



**Helena Dalli**  
*Commissioner for Equality*

Brussels, 25 May 2021

**Subject: The upcoming extension of the list of EU crimes and the missing grounds of “gender identity” and “sex characteristics”**

Dear Madame Commissioner,

We write to you following the occasion of the International Day Against Homophobia, Biphobia, Interphobia and Transphobia (IDAHOBIT), celebrated world-wide on May 17, to express our deep concern on the increasing reports of hate crimes and hate speech against LGBTI people across the EU. We wish to recall in this letter the urgent need for the EU to adopt legislation which would guarantee protection from LGBTI-phobic crimes and enable harmonisation of criminal laws in EU Member States. We unreservedly welcome the Commission's plan to present, by the end of 2021, an initiative to extend the list of EU crimes in Article 83(1) of the TFEU to hate speech and hate crime<sup>1</sup>. We consider this measure to be essential to ensure protection of LGBTI persons in the Union and appreciate your strong leadership in this field. With our letter today, we wish to raise some questions on the scope of the Commission's upcoming proposal.

According to the 2019 FRA EU LGBTI Survey II<sup>2</sup>, 38% of respondents in the EU experienced harassment for being LGBTI in the year before the survey (i.e. one third of respondents). In the five years before it, 11% of respondents, or one in ten persons, were physically or sexually attacked because of being LGBTI. Country specific data is even more alarming, reaching almost half (42-44 %) of respondents who experienced harassment (in Latvia, Romania, Lithuania, Poland and Belgium), and 15% of respondents who were physically attacked (in Poland and Romania). **Among all LGBTI people surveyed, trans and intersex people reported having experienced bias-motivated harassment and violence even more often than gays, lesbians and bisexual persons.** Moreover, the fifth evaluation of the Code of Conduct on Countering Illegal Hate Speech Online<sup>3</sup> revealed that sexual orientation is the most commonly reported ground of hate speech (33,1%). In its Annual Review of the Human Rights Situation of LGBTI people in 2020<sup>4</sup>, ILGA-Europe also reported that there has been a substantial rise in hate speech online and in the media, and identified a growing trend of anti-LGBTI hate speech coming from official sources, including politicians and religious leaders across Europe.

Hate crimes and hate speech, motivated by bias and prejudice, happen to LGBTI people every day and everywhere, simply because of who they are. Consequently, as the above-mentioned EU LGBTI Survey II revealed, 42% of respondents in the EU suffered psychological problems (e.g., depression or anxiety) after hate-

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<sup>1</sup> Commission Work Programme 2021 „A Union of vitality in a world of fragility”, COM(2020)690, available at: [https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents\\_en](https://ec.europa.eu/info/publications/2021-commission-work-programme-key-documents_en).

<sup>2</sup> Report A long way to go for LGBTI equality, The European Union Agency for Fundamental Rights, 2020, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-lgbti-equality\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality_en.pdf).

<sup>3</sup> 5th evaluation of the Code of Conduct, European Commission, 2020, available at: [https://ec.europa.eu/info/sites/default/files/codeofconduct\\_2020\\_factsheet\\_12.pdf](https://ec.europa.eu/info/sites/default/files/codeofconduct_2020_factsheet_12.pdf).

<sup>4</sup> ILGA-Europe's Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People covering events that occurred in Europe and Central Asia between January-December 2020, available at: <https://ilga-europe.org/annualreview/2021>.

motivated violent incidents they experienced (with country specific data reaching over 60% in Latvia and Lithuania). 33% respondents reported that after the incidents they were afraid to go out or visit places (41% in Poland and Sweden). Consequently, 30% of LGBTI people in the EU (and over 50% in Slovakia, Bulgaria, Cyprus, Romania, Hungary and Poland), avoid holding hands in public with same-sex partner, for fear of being assaulted, threatened or harassed.

