

LGBT Rights in the EU

Abstract

The thesis examines the protection of lesbian, gay, bisexual, and transgender (LGBT) rights in the European Union (EU). After accession to the EU, one of the EU's most powerful weapons for ensuring adaption into the EU norms and rules - conditionality - is lost. In some EU Member States, the EU norm of non-discrimination against sexual minorities has not yet been successfully adopted. Using Europeanisation theory as a theoretical framework, the thesis aims at examining what tools the EU have at its disposal to ensure that the norm of non-discrimination against sexual minorities is adopted in all its Member States. More specifically, in the absence of external incentives, does the EU use mechanisms of social learning? The study conclude that the EU do use social learning, along with other mechanisms, but could benefit from having a strategic framework for LGBT issues within the Union.

Key words: Social learning, Europeanisation, Norms, Sexual orientation, LGBT

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List of Abbreviations

Amsterdam Treaty	Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts
CEE countries	Central and Eastern European countries
Commission	European Commission
Council	Council of the European Union
ECJ	Court of Justice of the European Union
EIDHR	European Instrument for Democracy and Human Rights
EU	European Union
EU Charter	Charter of Fundamental Rights of the European Union (2010/C 83/02)
FRA	European Union Agency for Fundamental Rights
Horizontal Directive	Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM (2008) 426 final)
ILGA-Europe	European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association
Lisbon Treaty	Treaty of Lisbon amending the Treaty on European Union and the Treaty on the European Community
LGBT	Lesbian, Gay, Bisexual, and Transgender
MEP	Member of the European Parliament
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organisation
TEU	(Consolidated Version of) the Treaty on European Union
TFEU	(Consolidated Version of) the Treaty on the Functioning of the European Union
Toolkit	Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People

1 Introduction

According to the EU Treaty (Treaty on European Union, TEU), the European Union (EU or hereinafter 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. The 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.

(Article 2 TEU).

With the Lisbon Treaty, the EU's legal obligations to human rights was further strengthened by making the EU Charter on Fundamental Rights legally binding for the Member States. In the past two decades the EU has significantly stepped up its work for the rights of sexual minorities in the Union and there is a pronounced norm of equal rights for all, regardless of sexual orientation. In a number of eastern Member States however (for example Poland, Latvia and Lithuania), this part of the human rights *acquis* is still facing opposition. In many of these countries, the issue of lesbian, gay, bisexual, and transgender (LGBT) rights did not appear on the political agenda until pressure was applied by the EU during the accession negotiations (O'Dwyer 2010: 230). During the accession period, the EU had a strong influence on the candidate states. The Copenhagen Criteria put high pressure on the states to reform their political systems, not least with regards to human rights and minority protection. The recent years' disturbing trend in a number of Member States, with increased discrimination and vulnerability of sexual minorities, raises concerns regarding the sustained post-accession compliance of the EU human rights *acquis*, not least within culturally sensitive policy areas. When the EU no longer have the strong enforcement mechanisms of conditionality, can it ensure compliance with its norms regarding sexual minorities?

1.1 Purpose and Research Question

If the EU is to continue to be a credible normative actor within the international human rights regime, it needs to be able to ensure a strong protection for the human rights within the Union. Even though the sanctions available to EU institutions to punish infringements of EU law are less powerful than the threat of

withholding membership to a candidate state, they are still much more powerful than the leverage of EU institutions with regards to the political conditions for accession, such as human rights and minority protection (Sedelmeier 2011: 27). International human rights organisations, such as Amnesty International, has raised critique against the EU, claiming that much work remains for the EU in enforcing its human rights standards in the Member States. Among the key human rights abuses are, according to the organisation, the widespread discrimination of LGBT people (Amnesty International 2013). The overarching purpose of this thesis is to examine in what ways the EU can further the diffusion of “EU-specific” norms to its new Member States. More specifically, the thesis aims at investigating how the rights of LGBT people in the EU can be enhanced, especially in the new Member States. From this purpose, the following research questions are posed:

In the absence of external incentives such as EU membership – how does the EU work to ensure that the norm of non-discrimination towards sexual minorities is internalised in the Member states?

What tools does the EU have at its disposal? What concrete measures are being taken?

The research question is of principled importance, because it is essential that the EU has functioning mechanisms to ensure that the founding principles and norms are obeyed and are successfully diffused into the new Member States after they accede to the Union. Human rights is a fundamental principle for the EU and plays a large role as a common identity for the Member States. If the Union fails in upholding the respect for human rights in all its Member States, it would thus affect the common identity. LGBT rights are sensitive issues and thereby interesting to examine, as one would expect to find greater resistance to the new norms in this policy area. Should one find a functioning model in this area, that model should be applicable on other areas as well.

1.2 Disposition

I start by outlining the theoretical framework of the thesis. In order to communicate how the theories on socialisation positions themselves in the wider Europeanisation research, I start by a brief introduction to Europeanisation theory. I then move on to the functioning of the norm diffusion process, to provide the necessary background to the theories of external incentives and social learning. The focus in this paper is on social learning, however the context of external incentives (and the problems associated with it in the post-accession period) is needed. In chapter 3, I outline the normative foundation of the EU, how norms and ideas are a central part to the EU identity, before moving on to argue for there being a strong norm on non-discrimination for sexual minorities. The following

chapter illustrates how this norm has not yet been internalised in all Member States. Chapter 4 analyses what mechanisms the EU has at its disposal for coming to terms with this problem, in the light of social learning theory. The thesis ends with a concluding discussion.

1.3 Method and Material

I apply a social constructivist approach to my study. Social constructivism is a theoretical approach to international relations based on the premise that “the interest and identities of political actors, including states, are socially constructed (Jordan 2003:664). It stresses the importance of political cooperation, and not merely a strictly legal regulation within the EU. Creating common institutions facilitates the finding of common solutions to problems. Unlike realists, who see international organisations as merely the tools of states, scholars of social constructivism see these organisations and institutions as independent actors (Ibid: 664ff). My focus is on the norms of the EU, not merely the legislation of the Union. I take the concepts from socialisation theory and apply them to the mechanisms I identify in the EU’s work on LGBT rights. To a certain degree the study has a normative approach, as I argue that the EU must protect its norms on sexual minorities, and that it is of great importance that all Member States adhere to the norms. The study is qualitative as I to a large extent look at primary sources of EU law and policies, to determine what kind of socialisation mechanisms the applies.

The study at hand constitutes a case of socialisation of new Member States into a specific “EU culture”. By examining what tools the EU have at its disposal to ensure that the Member States are acting in accordance with the norms of LGBT equality and non-discrimination, an indication is given to how well the new Member States have been socialised into the EU culture of respect for human rights, and more specifically, minority rights. Respect for sexual minorities is suitable as a case study of post-accession Europeanisation, as the issue did not become politicised until after accession. It is also a policy area where culturally sensitive norms conflict with each other. If a strategy can be found for successful socialisation in this policy area, it is likely to be successful also in other areas.

