



The situation of LGBT people under the new European Union Treaties		
Treaty Article no	Text	Comments
<b style="color: #cc0000;">New explicit reference to equality, including the rights of persons belonging to minorities		
2 TEU	The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.	This new formulation makes it explicit that respect for human dignity, human rights and equality are the common values on which the Union is based. It is also made explicit that respect for human rights includes the rights of persons belonging to minorities. The new article also notes that these values are common to Member States in a society in which non-discrimination prevails. This proviso could be read in conjunction with art. 21 of the Charter, which forbids discrimination on a number of grounds, including sexual orientation.
<b style="color: #cc0000;">New general obligation for the EU to combat exclusion and discrimination		
3(3) TEU	[The Union] shall combat social exclusion and discrimination.	The Union must adopt a proactive approach in the fight against discrimination based on sexual orientation. This is not only an aim in itself, but also a component of all Union policies and activities susceptible of impacting on LGBT rights. Article 10 TFEU thus
10 TFEU	In defining and implementing its policies and	

	activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.	introduces equality mainstreaming with respect also to sexual orientation in all Union activities.
New Fundamental Rights Architecture		
6 TEU	<p>(1) The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.</p> <p>(2) The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.</p> <p>(3) Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.</p>	<p>This article is based on former art. 6 TEU, with significant innovations. The Charter becomes legally binding, with the same status as the Treaties (although it might be argued that it should have a higher status) and this poses a clear reference to the ban on sexual orientation discrimination.</p> <p>The article paves the road for accession to the ECHR, with all of its acquis in terms of protection for LGBT people.</p> <p>Fundamental rights, including those of LGBT people, are general principles of Union law. This means that, as general principles, they should inform the interpretation and application of all Union legal measures which could, when they collide with such fundamental rights, be held to be illegal. The ban on discrimination on certain grounds (notably age) has been declared by the ECJ as a fundamental principle of EU law and not just a result of the provisions of secondary law. The consequence is that it must be given full effect by national courts in areas covered by the scope of Union law: any national legal provisions that are clearly incompatible with the fundamental Union law principle of non-discrimination must be set aside even in disputes between private parties (so called horizontal direct effect). The principle of non-discrimination on certain grounds is only a specification of the general Union law principle of equal treatment, therefore this reasoning would logically apply also to sexual orientation discrimination in areas covered by Union law.</p>
Competence on combating sexual orientation discrimination		
19 TFEU	<p>(1) Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.</p> <p>(2) 2. By way of derogation from paragraph 1,</p>	<p>This is former art. 13 ECT. It foresees a special legislative procedure. Unanimity remains, but the role of EP is enhanced: before it had to be consulted, now it has to give consent.</p> <p>Incentive measures to support action taken by the Member States in order to combat discrimination are taken according to the ordinary legislative procedure.</p>

	the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.	
Potential for recognition of marriages and registered partnerships		
67(4) TFEU	The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.	The Union is under a duty to facilitate access to justice by its citizens and (arguably) residents. Mutual recognition of decisions in civil matters, in so far as it is related to access to justice, may also refer to matters of family law and marital status, including matters involving same-sex couples (for instance maintenance, child custody, property division, inheritance). See also next article.
81 TFEU	<p>(1) The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.</p> <p>(2) For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: (...) (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.</p> <p>(3) Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council,</p>	<p>Cooperation in civil matters is only “judicial”, not a general one; therefore, “mutual recognition” concerns in principle only judgments and decisions. In this framework, judicial cooperation in civil matters may include “measures for the approximation of the laws and regulations of Member States” which, by virtue of para 3, extend to family law matters. EU measures can, nevertheless, only concern cases having cross-border implications.</p> <p>The list in para 2 includes measures on “the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction”; this includes national rules on recognition of civil status like marriage, registered partnerships and others. Reference to the functioning of the internal market is made only eventual, whereas in former art. 65 TEC it was mandatory. However, there is no clear mandate for harmonisation of national laws in the field of civil status, as cooperation in this field only comes in through the lens of <i>judicial</i> cooperation (“for the purposes of paragraph 1”).</p>

	acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.	
4(2) TEU	The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional.	It could be argued that some MS would consider matters of family law, even those having cross-border implications and falling within 'mutual recognition' (art. 67(4)) and 'judicial cooperation in civil matters' (art. 81), as pertaining to their 'national identities' or to their 'fundamental structures', thus hampering any attempt to greater harmonization. The previous formulation of art. 6(3) TEU was indeed more limited. However, the new art. 4(3) explicitly states the principle of 'sincere cooperation' between MS and the Union, which could play a role vis a vis those MS reluctant to take action in family law matters falling within or having a link with Union law.