, all of them need to agree on a common and shared version of the text that will be adopted by both legislative institutions to become a new EU law. In this case, the Council adopts the text at a qualified majority.⁴

The ordinary legislative procedure

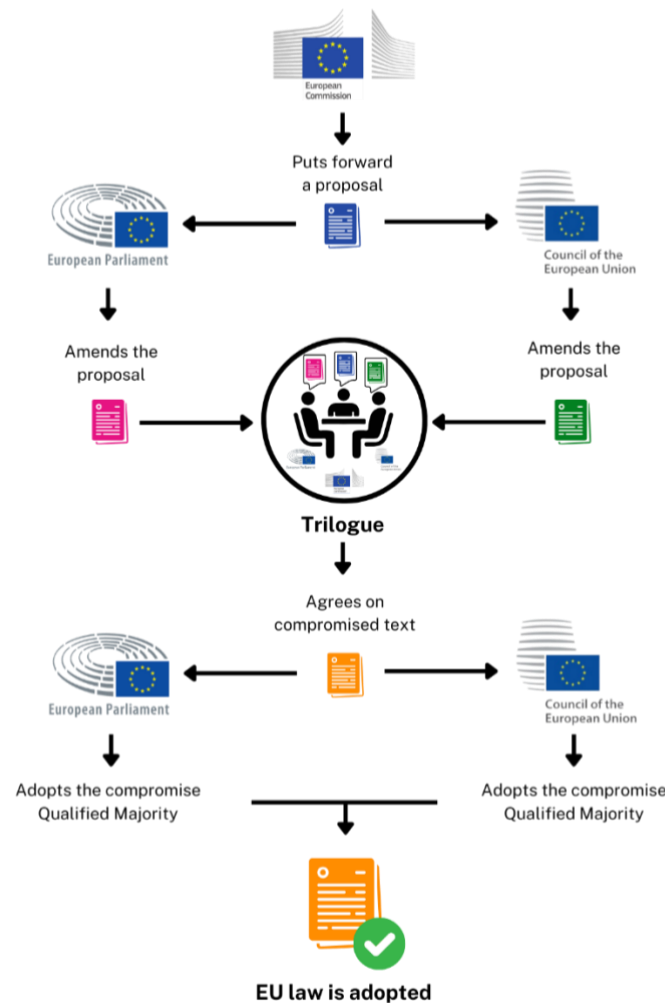


Figure 1 – The ordinary legislative procedure where the European Parliament and the Council of the EU are on equal footing to adopt an EU law.

⁴ For a legislative proposal to be adopted by the Council of the EU at qualified majority, 55% of the Member States representing at least 65% of the population of the EU need to vote in favour. However, if there is a blocking minority of at least 4 Member States representing at least 35% of the population, the legislative proposal is rejected.



The special legislative procedures

Besides the ordinary legislative procedure, there are two special legislative procedures. In these procedures, the Council of the EU is the only legislative institution adopting the EU law, which limits the role of the European Parliament.

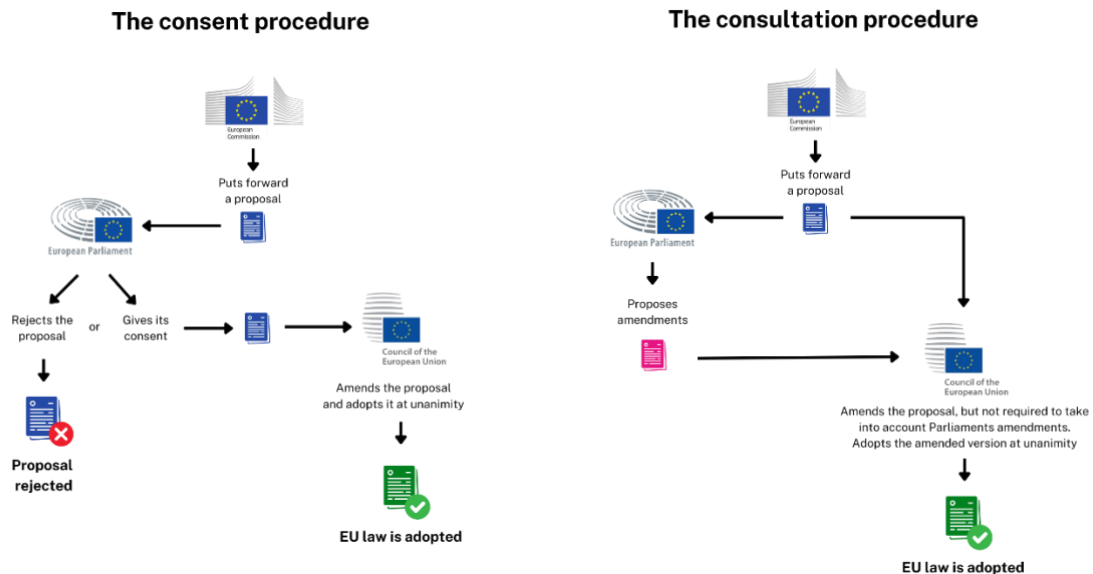


Figure 2 – The consent (left) and consultation (right) procedures with the Council of the EU being the only institution adopting the EU law at unanimity.

In the consent procedure, it is only required for the European Parliament to give its consent that the proposal of the Commission can be discussed and adopted by the Council of the EU. If the Parliament does not give its consent, the proposal is rejected. In this procedure, the Parliament cannot propose amendments on the Commission proposal. Only the Council of the EU amends and adopts the final text.

In the consultation procedure, the European Parliament can propose amendments to the Commission's proposal by adopting its own version of the text. However, the Council of the EU is the legislative institution adopting the text and it is not legally bound to consider the amendments proposed by the European Parliament.

In both special procedures, the Council usually needs unanimity to adopt the EU law. This means that every Member State has a veto right to block a text to be adopted under a special legislative procedure.



The legislative procedures regarding discrimination

As mentioned above, Article 19 TFEU states that the EU may take appropriate action to combat discrimination based on sex or sexual orientation. The same article states that the procedure to adopt legislation in this area is the consent procedure with the Council acting unanimously.

As will be discussed further, many pieces of EU legislation impacting the situation of LGBTIQ+ people fall under the special legislative procedures where the Council needs to act unanimously. Given the current positioning of some of the Member States on the respect of the fundamental rights of LGBTIQ+ people, unanimity in the Council has been impossible to achieve in the last years. In consequence, most of the legislative proposals of the Commission regarding discrimination and the fundamental rights of LGBTIQ+ people end up being blocked by the Council.

1.4 – EU legislation, EU programmes and case law

Based on the treaties, the EU institutions have adopted in the last 25 years a few EU laws that partly protect the rights of LGBTIQ+ people in the Union. The Court of Justice of the EU has also had the opportunity to rule on legal disputes creating case law that confirms some of the fundamental rights of LGBTIQ+ people.

EU legislation and programmes

In 2000, the Council of the EU adopted a Council directive establishing a general framework for equal treatment in employment and occupation.⁵ This directive protects all the EU citizens from discrimination based on sexual orientation in the field of employment and occupation, covering the access to employment, the working conditions, and the vocational training. This directive was adopted by unanimity by the then 15 Member States of the EU.⁶

Following this first directive, the European Commission put forward in 2008 a proposal known as the ‘horizontal equal treatment directive’.⁷ This new text aimed to extend the protection against discrimination based on religion or belief, disability, age and sexual orientation beyond employment and occupation to social protection (including social security and healthcare), social advantages, education, and access to and supply of goods and other services. More than 15 years later, this proposal has still not been adopted by the Council of the EU as will be discussed later.

⁵ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16–22 - <https://eur-lex.europa.eu/eli/dir/2000/78/oj>

⁶ This directive was adopted under Article 13 TEC which is now the already mentioned Article 19 TFEU.

⁷ 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)426, 2 July 2008 - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52008PC0426>



In 2010, the Council of the EU and the European Parliament jointly adopted the Audiovisual Media Services Directive.⁸ In the Article 9 of this EU law, there is a clear mention that ‘audiovisual commercial communications shall not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation’.

In 2012, the Council of the EU and the European Parliament jointly adopted the Victims’ rights directive.⁹ This piece of EU legislation sets the standards for the protection of victims of crimes so that they are treated with respect and receive adequate protection and support. It recognizes that victims of crime should be recognized and treated without discrimination, especially regarding their gender identity, gender expression and sexual orientation.

As mentioned above, these EU laws have a limited effect to protect all LGBTIQ+ people not only because they are limited in their scope (for example the directive regarding only employment and occupation), but also, because they do not always refer to gender identity and gender expression or do not refer at all to sex characteristics.

Beyond these few pieces of legislation, the European Commission runs a European programme to fund projects that promote, defend, and strengthen the values of the EU as well as the fundamental rights of every EU citizen. Part of the programme aims at fighting against discrimination, including discrimination towards LGBTIQ+ people. The last version of this programme adopted by the Council of the EU and the European Parliament in 2021 is called the Citizens, Equality, Rights and Values (CERV) programme. It will run till 2027 with a total budget of 1,55 billion euros.

Case law from the Court of Justice of the EU

Once EU legislation is adopted, legal dispute can take place over the interpretation of this legislation. In such cases, the Court of Justice of the EU is in charge to interpret the EU legislation and rule over the disputes. Such rulings by the EU Court constitute case law that is used to interpret similar disputes and set new standards for future rulings. In recent years, three rulings from the EU Court have been instrumental in securing the fundamental rights of LGBTIQ+ people.

⁸ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, OJ L 95, 15.4.2010, p. 1–24 - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0013-20181218>

⁹ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57–73 - <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32012L0029>



Coman case

In June 2018, the EU Court has ruled that the term 'spouse' used in the Free movement directive adopted in 2004 applied to all recognised married couples in the EU, even in a country where same-sex marriage was not recognised. Following this ruling known as the Coman case, Romania was required to provide long term residence permit to the American husband of Romanian citizen Adrian Coman, given that the couple had married in 2010 in Belgium.

While this ruling was a landmark in protecting the free movement rights of LGBTIQ+ couples in the EU, Romania has still not to this date implemented the judgement of the EU court. Following a judgement by the European Court of Human Rights, the Romanian government has finally proposed in September 2023 to introduce the recognition of civil partnerships for same-sex couples conducted in the EU¹⁰. This law will not provide however the possibility for Romanian couples to enter same-sex civil partnerships in Romania.

Baby Sara case

In 2019, a British/Bulgarian lesbian couple celebrated the arrival of baby Sara into their family while living in Spain. The Spanish birth certificate recognised the two mothers of the child, but Spain refused to grant the child Spanish citizenship as none of the mothers were Spanish. The couple then turned to Bulgaria to get the child recognised as a Bulgarian citizen, but the Bulgarian administration and courts denied the request as they claimed the Bulgarian mother was not the biological mother of the child.

The couple turned to the Court of Justice of the EU who ruled in December 2021 that Bulgaria had to recognise the parental relationship established in another Member State to ensure that the child could benefit from the freedom of movement guaranteed to all citizens of the EU. Yet, in March 2023 the Supreme Administrative Court of Bulgaria challenged this ruling arguing that Spain was able to offer the child citizenship as the baby was born in Spain but unable to acquire the citizenship of one of her parents. While Sara will be soon 5 years old, she remains stateless.

V.M.A and K.S

In 2021, another case of a baby born from a lesbian couple was brought to the CJEU. In this case, Polish authorities refused to transcript into the Polish register of civil status the birth certificate of the child registered in Spain from a Polish mother. This led to the refusal of the

¹⁰ BalkanInsight. September 21, 2023, Romania Govt Proposes to Recognise Same-Sex Marriages Conducted in EU. Retrieved from <https://balkaninsight.com/2023/09/21/romania-govt-proposes-to-recognise-same-sex-marriages-conducted-in-eu/>



authorities to deliver a Polish passport to the baby, preventing them from the full exercise of their freedom of movement in the EU.

In June 2022, the CJEU ruled that Member States were obliged to issue ID documents and passports without transcription of a birth certificate into the national register of civil status.¹¹ This means that every Member State is obliged to recognise official documents from another Member State when this is necessary to ensure the right of free movement of the child within the EU.

Rulings regarding the interpretation of sex in regard of gender equality

As mentioned in a 2022 article in the European equality law review¹², rulings of the CJEU now confirm that “gender identity is protected to a limited extent under the ground of sex, insofar as it covers individuals who intend to undergo, are undergoing or have undergone gender-affirming surgery.”¹³ However, the CJEU has not yet stated on any cases regarding non-binary or intersex people. This leaves some uncertainty on how EU law would be interpreted in these situations.

This section presented an overview of the functioning of the EU institutions with their competences when it comes to securing the fundamental rights of LGBTIQ+ people. It also provided the elements to understand of the state of play mid-2019 before the European elections and the nomination and validation of the current team of European Commissioners.

¹¹ Order of the Court of Justice of 24 June 2022, *Rzecznik Praw Obywatelskich v K.S. and Others*, C-2/21, ECLI:EU:C:2022:502

¹² European equality law review, DG Justice and Consumers, European Commission, 2022/1, pp 37-55 - <https://www.equalitylaw.eu/downloads/5725-european-equality-law-review-1-2022-pdf-1-343-kb>

¹³ This is based on the following judgements: Judgment of the Court of Justice of 30 April 1996, *P v S*, C-13/94, ECLI:EU:C:1996:170; Judgment of the Court of Justice of 7 January 2004, *K.B.*, C-117/01, ECLI:EU:C:2004:7; Judgment of the Court of Justice of 27 April 2006, *Richards*, C-423/04, ECLI:EU:C:2006:256; Judgment of the Court of Justice of 26 June 2018, *M.B.*, C-451/16, ECLI:EU:C:2018:492.