I make qualitative document studies to demonstrate that there is a norm of LGBT equality in the EU, and that there is a discrepancy between this norm and the practice in some Member States. As there is no coherent EU policy on LGBT rights, I illustrate this norm by analysing different legislative acts, as well as political statements and policies. In chapter 2, I provide an analytical framework for Europeanisation and norm diffusion, and show how the theories on external incentives and social learning fit into this. Some parts of the model is not applicable to this analysis, however. The third stage of the norm “life cycle”, internalisation, will not be measured in this analysis. In order to measure internalisation, or implementation of the norm, empirical research would have to be made “on the ground” in selected Member States, in order to fully determine

whether the norm has been internalised. This is not the purpose of this study. Rather, I am interested in how the EU acts when its Member States are not acting in accordance with a certain norm, in this case LGBT equality.

1.4 Delimitations

The thesis is not primarily aimed at mapping the overall discrimination against sexual minorities in some Member States. Today, there is no general non-discrimination legislation in the EU covering sexual orientation, beyond the area of employment. In many member states there is no legislation protecting sexual minorities from *inter alia* hate speech. As there is less legislation, there is less opportunity for the Commission to act on infringement procedures. A closer look on adaption to the EU culture, or EU norms, may therefore be more productive.

My focus is not to analyse why LGBT rights seems to be a particularly difficult area to socialise the norms. I am interested in the *process* in which norms are socialised and internalised by the Member States. Mainly, my focus lies in how the EU works to diffuse this norm to the Member States. Further, I will not be analysing to what extent the EU is effective in socialising its Member States, as that would be beyond the scope of this study.

On many policy areas there has been good progress in adapting to the EU norms, and EU conditionality has in many cases led to a behavioural change in the new member states. The reasons for why this seems to be harder for some states in the area of sexual rights is an interesting question, and one that deserves further research. It is however a question that is beyond the scope of this paper. Many factors could be included in such an analysis: the normative context of the country in question; its cultural, religious and historical legacies; and the role of civil society agents are a few examples. The purpose of this paper, however, is to look at how the EU acts when norms are not being adopted successfully, and not to look into the specific reasons for why certain norms are not adopted.

Discrimination in the wider social sphere is a complex phenomenon, and is too wide a scope for this study. To alter the perception and opinions of a society as a whole is a complex process that takes time. It may also be hard to determine to what extent the ruling elites can be held responsible for this. However, when it comes to open discrimination and offending language in public spheres such as the media, official agencies, public statements and in public or educational sector, there is a clear responsibility of the state to make sure that there are policies that are in line with the EU norms - and that they are upheld. As mentioned above, to measure to what extent a norm has been internalised would require an empirical study on the ground in the respective states. For that reason, I will not be looking at the real effects of the EU socialisation process.

My point of departure is, however, that when public officials and leading politicians, i.e. representatives of the state, are using a direct homophobic rhetoric, and putting forward homophobic legislation, one cannot argue that the norm has been internalised. In this situation - how does the EU act?

2 Theoretical Framework

In this chapter the theoretical framework guiding the paper will be outlined. The study places itself within the larger context of Europeanisation, more specifically how the EU socialises its Member States into internalising EU norms on non-discrimination of sexual minorities. First, I present the previous research done in the field of Europeanisation and norm diffusion. I then move on to outline the main theories used in this study: the external incentives model and social learning. As the focus of this study is on the post-accession period, the primary theory guiding the analysis is social learning, but an understanding of the external incentives model is necessary, as it is a central component in the EU's work to socialise its member states prior to accession.

2.1 Europeanisation

This study positions itself within the field of Europeanisation research. The term "Europeanisation" can be found in a wide spectrum of studies, covering issues such as: How does Europeanisation affect the interests and ideas, actors and institutions within the European union? What is the impact of the EU on policy processes? How have interest groups responded to the new form of EU politics? (Featherstone 2003: 20). One of the main critiques against Europeanisation as an analytical framework is that researchers often use the term without giving it a precise definition. As Kevin Featherstone notes, "the faddish use of 'Europeanisation' in different contexts can easily obscure its substantive meaning" (Ibid: 3). Moreover, concepts that are not well-defined lead to confusion, and concepts without negation are universals - they point to everything (Radaelli 2003: 28). However, Featherstone argues, "precisely the breadth of application and the demanding explanatory framework needed, attests to the value and importance of the term" (Featherstone 2003: 19). The term provides a gateway to understanding the complex web of developments that characterises the politics of the EU today.

In order to avoid the critique that the scope of Europeanisation is too wide to be used as a research agenda, it is important to specify what is meant by "Europeanisation". In his overview over Europeanisation research, Featherstone argues that the term can have a wider usage than just issues concerning the EU, such as increasing transnationalism, where ideas and norms spread across Europe. However, today the term is most associated with domestic adaptation to the

pressures emanating directly or indirectly from EU membership (which is why the term “EU-isation” could be used) (Featherstone 2003: 7f; Radaelli 2003: 27).

One early definition of the term, that has been widely used, is that of Ladrech, who sees it as “a process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organisational logic of national politics and policy-making” (Featherstone 2003: 12). Claudio Radaelli (2003:30) specifies the definition further to include mechanisms and effects of socialisation, stating that Europeanisation refers to

processes of (a) construction (b) diffusion and (c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’, and shared beliefs and norms which are first defined and consolidated in the EU policy process and then incorporated in the logic of domestic (national and subnational) discourse, political structures, and public policies.

In other words, actors redefine their their interests and behaviour to meet the imperatives, norms, and logic of EU membership.

2.1.1 On Norms and Norm Diffusion

Before going into the specifics of the norm diffusion process, a brief conceptualisation of what I mean by “norms” are in order. In the social constructivist literature, definitions of norms are often based on behaviour, prescription, and shared expectations. Norms represent standards of behaviour that often result from common practices, but who also have proscriptive or prescriptive qualities: they deem what is considered appropriate. As Annika Björkdahl argues: “[f]or the normal to become normative, a feeling of obligation needs to be added, and the behaviour must be driven by norms” (Björkdahl 2002: 40). This prescriptive quality is precisely what sets norms apart from “rules”. A third element common to the conceptualisation of norms is shared collective expectations. In a given context, actors with a certain identity are expected to behave in a certain way (in accordance with the norm) (Finnemore & Sikkink 1998: 891f; Björkdahl 2002: 43)

In the norm diffusion process, two separate logics of action can be discerned to explain the reason behind actors’ behaviour. Actions can be seen as driven by a logic of consequence, where the anticipated consequences of the action and the prior preferences of the actor determines actor behaviour. The actor thus makes a rational calculation of what consequence a certain action will result in (March & Olsen 1998: 950).

