From contested issue to fashion topic – How LGBT(I)\(^1\) entered EU’s Common Foreign and Security Policy

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\(^1\) The acronym has changed over time from LGBT to LGBTI. While the Toolkit 2010 uses the acronym LGBT, the Guidelines three years later refer to LGBTI. The ‘I’ is a new added category and referring to intersex people.
INTRODUCTION
Institutional change can be seen as contested by definition. However in this paper I argue that there are certain issues which are contested on a wider cultural level to such a degree that makes it surprising institutional change is taking place at all. The question is how highly contested issues still end up becoming part of policy and I argue that for this to happen a combination of factors is necessary. I attempt to explain the phenomenon of contested change at the case of human rights for LGBT(I) persons entering EU foreign policy and even becoming a fashionable subject.

I will start with the theoretical argument before explaining my methodological choice and data sources. I will then go into details of the case study and explain why, based on theory, we would not expect change to take place. Starting off at the micro level of the file within the European External Action Service (EEAS), I will gradually zoom out to situate the case within the organizational field. In summary, the case study is about the process which sees the LGBT file transform from a hardly acknowledged policy area into an LGBT Toolkit in 2010 which was then ‘upgraded’ to Council Guidelines on Human Rights for LGBTI Persons in 2013. This will be followed by a discussion on the implications of these findings for institutional organization theory.

THEORETICAL BACKGROUND
Building on Berger/Luckmann’s idea of social construction of reality Meyer and Rowan describe how institutions are established because “social processes, obligations or actualities come to take on a rule-like status in social thought and action...”(Meyer and Rowan 1977, 341). They can be understood as “more-or-less taken-for-granted repetitive social behaviour”.(Greenwood et al. 2013, 4) These “structures and procedures are assumed to go hand in hand with their “obvious,” uncontested meanings”(Zilber 2002, 235). This concept of so-called ‘rationalized myths’ has become an essential part of Sociological New Institutionalism. Where Sociological Institutionalism is used to look at organizations, these rules form an expectation horizon which organizations are aiming for in to secure greater legitimacy. In his seminal 1983 article, DiMaggio introduced the idea of isomorphic change and describes it as a process by which “organizational characteristics are modified in the direction of increasing compatibility with environmental characteristics” (DiMaggio and Powell 1983, 149). While many studies subsequently have dealt with the phenomenon of organizations becoming more similar to each other in the process, I will focus on isomorphism as the “relationship between an organization and its institutional context” in order to secure legitimacy.(Greenwood et al. 2013, 9)
Legitimacy is regarded as the currency of organizational survival and while it can be achieved by corresponding to the expectations dictated by the institutional environment, each organization of a particular organizational field is also part of shaping this environment. (Greenwood and Suchman 2013)

It would seem that the more contested an issue – i.e. the more it diverts from the status quo institutional environment - the harder it would be to become institutionalised within an organization. Therefore any challenge to the ‘status quo’ or these ‘rules’ implies some contestation. Despite this, change happens.

The modifications of the organization DiMaggio has in mind are more about the organizational structure and less about content, as the listed examples show (e.g. organizations becoming more hierarchical to reflect the structure of their donor). Much subsequent empirical research went into the same direction i.e. structural ideas and isomorphism within organizational fields. For example, the New Public Management reform, has been studied at length in many different settings.

This paper, however, deals with an idea of a different quality: change which is contested on many different levels – from the personal to the macro level. Sexual orientation and gender identity can be regarded as such contested topics. Institutional change with regard to these concepts is much more fundamental to values and identities of actors involved and more wide-reaching. And it is therefore contested on a fundamental level because it has the potential to call into question some of the strongest and most entrenched social institutions around the understanding of ‘normal sexuality’, the unquestioned categorization of people into male and female and the idea of the ‘traditional family’ as the basis for societal organization.

Most studies concerned with organizations have dealt with private sector rather than public administration. (Arellano-Gault et al. 2013, 149) The European Union is often examined through a macro political science lens and rarely from an organizational perspective even though there have been recent attempts to bring Sociology and New Institutionalism into European Union Studies. (Favell and Guiraudon 2009) Human rights often still fall within the legal domain while LGBTI issues are often confined to gender studies or feminist literature.