At the same time, there is clear stagnation in legislative changes which would guarantee sufficient protection to LGBTI people and stop the alarming increase of anti-LGBTI hate crimes and hate speech. **At present, 7 Member States do not expressly include sexual orientation as an aggravating factor in hate speech legislation and 15 do not include gender identity. In hate crime laws, 10 Member States do not mention sexual orientation, 16 do not refer to gender identity and 25 do not cover sex characteristics.**<sup>5</sup>

Among the Member States which do not expressly guarantee legal protection against anti-LGBTI hate crimes and hate speech, some recognise hate crimes as such in their criminal laws, but do not penalise them when targeted against LGBTI people. This would for instance be the case of Poland, where the respective Articles of the Criminal Code do not explicitly mention the grounds affecting LGBTI persons, or Italy, where the Senate has only now, after months of suspense, agreed to schedule the debate on the bill which would punish acts committed on grounds of sex, sexual orientation or gender identity.

These examples clearly show unjustified, discriminatory differentiation in protection from hate crimes and hate speech between particular groups, as well as lack of political will among Member States to adopt much needed legislative changes. The recent case of a man suspected of having been the victim of a horrendous homophobic hate crime in Latvia further raises the alarm, and contributes to the need for an urgent, common criminal law response at the EU level.

From the Commission's Work Programme 2021 and the LGBTIQ Equality Strategy 2020-2025<sup>6</sup> we understand that the Commission will present, by the end of 2021, an initiative to extend the list of EU crimes in Article 83(1) of the TFEU. Once such a decision is adopted, the Commission will have the competence to propose, as a second future step, substantive, harmonising legislation. The roadmap of the initiative<sup>7</sup> states that the list of EU crimes could be extended to cover hate speech and hate crime on the grounds covered by Framework Decision 2008/913/JHA, i.e. "race, colour, religion, descent or national or ethnic origin". Drawing on Article 19 TFEU as source of inspiration, further grounds under consideration are sex and sexual orientation, disability and age.

While we welcome the Commission's proposal, **we are concerned by that fact that the Roadmap does not specifically mention gender identity and sex characteristics.** In the light of information outlined in this letter, trans and intersex people are the most vulnerable to hate crimes and hate speech across the EU, despite the fact that few Member States penalise crimes motivated by prejudice towards gender identity and sex characteristics than they do with regard to sexual orientation. This is a reality of which the Commission is aware and it is also reflected in the LGBTIQ Equality Strategy. In accordance, we consider that the EU should guarantee that the proposed legislation will offer equal protection to every LGBTI person, leaving no one behind.

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<sup>5</sup> Data provided by ILGA Europe in Rainbow Europe Index 2020, available at: <https://rainbow-europe.org/#1/8693/0>

<sup>6</sup> European Commission (2020), "Union of Equality: LGBTIQ Equality Strategy 2020-2025", published on 12 November 2020, accessible at [https://ec.europa.eu/info/sites/default/files/lgbtiq\\_strategy\\_2020-2025\\_en.pdf](https://ec.europa.eu/info/sites/default/files/lgbtiq_strategy_2020-2025_en.pdf).

<sup>7</sup> Roadmap of the initiative "Extension of the list of EU crimes to hate speech and hate crime"; Ref. Ares(2021)1431474 - 23/02/2021, accessible at: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12872-Hate-speech-&-hate-crime-inclusion-on-list-of-EU-crimes\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12872-Hate-speech-&-hate-crime-inclusion-on-list-of-EU-crimes_en).

In the light of the above, we wish to ask you, Madame Commissioner:

1. Will the legislative proposal of the Commission to extend the list of EU crimes to cover hate speech and hate crime refer also to the grounds of gender identity and sex characteristics?
2. If not, why, and how is the Commission planning to guarantee equal protection from hate speech and hate crime to trans and intersex people?
3. If the decision on the amendment of art. 83 TFEU is adopted, when is the Commission planning to propose the substantive, harmonizing legislation on the basis of it, and what will be the scope of the proposal?

Yours sincerely,

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