Within the logic of appropriateness, actions are seen as rule-based. An actor with a given identity, is expected to respond to a specific situation according to certain rules. As March and Olsen explains, “[t]he pursuit of purpose is associated with identities more than with interests, and with the selection of rules more than with rational expectations” (Ibid: 951).

Thus, in the present case, if a state, or state actor, is driven by a logic of appropriateness, it adheres to a norm because it is convinced of the merits of the

norm. In contrast, if it is driven by a logic of consequence, it adheres to the norm because it believes that there is something to be gained from doing so, and not necessarily because it believes in the merits of the norm.

The two logics places themselves under different theoretical approaches: the sociological institutionalist versus the rationalist institutionalist (Featherstone 2003: 15f). However, as both Featherstone and March & Olsen points out, the two logics are not incompatible. Rather, as we shall see, the two logics often occur simultaneously or they characterise different phases of the Europeanisation process. The impact of Europeanisation is also differential across policies, politics, and politics, which is why different explanations for action and different basis for institutional change may be required (Featherstone 2003: 16; March & Olsen 1998: 953f).

2.1.2 The Norm “Life Cycle”

In their work on international norm dynamics, Martha Finnemore and Kathryn Sikkink highlight three aspects of norms - their origins, the mechanisms by which they exercise influence, and under which conditions norms will be influential in international politics. Their argument is that norms evolve in a certain pattern they describe as the norm’s “life cycle” (Finnemore & Sikkink 1998: 888). The “life cycle” consists of three stages - norm emergence, norm cascade and internalisation. At each stage, different social processes and logics of action may be involved. Norm-driven change may thus be characterised by different actors, motives, and mechanisms of influence (see table 1), depending on what stage in the norm’s evolution one is looking at (Ibid: 895).

Table 1. Stages of norms

	Stage 1 Norm emergence	Stage 2 Norm cascade	Stage 3 Internalisation
Actors	Norm entrepreneurs with organisational platforms	States, international organisations, networks	Law, professions, bureaucracy
Motives	Altruism, empathy, ideational commitment	Legitimacy, reputation, esteem	Conformity
Dominant mechanisms	Persuasion	Socialisation, institutionalisation, demonstration	Habit, institutionalisation

(Table taken from Finnemore & Sikkink 1998: 898)

In the first stage, norm emergence, the characteristic mechanism is persuasion by norm entrepreneurs, who tries to convince a critical mass of states to adopt a new norm. The motivations of norm entrepreneurs may vary, but according to

Finnemore & Sikkink, they are usually either altruism, empathy or ideational commitment (when a norm is promoted because the entrepreneur believes in the ideals and values embodied in the norm). Common for these motives are that they all relate to the identity of the norm entrepreneur, and thus are guided by a logic of appropriateness (Ibid: 895, 898). In the second stage, norm cascade, norm leaders attempt to socialise other states to become norm followers. The main motivations for embracing the new norm in this stage are a combination of “pressure for conformity, desire to enhance international legitimation, and the desire of state leaders to enhance their self-esteem” (Ibid: 895, 898). When a critical mass of relevant state actors has adopted a norm, the norm has reached its “tipping point”, and will thereafter become internalised. At this point, the norm has been so widely accepted, that it acquires a “taken-for-granted” quality and is no longer a matter of public debate. When a norm is fully internalised, conformity with the norm comes almost automatic, and it can even be hard to discern the norm, as most people don’t reflect over it anymore. Examples of fully discerned norms (at least in Western societies) are market exchange, sovereignty, and individualism (Ibid: 895, 904). Or, as Finnemore & Sikkink states, “few people today discuss whether women should be allowed to vote, whether slavery is useful, or whether medical personnel should be granted immunity during war” (Ibid: 895). This study concentrates on the second stage in the norm life cycle, the norm cascade, where the characteristic mechanism is socialisation.

2.1.3 Socialisation

In his work on the socialising potential of international institutions, Jeffrey Checkel defines socialisation as “a process of inducting actors into the norms and rules of a given community. Its outcome is sustained compliance based on the internalisation of these new norms” (Checkel 2005: 804). During the socialisation process, the actor switches from following a logic of consequences, to a logic of appropriateness. However, Checkel argues, agents may follow a logic of appropriateness in more than one way. Checkel therefore distinguishes between Type I internalisation and Type II internalisation. In Type I internalisation, agents simply act in accordance with what is expected of them by others. They adopt a role, regardless if they agree with the role or not. “The key is the agents knowing what is socially accepted in a given setting or community” (Ibid: 804). In Type II internalisation, on the other hand, the interests and values of the agent changes. Community norms are accepted as “the right thing to do”, and the values and sometimes also the identity of the community are adopted by the agent (Ibid: 804).

To summarise, socialisation is a process, with the end goal of internalisation. This process can occur through different mechanisms. Two examples of such mechanisms are external incentives and social learning. External incentives theory and social learning are not the only models of norm diffusion and Europeanisation, but they are models who have been explicitly adapted to the

Eastern enlargement, particularly regarding liberal democratic norms, and are therefore suitable for this analysis (Schimmelfennig & Sedelmeier 2005: 230).

2.2 External Incentives Theory

One of the major approaches in the field of EU enlargement studies regarding the Central and Eastern European (CEE) countries' adaption into the EU norms and rules is the "external incentives model". In this model, it is argued that the rule adaption of the CEE candidate countries was mainly driven by the reward of EU membership, promised by the EU as an external actor (Falkner & Treib 2008: 294). As adopting norms are politically and economically costly for a state, external incentives, such as EU conditionality, has been considered the most effective mechanism (O'Dwyer 2010: 229).

Frank Schimmelfennig, one of the major scholars on Europeanisation in the CEE countries, argues that "only the credible conditional promise of membership in the EU (and NATO) has the potential to produce compliance with liberal-democratic norms in norm-violating transformation countries" (Schimmelfennig 2007: 126). By comparing the CEE countries with other states from the former Soviet bloc, Schimmelfennig argues that the democracy promotion by European regional organisations has been effective in producing durable democratic change. Political conditionality is used by international organisations to induce political change at the state level. In the CEE countries, the adoption of liberal-democratic norms became the condition for receiving a reward from the Western community. With few exceptions, political conditionality in Europe has been strictly rewards-based. Transitional states has not been coerced into changing their systems, but the reward – the inclusion in the Western community – has been withheld if the states have not complied (Ibid: 127).

According to the external incentives theory, the adoption of EU norms of democracy and human rights depends on "the size and credibility of tangible, material incentives provided by external actors as well as on the political costs that target governments occur when adopting and implementing these rules domestically" (Schimmelfennig 2007: 128; Cirtautas & Schimmelfennig 2010: 424). The size of the reward must be bigger than the domestic costs of imposing the norm. Most importantly, the target government must be certain that the reward will be paid if the conditions are met. Regarding the size of the reward, Schimmelfennig argues that only the material benefits of NATO and the EU has tangible material benefits to offer. The Council of Europe can provide international recognition, but fails to offer any direct material gains. Adopting norms of democracy and human rights means losses in influence and power among ruling elites, who now face competition from independent courts, political opposition and free media. Only the external gains of, above all, EU membership can compensate for this, through *inter alia* access to the internal market, and possibilities of financial subsidies (Schimmelfennig 2007: 128f). Thus, it is primarily the prospect of EU membership that motivates candidate governments.