Part 2 - EU institutions' actions on LGBTIQ+ topics in the last 5 years

In this section, we analyse the work carried out by each of the main EU institutions regarding the protection and defence of the fundamental rights of LGBTIQ+ citizens between 2019 and 2024. We start by mentioning some of the key events regarding LGBTIQ+ people and communities in the EU that prompted reactions by the EU institutions. We then present the EU LGBTIQ Equality Strategy adopted by the European Commission in November 2020. From this we discuss the legislative proposals introduced over the last five years as well as the non-legislative actions taken by the EU institutions.

2.1 - Key events in the EU in the last 5 years

2019-2020 – The Polish 'LGBT free zones'

From the beginning of 2019, Polish provinces, counties, and municipalities started to adopt 'Regional Charters of Family Rights' targeting single parent and rainbow families or pass resolutions declaring themselves free from the so-called 'LGBT ideology'. The purpose of these charters and resolutions was to limit all support to initiatives or organizations fighting against the discrimination of LGBTIQ+ people.

By June 2020, as more and more municipalities, counties, and provinces adopted this type of resolutions, one third of the country had become a so-called 'LGBT-free zone'. In the following years, the denunciation of these charters, legal action in front of Polish courts,¹⁴ and the financial measures presented further in the report led to most of them revoking these resolutions. Early 2024, only a few municipalities were still enacting these charters.¹⁵

¹⁴ Polish top court upholds annulment of anti-LGBT resolutions, Notes from Poland, 29 June 2022 - <https://notesfrompoland.com/2022/06/29/polish-top-court-upholds-annulment-of-anti-lgbt-resolutions/>

¹⁵ Website of the Atlas of Hate - <https://atlasnienawisci.pl/>



June 2021 – The Hungarian ‘anti-LGBT propaganda law’

On 15 June 2021, the Hungarian National Assembly adopted Act LXXIX of 2021 on taking more severe action against paedophile offenders and amending certain acts for the protection of children. The original objective of the bill was to make the prevention, detection, and punishment of sexual criminal offenses against minors more effective.

However, last minute amendments introduced anti-LGBTIQ+ provisions in this law. In particular, the act amended the Child Protection Act, the Family Protection Act, the National Public Education Act, the Advertisement Act, and the Media Act to introduce a ban on access of minors to any content that “propagates or portrays divergence from self-identity corresponding to sex at birth, sex change or homosexuality.” With these last-minute amendments, the so-called ‘child protection law’ became Hungary’s version of the ‘anti-LGBT propaganda law’ adopted in Russia in 2013.

The law entered into force on 8 July 2021. Early 2023, as presented further, this law has been taken in front of the Court of Justice of the EU. However, the ruling is pending, and the law has still not been repealed.

12 October 2022 – Murder of two LGBTIQ+ persons in Slovakia

On 12 October 2022, an individual killed two LGBTIQ+ persons and injured another one in front of an LGBTIQ+ establishment in Bratislava, Slovakia. The murderer was found dead in his apartment the following morning, following a self-inflicted gunshot. He had published an antisemitic, homophobic, and transphobic manifesto mere hours before he acted.

This hate crime was one of the most discussed in the media, but others are worth mentioning. In March 2021, a man was murdered in Belgium by three teenagers who had contacted him through a gay dating app. A few weeks later, a 29-year-old man was burnt alive in Latvia by his neighbours who assumed he was gay.

2.2 – The LGBTIQ Equality Strategy 2020-2025

After her validation as president of the European Commission in July 2019, Ursula von der Leyen created a new portfolio for an EU Commissioner for Equality. Von der Leyen’s mission letter to the new Commissioner, the Maltese Helena Dalli, did not mention however any specific actions regarding the protection of the fundamental rights of LGBTIQ+ people.¹⁶ It provided a general mission to fight discrimination while mentioning sex and sexual orientation among the grounds for discrimination.

¹⁶ Mission Letter from Ursula von der Leyen to Helena Dalli, 1 December 2019 - https://commissioners.ec.europa.eu/system/files/2022-12/mission-letter-helena-dalli_2019_en.pdf



While more and more cities and localities in Poland were declaring themselves as ‘LGBT-free zones’, Ursula von der Leyen addressed the situation in her first State of the Union address to the European Parliament on 16 September 2020.¹⁷ She then declared that she “will not rest when it comes to building a Union of equality. A Union where you can be who you are and love who you want – without fear of recrimination or discrimination. Because being yourself is not your ideology. It's your identity. And no one can ever take it away.”

Von der Leyen added that “LGBTQI-free zones are humanity free zones. And they have no place in our Union” before announcing that the European Commission was about to put forward a strategy to strengthen the rights of LGBTIQ+ people. She mentioned that the strategy would encompass the mutual recognition of family relations in the EU because “if you are a parent in one country, you are of course a parent in every country.”

In November 2020, the European Commission adopted the first ‘LGBTIQ Equality Strategy’.¹⁸ Five years before, following a report from the European Parliament adopted in February 2014,¹⁹ the European Commission had adopted a ‘List of actions by the Commission to advance LGBTI equality’ for 2015-2019.²⁰ The use of the term *strategy* was perceived as a stronger commitment from the institution in the support of the fundamental rights of LGBTIQ+ people in the Union.

The strategy proposed a roadmap for the actions of the European Commission until the end of its term based on four pillars: tackling discrimination against LGBTIQ people; ensuring LGBTIQ people’s safety; building LGBTIQ inclusive societies; and leading the call for LGBTIQ equality around the world.

Following this strategy, the European Commission put forward a few pieces of legislation that were taken up by the Council of the EU and the European Parliament, depending on the required legislative procedure. This section will first describe the proposed and pending legislative texts before analysing other initiatives taken.

¹⁷ State of the Union Speech, Ursula von der Leyen, 16 September 2020 - https://state-of-the-union.ec.europa.eu/state-union-2020_en

¹⁸ LGBTIQ Equality Strategy 2020-2025, COM(2020)698, European Commission, 12 November 2020 - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0698>

¹⁹ Resolution on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2013/2183(INI)), European Parliament, 4 February 2014 - https://www.europarl.europa.eu/doceo/document/TA-7-2014-0062_EN.html

²⁰ List of actions by the Commission to advance LGBTI equality, European Commission, June 2017 - https://commission.europa.eu/system/files/2017-06/lgbti-actionlist-dg-just_en.pdf



2.3 - Legislative proposals

Within the EU LGBTIQ Equality Strategy, the European Commission announced that it would put forward some legislative proposals aiming at improving the respect of the fundamental rights of LGBTIQ+ people in the EU.

Extend the list of EU crimes to add hate speech and hate crime

Article 83 of the Treaty on the Functioning of the European Union defines a list of crimes that, due to their cross-border dimension, need to be tackled at the European level such as terrorism, trafficking in human beings or corruption.

In December 2021, the European Commission put forward a legislative proposal that would amend the treaty to add hate speech and hate crime to this list of EU crimes.²¹ To be adopted, this modification needs to be approved unanimously by the Council of the EU with the consent of the European Parliament.

Once this first step would be achieved, the European Commission could be able to put forward a second legislative proposal to establish minimum EU rules regarding hate speech and hate crime in the Union, especially when these target LGBTIQ+ people. This second step would follow the ordinary legislative procedure, with the Council and the Parliament acting on equal grounds and with only a qualified majority required in the Council.

According to the 2023 ILGA-Europe Rainbow Index, six EU Member States lack any law on hate speech and hate crime on the grounds of sexual orientation, gender identity, gender expression, or sex characteristics (SOGIESC).²² In another nine EU Member States, only the ground of sexual orientation is covered.²³ Being able to adopt minimum EU rules regarding hate speech and hate crime based on SOGIESC would be a powerful step to protect LGBTIQ+ citizens in the EU.

Yet, whereas the proposal has been put forward by the Commission more than two years ago, the unanimity required in the Council of the EU to adopt it has still not been reached.²⁴ On 18 January 2024, the European Parliament adopted a resolution on this file, urging the Council to adopt the proposal so that the Commission could proceed to the second step.²⁵

At the time of concluding this report, the Council of the EU had still not adopted the decision.

²¹ A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime, COM(2021)777, European Commission, 9 December 2021 - <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52021DC0777>

²² Bulgaria, Czechia, Germany, Italy, and Poland. Rainbow Europe website - <https://rainbow-europe.org/>

²³ Austria, Estonia, Ireland, Latvia, Lithuania, The Netherlands, Romania, Slovakia, and Slovenia.

²⁴ The resolution adopted by the European Parliament on 20 October 2022 presented further names Hungary, Poland, and Czechia as the three countries who are blocking the adoption of the Commission proposal.

²⁵ Resolution on extending the list of EU crimes to hate speech and hate crime (2023/2068(INI)), European Parliament, 18 January 2024 - https://www.europarl.europa.eu/doceo/document/TA-9-2024-0044_EN.html



The Equality Package

In December 2022, the European Commission put forward what it called the 'Equality Package' containing three legislative proposals announced in the strategy: two concerned the functioning of equality bodies in the EU and the third one concerned parenthood rights in the EU.

Equality bodies

Equality bodies are independent organizations which aim to promote equal treatment. They can provide advice, and sometimes legal support, to citizens who have experienced discrimination based on various grounds such as race, disability, or sexual orientation. They also conduct research and provide training to promote equality.

Over the last 25 years, some EU equality directives have made it mandatory for each EU Member State to set up a national equality body to monitor the implementation of EU directives on equality.²⁶ So far, the European Commission had only provided discretionary guidelines on how these equality bodies should be set up and managed.

The legislative proposals put forward by the European Commission in December 2022 aimed to provide stricter EU rules on equality bodies to strengthen their role.²⁷ For example, the proposals included measures to make sure that equality bodies would be independent and benefit from enough resources to carry out their tasks effectively. They also aimed at increasing the role of equality body in the support of the victims or in raising awareness on discrimination.

However, these proposals could not extend the list of the types of discrimination mandatorily covered by the equality bodies as this is limited by the existing EU directives on the matter. Most of these directives concern gender equality – which is defined as a discrimination based on sex – in the field of employment, social security or in goods and services.

Because the EU equality directives in question have been adopted under two different legislative procedures, the definition of standards for equality bodies in the EU required the adoption of two new directives: one adopted by the Council after consultation of the European Parliament, the other one adopted by the Council and the European Parliament

²⁶ Namely, the [Racial Equality Directive \(2000/43/EC\)](#), the [Gender Equality Directive in the field of goods and services \(2004/113/EC\)](#), the [Gender Equality Directive in the field of employment \(2006/54/EC\)](#), and the [Gender Equality Directive in the field of self-employment \(2010/41/EU\)](#). Two other equality directives – [The Employment Equality Directive \(2000/78/EC\)](#) and the [Gender Equality Directive in the field of Social Security \(79/7/EEC\)](#) – were not mentioning equality bodies. The Commission proposals made sure that the monitoring of these two directives would be added to the scope of the equality bodies.

²⁷ Equality Package: Commission proposes to strengthen equality bodies to fight discrimination, European Commission, 7 December 2022 - https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7507



under the ordinary legislative procedure.²⁸ However, both proposals by the Commission were strictly similar in content.

To ensure consistency and coherence, both proposals were negotiated together, giving more leverage to the European Parliament in the process. The interinstitutional negotiations led to the adoption of a compromise on both texts in December 2023. The Council Directive was approved with unanimity by the Council of the EU on 21 February 2024.²⁹ The other directive in co-decision is expected to be approved by the European Parliament and the Council of the EU by May 2024.

The compromised texts retain the proposals of the European Commission ensuring the independence of the equality bodies. They mention the support that the equality bodies can provide to any victim regardless of their gender, gender identity and gender expression which ensure a wide interpretation of the discrimination based on sex as defined in the equality directives covered. They also provide modalities for equality bodies to act in court proceedings when the EU directives are breached.

As national equality bodies usually have a mandate that goes beyond the monitoring of the EU equality directives, it is expected that ensuring a proper functioning of these institutions will have positive effects on their overall actions, usually covering the support for LGBTIQ+ people victims of discrimination.

However, the adopted texts provide no obligations for equality bodies to apply the same level of protection and action for victims of discrimination in situations that are not covered by the EU equality directives. Only the adoption of new equality directives at EU level would ensure such a level of protection for LGBTIQ+ people, a difficult step as will be discussed further. In the end, the adoption of the equality bodies directive will have quite a limited effect to protect LGBTIQ+ people from discrimination.

Parenthood

The second legislative proposal in the Equality Package of December 2022 aimed at strengthening the protection of the fundamental rights and other rights of children in cross-border situations.³⁰ If adopted, this regulation would provide legal certainty regarding the establishment and recognition of parenthood in cross-border situations within the EU. This proposal was tabled to fulfil the 2020 State of the Union declaration of Ursula von der Leyen,

²⁸ Union of equality: standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, Procedure 2022/0400(COD) -

[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0400\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0400(COD)&l=en)

²⁹ Voting result on the Council directive on equality bodies, Council of the EU, 6785/1/24, 21 February 2024 -

<https://data.consilium.europa.eu/doc/document/ST-6785-2024-REV-1/en/pdf>

³⁰ Equality package: Commission proposes new rules for the recognition of parenthood between Member States, European Commission, 7 December 2022 -

https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7509



“If you are a parent in one country, you are of course a parent in every country”. It would also fully establish in EU law the existing outcomes of the rulings of the Court of Justice of the EU regarding the recognition of parenthood.

