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Are laws in OECD countries LGBTI-inclusive?

This chapter takes an in-depth look at the extent to which laws critical to LGBTI equality have been passed in OECD countries as of 30 June 2019. The chapter first elaborates on the measurement of legal LGBTI inclusivity, defined as the share of LGBTI-inclusive laws that are in force among the set of legal provisions introduced in Chapter 2. The chapter then analyses levels and trends in legal LGBTI inclusivity, OECD-wide and by country, including how legal LGBTI inclusivity relates to social acceptance of LGBTI people, gender equality and economic development. Finally, the chapter proposes a realistic country-specific sequence of next steps in order to improve legal LGBTI inclusivity, along with guidance on passing some LGBTI-inclusive laws based on good practices from OECD countries and beyond.

Box 3.1. Comparative review of international indices on LGBTI inclusion

The three most prominent international indices on LGBTI inclusion are: (i) the State-Sponsored Homophobia Index by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), (ii) the Trans Rights Europe & Central Asia Index by Transgender Europe, and (iii) the Rainbow Index by ILGA Europe, the European region of ILGA. The set of LGBTI-inclusive laws defined in Chapter 2 includes virtually all of the legal provisions that are viewed as critical by these renowned indices to ensure equal treatment of LGBTI persons, and also incorporates measures not found in these foundational resources (see Annex 3.A for further details).

ILGA State-Sponsored Homophobia Index

The State-Sponsored Homophobia Index consists of a worldwide survey of what ILGA calls “institutionalised homophobia” defined as “homophobic laws”. This index has been published on an annual basis since 2006. The set of LGBTI-inclusive laws defined in Chapter 2 covers all of the components of ILGA’s State-Sponsored Homophobia Index and adds the following LGB-relevant issues (among many other transgender and intersex-inclusive dimensions): (i) the protection of LGB asylum seekers, (ii) the existence of LGB-inclusive human rights institutions, and (iii) equal access to assisted reproductive technology for different-sex and same-sex couples.

Trans Rights Europe & Central Asia Index by Transgender Europe

The Trans Rights Europe & Central Asia Index has been published on an annual basis since 2013. The set of LGBTI-inclusive laws defined in Chapter 2 explicitly or implicitly covers all components of the Trans Rights Europe & Central Asia Index with the exception of whether transgender minors have the same access to legal gender recognition as transgender adults. However, the legal set defined in Chapter 2 adds criteria for whether transgender people’s civil liberties are respected, a facet of equality and non-discrimination which is omitted from the Trans Rights Europe & Central Asia Index.

Rainbow Index by ILGA Europe

The Rainbow Index has been published on an annual basis since 2009. It is the most complete international index on the inclusion of sexual and gender minorities as it covers lesbian, gay, bisexual, transgender and intersex persons. The 2019 iteration of the Rainbow Index significantly expanded in depth compared to earlier versions. Despite this increasing scope, the set of LGBTI-inclusive laws defined in Chapter 2 explicitly or implicitly addresses all the items of the 2019 edition of the Rainbow Index with the exceptions of: (i) whether there is a ban on donating blood or any kind of bodily tissues based on sexual orientation or gender identity and (ii) whether single persons have access to medically assisted insemination irrespective of their sexual orientation or gender identity. However, the legal set defined in Chapter 2 adds two pieces of criteria omitted from the Rainbow Index, which are for (i) whether partners in a same-sex partnership are treated on an equal footing with partners in a different-sex partnership concerning access to surrogacy and (ii) whether a non-binary gender option is available on birth certificates, on top of “male” and “female”.

Consensual same-sex sexual acts have become legal in all OECD countries where they were formerly criminalised, as have sex-reassignment treatments and/or surgeries for transgender people. Nevertheless, only half of OECD countries have legalised same-sex marriage throughout their national territory and only a third allow for a change of gender on official documents to match gender identity without forcing the transgender person to undergo sterilisation, sex-reassignment surgery, hormonal therapy or a psychiatric diagnosis. Steps backward have also been witnessed. Some OECD countries have introduced a constitutional ban on same-sex marriage, and the very possibility of a person being legally recognised as

transgender is questioned in some others (OECD, 2019^[1]).¹ Finally, the rights of intersex people are by and large ignored.

Based on an analysis of national laws and their amendments that was vetted by a large majority of the countries covered in this report (33/35),² Chapter 3 takes an in-depth look at the extent to which laws critical to LGBTI equality have been passed in OECD countries as of 30 June 2019. This set of laws is comprehensive: it includes nearly all the legal provisions that are viewed as crucial by the three most prominent international indices on LGBTI inclusion, noting that it further contains critical items not covered by these indices (Box 3.1).

Section 3.1 elaborates on the measurement of legal LGBTI inclusivity, defined as the share of LGBTI-inclusive laws that are in force among the set of legal provisions introduced in Chapter 2. Section 3.2 analyses levels and trends in legal LGBTI inclusivity, OECD-wide and by country, including how legal LGBTI inclusivity correlates with social acceptance of LGBTI people, gender equality and economic development. Section 3.3 investigates how legal LGBTI inclusivity could be improved. It proposes a realistic country-specific sequence of next steps that takes into account, for each OECD country, both where this country is standing and, given this achievement, how attainable it is for this country to pass the LGBTI-inclusive provisions not yet in force on its national territory. Section 3.3 also provides guidance on passing some LGBTI-inclusive laws, based on good practices from OECD countries and beyond.

3.1. Measuring legal LGBTI inclusivity

Legal LGBTI inclusivity is defined as the share of LGBTI-inclusive laws that are in force in OECD countries among the set of legal provisions introduced in Chapter 2. Section 3.1.1 first presents the questionnaire on LGBTI-inclusive laws and policies based on which legal LGBTI inclusivity is measured. Section 3.1.2 then explains how responses to the questionnaire are compiled in order to compute legal LGBTI inclusivity.

3.1.1. The OECD questionnaire on LGBTI-inclusive laws and policies

The OECD questionnaire on LGBTI-inclusive laws and policies was designed for the purpose of this report, upon request from 12 member countries³ who signed a call to action for the OECD to undertake, among other endeavours, an inventory of the extent to which laws and policies in Member countries ensure equal treatment of sexual and gender minorities. The questionnaire investigates whether LGBTI-inclusive provisions emphasised in Chapter 2 have been passed in OECD countries as of 30 June 2019 and, for those that are in force, it provides the year when the provision first came into effect. This information was collected by the OECD, based on an analysis of national laws and their amendments that was vetted by a large majority of the countries covered in this report (33/35).⁴

Consistent with Chapter 2, the questionnaire is structured around two sections. The first section deals with general provisions which are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether. The second section deals with group-specific provisions that seek to address the unique challenges faced by subgroups of the LGBTI population. It is composed of two subsections: one that deals with LGB-specific provisions, the other that deals with TI-specific provisions.

General, LGB-specific and TI-specific provisions are each broken down into five components, as presented in Figure 3.2. These components are:

- For *general provisions*: (i) protection of LGBTI people against discrimination; (ii) protection of LGBTI people's civil liberties; (iii) protection of LGBTI people against violence; (iv) protection of LGBTI people fleeing persecution abroad; and (v) existence of an LGBTI-inclusive equality body, ombudsman or human rights commission;
- For *group-specific provisions*:

- Within the subset of *LGB-specific provisions*: (i) equal treatment of same-sex and different-sex consensual sexual acts; (ii) ban on conversion therapy; (iii) legal recognition of same-sex partnerships; (iv) equal adoption rights; and (v) equal access to assisted reproductive technology;
- Within the subset of *TI-specific provisions*: (i) being transgender not categorised as a mental illness in national clinical classification, (ii) legal gender recognition, (iii) no medical requirement attached to legal gender recognition, (iv) availability of a non-binary gender option on birth certificates and other identity documents, and (v) postponing medically unnecessary sex-normalising treatment or surgery on intersex minors.

The detailed questions attached to each of the 15 (3x5) components are presented in Annex 3.B.

3.1.2. Compiling responses to the OECD questionnaire

Legal LGBTI inclusivity is calculated based on responses to the OECD questionnaire on LGBTI-inclusive laws and policies. For illustration, the component “Protection of LGBTI people against violence” is used. As it is apparent in Annex 3.B, applying international human rights standards to this issue would entail passing six legal provisions: three in order to protect LGBTI individuals against hate crime (one based on sexual orientation for LGB people, one based on gender identity for transgender people, and one based on sex characteristics for intersex people), and three in order to protect LGBTI individuals against hate speech (again, one for LGB people, one for transgender people and one for intersex people). Imagine a country where hate crime and hate speech explicitly based on sexual orientation and gender identity are criminalised and/or considered by the national law as an aggravating circumstance, but where no such provision exists concerning sex characteristics. In this case, legal LGBTI inclusivity attached to the component “Protection of LGBTI people against violence” will be equal to 2/3 since four of the six provisions necessary to protect LGBTI individuals are in force.

Once legal LGBTI inclusivity attached to each of the 15 components of the questionnaire is calculated, one can compute an arithmetic average by category of provisions. More precisely:

- Legal LGBTI inclusivity associated with the category “general provisions” is the arithmetic average of legal LGBTI inclusivity attached to each of the five components of general provisions;
- Legal LGBTI inclusivity associated with the category “group-specific provisions” is the arithmetic average of legal LGBTI inclusivity attached to each of the ten components of group-specific provisions, noting that legal LGBTI inclusivity can also be calculated for subcategories of group-specific provisions. In this case:
 - Legal LGBTI inclusivity associated with the subcategory “LGB-specific provisions” is the arithmetic average of legal LGBTI inclusivity attached to each of the 5 components of LGB-specific provisions;
 - Legal LGBTI inclusivity associated with the subcategory “TI-specific provisions” is the arithmetic average of legal LGBTI inclusivity attached to each of the five components of TI-specific provisions.

At this stage, it is possible to compute legal LGBTI inclusivity for the combination of both general and group-specific provisions. This value is simply the arithmetic average of legal LGBTI inclusivity associated with the category “general provisions” and legal LGBTI inclusivity associated with the category “group-specific provisions”. Indeed, since general and group-specific provisions are both essential for the inclusion of LGBTI individuals, they are given equal weight in the average. Consequently, each of the five components of general provisions is assigned a 10% weight, while each of the ten components of group-specific provisions is assigned a 5% weight (Box 3.2).

Box 3.2. Computing legal LGBTI inclusivity: A methodological note

For a given country, are called:

- G1, G2, G3, G4 and G5 the level of legal LGBTI inclusivity attached to each of the five components of general provisions;
- LGB1, LGB2, LGB3, LGB4, LGB5, TI1, TI2, TI3, TI4 and TI5 the level of legal LGBTI inclusivity attached to each of the ten components of group-specific provisions: five relate to LGB-specific provisions (from LGB1 to LGB5), and five relate to TI-specific provisions (from TI1 to TI5).

G_m is the level of legal LGBTI inclusivity associated with the category “general provisions”. G_m is computed as follows:

$$G_m = 1/5 * (G_1 + G_2 + G_3 + G_4 + G_5).$$

Similarly, G_{Sm} is the level of legal LGBTI inclusivity associated with the category “group-specific provisions”. G_{Sm} is computed as follows:

$$G_{Sm} = 1/10 * (LGB_1 + LGB_2 + LGB_3 + LGB_4 + LGB_5 + TI_1 + TI_2 + TI_3 + TI_4 + TI_5).$$

The level of legal LGBTI inclusivity attached to general and group-specific provisions combined is merely the arithmetic average of G_m and G_{Sm} .

In some federal countries or countries with a decentralised system of governance, some of the issues addressed in the OECD questionnaire on LGBTI-inclusive laws and policies are regulated only at the subnational level.⁵ These countries are Australia, Austria, Belgium, Canada, Mexico, Spain, the United Kingdom and the United States. In this case, information on whether LGBTI-inclusive laws are in force is collected for each of the four most populous subnational jurisdictions. In this setting:

- If the LGBTI-inclusive law under consideration is in force in none of these four jurisdictions, it will be considered as absent nationwide;
- If this law is in force in one, two, or three of these four jurisdictions, it will respectively be considered as in force in 25%, 50% or 75% of the national territory;
- If this law is in force in all four jurisdictions, it will be considered as in force throughout the national territory.

Focusing on the four most populous subnational jurisdictions has the advantage of covering all or a large majority of the population in most of those countries where LGBTI issues happen to be regulated at the subnational level:

- New South Wales, Victoria, Queensland and Western Australia comprise 85% of the Australian population
- Vienna, Lower Austria, Upper Austria and Styria comprise 71% of the Austrian population
- Brussels-Capital Region, Flanders and Wallonia comprise all the Belgian population
- Ontario, Quebec, British Columbia and Alberta comprise 85% of the Canadian population
- Andalusia, Catalonia, Community of Madrid and Valencia comprise 60% of the Spanish population
- England, Northern Ireland, Scotland and Wales comprise all of the UK population.

The two exceptions are Mexico and the United States. Mexico state, Mexico City, Veracruz and Jalisco comprise only 35% of the Mexican population, while California, Texas, Florida and New York comprise only 33% of the US population. That said, the four most populous entities in Mexico and the United States seem representative of the extent to which LGBTI-inclusive laws are in force nationwide. For instance, two

of the four most populous entities in Mexico have legalised same-sex marriage as of 30 June 2019, which is close to the share of entities that have done so nationwide (18 of 32 Mexican entities). Similarly, two of the four most populous states in the United States are part of the states that, according to the Movement Advancement Project⁶, are above the US average concerning the implementation of LGBTI-inclusive laws and policies, which exactly coincides with the share of such top-performing states nationwide (25 of 50 US states).

3.2. Levels and trends in legal LGBTI inclusivity

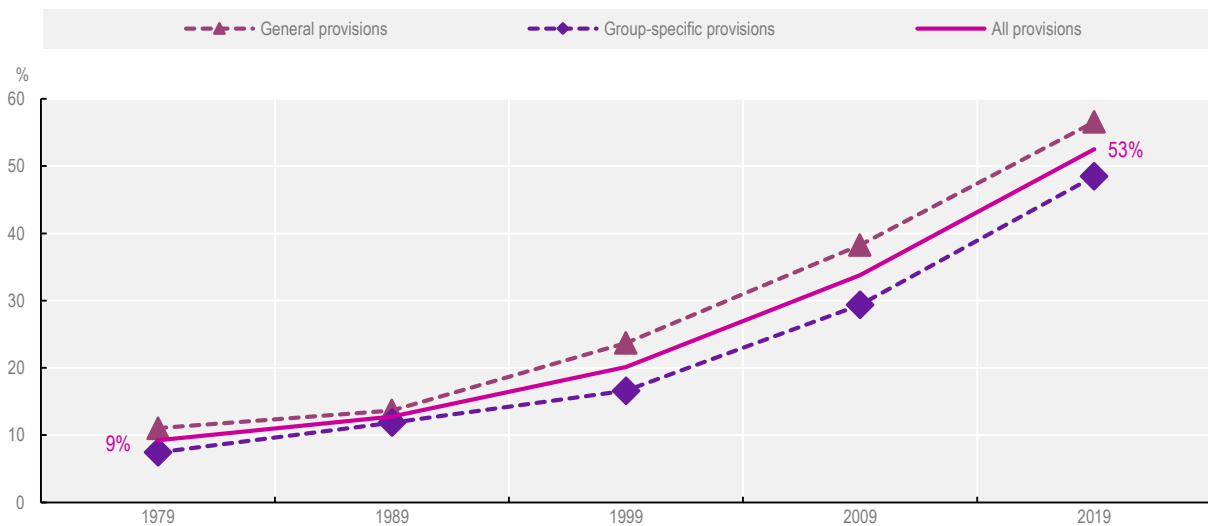
Section 3.2 analyses levels and trends in legal LGBTI inclusivity, OECD-wide (Section **Error! Reference source not found.**) and by country (Section 3.2.2). It concludes by investigating how legal LGBTI inclusivity correlates with measures of social inclusion and economic development (Section 3.2.3).

3.2.1. Moderate legal LGBTI inclusivity OECD-wide, but rising

OECD countries are slightly more than halfway to full legal acceptance of LGBTI people: legal LGBTI inclusivity is equal to 53% as of 2019. But legal LGBTI inclusivity is strongly improving: it has risen nearly six-fold since the late 1970s, when less than 10% of laws critical for LGBTI inclusion were passed. The bulk of this increase occurred in the past 20 years and is driven by passage of both general and group-specific provisions (Figure 3.1).

Figure 3.1. Legal LGBTI inclusivity in OECD countries is on the rise

Evolution of legal LGBTI inclusivity between 1979 and 2019, OECD-wide (all provisions, general provisions and group-specific provisions)



Note: This figure reports the share of legal provisions highlighted in Chapter 2 that are in force in OECD countries, between 1979 and 2019. It distinguishes between all provisions, general provisions and group-specific provisions – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).


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Figure 3.2 provides additional insights. It reports legal LGBTI-inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies as of 2019, and its variation between 1999 and 2019⁷ (see Annex 3.C for a detailed analysis of levels and trends in legal LGBTI inclusivity by component, both OECD-wide and by country).

Figure 3.2. Legal LGBTI inclusivity varies significantly over time and across components

Legal LGBTI inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies (level as of 2019 in percentage and variation between 1999 and 2019 in percentage points)



Note: This figure reports legal LGBTI-inclusivity attached to each of the 15 components of the OECD questionnaire on LGBTI-inclusive laws and policies as of 2019 (in percentage), and its variation between 1999 and 2019 (in percentage points) – see Annex 3.C for a detailed analysis of levels and trends in legal LGBTI inclusivity by component, both OECD-wide and by country.

The variation in legal LGBTI inclusivity is computed between 1999 and 2019 for two reasons: (i) the bulk of the increase in legal LGBTI inclusivity occurred in the past 20 years (Figure 3.1); (ii) 1999-2009 is the decade when all OECD countries were enjoying political independence for the first time, following the collapse of the Communist regimes in Eastern Europe in the early 1990s.

The abbreviation “wgt” in the figure refers to “weight”. It recalls that general and group-specific provisions are given equal weight when computing level of legal LGBTI inclusivity across all 15 components, meaning that each of the five components of general provisions is assigned a 10% weight, while each of the ten components of group-specific provisions is assigned a 5% weight – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Figure 3.2 reveals that the component that provides the strongest contribution to legal LGBTI-inclusivity as of 2019 relates to the protection of civil liberties of LGBTI individuals. No legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. However, LGBTI equality is far from being a done deal when it comes to civil liberties and constant vigilance is needed to avoid steps backward. Attempts to pass gay propaganda laws have occurred among OECD countries, although such laws are strongly condemned by international human rights bodies for hindering freedom of expression on LGBTI issues as recalled in Chapter 2. Moreover, in some instances, public authorities erected barriers to the organisation of peaceful LGBTI public events such as pride parades, or threatened the registration, operation and access to funding of LGBTI human rights associations (see Annex 3.D for further details).