The impact that the prospect of membership has on the domestic politics, depends on the preferences of national parties, and the number of veto players on the domestic arena.

If EU membership is the single most important factor in CEE compliance of EU norms, one would expect compliance to weaken after EU membership is obtained, as there is thus no longer any strong external incentives for compliance. Then how can external incentives be perceived as being a method for true democratic consolidation? According to social constructivist theories, the rationale behind using conditionality for imposing certain rules and norms on states lies in the perception that “legal rules and norms operate by changing interests and thus reshaping the purposes for which power is exercised” (Jordan 2003: 664). Norms and rules shape and constrain states in their decision-making, by obliging them to observe the norms. By taking part in the process of norm-creation, state actors begin to think that complying with the norm is in their own self-interest (Ibid: 664). Scholars of social constructivism sometimes also acknowledge that the process of norm conformity may be partially explained by other theoretical approaches, such as neoliberalism. According to this logic, states choose to conform to a certain norm, when they believe that it will facilitate cooperation and minimise transaction costs, or maximise utility. The reason for conforming to *inter alia* a human rights norm, is thus not primarily because the state believe in the values of the norm, but because it believes that it will gain advantages in forms of *inter alia* international prestige or improved trade conditions – a so called instrumental adoption of the norm. However, these two logics can be combined. Even if a state adopts a set of norms on instrumental grounds, if this adoption leads to a domestic structural change (such as increased democratisation), this spills over into a process of identity transformation. Thus, norms that are initially adopted for instrumental reasons, are later maintained because they have become a part of the state's belief and identity (Ibid: 665f). In other words, after “imposing” the norms through conditionality, the states begin to believe that it is in their own self-interest, for many reasons, to follow the norm. One of the main concerns in the period around the 2005 EU enlargement was that the norm compliance of the new members would decrease after membership was obtained (O'Dwyer 2010: 229). In the EU case, the high-intensity involvement of the Commission during the accession process was believed to create a momentum, where the states themselves would want to follow the EU norms even after becoming members, i.e. when the external incentive was no longer present (Sasse 2008: 842).

2.3 Social Learning

The theories of social learning posits that durable conformity to the norm occurs when states are persuaded by the appropriateness of the norm. In the EU case, Europeanisation follows when a member or candidate state are convinced of the suitability of the EU norms, and the beliefs and expectations of domestic actors

thereby are altered. Unlike external incentives theory, which proscribes that states choose to proscribe to a norm in order to reap a reward, the states are here changing their beliefs and preferences (O'Dwyer 2010: 230, 232). Checkel, using different terminology, calls this normative suasion. "When normative suasion takes place, agents actively and reflectively internalise new understandings of appropriateness. If asked about the source of compliance, agents - after conscious thought - might answer, 'Well, this is the right thing to do even though I didn't used to think so.'" (Checkel 2005: 812). Here, we see a clear switch to a logic of consequences, thus resulting in Type II internalisation.

This persuasion of the suitability of a norm often comes through the activity of transnational networks of actors, as well as from international organisations, who puts pressure on domestic governments to endorse European norms in the domestic political discourse. Such persuasion is easiest where the EU norms "resonate" with domestic norms, i.e. when the new norm is not in direct opposition to previous, dominant norms (O'Dwyer 2010: 232f; Checkel 2005: 813). Given the controversy surrounding issues of LGBT rights in many member states, social learning should be expected to be harder in this policy area than in many others.

As the name implies, this mechanism emphasises learning. Agents are expected to update and alter their beliefs and practices in the light of new information. There is thus a focus on deliberative processes, where agents are open to be persuaded by "the better argument". The EU can foster social learning by developing and supporting transnational networks that include domestic, as well as European actors. This would also have the benefit of increasing the perception of "norm ownership", that the norm is not considered as imposed and foreign. The networks can also be used to channel financial support. Although networks are often self-generating, the EU can play a significant role in facilitating their existence (O'Dwyer 2010: 233). Effective social learning will thus require organised domestic advocacy networks that are robust enough to represent the issue and lobby the national governments. The EU institutions can assist in supporting these networks, not least financially. Indications of social learning, is when transformative public deliberations are taking place on the issue. In the present case, when LGBT rights become a salient political issue, on which political parties differentiate themselves: "[i]f an issue is not salient in party competition, it constitutes part of the assumed status quo, or the 'regime of silence'" (Ibid: 233f).

Conor O'Dwyer and Katarina Schwartz mentions environmental protection as an example of successful case of norm diffusion through social learning. Here, the EU environmental norms were promoted by a transnational epistemic network, and international institutions and cooperation, such as the "Environment for Europe" initiative, provided mechanism for social learning by fostering deliberation, information exchange, bureaucratic networks, and technical assistance (2010:235f).

Social learning and external incentives complement each other, but during the accession process, emphasis has been on external incentives such as conditionality. Even though internalisation can become the result of

conditionality, as actors may come to identify themselves with their behaviour, there is a considerable risk that the norm is not fully internalised, and thus may not be adhered to in the absence of the external incentives. In my analysis, I will use these theoretical concepts, to determine whether one can find examples of the EU employing these mechanisms in its work for the rights of sexual minorities.

3 LGBT Rights as an EU Norm

Before analysing what mechanisms the EU has at its disposal for socialising its members states to the norm of LGBT equality, it must first be established what these norms are and how they are expressed. In the following chapter, I first give a brief introduction to the normative foundation of the EU. The aim is to show in what ways the EU can be viewed a “community of values”, where the founding principles and values of the Union play a large role for its self-perception. I then move on to illustrate in what ways one can claim that the EU has a strong norm on non-discrimination towards sexual minorities. I argue that these norms are manifested in EU legislation, as well as expressed politically. In the last section, I show that there is a discrepancy between the EU norms and the practice in some Member States.

3.1 The Normative Foundation of the EU

From having a traditional and nearly exclusive focus on economic matters, the European Union has, in the past 20 years, increasingly taken human rights issues to heart. Human rights has become a central component in the EU’s work, not least in its foreign policy and neighbourhood policy (Smith 2003: 12f). Some scholars would go as far as to claim that the EU is first and foremost a peace project, that the economic cooperation is to a large extent merely a mean to achieve the goal of peace (Möller 2005: 11).

Already in Article 2 of the Treaty on European Union (TEU), explicit reference is made to human rights:

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.