In its proposal, the Commission estimated that 2 million children in the EU ‘may currently face a situation in which the recognition of their parenthood as established in one Member State is not recognised for all purposes in another Member State’. This includes, but is not limited to, many children living in LGBTIQ+ families as marriage between and adoption by LGBTIQ+ parents is not recognized in all the Member States of the EU. With this objective, the measures proposed would apply “irrespective of how the child was conceived or born and irrespective of the type of family of the child”.

With this proposal, the Commission intends to set Union rules to clarify the competences at national level to establish parenthood with the aim to facilitate the processes of recognition of parenthood between the Member States, including by the creation of a European Certificate of Parenthood. The proposal then aims to extend the recognition of parenthood – already guaranteed when it comes to free movement for example – so that matters of succession or maintenance rights would also be covered.

Article 81(3) of the Treaty on the Functioning of the European Union states that measures concerning family law with cross-border implications are to be adopted following a special legislative procedure with the adoption of the regulation by the Council at unanimity, following the consultation of the European Parliament.

On 14 December 2023, the European Parliament adopted a legislative resolution supporting the proposal of the Commission while proposing some amendments to the text.³¹ It is important to mention that whereas the Commission proposal applies to all children, the interventions during the debate in the European Parliament held on 13 December 2023 focused mainly on children in LGBTIQ+ families with many interventions referring to surrogacy.³²

In its resolution, the European Parliament proposes amendments to stress the impact of the regulation for the recognition of parenthood and the rights of children living in LGBTIQ+ families. It introduces the need for the EU and the Member States to develop guidelines and training to ensure an effective application of the regulation. It also proposes technical modifications to ensure that language is not a barrier in the processes. However, in the context of the consultation procedure, the Council is not bound to consider these proposed amendments.

³¹ Legislative resolution on the proposal for a Council regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood COM(2022)0695 – C9-0002/2023 – 2022/0402(CNS)), European Parliament, 14 December 2023 - https://www.europarl.europa.eu/doceo/document/TA-9-2023-0481_EN.html

³² Verbatim report of proceedings, European Parliament, 13 December 2023 - https://www.europarl.europa.eu/doceo/document/CRE-9-2023-12-13-ITM-015_EN.html



In the Council of the EU, the discussion on the proposal is ongoing. The text is rather technical due to the inherent complexity of the mutual recognition of parenthood between national systems that work differently. The regulation would need to be implemented by civil servants at the local level, requiring clear procedures and training. In that context the establishment of a European certificate of parenthood may appear to cause more problems than simplifications.

Now that the Parliament has adopted its resolution, the adoption of the text fully depends on the capacity of the Council to reach unanimity on a compromised text. Although the law would apply to all parents and children, it is expected that the adoption of the text will face the question of recognition of rainbow families. Given the opposition of some of the Member States on this aspect, there is no way to know if, and when, unanimity can be reached in the Council.

Strategic lawsuits against public participation

In the last years, anti-rights actors have been using strategic lawsuits against public participation (SLAPP) as a tactic to harass, intimidate, and silence journalists or human rights defenders – including LGBTIQ+ activists – by burdening them with unfounded legal procedures. This tactic has been used for example against Polish activist Bart Staszewski who was denouncing the ‘LGBT-free zones’ in his country.³³

In April 2022, the Commission adopted a proposal for a directive whose purpose was to protect human rights activists from SLAPPs.³⁴ The proposal followed the ordinary legislative procedure within the Council of the EU and the European Parliament. It was approved by the European Parliament on 27 February 2024 and by the Council of the EU on 19 March 2024, with Hungary being the only Member State voting against.³⁵

The directive requests the Member States to make sure that there are ways for early dismissal of manifestly unfounded claims made against human rights defenders. It requires to establish accelerated procedures for and remedies against these types of abusive court proceedings. It also protects human rights defenders from judgements made in non-EU countries.

However, the directive only covers cases with a cross-border dimension as this is the limit of the EU competence on the matter. This means that, to be applicable, the parties in the case must be domiciled in different EU countries or that the elements of the case must have a cross-

³³ Poland: Bart Staszewski facing SLAPPs for legitimately defending LGBT rights, United Nations Special Rapporteur on Human Rights Defenders, 19 January 2022 - <https://srdefenders.org/poland-bart-staszewski-slapps-for-legitimately-defending-lgbt-rights-joint-communication/>

³⁴ Protection of journalists and human rights defenders from manifestly unfounded or abusive court proceedings, Procedure 2022/0117(COD) - [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0117\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2022/0117(COD)&l=en)

³⁵ Voting result on the directive on SLAPPs, Council of the EU, 8003/24, 19 March 2024 - <https://data.consilium.europa.eu/doc/document/ST-8003-2024-INIT/en/pdf>



border dimension.³⁶ This means that only a very limited number of existing situation of SLAPPs are covered, as most often human rights defenders act in their own country.

When transposing the directive, the Member States are invited to adopt similar measures for domestic cases.³⁷ However, they are not bound to, which considerably limits the scope of the progress made with the directive.

The Equality Directive of 2008

In July 2008, the European Commission adopted a proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age, or sexual orientation.³⁸ Known as the ‘horizontal Equal Treatment Directive’, this EU legislation would extend the protection from discrimination based on sexual orientation to social protection, health care, education and access to goods and services, including housing. So far, discrimination based on sexual orientation is only prevented at EU level in employment, occupation, and vocational training.

Yet, 16 years after the proposal was put forward by the Commission, the discussions are still ongoing at the Council of the EU, and the unanimity required to adopt the directive has still not been reached. This is particularly worrying for two reasons. First, in the last 16 years, every single Member State of the EU has assumed the presidency of the Council of the EU and has failed to advance the file to reach an agreement. Second, the proposal of 2008 does not mention discrimination based on gender identity, gender expression or sex characteristics and appears somehow outdated. Even if the current proposal was adopted now, it would only be considered a limited advancement.

On 16 November 2022, the Czech Presidency of the Council of the EU published a progress report on the file indicating that the recent discussions had been focussed on the provisions linked to discrimination regarding disabilities. The report mentions that delegations had questioned the need for such regulation at EU level while two Member States still had general reservations on the proposal.

In the LGBTIQ Equality Strategy adopted in 2020, the European Commission had called once more “the Council to adopt the proposal in order to close the gaps in EU law protection against discrimination based on sexual orientation”. While the 2023 progress report on the

³⁶ This opens the possibility to enlarge the number of cases that would fall under the directive. A local activist acting in the name of an organisation established in another country could provide a cross-border dimension to the case for example.

³⁷ Commission recommendation (EU) 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings (‘Strategic lawsuits against public participation’), C/2022/2428, OJ L 138, 17.5.2022, p. 30–44 - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022H0758>

³⁸ 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)426, European Commission, 2 July 2008 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52008PC0426>



implementation of the LGBTIQ Equality Strategy still mentioned that this file was a priority for the Commission, it is now the fourth Commission that has failed to see this text adopted by the Council.³⁹

2.4 - Non-legislative actions

The European Council

A week after the adoption of the 'anti-LGBT propaganda' law in Hungary, the European Council was holding a meeting in Brussels. In a few days, 18 Member States had already denounced the law and called on the Commission to take all measures to refer the matter to the Court of Justice of the EU.⁴⁰

In this context, and for the very first time in the history of the EU, LGBTIQ+ non-discrimination was discussed by the heads of state and government.⁴¹ The official comment from the President of the European Council, Charles Michel, was that it had been a “sincere and necessary debate on LGBTIQ+ rights” and that the “primacy of EU law is a fundamental principle”.

When reporting about the meeting to the European Parliament on 7 July 2021, Commission President Von der Leyen indicated that “Heads of State and Government had a very personal and emotional discussion about the new Hungarian law.”⁴² She confirmed then that the “leaders in the European Council were very determined to support the Commission in taking action”.

According to diplomats present, this was one of the most heated debates in the history of the European Council. Yet, this was the only occasion over the last five years when LGBTIQ+ topics were discussed at the highest level within the European Council.

³⁹ Progress report on the implementation of the LGBTIQ Equality Strategy 2020-2025, European Commission, 12 April 2023 - https://commission.europa.eu/system/files/2023-04/JUST_LGBTIQ%20Strategy_Progress%20Report_FINAL_WEB.pdf

⁴⁰ Eighteen countries unite at Belgium's initiative to defend LGBTIQ rights in Europe, Sophie Wilmès website, Remy Esquiliche, 22 June 2021 - <https://www.sophiewilmes.be/en/thirteen-countries-unite-at-belgiums-initiative-to-defend-lgbtig-rights-in-europe/>

⁴¹ European Council of 24-25 June 2021 - <https://www.consilium.europa.eu/en/meetings/european-council/2021/06/24-25/>

⁴² Speech by President von der Leyen at the European Parliament Plenary on the conclusions of the European Council meeting of 24-25 June 2021, 7 July 2021 - https://ec.europa.eu/commission/presscorner/detail/en/speech_21_3526



The European Commission

In the context of the EU LGBTIQ Equality Strategy, the European Commission launched a range of actions beyond legislative proposals. Many of them were presented in the progress report on the strategy published in 2023.⁴³

Actions connected to the LGBTIQ Equality Strategy

One action was the setup of the LGBTIQ Equality Subgroup in May 2021 to enhance the implementation of the strategy in the Member States. This subgroup of the High-Level Group on Non-discrimination, Equality and Diversity brings together experts from 25 Member States and Norway.⁴⁴ It acts as a forum to exchange best practices on legal protection against discrimination and inclusion of LGBTIQ+ people, such as on procedures for legal gender recognition based on self-determination. In April 2022, the subgroup published guidelines for the adoption of strategies and action plans to enhance LGBTIQ equality.⁴⁵

In December 2023, the European Commission updated the guidelines on the right of free movement of EU citizens and their families. These guidelines reaffirm the understanding of free movement of LGBTIQ+ people and rainbow families considering the rulings of the Court of Justice of the EU on the matter.⁴⁶ The guidelines remind that same-sex marriages and parenthood established in a Member State must be accepted by the others for matters of free movement even if these are not legally provided in the national law.

Various EU funding programmes adopted for the period 2021-2027 include a dimension related to the inclusion or the well-being of LGBTIQ+ people such as the Citizens, Equality, Rights, and Values (CERV) programme, Erasmus+ or Horizon Europe regarding research on the access to health care services for LGBTIQ+ people.

Within the EU strategy on the rights of the child adopted in March 2021, the Commission announced its intention to support the exchange of good practices on ending intersex genital

⁴³ Progress report on the implementation of the LGBTIQ Equality Strategy 2020-2025, European Commission, 12 April 2023 - https://commission.europa.eu/system/files/2023-04/JUST_LGBTIQ%20Strategy_Progress%20Report_FINAL_WEB.pdf

⁴⁴ Cyprus and Latvia have not yet joined the subgroup, although Cyprus has now mentioned its interest to do so.

⁴⁵ Guidelines for Strategies and Action Plans to Enhance LGBTIQ Equality, High-level group on non-discrimination, equality and diversity, LGBTIQ Equality Subgroup, April 2022 - https://commission.europa.eu/system/files/2022-09/guidelines_for_strategies_and_action_plans_to_enhance_lgbtiq_equality_2022final16_05.pdf

⁴⁶ Guidance on the right of free movement of EU citizens and their families, European Commission, 6 December 2023 - https://commission.europa.eu/document/74103245-b262-4358-8d74-77be9d0ccb15_en



mutilations.⁴⁷ The document also briefly mentions the online and offline harassment of LGBTIQ+ teenagers.

Regarding the EU external affairs, the diplomatic service of the EU – the European External Action Service (EEAS) – adopted a diversity agenda for 2023-2025.⁴⁸ This agenda covers both the processes of the service, making sure that EEAS champions diversity and inclusion internally, and the integration of diversity and inclusion in all the interactions of EEAS with third parties.

In the last years, the EEAS has also developed a strong focus on foreign information manipulation and interference (FIMI). FIMI is defined as a ‘pattern of behaviour that threatens or has the potential to negatively impact values, procedures and political processes’. The EEAS established a methodology and a toolbox to understand and detect FIMI. In October 2023, the EEAS published a report regarding the different tactics, techniques and procedures used by foreign actors to target the LGBTIQ+ communities in the EU.⁴⁹ This work was mentioned in the context of the Defence of Democracy communication adopted by the European Commission in December 2023.⁵⁰ In its annual report on FIMI published in January 2024, the EEAS keeps a focus on the impact of FIMI linked to the LGBTIQ+ communities.⁵¹

Infringement procedures

Following the multiplication of ‘LGBT-free zones’ in Poland and the adoption of the ‘anti-LGBT propaganda law’ in Hungary, the European Commission started legal action against both countries on 15 July 2021.⁵² In these infringement procedures, the Commission accused both countries to breach the values of equality and the protection of fundamental rights enshrined in Article 2 of the Treaty on the European Union. The procedures started with a discussion with both Member States. They had two months to answer the concerns of the Commission.