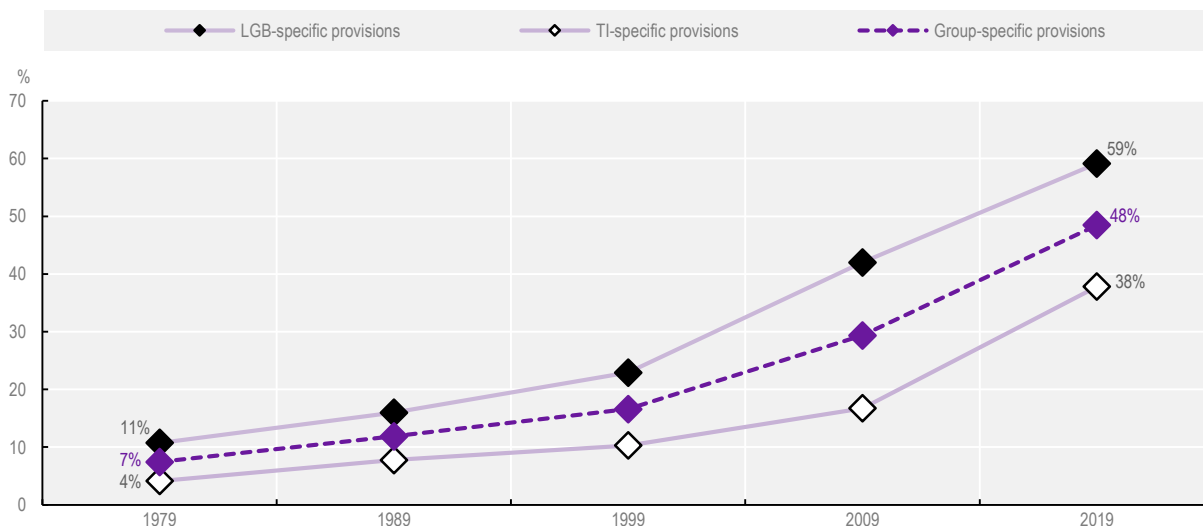
Figure 3.2 also unveils that, between 1999 and 2019, OECD countries made great strides with respect to the following five components:⁸

- *Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission:* e.g. a human rights institution in charge of supporting victims of discrimination explicitly based on sexual orientation is present in 29 OECD countries in 2019, up from six OECD countries in 1999;
- *Protection of LGBTI people fleeing persecution abroad:* e.g. persecution (or a well-founded fear of persecution) explicitly based on sexual orientation is recognised as a valid ground for granting asylum in 24 OECD countries in 2019, up from four OECD countries in 1999;
- *Protection of LGBTI people against discrimination:* e.g. discrimination explicitly based on sexual orientation is prohibited in employment in 32 OECD countries in 2019, up from 11 OECD countries in 1999;
- *Equal adoption rights:* both second-parent adoption and joint adoption by same-sex partners is legal in 20 OECD countries in 2019, up from only one OECD country in 1999;
- *Legal recognition of same-sex partnerships:* same-sex marriage is legal in 20 OECD countries (at least in some parts of their national territory) in 2019, while *no* OECD country was allowing same-sex partners to marry in 1999.

Although general and group-specific provisions contribute almost equally to the rise in legal LGBTI inclusivity, OECD countries are less active with respect to group-specific provisions. Figure 3.3 decomposes group-specific provisions into their LGB-specific and TI-specific parts, and reports their evolution over time. It reveals a lack of laws to advance the rights of transgender and intersex people. In 2019, although 59% of LGB-specific provisions were in force, this was the case of only 38% of the provisions critical for the inclusion of transgender and intersex persons. However, OECD countries are catching up: in the past 10 years, TI-specific provisions were passed at a faster pace. OECD countries have made particularly strong progress in depathologising legal gender recognition. In 2019, 15 OECD countries allow transgender people to change their gender marker on birth certificate and other identity documents without attaching medical requirement to this process (at least in some parts of their national territory), while *no* OECD country was allowing legal gender recognition without sterilisation, sex-reassignment surgery and/or treatment, or mental health diagnosis in 2009.

Figure 3.3. OECD countries are lagging behind on the legal inclusion of transgender and intersex people, but slowly catching up

Evolution of legal LGBTI inclusivity between 1979 and 2019, OECD-wide (group-specific provisions, LGB-specific provisions and TI-specific provisions)



Note: This figure reports the share of legal provisions highlighted in Chapter 2 that are in force in OECD countries, between 1979 and 2019. It distinguishes between group-specific provisions, LGB-specific provisions and TI-specific provisions – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

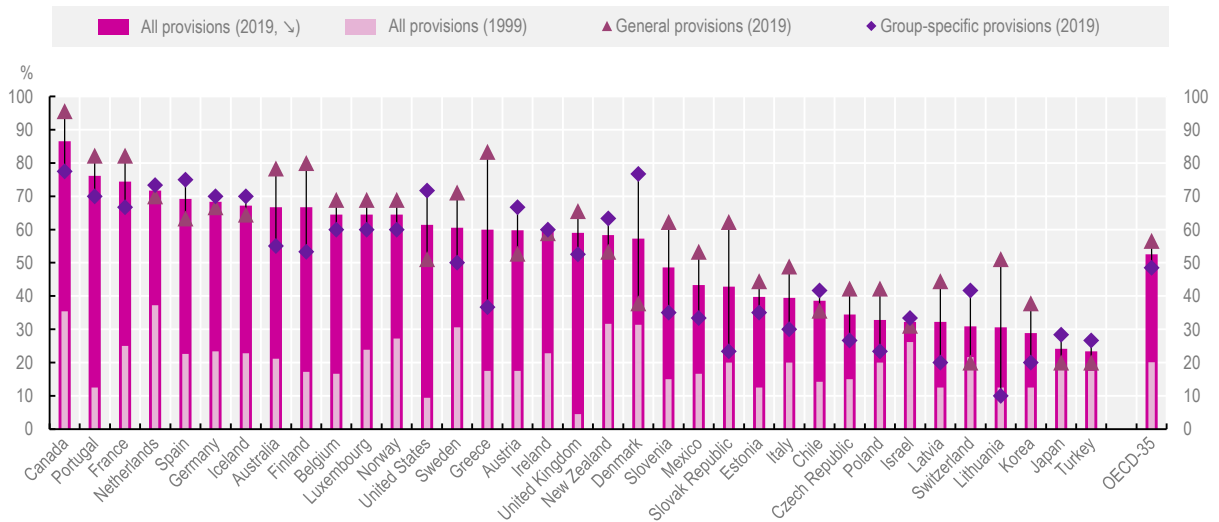
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3.2.2. Unequal levels and trends across countries but progress everywhere

Legal LGBTI inclusivity varies significantly by country, ranging from 25% among the three least active countries – Japan, Turkey and Korea – to 79% among the three most active countries – Canada, Portugal and France (Figure 3.4). This disparity is mainly driven by group-specific provisions: legal LGBTI inclusivity is, in this case, nearly eight times higher in Canada (78%) than in Lithuania (10%). Within group-specific provisions however, variation in legal LGBTI inclusivity across countries does not depend much on whether LGB-specific provisions or TI-specific provisions are considered (Figure 3.5). Nearly all the provisions critical to the inclusion of lesbian, gay and bisexual people are in force in Spain (95%), as compared to only 20% in Korea, Latvia and Lithuania. Similarly, approximately three quarters of the provisions necessary for the inclusion of transgender and intersex people are in force in Denmark (73%), as compared to only 20% in nearly one third of OECD countries⁹ – none of these TI-specific provisions has yet been passed in Lithuania.

Figure 3.4. Legal LGBTI inclusivity is improving in all OECD countries


Legal LGBTI inclusivity as of 1999 and 2019, by OECD country (all provisions, general provisions and group-specific provisions)



Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries, as of 1999 and 2019. For year 1999, it focuses on all provisions. For year 2019, it distinguishes between all provisions, general provisions and group-specific provisions – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.

(\s) in the legend relates to the variable for which countries are ranked from left to right in decreasing order.

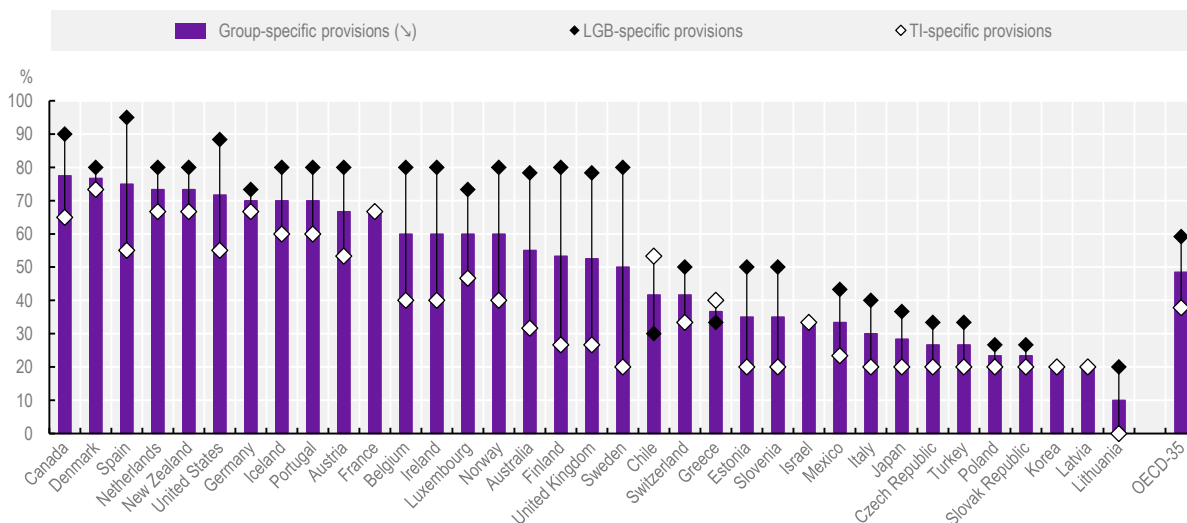
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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EU Members are overrepresented among OECD countries whose legal LGBTI inclusivity is above the OECD average as of 2019, which reflects the strong normative framework in favour of LGBTI equality required by EU institutions (Chapter 2).¹⁰ Notably, all EU Members have transposed the Employment Equality Directive that prohibits discrimination on the grounds of, *inter alia*, sexual orientation as of 2019 (this is the case of only three quarters of non-EU OECD countries). Additionally, more than 80% of EU Members recognise persecution (or a well-founded fear of persecution) explicitly based on sexual orientation and gender identity as a valid ground for granting asylum following Directive 2011/95/EU (only a minority of non-EU OECD countries do so).

Figure 3.5. Cross-country variation in legal LGBTI inclusivity is similar should one focus on LGB-specific or TI-specific provisions

Legal LGBTI inclusivity as of 2019, by OECD country (group-specific provisions, LGB-specific provisions and TI-specific provisions)



Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries, as of 2019. It distinguishes between group-specific provisions, LGB-specific provisions and TI-specific provisions – see Box 3.2 for further details on how legal LGBTI inclusivity is computed.

(\) in the legend relates to the variable for which countries are ranked from left to right in decreasing order.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

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Overall, analysis of levels and trends in legal LGBTI-inclusivity permits categorising OECD countries into three performance tiers, from low- to top-performing (Box 3.3). Yet, despite this strong cross-country variation, *all* OECD countries are making progress (Figure 3.4). The strongest growth occurred in Portugal (+63 percentage points, from 13% to 76%), while the weakest growth occurred in Turkey (+5 percentage points from 18% to 23%).

Path dependence is substantial, meaning that countries that were above (resp. below) the OECD average in 1999 are more likely to be above (resp. below) this average in 2019: 13 of the 20 countries that are above the OECD average in 2019 were already above this average in 1999,¹¹ while 13 of the 15 countries that are below the OECD average in 2019 were already below this average in 1999.¹²

Box 3.3. Three OECD performance tiers

Levels and trends in legal LGBTI-inclusivity reveal three performance tiers among OECD countries:

- *Bottom-performing tier:* countries in this performance tier are showing only modest improvements relative to other OECD countries.¹ They are characterised by a below-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity over the past two decades. 14 countries belong to this category: Chile, Czech Republic, Estonia, Israel, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Poland, Slovak Republic, Switzerland and Turkey;
- *Middle-performing tier:* countries in this performance tier are following trends that suggest their position relative to the OECD average may change in the near future. This category includes countries who show a below-average level of legal LGBTI inclusivity as of 2019 but an above-average increase in legal LGBTI inclusivity between 1999 and 2019 (Slovenia), and countries who show an above-average level of legal LGBTI inclusivity as of 2019 but a below-average increase in legal LGBTI inclusivity between 1999 and 2019 (Denmark, New Zealand and Sweden);
- *Top-performing tier:* countries in this performance tier have been making tremendous progress over the past decades and continue doing so at a sustained pace. They are characterised by an above-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity between 1999 and 2019. 17 countries belong to this category: Australia, Austria, Belgium, Canada, Finland, France, Germany, Greece, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, United Kingdom and United States.

¹ Some countries in this performance tier have recently shown major improvements in LGBTI rights that, however, cannot be reflected in the level of legal LGBTI inclusivity analysed in this report since these improvements are posterior to 30 June 2019. In Switzerland for instance, 63.1% of Swiss voters approved in a referendum on 9 February 2020 the prohibition of discrimination and hate speech (incitement to hatred) based on sexual orientation. The provision in the Swiss Penal Code resulting from this approval will come into force on 1 July 2020.

Yet, past performance of OECD countries regarding legal inclusion of LGBTI people does not fully predict current performance, and both positive and negative shifts have occurred between 1999 and 2019. Seven countries that were below the OECD average in 1999 have managed to emerge above this average as of 2019. These countries are Austria, Belgium, Finland, Greece, Portugal, United Kingdom and the United States. The strides made between 1999 and 2019 by Portugal and the United Kingdom have been truly spectacular: legal LGBTI inclusivity increased by 63 percentage points in Portugal (from 7 percentage points below the OECD average in 1999 to 23 percentage points above this average in 2019); and by 55 percentage points in the United Kingdom (from 16 percentage points below the OECD average in 1999 to 6 percentage points above this average in 2019). By contrast, two countries, Israel and Switzerland, have fallen below the OECD average as of 2019 while they were above this average in 1999. Their decline is significant: Israel was 6 percentage points above the OECD average in 1999 but 21 percentage points below this average in 2019; Switzerland was 2 percentage point above the OECD average in 1999 but 22 percentage points below this average in 2019. These drops are not due to steps backward. Instead, they reflect that these countries have made progress at a much slower pace than other OECD countries.

Some countries performing just below and above the OECD average are following trends that suggest their position relative to that average may change in the near future – for better or worse. Slovenia is trending positively and close to moving above the average. In this country, legal LGBTI inclusivity has increased from 15% in 1999 to 49% in 2019, which is only 4 percentage points below the OECD average (52%). By contrast, Denmark and New Zealand are at risk of falling below the average. Although these

countries have consistently performed better in terms of legal LGBTI inclusivity relative to the OECD average, their relative advantage is declining: their legal LGBTI inclusivity was between 11 and 12 percentage points above the OECD average in 1999, but only 4 to 5 percentage points above this average in 2019.

3.2.3. Is legal LGBTI inclusivity associated with measures of social inclusion and economic development?

Section 3.2.3 investigates the correlation between legal LGBTI inclusivity and two measures of social inclusion: (i) social acceptance of LGBTI people and (ii) gender equality. This section also analyses the relationship between legal LGBTI inclusivity and economic development.

Legal LGBTI inclusivity and social acceptance of LGBTI people

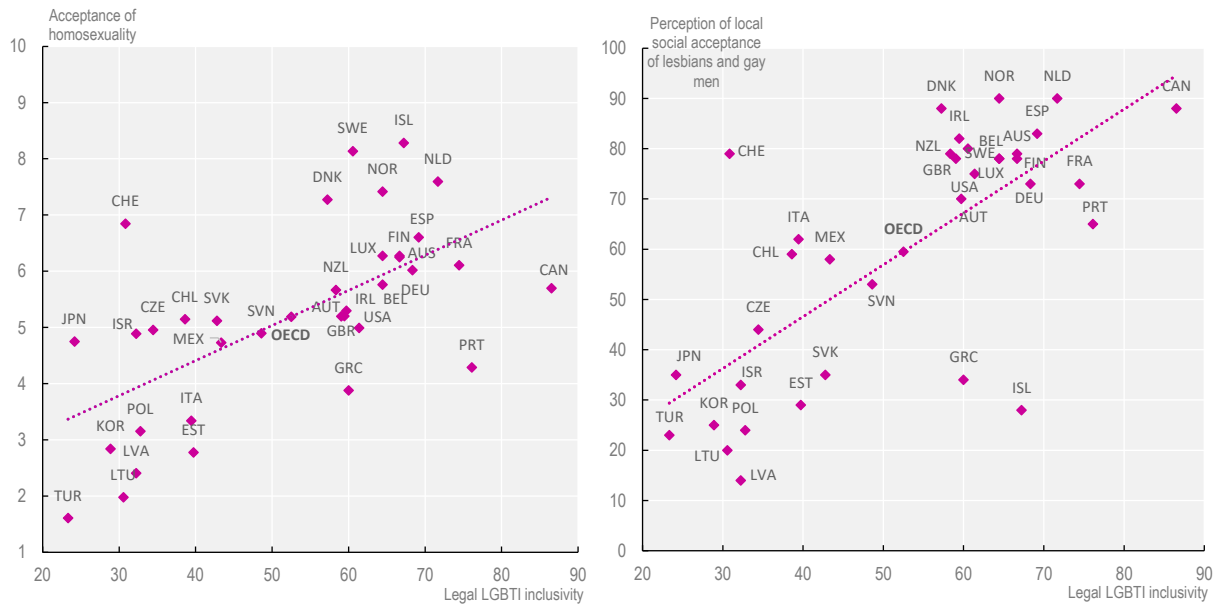
While countries with greater acceptance of sexual and gender minorities are more likely to pass LGBTI-inclusive laws, evidence shows that legal changes in favour of LGBTI people in turn do cause changes in attitudes towards this population. Indeed, individuals perceive legal changes as reflections of advancements in what is socially acceptable and many are willing to conform to these shifts (Tankard and Paluck, 2017^[2]). For instance, in European countries where same-sex marriage is legal, acceptance of homosexuality increased much faster after those states adopted same-sex relationship recognition policies (Aksoy et al., 2020^[3]). Similarly, same-sex marriage legalisation across U.S. states led to an increase in employment of people in same-sex couples, a change driven by improvements in attitudes towards homosexuality and, hence, lower discrimination against LGB individuals (Sansone, 2019^[4]).

