



**Brussels, 26 May 2023
(OR. en)**

9656/23

LIMITE

**JAI 660
FREMP 157**

NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Draft Council conclusions on the safety of LGBTI persons in the European Union = Approval

1. On 30 March 2023, the Presidency presented its first draft Council conclusions on the safety of LGBTI persons in the European Union to the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP). The text focuses on the situation of LGBTI persons in the EU, as regards their safety and in particular their protection from violence, harassment and discrimination.
2. These draft conclusions were further examined by FREMP on 25 April and 11 May, as well as during a meeting of the JHA Counsellors on FREMP matters on 22 May 2023. After each of these meetings, the Presidency submitted compromise suggestions in order to accommodate delegations' concerns.
3. The Presidency considers the outcome of the work carried out at FREMP as a balanced approach that meets the objectives set out in the draft conclusions.
4. In the light of these considerations, the Permanent Representatives' Committee is invited to agree provisionally on the draft Council conclusions on the safety of LGBTI persons in the EU, as set out in the Annex to this Note, and to invite the Council to approve them at its session on 9-10 June 2023.

9656/23 MxP/mc 1

JAI.ALIMITE **EN**

DRAFT

Council conclusions on the safety of LGBTI persons in the European Union

The Council of the European Union,

- a. **Recalling** Article 2 of the Treaty on European Union, whereby 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 and **emphasising** that Article 21 of the Charter of Fundamental Rights of the European Union (hereinafter ‘Charter’) explicitly prohibits any discrimination based on sex and sexual orientation;
- b. **Underlining** that human rights are universal, indivisible, interdependent and interrelated and that Member States have undertaken to guarantee the rights and freedoms enshrined in the Charter and in the European Convention for the Protection of Human Rights and Fundamental Freedoms for all people within their jurisdiction;
- c. **Recognising** the responsibility of Member States to ensure the safety of all groups in vulnerable situations, including by identifying any deficiencies in their protection and by mitigating such shortcomings;
- d. **Recalling** that Articles 8 and 10 of the Treaty on the Functioning of the European Union (TFEU) provide that the Union in all its activities shall aim to eliminate inequalities and combat discrimination, including on the grounds of sex and sexual orientation, in defining and implementing its policies and activities, and that Article 19 TFEU empowers the Council to take action to combat discrimination on those grounds;

- e. **Recognising** that intersecting forms of discrimination, including where discrimination against LGBTI¹ persons intersects with other grounds, can contribute to exacerbate vulnerable situations and may put LGBTI persons at increased risk of experiencing hate crime or hate speech;
- f. **Reaffirming** the importance of Directive 2012/29/EU (hereinafter ‘Victims’ Rights Directive’) establishing minimum standards on the rights, support and protection of victims of crime, as it ensures that all victims of crime are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner and **underlining** that the ‘EU Strategy on victims’ rights (2020-2025)’ addresses all victims of crime, while paying attention to the specific needs of persons in the most vulnerable situations, such as victims of anti-LGBTI hate crime;
- g. **Reiterating** the Council conclusions of 6 December 2013 on combating hate crime in the European Union, as they recognise the clear link between promoting equality and fighting discrimination on the one hand, and tackling hate crimes on the other;
- h. **Reiterating** the Council conclusions of 16 June 2016 on LGBTI equality, as they underline the importance of advancing equality and combating discrimination, for example by comparative data collection and cooperation between stakeholders;
- i. **Reiterating** the Council conclusions of 5 March 2021 on strengthening the application of the Charter of Fundamental Rights in the European Union, as they highlight the persistence of serious problems and obstacles to everyone’s full enjoyment of fundamental rights, including for LGBTI persons;
- j. **Recalling** the Council conclusions of 10 March 2023 on the application of the EU Charter of Fundamental Rights and the role of the civic space in protecting and promoting fundamental rights in the EU, as civil society organisations and human rights defenders play an indispensable role in the protection of LGBTI persons from violence, harassment and discrimination;

¹ In these Council conclusions, LGBTI is used as an abbreviation of Lesbian, Gay, Bisexual, Transgender and Intersex.

