

Good practices to close the gender identity gap

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Legal Seminar on the implementation of EU law on
equal opportunities and anti-discrimination
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Introduction to ILGA-Europe



- ILGA-Europe is the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).
- It works for human rights and equality for lesbian, gay, bisexual, trans and intersex people at European level.
- It is an umbrella organisation representing more than 300 organisations from across Europe.
- ILGA-Europe was established as a separate region of ILGA in 1996. ILGA itself was founded in 1978.

ILGA-Europe



- Work closely with Transgender Europe (TGEU)
- Fund trans specific research and capacity building
- Raise trans issues with key stakeholders and during European conferences/ seminars
- Various trans specific or inclusive publications
- Trans Rights Conference (28 October, Malta)

Our work for trans equality





Two of our publication



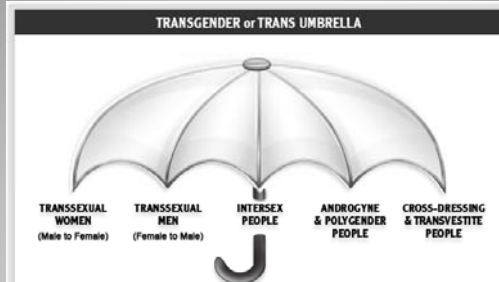
What are the issues?



- Trans person: someone who does not live in the gender s/he was assigned at birth
- Trans people have a gender identity and/or gender expression that does not correspond to the sex in which they were born
- Gender Identity \neq Sexual Orientation
- The gender identity is understood as each person's deeply felt internal and individual experience of gender

Definitions

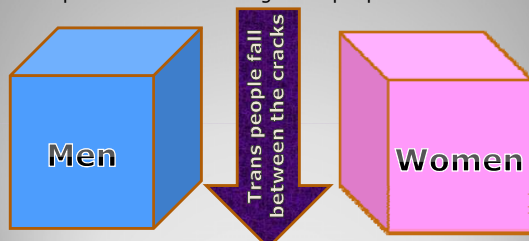




Trans Umbrella



- Legal definitions of 'sex' are often binary and mutually exclusive 'male' / 'female' categories and are problematic for transgender people.



Binary Gender Categories



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Anti-Discrimination Legislation

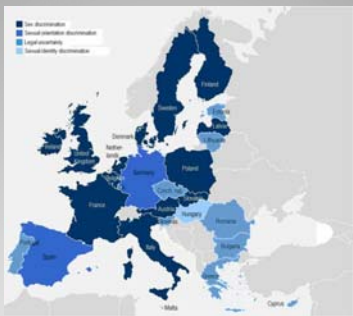







- P v. S and Cornwall County Council [1996]
- ECJ case law confirms that:
 - 'Sex' = 'men and women'
 - = 'gender reassignment'
- EU Gender Equality Directives cover discrimination on 'gender reassignment'
 - 2004/113/EC Goods and Services Directive
 - 2006/54/EC Gender 'Recast' Directive

European Case-law & Directives



National Legislation (1)

- Legislation covering gender identity patchy and not harmonised:
 - Sex **13** Member States: AT, BE, DK, FI, FR, IR, IT, LV, NL, PL, SK, SE, UK.
 - Sexual orientation **2** Member States: DE, ES.
 - Sexual Identity **1** Member State: HU.
 - Uncertain **11** Member States: BG, CY, CZ, EE, GR, LT, LU, MT, PT, RO, SL.
- Due to the above, it is crucial that future EU gender directives address gender identity as a ground in itself.

(Source: FRA, 2009)

National Legislation (2)



Good Practice 1: Sweden's Anti-discrimination legislation



- On 1 January 2009, the Swedish Discrimination Act and the Act Concerning the Equality Ombudsman entered into force.
- The Discrimination Act codifies all EU legislation into one Act of law.
- The list of grounds of anti-discrimination include **“sex, transgender identity and expression”** hence covering all trans people.

Sweden's equality legislation



- "1. *Sex*: that someone is a woman or a man.
- 2. *Transgender identity or expression*: that someone does not identify herself or himself as a woman or a man or expresses by their manner of dressing or in some other way that they belong to another sex."

