



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: General Secretariat of the Council
to: Delegations
Subject: European Parliament plenary meeting of 22 May 2012
Fight against homophobia in Europe

For the Council, Minister WAMMEN made the speech in Annex I.

Commissioner Ms. REDING presented the speech in Annex II.

On behalf of the EPP, Mr. BUSITILL recalled the consistent manner in which the European Parliament has always condemned discrimination of any kind. However with regard to the drafting of a joint motion for a resolution he urged respect for subsidiarity and was opposed to listing individual countries whose governments were not always responsive to homophobic incidents.

For the S&D group, Mr. CASHMAN said that states should give equal protection and opportunities to all individuals. He favoured naming countries such as Moldova, Ukraine and Russia which did not provide for such protection. Not naming countries could become an incentive for other countries to oppress homosexuals.

Ms. IN 'T VELD, for ALDE, said that 5 to 10% of the European Union's population was homosexual, but that in spite of their contribution to the economy that group did not always enjoy the same rights as other citizens. She called for a strong resolution including the naming of countries. She also felt that the language of hate used by certain political leaders was dangerous and contributed to the creation of a climate of violence and fear.

For the Greens, Ms. LUNACEK said that the situation was improving but that there were still countries and even Member States that had laws which made it difficult to come out.

On behalf of the ECR, Mr. KIRKHOPE favoured building a more tolerant society but considered that some countries were moving faster in that direction than others. At least fundamental values and dignity should be protected in a decent fashion.

Referring to Hungarian legislation Mr. DE JONG, for the GUE, said that the situation in some countries was getting worse. Outing of politicians would be an incentive for other homosexuals to come out themselves.

Subsequent comments by other Members were unanimous in condemning homophobia wherever it occurred in the world. Some Members such as Ms. STRIFFLER (EPP) called on the Commission to take action against Member States such as Lithuania, Latvia and Hungary who needed to reconsider relevant parts of their legislation. Several Members called upon the Council to move ahead with the anti-discrimination Directive and suggested the development of an EU action plan to fight homophobia. Reacting to some remarks concerning the marriage of same-sex couples, Mr. POSSELT (EPP) stated that he was in favour of the protection of fundamental rights but that these should not be abused to force Member States to adopt a common definition of a "family". A similar comment was made by Mr. MORGANTI (EFD) who urged respect for core values such as marriage and having children.

Reacting to these comments, Commissioner REDING explained the link between the Free Movement Directive and the mutual recognition of same-sex couples which had already been the subject of many written questions. It was key that the mere fact of having exercised the right to free movement did not imply that same-sex couples would acquire more rights in the host Member State than those guaranteed to their own nationals in that Member State. Moreover the question of recognition of marriages did not fall within the scope of the Free Movement Directive and a host Member State was under no obligation to recognise the marriage under its national law. She also referred to regular interventions by the High Representative on specific homophobic incidents in third countries.

Mr. WAMMEN concluded that the three institutions shared the same point of view and that discrimination based on sexual orientation should not be tolerated. Member States should take all necessary measures to guarantee the same level of rights and protection for all citizens. He passed on the Presidency's commitment to do its utmost to find a solution to unblock the Anti-discrimination Directive. Homophobia should be part of history, not of the future.

CHECK AGAINST DELIVERY

Madam President, just like racism and sexism, homophobia is a blemish on European values, threatens the principle of equality, undermines the spirit of tolerance and diversity and blights the lives of victims. Therefore the Council stands alongside Parliament today in the fight against it.

We need to be constantly vigilant in combating discrimination. This is about defending and putting into practice the values we have enshrined in the UN Charter and human rights instruments such as the Convention on Civil and Political Rights, in Treaties, in the Charter on Fundamental Rights, and in EU legislation. This is not only about sexual orientation and identity. It is about freedom, including the right to speak freely, to march, to demonstrate and to express oneself in public.

As a legislator, the Council has already taken steps to protect European citizens against discrimination. The Council directive on establishing a general framework for equal treatment in employment and occupation is an important one. It prohibits discrimination on the grounds of religion or belief, disability, age or sexual orientation, as regards employment and occupation. Thus it is already illegal for employers to discriminate against someone just because they happen to be gay – or indeed heterosexual – but of course discrimination does not take place only at work. European citizens also expect to receive equal treatment at school, when seeing a doctor, when renting a house and so on. No one should suffer discrimination because of their sexual orientation. No one should face harassment and bullying.

The Council is currently examining a Commission proposal for a new directive that would extend protection against discrimination to areas outside employment – areas such as social protection, healthcare, education and access to goods and services, including houses.