Figure 3.6 and Figure 3.7 confirm a significant positive relationship between legal LGBTI inclusivity and acceptance of LGB, transgender and intersex people. An increase in legal LGBTI inclusivity from its average value (25%) among the three lowest-performing OECD countries (Turkey, Japan and Korea) to its average value (79%) among the three highest-performing OECD countries (Canada, Portugal and France) is associated with:

- A 2.5 point increase in the score on a 1-to-10 scale measuring acceptance of homosexuality, from 3 to 5.5 (left panel of Figure 3.6);
- A nearly three-fold increase in the share of respondents who consider their area of residence is a good place to live for lesbians and gay men, from 28% to 75% (right panel of Figure 3.6);¹³
- A more than 25% increase in the share of respondents who support transgender people, from 34% to 43% (left panel of Figure 3.7);¹⁴
- A more than 50% increase in the share of respondents who support intersex people, from 28% to 43% (right panel of Figure 3.7).¹⁵

Figure 3.6. Legal LGBTI inclusivity is positively associated with acceptance of lesbians and gay men

Relationship between legal LGBTI inclusivity, acceptance of homosexuality (left panel) and perception of local social inclusion of lesbians and gay men (right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Chapter 2 that are in force in OECD countries as of 2019. In the left panel, acceptance of homosexuality is measured on a scale from 1 to 10, where 1 means that homosexuality is never justified and 10 means that it is always justified. It is based on the following question: *Please tell me whether you think homosexuality can always be justified, never be justified, or something in between using this card.* This question is part of a battery of several questions about controversial behaviours and issues (e.g. abortion, divorce, euthanasia, prostitution, etc.) that have been asked in the following cross-country surveys: the AsiaBarometer, the European Values Survey, the Latinobarometro and the World Values Survey. Only survey rounds that occurred after 2001 are used. In the right panel, the perception of local social acceptance of lesbians and gay men refers to the share of respondents to the 2018 Gallup World Poll who consider that their area of residence is a good place to live for gay men or lesbians. It is based on the following question: *Is the city or area where you live a good place or not a good place to live for gay or lesbian people?*

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019), OECD compilation based on AsiaBarometer, European Values Survey, Latinobarometro and World Values Survey, and Gallup World Poll.


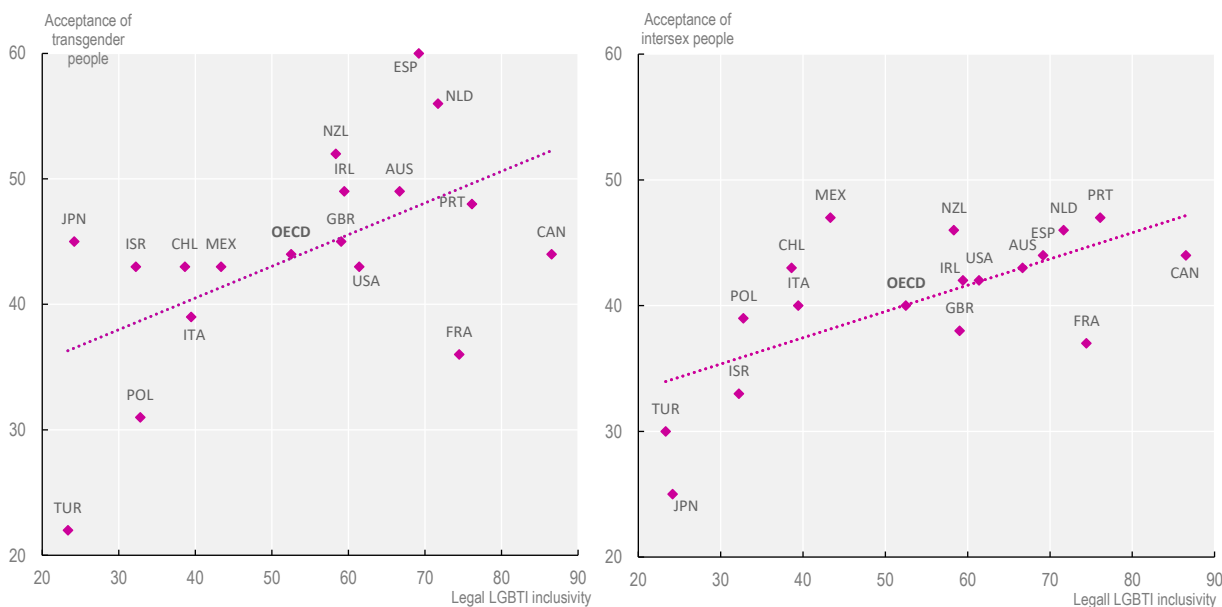
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Figure 3.7. Legal LGBTI inclusivity is positively associated with acceptance of transgender and intersex people

Relationship between legal LGBTI inclusivity, acceptance of transgender people (left panel) and acceptance of intersex people (right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Chapter 2 that are in force in OECD countries as of 2019. In the left panel, acceptance of transgender people refers to the average share of respondents to the 2016 ILGA survey who answer “Yes” to the following two questions: (i) *If a male child always dressed and expressed himself as a girl, would you find that acceptable?*; (ii) *If a female child always dressed and expressed herself as a boy, would you find that acceptable?* In the right panel, acceptance of intersex people refers to the share of respondents to the 2016 ILGA survey who answer “No” to the following question: *Do you think that children whose genitals are unclear at birth should be surgically assigned a gender by medical professionals?*

Source: 2016 ILGA survey.

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Legal LGBTI inclusivity and gender equality

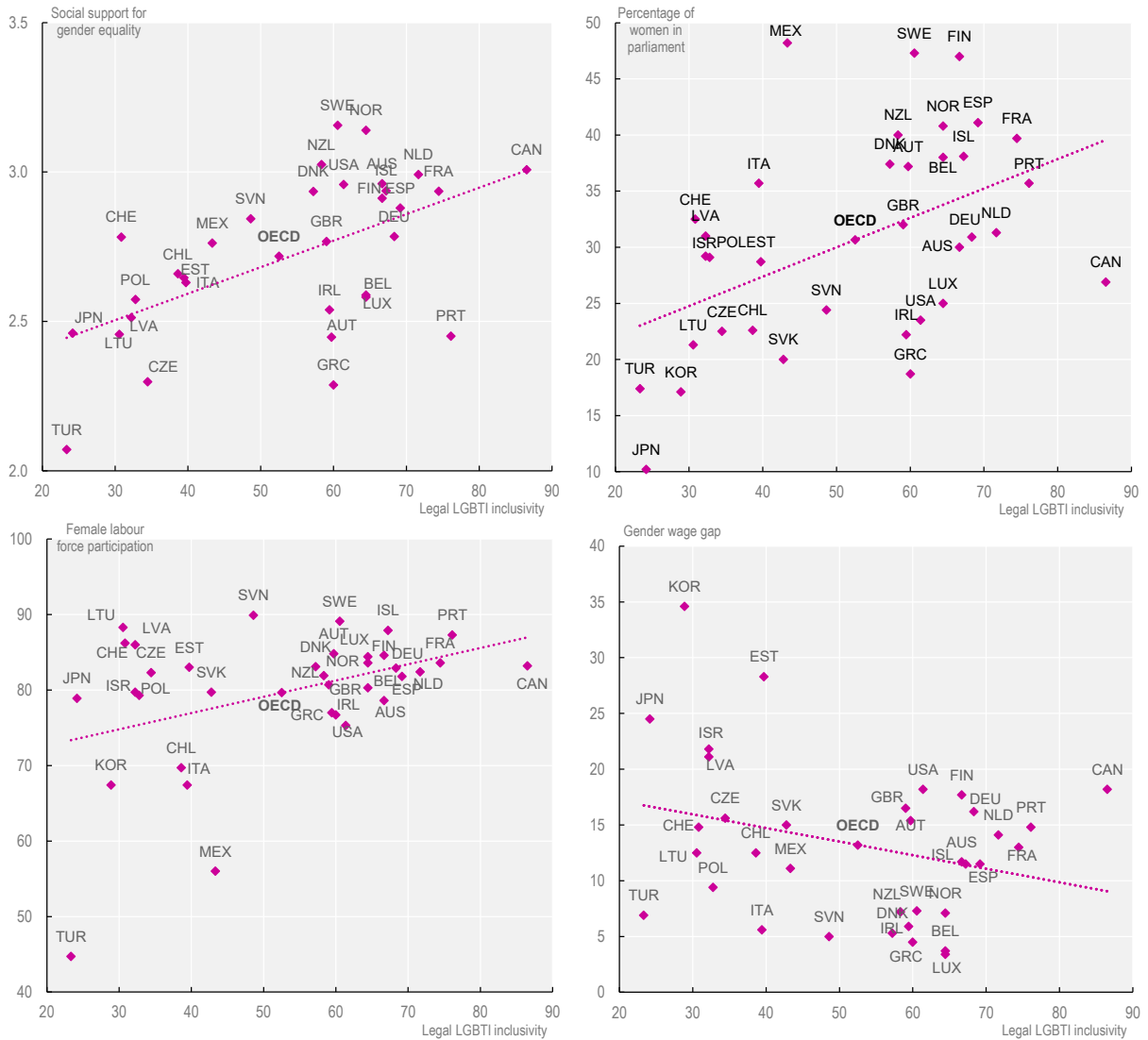
Both exclusion of LGBTI people and endorsement of traditional gender norms derive from the mistaken view that (i) individuals fall into only two distinct biological sexes at birth (male and female) that perfectly match their gender identity; (ii) men and women unequivocally feel sexual attraction to one another; (iii) within these couples, men and women fulfil biologically determined roles. One can therefore expect a strong association between legal LGBTI inclusivity and gender equality.

Figure 3.8 indeed reveals a significant positive relationship between legal LGBTI inclusivity and gender equality. An increase in legal LGBTI inclusivity from its average value (25%) among the three lowest-performing OECD countries to its average value (79%) among the three highest-performing OECD countries is associated with:

- A one-point increase on a 1-to-4 scale measuring support for gender equality, from 2 to 3 (upper left panel of Figure 3.8);
- A more than two-fold increase in the share of women in parliament, from 15% to 34% (upper right panel of Figure 3.8);
- A one-third increase in female labour force participation, from 64% to 85% (lower left panel of Figure 3.8);
- A 30% decrease in the gender wage gap, from 22% to 15% (lower right panel of Figure 3.8).

Figure 3.8. Legal LGBTI inclusivity is positively associated with gender equality

Relationship between legal LGBTI inclusivity, support for gender equality (upper left panel), percentage of women in parliament (upper right panel), female labour force participation (lower left panel) and gender wage gap (lower right panel)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Chapter 2 that are in force in OECD countries as of 2019. In the upper left panel, social support for gender equality is an average of responses to the following three questions taken from the European Values Survey and World Values Survey: (i) *When jobs are scarce, men should have more right to a job than women* (=1 if strongly agree, =2 if agree, =3 if disagree, =4 if strongly disagree); (ii) *On the whole, men make better political leaders than women do* (=1 if strongly agree, =2 agree, =3 if disagree, =4 if strongly disagree); (iii) *A university education is more important for a boy than for a girl* (=1 if strongly agree, =2 agree, =3 if disagree, =4 if strongly disagree). Only survey rounds that occurred after 2001 are used. In the upper right panel, the percentage of women in parliament is computed as of 2019 and stems from the OECD Government at a Glance database. In the lower left panel, female labour force participation is computed as of 2018 for the 25-54 age group and stems from the OECD Employment database. In the lower right panel, gender wage gap is defined as the difference between male and female median wages divided by the male median wages (expressed in percentage), among full-time employees. It is computed as of 2017 or earlier and stems from the OECD Employment database.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019), OECD compilation based on European Values Survey and World Values Survey, OECD Government at a Glance database, and OECD Employment database.

Legal LGBTI inclusivity and economic development

Economic development is conducive to education (Chevalier et al., 2013^[5]) and, hence, legal LGBTI inclusivity. Education plays a major role in explaining differences in attitudes towards sexual and gender minorities. For instance, the score of individuals with a college education on a 1-to-10 scale measuring acceptance of homosexuality (6.1) is two points higher than that of individuals who have, at most, a lower-secondary education (4.1) (OECD, 2019^[1]). This result may be in part due to education's correlation with complex reasoning that increases individuals' tolerance to nonconformity (Ohlander, Batalova and Treas, 2005^[6]).

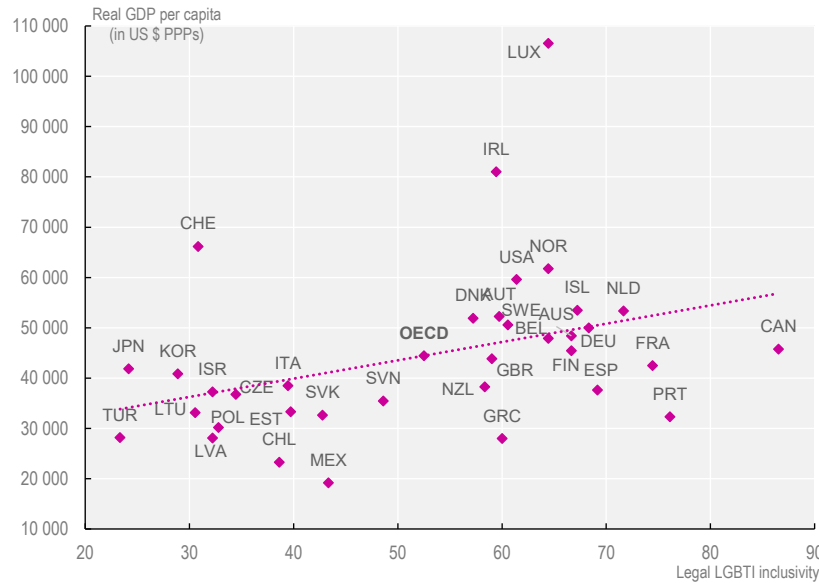
Legal LGBTI inclusivity also contributes to economic development by reducing the massive cost of anti-LGBTI discrimination (Carcillo and Valfort, 2018^[7]). Anti-LGBTI discrimination reduces demand for labour of LGBTI people, which reduces their wages, their access to employment and confines sexual and gender minorities to less qualified positions than they might otherwise occupy. These negative consequences are magnified by reactions of the labour supply. Reduced wages undermine incentives to work. The discrimination-induced decrease in the demand for labour also reduces the productivity of LGBTI people who invest less in education and life-long learning because they anticipate low returns. This negative spiral results in production losses that in turn affect public finances. Lower production and wage levels reduce state revenue from income tax, corporation tax, and social security contributions. At the same time, discrimination in access to employment increases public expenditure due to unemployment benefits and social transfers to those who are discriminated against.

Yet, these immediate negative effects of discrimination represent only a fraction of the harmful spill-overs resulting from excluding LGBTI people from the labour market and the wider society. Notably, representative survey data point to widespread psychological distress among LGBTI individuals due to – at least partly – stigma (OECD, 2019^[1]). Sexual and gender minorities mostly live in social environments that largely view heterosexuality and cisgender identity, i.e. congruence between sex at birth and gender identity, as the only way of being normal. LGBTI people therefore experience stress not undergone by heterosexual and cisgender individuals, the so-called minority stress (Meyer, 2003^[8]). This stress has been shown to seriously hamper mental health, by generating anxiety, depression, suicide ideation, substance use and abuse. In the United States for instance, the reduction in the number of suicide attempts between LGB and heterosexual youth was substantially higher in states that adopted same-sex marriage before its legalisation by the Supreme Court in 2015, than in others – a trend that was not apparent before the implementation of LGB-inclusive policies. Overall, it is estimated that same-sex marriage policies caused a reduction by nearly 15% of suicide attempts among adolescents who self-identify as gay, lesbian or bisexual (Raifman et al., 2017^[9]). Lower mental health in turn has the potential to impair LGBTI people's physical health by providing a fertile ground to other pathologies, such as cardiovascular diseases. Overall, the detrimental effect of discrimination on LGBTI people's mental health further contributes to eroding a country's human capital, as well as public finances through significant spending on social and health services in order to address the consequences of LGBTI people's marginalisation.

Consistent with these mechanisms, Figure 3.9 unveils a positive relationship between legal LGBTI inclusivity and economic development. An increase in legal LGBTI inclusivity from its average value among the three lowest-performing OECD countries to its average value among the three highest-performing OECD countries is associated with an increase in real GDP per capita of approximately USD 3 200.

Figure 3.9. Legal LGBTI inclusivity is positively associated with economic development

Relationship between legal LGBTI inclusivity and real GDP per capita (in USD PPPs)



Note: Legal LGBTI inclusivity refers to the share of provisions highlighted in Chapter 2 that are in force in OECD countries as of 2019. Real GDP per capita (in USD PPPs) is computed as of 2019 using 2015 as the reference year and stems from the OECD Main Economic Indicators database.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019) and OECD Main Economic Indicators database.

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3.3. What are the possible next steps to improve legal LGBTI inclusivity?

Identifying possible next steps entails taking into account, for each OECD country, both where this country is standing and, given this achievement, how attainable it is for this country to pass the LGBTI-inclusive provisions not yet in force on its national territory. A straightforward way to assess the attainability of LGBTI-inclusive provisions consists in investigating the prevalence of these provisions among the various OECD performance tiers. More precisely, it is possible to distinguish between:

- Legal provisions that are *low-hanging fruits*: these are the legal provisions passed by a majority among all performance categories, including bottom-performing countries;
- Legal provisions that are *middle-hanging fruits*: these are the legal provisions passed by a majority, but only among middle- and top-performing countries;
- Legal provisions that are *high-hanging fruits*: these are the legal provisions passed by a majority, but only among top-performing countries;
- *Ground-breaking* provisions: these are the legal provisions passed by only a minority among all performance categories, including top-performing countries.