This makes the emergence of LGBTI in foreign and security policy of the EU a very relevant and timely study which can help unpick how this institutional change is happening within a context of contestation on many different levels and from different directions in a complex web of dynamics and processes.
There have been many different attempts to predict and explain institutional and organizational change. Some focused on actors as the ‘agents of change’, based on the idea that actors pursue certain goals and act rationally to achieve it, others looked more on external factors such as ‘shocks’ as responsible for change ((Meyer, 1982 in (Greenwood et al. 2013, 19) Yet others described actors as ‘cultural dopes’ constrained by the institutions they are a part of.(Greenwood et al. 2013, 20)

More recent theories, have attempted to reconcile the two strands. They have focused more on the space where organizations and environment intersect and where actors become connectors of two institutional environments. Concepts such as bricolage and translation challenge the notion that ideas can simply ‘diffuse’ without changing and be passively received. Bricolage takes into account the time aspect and that ideas are layered and never completely cover existing ones.(Djelic and Quack 2013) Translation however, “changes what is translated and those who translate”.(Czarniawska and Sevón 2005, 10) Since “requirements trigger not automatic conformity” but lead to questions being asked as to whether something applies to the own organization, who is the authority to decide this, who else might be doing something and if so what?(Campbell 2004, 208) These questions suggest therefore it is not a simple process of diffusion but practices and ideas change as actors fit what they pick up into their own institutional framework. What they pick up is “guided by fashion” and follows the logic of appropriateness at any given point in time. (Czarniawska and Sevón 2005, 10) We are all constrained and enabled in this by our institutional environment, and therefore "we cannot actually perceive something unless it relates to something we already know."(Czarniawska and Sevón 1996, 27) We give it meaning and make sense of it as we fit it within our frame of reference in a particular way.(Weick 1995)

With regard to contestation specifically, Sanders and Tuschke looked at how “institutionally contested practice” can diffuse if an organization is exposed to another institutional environment.(Sanders and Tuschke 2007) However, this study has two weaknesses. Firstly, as just mentioned, the concept of diffusion does not take into account that ideas change as they are being transferred from one context to another and have to be translated. Secondly, situated at the organizational level, it employs a quantitative approach, which makes it unable to trace the processes which take place within organizations that lead to the adoption of a contested practice. This paper speaks seeks to address these gaps. While more interested in ideas rather than practice, ideas are ‘stubbornly material’ so we can track their incarnations as they are turned into ‘linguistic artefacts’. (Czarniawska and Sevón 2005, 9, 33) I will therefore examine how LGBTI entered EU
foreign policy by tracing the emergence of the 2010 LGBT Toolkit and its ‘upgrade’ to LGBTI Council Guidelines in 2013.

METHODOLOGY

Qualitative methodology, as employed for this paper, is well suited for studying in-depth processes of an organization. (Lee 1999) When studying organizational behaviour within an institutional context, qualitative methodology sits comfortably alongside the theoretical framework of Sociological New Institutionalism as it lends itself to study frames and cultural systems. Also both, the theory of Sociological Institutionalism as well as qualitative methods, adhere to a constructivist paradigm and therefore complement each other (Zilber 2002).

The data this case study is mainly based on, are official EU documents and semi-structured background interviews with EU officials in Brussels who, either have worked, still work, or have knowledge of, LGBT(I) issues. Interviews were carried out between December 2013 and November 2014. Starting out from meetings with NGOs to gain better background knowledge, the majority of interviews was conducted was with staff working at the European External Action Service (EEAS). Created in 2009 with the ratification of the Treaty of Lisbon, the EEAS is the diplomatic service of the EU and set up to support the High Representative of the EU. A second group of people interviewed works at the European Commission as part of the Directorate General (DG) for Development and Cooperation - EuropeAID (DEVCO). The sampling of interview partners was done along the snowball system whereby people would recommend colleagues to speak to or would mention names of counterparts. This way I was sure to get a grasp of the organizational field, which "may also be described as a system of relations - relations which have evolved between the actors who define their activities as being concerned with similar issues." (Sahlin-Andersson 2011, 74) This sampling method was combined with theoretical sampling based on the perspectives which would be of interest. I subsequently analysed the data and looked to theory to abstract and explain what had been happening.