- k. **Underlining** the shared responsibility between the European Parliament, the Council and the Commission together with the Member States, to protect and promote fundamental rights, including to ensure equal treatment and equality for all;
- l. **Recognising** the importance of joint efforts with international organisations, such as the Council of Europe, the Organization for Security and Co-operation in Europe and the United Nations, in protecting and promoting the full enjoyment of human rights for all, including for LGBTI persons;
- m. **Condemning** the Russian war of aggression against Ukraine and **acknowledging with concern** the increased risk for stigmatisation, violence, harassment and discrimination, also of LGBTI persons, arising from the war, as well as the increased levels of disinformation, that may follow in its tracks.

The Council of the European Union **affirms** its commitment to eliminate inequalities and **approves** the following conclusions.

The situation of LGBTI persons in the European Union

The Council of the European Union,

- 1. **Welcomes** that the European Union Agency for Fundamental Rights (hereinafter ‘Fundamental Rights Agency’) continually carries out comparative EU-wide surveys on the situation of LGBTI persons in the Union which serve to develop comparable data on the respect, protection and fulfilment of the fundamental rights of LGBTI persons, as such data are a crucial element in following the development over time and in supporting policy development;

2. **Recognises** the worrying fact that a comparison of the results of the 2012² and 2019³ surveys shows little overall progress and, in some respects, a potentially deteriorating situation within the EU, and **stresses** that the findings in the 2019 survey indicate recurring problems for LGBTI persons' enjoyment of their fundamental rights and highlight the need for a more effective application of the relevant EU acquis;
3. **Condemns** the persistence of violence, harassment and discrimination against LGBTI persons across the Union, highlighted by the fact that the 2019 survey shows that significant numbers of persons continue to experience such acts due to being LGBTI, and in doing so takes the low rate of reporting of such incidents to the police or any other competent body into consideration;
4. **Deplores** that over half of respondents to those surveys feel compelled to hide being LGBTI most of the time, that around 40 % of those open about being LGBTI report experiences of harassment, and that physical or sexual attacks remain prevalent as indicated by the fact that one in ten respondents reports having been the target of such violence during the five-year period prior to the survey, with trans and intersex respondents showing significantly higher exposure to violence;
5. **Calls on** the Fundamental Rights Agency to continue to carry out surveys on the situation of LGBTI persons in all areas of life, both online and offline, including by regularly compiling high-quality data based on the most reliable methods to allow for a comparison over time.

² 2012 European Union survey on the perceptions and experiences of lesbian, gay, bisexual or transgender (LGBT) persons, FRA.

³ 2019 EU-LGBTI II Survey and 'A long way to go for LGBTI equality', FRA, 2020.

Protecting LGBTI persons from violence, harassment and discrimination

The Council of the European Union commits to:

6. **Promote and support** the fundamental right of all persons within the EU, including LGBTI persons, to be safe from violence, harassment and discrimination; **continuously address** violations of fundamental rights, including such violations against LGBTI persons and **keep** matters of LGBTI safety on the political agenda;
7. **Regularly follow up** on the state of play of LGBTI equality in general, and of the safety of LGBTI persons in particular, including by examining relevant reports and studies presented by the Commission, the Fundamental Rights Agency and other relevant bodies and institutions, thereby providing a forum to take stock of progress and exchange views.

The Council of the European Union invites Member States, within their national competences, to:

8. **Prevent** all forms of violence, harassment and discrimination and ensure that national administrations, including law enforcement, judicial authorities and equality bodies, are specifically and sufficiently equipped to protect and, where appropriate, promote the fundamental rights of LGBTI persons;
9. **Protect** LGBTI persons, both online and offline, from hate crimes, hate speech, acts of violence and harmful practices, including being subjected to ‘conversion practices’ for instance by developing methods to identify, record and investigate offences committed with an anti-LGBTI motive as well as by encouraging the reporting of such offences by victims and witnesses or by providing training to law enforcement personnel, judicial authorities, agencies or organisations delivering victim support services and other relevant authorities;

10. **Counteract** the spread of conspiracy narratives and malign information influence relating to LGBTI persons⁴ and **protect** persons and communities affected by such phenomena, for instance by building capacity to identify, prevent and counter foreign interference, information manipulation, misinformation and disinformation, with due respect for fundamental rights, including the right to freedom of expression and information;
11. **Ensure a robust structure** to gather information on the development of the national situation on the safety of LGBTI persons in particular, and LGBTI equality in general, for example through equality bodies or other competent bodies;
12. **Take measures** to ensure that LGBTI persons and human rights defenders can exercise their right to freedom of expression, freedom of peaceful assembly and freedom of association at all levels without fear of violence, harassment or any form of coercion or unjustified restrictions;
13. **Take into account** the increased need to address the safety of LGBTI persons in times of crises, as well as other persons or groups who may find themselves in a situation of increased vulnerability; this need has been highlighted, for example, by reports indicating that the COVID-19 pandemic has led to increased levels of hatred, violence and discrimination against LGBTI persons⁵;
14. **Safeguard** the dignity, human rights and fundamental freedoms of all persons who have fled the Russian war of aggression against Ukraine-and take into account the increased risk of vulnerability that all LGBTI refugees and asylum seekers may be subject to.