A realistic country-specific sequence of next steps emerges from this categorisation. To prevent countries from being stuck in their performance tier or, worse, from being downgraded to the lower performance category, the first step would consist, for each country, in finishing passing the legal provisions already implemented by a majority of countries in the same or in lower performance tiers (if applicable). The subsequent steps would entail passing the legal provisions already implemented by a majority of countries

in the higher performance tiers, starting with the performance category just above. Concretely, this approach could imply four next steps for bottom-performing countries, three next steps for middle-performing countries and two next steps for top-performing countries (Box 3.4).

Obviously, this sequence of next steps is only indicative. Countries are free to pass all the LGBTI-inclusive legal provisions not yet in force on their national territory either simultaneously, or in the order they wish. But the suggested next steps may be useful for countries who aim to improve their legal LGBTI-inclusivity in a staggered and manageable way. To help countries implement these next steps in practice, Section 3.3.1 details the legal provisions that fall under each of the four categories above, from low-hanging to ground-breaking, while Section 3.3.2 provides guidance on passing some of these provisions, based on good practices from OECD countries and beyond.

Box 3.4. A realistic country-specific sequence of next steps

OECD countries could consider undertaking the following next steps to travel the road to legal LGBTI inclusion in a staggered and manageable way, depending on their performance tier:

- For bottom-performing countries:
 - *Step 1*: Finishing passing all low-hanging provisions (if applicable)
 - *Step 2*: Passing all middle-hanging provisions
 - *Step 3*: Passing all high-hanging provisions
 - *Step 4*: Passing all ground-breaking provisions
- For middle-performing countries:
 - *Step 1*: Finishing passing all low-hanging and middle-hanging provisions (if applicable)
 - *Step 2*: Passing all high-hanging provisions
 - *Step 3*: Passing all ground-breaking provisions
- For top-performing countries:
 - *Step 1*: Finishing passing all low-, middle- and high-hanging provisions (if applicable)
 - *Step 2*: Passing all ground-breaking provisions

3.3.1. Categorising LGBTI-inclusive legal provisions based on their attainability

Analysing the prevalence of LGBTI-inclusive provisions among the various OECD performance tiers permits identifying which of these provisions are low-hanging, middle-hanging, high-hanging or ground-breaking. Table 3.1 points out that the attainability of LGBTI-inclusive legal provisions strongly depends on the subgroups of the LGBTI population these provisions target. While legal provisions fostering the inclusion of LGB people are overrepresented among those that are low- and middle-hanging, legal provisions promoting the inclusion of transgender and intersex people are mainly high-hanging and ground-breaking. This finding echoes an important takeaway from Section 3.2.1 according to which OECD countries are lagging behind with regard to TI-specific laws. Table 3.1 also reveals that even top-performing countries are still far from full legal LGBTI inclusion. Several haven't passed all low- and middle-hanging legal provisions yet. Moreover, the number of ground-breaking provisions that only a minority have implemented thus far is significant. Two types of ground-breaking legal provisions, i.e. hate crime *and* hate speech laws based on sex characteristics, as well as laws banning conversion therapy, are particularly rare among OECD countries: the former are in force in only one OECD country nationwide (Canada), while the latter have been passed in a very limited number of OECD countries and only at the subnational level (see Annex 3.C for more details). It is important that top-performing countries continue demonstrating their leadership by passing those ground-breaking provisions, so that they progressively become standard equality measures.

Table 3.1. Legal provisions fostering the inclusion of transgender and intersex people are overrepresented among those that are high-hanging and ground-breaking

Prevalence of LGBTI-inclusive provisions among the various OECD performance tiers as of 30 June 2019

	Share of countries where the legal provision(s) is(are) in force throughout the national territory among...		
	... bottom-performing countries	... middle-performing countries	... top-performing countries
LOW-HANGING LEGAL PROVISIONS			
<u>Protection of LGBTI people's civil liberties: Freedom of expression, assembly and association</u>	all	all	all
<u>Equal treatment of same-sex (SS) and different-sex (DS) consensual sexual acts: No criminalisation of SS consensual sexual acts; Equal age of consent across SS and DS sexual acts</u>	majority:93%	all	all
<u>Legal gender recognition</u>	majority:86%	all	all
<u>Protection of LGBTI people against discrimination: Prohibition of discrimination in employment and a broad range of others fields based on SO</u>	majority:64%	all	majority:94%
<u>Existence of an LGBTI-inclusive human rights institution (HRI): HRI in charge of supporting victims of discrimination based on SO</u>	majority:64%	all	majority:94%
MIDDLE-HANGING LEGAL PROVISIONS			
<u>Existence of an LGBTI-inclusive human rights institution (HRI): HRI in charge of supporting victims of discrimination based on GI</u>	minority:50%	majority:75%	majority:82%
<u>Protection of LGBTI people against violence: Hate crime and hate speech laws based on SO</u>	minority:29%	majority:75%	majority:59%
<u>Equal adoption rights: Second-parent adoption (SPA) and joint adoption (JA) legal for SS partners</u>	none	majority:75%	majority:94%
<u>Legal recognition of same-sex partnerships: Same-sex marriage legal</u>	none	majority:75%	majority:88%
<u>Equal access to assisted reproductive technology: Equal treatment in access to medically assisted insemination (MAI) and/or in vitro fertilisation (IVF) across same-sex and different-sex partners; If MAI and/or IVF are legal for same-sex partners, automatic co-parent recognition is legal; Equal treatment in access to surrogacy</u>	minority:7%	majority:75%	majority:71%
HIGH-HANGING LEGAL PROVISIONS			
<u>Protection of LGBTI people fleeing persecution abroad: Persecution based on SO explicitly recognised as a valid ground for granting asylum</u>	minority:36%	minority:50%	all
<u>Protection of LGBTI people fleeing persecution abroad: Persecution based on GI explicitly recognised as a valid ground for granting asylum</u>	minority:29%	minority:50%	majority:88%
<u>Protection of LGBTI people against discrimination: Prohibition of discrimination in employment and a broad range of others fields based on GI</u>	minority:21%	minority:50%	majority:88%
<u>Existence of an LGBTI-inclusive human rights institution (HRI): HRI in charge of supporting victims of discrimination based on SC</u>	minority:7%	minority:25%	majority:59%
<u>No medical requirement attached to legal gender recognition</u>	minority:7%	minority:25%	majority:59%
<u>Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors</u>	minority:29%	minority:50%	majority:53%
GROUND-BREAKING LEGAL PROVISIONS			
<u>Protection of LGBTI people against discrimination: Prohibition of discrimination in employment and a broad range of others fields based on SC</u>	none	none	minority:47%
<u>Protection of LGBTI people against violence: Hate crime and hate speech laws based on GI</u>	none	minority:25%	minority:35%
<u>Protection of LGBTI people fleeing persecution abroad: Persecution based on SC explicitly recognised as a valid ground for granting asylum</u>	none	minority:25%	minority:29%
<u>Being transgender not categorised as a mental illness in national clinical classification</u>	none	minority:25%	minority:24%
<u>Availability of a non-binary gender option on birth certificates and other identity documents</u>	none	minority:25%	minority:24%
<u>Protection of LGBTI people against discrimination: Prohibition of discrimination based on SO, GI and/or SC in the Constitution</u>	minority:7%	minority:50%	minority:12%
<u>Protection of LGBTI people against violence: Hate crime and hate speech laws based on SC</u>	none	none	minority:6%
<u>Ban on conversion therapy</u>	none	none	none

Note: In this table, "SO" refers to "sexual orientation", "GI" to "gender identity" and "SC" to "sex characteristics". Cells in pink refer to a situation where the legal provisions analysed are in force in a majority of countries among the performance tier under consideration.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

3.3.2. Good practices on passing LGBTI-inclusive legal provisions

Effectively passing LGBTI-inclusive provisions requires consistency of these provisions with other laws as well as carefulness in the way these provisions are drafted so that they fully protect all LGBTI people. Analysis of LGBTI-inclusive laws among OECD countries reveals that these conditions are not always fulfilled. This is particularly the case concerning the following five provisions: (i) no criminalisation of same-sex consensual sexual acts; (ii) ban on conversion therapy; (iii) no medical requirement attached to legal gender recognition; (iv) availability of a non-binary gender option on birth certificates and other identity documents; and (v) postponing medically unnecessary sex-normalising treatment or surgery on intersex minors.

No criminalisation of same-sex consensual sexual acts

Same-sex consensual sexual acts are legal in all OECD countries, which stands in sharp contrast with the situation worldwide: 68 countries continue to criminalise same-sex conduct between consenting adults including eight countries that impose or have the option to impose the death penalty as punishment (Iran, Mauritania, Nigeria, Saudi Arabia, Somalia, Sudan, United Arab Emirates and Yemen) (ILGA World, 2019^[10]). Yet, while the legality of same-sex consensual sexual acts is not challenged by competing laws in most OECD countries, two exceptions exist: openly gay, lesbian and bisexual individuals are banned from serving in the military in Korea and Turkey.

Box 3.5. The “Don’t Ask, Don’t Tell” policy in the United States

“Don’t ask, don’t tell” (DADT) was the official United States policy on military service by gays, bisexuals, and lesbians instituted by the Clinton Administration in 1994. The policy prohibited military personnel from discriminating against or harassing closeted homosexual or bisexual service members or applicants, while barring openly gay, lesbian, or bisexual persons from military service because their presence “would create an unacceptable risk to the high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability”. DADT ensured that consensual same-sex sexual conduct, whether committed on or off a military base, could still be a ground for dismissal from military service. By 2008, more than 13 000 service members had been discharged from the military under DADT.

In 2010, DADT came under significant legislative and judicial scrutiny. In May, the US House of Representatives voted to repeal DADT. In November, the Department of Defense released a report which found that repealing the DADT policy would pose little risk to military effectiveness. The report looked at studies on militaries of Australia, Canada, Germany, Israel, Italy, the Netherlands and the United Kingdom – all of which had years of experience with LGBT personnel serving in their forces without any restrictions. The report highlighted that none of these studies found that having LGBT service members had affected unit performance. The formal repeal of DADT became effective in 2011.

In Korea, Article 92-6 of the 1962 Military Criminal Act provides that a person who commits anal intercourse or any other indecent act with “a military person” shall be punished by imprisonment for up to two years. The Korean military has invoked Article 92-6 to punish sexual acts between male servicemen regardless of whether the acts were consensual or whether they happened within or outside of military facilities (Human Rights Watch, 2019^[11]). The provision of the Military Criminal Act that bans same-sex conduct among soldiers was upheld as recently as 2016 by the Constitutional Court in a 5-4 ruling.

In Turkey, the Military Health Regulation defines homosexuality as a ‘psychosexual’ illness and identifies homosexuals as unfit for the military (Commission of the European Communities, 2009^[12]). Yet, military service is compulsory for all male Turkish citizens between the ages of 18 and 41. In this setting, individuals

whose homosexuality is found out any time during the one-year military service are not allowed to complete their service. Instead of receiving a certificate of completion, they receive a certificate of discharge for homosexuality (colloquially referred to as the “pink certificate”). Alternatively, homosexuals can “apply” for a “pink certificate” to be exempted from military service following a series of psychological evaluations consisting of personality tests and interviews with the draftee as well as with his family. A “pink certificate” is associated to huge social stigma. This stigma can last for a lifetime by severely undermining the possibility of being hired, as employers typically request proof that the job candidate or employee has done their military service.

Arguments for banning openly gay, lesbian and bisexual individuals from the military typically stress that including this population would undermine a fundamental tenet of military service, i.e. ensuring that soldiers remain undistracted from their mission. But these arguments are ill-founded. Notably, while several studies have investigated the impact of having LGBTI personnel serving in military forces without restriction (the case for instance in Australia, Canada, Germany, Israel, Italy, the Netherlands and the United Kingdom), none have concluded that this policy is detrimental to the performance of military units (Rostker et al., 2011^[13]). The observation that an LGBTI-inclusive military poses no risk to military effectiveness contributed to the repeal of the “Don’t Ask, Don’t Tell” policy in the United States in 2011 (Box 3.5). More fundamentally, excluding openly gay, lesbian and bisexual individuals from the military breaches the right to equal treatment and freedom from discrimination, and constitutes an impermissible infringement of the right to privacy, as the European Court of Human Rights ruled in two cases in 1999 (Box 3.6).

Box 3.6. Two decisions from the European Court of Human Rights: *Lustig-Prean v. the United Kingdom (1999)* and *Smith and Grady v. the United Kingdom (1999)*

Before 2000, military policies under both the UK Ministry of Defence and the Federal Republic of Germany prohibited LGBT service members from serving openly in the armed forces, regardless of the individual’s conduct or service record.

Both the United Kingdom and Germany changed their policies in 2000 in response to the decisions in *Lustig-Prean v. the United Kingdom (1999)* and *Smith and Grady v. the United Kingdom (1999)* – collectively with *Lustig-Prean*, “*Smith*”. These two decisions were rendered by the European Court of Human Rights (ECtHR). The ECtHR found that the UK military policy that authorised the dismissal of military personnel following investigations into their sexuality violated the right to privacy protected under Article 8 of the European Convention on Human Rights. The ECtHR held that the UK government’s position was based solely upon negative attitudes ranging from “stereotypical expressions of hostility to those of homosexual orientation, to vague expressions of unease about the presence of homosexual colleagues.” The Court concluded that there was no sound evidence that consensual same-sex sexual conduct threatens unit cohesion or poses security risk. In response to the *Smith* decisions on 27 September 1999, the UK government repealed its ban on 12 January 2000. Germany soon followed suit in December 2000.

Ban on conversion therapy

Although bans on conversion therapy are still in their infancy, the number of bills in preparation or under discussion that provide for a prohibition of this practice at the *national* level is escalating. Such bills have notably emerged in Australia, Austria, Canada, France, Germany, Ireland, the Netherlands, New Zealand, Poland, or Switzerland. This trend largely flows from increased pressure exerted by international human rights stakeholders for their Member countries to counter efforts to change sexual orientation and gender identity (Chapter 2). A surge in the number of reports that investigate the nature, extent and impact of LGBT conversion therapies nationwide has also contributed to bring this issue to the forefront of the debate

on LGBTI rights. These reports highlight that conversion therapies that target LGBTI individuals are detrimental and remain pervasive. In Australia for instance, although all health authorities strongly oppose any form of mental health practice that treats homosexuality as a disorder, or seeks to change a person's sexual orientation, a 2018 report suggests that up to 10% of LGBTI Australians are still vulnerable to harmful conversion therapies, with at least ten organisations based in Australia and New Zealand advertising these practices (Jones et al., 2018^[14]). Consistent with this finding, a national ban on LGBTI conversion therapies was found to be LGBTI Australians' top priority in a 2018 survey about next steps for greater LGBTI inclusion (Just.Equal and Pflag Australia, 2018^[15]).

However, the regulation of conversion therapy practices can be complicated by tension with the right to freedom of religion. Malta's legislation is the only one worldwide that provides a full protection to LGBTI individuals against conversion therapies by targeting both professionals (e.g. state-licensed medical and mental health practitioners) as well as non-professionals (e.g. religious organisations) (Box 3.7). In other countries, the scope of conversion therapy bans is limited to professionals, unless non-professionals receive payment in exchange for "treatment", in which case they can be condemned for violating consumer fraud protection since they advertise a service they cannot deliver (false advertising).¹⁶

Box 3.7. Malta's national ban on conversion therapy

The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2015 came into force in 2016. This act aims "to prohibit conversion therapy, as a deceptive and harmful act or practice against a person's sexual orientation, gender identity and, or gender expression, and to affirm such characteristics" and is the most comprehensive on that matter worldwide. It criminalises conversion therapy by both professionals (e.g. state-licensed medical and mental health practitioners) as well as non-professionals (e.g. religious organisations). While the former are prohibited from performing conversion therapy on any person, the latter are prohibited from (i) performing conversion therapy on a "vulnerable person", including minors and individuals suffering from a physical or mental infirmity, as well as (ii) performing involuntary and, or forced conversion therapy on any person.

Source: The Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2015 (Malta).

Malta could serve as an example for OECD countries who haven't passed a nationwide ban on conversion therapy yet. Among those where bans on conversion therapy are already in force at the subnational level, complementary policy actions could be considered to target non-professionals providing conversion therapies to minors for free, such as religious organisations. One option is to strengthen religious LGBT organisations engaged in outreach with those youths that may be at risk of being subject to lawful conversion treatment by anti-LGBT religious groups. This holistic approach is critical so that governments send the message to LGBTI youth that they stand with them and defend their right to be who they are.

No medical requirement attached to legal gender recognition

Among the 14 OECD countries where changing one's gender marker on one's birth certificate and other identity documents is legal and not conditioned on medical requirements, a majority (9) ground the change of gender marker on self-determination, i.e. the principle that transgender people's declaration of their gender identity for the purpose of obtaining gender recognition does not require validation by a third party, such as an expert or a judge. These countries are Belgium, Chile, Denmark, Iceland, Ireland, Mexico (Mexico City), the Netherlands, Norway and Portugal.¹⁷

However, in the five other countries where legal gender recognition is explicitly demedicalised, the process is not based on this good practice: it requires validation by a third party. This condition entails a risk of re-medicalising legal gender recognition since applicants are tempted to include medical assessments in their

application in order to increase their chance of being validated. In Germany, although the request for sterilization and sex-reassignment surgery was removed in 2011 from the Transsexual Act following a ruling by the German Constitutional Court, the process still involves two experts who are notably required to comment on whether the applicants' sense of belonging to a gender that does not match their sex at birth will no longer change. In France, Greece, Luxembourg or the United States (California), the applicants must submit an application to a court or an administrative body in which they must establish the proof, "by any means", that they are publicly known as living in a gender different from the gender that appears on their original birth certificate. Although the law explicitly states that "not having undergone medical treatment, surgery, or sterilisation cannot be bars to the change", having undergone them helps strengthen the application and, hence, convince the judge and other third parties in charge of endorsing the gender marker change.¹⁸

To avoid a *de facto* re-medicalisation of legal gender recognition, OECD countries who aim to fully demedicalise legal gender recognition are encouraged to avoid the intervention of a third party and, instead, ground legal gender recognition on self-determination. Chapter 4 presents best practice examples on how to bust myths around self-determination and, hence, ensure popular support for such laws.

Availability of a non-binary gender option on birth certificates and other identity documents

Eight OECD countries allow a non-binary gender option on birth certificates and other identity documents, at least in some parts of their national territory: Australia (New South Wales¹⁹), Austria, Canada (Alberta, British Columbia and Ontario),²⁰ Germany, Iceland, Netherlands, New Zealand and the United States (California and New York – New York City to be precise).

