

European Commission
DG HOME

HOME-ANEWAGENDA@ec.europa.eu.

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Transgender Europe – Submission to the DG Home Affairs consultation on the ‘post-Stockholm Programme’

Transgender Europe (TGEU) is a European non-profit, non-governmental umbrella organisation working for the full equality and inclusion of all trans people in Europe. The network includes trans and other organisations that support or work for the rights of all trans people across Europe. Founded in 2005, TGEU has more than 70 member organizations and over 120 individual members in 35 countries.

The mission of TGEU is to support and strengthen the trans movement and to be a powerful advocacy organisation for trans rights in Europe and beyond.

TGEU enjoys participatory status with the Council of Europe and is member of the International Lesbian, Gay, Bisexual, Trans and Intersex Association - ILGA, the social platform and the Fundamental Rights Platform.

Definitions

Transgender or trans people have a gender identity which is different to the gender assigned at birth. This includes people who intend to undergo, are undergoing, or have undergone gender reassignment as well as those who prefer or choose to present themselves differently to the expectations of the gender assigned to them at birth.

Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of

gender, including dress, speech and mannerisms. (*Yogyakarta Principles*)

Legal Gender Recognition is the official recognition of a person's gender identity including gender marker and name(s) in public registries and key documents. The European Court of Human Rights has repeatedly ruled on gender identity recognition and its conditions, strengthening the human rights of trans people.

Submission to the Post-Stockholm Programme

The work of DG HOME and its Stockholm Programme has significance and relevance for transgender persons. When designing the Post- Stockholm Programme the following issues pertaining to gender identity should be taken into account by the European Commission.

The European Commission should continue to promote citizenship and fundamental rights, and paying particular attention to the special needs of vulnerable groups, such as trans persons. While the number of trans persons residing in the Union is unknown, the level and degree of rights infringements faced by this group calls for a systematic response from the European Commission to ensure their rights are safe-guarded.

Full exercise of the right to free movement

In order to be able to fully enjoy the right to free movement within the European Union, trans people permanently living according to their gender identity need civil status and identification documents reflecting their gender identity and corresponding name(s). Without matching documents, they are exposed to discrimination and violations of their right to privacy in another Member State.

It falls within the competence of Member States to regulate the procedure of how a trans person can adapt their civil status and identification documents. However, a number of Member States have no procedures in place. Four Member States, namely Ireland, Slovenia, Lithuania and Bulgaria do not provide such a possibility to their trans citizens. As a result trans citizens of these Member States are not able to enjoy their right to free movement as they cannot access the necessary documents. They are discouraged from traveling without

documents matching their gender identity, to avoid unwanted outings and subsequent discrimination; they are often also suspected to use falsified documents.

Where in place, gender recognition procedures are often lengthy, cumbersome and a great financial and emotional burden to the individual.

For instance, in France change of name and gender marker is regulated through case law, leading to arbitrary decisions and legal uncertainty. Due to a lack of clear regulations and the high case load of the French courts, it takes an individual on average five years to obtain permission to change documents. During this time, the violation of privacy continues for the individual as they have to use documents not reflecting their gender identity and name. As a consequence, trans people are more reluctant to travel and cross borders as they are more prone for personal check-ups by police, border and security staff (e.g. in airports) upon the suspicion to use falsified documents.

It is characteristic of gender recognition procedures to violate the individual's human rights by requesting proof of sterility or medical interventions to align the physical appearance to the person's gender identity. 14 member states (Belgium, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Italy, Latvia, Luxembourg, Malta, Romania and Slovakia) require sterilisation prior to gender recognition. The Council of Europe's Human Rights Commissioner contested that transgender people are the only social group in Europe forced by law to undergo sterilization.

Secondly, gender recognition procedures in 12 member states (Croatia, Cyprus, Czech Republic, France, Greece, Hungary, Italy, Latvia, Malta, Poland, Slovakia, United Kingdom) require the individual to be single. In case of married trans persons they are requested to get divorced, their marriage is annulled or transferred into a registered partnership. This results in a loss of rights for the individual concerned, but also for family members, spouses and children. This becomes particularly a problem for family re-unification and when moving to another Member state.

Thirdly, the basis for gender recognition procedures in Member States is a mandatory 'mental disorder' diagnosis. Requesting a health person to be labelled as 'sick' does not only violate their dignity but also their right to be free from torture and ill-treatment. Additionally, having a mental disorder diagnosis limits a trans person's access to certain jobs, e.g. in security.

The European Commission should explore how gender recognition procedures in Member States impact trans individuals' enjoyment of the right to free movement.

The EU should take action to ban limitations that the Member State of nationality may put in place to restrict its trans nationals' access to gender reassignment, change of legal gender and/or change of name in another EU Member State (e.g. through non-issuance of civil status documents to trans people.).

Mutual recognition of civil status and other key documents

Recognition of decisions amongst Member States in the area of legal gender recognition needs further harmonization. As an example a transgender UK national, who had holds a UK Gender Recognition Certificate, residing in Malta is refused a Maltese residence card as the authorities do not recognize the legal gender change. In their argumentation the UK national would need to fulfill the requirements of the Maltese law, namely to be sterilized, in order to be issued the residence card to her female name and gender. Without such a residence card, the UK national is barred from taking on jobs and participation in social life in her country of residence.

Other related problems are trans students and workers, whose country of origin does not provide for the right to have name and gendered information on educational and employment certificates adapted. Educational institutions and employers are often reluctant, citing lack of a legal framework, to change the documents. Without the possibility to have educational and employment certificates to match their name and gender identity trans people are effectively barred from seeking work or continuing their education in another Member State.

The EU should seek to facilitate mutual recognition of change of name on academic certificates through a system similar to the European Credit Transfer and Accumulation System (ECTS). It should also introduce a privacy clause for those who change their European civil status document and/or those who have non-harmonised information (e.g. mismatch between the gender indicated and the gender of the chosen name).

Rights of the child

Gender Recognition procedures are except for Germany and Austria not accessible for persons below legal majority. This limits for young trans people the possibility to exercise their rights, e.g. travel to another Member State or seek employment or education.

Protection from Violence

There is no safe country for trans people. In the last five years 71 murders of trans people have been documented in Europe (source: Transrespect versus Transphobia Worldwide, 2013). Nearly every trans person who is visible as transgender experiences harassment, abuse and violence in public. Still, very few countries protect trans people against violence.

It has to be welcomed that trans people's heightened vulnerability to fall victim of crime has been addressed by the Victims' Rights Directive. The Directive correctly addresses crimes motivated by bias on grounds of gender identity or expression as gender-based crimes. When monitoring its implementation, the European Commission should pay particular attention to issues pertaining gender identity and expression in:

- trainings of professional groups, particularly law enforcement but also judges and prosecutors;
- availability, accessibility and support of specialized victim support services,
- protection mechanisms for victims and witnesses of crimes,
- and efforts to overcome under-reporting.

However, this is not sufficient and **the European Commission should further pursue measures to introduce legislation to combat and prevent bias-motivated crimes.**