Human rights and minority rights, along with principles of non-discrimination and tolerance, are thus explicitly referred to as the founding values of the European Union. A further example of the importance attested to these values are the provisions of Article 7 of the TEU, according to which the Council, if they determine that there is a “serious breach by a Member State of the values referred to in Article 2”, may decide to suspend certain of the rights of the Member State,

including its voting rights in the Council. Even though such extreme measures are unlikely to happen, it is a powerful testament to importance of these norms.

In 2000, the EU Charter of Fundamental Rights was adopted. The Charter brings together in a single document the fundamental rights protected in the EU, to make them more visible and to anchor them in EU law. Through Article 6.1 in the Lisbon Treaty, which entered into force in December 2009, the Charter became legally binding in the EU. The Charter is to ensure that the fundamental rights are protected in the implementation of EU law (European Commission 2013b).

The EU has also put an emphasis on its norms and values regarding human rights in its external relations. In Article 3.5 of the TEU, it is stated that “[i]n its relations with the wider world, the Union shall uphold and promote its values and interests”, and contribute to, among other things, peace, security and the promotion of human rights (European Union 2010b). The EU can thus be regarded as a value-based community, with a distinct normative dimension. Its identity is largely based upon these “European” values (Mos 2013: 81).

3.2 LGBT Rights in the EU

3.2.1 Legislation

The EU took its first concrete measures for a LGBT policy with the Amsterdam Treaty. Before that, tentative attempts had been made to discuss the issue. The European Parliament had during the 1980’s adopted two non-binding resolutions that highlighted the issue¹, but no policy proposals had been put forward. A major shift occurred with the so called Roth Report in 1994², which has been described as a cornerstone in the Parliament’s work on LGBT rights. The Roth Report brought up the issues of wide-spread sexual orientation discrimination in the areas of employment, marriage, adoption, and privacy. Following the report, the European Parliament called upon the European Commission to draft anti-discrimination recommendations for sexual orientation³. At a minimum, such recommendations should seek to end different and discriminatory ages of consent for homosexual and heterosexual acts, all forms of discrimination in labor law, the barring of gay and lesbian couples from marriage (or equivalent legal framework)

¹ Resolution by Parliament on sexual discrimination at the workplace (*Official Journal No C 104 of 16 April 1984*; Resolution by Parliament on discrimination against transsexuals (*Official Journal No. C 256 of 9 October 1989*)

² Report of the Committee on Civil Liberties & Internal Affairs on Equal Rights for Homosexuals & Lesbians in the European Community (EUR. PARL. DOC., A3-0028/94)

³ Resolution by Parliament on equal rights for homosexuals and lesbians in the EC (*Official Journal No. C 061 of 28 February 1994*)

and to have children. At the same time, a number of minority groups had started to lobby the EU Member States to eradicate discrimination on various grounds. In the Amsterdam Treaty, which entered into force in 1999, the Member States addressed the issue. Article 13⁴ of the Treaty now allowed for the EU to adopt legislation banning all forms of discrimination, including sexual orientation (Langenkamp 2003: 440ff). Up until this point, there was no legal protection at the EU level from discrimination on the grounds of sexual orientation. Rather, two decisions from the Court of Justice of the European Union (ECJ) (*Grant v. South-West Trains Ltd.* and *D. v. Council of the European Union*) had demonstrated the need to protect the rights of LGBT people. The decisions determined, *inter alia*, that under current Community law, negative treatment of homosexuals did not constitute gender discrimination, as long as both male and female homosexuals were treated equally (Ibid: 442f).

Two landmark anti-discrimination Directives were shortly after adopted on the basis of these new treaty provisions: the Race Equality Directive (2000/43/EC) and the Framework Employment Directive (2000/78/EC). The Framework Employment Directive prohibits discrimination in the workplace on the grounds of disability, sexual orientation, religion or belief, and age. It is however much narrower in scope than the Race Equality Directive, which obliges Member States to adopt anti-discrimination legislation in the areas of employment, education, social protection including social security and healthcare, and access to and the supply of goods and services, including housing. This effectively mean that there is no EU legislation protecting LGBT people from discrimination such as impossibility to visit partners in hospitals, paying higher premiums on health insurance, being denied social benefits reserved for married couples, or being refused to rent, to name a few (Bakowski 2010: 2f). Even though this legislation is narrow in scope, it is important to note that it nevertheless the only international legislation prohibiting discrimination in the grounds of sexual orientation (Swiebel 2009: 23). This in itself serves as a demonstration of the norm.

Important to note is that transgender persons are (for obvious reasons) not covered under the discrimination ground “sexual orientation”. Discrimination against transgender persons is instead prohibited under the so called “Recast Directive” (2006/54/EC), adopted in 2006, which is aimed at consolidating the previous existing EU provisions on equal treatment between men and women. In the Directive an explicit reference to discrimination based on “gender reassignment” was introduced for the first time in EU law (European Parliament 2010: 4).

When the Charter became legally binding it further emphasised the norm of non-discrimination on the grounds of sexual orientation, as Article 21.1 of the Charter states that:

Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
(European Union, 2010a)

⁴ Now Article 19 in the Treaty on the Functioning of the European Union (TFEU).

The Lisbon Treaty also put the entry into force of the Treaty on the Functioning of the European Union (TFEU). Beyond obliging the EU to ensure that all EU legislation conforms with the Charter, it puts an obligation on the EU to *actively* mainstream equality in its work and activities (Leigh et al. 2012: 13).

3.2.2 Political Norms

The EU thus have some competence to act on LGBT issues, although the legislation is currently not comprehensive. Beyond the legally codified norms of non-discrimination towards sexual minorities (which are limited in its application), I argue that there is also a clear political norm on LGBT rights.

This norms expresses itself, *inter alia*, by the public support from EU institutions and politicians. The European Parliament has become a principal driving force in bringing LGBT rights onto the political agenda. Although the Parliament is arguably the weakest among the major institutions in terms of political power, they play a significant role in raising awareness of issues and influencing legislation by drafting amendments to Commission proposals. The Parliament drafts a substantial amount of reports and resolutions. Although these resolutions are non-binding, they serve as important tools in the EU's political context (ILGA-Europe 2013a). Examples of resolutions and reports from the Parliament includes support for mutual recognition of same-sex partnerships between EU Member States (European Parliament 2009a), a call for a comprehensive anti-discrimination Directive (European Parliament 2008), and a call for the revision of a homophobic law in Lithuania (European Parliament 2009b).

Viviane Reding, Commissioner for Justice, Fundamental Rights and Citizenship, has on several occasions voiced her support for LGBT rights and stressed “the importance of pursuing a determined effort in fighting against homophobia and in promoting equality for LGBT people”, because homophobia is an “unacceptable violation of human dignity” and it is incompatible with the founding values of the EU (Reding 2010).