However, this non-binary gender option is reserved to intersex individuals in a majority of these jurisdictions (Austria, Germany, Netherlands and New Zealand). To be fully inclusive, it is important to provide this option to non-binary transgender individuals as well, i.e. transgender individuals who view themselves as neither female nor male, or as both female and male, as it is done in Alberta (2018), British Columbia (2018), California (2019), Iceland (2019), New South Wales (2014), New York City (2018), and Ontario (2018).

Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors

Only two OECD countries have passed laws explicitly prohibiting medically unnecessary sex-normalising treatment or surgery on intersex minors, at least in some of their subnational jurisdictions. These countries are Portugal (Law No. 38/2018 on the right to self-determination of gender identity and gender expression and protection of the sexual characteristics of each person) and Spain where several autonomous regions have passed laws on the "rights, equal treatment and non-discrimination of LGBTI people" that notably address the situation of intersex minors. However, these laws fall short of being as straightforward and comprehensive as Malta's legislation that is viewed by human rights stakeholders as a best practice (Box 3.8). For instance, instead of prohibiting medically unnecessary treatments and surgical interventions on minors that could be deferred until the individual can decide and give informed consent, some of these laws provide that such interventions can be performed once the intersex minor's gender identity "is manifested". Yet, the expression is ambiguous and it is unclear to what extent manifestation of gender identity coincides with the minor's capacity to provide informed consent.

Box 3.8. Malta: Leading the way in protecting the rights of intersex minors

In 2015, Malta adopted the Gender Identity, Gender Expression and Sex Characteristics Act, a legislative milestone that guarantees the right to bodily integrity and physical autonomy for intersex minors who are under the age of 16. The law has been widely praised by human rights stakeholders for encapsulating some of the world's most progressive legal rights for intersex minors.

More specifically, the law makes it illegal for “medical practitioners or other professionals to conduct any sex assignment treatment and/or surgical interventions on the sex characteristics of a minor which treatment and/or intervention can be deferred until the individual to be treated is able to provide informed consent” (§14.1). Such treatments or interventions may be performed on a minor only if the child grants informed consent through parental authorities or a tutor (§14.1). In exceptional medical circumstances an agreement between a designated interdisciplinary team and the parental authorities or tutor of the minor that is still unable to provide consent may be reached, but critically the law prohibits such treatments or interventions that are performed without the consent of the minor from being “driven by social factors” (§14.3). These provisions are essential insofar as they explicitly distinguish between treatments necessary for the health needs of a person as opposed to cosmetic, deferrable treatments that are motivated by social influences, while also ensuring the support of an interdisciplinary team of professionals to provide a holistic approach. In instances when a minor offers consent to engage in treatment and conveys this decision to the parental authorities or tutor, medical professionals are obligated under the law to ensure the best interests of the child and give weight to the views of the minor with regard to the child's age and maturity (§14.6). The bill further requires that all persons (including minors and their families) seeking psychosocial counselling to be given individually tailored support beginning from the date of diagnosis or self-referral for as long as necessary (§15.1). The act also makes medical practitioners or other medical professions that breach the law liable to punishment in the form of imprisonment not exceeding five years or liable to fines ranging between EUR 5 000 and EUR 20 000 (§14.2). Finally, the law establishes a working group to review and make recommendations on the current medical treatment protocols to ensure they align with current medical best practices and human rights standards (§16).

Source: The Gender Identity, Gender Expression and Sex Characteristics Act (ACT XI of 2015, as amended by Acts XX of 2015 and LVI of 2016 and XIII of 2018) (Malta).

For countries who do not feel ready for a legal ban on medically unnecessary sex-normalising treatment or surgery on intersex minors, a range of alternatives are available that are duly taken into account when computing legal LGBTI inclusivity, as evidenced in Annex 3.C. For instance, publishing guidelines that urge medical practitioners to refrain from performing non-consensual normalisation surgery on intersex minors is one such possibility. It is also important that countries engage in preparatory steps aimed at gathering support for guidelines or laws banning unconsented non-vital medical interventions so as to ensure proper enforcement of these bans. These preparatory steps include (i) inquiring into the treatment of intersex minors in order to show the extent to which unconsented medically unnecessary sex-normalising treatment or surgery are performed on intersex minors; (ii) increasing acceptance of intersex individuals among the general public so as to alleviate the social pressure for categorising a newborn as either female or male; (iii) consulting with all stakeholders, chief of which are intersex people, parents and medical practitioners in order to build consensus around a set of recommendations that serve as a starting point to a nationally consistent human-rights based approach to decision-making about medical interventions on intersex minors.

Nearly one third of OECD countries (14) are active in seeking to postpone medically unnecessary sex-normalising treatment or surgery on intersex minors:

- Six have published guidelines that urge medical practitioners to refrain from performing these interventions, via their National Advisory Commission on Biomedical Ethics (Switzerland), their Ministry of Health (Chile, Denmark, Israel and Mexico) or their Constitutional Court (Austria);
- Eight are involved in preparatory steps aimed at gathering support for upcoming guidelines or laws banning unconsented non-vital medical interventions on intersex minors:
 - An inquiry into the treatment of intersex minors has been conducted or is being conducted in Finland, France, Germany and the United Kingdom;
 - In 2018, Luxembourg launched a nationwide awareness raising campaign called “Female? Male? Intersex? Let’s Be Open Minded” that aims to promote acceptance of intersex people and, hence, reduce social pressure for individuals to conform to the female-male binary system (Box 3.9);
 - Broad consultation with key stakeholders has taken place in Australia, the Netherlands and New Zealand.

Box 3.9. Reducing social pressure for individuals to conform to the female-male binary system: best practice example from Luxembourg

As part of the 2018 Intersex Awareness Day, Luxembourg’s Ministry of Family Affairs and Integration launched the “Female? Male? Intersex? Let’s Be Open Minded” awareness campaign. The initiative aims to inform the public about intersex persons, break taboos, combat discrimination and prejudice, while promoting acceptance and respect. The campaign – a product of the country’s LGBTI national action plan – includes a website with documents and links about intersex persons and their rights, a poster with the campaign slogan, and an informational leaflet for parents of an intersex child. The brochure for parents feature inclusive language that appeals to the shared emotions and identity of new parents, acknowledging that it is an exciting but potentially overwhelming time and that although they may have many questions about what it means to have an intersex child there are numerous resources and services available to assist them. The leaflet encourages parents not to panic and to take time getting to know their child, noting that a child’s sex is only one aspect of their personhood and the child should be given time to understand their sex and develop their identity. Critically, the resource notes that operations on the genitals of an intersex child are only rarely medically necessary and often have considerable consequences, so parents are advised to consult with a list of key stakeholders when the time comes to make any decision about potential treatment. The material notably encourages parents to speak with intersex adults and other parents of intersex children to help the child develop with love and support, placing the issue within a cultural framework of a healthy and nurturing family.

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Annex 3.A. International indices on LGBTI inclusion

The three most prominent international indices on LGBTI inclusion are: (i) the State-Sponsored Homophobia Index by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), (ii) the Trans Rights Europe & Central Asia Index by Transgender Europe, and (iii) the Rainbow Index by ILGA Europe, the European region of ILGA.

ILGA State-Sponsored Homophobia Index

Established in 1978, ILGA is a global federation of 1 614 NGOs from 158 countries campaigning for the human rights of lesbian, gay, bisexual, trans and intersex persons. The organisation supports LGBTI civil society through advocacy work, research initiatives and grassroots partnerships.

The State-Sponsored Homophobia Index has been published by ILGA on an annual basis since 2006. Specifically, the 2019 report offers global, regional and national analysis of three dimensions, each of which is decomposed into subsections:

- *Criminalisation and Restriction*: decriminalisation of consensual same-sex intercourse and other sexual acts; legal barriers to freedom of expression in relation to sexual orientation issues; legal barriers to the registration or operation of sexual orientation-related civil society organisations (i.e. freedom of association and peaceful assembly);
- *Protection*: constitutional protection against discrimination based on sexual orientation; broad protections against discrimination based on sexual orientation; protection against discrimination based on sexual orientation in employment; criminal liability for offenses committed on the basis of sexual orientation (i.e. hate crimes); prohibition of incitement to hatred, violence or discrimination based on sexual orientation (i.e. hate speech); bans against “conversion therapy”;
- *Recognition*: same-sex marriage; partnership recognition for same-sex couples (e.g. civil unions); joint adoption by same-sex couples; second-parent adoption by same-sex couples.

For more information, see <https://ilga.org/state-sponsored-homophobia-report>.

Trans Rights Europe & Central Asia Index by Transgender Europe

Founded in 2005, Transgender Europe is a global federation of 112 NGOs from 44 countries advocating trans rights. Since 2013, Transgender Europe has been publishing on an annual basis the Trans Rights Europe & Central Asia Index that studies the legal inclusion of transgender individuals in 53 European and Central Asian countries.

The Trans Rights Europe & Central Asia Index has been published by Transgender Europe on an annual basis since 2013. Specifically, the 2019 edition of the Trans Rights Europe & Central Asia Index covers six dimensions which can be further decomposed into subsections:

- *Legal Gender Recognition*: existence of procedures for legal gender recognition; name change; change of gender on official documents to match gender identity; self-determination; no ‘Gender Identity Disorder’ diagnosis required; no compulsory medical intervention required; no surgical

intervention required; no compulsory sterilisation required; no compulsory divorce required; no age restrictions (available for minors); gender non-binary recognition;

- *Asylum*: law for international protection on grounds of gender identity; policy/other positive measures;
- *Bias-Motivated Speech/Violence*: hate crime law; hate speech law; policy tackling hatred;
- *Non-discrimination*: employment; health; education; goods and services; conversion therapy; other spheres of life; equality body mandate; equality action plan; law (protections for gender expression);
- *Health*: health care; depathologisation; conversion therapy prohibited;
- *Family Rights*: parenthood recognition.

For more information, see <https://tgeu.org/trans-rights-europe-central-asia-map-index-2019/>.

The four items from the Trans Rights Europe & Central Asia Index that are only implicitly covered by the set of LGBTI-inclusive laws defined in Chapter 2 are: (i) the right for transgender individuals to change their first name in the civil registry in order to reflect their gender marker (implicitly addressed in the TI-specific component “Legal gender recognition”); (ii) the fact that no compulsory divorce requirement is attached to legal gender recognition (implicitly addressed in the LGB-specific component “Legal recognition of same-sex partnerships”); (iii) the fact that conversion therapy aimed at “treating” transgender individuals is banned (implicitly addressed in the LGB-specific component “Ban on conversion therapy”); (iv) the recognition of trans-parenthood, i.e. the fact that parents’ legal gender identity is recognised on their child’s birth certificate with a transgender woman appearing as “mother”, a transgender man appearing as “father” and a non-binary transgender parent appearing as “parent” (implicitly covered by the TI-specific components “Legal gender recognition” and “Availability of a non-binary gender option on birth certificates”).

Rainbow Index by ILGA Europe

Formed in 1996 and covering 47 member countries of the Council of Europe, as well as Belarus and Kosovo, ILGA-Europe advocates for, monitors and influences the adoption of legislation and policies to advance the rights of LGBTI persons. It works with European states, as well as numerous European institutions.

The Rainbow Index has been published by ILGA Europe on an annual basis since 2009. Specifically, the 2019 edition of the Rainbow Index covers six dimensions which can be decomposed into subsections:

- *Equality and Non-Discrimination*: protections on the grounds of sexual orientation, gender identity and sex characteristics in the constitution and areas of employment, goods and services, education, health (including conversion therapy), equality body mandate, equality action plan, as well as laws on gender expression and general blood donations;
- *Family*: marriage equality; registered partnership with similar rights to marriage; registered partnership with limited rights; cohabitation; no constitutional limitation on marriage; joint adoption; second-parent adoption; automatic co-parent recognition; medically assisted insemination for couples; medically assisted insemination for single persons; recognition of trans parenthood;
- *Hate Crime and Hate Speech*: hate crime law, hate speech laws and policies tackling hatred based on the grounds of sexual orientation and gender identity, as well as hate crime laws and policy tackling hatred for intersex persons;
- *Legal Gender Recognition and Bodily Integrity*: existence of legal measures; existence of administrative procedures; name change; no age restriction for name change; self-determination; no Gender Identity Disorder diagnosis/psychological opinion required; no compulsory medical

intervention required; no compulsory surgical intervention required; no compulsory sterilisation required; no compulsory divorce required; no age restriction; prohibition of medical intervention before an intersex child is able to provide informed consent; depathologisation;

- *Civil Society Space*: public event held without state obstruction of freedom of assembly; public event held absent sufficient protection; associations operate without state obstruction of freedom of association; LGBTI human rights defenders are not at risk; no laws limiting external funding; no laws limiting freedom of expression;
- *Asylum*: law, policy or other positive measure based on sexual orientation, gender identity and intersex status.

For more information, see <https://rainbow-europe.org/>.

Annex 3.B. Questions to identify legal provisions fostering LGBTI inclusion

Questions to identify general provisions

A total of 25 questions investigate whether the general provisions defined in Chapter 2 are in force in OECD countries.

Protection of LGBTI people against discrimination

The protection of LGBTI people against discrimination in a Member country is addressed through three categories, each of which can be decomposed into three questions.

Because “the right to work, which includes the right of everyone to the opportunity to gain his living by work” is central to the International Bill of Human Rights, the first category of questions investigates whether anti-LGBTI discrimination in employment is explicitly prohibited:

- Is discrimination based on *sexual orientation* explicitly prohibited in employment by the national law?
- Is discrimination based on *gender identity* explicitly prohibited in employment by the national law?
- Is discrimination based on *sex characteristics* and/or *intersex status* explicitly prohibited in employment by the national law?

The second category of questions goes a step further by investigating whether anti-LGBTI discrimination in a Member country is explicitly prohibited in a broad range of fields, beyond employment (i.e. in the provision of and access to goods and services including housing, education, health, social benefits and social assistance).

- Is discrimination based on *sexual orientation* explicitly prohibited in a broad range of fields by the national law?
- Is discrimination based on *gender identity* explicitly prohibited in a broad range of fields by the national law?
- Is discrimination based on *sex characteristics* and/or *intersex status* explicitly prohibited in a broad range of fields by the national law?

The third category of questions dives deeper by investigating whether anti-LGBTI discrimination is explicitly prohibited in the Constitution, which enshrines the most fundamental legal principles of any given country:

- Is discrimination based on *sexual orientation* explicitly prohibited by the Constitution?
- Is discrimination based on *gender identity* explicitly prohibited by the Constitution?
- Is discrimination based on *sex characteristics* and/or *intersex status* explicitly prohibited by the Constitution?

Protection of LGBTI people's civil liberties

The protection of LGBTI people's civil liberties in a Member country is addressed by the following three questions:

- Is it the case that the national law has no specific provision concerning communication on LGBTI issues (e.g. through anti-propaganda measures)?
- Is it the case that the national law has no specific provision concerning peaceful assembly of LGBTI people (e.g. through barriers to the organisation of LGBTI public events)?
- Is it the case that the national law has no specific provision concerning association of LGBTI people (e.g. through barriers to the registration or funding of LGBTI associations)?

Protection of LGBTI people against violence

The protection of LGBTI people against violence in a Member country is addressed by two categories of questions. The first investigates whether LGBTI people are protected against hate crime:

- Is hate crime based on *sexual orientation* explicitly criminalised and/or considered by the national law as an aggravating circumstance?
- Is hate crime based on *gender identity* explicitly criminalised and/or considered by the national law as an aggravating circumstance?
- Is hate crime based on *sex characteristics* and/or *intersex status* explicitly criminalised and/or considered by the national law as an aggravating circumstance?

The second category of questions investigates whether LGBTI people in a Member country are protected against hate speech:

- Is hate speech based on *sexual orientation* explicitly criminalised and/or considered by the national law as an aggravating circumstance?
- Is hate speech based on *gender identity* explicitly criminalised and/or considered by the national law as an aggravating circumstance?
- Is hate speech based on *sex characteristics* and/or *intersex status* explicitly criminalised and/or considered by the national law as an aggravating circumstance?

Protection of LGBTI people fleeing persecution abroad

The protection of LGBTI people fleeing persecution abroad in a Member country is addressed by the following three questions:

- Does the national law and/or published policy explicitly recognise persecution (or a well-founded fear of persecution) based on *sexual orientation* as a valid ground for granting asylum?
- Does the national law and/or published policy explicitly recognise persecution (or a well-founded fear of persecution) based on *gender identity* as a valid ground for granting asylum?
- Does the national law and/or published policy explicitly recognise persecution (or a well-founded fear of persecution) based on *sex characteristics* and/or *intersex status* as a valid ground for granting asylum?

Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission

The existence of an LGBTI-inclusive equality body, ombudsman or human rights commission in a Member country is addressed by the following three questions:

- Is a national equality body, ombudsman or human rights commission explicitly in charge of supporting victims of discrimination based on *sexual orientation*?
- Is a national equality body, ombudsman or human rights commission explicitly in charge of supporting victims of discrimination based on *gender identity*?

- Is a national equality body, ombudsman or human rights commission explicitly in charge of supporting victims of discrimination based on *sex characteristics* and/or *intersex status*?

Questions to identify group-specific provisions

A total of 16 questions investigate whether the group-specific provisions defined in Chapter 2 are in force in OECD countries.

LGB-specific provisions

The part of the questionnaire that deals with LGB-specific provisions in Member countries relies on 11 questions.

Equal treatment of same-sex and different-sex consensual sexual acts

The equal treatment of same-sex and different-sex consensual sexual acts is addressed by the following two questions:

- Are consensual same-sex sexual acts legal?
- If consensual same-sex sexual acts are legal, are the age of consent for consensual same-sex sexual acts and the age of consent for consensual different-sex sexual acts equal?

Ban on conversion therapy

A Member country's policy regarding conversion therapy is addressed by the following question: "Is conversion therapy on minors banned? (The term "conversion therapy" refers to practices that aim to change an individual's sexual orientation from homosexual or bisexual to heterosexual)".

Legal recognition of same-sex partnerships

The legal recognition of same-sex partnerships is addressed by the following three questions:

- Is same-sex cohabitation or *de facto* partnership legal? (The term "cohabitation or *de facto* partnership" refers to a regime with usually a narrower legal scope than a registered/civil/domestic partnership or civil union and, hence, marriage. By "legal", we mean that same-sex couples in a cohabitation or *de facto* partnership are granted at least some of the rights that are granted to different-sex couples in a cohabitation or *de facto* partnership).
- Is same-sex registered/civil/domestic partnership or union legal? (The term registered/civil/domestic partnership or civil union describes a wider-ranging regime than cohabitation that resembles marriage without being equivalent to marriage.)
- Is same-sex marriage legal?