⁴⁷ EU strategy on the rights of the child, COM(2021)142, European Commission, 24 March 2021 - <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52021DC0142>

⁴⁸ Diversity and Inclusion Agenda in the EEAS 2023-2025, European Commission, 6 March 2023 - https://www.eeas.europa.eu/eeas/diversity-and-inclusion-agenda-eeas-2023-2025_en

⁴⁹ FIMI targeting LGBTIQ+ people: Well-informed analysis to protect human rights and diversity, EEAS, 23 October 2023 - https://www.eeas.europa.eu/eeas/fimi-targeting-lgbtqi-people_en?s=229

⁵⁰ Communication on Defending European democracy, COM(2023)630, European Commission, 12 December 2023 - https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13730-Defending-European-democracy-Communication_en

⁵¹ 2nd EEAS Report on Foreign Information Manipulation and Interference Threats, EEAS, 23 January 2024 - https://www.eeas.europa.eu/eeas/2nd-eeas-report-foreign-information-manipulation-and-interference-threats_en

⁵² EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people, European Commission, 15 July 2021 - https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3668



Following this first exchange, the Commission considered that the answers given by Hungary were not satisfactory and decided to take the next step in December 2021.⁵³ As the answers from Hungary were still not satisfactory, the European Commission decided on 15 July 2022 to refer Hungary to the Court of Justice of the EU.⁵⁴

However, it took another five months for the European Commission to file the case at the court. The procedure was registered on 19 December 2022 and published in the official journal of the EU on 13 February 2023. This publication opened the possibility for Member States to join the court case, siding with the European Commission against Hungary. Following the campaign of Forbidden Colours, Reclaim and Hatter Society, 16 Member States and the European Parliament ended up joining the case.⁵⁵ This participation made it the largest human rights case in the history of the EU.

In the Autumn 2023, all the parties had to submit their arguments and written observations to the court. It is expected that a hearing will be held in the spring of 2024 and that a ruling on the case could be adopted by the end of 2024.

The procedure launched against Poland regarding the 'LGBT-free zones' did not follow the same path. As legal efforts and financial pressure were bearing fruits, with the number of 'LGBT-free zone' decreasing, the European Commission decided to discretely close the infringement procedure against Poland on 26 January 2023.⁵⁶

Suspension of EU funds

The EU budget for 2021-2027 was adopted integrating new mechanisms to protect the fundamental values of the EU. The Member States now need to fulfil certain 'horizontal enabling conditions' to benefit from a large part of EU funds. One of these conditions concerns the effective application and implementation of the Charter of Fundamental Rights. Similar mechanisms were introduced in the recovery instrument under the 'Next Generation EU' launched in 2021 after the Covid crisis. In addition, the 'rule of law conditionality' mechanism allows to block the distribution of EU funds to Member States that breach the principle of the rule of law.⁵⁷

⁵³ December infringements package: key decisions, European Commission, 2 December 2021 -

https://ec.europa.eu/commission/presscorner/detail/en/inf_21_6201

⁵⁴ July Infringements package: key decisions, European Commission, 15 July 2022 -

https://ec.europa.eu/commission/presscorner/detail/en/inf_22_3768

⁵⁵ More about the work and campaign of Forbidden Colours - <https://www.forbidden-colours.com/2023/01/19/lawsuit-hungary/>

⁵⁶ EU ends legal action against Poland over anti-LGBT zones, Notes from Poland, 16 February 2023 -

<https://notesfrompoland.com/2023/02/16/eu-ends-legal-action-against-poland-over-anti-lgbt-zones/>

⁵⁷ This is known as the Recovery and Resilience Facility instrument - https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en



The Council of the EU and the European Commission made use of these different mechanisms to block EU funds for Poland and Hungary based on the observed violation of rule of law and the fundamental rights of LGBTIQ+ people.

In September 2021, the European Commission had put 126 million euros of the REACT-EU fund on hold for the five Polish provinces that declared themselves as ‘LGBT Free Zones,’ due to their discriminatory policies⁵⁸. This action was part of a broader stance by the EU, which was considering blocking a significant amount of EU cohesion funds allocated to Poland, potentially running into billions of euros, as reported by the Financial Times⁵⁹. EU funding had also been denied in 2020 to six Polish cities that had declared themselves as ‘LGBT-free zones’ and were applying for town-twinning applications supported by the EU.⁶⁰

All the different mechanisms mentioned here were used in December 2022 to block more than 28 billion euros of EU funds for Hungary following breaches on the rule of law and the fundamental rights of citizens in the country.⁶¹ Among these funds, about 700 million euros were blocked in direct connection with the repeal of the ‘anti-LGBT propaganda’ law adopted in June 2021.⁶²

Alongside the stick of infringement procedures, these mechanisms to block EU funding were used by the EU as a carrot to push Member States like Poland and Hungary to adhere to EU values, including the respect of the fundamental rights of LGBTIQ+ people. While it has been quite effective to repeal the ‘LGBT-free zones’ in Poland, these mechanisms have proven so far ineffective regarding the repeal of the ‘anti-LGBT propaganda’ law in Hungary.

The Council of the EU

In September 2019, during its presidency of the Council of the EU, Finland organised a conference on ‘Advancing LGBTI Equality in the EU’. The European Commission, Member States and civil society organisations agreed on the need for an EU strategy for LGBTI

⁵⁸ ‘LGBT Free Zone’-regions repealed after EU-pressure, Forbidden Colours, 28 September 2021 - <https://www.forbidden-colours.com/2021/09/28/lgbt-free-zone-regions-repealed-after-eu-pressure/>

⁵⁹ Poland and Hungary face threat to EU regional aid over human rights concerns, Financial Times, 21 September 2021 - <https://www.ft.com/content/3ca265c0-d1d1-4acf-bc9e-b208dab98293>

⁶⁰ EU blocks funding for six towns that declared themselves ‘LGBT-Free Zones’, James Frater and Lianne Kolirin, CNN, 31 July 2020 - <https://edition.cnn.com/2020/07/31/europe/poland-lgbt-eu-funding-intl/index.html>

⁶¹ Commission considers that Hungary's judicial reform addressed deficiencies in judicial independence, but maintains measures on budget conditionality, European Commission, 13 December 2023 - https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6465

⁶² EU Commission unfreezes nearly a third of funds blocked to Hungary, Federico Baccini, EU News, 13 December 2023 - <https://www.eunews.it/en/2023/12/13/eu-commission-unfreezes-nearly-a-third-of-funds-blocked-to-hungary/>



Equality.⁶³ This conference happened just before the current Commission led by Ursula von der Leyen took office.

Despite this initial impulse, all the following presidencies failed in adopting any Council conclusions regarding the situation of LGBTIQ+ people in the EU, as unanimity is required.⁶⁴ In June 2023, the Swedish presidency reported a failure in adopting Council conclusions on the safety of LGBTI persons in the EU. The document, published as Presidency conclusions, mentions that 25 of the 27 Member States delegations supported the text.⁶⁵

The conclusions included a commitment from the Member States to “promote and support the fundamental right of all persons within the EU, including LGBTI persons, to be safe from violence, harassment and discrimination” and to “continuously address violations of fundamental rights, including such violations against LGBTI persons and keep matters of LGBTI safety on the political agenda”.

The conclusions invited all Member States to protect LGBTIQ+ persons from violence, hate speech and hate crime as well as harmful practices such as ‘conversion therapies’. They also call them to “counteract the spread of conspiracy narratives and malign information influence relating to LGBTI persons”.

Finally, the conclusions asked the European Commission to “uphold and step up efforts to ensure the protection of LGBTI persons from violence, harassment and discrimination”. It also requested the institution to “ensure adequate funding for civil society organisations, human rights defenders and other relevant actors that counteract violence, harassment and discrimination against all persons, including LGBTI persons”.

As it was presented in the previous section, the only legislative acts related to LGBTIQ+ equality adopted by the Council of the EU over the last five years were the two proposals regarding the establishment of EU rules on equality bodies and the proposal on the protection from SLAPPs. The adoption of these texts was made possible by the fact that they were following the ordinary legislative procedure requiring only a qualified majority in the Council.⁶⁶ However, the impact of these legislations is rather limited for LGBTIQ+ people, as discussed earlier.

⁶³ Advancing LGBTI Equality in the EU: from 2020 and beyond – Conference Report, Finland’s Presidency of the Council of the EU and European Commission, September 2019 -

https://commission.europa.eu/system/files/2020-02/final_report_advancing_lgbt_equality_in_the_eu_conference.pdf

⁶⁴ The last set of Council conclusions on LGBTI equality were adopted almost 8 years ago, in June 2016, under the Dutch presidency - <https://www.consilium.europa.eu/en/press/press-releases/2016/06/16/epsco-conclusions-lgbti-equality/>

⁶⁵ Presidency conclusions on the safety of LGBTI persons in the European Union, Council of the EU, 9 June 2023 - <https://data.consilium.europa.eu/doc/document/ST-9942-2023-INIT/en/pdf>

⁶⁶ For the two legislative proposals on equality bodies, the need for coherence between the two texts made sure that they were negotiated together with the European Parliament whereas one of them required unanimity from the Council.



The most important legislative texts for LGBTIQ+ people – the 2008 Equality directive, the addition of hate speech and hate crime to the list of EU crimes, and the directive on parenthood – all require unanimity in the Council and none of them have been approved so far.

The European Parliament

Over the last 5 years, the European Parliament adopted almost 150 resolutions mentioning the rights of LGBTIQ+ people as referenced on the website of the LGBTI Intergroup of the European Parliament.⁶⁷ Among these, eight resolutions were focussing specifically on the rights of LGBTIQ+ people.

Resolution on the situation of LGBTI people in Uganda – 24 October 2019

The resolution on the situation of LGBTI people in Uganda was adopted in the context of growing concerns regarding the evolution of the legislation in the country regarding the criminalisation of same-sex sexual acts.⁶⁸ A bill discussed in the Ugandan parliament at that time would introduce death penalty for ‘aggravated homosexuality’.

The adopted resolution “reminds the Ugandan Government of its obligations under international law and under the Cotonou Agreement, which calls for universal human rights to be respected”. It also calls on the EU to support civil society organisations working on the respect of the human rights of LGBTIQ+ people in the country. The Parliament also requested that the Commission and the Council include the mention of non-discrimination based on sexual orientation in any future agreement with the country.

Resolution on public discrimination and hate speech against LGBTI people, including LGBTI free zones – 18 December 2019

At a moment when the so-called ‘LGBT free zones’ were multiplying in Poland, the European Parliament adopted a resolution where it expressed “deep concern at the growing number of

⁶⁷ Resource list of the European Parliament’s LGBTI Intergroup - <https://lgbti-ep.eu/resource-list/>

⁶⁸ Resolution on the situation of LGBTI people in Uganda (2019/2879(RSP)), European Parliament, 24 October 2019 - https://www.europarl.europa.eu/doceo/document/TA-9-2019-0042_EN.html



attacks against the LGBTI community that can be observed in the EU, coming from states, state officials, governments at national, regional and local levels, and politicians”.⁶⁹

Inter alia, the resolution called “on the Commission to take concrete measures to ensure freedom of movement for all families, including LGBTI families” as well as measures to combat hate speech and hate crime against LGBTIQ+ people. The parliament called “on Poland to firmly condemn discrimination against LGBTI people” and requested urgently “a comprehensive, permanent and objective EU mechanism on democracy, the rule of law and fundamental rights that includes the protection of LGBTI rights”.

Resolution on the declaration of the EU as an LGBTIQ Freedom Zone – 11 March 2021

Whereas the number of so-called ‘LGBT free zones’ were increasing in Poland over 2020 and a municipality in Hungary had also adopted an ‘anti-LGBT propaganda’ resolution, the European Parliament adopted a resolution denouncing actions taken in Poland, Hungary, Latvia, and Romania against the inclusion and respect of the fundamental rights of LGBTIQ+ people.⁷⁰ The European Parliament also recognized that “the backlash against LGBTIQ people is often coupled with a broader deterioration in the situation of democracy, the rule of law and fundamental rights”.

The European Parliament declared “the European Union an LGBTIQ Freedom Zone”, paraphrasing the non-discrimination articles of the EU treaties and Charter of fundamental rights. The resolution denounced all forms of violence or discrimination against LGBTIQ+ people in the EU.

Resolution on breaches of EU law & the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament – 8 July 2021

On 8 July 2021, the day the Hungarian ‘anti-LGBT propaganda’ law entered into force, the European Parliament adopted a resolution that “condemns in the strongest possible terms the Law adopted by the Hungarian Parliament, which constitutes a clear breach of the EU’s values, principles and law”.⁷¹ The Parliament recognizes that the Hungarian law “resembles the so-called 2013 Russian LGBT propaganda law” and that it “will restrict severely and

⁶⁹ Resolution on public discrimination and hate speech against LGBTI people, including LGBTI free zones (2019/2933(RSP)), European Parliament, 18 December 2019 -

https://www.europarl.europa.eu/doceo/document/TA-9-2019-0101_EN.html

⁷⁰ Resolution on the declaration of the EU as an LGBTIQ Freedom Zone (2021/2557(RSP)), European Parliament, 11 March 2021 - https://www.europarl.europa.eu/doceo/document/TA-9-2021-0089_EN.html

⁷¹ Resolution on breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament (2021/2780(RSP)), European Parliament, 8 July 2021 - https://www.europarl.europa.eu/doceo/document/TA-9-2021-0362_EN.html



intentionally the rights and freedoms of LGBTIQ persons, as well as children’s rights” in the country, as it happened in Russia.