The EU's commitment to LGBT rights is also evident not least in its external policies. Protecting and promoting the rights of LGBT people is one of the EU's priorities in their foreign policy. Through the “European Instrument for Democracy and Human Rights” (EIDHR), adopted in 2007, the EU channels financial and organisational support to local NGO's. Within EIDHR the EU promotes, *inter alia*, non-discrimination on grounds of sexual orientation (EEAS 2013).

In 2010, the Council's working party on human rights adopted a “LGBT Toolkit” which lists priorities and recommendations for addressing the human rights of LGBT people. The toolkit aims to “help the EU institutions, EU Member State capitals, EU Delegations, Representations and Embassies to react proactively to violations of the human rights of LGBT people, and to address structural causes behind these violations” by outlining operational tools for raising

issues of persecution, discrimination and ill-treatment of LGBT people, in dialogues with third country representatives (Council of the European Union 2010: 1). Even though the toolkit is not legally binding for the Member States, it draws its legitimacy from the TEU, and illustrates a larger commitment of the EU towards LGBT equality.

In addition to this, High Representative Catherine Ashton, as well as other high-ranking EU diplomats, are frequently speaking out on issues of LGBT rights in third countries:

The EU campaigns tirelessly for the respect of human rights, irrespective of sexual orientation and gender identity. We raise the issue of LGBTI rights during our Human Rights dialogues, we speak out through public statements, and we work behind the scenes with our Delegations to argue the case for justice and human rights.

(Ashton 2013)

In conclusion, I have argued that the EU has a clear norm of non-discrimination of LGBT people, and that this norm is being expressed not only in EU legislation, but also through political measures, such as public statements and proposals. These statements often make an effort to frame LGBT rights as being integral to EU's fundamental values, such as non-discrimination, equality, and freedom of assembly.

3.3 Discrepancy Within the EU

In the fore-math of the Eastern enlargement, concerns were expressed that the new Member States would not comply with the EU *acquis* after accession, when the forceful compliance mechanism of membership was no longer present. Even though this fear has widely been considered to have been overstated on most policy areas (Tallberg et al 2009: 125), there is reason to reflect on how the norm of LGBT equality has been internalised in some of the new member states. I will in this section argue that there are large discrepancies within the EU in the protection and rights for LGBT people.

It can be questioned whether the norm of LGBT equality has been fully internalised even in the core EU countries, not least since it is a culturally sensitive norm. A recent study from the European Union Agency for Fundamental Rights (FRA) on the situation for LGBT people in the EU, with more than 93 000 respondents, concluded that discrimination against LGBT people took place in all EU Member States. Nearly half of the respondents, which all identified themselves as LGBT, reported they had felt personally discriminated against or harassed due to their sexual orientation in the last year. A quarter had experienced violence in the last five years (European Union Agency for Fundamental Rights 2013a: 7).

However, even if discrimination against LGBT people occur all over the EU, a World Values Survey from 2005/2006 indicates that homophobia is more

widespread in the eastern Member States. In the survey 54,5 % of the respondents in Latvia, 55,2 % in Poland, and 67,5 % in Lithuania responded that they would not want a homosexual neighbour. In the EU-15⁵, the corresponding number was 18,8 %, with the highest numbers being 25-28 %. Further, 76,9 % of respondents in Latvia, 59,9 % in Poland, and 78 % in Lithuania considered homosexuality to never be justifiable. In the EU-15, only an average of 23 % agreed with this statement, with the highest numbers being 35-40 % (World Values Survey 2009). These surveys shows that there are significant differences between old and new Member States in the attitudes towards sexual minorities.

Public perceptions of homosexuality gives an indication of whether the norm has been internalised or not. At the same time, one might wonder what differs some of the eastern Member States to some of the “old”, western states? If public perception is the main indicator of internalisation of the norm, where do one draw the line? How many percentage of the population must be homophobic for the state to be considered homophobic? In May 2013, major demonstrations took place in France against a new law legalising same-sex marriages. The large demonstrations illustrated that there is still far from unity on the issue of LGBT rights, and that there are still opposition to LGBT equality from different groups in society. With this backdrop, what differs France from, *inter alia*, Poland or Latvia?

Even if discrimination against LGBT people and homophobia occur all over EU, one factor stands out in some eastern states: the level of state-sponsored homophobia. In the FRA survey, a demarkation line could be seen along east/west lines in the answer to the question “how widespread is offensive language about lesbian, gay, bisexual, and/or transgendered people by politicians where you live?”. In the western countries, generally fewer than 10 % answered “very widespread”, whereas in the eastern states, 30-40 % of respondents gave the same answer (European Union Agency for Fundamental Rights 2013b).

In several eastern Member States, Pride parades have been denied permission. The bans are often motivated by references to participant and public safety, the violation of public morals, and the preservation of public morals. This was the case in 2008 in Lithuania, and the year after in Latvia (European Union Agency for Fundamental Rights 2010: 31).

The European Parliament has in a number of resolutions expressed concern over the increase in homophobia in the eastern Member States. In a resolution from May 2012, the Parliament regrets that “in the EU, the fundamental rights of LGBT people are not always fully upheld” (European Parliament 2012: para 1). The resolution explicitly singled out Hungary, Lithuania, and Latvia. In 2009, the Parliament adopted a resolution that declared that a Lithuanian law was in breach of EU and international human rights obligations, as it would forbid co called “propaganda” of homosexual relations to minors (European Parliament 2009).

In his study on post-accession Poland and Latvia, O’Dwyer concludes that both states have a very high rate of “state-sponsored homophobia”, where

⁵ The Member States prior to the 2004 enlargement: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

politicians are using a homophobic language, and harassment are day-to-day occurring for LGBT people who are open about their sexuality (O'Dwyer 2010: 234f, 238ff). As mentioned before, it is hard to measure whether a norm has been internalised, and neither is this the purpose of this study. However, the examples given in this section are used as illustrative examples of how the norm of non-discrimination and equality for sexual minorities has not yet been internalised in all Member States. In other words, rather than showing what would indicate successful norm internalisation, I suffice with claiming that if the norm was internalised, we would not find evidence of abrogation of civil liberties, firing of public officials, introduction of homophobic legislation and aggressively homophobic statements by officials in high public office (O'Dwyer & Schwartz 2010: 231f).

4 From Conditionality to Social Learning?

So far I have shown that there is a discrepancy between the EU norm of non-discrimination towards sexual minorities, and the practice in some Member States, where the norm has not yet been fully internalised. This raises the question whether the EU's compliance system can compensate for the absence of conditional incentives, i.e. the threat of withholding membership during the accession period. What happens in the areas of political conditionality, such as human rights and minority protection, where the EU institutions' powers vis-à-vis the Member States are limited? In the following chapter, I analyse how the EU is addressing this problem. What tools do they have at their disposal? How do they work on issues of LGBT rights? More specifically, I seek to investigate whether the EU has replaced conditionality with other socialisation mechanisms, such as social learning.