Equal adoption rights

Equal adoption rights for different-sex and same-sex couples is addressed by the following two questions:

- Is it legal for partners in a same-sex partnership to jointly adopt a child? (The term "joint adoption" refers to a process whereby (i) the legal relationship between a child and her/his biological parents is extinguished; (ii) the adopting partners become the two legal parents of the child).
- When one partner in a same-sex partnership is a legal parent, can the other partner become the second legal parent through adoption (i.e. second-parent adoption), assuming that there is no second legal parent registered?

Equal access to assisted reproductive technology

Equal access to assisted reproductive technology for different-sex and same-sex couples is addressed by the following three questions:

- Is a partner in a same-sex partnership treated on an equal footing with a partner in a different-sex partnership concerning access to medically assisted insemination (using sperm of a donor) or *in vitro* fertilisation (using donated sperm and/or egg)?
- When one partner in a same-sex partnership gives birth through legal medically assisted insemination or *in vitro* fertilisation, can the other partner become the second legal parent without having to go through adoption (i.e. automatic co-parent recognition)? (Please answer N/A if access of a same-sex partner to assisted reproductive technology is not legal).
- Are partners in a same-sex partnership treated on an equal footing with partners in a different-sex partnership concerning access to surrogacy, i.e. an assisted reproductive technology in which a woman (surrogate) carries a child in her uterus on behalf of another person?

TI-specific provisions

The part of the questionnaire that deals with TI-specific provisions in a Member country relies on five questions.

Being transgender not categorised as a mental illness in national clinical classification

This component is addressed by the following question: “Is being transgender removed from the list of mental disorders in national clinical classification?”.

Legal gender recognition

This component is addressed by the following question: “Is the change of gender marker in the civil registry (e.g. birth certificate, social security number) legal? (By “gender marker” we mean the elements that reveal an individual’s gender. An individual’s gender marker typically consists of his/her sex at birth and first name).”

No medical requirement attached to legal gender recognition

This component is addressed by the following question: “Is it the case that the change of gender marker in the civil registry necessitates no medical requirement (sterilisation, sex-reassignment surgery or treatment including those that involve sterilisation, and/or mental health diagnosis)? (If the change of gender marker is not legal, please answer N/A).”

Availability of a non-binary gender option on birth certificates and other identity documents

This component is addressed by the following question: “Is a non-binary gender option available on birth certificates and other identity documents, on top of “male” and “female”?”

Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors

This component is addressed by the following question: “Have significant steps been taken towards postponing medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent, beyond the availability of a non-binary gender option (e.g. awareness raising campaign on intersexuation, inquiry into the treatment of intersex minors, guidelines directed at medical practitioners, legal ban on cosmetic sex-normalising treatment or surgery on intersex minors, etc.)?”

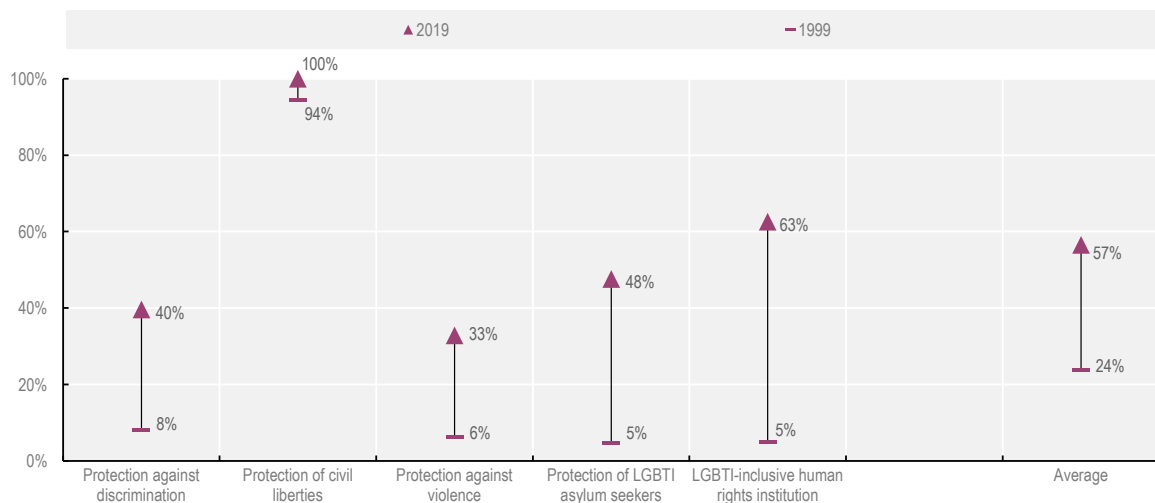
Annex 3.C. Levels and trends in legal LGBTI inclusivity, OECD-wide and by country, for each component of general and group-specific provisions

General provisions

On average, 57% of the general provisions defined in Chapter 2 are in force as of 2019 (Annex Figure 3.C.1). While no law in OECD countries explicitly restricts the civil liberties of LGBTI individuals, only one third of legal provisions aimed at protecting LGBTI individuals against hate crime and hate speech have been passed. Yet, OECD countries have made great strides since 1999 when less than one fourth of the general provisions critical for the inclusion of lesbians, gays, bisexuals, transgender and intersex people altogether were in effect. Progress was mainly achieved in the following fields: establishment of an LGBTI-inclusive human rights institution, protection of LGBTI asylum seekers, and protection of LGBTI individuals against discrimination.

Annex Figure 3.C.1. OECD countries made great strides in establishing LGBTI-inclusive human rights institutions, but modest progress in protecting LGBTI people against violence

Evolution of legal LGBTI inclusivity between 1999 and 2019 OECD-wide, by component of general provisions



Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries in 1999 and 2019, by component of general provisions – see Box 3.2 for further details on how LGBTI inclusivity is computed.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Protection of LGBTI people against discrimination

Protecting LGBTI people against discrimination entails passing nine legal provisions (Annex 3.B):

- Three in order to explicitly protect LGBTI individuals against labour market discrimination (one based on sexual orientation for LGB people, one based on gender identity for transgender people, and one based on sex characteristics for intersex people);
- Three in order to explicitly protect LGBTI individuals against discrimination in a broader range of fields (i.e. beyond employment) that typically cover the provision of and access to goods and services (including housing), education, health, social benefits and assistance (again, one for LGB people, one for transgender people and one for intersex people);
- Three in order to explicitly protect LGB, transgender as well as intersex individuals in the Constitution.

Of these nine legal provisions, nearly four (40%) are in force in OECD countries as of 2019, up from approximately one (8%) in 1999. Only three OECD countries (Japan, Switzerland and Turkey) provide no explicit legal protection against discrimination to LGBTI people (Annex Table 3.C.1). By contrast, a large majority of countries prohibit discrimination based on sexual orientation in employment (32 countries) as well as in a range of other fields (30 countries). A majority (22 countries) also explicitly protect transgender people against discrimination in these fields. However, only a small minority (9 countries) aim to explicitly shield intersex people from unfair treatment in employment and beyond. The number of OECD countries who provide constitutional protection against discrimination to LGBTI individuals is even lower (5 countries), noting that this protection, when it exists, targets the ground of sexual orientation but not that of gender identity or sex characteristics.

Consistent with the 2017 resolution of the Parliamentary Assembly of the Council of Europe, explicit protection of intersex people against discrimination takes two forms (CoE Parliamentary Assembly, 2017^[16]):

- Some countries insert “intersex status” or “sex characteristics” as a specific prohibited ground in the antidiscrimination legislation: this is the case of Australia, Greece, Iceland, Netherlands, Portugal and Spain;
- Other countries explicitly state in antidiscrimination legislation that protection against discrimination on the basis of an existing characteristic, e.g. “sex” or “gender identity and expression”, extends to intersex people: this is the case of Canada, Finland or Germany.

Within the European Union (EU), sexual orientation antidiscrimination laws were passed beginning in 2000s, when the so-called “Employment Equality Directive” (Directive 2000/78/EC) obliged EU countries to explicitly prohibit discrimination based on sexual orientation, at least in employment. Accordingly, all OECD countries that are also EU Members have passed such laws. Outside the EU, discrimination against LGB individuals was first explicitly prohibited in Quebec in 1977 (and then in 1981 in Norway), and last prohibited in 2012 in Chile. The passage of antidiscrimination laws that explicitly protect transgender and intersex people is more recent, coming into effect in the mid-2010s. Discrimination against transgender individuals was first prohibited in 1999 in the United Kingdom, while antidiscrimination laws protecting intersex individuals were passed for the first time in 2006 in Germany. The Netherlands were the last OECD country to pass provisions explicitly banning both types of discrimination in 2019.

Annex Table 3.C.1. A majority of OECD countries explicitly protect LGBT people against discrimination in employment and beyond, but the explicit protection of intersex people is still in its infancy, as is the prohibition of discrimination based on sexual orientation, gender identity and sex characteristics in the Constitution

Overview of whether OECD countries explicitly protect LGBTI people against discrimination as of 30 June 2019

No explicit legal protection of LGBTI people against discrimination	Explicit legal protection of LGBTI people against discrimination		
	In employment	In a broad range of fields, beyond employment	In the Constitution
Japan Switzerland Turkey	Australia (LGB: 1994; TI: 2013) Austria (LGB: 2004; T: 2004 in Styria) Belgium (LGB: 2003; T: 2014) Canada (LGB: 1996; TI: 2017) Chile (LGBT: 2012) Czech Republic (LGB: 2004; T: 2009) Denmark (LGB: 1996) Estonia (LGB: 2004) Finland (LGB: 1995; TI: 2015) France (LGB: 2001; T: 2012) Germany (LGBTI: 2006) Greece (LGB: 2005; T: 2010; I: 2016) Iceland (LGBTI: 2018) Ireland (LGB: 1998; T: 2015) Israel (LGB: 1992) Italy (LGB: 2003) Korea (LGB: 2001) Latvia (LGB: 2006) Lithuania (LGB: 2003) Luxembourg (LGB: 1997; T: 2016) Mexico (LGB: 2003) Netherlands (LGB: 1992; TI: 2019) New Zealand (LGB: 1994) Norway (LGB: 1998; T: 2013) Poland (LGB: 2004) Portugal (LGB: 2003; T: 2015; I: 2018) Slovak Republic (LGBT: 2004) Slovenia (LGB: 2003; T: 2016) Spain (LGB: 1996; TI: 2014 in Catalonia, 2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia) Sweden (LGB: 1987; T: 2009) United Kingdom (LGB: 2003; T: 1999) United States (LGB: 1992 in California and 2003 in New York; T: 2003 in California and 2019 in New York)	Australia (LGBTI: 2013) Austria (LGB: 2004 in Styria and Vienna and 2005 in Lower and Upper Austria; T: 2004 in Styria and Vienna) Belgium (LGB: 2003; T: 2014) Canada (LGB: 1996; TI: 2017) Chile (LGBT: 2012) Czech Republic: (LGBT: 2009) Denmark (LGB: 1996) Estonia (LGB: 2004) Finland (LGB: 1995; TI: 2015) France (LGB: 2001; T: 2012) Germany (LGBTI: 2006) Greece (LGBTI: 2016) Iceland (LGB: 1996; T: 2014) Ireland (LGB: 2000; T: 2015) Israel (LGB: 2000) Korea (LGB: 2001) Latvia (LGB: 2013) Lithuania (LGB: 2003) Luxembourg (LGB: 1997; T: 2016) Mexico (LGB: 2003) Netherlands (LGB: 1992; TI: 2019) New Zealand (LGB: 1994) Norway (LGB: 1981; T: 2013) Portugal (LGB: 2004; T: 2018; I: 2018) Slovak Republic (LGBT: 2008) Slovenia (LGB: 2004; T: 2016) Spain (LGB: 1996; TI: 2014 in Catalonia, 2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia) Sweden (LGB: 1987; T: 2009) United Kingdom (LGB: 2007; T: 2008) United States (LGB: 2003 in New York and 2005 in California; T: 2005 in California and 2019 in New York)	Canada (LGB: 1995) Mexico (LGB: 2011) New Zealand (LGB: 1994) Portugal (LGB: 2004) Sweden (LGB: 2011)

Note: This table indicates whether OECD countries explicitly protect LGBTI people against discrimination as of 30 June 2019. The expression "Australia (LGB: 1994; TI: 2013)" in the column entitled "employment" means that, in Australia, (i) discrimination in employment based on sexual orientation was explicitly prohibited for the first time in 1994; (ii) discrimination in employment based on gender identity and sex characteristics and/or intersex status was explicitly prohibited for the first time in 2013.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Protection of LGBTI people's civil liberties

As of 2019, no OECD country explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities: national laws do not include provisions explicitly restricting communication on LGBTI issues (e.g. gay propaganda laws) or barriers to the organisation of LGBTI public events as well as to the registration or funding of LGBTI associations.

Protection of LGBTI people's civil liberties was already ensured in most OECD countries two decades ago, except in the United Kingdom and the United States. In these countries, freedom of expression, peaceful assembly and association of sexual and gender minorities was fully recognised by national laws only in 2003 when Section 28 of the *Local Government Act* prohibiting the intentional promotion of homosexuality by any local authority was completely repealed (United Kingdom), and when the Supreme Court invalidated sodomy laws in *Lawrence v. Texas* (United States).

That said, constant vigilance is needed to avoid steps backward, as evidenced in Annex 3.D.

Protection of LGBTI people against violence

Protecting LGBTI people against violence entails passing six legal provisions (Annex 3.B):

- Three in order to explicitly protect LGBTI individuals against hate crime (one based on sexual orientation for LGB people, one based on gender identity for transgender people, and one based on sex characteristics for intersex people);
- Three in order to explicitly protect LGBTI individuals against hate speech (again, one for LGB people, one for transgender people and one for intersex people).

Of these six legal provisions, 33% are in force in OECD countries as of 2019 (i.e. two), up from 6% in 1999. Annex Table 3.C.2 reveals that one fourth of OECD countries provide no explicit legal protection of LGBTI people against violence (Czech Republic, Germany, Italy, Japan, Korea, Latvia, Poland, Switzerland and Turkey). In others, hate crime and/or hate speech laws have been passed so as to explicitly protect LGB people (26 countries), transgender individuals (14 countries) and intersex individuals (5 countries, i.e. Australia, Canada, Greece, Spain and the United Kingdom).

Sexual orientation was included as a protected ground in hate crime and/or hate speech legislation in the mid-2000s, approximately 10 years before the grounds of gender identity or sex characteristics were introduced. In several countries, this legislation was adopted as a response to murders motivated by the victims' actual or perceived membership to the LGBTI population. This was the case in the United States where the Hate Crimes Prevention Act that came into force in 2009 was named after Matthew Shepard and James Byrd Jr. who were both murdered in 1998. Matthew Shepard was an American student who was beaten, tortured, and left to die because he was gay, while James Byrd Jr. was an African American man who was tied to a truck by two white supremacists, dragged behind it, and decapitated. The Hate Crimes Prevention Act expands the 1969 United States federal hate-crime law notably (i) to include crimes motivated by a victim's actual or perceived sexual orientation or gender identity, as well as (ii) to remove, in the case of hate crimes related to the race, colour, religion, or national origin of the victim, the prerequisite that the victim be engaging in a federally protected activity, like voting or going to school. Similarly, in Chile, the 2012 hate crime law protecting LGB and transgender people was passed following the death the same year of Daniel Zamudio, a 25-year man who was beaten and tortured for several hours after his attackers learnt he was gay.

Annex Table 3.C.2. A majority of OECD countries explicitly protect LGB people against violence, but only a minority provide transgender and intersex people with such a protection

Overview of whether OECD countries explicitly protect LGBTI people against violence as of 30 June 2019

No explicit legal protection of LGBTI people against violence	Explicit legal protection of LGBTI people against hate crime	Explicit legal protection of LGBTI people against hate speech
Czech Republic Germany Italy Japan Korea Latvia Poland Switzerland Turkey	Australia (LGB: 2002 in New South Wales) Austria (LGB: 2016) Belgium (LGB: 2003; T: 2012) Canada (LGB: 1996; TI: 2017) Chile (LGBT: 2012) Denmark (LGB: 2004) Estonia (LGB: 2006) Finland (LGB: 2011) France (LGB: 2003; T: 2012) Greece (LGBT: 2014; I: 2015) Israel (LGB: 2004) Lithuania (LGB: 2009) Mexico (LGB: 2014) New Zealand (LGBT: 2002) Norway (LGB: 1994) Portugal (LGB: 2007; T: 2013) Slovak Republic (LGB: 2013) Slovenia (LGB: 2008) Spain (LGB: 1996; T: 2015) Sweden (LGB: 2002; T: 2018) United Kingdom (LGB: 2003 in England and Wales, 2004 in Northern Ireland and 2009 in Scotland; T: 2009 in Scotland and 2012 in England and Wales; I: 2009 in Scotland) United States (LGBT: 2009)	Australia (LGB: 1993 in New South Wales and 2002 in Queensland; T: 2002 in Queensland and 2018 in New South Wales; I: 2018 in New South Wales) Austria (LGB: 2012) Belgium (LGB: 2003; T: 2014) Canada (LGB: 1996; TI: 2017) Denmark (LGB: 1988) Estonia (LGB: 2006) Finland (LGB: 2011) France (LGB: 2004; T: 2012) Greece (LGBT: 2014) Iceland (LGB: 1996; T: 2014) Ireland (LGB: 1989) Israel (LGB: 1997) Lithuania (LGB: 2003) Luxembourg (LGB: 1997; T: 2016) Mexico (LGB: 2014) Netherlands (LGB: 1992) Norway (LGB: 1981) Portugal (LGB: 2007; T: 2013) Slovak Republic (LGB: 2017) Slovenia (LGB: 2008) Spain (LGB: 1996; T: 2015; I: 2014 in Catalonia, 2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia) Sweden (LGB: 1998; T: 2018) United Kingdom (LGB: 2004 in Northern Ireland, 2006 in Scotland and 2008 in England and Wales; T: 2006 in Scotland; I: 2006 in Scotland)

Note: This table indicates whether OECD countries explicitly protect LGBTI people against violence as of 30 June 2019. The expression “Austria (LGB: 2016)” in the column entitled “explicit legal protection against hate crime” means that, in Austria, hate crime legislation explicitly protecting LGB individuals was adopted for the first time in 2016.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Protection of LGBTI people fleeing persecution abroad

Protecting LGBTI people fleeing persecution abroad entails passing three legal provisions that explicitly recognise persecution (or a well-founded fear of persecution) based on sexual orientation, gender identity and sex characteristics as a valid ground for granting asylum (one provision per ground) – see Annex 3.B.