CASE STUDY

2 The EEAS is the EU’s diplomatic branch established by the Lisbon Agreement in 2009. (Treaty of Lisbon. Amending the Treaty on European Union and Establishing the European Community, n.d.) It supports, and is headed up by, the High Representative who can be said to hold a somewhat equivalent role to that of a ‘Foreign Affairs Minister’ and who also holds the role of the Vice President of the EU Commission. Staff is mainly recruited from three pools: EU Commission, the Council Secretariat and seconded diplomats from the Member States. There are furthermore a number of contract agents working for the EEAS in various positions.
Not only is the topic contested on a fundamental basis, it is also contested at different levels, from the macro political level, to the organizational and down to personal level.

On a macro level, the EU’s foreign policy on LGBTI has been strongly criticised as Western Imperialism by a number of African head of states, for example when the EU spoke out against the Ugandan Anti-Homosexuality Act in 2013.\(^3\) It is puzzling why we saw this engagement since there does not seem to be an obvious benefit for the EU in getting involved with a topic which is considered by many as very controversial and contested. One could cynically ask, why the EU would risk affecting the relationship with any third country over it or even let it affect trade. Within the EU itself, the idea of equality for sexual orientation and gender identity is still a relatively new one and is contentious. This alone would perhaps not be surprising but the EU’s Common Foreign and Security Policy is still organised in a largely intergovernmental way – i.e. the Member States decide. Therefore we would not expect to see foreign policy be ahead of EU internal policies in this particular topic and ahead of many Member States own policies. As we shall see, at the individual level, the empirical data from interviews suggests that there was, and still is, resistance within the organizational units to work on this topic at all.

However, before we get to the empirical data it is important to look in more detail at the context of the two main policies with regard to LGBT(I) in EU Common Foreign and Security and their nature.

Setting the Scene – Toolkit, Guidelines and their context

The Toolkit was embraced by the Political Security Committee (PSC)\(^4\) in 2010. Three years later this was ‘upgraded’ to comprehensive and far-reaching Guidelines on LGBTI passed by the Council.\(^5\) These two policies take centre stage in this paper as they are the condensation and carriers of the idea of LGBTI in EU foreign policy.

While the Toolkit and the Guidelines are now part of EU foreign policy, there is no specific and comprehensive legal framework or even action plan for LGBTI issues in EU internal policies\(^6\). The European Charter of Fundamental Rights includes grounds of gender and sexual orientation in its general equality and non-discrimination provisions and while it is the first binding international

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\(^3\) This legislation has since been repealed on formal grounds.

\(^4\) The PSC is a permanent structure under the EU Council, it is chaired by the European External Action Service and is comprised of one ambassador per Member State, a permanent representative of the European Commission, a representative of the EUMC, a representative from the Secretariat of the Council of the EU and someone from the legal service.

\(^5\) While the Toolkit used the acronym LGBT, the Guidelines are about LGBTI. This will be discussed further on in the paper.

\(^6\) This was one of the major topics discussed at the first ever conference on LGBTI issues in the Council 28 October 2014.
human rights document to do so. However, it is binding first and foremost to EU institutions and Member States when implementing EU legislation. The other piece of EU internal legislation is the 2000/78 Directive covering employment. A proposed horizontal EU equality directive which would instruct states to legislate against discrimination on grounds of sexual orientation and gender identity also with regard to goods, facilities and services,\(^7\) has been stalled for lack of Member States’ agreement for a number of years now. This means there is no policy to bridge the gap between the general ideals and the reality in Member States.\(^8\)

Together with Guidelines on Freedom of Religion or Belief, the LGBTI Guidelines were passed in 2013 to complement a suite of eight existing guideline documents. The earlier Guidelines cover the topics death penalty, torture, children in armed conflict, human rights defenders, rights of the child, violence against women, promotion of international humanitarian law and human rights dialogues with third countries. The latest Guidelines are on freedom of expression and passed in 2014 which makes a total of eleven guidelines. The stated aim of the LGBTI Guidelines is to “provide officials of EU institutions and EU Member States, with guidance to be used in contacts with third countries and with international and civil society organizations.”(Council of the European Union 2013)