The European Parliament then “calls on the Commission to immediately take legal action, namely by launching an accelerated infringement procedure against Hungary”. In the situation that the Commission would not act, it reminds the EU Member States that they can also bring the matter before the Court of Justice of the EU.

The resolution stresses that “violations of the human rights of LGBTIQ persons are part of a larger political agenda which is leading to the dismantling of democracy and the rule of law, including media freedom, and should be considered as systemic violations of Article 2 TEU”. It “expresses deep concern that the deterioration of media freedom is leading to an increase in the scapegoating and targeting of minorities, including LGBTIQ people”. The European Parliament then “reiterates its calls on the Commission and the Council to finally recognise the urgent need for action to defend the values enshrined in Article 2 TEU.”

Beyond the degrading situation in Hungary, it notes similar instances of LGBTQ+ hate and discrimination in other EU countries: Poland, Croatia, Czech Republic, Lithuania, and Latvia.

Resolution on LGBTIQ rights in the EU – 14 September 2021

After receiving several petitions regarding the rights of rainbow families in the EU and the situation of LGBTIQ+ people in Poland and after organising a workshop where the study ‘Obstacles to the Free Movement of Rainbow Families in the EU’ was presented⁷², the European Parliament Committee on Petitions put forward a resolution on LGBTIQ rights in the EU adopted by the European Parliament in September 2021.⁷³

In this resolution, the European Parliament expresses “its deepest concern regarding the discrimination suffered by rainbow families and their children in the EU and the fact that they are deprived of their rights on grounds of sexual orientation or gender identity, or sex characteristics of the parents or partners”.

The European Parliament “calls on the Commission to ensure that all EU Member States respect continuity in law as regards the family ties of members of rainbow families”, that parenthood recognized in one EU Member States is recognized in all the EU and that freedom of movement is ensured for all families.

Regarding the situation in Poland and in Hungary, the European Parliament “calls on the Commission to make full use of the tools available to it, to address the clear risk of a serious breach by Poland and Hungary of the values on which the Union is founded, in particular

⁷² Obstacles to the Free Movement of Rainbow Families in the EU, European Parliament, March 2021 - [https://www.europarl.europa.eu/cmsdata/257913/IPOL_STU\(2021\)671505_EN.pdf](https://www.europarl.europa.eu/cmsdata/257913/IPOL_STU(2021)671505_EN.pdf)

⁷³ Resolution on LGBTIQ rights in the EU (2021/2679(RSP)), European Parliament, 14 September 2021 - https://www.europarl.europa.eu/doceo/document/TA-9-2021-0366_EN.html



expedited infringement procedures and applications for interim measures before the Court of Justice, as well as budgetary tools.”

Resolution on growing hate crimes against LGBTIQ+ people across Europe in light of the recent homophobic murder in Slovakia – 20 October 2022

Following the murder of two LGBTIQ+ persons in Bratislava, Slovakia, the European Parliament adopted a resolution on 20 October 2022 condemning this act of terror.⁷⁴ The resolution denounces “the climate of hate, intolerance and intimidation towards LGBTIQ+ community in Slovakia [...] cultivated not only by far right and extremist movements, but also by representatives of the church and political elites”.

The European Parliament “strongly condemns all forms of hate and violence, as well as any physical or verbal attacks, against persons based on their gender, sexual orientation, gender identity or expression and sex characteristics.” It calls on the Slovakian government to secure equal rights for LGBTIQ+ people in the country. It also “urges the Council to adopt as soon as possible the Council decision on the extension of the list of EU crimes to include speech and hate crimes”, noting that Hungary, Poland, and Czechia are the three countries blocking the adoption of this proposal.

The resolution insists on the link between hate speech and hate crime against LGBTIQ+ people and the rise of far-right political parties and conservative organisations in Europe. It calls on the EU to launch campaigns against anti-LGBTIQ+ narratives and on the Commission “to also prioritise the follow-up of anti-LGBTIQ+ narratives in their disinformation efforts”. It also “calls on the Commission and the Member States to support civil society at European, national, regional and local levels to strengthen democracy, rule of law and fundamental rights”.

Resolution on the universal decriminalisation of homosexuality – 18 April 2023

On 21 March 2023, the Ugandan Parliament adopted the Anti-Homosexuality Bill that proposed the application of the death penalty for the offence of ‘aggravated homosexuality’.⁷⁵ This bill also entailed “the complete censorship of LGBTIQ issues, including for civil society organisations undertaking human rights-based advocacy and healthcare work”. On 18 April

⁷⁴ Resolution on growing hate crimes against LGBTIQ+ people across Europe in light of the recent homophobic murder in Slovakia (2022/2894(RSP)), European Parliament, 20 October 2022 - https://www.europarl.europa.eu/doceo/document/TA-9-2022-0372_EN.html

⁷⁵ As mentioned in the resolution, the bill also proposed life imprisonment for the offence of ‘homosexuality’, up to 14 years in prison for ‘attempted homosexuality’, and up to 20 years in prison for ‘promoting homosexuality’.



2023, whereas that bill had not been signed into law⁷⁶, the European Parliament adopted a resolution calling for the universal decriminalisation of homosexuality.⁷⁷

The resolution “condemns, in the strongest possible terms, the Bill adopted [...] by the Ugandan Parliament” and denounces “the scapegoating of LGBTIQ people by the majority of the Ugandan political class”. It also “unambiguously condemns all laws, practices and official positions criminalising homosexuality and transgender identity”.

The European Parliament notes its worry “about the current global anti-rights, anti-gender and anti-LGBTIQ rhetoric movements, which are fuelled by some political and religious leaders around the world, including within the EU” and “strongly condemns the spread of such rhetoric by some influential political leaders and governments in the EU, such as in Hungary, Poland and Italy.”

In the context of the Ugandan bill being signed into law – which it was on 24 May 2023 – the European Parliament calls for various sanctions towards Uganda and “the political and religious leaders who instigated and supported the Bill”. It also calls on EU diplomacy to take steps towards a “universal decriminalisation of homosexuality and transgender identity”.

Resolution on the implementation of the EU LGBTIQ Equality Strategy 2020-2025 - 8 February 2024

On 8 February 2024, the European Parliament adopted a resolution regarding the implementation of the EU LGBTIQ Equality Strategy adopted in November 2020.⁷⁸ The aim of this resolution was to evaluate the way the Commission has carried out the current strategy and propose recommendations for the development of a new strategy starting in 2025.

Whereas the European Parliament “acknowledges the progress made for the implementation of the LGBTIQ Equality Strategy 2020-2025”, it stresses “that real equality for LGBTIQ+ persons in the EU is still far away from current reality”. The resolution mentions the efforts still require against discrimination towards LGBTIQ+ people in employment, health services, education, social protection or access to goods and services.

The resolution reiterates previous concerns regarding the rise of hate speech and hate crimes against LGBTIQ+ people and condemns the increasing scapegoating of LGBTIQ+ communities. It stresses the need for a common approach in the EU regarding legal gender recognition, marriages and partnerships, and parenthood.

⁷⁶ Ugandan President Museveni signed it on 26 May 2023 after minor modifications by the Parliament.

⁷⁷ Resolution on the universal decriminalisation of homosexuality in the light of recent developments in Uganda (2023/2643(RSP)), European Parliament, 20 April 2023 - https://www.europarl.europa.eu/doceo/document/TA-9-2023-0120_EN.html

⁷⁸ Resolution on the implementation of the EU LGBTIQ Equality Strategy 2020-2025 (2023/2082(INI)), European Parliament, 8 February 2024 - https://www.europarl.europa.eu/doceo/document/TA-9-2024-0076_EN.html



The European Parliament “regrets the lack of a cohesive overview of EU funding for LGBTIQ+ equality under the different programmes supporting the Strategy” and “emphasises the urgency for the Commission to ensure access to funding for civil society organisations (CSOs) working for the human rights of LGBTIQ+ persons”. It specifically “calls on the Commission to monitor the impacts and fund CSOs and academic projects investigating the anti-gender movement”.

The resolution “calls for the EU and the Member States to ensure the true mainstreaming of LGBTIQ+ rights across all EU policies” and “to involve LGBTIQ+ persons in policymaking”.

Following the infringement procedure launched against Hungary, the European Parliament “calls on the Commission [...] to launch infringement procedures in cases where the fundamental rights of LGBTIQ+ persons have been violated” and having “recourse to expedited procedures and applications for interim measures”. Once rulings have been adopted by the Court, the resolution “calls on the Commission to ensure that Member States comply with the judgments.’

The European Parliament “calls for the EU to give access to asylum to LGBTIQ+ persons, including those from third countries classified as safe countries”. Regarding the foreign policy of the EU, it suggests “the Commission to instate a Special Representative for LGBTIQ+ Equality in the European External Action Service”.

The resolution calls again for the Council to adopt the horizontal anti-discrimination directive blocked since 2008 with the addition of gender identity, gender expression and sex characteristics alongside sexual orientation as grounds for discrimination. It also calls on the Council to adopt the proposal to extend the list of EU crimes in Article 83(1) TFEU to hate speech and hate crimes. The resolution also demands bans on conversion practices, genital mutilations, forced abortions and forced sterilisations at the EU level.

Regarding future developments, the European Parliament “calls on the Commission to draw up a new LGBTIQ+ Equality Strategy for 2025-2030.” This strategy should be “driven by a more robust instrument, accompanied by a target-oriented implementation plan, a strong mainstreaming structure ensuring LGBTIQ+ rights are mainstreamed across all EU policies including all grounds of sexual orientation, gender identity, gender expression and sex characteristics and resource allocation”. The new strategy should “include a timeline and milestones, ensuring the monitoring, evaluation, accountability and learning processes, including the consultation of LGBTIQ+ organisations.”

The European Parliament finally asks the current Commission “to secure a portfolio for an Equality and Diversity Commissioner in the next term” and “encourages the introduction of an LGBTIQ+ rights coordinator in the EU Commission”.



Beyond these eight resolutions, it is interesting to mention the resolution of the European Parliament regarding foreign information manipulation and interference (FIMI) adopted in June 2023.⁷⁹ In this resolution, the Parliament clearly points out “that the LGBTIQ+ community remains a target for foreign interference and disinformation campaigns”. It singles out the situation of the LGBTIQ+ communities in Slovakia, Hungary, and Poland, and denounces “the disinformation spread by state-owned media and far-right organisations on the topic”.

The Parliament then “reiterates its call on the Commission to develop and implement strategies to hinder the financing of anti-gender groups, movements and individuals that actively spread disinformation or participate in information manipulation targeting LGBTIQ+ people.” It is interesting to note that the mirrored conclusions adopted in July 2022 by the Council of the EU on FIMI do not mention at all LGBTIQ+ people.⁸⁰

⁷⁹ Resolution on foreign interference in all democratic processes in the European Union, including disinformation (2022/2075(INI)), European Parliament, 1 June 2023 - https://www.europarl.europa.eu/doceo/document/TA-9-2023-0219_EN.html

⁸⁰ Council Conclusions on Foreign Information Manipulation and Interference (FIMI), Council of the EU, 18 July 2022 - <https://data.consilium.europa.eu/doc/document/ST-11429-2022-INIT/en/pdf>



Part 3 – Analysis

3.1 - Analysis of the situation in the European Commission

In September 2020, a year after the beginning of her term, Ursula von der Leyen set the tone regarding the protection of the fundamental rights of LGBTIQ+ people in her State of the Union speech. Her declarations announced the adoption of the LGBTIQ Equality strategy in November 2020. Despite the evolutions and the events in the following years, there was not a strong focus on this topic on her following State of the Union speeches between 2021 and 2023.⁸¹

The adoption of the LGBTIQ Equality strategy marked a clear signal from the Commission in support to the fundamental rights of LGBTIQ+ people. Yet, one must keep in mind that this strategy is the strategy of the European Commission only. It details what the Commission will do to defend equality for LGBTIQ+ people within its capacity for action.

From that point of view, the Commission has delivered most of what it has promised. It has put forward the legislative proposals regarding equality bodies, parenthood and hate speech and hate crime. It has established the LGBTIQ Equality Subgroup to foster the exchange of good practices between Member States. The Commission has also introduced LGBTIQ+ related topics in the EU programmes providing funding to organisations and projects.

The Commission strategy is however not binding for the other EU institutions. If the Commission has put forward legislative proposals as planned, the Council of the EU has failed to adopt the most important of them so far. On the other hand, the exchange of best practices is a useful soft tool, but his impact is limited to the Member States which are willing to take part in the discussions and implement these best practices at the national level. This means that although the Commission has delivered on the strategy, key effective results regarding its implementation are still pending.

⁸¹ Only short mentions of being able to 'love who you want' and 'be who you are' are present in the 2021 and 2023 State of the Union speeches.



Regarding the enforcement of the rulings of the Court of Justice of the EU, the European Commission did not act decisively. Instead of taking further action in front of the Court regarding the Coman case and the V.M.A and K.S case, it opted for the soft approach to maintain a dialogue with the Member States concerned (Romania and Poland). As a consequence, the concerned Member States have failed to implement the Courts decision so far.