First, it is important to clarify that it is hard to look at the EU as a unified actor on these issues. Rather, one has to look at the different EU institutions separately, as they have different competence to act, and different tools at their disposal. I will therefore analyse their actions separately. I will focus my analysis on the Commission and the European Parliament, as they are the main supranational institutions. I will also briefly account for the FRA's work on LGBT rights. The Council naturally has a lot of power to act, not least in the legislative field, but as an intergovernmental institution, it has its limits. The very Member States who do not wish to increase these rights sit in the Council, and may block any such proposals. Further, as the focus of this study is to look at what socialisation mechanisms the EU has at its disposal, it is more fruitful to look at the two supranational institutions, as they have more mechanisms at their disposal.

4.1 The European Commission

As the core executive institution in the EU, and the one with the largest resources at their disposal, the Commission has a large role to play in socialising Member States into following the norms. Often referred to as the “driver of integration”, the Commission has an institutional interest in furthering EU integration and propose new legislation. The Commission is also the “guardian of the treaties” and has the power to initiate infringement procedures against a Member State, if they are not complying with EU law (Hix & Høyland 2011: 35ff). The

Commission has used this power in relation to LGBT rights. In one case, the Polish authorities refused to issue certificates on civil status to citizens who wished to marry or register partnership with a person of the same sex in another Member State. The Commission here intervened with the Polish authorities on the basis that this practice was incompatible with the Article 7 of the Charter, respect for private life, Article 21, non-discrimination on the grounds of sexual orientation, and the EU rules on free movement. The intervention resulted in the Polish authorities taking steps to change their regulations (European Commission 2012: 52). Another case involved the Czech authorities using a so-called “phallometric test” to test the validity of asylum seekers claims of their sexual orientation. The Commission claimed that this was a clear violation of Articles 4 and 7 of the Charter, as it was to be regarded as degrading treatment and not respecting the private life. This was particularly so, according to the Commission, for people who have been persecuted due to their sexual orientation (Ibid: 52f).

In 2008 the Commission proposed a new anti-discrimination Directive (the so-called Horizontal Directive), that would prohibit discrimination based on religion or belief, disability, age, or sexual orientation also on areas outside of employment. Effectively, these groups would enjoy the same protection offered in the Race Directive. The proposal never made it through the negotiations in the Council however, and to date, five years later, there are few expectations of it to be adopted in the near future (Leigh et al 2012: 22f). Even though the main countries blocking the proposal (Germany, Czech Republic, Italy, Lithuania and Malta) had conservative governments, the objections has been less based on Christian mores on sexual orientation, and more on the costs relating to installing disabled access to buildings, as well as on legal uncertainty on subsidiarity and proportionality (Euobserver 101006).

These measures taken by the Commission has less to do with social learning than on mechanisms of strategic calculation. There has been no shift to a logic of appropriateness, rather the Member States in question has made a calculated choice to comply with the Commission’s objections. However, legislation can play an important role, even in terms of socialisation. Once legislation is in place, actors will have to start to act according to it, whether they agree with the logic behind it or not. They “play a role”, because they are expected to do so. And after a while, their identity may come to be shaped after their behaviour, and ultimately, there had been a shift of preference (Checkel 2005: 810f). Naturally, this is not always the case, neither is full internalisation always achieved. But it is not uncommon that legislation drives the normative development, not least regarding society as a whole.

Another aspect of the proposed Directive was that it would oblige governments to encourage dialogue with non-governmental organisations (NGO’s) working in the field. Before proposing new legislation to implement the Directive, the governments would have to consult LGBT interest groups. Thus, they would have to, at least implicitly, recognise LGBT groups as legitimate partners (Swiebel 2009: 25).

One major way that the Commission facilitates social learning is through its funding of NGO’s. Through its action programme to combat discrimination, the

PROGRESS Community Programme the EU seeks to develop the capacity of key players, such as local authorities, social partners and NGO's. To achieve this, it is encouraging exchanges of information and good practices, and establishing European networks. The programme is also intended to "promote and disseminate the values and practices that underpin the fight against discrimination" (European Commission 2013c). By encouraging transnational networks, and facilitating deliberation, this method should have good prospects of achieving social learning. By strengthening civil society in the Member States where the LGBT norm has weak resonance, there is higher probability that they will be able to persuade state elites on the appropriateness of the norm. The thinking behind the programme is that legislation, albeit important, is not in itself enough to combat discrimination, as one need to alter one's behaviour and perceptions of what behaviour that is deemed appropriate. By making money available for fact-finding and research, the outcomes generated by the activities, may also in the end result in new legislative measures, but then based on altered expectations. According to the Commission, a key aim of the EU's work on combating discrimination is to "foster dialogue and strengthen networking between organisations" (European Commission 2013d). This is facilitated by the Commission's bi-annual meetings, where NGO's are invited to discuss current Community matters, *inter alia*, legislative and policy proposals, and give input.

Under the PROGRESS programme, the EU also funds European umbrella NGO networks, among them ILGA-Europe. ILGA-Europe is the largest LGBT advocacy group in Europe, and provides assistance to local LGBT groups, as well as lobby the European institutions on issues of LGBT rights. ILGA-Europe receives most of its fundings from the Commission:

Financial support received by the different funders for staff costs is indispensable as it is the staff of ILGA-Europe who has the expertise to provide capacity-building across Europe, to implement projects and to support different actors involved in promoting equality and combating non-discrimination.
(ILGA-Europe 2013)

Apart from strengthening the NGO's, PROGRESS is also intended to support national authorities in "developing their national policy to combat discrimination and promote equality beyond legislation" and identifying best practices which can be used by other participating countries (Ibid). NGO's are considered to be a valuable asset in both formulating and implementing policy - through the information and expertise supplied by their members. Thus, the programme is aimed at creating a deliberative environment, where agents can be persuaded into the belief that LGBT rights are in fact human rights - core EU norms.

4.2 The European Parliament

As described in section 2.2, the European Parliament is in many ways the most progressive EU institution when it comes to LGBT rights and has played a large

part in bringing LGBT rights onto the political agenda. The Parliament's main power lies in raising awareness of issues and influencing legislation by making amendments to, and approving, Commission proposals. The Parliament also drafts a substantial amount of reports and resolutions on various subjects (ILGA-Europe 2013a). The Parliament has on a number of occasions spoken out on LGBT rights., both on specific matters, such as the call for the revision of the homophobic law in Lithuania, and on more general matters. In May 2012, the Parliament adopted a resolution on the fight of homophobia in Europe. The resolution won overwhelming support in the Parliament, with 403 votes in favour of the resolution, and only 105 against. The resolution calls for the adoption of the Horizontal Directive, adoption of legislation against homophobic and transphobic violence and crimes, and a "roadmap" for equality on the grounds of sexual orientation and gender equality (European Parliament Intergroup on LGBT Rights 2012). Such a roadmap would establish a coherent and overarching plan of action in the area of LGBT rights and provide transparency regarding the work the EU has already done for LGBT rights. It could further be an effective means of developing clear, long-term goals, and the process to achieve these goals; co-ordinating positions and ensuring a coherent approach; and drawing together diverse issues in a single document and effectively communicating those issues (Leigh et al 2012: 8, 10).