As you know only too well, the negotiations on this proposal have not been easy. The Council has been examining the text since 2008. We need all Member States to agree before we can adopt this act. However, the work continues and the Danish Presidency will be presenting a progress report to the Employment, Social Policy, Health and Consumer Affairs Council in June.

Legislation is, of course, the bedrock of human rights and equal treatment, but it can never be enough in itself. Another tool at our disposal is awareness raising. Changing attitudes is a long-term process, and I recall with satisfaction that five years ago the values shared by the Council and the Parliament were given embodiment in the 2007 Year of Equal Opportunities for All, which was set up to remind our citizens that all people are entitled to equal treatment irrespective of their racial or ethnic origin, age, sexual orientation and so on.

We need to continue this work. The Fundamental Rights Agency is deepening our understanding of discrimination based on sexual orientation, and the EU also seeks to project its values in the wider world through its external actions. The European Parliament keeps a vigilant eye on this process.

A glance at the newspapers is enough to confirm that homophobic incidents are still all too common in Europe and beyond. The European Parliament plays a crucially important role in defending sexual minorities who are not adequately protected by politicians and the law.

The EU has led the world in affirming lesbian, gay, bisexual and transgender people's rights and we must continue this process together. This is a shared responsibility of this House, the Commission and the Member States, and it is a shared responsibility for all our citizens in the EU.

Madam President, last week, on 17 May 2012, we celebrated the International Day against Homophobia and Transphobia. On that occasion I made a statement on behalf of the Commission, and I would like to reiterate here, in front of the elected representatives of the European citizens, that homophobia and transphobia are an unacceptable violation of human dignity and that they are completely incompatible with the founding values of the EU.

That is why the Commission is fully committed to combating this phenomenon with all the powers at our disposal. As Vice-President in charge of fundamental rights and non-discrimination, I have the task of ensuring that the principle of equal treatment remains valid everywhere and for all. Lesbian, gay, bisexual and transgender people across the EU are still victims – victims of exclusion, hate speech, hate crime, discrimination and intolerance. We all know that, and we also know that our basic texts, such as the Charter of Fundamental Rights, prohibit any discrimination based on sexual orientation. As explained in the recently adopted annual report on the application of the Charter, the Commission ensures that this principle is respected in every EU action and by Member States when they implement EU law.

Discrimination based on sexual orientation is also prohibited in our directives, for instance in the directive on employment. The Commission has made a legislative proposal to extend this prohibition to cover access to goods and services, social protection and education. I agree with the Presidency that it is unfortunate that this text is in an impasse in the Council, and I look forward to the report the Presidency is to prepare on its efforts to move forward on it. Unfortunately, this text needs unanimity in Council and that is the reason why it is blocked, but it is clear also that there is a vast majority of Member States who would back it.

Not only do we have laws in place but the Court of Justice has also confirmed several times in its rulings that the directives on gender equality in employment and access to goods and services also prohibit discrimination based on gender reassignment. So, with regard to the legal basis we are very clear: there is no doubt what the legal foundations are.

On top of that, of course, you have to stay vigilant, and the Commission remains vigilant, following up closely every petition and parliamentary question that alerts us to discriminatory practices on grounds of sexual orientation, whenever they concern matters falling within EU competence.

Hate crime against LGBTI persons remains a source of concern, as shown by the recent homophobic murder of the young Belgian Ihsane Jarfi. That is also why the Commission has asked the Agency for Fundamental Rights to conduct a specific survey on hate crimes and discrimination against LGBTI persons in all Member States and in Croatia, because we need to have evidence – not only the evidence once a crime has happened but also a mapping of where crimes happen in order to understand more about the trends in this domain.

In parallel, the Commission is continuing its awareness-raising actions across Europe in order to fight discrimination and to promote equality and diversity. In particular, as you know, we support civil-society organisations and national authorities in combating discrimination on the grounds of sexual orientation and gender identity.

What we do in Europe, we also do outside Europe. The External Action Service is very much aware of the difficulties faced by the LGBTI community in third countries like Russia, Ukraine and Moldova, to mention only those in which we find not only discrimination and violence but also criminalisation. The EU has repeatedly condemned such measures and repeatedly called on the authorities of those countries to respect their international legal obligations on human rights, including the principles of equality and dignity.

Let me remind you that Cathy Ashton, the High Representative of the Union for Foreign Affairs and Security Policy, condemned homophobia in her statement on 17 May 2012 and called on governments to apply human rights equally, irrespective of sexual orientation or gender identity. And every time she visits a country outside the EU she recalls these principles in very strong language.

As EU Commissioner for Justice, I will continue here in Europe to do my utmost to uphold the fundamental rights upon which the European Union is founded, not only on the International Day against Homophobia but on every day of the year, because homophobia has no place in Europe.