⁴ Among other reports, see the briefing on Disinformation campaigns about LGBTI+ people in the EU and foreign influence by the Policy Department for External Relations of the European Parliament (PE 653.644) highlighting such phenomena originating from or being supported or multiplied by actors outside the EU, including Russia.

⁵ Among other reports, see 'Violence and discrimination based on sexual orientation and gender identity during the coronavirus disease (COVID-19) pandemic' (A/75/258), United Nations, 2020.

The Council of the European Union:

15. **Welcomes** the continued commitment of the Commission to LGBTI equality as well as their work to that end, and **takes appreciative note** of the strategic guidance provided by the Commission LGBTIQ⁶ Equality Strategy 2020-2025, including the pillar on safety;
16. **Stresses its support for** the intention of the Commission to ensure coherence between the Strategy and the Council Guidelines of 24 June 2013 to promote and protect the enjoyment of all human rights by LGBTI persons in the context of the EU's external policy and **invites** the High Representative and the Commission to continue to integrate LGBTI equality, in particular matters of safety, and the decriminalisation of consenting same-sex relations into external action;
17. **Underscores** the importance of ensuring that the safety and equal treatment of LGBTI persons continues to be addressed in the context of the accession negotiation process of candidate countries and in the stabilisation and association process⁷.

The Council of the European Union invites the Commission to:

18. **Uphold and step up efforts** to ensure the protection of LGBTI persons from violence, harassment and discrimination, including hate speech and hate crimes, as a priority of the Union; such efforts should support Member States in providing comprehensive protection against such incidents, for example through facilitating exchanges of best practices;
19. **Facilitate** the work of the Subgroup on Equality Data to establish a guidance note on the collection and use of data on LGBTI equality, which can be used in efforts to collect data on violence, harassment and discrimination;

⁶ The term LGBTIQ is used here in order to correctly reflect the title of the Commission Strategy.

⁷ As is continuously highlighted by the Commission and the Council, most recently by the Council conclusions on enlargement and stabilisation and association process of 13 December 2022.

20. **Continue and step up** its work to prevent and combat the spread of online hate speech and violent extremist content against LGBTI persons, for example through the Code of Conduct on countering hate speech online⁸, as well as through the work of the EU Internet Forum to prevent radicalisation and violent extremism;
21. **Provide** a mid-term review of the LGBTIQ⁹ Equality Strategy 2020-2025 by the end of 2023 and regularly thereafter **report** on the progress made, as well as **inform** Member States of any developments through the High-Level Group on Non-Discrimination, Equality and Diversity and the subgroup on these issues as appropriate;
22. **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 well as **provide** funding for organisations supporting victims, through relevant funding programmes, such as the Citizens, Equality, Rights and Values programme.

The Council of the European Union invites:

23. The European Union Agency for Law Enforcement Training (CEPOL) and the European Judicial Training Network (EJTN) **to provide** Member States with expertise and support to advance their efforts in hate crime training in order to ensure the safety of LGBTI persons;
24. The Fundamental Rights Agency **to continue to provide** Member States with expertise and support to improve data collection systems through improved reporting and recording of hate crimes;
25. The Fundamental Rights Agency and the European Institute for Gender Equality (EIGE), within their respective mandates, **to continue to provide** Member States with assistance and expertise on the design and implementation of the collection of data on the situation of LGBTI persons, thereby facilitating comparability over time;

⁸ Code of Conduct on countering illegal hate speech online, 30 June 2016.

⁹ The term LGBTIQ is used here in order to correctly reflect the title of the Commission Strategy.

26. The European Agency for Safety and Health at Work (EU-OSHA) **to gather and disseminate** knowledge and tools to improve the occupational safety and health of LGBTI persons, including to protect workers from violence, harassment and discrimination in the workplace.

9656/23 MxP/mc 10

ANNEX JAI.ALIMITE **EN**