The European Parliament thus play an important role in acknowledging the issue and pushing the development of the EU norm. It also have an important role in pointing out Member States when they are not following the norm ("shaming" them). This form of incentive-based mechanism is in itself not a socialisation mechanism. If Member States only alter their behaviour because they are told to do so, and to avoid being regarded as different from others, no real change of the state's preferences and beliefs have occurred. As pointed out before, however, this can be a start of a socialisation process, as the actor will later start to alter its beliefs after its behaviour. Some authors argue that peer pressure from the European Parliament has had a large impact in some policy areas, such as on minority rights in the Baltic states. In these states, what started as strategic and instrumental processes, over time led to changing practices and sustained compliance, which are patterns of deeper socialisation effects (Checkel 2005: 814; Sedelmeier 2011: 28).

4.3 The European Union Agency for Fundamental Rights

The European Union Agency for Fundamental Rights (FRA) is an EU specialised agency, with the objective to provide the EU institutions and Member States with independent, evidence-based advice on fundamental rights. FRA was created in 2007 by Council Regulation EC 168/2007, and has the aim to contribute towards ensuring full respect for fundamental rights across the EU (European Union Agency for Fundamental Rights 2013c).

One of FRA's main tasks is to collect objective, reliable and comparable information and data on fundamental rights issues across the EU. The research is mainly done on particular themes, rather than monitoring or assessing individual Member States (European Union Agency for Fundamental Rights 2013d). In the area of LGBT rights, the FRA has produced a number of reports. In 2008 and 2009, it published reports on the legal and social situation regarding homophobia and discrimination on grounds of sexual orientation and gender identity in the Member States, with updates in 2010 and 2011. In 2012, it released a report on hate crimes in the EU. In 2013, the results of a large survey on the fulfilment and protection of LGBT rights in the EU, ordered by the Commission, was published (European Union Agency for Fundamental Rights 2013e). The data collected is used to provide assistance and expertise to the EU institutions and Member States to support them to fully respect the fundamental rights. In addition, the FRA also collects and shares "promising practices" among the EU Member States. This gives Member States the opportunity to learn from successful models from each other (European Union Agency for Fundamental Rights 2013f).

The work done by the FRA is a good starting point for actions that can be taken by the EU on LGBT issues. By providing data about the situation for LGBT rights in the Union, and how this relates to the fundamental rights, the Member States has an opportunity to learn, and to improve on LGBT rights. The data becomes the starting point from which politicians can act. It is likely to facilitate social learning, as the reports make visible the problems and provides arguments for why LGBT rights are important. As Kelly Kollman has shown in her study on same-sex unions policy, "Europe has had a far greater impact on national policy outcomes when its influence has been felt through the informal processes of norm diffusion and elite socialization than when it has tried to impose formal mandates through court decisions and EU directives." The article argues that "the EU, the ECtHR, and a transnational network of LGBT activists have played a crucial role in this policy change by creating a soft law norm for relationship recognition and disseminating this norm to policymakers in Western European states" (Kollman 2009: 37). By framing the norm of LGBT equality as a matter of rights, and not morality, the issue can be connected to the universal, and "unobjectionable" norms of human rights. This in turn increases the possibility for successful deliberation and social learning.

5 Concluding Discussion

As we have seen in the previous chapter, the EU works actively on promoting its norms of non-discrimination towards sexual minorities towards its member states. The normative development of the issue is credited mainly to the European Parliament, who keeps the issue a part of the political debate, even at times when the political will among the other institutions is lagging. Even if the parliamentary resolutions are non-binding on the Member States, they provide a normative direction, and in the case of LGBT rights, it has usually been the Parliament that has driven the expansion of rights in the Union. The strong focus on LGBT rights in the external policies are also contributing to securing the norm as a part of the EU's founding values - something it wishes to export to the rest of the world.

Some of the mechanisms the EU employs has more strands of *strategic calculation* than others, such as when the Parliament expresses concerns over the development in specific Member States. The Commission intervening when Member States are not complying with EU law is another example. But these actions may still be part of a socialisation process, even if it is not through a social learning process. Further, in pointing out unacceptable behaviour, Member States learn more of the values the EU wishes to promote, which could lead to internalisation of those values in the longer run.

In recent years, some changes have been seen in, *inter alia*, Poland. The current government has taken a more liberal stand towards LGBT rights than the previous one, which may be attributed to socialisation. Among other things, legislation on same-sex partnerships has been proposed (Polskie Radio, 130305). Still there is a large scepticism towards sexual minorities in Poland, but the fact that government is taken a more progressive stand than the general public, suggests that there may have been some elite socialisation by the EU. It is however hard to determine whether there is a causal relationship between EU actions of social learning and these developments. In order to make such conclusions, in-depth interviews with national policy-makers and representatives from civil society are needed. Even if no definite conclusions can be made in this study regarding the internalisation of the norm in EU Member States, the fact that the political elites - that are leaders of normative development - is explicitly not adhering to the norm, indicates that one has not yet reached internalisation.

Progress has been made in the past decade, but more can, and needs to, be done to harmonise the protection of the rights of LGBT people across the Union. It is important to adopt the Horizontal Directive. Apart from securing protection from discrimination outside of the area of employment, it would send an important message that there is not any hierarchy among groups, that some groups are not deserving of more protection than others. Further, with legislation in place,

Member States would have something concrete to work around, something that would increase the possibility of eventually internalising the norm.

One major challenge for the EU is to create the political will for dealing with LGBT issues among national politicians. Some social learning will most likely be fostered by the mere construction of the EU itself. As national politicians travel more, they are confronted with questions and remarks from their peers in other Member States. Further, when members of the European Parliament (MEP's) interact with their counterparts in the European parties, in an environment of "European" values, one would expect that they learn to see the value of sexual minority rights, especially when these norms are framed in relation to "unobjectionable" EU norms, such as human rights and minority protection. When these politicians return to the Member States, they are likely to bring some of these new values into the national politics. But to accelerate the transformative process, the EU should engage more actively in social learning mechanisms. One way of reaching this result would be to create a framework for LGBT issues within the Union. Increased coordination, between and within the European institutions, would facilitate the development of a coherent and long term plan of action, as has been done in other policy areas (such as environmental policy). With clear objectives, such as awareness-raising, and knowing how and when to bring up these issues with national governments, the socialisation effects would most likely be increased. With such a plan in place, the EU could also develop indicators to assess whether certain objectives have been met or not, as well as monitoring the achievements of the objectives. Considering that the EU works in similar ways in its external policies and in the enlargement process, this could likely be achieved also within the Union.

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