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THE EU AND LGBTIQ RIGHTS

Koen Sloopmaeckers

WHAT IS THE SITUATION NOW?

The European Union has increasingly come to be regarded by both proponents and opponents as [a champion](#) of the rights of Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer (LGBTIQ) people. From the adoption of the 1997 Amsterdam Treaty — the first legally binding international treaty to include a reference to sexual orientation — to the [2020 Strategy on LGBTIQ Rights](#), LGBTIQ equality is positioned as part of the EU's core values.

Yet, the centrality of LGBTIQ rights has sparked opposition and even conflict within the EU. Although the EU presents itself as LGBTIQ friendly, legal protections under EU law remain limited. Moreover, there are significant differences between the Union's institutions and between member states.

LGBTIQ rights are embedded within the EU treaties as part of the EU's core values and the anti-discrimination principle, which explicitly mentions sexual orientation. This principle of anti-discrimination has been embedded in secondary legislation but only in limited areas such as employment. Proposals for a horizontal anti-discrimination directive, which would place LGBTIQ discrimination on an equal legal footing to race and gender (covering all areas of life), have been [blocked in the Council](#) for over a decade. The 2012 Victim's Right directive sets out some minimum rights for crime victims, including those of homophobic and transphobic crimes.

The European Parliament has been the most active institution. The Intergroup on LGBTI Rights, for example, has proposed and supported several resolutions and helped ensure the adoption of several reports on LGBTIQ rights. In recent years, the European Commission has become more active and has adopted the LGBTIQ Equality Strategy (2020-2025) [which aims](#) 'to address LGBTIQ discrimination more effectively by 2025'.

HOW HAVE WE GOT HERE?

Many factors account for the inclusion of LGBTIQ equality within the EU's policy agenda and in the treaties. Activists have played their part. The [European Parliament emerged as a hub for transnational advocacy networks](#) that allowed LGBTIQ activists to influence the Amsterdam Treaty.

The wider political context of the 1990s also played an important part, with the EU defining its own identity more clearly, both through the ongoing

constitutionalising process and its (re-) positioning vis-à-vis the rest of the world during this period. As part of these processes, democracy and human rights [were incorporated](#) as key defining principles of the EU. In the 2000s, LGBTIQ rights gained more prominence in light of the [EU's general anti-discrimination principles](#) and [the increased politicisation](#) of the issue in some of the new member states. In the 2010s, LGBTIQ rights developed into an issue in its own right — as a core value of the EU — and a principle to be promoted through its external relations. In the second half of the decade, the Commission adopted a [list of actions on LGBTIQ rights](#) which were the precursors of the current LGBTIQ equality strategy.

Yet, most of the steps taken by the European institutions in recent years seem to be rather symbolic, such as the Commission's participation in the 2016 Europride. Indeed, legislative change seems unlikely to follow, as LGBTIQ equality has become increasingly contested in disputes between EU institutions and the member states, diminishing the capacities of the EU to adopt new policies.

WHERE IS THE EU LIKELY TO HEAD ON THIS?

Across the EU, we see '[political homophobia](#)' being deployed to gain political capital. Although this phenomenon has become widespread as part of the so-called anti-gender movements, Poland and Hungary in particular stand out as a result of their aggressive anti-LGBTIQ policies. This has led to increased tensions between EU institutions and member states.

It is hard to predict where the EU might go with its LGBTIQ rights agenda. However, if we consider that the EU institutions responded to political homophobia in Eastern Europe in the 2000s by making LGBTIQ rights part of the EU's defining values, we can probably expect EU institutions to intensify their efforts to promote LGBTIQ rights internally and externally. Indeed, [when entities are challenged](#) in their own identification processes, a common response is to further emphasise this particular identity marker. Yet, these processes will lead to increased conflict with populist national political forces, who will seek to challenge the EU's interpretation of European values. Hence, new policies on LGBTIQ rights will be contested and are thus less likely to be adopted.

Against this background, the European Court of Justice might become a more important institution when it comes to defining the meaning of the EU's values and expanding notions of LGBTIQ rights within the EU. The ECJ has ruled on and expanded the notions of what is considered a family through court cases on the basis of violations of LGBTIQ families' freedom of movement (see for example: [V.M.A. v Stolichna obshtina, rayon 'Pancharevo'](#) (C-490/20), and [Coman and Others v Inspectoratul General pentru Imigrări](#) and Others

(C-673/16)). Similarly, we have also seen the European Commission [start infringement procedures and legal actions](#) against Poland and Hungary for their violations of the fundamental rights of LGBTIQ people.

Finally, the current war in Ukraine might have implications for the role of human rights and LGBTIQ rights in the EU's external policy processes. The war has been discursively framed as a conflict of value systems. For example, whereas [Putin](#) justified his war by referring to the need to protect Russia from the West's 'perverse' values, the European Commission Vice-President Maroš Šefčovič responded to the war by [stating that](#) 'It's quite clear that [Ukrainians] are indeed dying for European values'.

Given that the EU's support of Ukraine is in part justified by the need to defend democracy and liberal value systems, [which includes LGBTIQ rights](#), the war could lead to a consolidation of LGBTIQ rights as a marker of EU's external identity. However, to what extent this will allow the EU to overcome the current opposition to LGBTIQ rights within its own borders is much less certain. We could therefore see an increased disconnect between what the EU institutions declare to be its defining values and the reality on the ground.