Despite all of the EU’s internal discrepancies further detailed below, the Guidelines can be described as very comprehensive and far reaching. They are comprehensive in that they cover many different aspects of life including health and education. They are far reaching in the sense that they “seek to enable the EU to proactively promote the human rights of LGBTI persons, to better understand and combat any structural discrimination they might face.”(Council of the European Union 2013 B5)

Thereby they clearly go beyond asking countries to respecting human rights. This would merely mean, for example, calling on countries to decriminalise homosexuality. The Guidelines also go beyond asking for human rights of LGBTI persons to be only protected, which would be calling on countries to have non-discrimination legislation in place which covers sexual orientation and gender identity. The Guidelines indeed can be interpreted to be calling for the fulfilment of rights – i.e. the proactive engagement in promoting rights and ensuring the enjoyment of rights as stated. While not mentioning ‘fulfilment’ per se, it is about actually transforming the demands into practice in third countries. This emphasis on a de-facto change through implementation is further supported by the table in the annex which provides “elements for analysis/checklist of the situation regarding LGBTI

\(^7\) For example, in many member states there is currently no legal protection against discrimination when a same-sex couple is refused a hotel room or when a trans person is refused to be admitted as a patient by a general practitioner.

\(^8\) In January 2014, the EU Parliament passed the so-called Lunacek Report, calling for exactly this: a ‘Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity’.
human rights issues”. (Council of the European Union 2013) With reference to the right to education there is for example a question posed in the annex about whether “LGBTI persons enjoy their right to education in a safe environment, free from bullying, violence social exclusion...”. (Council of the European Union 2013 Annex) Data, such as that of the Fundamental Rights Agency, shows that this is not the case within the EU member states yet. (EU LGBT Survey 2014) Another section in the annex with regard to the rights of children, asks whether there are “procedures in place to enable minor transgender persons to express their gender identity and live accordingly.” (Council of the European Union 2013) Most EU Member States do not have these procedures in place. This detailed checklist in the annex sets the Guidelines apart from the other Guidelines in terms of its document structure. With the annex in this form, it still reminds of its toolkit origins and there seems to be a clear emphasis on monitoring and evaluation since it requires clear yes/no answers.

While the Guidelines are meant to be valid for all countries outside of the EU, they also state that the “EU is committed to advancing the human rights of LGBTI persons in a meaningful and respectful way” and that it “will do so by taking into account the local realities in which human rights defenders need to advance their struggle.” (Council of the European Union 2013 B8) Where it is about local NGOs and human rights defenders, the Guidelines specifically include the phrase ‘as appropriate’. This is also reflected in a general understanding that any action has to be decided on a case-by-case basis. [Interview – 22, 14]

The LGBTI Council Guidelines themselves point out that “the promotion of human rights on grounds of sexual orientation and gender identity in many areas around the world, including within the EU, can lead to sensitive discussions.” (Council of the European Union 2013 B8) But just how contested is it, on which levels and what have been developments? In other words, what are some of the complexities the EU has to deal with? And what is the situation inside the EU?

There have been a number of changes within the EU in recent years, for example with more countries opening marriage to same sex couples (e.g. France and UK). At the same time we have seen legislation in Lithuania for the protection of minors practically making it very challenging for organizations working on LGBTI issues to operate for fear of law suits against them. And in countries like Croatia, a referendum in 2013 ensured a constitutional change to define marriage between a man and a woman only. These examples show that there are challenges stemming from parts of the population within member states and from Member States’ governments themselves. It leads to no clear consensus between EU Member States on what constitutes promotion and protection of human rights of LGBTI persons - on a legislative level and on the experience on the ground. Even
where EU-wide protective legislation for LGBT(I) exists, namely in the area of employment, the effective protection and claiming of rights can be very difficult due and the “review of national experiences reveal that there are still challenges” to (effective) implementation on many levels.9

So how was it possible for the Toolkit to emerge and later to reach the required unanimity in the Council on the far-reaching Guidelines?

Contesting change - An unwanted file
So how contested was LGBT and how did the idea enter in the EU’s foreign policy arena? While already Bordieu suggested that it seems impossible and perhaps futile to ask for the origins of an idea (in Sahlin-Andersson 2011, 31), there is merit in detecting the traces of its journey which can help reveal the changes.