Of these three legal provisions, 48% are in force in OECD countries as of 2019, up from 5% in 1999. Annex Table 3.C.3 reveals that one third of OECD countries provide no explicit protection of LGBTI asylum seekers (Chile, Czech Republic, Denmark, Estonia, Israel, Japan, Korea, Mexico, New Zealand, Switzerland, Turkey). In others, explicit protection is granted to LGB asylum seekers (24 countries), transgender asylum seekers (21 countries) and, to a lesser extent, intersex asylum seekers (5 countries, i.e. Australia, Canada, Finland, France and Norway).

LGBTI-inclusive immigration laws and policies are recent. Their average year of passage is 2008 for the ground of sexual orientation, 2012 for the ground of gender identity and 2015 for the ground of sex characteristics.

Annex Table 3.C.3. A majority of OECD countries explicitly protect LGBT fleeing persecution abroad, but only a minority provide intersex people with such a protection

Overview of whether OECD countries explicitly protect LGBTI people fleeing persecution abroad as of 30 June 2019

No explicit protection of LGBTI asylum seekers	Explicit protection of LGBTI asylum seekers
Chile	Australia (LGBTI: 2014)
Czech Republic	Austria (LGBT: 2013)
Denmark	Belgium (LGBT: 2013)
Estonia	Canada (LGB: 1993; T: 1995 ; I: 2017)
Israel	Finland (LGB: 2009; TI: 2015)
Japan	France (LGB: 2015; TI: 2019)
Korea	Germany (LGBT: 2013)
Mexico	Greece (LGBT: 2013)
New Zealand	Iceland (LGB: 2016)
Switzerland	Ireland (LGB: 1996; T: 2015)
Turkey	Italy (LGB: 2008; T: 2015)
	Latvia (LGBT: 2016)
	Lithuania (LGB: 2017; T: 2016)
	Luxembourg (LGB: 2006; T: 2016)
	Netherlands (LGB: 2007; T: 2015)
	Norway (LGB: 1998; TI: 2012)
	Poland (LGB: 2008)
	Portugal (LGBT: 2008)
	Slovak Republic (LGB: 2007; T: 2014)
	Slovenia (LGB: 2008; T: 2013)
	Spain (LGBT: 2009)
	Sweden (LGBT: 2006)
	United Kingdom (LGB: 2006; T: 2011)
	United States (LGB: 1994)

Note: This table indicates whether OECD countries explicitly protect LGBTI people fleeing persecution abroad as of 30 June 2019. The expression “Belgium (LGBT: 2013)” in the column entitled “explicit protection of LGBTI asylum seekers” means that, since 2013, persecution (or a well-founded fear of persecution) based on sexual orientation and gender identity is explicitly recognised as a valid ground for granting asylum in Belgium.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission

Establishing a LGBTI-inclusive human rights institution entails passing three legal provisions that explicitly entrust this institution with assisting victims of discrimination and promoting equality based on sexual orientation, gender identity and sex characteristics (one provision per ground) – see Annex 3.B.

Of these three legal provisions, 63% are in force in OECD countries as of 2019 (i.e. nearly two), up from 5% in 1999. OECD countries with an LGBTI-inclusive equality body, ombudsman or human rights commission are typically those where antidiscrimination laws explicitly protecting sexual and gender minorities are in force (Annex Table 3.C.4). Indeed, antidiscrimination legislation usually designates or establishes a body or bodies to promote equality and combat discrimination in the fields and across the grounds it covers. These provisions establish the structure and composition of the bodies, set out their functions and accord them the powers to fulfil these functions.

Yet, exceptions exist. None of the OECD countries where no LGBTI-inclusive antidiscrimination laws exist hosts an LGBTI-inclusive human rights institution. But three of the 32 countries where such laws are in force do not associate them with the establishment of an LGBTI-inclusive equality body, ombudsman or human rights commission. The latter is the case of Chile, Israel and Spain. In the remaining 29 OECD countries, the grounds addressed by the LGBTI-inclusive human rights institution are often wider than those covered by the LGBTI-inclusive antidiscrimination legislation. This broader scope can be observed in eight OECD countries: Estonia, France, Italy, Korea, Luxembourg, Mexico, New Zealand and Poland. In France for instance, while intersex people are not explicitly mentioned by the antidiscrimination legislation, they are part of the groups explicitly supported by the national human rights institution.

Annex Table 3.C.4. In a majority of OECD countries, LGBT people are explicitly protected by a national human rights institution, but this is not the case of intersex people

Overview of whether OECD countries host a national human rights institution that explicitly protects LGBTI persons, as of 30 June 2019

There is no national equality body, ombudsman or human rights commission that explicitly protects LGBTI persons	There is a national equality body, ombudsman or human rights commission that explicitly protects LGBTI persons
Chile	Australia (LGB: 1994; TI: 2013)
Israel	Austria (LGB: 2004)
Japan	Belgium (LGB: 2003; T: 2014)
Spain	Canada (LGB: 1996; TI: 2017)
Switzerland	Czech Republic (LGBT: 2009)
Turkey	Denmark (LGB: 2008)
	Estonia (LGBT: 2009)
	Finland (LGBTI: 2015)
	France (LGB: 2004; T: 2012; I: 2018)
	Germany (LGBTI: 2006)
	Greece (LGB: 2005; T: 2010; I: 2016)
	Iceland (LGBTI: 2018)
	Ireland (LGBT: 2014)
	Italy (LGBT: 2011)
	Korea (LGB: 2001; T: 2019)
	Latvia (LGB: 2007)
	Lithuania (LGB: 2005)
	Luxembourg (LGBTI: 2006)
	Mexico (LGBTI: 2003)
	Netherlands (LGB: 1994; TI: 2019)
	New Zealand (LGB: 1994; T: 2006; I: 2016)
	Norway (LGB: 2007; T: 2013)
	Poland (LGBT: 2011)
	Portugal (LGBT: 2007; I: 2018)
	Slovak Republic (LGBT: 2004)
	Slovenia (LGB: 2004; T: 2016)
	Sweden (LGB: 1999; T: 2009)
	United Kingdom (LGB: 1998 in Northern Ireland and 2007 in England, Scotland and Wales; T: 2010 in England, Scotland and Wales)
	United States (LGB: 2015; T: 2012) ¹

Note: This table indicates whether OECD countries host a human rights institution that explicitly protects LGBTI persons as of 30 June 2019. The expression "Canada (LGB: 1996; TI: 2017)" in the right column means that Canada has been hosting a human rights institution explicitly in charge of equal treatment of (i) LGB individuals since 1996; (ii) transgender and intersex individuals since 2017.

1. In the United States, the Equal Employment Opportunity Commission (EEOC) is the federal agency in charge of enforcing bans on employment discrimination, mediating and settling thousands of discrimination complaints including those coming from LGBT individuals. Although LGBTI-inclusive antidiscrimination legislation has not emerged yet at the US federal level, the EEOC held in 2012 that discrimination against an individual because that person is transgender constitutes discrimination based on sex and is therefore covered under Title VII of the Civil Rights Act of 1964. See *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (20 April 2012): <http://www.eeoc.gov/decisions/0120120821%20Macypercentage20percentage20DOJpercentage20ATF.txt>. Moreover, in 2015, the EEOC also held that discrimination against an individual because of that person's sexual orientation constitutes discrimination based on sex and is therefore prohibited under Title VII. See *David Baldwin v. Dep't of Transportation*, EEOC Appeal No. 120133080 (15 July 2015): <http://www.eeoc.gov/decisions/0120133080.pdf>. However, these rulings are not binding on courts and would need to be addressed by the Supreme Court for a final decision.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

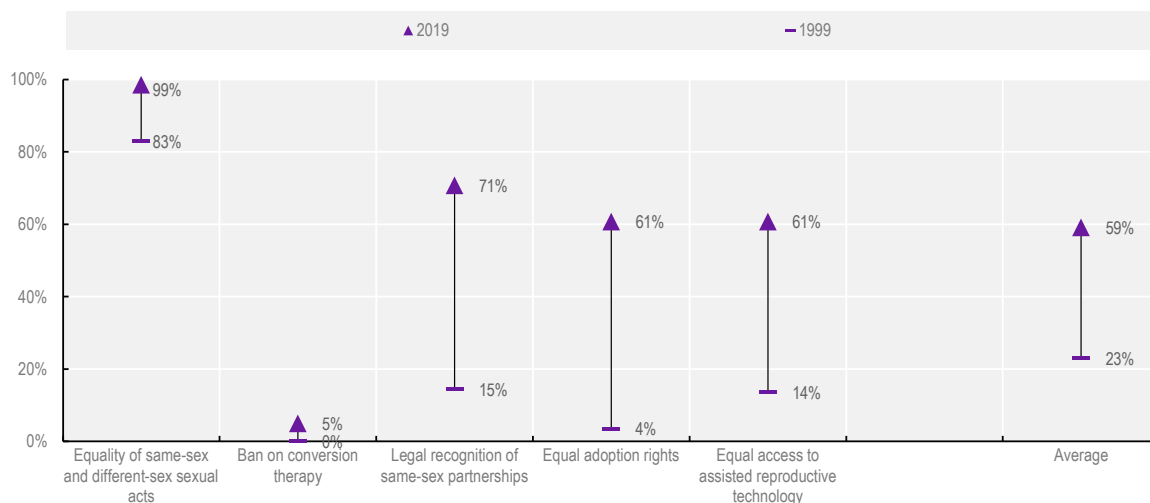
Group-specific provisions

LGB-specific provisions

On average, 59% of the LGB-specific provisions defined in Chapter 2 are in force as of 2019, up from 23% in 1999 (Annex Figure 3.C.2). While the national law of all countries treats different-sex and same-sex consensual sexual acts on an equal footing (or nearly so), only three countries ban conversion therapy. Spectacular progress was achieved in the following fields: legal recognition of same-sex partnerships, equal adoption rights as well as equal access to assisted reproductive technology of different-sex and same-sex couples.

Annex Figure 3.C.2. While all OECD countries have decriminalised same-sex consensual sexual acts, only three ban conversion therapy in some of their subnational jurisdictions

Evolution of legal LGBTI inclusivity between 1999 and 2019 OECD-wide, by component of LGB-specific provisions



Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries in 1999 and 2019, by component of LGB-specific provisions – see Box 3.2 for further details on how LGBTI inclusivity is computed.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

StatLink  <https://stat.link/3v8ydw>

Equal treatment of same-sex and different-sex consensual sexual acts

Two types of laws violate equal treatment of consensual same-sex and different-sex sexual acts: those that criminalise same-sex conducts between consenting adults and those that establish a higher age of consent for same-sex than for different-sex sexual acts. In all 35 OECD countries covered in this report, both types of laws have been repealed (or were, in a few cases, never passed) except for one country. In Chile, although the section of Article 365 of the Penal Code criminalising homosexual acts was repealed in 1999, it still provides for a minimum age of consent for homosexual acts (18) that is different from the minimum age of consent for heterosexual acts (14). A bill is pending that would allow repealing Article 365 altogether and, hence, equalise the age of consent regardless of sexual orientation (Cámara de Diputados de Chile, 2009^[17]).

Annex Table 3.C.5. No OECD country criminalises consensual same-sex sexual acts and only one sets a higher age of consent for same-sex than for different-sex sexual acts

Overview of whether same-sex and different-sex consensual sexual acts are treated on an equal footing in OECD countries as of 30 June 2019

No criminalisation of same-sex consensual sexual acts		Equal age of consent for same-sex and different-sex sexual acts
Countries where same-sex consensual sexual acts were never explicitly criminalised	Countries where same-sex consensual sexual acts were once explicitly criminalised	
Italy	Australia (1994)	Australia (1994)
Korea	Austria (1974)	Austria (2002)
Mexico	Belgium (1795)	Belgium (1867 – except between 1965 and 1985 ²)
Turkey	Canada (1969)	Canada (2019)
	Chile (1999)	Czech Republic (1990)
	Czech Republic (1962)	Denmark (1976)
	Denmark (1933)	Estonia (2001)
	Estonia (1992)	Finland (1999)
	Finland (1971)	France (1982)
	France (1791 – except between 1960 and 1980 ¹)	Germany (1994)
	Germany (1969)	Greece (2015)
	Greece (1951)	Iceland (1992)
	Iceland (1940)	Ireland (1993)
	Ireland (1993)	Israel (1988)
	Israel (1988)	Japan (1882)
	Japan (1882)	Korea (2012)
	Latvia (1992)	Latvia (2001)
	Lithuania (1993)	Lithuania (2004)
	Luxembourg (1794)	Luxembourg (1992)
	Netherlands (1811)	Netherlands (1971)
	New Zealand (1986)	New Zealand (1986)
	Norway (1972)	Norway (1972)
	Poland (1932)	Poland (1932)
	Portugal (1983)	Portugal (2007)
	Slovak Republic (1962)	Slovak Republic (1990)
	Slovenia (1976)	Slovenia (1976)
	Spain (1979)	Spain (1996)
	Sweden (1944)	Sweden (1978)
	Switzerland (1942)	Switzerland (1992)
	United Kingdom (1967 in England and Wales, 1981 in Scotland and 1982 in Northern Ireland)	United Kingdom (2001)
	United States (2003)	United States (2003)

Note: This table indicates whether same-sex and different-sex consensual sexual acts are treated on an equal footing in OECD countries as of 30 June 2019. The expression “Chile (1999)” in the column “countries where homosexual consensual acts were once explicitly criminalised” means that homosexual consensual acts were decriminalised in Chile in 1999.

1. In 1960, a clause was introduced in the French Penal Code that doubled the penalty for indecent exposure (“outrage public à la pudeur”) for homosexual activity (Article 330-2). This clause was repealed in 1980 as part of an act redefining several sexual offenses. See <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000886767>.

2. The age of consent in Belgium is 16, as specified by Article 372 of the Penal Code. The age of consent was increased to 18 for same-sex sexual activity in 1965, following the addition of Article 372bis. This article was repealed in 1985.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Annex Table 3.C.5 presents where and when (i) homosexual consensual acts were decriminalised – in countries where they were once explicitly illegal; (ii) the ages of consent for homosexual and heterosexual consensual acts were equalised. In four countries, homosexual consensual acts were never explicitly criminalised (Italy, Korea, Mexico and Turkey). Among countries where these acts were once illegal, a majority decriminalised this conduct after 1970, although the timing varies significantly by country. France became the world’s first country to legalise same-sex sexual acts between consenting adults. Before the French Revolution, sodomy was a serious crime. Jean Diot and Bruno Lenoir were the last homosexuals burned to death on 6 July 1750. The first French Revolution decriminalised homosexuality when the Penal Code of 1791 made no mention of same-sex relations in private. The United States was the last OECD country where homosexuality was made legal nationwide, following *Lawrence v. Texas* (2003), a landmark civil rights case by the United States Supreme Court. In this case, the Court struck down the sodomy law in Texas and, by extension, invalidated sodomy laws in 13 other states, making same-sex sexual activity legal in every US state and territory.

Across OECD countries, the ages of consent for homosexual and heterosexual consensual acts were set equal between three to four decades after homosexuality was decriminalised. Canada was the last OECD country to ensure age of consent equality. Until 2019, Section 159 of the Penal Code set an age of consent for anal sexual acts at 18, while the age of consent for other types of sexual activity was equal to 16. Section 159 was repealed on 30 June 2019, noting that several provincial courts had independently declared Section 159 to be unconstitutional prior to 2019.

Ban on conversion therapy

Of the four countries that have banned conversion therapy on minors throughout their national territory, i.e. Brazil, Ecuador, Malta and Taiwan, none is part of the OECD²¹ (OutRight Action International, 2019^[18]). Yet, three OECD countries ban conversion therapy on minors in some of their subnational jurisdictions. This is the case of:

- Two of the four most populous provinces in Canada: Ontario since 2015 and British Columbia (Vancouver) since 2018;²²
- Three of the four most populous regions in Spain: the Community of Madrid since 2016, Andalusia since 2018 and Valencia since 2019;
- Two of the four most populous states in the United States: California since 2013 and New York since 2019, noting that, as of 30 June 2019, 14 other US states have banned conversion therapy on minors.²³

Legal recognition of same-sex partnerships

Legal recognition of same-sex partnerships takes three different forms, ranging from *basic* (same-sex *de facto* partnership or cohabitation), to *advanced* (same-sex civil/registered/domestic partnership or civil union), to *full-fledged* (same-sex marriage). Legal LGBTI inclusivity related to the item “Legal recognition of same-sex partnerships” is therefore computed as follows:

- It is equal to 0 if the country does not recognise any type of same-sex partnership;
- It is equal to 1/3 if the country only recognises same-sex *de facto* partnership or cohabitation;
- It is equal to 2/3 if the country only recognises same-sex civil/registered/domestic partnership or civil union;
- It is equal to 1 if the country recognises same-sex marriage.

Legal LGBTI inclusivity attached to the item “Legal recognition of same-sex partnerships” is equal to 71% in 2019, up from 15% in 1999. This evolution reflects major progress (Annex Table 3.C.6). Same-sex marriage is legal in 20 OECD countries (at least in some parts of their national territory) as of 2019, while *no* OECD country was allowing same-sex partners to marry in 1999. Netherlands was the first country to legalise same-sex marriage (in 2001). In most other countries, marriage equality laws were passed after 2010. Moreover, nine additional OECD countries have legalised either a *basic* or an *advanced* type of same-sex partnership, as compared to only one two decades ago (Israel²⁴). Only six OECD countries do not provide any recognition of same-sex partnerships (Japan, Korea, Latvia, Lithuania, Slovak Republic, and Turkey). Except for Turkey, these countries are characterised by a Constitution that explicitly defines marriage as the union between a man and a woman.