Following the reaction of most Member States to the adoption of the 'anti-LGBT propaganda' law in Hungary, the Commission acted promptly. Only a month after the adoption of the law, the Commission had opened an infringement procedure against Hungary. However, after this swift decision, the process slowed down. Whereas it could have acted faster, it took 18 months – and some pressure – for the Commission to bring the matter to the Court of Justice of the EU. Moreover, it did so without demanding interim measures such as a suspension of the law nor an accelerated procedure. Therefore, the ruling is not expected before the end of 2024 and the law is still in force while the judgement is pending.

The fact that the Commission dropped the infringement procedure against Poland with regards to the 'LGBT-free zones' was also a disappointment for the LGBTIQ+ communities in the country.

The adoption of the LGBTIQ Equality Strategy under Ursula von der Leyen marked a significant commitment from the European Commission to LGBTIQ+ rights. However, the strategy's effectiveness has been constrained by its non-binding nature on other EU institutions and the hesitance of some Member States to implement proposed measures. Despite initial actions, the Commission's cautious enforcement approach and slow progress in legal proceedings against Member States like Hungary and Poland have led to delays in addressing discriminatory laws, leaving substantial challenges in achieving comprehensive LGBTIQ+ equality across the EU.

3.2 - Analysis of the situation in the Council of the EU

As mentioned already, the situation appears blocked in the Council of the EU when it comes to defending the fundamental rights of LGBTIQ+ people. Although most Member States are supportive of progress on these questions, Council conclusions and most legislation currently require unanimity to be adopted. This means that one Member State alone can block any progress on these topics.

Over the last five years, Hungary has been the main blocking delegation on files linked with LGBTIQ+ people in the Council, with the support of Poland till December 2023. Important legislation to guarantee the protection of the rights of LGBTIQ+ people has been stuck for years and new proposals put forward by the current Commission have not yet been adopted.



This situation reveals that the distribution of competencies between the Member States and the EU as well as the procedure to adopt legislation on equality for all are currently hampering any progress on these aspects at the European level. Under the present circumstances, achieving consensus on the fundamental rights of LGBTIQ+ people within the Council of the EU requires a shift in government among some of the 27 Member States. Nonetheless, considering the vast diversity across them, a modification in the EU treaties would be necessary for a lasting resolution to the existing deadlock. Yet, the adoption of new treaties also requires unanimity of the Member States, creating another deadlock.

3.3 - Analysis of the situation in the European Parliament

This section presents an analysis of the votes of the Members of the European Parliament (MEPs) on nine LGBTIQ+ specific texts over the last five years: the votes on the eight resolutions mentioned in the previous section and the vote on the legislative resolution on matters of parenthood and creation of a European Certificate of Parenthood. Although this last legislative resolution is not strictly about the rights of LGBTIQ+ people, the fact that the debate before the adoption of the text mainly focussed on rainbow families indicates that this was the key aspect on which the MEPs cast their vote.

Methodology to analyse the votes of MEPs

The analysis considers the vote of each MEP on each of the nine texts considered. MEPs have three voting options: for, against or abstention. If an MEP is in function but absent for the vote, this is considered as a 'No vote'. If an MEP was not in function at the time of the vote, this is considered as 'Missing'.

Based on how an MEP voted on the nine texts, they are distributed in one of the following voting categories:

- Category 1 – Only For: the MEP has always voted in favour of the texts
- Category 2 – For or Abstained: the MEP has voted either in favour of the texts or abstained
- Category 3 – Mixed voting: the MEP has voted in favour of some texts but against others, with potential abstentions
- Category 4 – Abstained or Against: the MEP has voted against the texts or abstained
- Category 5 – Only Against: the MEP has only voted against the texts⁸²

The MEPs from the United Kingdom who were elected in June 2019 but who seated only till 31 January 2020 are not included in the analysis.⁸³ With 705 MEPs seating since 1 February

⁸² This means that the 'No votes' and 'Missing' are not considered in the classification of an MEP within a category.

⁸³ This only affects the data of the two first votes where only 677 out of the then 751 MEPs are considered. The analysis for these two votes does not include Oriol Junqueras who was elected but never seated in the European Parliament.



2020, 79 MEPs that have been replaced between the first vote on 24 October 2019 and the last vote on 8 February 2024, and nine MEPs who were either missing or did not cast a vote on any of the nine texts considered, the analysis takes into account the votes of 775 MEPs. This analysis also considers the corrections and intentions of vote explaining additional differences between the data presented here and the official results of the vote.⁸⁴

The analysis refers to the MEPs' European political group at the European Parliament. During the 2019-2024 term, there were seven political groups established, here listed politically from left to right:

- The Left group in the European Parliament - GUE/NGL
- The Group of the Progressive Alliance of Socialists and Democrats
- The Group of the Greens/European Free Alliance
- The Renew Europe Group
- The Group of the European People's Party
- The European Conservatives and Reformists Group
- The Identity and Democracy Group

The MEPs who do not belong to any of the political groups are classified as Non-attached Members. Some MEPs have switched political groups over their mandate. The results only consider the political group to which the MEPs were part of on 8 February 2024 or at the end of their mandate if they were replaced before that date.⁸⁵

The following Member States ranking and political parties ranking are based on the distribution of MEPs into the five voting categories and on a voting indicator. This voting indicator is calculated by attributing +1 point for a vote 'for' and -1 point for a vote 'against', with 0 for abstention or a 'No vote'. The sum of the points for all the MEPs from a Member State or a political party is then divided by the number of MEPs in the Member State or the party.

Given that there are nine votes considered, the voting indicator can vary between +9 (all MEPs have voted 'for' in all votes) and -9 (all MEPs have voted 'against' in all votes). The voting indicator gives an indication of the impact of a group of MEPs – from a Member State or a political party – on the adoption of the texts.

Results

Tables 1 and 2 summarise the results of the votes on each of the nine texts. It is important to note first that all the texts submitted to the vote have been adopted with a large majority

⁸⁴ After a roll-call vote, an MEP can express their will to correct their vote if they cast an incorrect vote or indicate their intention of vote if they have not cast a vote. However, this modifications after the vote do not modify the official result of the vote.

⁸⁵ This explains the variation of the number of MEPs per political groups in the results presented in Annex 1.



(between 58% and 81%).⁸⁶ This means that overall, the European Parliament is an institution that has clearly supported the fundamental rights of LGBTIQ+ people over the last five years.

Text submitted to the vote	For	Abstained	Against	No vote	Total
1. Resolution on LGBTI people in Uganda	469	110	4	94	677
2. Resolution on hate speech against LGBTI people	425	74	117	61	677
3. Resolution on the EU as an LGBTIQ Freedom Zone	489	51	139	26	705
4. Resolution on the rights of LGBTIQ citizens in Hungary	457	61	146	41	705
5. Resolution on LGBTIQ rights in the EU	388	121	162	34	705
6. Resolution on growing hate crimes against LGBTIQ+ people	450	42	78	126	696
7. Resolution on the universal decriminalisation of homosexuality	417	36	61	190	704
8. Legislative resolution on matters of parenthood	364	23	147	169	703
9. Resolution on the implementation of the EU LGBTIQ Strategy	389	33	122	161	705

Table 1 – Results of the votes in the European Parliament on the nine texts considered in the analysis.

Text submitted to the vote	For (%)	Abstained (%)	Against (%)
1. Resolution on LGBTI people in Uganda	80	19	1
2. Resolution on hate speech against LGBTI people	69	12	19
3. Resolution on the EU as an LGBTIQ Freedom Zone	72	8	20
4. Resolution on the rights of LGBTIQ citizens in Hungary	69	9	22
5. Resolution on LGBTIQ rights in the EU	58	18	24
6. Resolution on growing hate crimes against LGBTIQ+ people	79	7	14
7. Resolution on the universal decriminalisation of homosexuality	81	7	12
8. Legislative resolution on matters of parenthood	68	4	28
9. Resolution on the implementation of the EU LGBTIQ Strategy	72	6	22

Table 2 – Results of the votes in the European Parliament on the nine texts considered in the analysis in percentages.

	1. Only For	2. For or Abstained	3. Mixed voting	4. Abstained or Against	5. Only Against	Total
Number of MEPs	445	116	94	99	21	775
Fraction of MEPs (in %)	57.5	15	12	13	2.5	100

Table 3 – Distribution of the MEPs in the voting categories

Table 3 presents the distribution of the MEPs regarding the voting categories defined above. This table shows that almost 6 MEPs out of 10 have always voted in favour of all the texts. On the other hand, only 2,5% of the MEPs have consistently voted against the texts. In addition, the data show that 27,5% of the MEPs have voted at least once against one of the key texts considered (categories 3 to 5).

⁸⁶ For the first and second resolutions, the data presented here is just a subset of the 750 MEPs that were then voting on the text as the MEPs from UK were still present. The data also considers the corrections or intentions of vote as expressed by the MEPs after the vote. For these reasons, the results presented here do not correspond to the actual voting results on the resolutions as registered.



These global figures of support for the fundamental rights of LGBTIQ+ people hide clear divergences of positioning of the MEPs depending on the political group they belong to. This is clearly highlighted in Table 4.

European Political Groups	1. Only For	2. For or Abstained	3. Mixed voting	4. Abstained or Against	5. Only Against	Voting indicator
Left - GUE/NGL	92.5	7.5				7.5
Socialists & Democrats - S&D	92.0	2.0	5.5	0.5		7.1
Greens / EFA	96.0	4.0				7.9
Renew Europe Group	94.5	5.5				7.8
European People's Party - EPP	32.0	45.5	16.5	5.5	0.5	4.8
Conservatives and Reformists - ECR	1.5	11.0	15.5	55.0	17.0	-4.4
Identity and Democracy Group		1.5	36.5	56.0	6.0	-5.6
Non-attached Members	30.5	6.0	35.0	20.5	8.0	0.0
Total	57.5	15.0	12.0	13.0	2.5	4.1

Table 4 – Distribution of the MEPs in the voting categories in each political group of the European Parliament (in % of the members of the group)⁸⁷

Table 4 shows that none of the MEPs from the Greens/EFA, Renew Europe and the Left – GUE/NGL have voted against any of the texts considered. Only a small minority of the MEPs from these groups have abstained at times. Moreover, MEPs from these groups have been consistent in showing up for voting, as the voting indicator for these three groups varies from 7.5 to 7.9 out of 9.

With some MEPs in the third and fourth category but with 92% of its MEPs in the first category, the group of Socialists and Democrats has a high voting indicator of 7,1 indicating a strong support for the fundamental rights of LGBTIQ+ people.

On the other side of the political spectrum, the group of the European Conservatives and Reformists and the Identity and Democracy group both display a strongly negative voting indicator, respectively -4.4 and -5.6. The ECR group shows the widest internal divergence with the largest fraction of MEPs who have not cast any vote in favour of any texts (72%) while 12.5% of its MEPs have not voted against any text. In the Identity and Democracy group, only one MEP did not cast any vote against the proposed texts while 62% of the MEPs did not cast a single vote in favour of any text.

In between the groups who clearly support the fundamental rights of LGBTIQ+ people and those who clearly oppose them, the group of European People’s Party (EPP) illustrate a diverse set of positioning. With 77.5% of its MEPs not voting against any of the texts, 6% not voting in favour of any of the texts, and a voting indicator of 4.8, the EPP group is characterised by wide internal divergences on the fundamental rights of LGBTIQ+ people.

To understand this situation, one must analyse the voting situation within each European political group based on the national political affiliation of the MEPs. This analysis reveals that

⁸⁷ The detailed votes of each political group on each of the nine texts considered is presented in Annex 1.



the political groups fall into different categories when dealing with the fundamental rights of LGBTIQ+ people:

- The groups where MEPs from different Member States strongly align to support the fundamental rights of LGBTIQ+ people such as the Greens/EFA, Renew Europe, the Left – GUE/NGL and the Socialists and Democrats. In this category, only MEPs from one or two Member States in each group are showing a weaker support.⁸⁸
- The groups where MEPs from different Member States strongly align to oppose the fundamental rights of LGBTIQ+ people such as group of the European Conservatives and Reformists and the Identity and Democracy group. In these groups, only the members from a few Member States might show limited support in favour of some of the texts regarding the fundamental rights of LGBTIQ+ people.⁸⁹
- The groups where the positioning on the fundamental rights of LGBTIQ+ people are clearly non-aligned between MEPs from different countries as represented by the EPP group.⁹⁰

This situation reveals that the votes must be analysed both from a political perspective at the EU level but also at the Member State level.⁹¹ Table 5 presents the distribution of the MEPs in the voting categories and the voting indicator per Member State.

⁸⁸ This is the case for MEPs from Lithuania in the Greens, from Portugal in the Left, from Czechia and Romania in Renew or from Romania and Slovakia in S&D.

⁸⁹ This is the case for MEPs from Belgium, Slovakia, Sweden, and Czechia in ECR. By voting in favour of the resolution for the universal decriminalization of homosexuality, French MEPs from Rassemblement National also showed a divergence with the other MEPs of the Identity and Democracy Group.

⁹⁰ Within EPP, the MEPs from Austria, Belgium, Cyprus, Denmark, Finland, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Spain, and Sweden mainly supported the texts regarding the fundamental rights of LGBTIQ+ people while the MEPs from Bulgaria, Croatia, Estonia, France, Hungary, Italy, Romania, Slovakia, and Slovenia mainly opposed them or abstained.