A staff member recounts how the LGBT file was very much unwanted and ‘passed around’ until it landed on their desk. [INTERVIEW – 24] One reason provided was that because there was not much activity on this topic, it was not something with which one would gain visibility with – i.e. it was not perceived to aid someone’s career to work on this file. Another reason given for why none of the colleagues wanted to work on this topic at the time was that ‘it was the only topic where people felt their stance on it reflected on them personally’. This was exemplified by the fact that the person covering the interviewee during a period of absence did not do any work on the LGBT file at all, did not deem it necessary to provide any explanation for this when the colleague returned and did not want to talk about it but just ‘disappeared’. It seems like this refusal was not noted by anyone and definitely did not have any negative consequences for the person involved. If the “severity with which the disappointment of social expectations is sanctioned evidences the institution’s relevance and centrality”, then it seems safe to say that LGBTI was not regarded a central topic.

Not only was the topic not a priority, working on the LGBT Toolkit, the interviewee experienced how colleagues and managers, some of them very senior, felt entitled to make inappropriate comments and sex-jokes. The interviewee was outraged about this and describes it as unlikely that these kinds of comments would have been made with regard to any other file. Because there was this element

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that people felt their stance on it reflected personally on them, it also led colleagues to speculations about the persons working on it.

Even people specifically working on and concerned about human rights did not regard LGBT issues as part of their mandate. A manager, while described as somebody who actually cares about human rights, had to be constantly reminded as to why they should be working on the issue. It required the explanation that people experience torture and the death penalty because of their sexual orientation, to trigger the understanding that yes indeed, it was an issue that the EEAS should be concerned about and work on.

These examples above show that LGBTI constituted a highly contested issue from the very start. People associated the topic with ‘sex’ and therefore did not regard it as something that fit within the work context. It shows that there was no widely-held understanding that LGBT persons were a group like any other marginalised group at that point. This would explain how they felt entitled to make comments the comments they did which would usually not be workplace conform. The contestation was fundamental in that the issue itself was questioned at all levels. Despite there being a file, it was not ‘how’ one should work on it, but ‘whether’ it was an ‘appropriate’ topic to work on, let alone mention, at all.

**A Task Force for an LGBT Toolkit**

The Toolkit was the first official document including LGBTI. A suggestion was made by ILGA-Europe and the Dutch Government (who in turn received input from a national organization COC NL) to the EEAS and landed on the interviewee’s desk. (Email 20.05.2015) ILGA Europe is a lobby organization in Brussels working specifically on LGBT issues and one which is frequently referred to and praised for its professionalism. When the draft came in, there was not much time to consult further but the draft was then ‘Councillified’ by the staff member holding the file [INTERVIEW – 24]– i.e. translated into the language of a Council document. This was then subsequently discussed in the Task Force of the Council’s working group on human rights (COHOM). A Task Force is an ‘informal’ group within COHOM that is formed of Member States’ representatives interested in the particular topic. In this

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10 Every council meeting which is not held in Council offices is considered informal. The rules of diplomacy etc. still apply, but for example the French representative, who would usually be instructed to speak French only at meetings of a certain level, spoke in English.
The Council pressured for the Toolkit and took everyone by surprise with this move.[INTERVIEW – 14] The Netherlands, France, Spain, and the UK, are said to have played an important role in this and in establishing the topic within EU Foreign and Security Policy more generally. Regarded as part of the ‘usual suspects’, Spain is ascribed an especially important role during the negotiations in the Council’s Working Group on Human Rights (COHOM) as the country which held the presidency at the time.[INTERVIEW -18]

It is noteworthy that those Member States who could be called ‘early adopters’ of legislation within their own countries against discrimination on grounds of sexual orientation and gender identity, are the ones pushing for integration in EU foreign policy. Even though this is about foreign, rather than EU internal policy, it can be interpreted as attempts to change the institutional context closer to their own position, hence enhancing their own legitimacy.