Definitions in Swedish law



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Equality Body to address trans discrimination



- European Union gender directives require that Member States designate and make the necessary arrangements for a body for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex.
- That requirement includes "discrimination arising from **gender reassignment** of a person."

Gender Directives' requirement



Good Practice 2: Equality Bodies taking on trans cases



- Remit covers gender-based discrimination of trans people
- 2008 Study on the social position of trans people in Belgium and the structural discrimination that they face
- Results should in turn inform the policy of IEWM and Belgian policy and legislation.

Belgian Institute for Equality for Men and Women



- The Equality Ombudsman of Sweden is provided with the power to:
 - Ensure that no discrimination occurs.
 - Provide advice and other provide support to victims of discrimination.
- All trans people are covered in the remit of the Equality Ombudsman.
- Ombudsman proactive on trans identity and expression as it is a new ground.

Swedish Equality Ombudsman



- EQUINET is planning to hold information sessions on handling of trans discrimination for its members
- HALDE (FR), Equal Treatment Commission (NL), EHRC (UK) (*amongst others*) keep track of trans cases of discrimination and share knowledge with others.

EQUINET and other Equality Bodies



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Work closely with trans / LGBT organisations



- Legislators or policy makers run a significant risk of not getting it right if they do not work directly with the community in question.
- All countries with developed trans inclusive laws and policies have achieved them through partnership with (and funding of) trans or LGBT organisations.

Partnership with trans representatives



Good Practice 3: Scotland's policy to work in partnership with trans organisations



- The UK Gender Equality Duty (GED) came into force on 6 April 2007.
- It requires all UK public authorities, to carry out all their functions, in due regard of the need to:
 - Eliminate unlawful discrimination and harassment on the grounds of sex.
 - Promote equality of opportunity between women and men.
- GED includes transgender men and women:
 - "authorities also have an obligation to eliminate discrimination and harassment towards current and potential transsexual staff and to transsexual service users."

UK: The Gender Equality Duty



- Lack the specific expertise on transgender issues
 - work together with transgender people and organizations to develop appropriate tools.
- Scottish Transgender Alliance (STA) was funded for one year in a pilot project:
 - STA delivers trainings for the Scottish Parliament, government and public authorities.
 - STA develops policies on transgender issues.
 - STA co-operates with other equality NGOs.
- Cooperation is very successful: funding extended by another three years!

Scottish Implementation of GED



- STA work lead to an inclusion of "transgender identity" as aggravating factor in hate crimes legislation.
- Transgender hate crime are reported separately.
- Offences (Aggravated By Prejudice) (Scotland) Bill states:
"Actual or perceived **transgender identity** means any of the following
(a) transvestism, transsexualism, intersexuality or having, by virtue of the Gender Recognition Act 2004, changed gender, or
(b) any other gender identity which is not standard male or female gender identity."

Hate Crime legislation



"I have been very grateful for the work of the Scottish Transgender Alliance, both in relation to the Offences (Aggravation by Prejudice) Bill and in wider terms. Far too often transgender issues are left as an afterthought in policymaking, or missed out altogether. Even when there are people in public services or in government trying to correct this, they may lack the specific expertise or the language to raise the issues with confidence. It has been of great value in Scotland to have access to an organisation which can ensure that the voice of transgender community is heard, and I hope that this experience will be of benefit throughout Europe."

(May 2009)

Patrick Harvey, Scottish MP



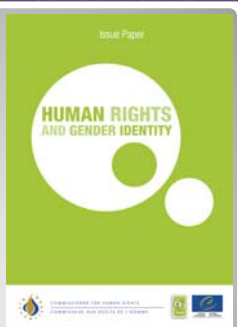
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Looking into the Future



- The Human Rights and Gender Identity Issue Paper by Human Rights Commissioner Thomas Hammarberg lays out a set of 12 recommendations for Council of Europe Member States.

(July, 2009)



Commissioner for Human Rights



- The European Commission is showing clear openness to address the gross discriminations that exist against trans people in several EU Member States
- The inclusion of gender identity and gender expression as grounds of anti-discrimination in gender equality directives should serve as a start.
- Funding programmes such as PROGRESS should also do their part to raise trans visibility and address discrimination against trans people.

European Commission



Thank you!
Questions welcome

www.ilga-europe.org