⁹¹ Dedicated fiches for each political group showing the distribution of the MEPs from each European political group based on their national party affiliation are available on the website of Forbidden Colours - <https://www.forbidden-colours.com/queer-your-eu/party/>



#	Country	1. Only For	2. For or Abstained	3. Mixed voting	4. Abstained or Against	5. Only Against	Voting Indicator
1	Ireland	100.0					8.3
2	Luxembourg	100.0					8.2
3	Malta	100.0					7.2
4	Cyprus	100.0					6.8
5	Portugal	83.3	16.7				7.7
6	Denmark	82.4	11.8		5.9		7.4
7	Sweden	84.0	8.0	8.0			7.2
8	Spain	71.9	21.9		4.7	1.6	6.5
9	Belgium	78.3		21.7			6.5
10	Germany	61.0	28.6		9.5	1.0	5.9
11	Netherlands	60.6	21.2	3.0	9.1	6.1	5.6
12	Austria	54.5	31.8	13.6			5.3
13	Estonia	71.4		14.3	14.3		5.1
14	Finland	80.0		6.7	13.3		4.9
15	Lithuania	36.4	45.5	9.1	9.1		4.6
16	Slovenia	55.6	11.1	33.3			4.1
17	Czechia	42.9	28.6	23.8	4.8		4.0
18	Greece	66.7	4.8	19.0	4.8	4.8	4.0
19	France	62.2	3.3	22.2	12.2		3.8
20	Latvia	25.0	50.0	12.5	12.5		3.1
21	Croatia	38.5	7.7	38.5	15.4		3.0
22	Bulgaria	47.1	17.6	11.8	17.6	5.9	2.6
23	Slovakia	33.3	26.7	13.3	20.0	6.7	2.4
24	Romania	30.6	11.1	52.8	5.6		1.6
25	Italy	41.9	7.0	10.5	32.6	8.1	0.7
26	Hungary	31.8		45.5	13.6	9.1	-0.1
27	Poland	28.6	21.4		41.1	8.9	-0.5

Table 5 – Ranking of the EU Member States based on the distribution of their MEPs in the voting categories (in percentage of the MEPs of the country) and on their voting indicator.

Based on the distribution of the MEPs of each Member State within the voting categories and considering the voting indicator, the Member States are divided into six groups:

- Four Member States – Ireland, Luxembourg, Malta, and Cyprus – see all their MEPs across political groups having only voted for each of the nine texts considered here. Among them, the MEPs from Ireland were the most diligent in voting, as illustrated by the high voting indicator of 8.3 out of 9.
- Five Member States – Portugal, Denmark, Sweden, Spain, and Belgium – see a high proportion of their MEPs falling into the first and second voting categories, leading to a high voting indicator (between 6.5 and 7.7). In these Member States only a small fraction of the MEPs falls in the fourth and fifth voting categories.
- Six Member States – Germany, The Netherlands, Austria, Estonia, Finland, and Lithuania – find themselves in an intermediary situation with more than half of their



MEPs in the first category but also more than 10% of them in the fourth or fifth categories and/or a voting indicator above average (between 4.6 and 5.9).

- Four Member States – Slovenia, Czechia, Greece, and France – still have a rather large proportion of their MEPs in the first and second categories but a voting indicator just below average (between 3.8 and 4.1)
- Five Member States – Latvia, Croatia, Bulgaria, Slovakia, and Romania – see less than 50% of their MEPs in the first category and display a low voting indicator (between 1.6 and 3.1)
- Three Member States – Italy, Hungary, and Poland – display a very low or even negative voting indicator (between -0.5 and 0,7) revealing that a large proportion of their MEPs are voting consistently against the text defending the fundamental rights of LGBTIQ+ people.

This ranking of the Member States is directly linked with the distribution of the Member States' MEPs in the different European political groups. The Member States on the top of the ranking are those with a high proportion of elected MEPs seating with the Greens, the Left, Renew or the Socialists and Democrats. The Member States at the bottom of the ranking are those with a high proportion of elected MEPs seating with the Conservatives and Reformists or Identity and Democracy group.

These results offer us a unique view of the political situation at the national level in the EU regarding the defence of the fundamental rights of LGBTIQ+ people. If most governments are currently supporting these rights, the so-called 'anti-gender' and anti-rights movements are getting traction. What was once described as an East/West divide in the EU, no longer holds. The fact that France, Germany, the Netherlands, or Finland appears in yellow and orange on the map demonstrates the slow but continuous growth of these movement in Western Europe with the support and involvement of conservative and far-rights political parties.

This report is completed by 27 country fiches presenting the individual votes of the MEPs from each Member State according to their affiliation to their national parties.⁹²

⁹² For more information, check the 27 country fiches on the website of Forbidden Colours - <https://www.forbidden-colours.com/queer-your-eu/country/>



Coding of the EU Member States based on the votes of their elected MEPs

- All MEPs in category 1 and high voting indicator (6.8 - 8.3)
- >70 % of MEPs in category 1 and high voting indicator (6.5 - 7.7)
- >50% of MEPs in category 1, >10% in category 4/5 and/or a voting indicator above average (4.6 - 5.9)
- >60% of MEPs in category 1/2 and voting indicator just below average (3.8 - 4.1)
- <50% of MEPs in category 1 and a low voting indicator (1.6 - 3.1)
- >20% of MEPs in category 4/5 and a very low voting indicator (-0.5 - 0.7)

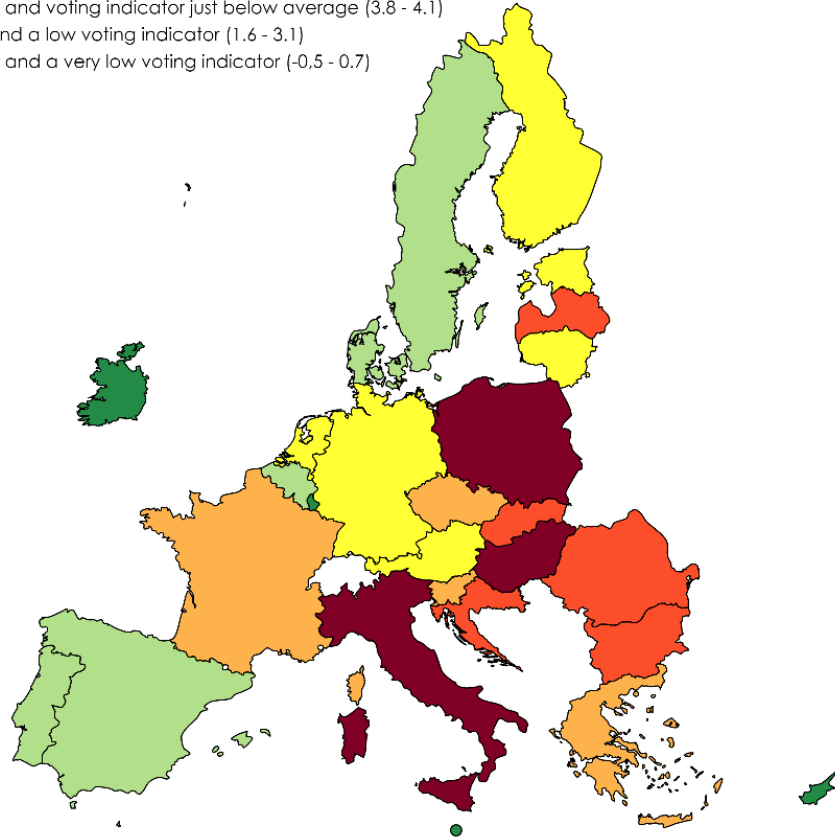


Figure 3 – Map of the EU representing the distribution of the EU Member States in different categories depending on the vote of their elected MEPs on nine key texts regarding the fundamental rights of LGBTIQ+ people. (Created with mapchart.net)

The participation in the LGBTI Intergroup in the European Parliament also reveals the commitment of the MEPs from the different European political groups regarding the support for the fundamental rights of LGBTIQ+ people. Created in 1997, this intergroup is the largest cross-partisan group in the European Parliament with 151 members (more than 20% of the MEPs). Yet, participation of the MEPs varies greatly from one political group to another as shown in Table 6.

While almost half of the MEPs from the Greens are members of the LGBTI Intergroup, there are no members from the group of Conservatives and Reformists nor Identity and Democracy group. The participation of MEPs from the European People’s Party is also limited with only 10% of them joining the LGBTI intergroup.



European Political Groups	Number of members	% of the group
Left - GUE/NGL	15	40.5
Socialists & Democrats - S&D	51	35.7
Greens / EFA	33	45.8
Renew Europe Group	31	30.7
European People's Party - EPP	18	10.2
Conservatives and Reformists - ECR	0	0.0
Identity and Democracy Group	0	0.0
Non-attached Members	3	6.3
Total	151	21.4

Table 5 – Participation of the MEPs in the LGBTI Intergroup by political groups⁹³

Following this analysis, the European Parliament appears as an institution that defends and protects the fundamental rights of LGBTIQ+ people. This comes from the fact that the political groups that support these rights carry a larger weight than those who oppose them in the current legislature. However, every European election can change this balance of power.

The European Parliament’s resolutions are important political declarations to denounce the situations faced by LGBTIQ+ people and defend the fundamental rights of LGBTIQ+ people. However, their impact is limited as the resolutions’ requests towards the European Commission, the Council of the EU or the Member States are non-binding.

As discussed, the legislative power of the European Parliament on key EU laws that could improve the protection of LGBTIQ+ people in the Union is also limited. This depends on the legislative procedures defined in the treaties regarding these laws that usually only provide consultation or consent to the European Parliament. Only a modification of the EU treaties could change the legislative procedures used and give more power to the European Parliament on these issues.

As exposed in this report, the advancement of the protection of the fundamental rights of LGBTIQ+ people at the EU level depends on many factors. Among those:

- The competencies of the EU as defined in the EU treaties
- The legislative procedures to adopt EU laws as defined in the EU treaties
- The positioning of the 27 EU national governments who vote in the Council of the EU
- The political composition of the European Parliament as some political groups support the fundamental rights of LGBTIQ+ people while others oppose them

⁹³ Based on the data retrieved from <https://lgbti-ep.eu/who-we-are/members/> on 15 March 2024.



- The will of the European Commission to act decisively, especially in the case of a breach of EU laws and values

In the current situation:

- The EU has little competencies regarding what affects the life of LGBTIQ+ people as defined in the treaties, except in case of cross-border situations
- The legislative processes most often require unanimity from the Council of the EU with little legislative power given to the European Parliament
- Unanimity in the Council implies that the 27 governments of the Member States must be fully aligned on these topics to achieve progress and that it takes only one Member State to block any progress regarding the fundamental rights of LGBTIQ+ people

In this context, the Commission only has narrow openings to advance the protection of the fundamental rights of LGBTIQ+ people such as through legislation having a cross-border dimension (recognition of parenthood, SLAPP...). At the same time, the Commission has not been as proactive and decisive as it could have been when it came to ensuring the implementation of the rulings of the Court of Justice of the EU or the launch of infringement procedures against the Member States violating the fundamental rights of LGBTIQ+ people.



Part 4 - Recommendations

Based on the comprehensive analysis of the European Union's functioning, competencies, and recent actions regarding the fundamental rights of LGBTIQ+ people, as well as the detailed examination of the positions and activities of the European Commission, the Council of the EU, and the European Parliament, Forbidden Colours draws several recommendations to foster the protection of the fundamental rights of LGBTIQ+ people within the European Union. These recommendations aim to address the identified challenges and leverage opportunities over the next five years.

Recommendations for EU citizens and European political groups

Regarding the upcoming European elections of June 2024, Forbidden Colours calls all European citizens to take part in the elections and cast their vote for the candidates of the political groups that have shown clear and strong support for the fundamental rights of LGBTIQ+ people.

Based on the analysis presented in this report, this translates into the support for candidates from the Greens/EFA, Renew Europe, the Left – GUE/NGL or the Socialists and Democrats.

Given the divergence of positioning within the European People's Party on the topic, Forbidden Colours calls EU citizens to consult the country analysis to check if the party affiliated with the EPP they want to vote for is supportive of the fundamental rights of LGBTIQ+ people.⁹⁴

Forbidden Colours reminds EU voters that the candidates from the political parties affiliated with the European Conservatives and Reformists group or Identity and Democracy group defend an agenda to block any progress regarding the protection of the fundamental rights of LGBTIQ+ people.

⁹⁴ For more information, check the 27 country fiches on the website of Forbidden Colours - <https://www.forbidden-colours.com/queer-your-eu/country/>



Forbidden Colours calls on the Greens/EFA, Renew Europe, the Left – GUE/NGL and the Socialists and Democrats groups to ensure the full alignment of their members on the clear support for the fundamental rights of LGBTIQ+ people. Forbidden Colours also calls on the European People’s Party to clarify its position on the matter.

Forbidden Colours reminds EU citizens that the advancement of the fundamental rights of LGBTIQ+ people at the EU level mainly depends on the support from national government representatives sitting in the Council of the EU. Forbidden Colours calls all EU citizens to participate in their national elections and cast a vote for candidates and parties that support the fundamental rights of LGBTIQ+ people.

Recommendations for the next European Commission 2024-2029

Composition of the College of Commissioners

Following the European elections, a new European Commission will take office and start its mandate by Autumn 2024.