One main discussion point in the COHOM at the time is reported to have been whether it should be ‘LGBT rights’ or ‘human rights for LGBT people’, the latter being agreed upon. It was suggested that this was due to ‘sloppy language’ in the initial draft document which did not distinguish between the two concepts and was inconsistent in its language use.12 We therefore observe the framing of the label LGBTI within an already existing institution within the EU and more specifically within the Council, EEAS and Commission: that of human rights. The concept of human rights has formed an established part of EU foreign policy and of the EEAS as is evident in the organigramme. There is a whole human rights unit within the EEAS which has its counterpart for development cooperation in the Commission.

One could assume that not the Toolkit existed, working on LGBT issues would have become more ‘normalised’ within the human rights unit and a file like others. This, however, was not the case. Even with the Toolkit in existence, its legitimacy and that of the topic continued to be questioned. Colleagues wanted to know whether it was legally binding and whether they had to take it into account. While technically not legally binding, the Toolkit was passed at the level of the Political and

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11 While Malta was known to be particularly averse to LGBT issues, since the elections this country has introduced many legislative changes, making it for example one of the most ‘progressive’ in terms of transgender issues in Europe.  
12 Interestingly, a number of people I spoke to, even those working directly at EEAS on human rights, did not make this distinction nowadays either when they spoke, but used LGBT rights perhaps as a way of shorthand.
Security Council, which is quite high up in the hierarchy and has cloud and authority. Given the persistent challenges however, this was not enough to grant it the necessary legitimacy to institutionalize the topic. Given such entrenched opposition, how was it possible for the topic to take hold and be perceived to fit?

Speaking with authority – granting legitimacy
While the Council was the one pushing for the toolkit, NGOs seem to have played a crucial role in shaping the institutional environment and preparing the way for greater institutionalization.\textsuperscript{13} Lobby groups like ILGA Europe and the European Parliament LGBTI Intergroup are regarded as very important and influential for the developments and their professional is praised.[INTERVIEW – 20 ]

Somewhere between the LGBT Toolkit and the LGBTI Guidelines, the initial LGBT acronym was expanded by the letter ‘I’ for ‘intersex’. But how did the ‘I’ for intersex get to join the other letters? The person working on the file at EEAS had heard LGBTI being used somewhere and simply added the ‘I’ to the acronym in the draft of a statement from the High Representative Lady Ashton on the International Day Against Homophobia (IDAHO\textsuperscript{14}) 17 May 2011. There is reasoning provided for adding the ‘I’ in this case other than that it is the latest ‘fashion’. This was rationalized with the explanation that because intersex is regarded a biological condition this would strengthen the argument for the other causes. The staff member added it to see if it would get through the hierarchy’. [INTERVIEW – 24] And it did. One very senior official emailed back to ask what ‘intersex’ was but it was not vetoed and has since been included. At that time all other statements made by EU officials from other EU organizations on IDAHO were either only referring to homosexuality or to LGBT, but no other EU entity included intersex. The EEAS therefore perhaps set a new standard.

Recent discussions on an organization level to drop the ‘I’ from a document or event title were said to have been shut down with reference to the ‘I’ in the guidelines.[INTERVIEW – 25]

One person who had been working on the topic for a while as part of the EU Parliament Secretariat and the Commission suggested that they always tried to use the latest acronym suggested by NGOs in any document because otherwise the document would be outdated already by the time the document was passed,[INTERVIEW - 11] ILGA Europe was furthermore invited to speak at the COHOM meeting when the Guidelines were discussed and had also been contracted to carry out trainings for EU Delegation human rights focal points.

\textsuperscript{13} For a discussion on the role of individual activists and ‘experts’ who move between organizations also see (Paternotte 2011)

\textsuperscript{14} IDAHO has since been turned into IDAHOT including the ‘T’ for transphobia or some organizations even use IDAHOBIT which stands for the International Day Against Homophobia, Biphobia and Transphobia.
This reinforces the idea of the NGOs as experts who are relied on almost blindly. Civil society organizations in Brussels, like ILGA Europe and Amnesty International, play an important role in directing attention to the LGBTI issue and the way they are relied upon heavily for information and expertise. Since LGBTI seems to be perceived as ‘identity politics’, a special issue and not simply a human rights issue like any other, specific legitimacy is needed. This seems to tie into debates around who can legitimately speak for whom and can represent whom even within the LGBTI community or movement, mentioned as damaging by one interviewee.[INTERVIEW – 24] If this is the perception, that specific licence is needed, this feeds the idea that it requires specific experts to talk on the issue. This is further supported by interviewees suggesting that the ones leading on or furthering the agenda are often people who are personally affected.[INTERVIEW – 20, 15, 1]. While the fear of association with the topic altogether might be lower, the people leading or holding the briefs often have some (personal) background or interest in the topic area.

