

Motion, Rainbow Rose GA 2021

“Self-determination and depathologisation as a basis for legal gender recognition are European and Socialist values ”

Given the limits of EU treaties and the Commission’s will with regards to LGBTIQ+ rights, Rainbow Rose and its member organisations — together with PES and its member parties — must work together to advance LGBTIQ+ rights not only through the European Institutions but actively at all levels of government until treaties can be expanded to prevent all forms of discrimination based on sexual orientation, gender identity and expression, and sex characteristics.

This is particularly true in our fight to ensure that legal gender recognition follows best practices across Europe. This is monitored by Transgender Europe every year and, depending on the Council of Europe country, ranges from not being consistently available, requiring a diagnosis and/or abusive medical requirements to a depathologised process based on self-determination. This is considered the gold standard following the removal of trans-related categories from the Chapter on Mental and Behavioral Disorders in the World Health Organisation’s International Classification of Diseases - 11th Revision in 2019.

This motion focuses on Rainbow Rose’s role in furthering this fundamental right needed to protect LGBTIQ+ identities — self-determination — and the policy goals around legal gender recognition based on it, which are needed to reduce discrimination and violence directed toward trans and non-binary people in Europe.

Whereas LGBTIQ+ persons everywhere in Europe should enjoy the freedom to live and publicly express their sexual orientation and gender identity, gender expression and sex characteristics without fear of intolerance, discrimination or persecution on those grounds.

Whereas trans persons in Europe experience more harassment — including physical and sexual attacks) than the LGBTIQ+ community as a whole according to the EU Fundamental Rights Agency 2019 LGBTI survey. Experiencing physical or sexual attacks is more common for trans respondents (17% in the five years before the FRA survey), compared with the average for all respondents (11% in the EU-28).

Whereas, the European Court of Human Rights has held that the notion of personal autonomy is a key principle underlying Article 8 of the European Convention on Human Rights and includes a right to self-determination applicable to sexual orientation and gender identity. It has described gender identity as “one of the most intimate areas of a person’s private life” and as “one of the most basic essentials of self-determination.”

Whereas the Commission’s “Legal Gender Recognition in the EU” report prepared by the PES Equality Commissioner Helena Dalli at DG Justice and Consumers recommends “Member States should strive to adopt LGR procedures based on self-determination and meet the human rights principles set out in the Yogyakarta principles”: “take all necessary measures ‘to legally recognise each person’s self-defined gender identity’” and “remove requirements to satisfy medical (including psychiatric), civil status, age preconditions or ‘real-life experience’ (RLE) requirements.”

Whereas the Union of equality: LGBTIQ Equality Strategy 2020-2025 developed by PES Equality Commissioner Helena Dalli states “the Commission will foster best practice exchanges between Member States on how to put in place accessible legal gender recognition legislation and procedures based on the principle of self-determination and without age restrictions.”

Whereas the LGBTIQ Freedom Zone resolution passed in the European Parliament voices concern that Article 33 of the Omnibus Bill T/9934 “de facto bans legal gender recognition for trans and intersex persons in Hungary, exposing them to discrimination and infringing their right to privacy” and that in December 2020 “the Hungarian Parliament adopted constitutional amendments which further restrict the rights of LGBTIQ people, neglect the existence of transgender and non-binary persons”;

Whereas opposing self-determination and depathologisation with regards to legal gender recognition is a rightwing policy that aligns with extremist governments in not only Hungary but also Russia and Poland;

Whereas we have seen no evidence from all the places where gender self-identification has been passed — in Europe and beyond — that it represents a danger to cisgender women. States and jurisdictions as varied as Ireland, Malta, Norway, Belgium, Denmark, Portugal, Argentina, Bolivia, Uruguay, Pakistan, Mexico City, the Australian State of Victoria and the U.S. states of New York, California and New Jersey amongst others have successfully advanced in these rights;

Whereas many of these jurisdictions had their self-determination-based legal gender recognition laws passed by socialist, social democratic and labour parties;

Whereas the PES LGBTI roadmap adopted in June 2017 calls the PES to encourage member parties to advance LGBTI legislation on the national level and notes “particular attention should be dedicated to the rights of trans and intersex people, with focus on legal gender recognition human rights based models and depathologisation”

Whereas the S&D position paper on LGBTI rights from October 2016 “requests that Member States recognize the change of gender and provide access to quick, accessible and transparent legal gender recognition procedures without medical requirements, such as surgery or sterilization or psychiatric consent. The choice must be based only on the person's self-determination. Transgender people must have their new gender recognized in official documents with retroactive effect and full respect of their privacy.”;

Whereas the PES resolution passed at the Lisbon Congress states that PES along with Rainbow Rose call for policies that include “allowing for quick, accessible and transparent legal gender recognition procedures without medical or psychiatric consent and based on the persons’ self determination and without age limits.” It also notes that “we will not allow LGBTI people to become a tool in polarising populist discourse. We will continue to strongly condemn hate speech and speech that sets communities against one another”;

Whereas Rainbow Rose statutes declare the first of the “aims of the association [is]: to operate as a European Social Democratic LGBT Network that fights against all types of discrimination and campaigns for LGBTI peoples equality and rights” and trans rights are LGBTI rights;

Whereas Rainbow Rose statutes also states that an aim is to “to advance LGBTI people’s rights in the political agenda of the Party of European Socialists (PES) and its member parties”;

We call on the Rainbow Rose board, its member organisations and activists to actively engage the entire political family, as well as institutions, in support of this fundamental LGBTIQ+ policy principle of self-determination and depathologization of legal gender recognition including — but not limited to —

- Engaging directly with member organisations and PES member parties that move against self-determination and depathologization principles in member organization statements, party documents, or votes in Parliament
- Bringing such instances up at PES Coordination Team and Presidency meetings to voice Rainbow Rose's concerns
- Working with and pressuring internally the leadership of PES and S&D to both speak in favor of these fundamental self-determination and depathologization principles publicly and to lobby behind the scenes
- Engaging directly with elected politicians from our member parties that speak critically of such rights and principles, creating doubts in society and opening trans members of society to more discrimination, harassment and violence
- Seeking out experts from ILGA-Europe, Transgender Europe and other organisations to better Rainbow Rose's understandings of best practices and trans-inclusive policies
- Encouraging member organisations and Rainbow Rose itself to include quotas for trans, non-binary, and gender non-conforming individuals in leadership positions including executive boards, commissions, etc.
- Working with PES member parties to include trans people (and LGBTIQ+ people more broadly) in their election lists (particularly but not solely European) at a rate similar to our percentage of population, because representation is power.
- Pushing to include self-determination and depathologization as criteria for candidate states in any enlargement of the European Union, including in the Western Balkans

The Rainbow Rose 2021 General Assembly declares its unyielding support to trans, non-binary and gender non-conforming people living in Europe. We are a trans-inclusive organization and call our socialist, social-democratic and labour family to work together to address the fundamental human rights based on self-determination and depathologisation.