Forbidden Colours calls on the future President of the European Commission to maintain the portfolio for a Commissioner for Equality. Moreover, Forbidden Colours calls for the mission letter of this Commissioner to include clear objectives when it comes to the protection of the fundamental rights of LGBTIQ+ people in the EU.

Enforcement and Monitoring of the fundamental rights of LGBTIQ+ people

Forbidden Colours expects the Commission to increase the monitoring and reporting on Member States' compliance with EU laws and directives concerning the fundamental rights of LGBTIQ+ people, using infringement procedures more proactively when necessary.

Forbidden Colours requests to enhance the Commission's diligence in overseeing the Member States' adherence to the jurisprudence established by the Court of Justice of the European Union and to initiate infringement procedures with greater promptness, avoiding protracted delays.

Forbidden Colours calls on the Commission to use existing legal frameworks, such as the rule of law conditionality regulation, to ensure non-discrimination through the execution of projects funded by the EU.

Current and Future Legislative Initiatives



Forbidden Colours calls on the Commission to modify existing or still discussed EU equality directives to make sure that the grounds of gender identity, gender expression and sex characteristics are covered alongside sexual orientation. The Commission should make sure that all future legislative proposals include all these aspects.

LGBTIQ+ Equality Strategy

Forbidden Colours calls on the Commission to adopt a new LGBTIQ+ Equality Strategy for 2025-2030. For the development of this strategy, the Commission should consider a comprehensive approach that acknowledges the broader European political landscape, particularly the challenges posed by anti-rights movements. These groups often target LGBTIQ+ communities, using them as scapegoats to undermine the principles of European democracy and national security.

To effectively address these challenges, the Commission's strategy should:

- Employ an intersectional lens to understand and address the multifaceted forms of discrimination and challenges faced by LGBTIQ+ individuals. This approach acknowledges that individuals may face overlapping forms of discrimination based on various aspects of their identity, including gender, race, ethnicity, disability, and socioeconomic status, among others. By adopting an intersectional framework, the Commission can ensure that its actions are inclusive and responsive to the diverse needs of the LGBTIQ+ community.
- Embed LGBTIQ+ equality considerations into wider European initiatives, mechanisms and programmes focused on strengthening democratic resilience, combating corruption, and upholding the rule of law. This integration ensures that the fundamental rights of LGBTIQ+ people are not addressed in isolation but are recognized as integral to the broader objectives of promoting democracy, transparency, and justice within the EU.
- Include clear benchmarks, indicators, and mechanisms for monitoring and evaluating progress. This will enable the Commission to assess the impact of its initiatives, identify areas for improvement, and adapt its approach as necessary to address emerging challenges and opportunities.

Forbidden Colours expects that the development and implementation of the new strategy involve close collaboration with a wide range of stakeholders, including EU Member States, a large range of LGBTIQ+ civil society organisations and advocacy groups working at the EU and national level, academia, and other international partners. This collaborative approach would ensure that the strategy is informed by diverse perspectives and experiences, enhancing its effectiveness and relevance.



Funding and Support

Forbidden Colours calls on the Commission to ensure more coherence between the different EU programmes supporting the fundamental rights and the needs of LGBTIQ+ people. It also requests that more funding would be available for these programmes.

Forbidden Colours urges the European Commission and the Member States to introduce specific calls in the CERV programme for projects from civil society organisations aiming at monitoring and countering the so-called 'anti-gender' and anti-rights movements.

External Relations

Forbidden Colours calls on the Commission to integrate human rights for LGBTIQ+ people into the EU's external policies and actions systematically, including in its relations with third countries, trade agreements, and development cooperation. In this context, Forbidden Colours advocates for the European Commission to rigorously adhere to the principles of conditionality.

Forbidden Colours expects the Commission to leverage diplomatic avenues and the European External Action Service (EEAS) with greater efficacy to champion the fundamental rights of LGBTIQ+ people worldwide. This is particularly crucial in response to the escalating anti-rights campaigns globally, driven by ultraconservative factions from Russia and the United States aiming to undermine the European Union's stance. The diplomatic apparatus of the EU should offer a secure environment for LGBTIQ+ human rights advocates to plan, campaign, and coordinate their countermeasures against the so-called 'anti-gender' and anti-rights movement.

Forbidden Colours considers that the EEAS should intensify its diplomatic efforts to engage with countries and international partners and raise awareness about the detrimental effects of disinformation campaigns, particularly those targeting LGBTIQ+ communities. Forbidden Colours calls on the EEAS to work together with its partners in the G7 and NATO on these aspects.

Forbidden Colours calls on the Commission to fund a dedicated platform or network for the exchange of intelligence and best practices related to countering disinformation and foreign interference, with a specific focus on threats targeting LGBTIQ+ communities. This network should include EU Member States, international partners, civil society organizations, and experts in the field of geopolitical strategic communications and fundamental rights of LGBTIQ+ people. The EEAS can facilitate capacity-building initiatives, workshops, and training programmes aimed at enhancing the ability of stakeholders to identify, analyse, and counter disinformation campaigns effectively. This collaborative approach will strengthen the collective response to the challenges posed by anti-rights movements and their disinformation tactics.



Forbidden Colours requests the Commission to fund and support civil society organizations that can develop comprehensive public awareness campaigns and media literacy programmes that specifically address the issue of disinformation targeting LGBTIQ+ communities. These campaigns should aim to educate the public about the nature and impact of disinformation, how to critically assess information sources, and the importance of upholding human rights for all, including LGBTIQ+ individuals. By improving media literacy and raising public awareness, the EEAS' strategic partners can contribute to building more resilient societies that are less susceptible to the divisive and harmful narratives propagated by anti-right foreign actors.

Recommendations for the Council of the EU & the European Council

Forbidden Colours calls on the current and upcoming presidencies of the Council to prioritize the fundamental rights of LGBTIQ+ people. This includes the organization of high-level conferences, the adoption of Council conclusions, and the setting of Council and European Council agendas that include discussions on the fundamental rights of LGBTIQ+ people and the threats posed by the anti-rights movement.

Forbidden Colours calls on the current and upcoming presidencies of the Council to make sure that the proposals currently blocked or discussed – the horizontal equality directive, the introduction of hate crime and hate speech as EU crimes, or the directive on parenthood – are adopted as soon as possible.

In case the adoption of proposals fails due to the need to reach unanimity, Forbidden Colours calls on the Council of the EU to adopt legislation through enhanced cooperation among willing Member States.

In the current situation in which Hungary has breached the fundamental values of the EU as defined in Article 2 TEU, Forbidden Colours urges the European Council and the Council of the EU to go to the next steps on the ongoing procedures under Article 7 TEU to activate the suspension of specific membership rights to Hungary, including voting rights in the Council.

Recommendations for the European Parliament

Forbidden Colours calls on the European Parliament to continue adopting resolutions and reports that highlight issues related to the fundamental rights of LGBTIQ+ people and request action from the Commission, the Council, and the Member States.

Forbidden Colours expects the European Parliament to use its controlling capacity over the EU Budget to investigate and expose the use of EU Funds by anti-rights groups and actors.



Forbidden Colours calls on the European Parliament to strengthen cooperation with national parliaments to promote the adoption of laws and policies that support the fundamental rights of LGBTIQ+ people at the national level, aligning with EU standards and values.

Forbidden Colours requests to increase the role of the LGBTI Intergroup in the European Parliament, enabling it to play a more prominent role in legislative processes and inter-institutional dialogue. Forbidden Colours also calls on all elected MEPs to join the LGBTI Intergroup.

Forbidden Colours expects the LGBTI Intergroup to develop a strategy in cooperation with civil society organizations at the beginning of the legislature to address the threats posed by the anti-rights movement.

Recommendations on the modification of EU treaties

Forbidden Colours calls on all the EU institutions and the Member States to work together in a modification of the EU treaties to ensure better protection of the fundamental rights of LGBTIQ+ people at the EU level. These modifications should include:

- To introduce in Article 10 and Article 19 TFEU the grounds of gender identity, gender expression and sex characteristics as grounds for discrimination alongside sexual orientation. A similar clarification should be added in Article 21 of the EU Charter for Fundamental Rights.
- To extend the competencies of the European Union when it comes to the protection of LGBTIQ+ people against discrimination to include the possibility of banning so-called conversion therapies, banning genital mutilations, and introducing self-determination in legal gender recognition procedures at the EU level.
- To make sure that the ordinary legislative procedure is used for any piece of EU legislation dealing with the fundamental rights of LGBTIQ+ people, breaking the unanimity required in the Council and providing a stronger legislative power to the European Parliament
- To provide the right of initiative to the European Parliament to put forward legislative proposals to be discussed and adopted following the ordinary legislative procedure.



Annex 1 – Political groups’ vote on key LGBTIQ+ texts

1. Resolution on LGBTI people in Uganda	For	Abstained	Against	No vote	Total
Left - GUE/NGL	34			4	38
Socialists & Democrats - S&D	119	2		19	140
Greens / EFA	59			8	67
Renew Europe Group	76			19	95
European People's Party - EPP	138	9	1	25	173
Conservatives and Reformists - ECR	13	39		8	60
Identity and Democracy Group	5	52	1	2	60
Non-attached Members	25	8	2	9	44
Total	469	110	4	94	677

2. Resolution on hate speech against LGBTI people	For	Abstained	Against	No vote	Total
Left - GUE/NGL	32	2		4	38
Socialists & Democrats - S&D	116	5	1	18	140
Greens / EFA	61	3		3	67
Renew Europe Group	89	1		5	95
European People's Party - EPP	110	36	13	14	173
Conservatives and Reformists - ECR	5	10	43	2	60
Identity and Democracy Group	1	5	51	3	60
Non-attached Members	11	12	9	12	44
Total	425	74	117	61	677

3. Resolution on the EU as an LGBTIQ Freedom Zone	For	Abstained	Against	No vote	Total
Left - GUE/NGL	36			2	38
Socialists & Democrats - S&D	133	3		8	144
Greens / EFA	69	1		2	72
Renew Europe Group	98	1		2	101
European People's Party - EPP	131	24	14	9	178
Conservatives and Reformists - ECR	5	12	48		65
Identity and Democracy Group	1	4	55	1	61
Non-attached Members	16	6	22	2	46
Total	489	51	139	26	705

4. Resolution on the rights of LGBTIQ citizens in Hungary	For	Abstained	Against	No vote	Total
Left - GUE/NGL	35	2		1	38
Socialists & Democrats - S&D	123		1	20	144
Greens / EFA	69	1		2	72
Renew Europe Group	99	1		1	101
European People's Party - EPP	110	44	12	12	178
Conservatives and Reformists - ECR	5	9	50	1	65
Identity and Democracy Group	1		59	1	61
Non-attached Members	15	4	24	3	46
Total	457	61	146	41	705



5. Resolution on LGBTIQ rights in the EU	For	Abstained	Against	No vote	Total
Left - GUE/NGL	33	2		3	38
Socialists & Democrats - S&D	122	1	8	13	144
Greens / EFA	68	1		3	72
Renew Europe Group	96	3		2	101
European People's Party - EPP	51	98	22	7	178
Conservatives and Reformists - ECR	4	9	51	1	65
Identity and Democracy Group		2	58	1	61
Non-attached Members	14	5	23	4	46
Total	388	121	162	34	705

6. Resolution on growing hate crimes against LGBTIQ+ people	For	Abstained	Against	No vote	Total
Left - GUE/NGL	32			5	37
Socialists & Democrats - S&D	121			21	142
Greens / EFA	65	1		6	72
Renew Europe Group	86			15	101
European People's Party - EPP	119	9	2	45	175
Conservatives and Reformists - ECR	8	11	35	10	64
Identity and Democracy Group	3	16	29	11	59
Non-attached Members	16	5	12	13	46
Total	450	42	78	126	696

7. Resolution on the universal decriminalisation of homosexuality	For	Abstained	Against	No vote	Total
Left - GUE/NGL	24			13	37
Socialists & Democrats - S&D	100			43	143
Greens / EFA	61			11	72
Renew Europe Group	84			17	101
European People's Party - EPP	110	13	3	50	176
Conservatives and Reformists - ECR	7	9	30	21	67
Identity and Democracy Group	17	8	26	9	60
Non-attached Members	13	6	2	27	48
Total	416	36	61	191	704

8. Legislative resolution on matters of parenthood	For	Abstained	Against	No vote	Total
Left - GUE/NGL	26			11	37
Socialists & Democrats - S&D	97		2	44	143
Greens / EFA	57	1		13	71
Renew Europe Group	78	1		22	101
European People's Party - EPP	86	14	32	44	176
Conservatives and Reformists - ECR	7	4	45	11	67
Identity and Democracy Group	1	1	47	11	60
Non-attached Members	12	2	21	13	48
Total	364	23	147	169	703

9. Resolution on the implementation of the EU LGBTIQ Strategy	For	Abstained	Against	No vote	Total
Left - GUE/NGL	27			10	37
Socialists & Democrats - S&D	104			39	143
Greens / EFA	61			11	72
Renew Europe Group	80	3		18	101
European People's Party - EPP	102	18	12	45	177
Conservatives and Reformists - ECR	1	4	50	12	67
Identity and Democracy Group	1	5	42	12	60
Non-attached Members	13	3	18	14	48
Total	389	33	122	161	705



A report by

forbidden
colours