An opportunity arises – an idea becomes an action point
A prerequisite for the Guidelines was the Strategic Framework and Action Plan on Human Rights and Democratisation 2012. Only because the Strategic Framework document included the action point to ‘Develop public EU guidelines, building upon the EU’s LGBT (lesbian, gay, bisexual, transsexual) toolkit’ were they created.[INTERVIEW – 18] Apparently during the consultation phase people lost overview of what was going on. ILGA Europe then submitted a consultation response which included the idea for the Guidelines. The staff member at EEAS working on the file worried that ILGAs proposed amendment to the Action Plan might lead to watering down of what had been secured in the Toolkit already. The interviewee said that ‘a lot of the work is very tedious and reactive but that once in a while, something flies by and you have to grab it. You need to be prepared to do it.’ [INTERVIEW - 24] The moment was therefore recognised as an opportunity and the consultation response therefore passed on to see if it would be successful. And it was. The amendment passed as part of the whole Action Plan package in the Council.

An opportunity is only recognized as such if there is a certain level of awareness. This awareness can never be all encompassing but is coming from a particular context. It is therefore not surprising, that the issue was recognized as a human rights issue by people working within the human rights unit. The problem is defined because a solution can be envisaged, which in this case is rooted within the context of EU Foreign Policy and human rights.
This was presented as the only possible way it could have been included. If one of the Member States had added it to the draft, so the interviewee, this would have caused big discussions and possibly a split between Member States in favour and those more reluctant. The interviewee suggested also that it would have been perceived as the ‘progressive Member States’ issue’. The EEAS employee themselves was unable to include it as a suggestion because the Action Plan was a Council initiative and therefore the proposal would have had to come from the Member States as an amendment but it did not occur as an idea there. Therefore only by the idea being introduced from an external source could it be successful. The same Action Plan calls for Guidelines on the Freedom of Religion and Belief and no one could argue that there was no need for additional Guidelines.

The initial inclusion of the Guidelines in the Strategic Framework based on staff accounts seems therefore more incidental than strategic from the description of EEAS staff. Once in there as one of the action points, it more or less automatically led to the creation of the Guidelines. The negotiations in the Council Working Groups were then very much about the substance but arguments were made on a detailed legal basis and the ‘how’ not the ‘if’. For example, the attempt to include a reference to the Yogyakarta Principles15 into the Toolkit had caused strong opposition from Member States such as Poland because they were not regarded as an official document.[INTERVIEW -24] The reference was successfully included in the Guidelines because a UN document was found which already referenced the Principles.[INTERVIEW -18]

DISCUSSION

This was attempt to account in detail the processes by which an idea about equality for people regardless of their sexual orientation or gender identity coming from the environment and cast into the acronym LGBT (later morphed into LGBTI), became embedded formally within EU’s Foreign and Security Policy. I first demonstrated how contested the issues of LGBT/I was, and to a certain extent still is, on different levels – from the international level, to the inter-European level, national level and down to the staff level. As we follow the emergence of the Toolkit and subsequent upgrade to Guidelines, we see a shift in contestation at the organizational level and greater institutionalization up to the point where the promotion of human rights for LGBTI has almost become a fashion.

15 The Yogyakarta Principles were drafted by a group of experts in 2006. They are the ‘Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity’ – i.e. framing the issues of sexual orientation and gender identity within human rights terms.
We saw that in the beginning, LGBT started as an unwanted file perceived as foreign and which could be ignored without repercussion. Only once it landed on someone’s desk who not only recognized it as a human rights issue, but was able to also communicate this to colleagues. Still, the reactions suggest that it was still not recognized as a legitimate issue to work on or something that fit within the task environment. When the toolkit draft arrived, it needed to be literally ‘translated’ to turn it into a document the Council would consider. This translation process continued in the working group discussions as it was made to fit fully into the human rights basket by making it about human rights for LGBT persons. This also clearly reinforced the responsibility of human rights units for it. The Toolkit’s applicability and with it legitimacy was questioned and while it seems from the accounts that the topic was no longer regarded as inappropriate for someone else to work on, the question became about whether it was mandatory for oneself to work on. Therefore it was legitimised to a certain extent in the eyes of employees through becoming a formal document in form of the Toolkit but only the ‘upgrade’ into Guidelines seems to have institutionalised it further as a topic internally. At the same time, this can also be regarded as having changed the institutional context, perhaps exemplified by the ‘I’ joining the other letters.

There was the reported sense that people felt they had to position themselves vis a vis the topic and that it on them personally. It is therefore not so difficult to see how those who clearly position themselves will be the ones with greater authority and regarded as legitimate and appropriate spokespersons. Fear of association and insecurities given the perceived sensitivities of the topic and the fear to get it wrong, but also NGO initiated debates around who is entitled to represent whom, seem to have contributed to certain NGOs being regarded as the experts. The fact that they are perceived as ‘professional’ shows they are successful in meeting the expectations of staff in the EU organizational units in terms of communication and demeanor.

The shift in how LGBT is rationalized at different levels and at different times is interesting to observe. It started from LGBT being translated into the foreign policy context through human rights by citing examples of violations and implicitly appealing to moral and values at the personal level, to the much more abstract and purely legalistic negotiations in COHOM on the guidelines a few years later.

From the perspective of people working on the topic, the problem becomes about lack of a binding document. It seems that the immediate benefit as described by the interviewee of the LGBT file to
become a policy, was not so much the situation on the ground or the reality ‘out there’ to which the Guidelines speak. It was perhaps more so the situation in-house (which, of course, one could argue is a pre-requisite for taking it ‘out there’).

The ad-hoc and incidental nature of change also becomes very apparent in the accounts of actors who were part of it. A situation needed to be recognized as an opportunity, existing institutions in the form of decision making rules, plus the co-currence of the other Guidelines on Religion and Belief came together to create a situation where an action point on the Guidelines could be included.

**Concluding remarks**

Only by fitting into the human rights concept, which has been firmly embedded not only in EU foreign policy but also organizational structures through whole thematic units dealing with human rights (in the EEAS and in DEVCO), does it find its place. Once in a legally binding form, it becomes more abstract, objectified, less of an alien concept and more like one of the other files, and can be treated as such by staff - or not? There seems to be a sense that perhaps after not having received very much attention, the topic suddenly became very trendy and too much of a focus to the detriment of other human rights issues but perhaps also the cause itself.[INTERVIEW – 19, 20]

And while fashionable in certain circles, the topic remains contested and challenged today, sometimes by the same people who championed it in the first place. Staff working on human rights suggest that the EU is doing a lot on the topic but that it is perhaps receiving ‘too much attention’ and that this might not be helping the ‘cause’. They suggest that the unbalanced attention and differences in response from the EU between this topic and other human right could undermine the legitimacy of the EEAS and EU as the two main principles of human rights are their indivisibility (no hierarchy between rights) and universality (rights matter regardless of context).[INTERVIEW – 19, 20] Interviewees were also in agreement, that still not every colleague is personally comfortable with the topic of LGBTI. However, it has been accepted as something the EU is active on within its foreign policy – even if the way the EU promotes human rights on for LGBTI persons is still contested.[INTERVIEW – 19, 20] At the recent first ever Council event on LGBTI, it was acknowledged that external policies are ahead of internal ones and described as a threat to legitimacy. We might therefore seeing external policies pushing internal policies in the name of cohesion and legitimacy.

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16 See for example (EU Commission 2001)
This is one directions which warrants further exploration as well as for example the rationalizations provided by staff, differences between organizational units in their view of LGBTI and of course the analysis of the reception and reaction and use of the Guidelines in- and outside of Brussels. Furthermore the extent to which the LGBTI fashion is ‘superficial’ or ‘substantial’ - in other words, the level of decoupling, warrants further research. These topics however are beyond the scope of this paper and will have to be discussed elsewhere.

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**Literature**