Annex Table 3.C.6. A majority of OECD countries have legalised same-sex marriage

Overview of whether same-sex partnerships are recognised in OECD countries as of 30 June 2019

No legal recognition of same-sex partnerships	Legal recognition of same-sex partnerships
Japan	Australia (Basic: 2008; Advanced: 2008 in Victoria, 2010 in New South Wales and 2012 in Queensland; Full-fledged: 2017)
Korea	Austria (Basic: 2003; Advanced: 2010; Full-fledged: 2019)
Latvia	Belgium (Basic: 1996; Advanced: 2000; Full-fledged: 2003)
Lithuania	Canada (Basic: 2000; Advanced: 2002 in Quebec; Full-fledged: 2005)
Slovak Republic	Chile (Advanced: 2015)
Turkey	Czech Republic (Advanced: 2006)
	Denmark (Advanced: 1989; Full-fledged: 2012)
	Estonia (Advanced: 2016)
	Finland (Advanced: 2002; Full-fledged: 2017)
	France (Basic/Advanced: 1999; Full-fledged: 2013)
	Germany (Advanced: 2001; Full-fledged: 2017)
	Greece (Advanced: 2015)
	Iceland (Advanced: 1996; Full-fledged: 2010)
	Ireland (Advanced: 2011; Full-fledged: 2015)
	Israel (Basic: 1994)
	Italy (Basic/Advanced: 2016)
	Luxembourg (Advanced: 2004; Full-fledged: 2015)
	Mexico (Advanced: 2007 in Mexico City; Full-fledged: 2010 in Mexico City and 2016 in Jalisco)
	Netherlands (Advanced: 1998; Full-fledged: 2001)
	New Zealand (Basic: 2002; Advanced: 2005; Full-fledged: 2013)
	Norway (Basic: 1991; Advanced: 1993; Full-fledged: 2009)
	Poland (Basic: 2012)
	Portugal (Basic: 2001; Full-fledged: 2010)
	Slovenia (Advanced: 2005)
	Spain (Basic: 1995; Advanced: 1998 in Catalonia, 2001 in Madrid and Valencia and 2002 in Andalusia; Full-fledged: 2005)
	Sweden (Basic: 1988; Advanced: 1995; Full-fledged: 2009)
	Switzerland (Advanced: 2007)
	United Kingdom (Advanced: 2005; Full-fledged: England, Scotland and Wales in 2014)
	United States (Advanced: 2000 in California; Full-fledged: 2015)

Note: This table indicates whether same-sex partnerships are legally recognised in OECD countries as of 30 June 2019. “Basic” refers to the recognition of same-sex *de facto* partnership or cohabitation, “Advanced” refers to the recognition of same-sex civil/registered/domestic partnership or civil union and “Full-fledged” refers to the recognition of same-sex marriage. The expression “Czech Republic (Advanced: 2006)” in the column entitled “legal recognition of same-sex partnership” means that same-sex civil/registered/domestic partnership or civil union became legal in 2006 in Czech Republic.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Equal adoption rights

In all OECD countries, different-sex partners enjoy adoption rights, meaning that they are entitled to joint-adoption as well as to second-parent adoption by one of the two partners (Chapter 2). Equal adoption rights for different-sex and same-sex couples therefore implies that:

- When one partner in a same-sex partnership is a legal parent, the other partner is entitled to become the second legal parent through adoption, assuming that there is no second legal parent registered (i.e. *full* second-parent adoption for same-sex couples)
- Same-sex partners are entitled to jointly adopt a child (i.e. joint adoption for same-sex couples, whereby (i) the legal relationship between the child and her/his biological parents is extinguished, and (ii) the adopting same-sex partners become the two legal parents of the child).

Of these two legal provisions, 61% are in force in OECD countries as of 2019 (i.e. around one), up from 4% in 1999. While 11 OECD countries provide no adoption right to same-sex couples, 24 grant them with access to second-parent adoption and 20 with access to joint adoption (Annex Table 3.C.7). The latter are those that have legalised same-sex marriage, which may reflect the strong commitment of these countries to the advancement of LGB rights, rather than the need to legalise same-sex marriage before being able to grant joint adoption. Indeed, the right to joint adoption is restricted to married different-sex and same-sex couples in only a minority of countries (Finland, France, Germany and Luxembourg).

Annex Table 3.C.7. A majority of OECD countries provide same-sex couples with access to both second-parent adoption and joint adoption

Overview of whether same-sex partners enjoy equal adoption rights relative to different-sex partners as of 30 June 2019

No adoption right for same-sex partners	Equal adoption rights of different-sex and same-sex couples concerning second-parent adoption (SPA) and/or joint adoption (JA)
Chile	Australia (SPA and JA: 2002 in Western Australia, 2010 in New South Wales, 2016 in Queensland and Victoria)
Czech Republic	Austria (SPA: 2013; JA: 2016)
Greece	Belgium (SPA and JA: 2006)
Israel	Canada (SPA and JA: 1996 in British Columbia, 2000 in Alberta and Ontario and 2002 in Quebec)
Italy	Denmark (SPA: 1999; JA: 2010)
Korea	Estonia (SPA: 2016)
Latvia	Finland (SPA: 2009; JA: 2017)
Lithuania	France (SPA and JA: 2013)
Poland	Germany (SPA: 2005; JA: 2017)
Slovak Republic	Iceland (SPA: 2000; JA: 2006)
Turkey	Ireland (SPA: 2017; JA: 2015)
	Japan (SPA: 1947)
	Luxembourg (SPA and JA: 2015)
	Mexico (SPA and JA: 2011 in Mexico City)
	Netherlands (SPA and JA: 2001)
	New Zealand (SPA and JA: 2013)
	Norway (SPA: 2002; JA: 2009)
	Portugal (SPA and JA: 2016)
	Slovenia (SPA: 2011)

No adoption right for same-sex partners	Equal adoption rights of different-sex and same-sex couples concerning second-parent adoption (SPA) and/or joint adoption (JA)
	Spain (SPA and JA: 2005) Sweden (SPA and JA: 2003) Switzerland (SPA: 2018) United Kingdom (SPA and JA: 2005 in England and Wales, 2009 in Scotland, 2013 in Northern Ireland) United States (SPA and JA: 2015)

Note: This table indicates whether same-sex partners enjoy equal adoption rights relative to different-sex partners as of 30 June 2019. The expression “Denmark (SPA: 1999; JA: 2010)” in the column entitled “equal adoption rights of different-sex and same-sex couples concerning second-parent adoption (SPA) and/or joint adoption (JA)” means that same-sex partners are granted access to second-parent adoption since 1999, and to joint adoption since 2010 in Denmark.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Annex Box 3.C.1. Even in countries where same-sex adoption is legal, the quest for same-sex partners to become adoptive parents has remained elusive

In countries where same-sex adoption is legal, couples have two main options to adopt a child: they can adopt a child from their own country (domestic adoption) or from another country (international adoption). Evidence suggests that same-sex couples enjoy equal adoption rights in formal terms, but hardly in practice (Messina and D’Amore, 2018_[19]). Many social workers and foster care/adoption panels are still biased against LGB individuals, meaning that same-sex couples are rarely put on the top of the list of “suitable” adoptive parents, in a context where the number of couples applying for adoption far outweighs the number of adoptable children. In France for instance, a controversy emerged in 2018 after adoption agency officials made disparaging remarks about same-sex couples – one saying that agencies would always favour heterosexual couples over homosexual ones, and another that same-sex couples were “atypical” and should be prepared to adopt “atypical” children, i.e. those who are older or with disabilities.¹

International adoption turns out not to be an easier option. Indeed, many countries of origin prohibit adoption of their children by same-sex couples and, in order to preserve cooperation, countries of destination usually carefully comply with the set of limitations and terms. In Norway for instance, the new Adoption Act 2018 contains a provision that specifies that adoption by same-sex partners is not possible if the child comes “from a country that does not permit persons of the same sex to adopt together”.

Despite these substantial hurdles, same-sex couples are fuelling a rise in adoption rates although the overall number of adoptions is falling. In England and Wales for instance, adoption orders by same-sex couples represented 12% of all adoptions in 2018/19, as compared to just 7% in 2013/14, while only 4 895 adoption orders were issued in 2018/19, down from 6 437 in 2013/14. Indeed, same-sex couples are more likely to adopt children who would usually be considered ‘harder to place’, including children who are over the age of four and those who have been identified as having ‘special needs’.²

1. See https://www.lemonde.fr/societe/article/2018/06/21/en-seinte-maritime-les-homosexuels-candidats-a-l-adoption-cibles-de-propos-discriminatoires_5318899_3224.html.

2. See <https://www.telegraph.co.uk/news/2019/11/October/rise-same-sex-couples-adopting-charity-says-willing-care-harder/>.

Despite this commitment, the adoption process for same-sex couples in these countries remains an obstacle course marked by unique and additional challenges compared with those encountered by opposite-sex couples wanting to adopt a child (Annex Box 3.C.1).

Equal access to assisted reproductive technology

Equal access to assisted reproductive technology of different-sex and same-sex couples implies that:

- Partners in a same-sex partnership be treated on an equal footing with partners in a different-sex partnership concerning access to medically assisted insemination (using sperm of a donor) or *in vitro* fertilisation (using donated sperm and/or egg);
- When medically assisted insemination or *in vitro* fertilisation is legal for both different-sex and same-sex couples, the same-sex partner be automatically recognised as the second legal parent, as would be the case for a male partner of a woman who procreates through these techniques (i.e. automatic co-parent recognition for same-sex couples);
- Partners in a same-sex partnership be treated on an equal footing with partners in a different-sex partnership concerning access to surrogacy.

Of these three legal provisions, 61% are in force in OECD countries as of 2019 (around two), up from 14% in 1999. Despite this progress, only a minority of OECD countries (16) provide same-sex couples with an access to assisted reproductive technology that is fully equal to that of different-sex partners (Annex Table 3.C.8), meaning that they are treated on an equal footing with respect to each of the following dimensions: (i) access to medically assisted insemination or *in vitro* fertilisation; (ii) access to automatic co-parent recognition when medically assisted insemination or *in vitro* fertilisation is legal; (iii) access to surrogacy. Four countries fulfil two of these three conditions, and nine countries comply with only one of them. Six countries fully discriminate against same-sex couples regarding access to assisted reproductive technology: Czech Republic, Greece, Korea, Latvia, Lithuania and Poland.

Of the 21 countries that provide equal treatment in access to medically assisted insemination (MAI) or *in vitro* fertilisation (IVF), only one country, Turkey, ensures equality by *denying* access to these techniques to *both* different-sex and same-sex partners (by contrast, the 20 other countries ensure equality by *granting* access to these techniques to *both* types of partnerships). Indeed, since 1987 when the first regulation of assisted reproduction was published in Turkey (By-law on Centres for Assisted Procreation – Official Gazette no. 19551), third-party reproductive assistance, i.e. the use of donor eggs, donor sperm and surrogacy, is strictly prohibited.

An opposite pattern is at work regarding equal treatment in access to surrogacy: countries that ensure this equal treatment by denying access to surrogacy to both different-sex and same-sex partners are a majority (16) of the 27 countries where access to surrogacy is non-discriminatory. Surrogacy is legal for both different-sex and same-sex partners in only four countries: Canada, the United Kingdom, as well as some subnational jurisdictions in Australia and the United States. In these countries, lawfulness usually concerns altruistic surrogacy (no financial compensation of the surrogate mother beyond reimbursement for medical costs and other reasonable pregnancy-related expenses). Commercial surrogacy remains by and large explicitly prohibited, except in California and Texas (United States) and in Queensland (Australia). In a third category of countries, equal treatment of different-sex and same-sex couples is formally ensured through the fulfilment of two conditions: (i) surrogacy, at least when it is altruistic, is not explicitly illegal; (ii) joint adoption by same-sex partners is legal. The absence of unlawfulness of surrogacy implies, in principle, that the intended parents can become the legal parents, but only after the surrogate mother gives up her parental rights and the intended parents jointly adopt the child – thus there is no possibility of automatically eliminating the parenthood of the surrogate mother or of doing so through a simple “parental order” as it is the case in countries where surrogacy is explicitly legal. But legal joint adoption by same-sex partners ensures, in this context where surrogacy is not explicitly unlawful, that same-sex partners can become parents through the services of a surrogate mother in the same way as different-sex partners. Seven OECD countries belong to this third category: Belgium, Ireland, Luxembourg, Mexico (Mexico City), the Netherlands, New Zealand and Sweden.

Finally, among the 21 countries where MAI or IVF are legal (or not explicitly illegal) for both different-sex and same-sex partners, a majority grant the same-sex partner with access to automatic co-parent recognition. The five exceptions are Chile, Germany, Israel, Luxembourg and Mexico.

Annex Table 3.C.8. Only a minority of OECD countries provide same-sex couples with an access to assisted reproductive technology that is fully equal to that of different-sex partners

Overview of whether same-sex partners enjoy equal access to assisted reproductive technology relative to different-sex partners as of 30 June 2019

No equal treatment of different-sex (DS) and same-sex (SS) partners in access to ART	Equal treatment of different-sex (DS) and same-sex (SS) partners in access to assisted reproductive technology					
	Equal treatment in access to medically assisted insemination (MAI) or in vitro fertilisation (IVF)		When MAI or IVF are legal for both DS and SS partners, SS partners are entitled to automatic co-parent recognition	Equal treatment in access to surrogacy		
	MAI or IVF legal (or not explicitly illegal) for both DS and SS partners	MAI or IVF explicitly illegal for both DS and SS partners		Surrogacy legal for both DS and SS partners	Surrogacy not explicitly illegal and joint adoption legal for SS partners	Surrogacy explicitly illegal (or prohibited by national medical associations) for both DS and SS partners
Czech Republic Greece Korea Latvia Lithuania Poland	Australia (2002 in Western Australia, 2007 in New South Wales, and 2010 in Queensland and Victoria) Austria (2015) Belgium (2007) Canada (2004) Chile (1984) Denmark (2006) Finland (2007) Germany (1991) Iceland (2006) Ireland (1986) Israel (1996) Luxembourg (2005) Mexico (1984) Netherlands (1986) New Zealand (2004) Norway (2009) Portugal (2016) Spain (2006) Sweden (2005) United Kingdom (2009) United States (1981)	Turkey (1987)	Australia (2008) Austria (2015) Belgium (2015) Canada (2002 in Quebec, 2011 in Alberta, 2013 in British Columbia, 2007 in Ontario) Denmark (2013) Finland (2019) Iceland (2010) Ireland (2019) Netherlands (2014) New Zealand (2005) Norway (2009) Portugal (2016) Spain (2015) Sweden (2019) United Kingdom (2009) United States (2017)	Australia (2010 in New South Wales, Queensland and Victoria) Canada (2004) United Kingdom (2009) United States (2005 in California, 2015 in Texas)	Belgium (2006) Ireland (2015) Luxembourg (2015) Mexico (2011 in Mexico City) Netherlands (2001) New Zealand (2013) Sweden (2003)	Austria (2005) Denmark (1986) Estonia (2002) Finland (2007) France (1994) Germany (1991) Iceland (1996) Italy (2004) Japan (2003) Norway (2004) Portugal (2006) Slovak Republic (2005) Slovenia (2000) Spain (2006) Switzerland (1998) Turkey (1987) United States (1992 in New York)

Note: This table indicates whether same-sex partners enjoy equal access to assisted reproductive technology relative to different-sex partners as of 30 June 2019. The expression “Finland (2007)” in the column “MAI or IVF legal (or not explicitly unlawful) for both DS and SS partners” means that medically assisted insemination or *in vitro* fertilisation is legal (or not explicitly unlawful) for both different-sex and same-sex couples since 2007 in Finland.

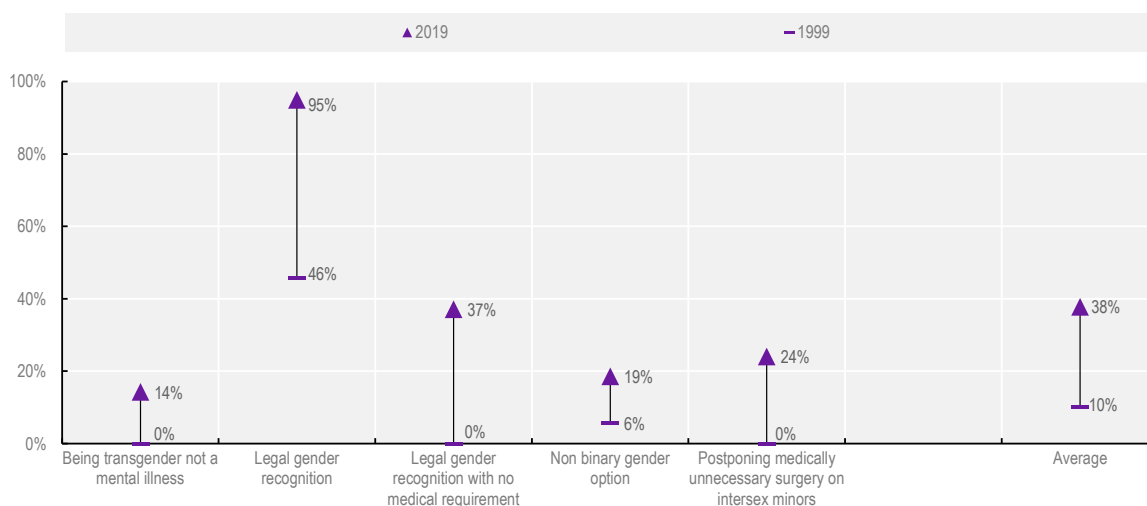
Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

TI-specific provisions

On average, only 38% of the TI-specific provisions defined in Chapter 2 are in force as of 2019, up from 10% in 1999 (Annex Figure 3.C.3). Nearly all OECD countries allow transgender people to change their gender marker on birth certificates and other identity documents as of 2019, while less than half did so in 1999. Significant progress has also been made regarding expunging medical requirements from gender recognition legislation, noting that these requirements were part of all gender recognition laws 20 years ago. But improvements have been extremely modest in the following fields: not categorising being transgender as a mental illness in national clinical classification; availability of a non-binary gender option on birth certificates and other identity documents; and postponing medically unnecessary sex-normalising treatment or surgery on intersex minors.

Annex Figure 3.C.3. Despite a surge in the number of countries that have passed gender recognition laws, legal inclusion of transgender and intersex individuals remains limited

Evolution of legal LGBTI inclusivity between 1999 and 2019 OECD-wide, by component of TI-specific provisions



Note: This figure reports the share of provisions highlighted in Chapter 2 that are in force in OECD countries in 1999 and 2019, by component of TI-specific provisions – see Box 3.2 for further details on how LGBTI inclusivity is computed.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

StatLink  <https://stat.link/lipun1>

Depathologising being transgender

Depathologising being transgender entails three policy actions: (i) not categorising being transgender as a mental illness in national clinical classification; (ii) allowing transgender people to change their gender marker on birth certificates and other identity documents; (iii) attaching no medical requirement to legal gender recognition.

According to Annex Figure 3.C.3:

- Legal LGBTI inclusivity attached to the item “Being transgender not a mental illness” is equal to 14% as of 2019, which means that being transgender was removed from the list of mental illnesses in national clinical classification in only five OECD countries (this declassification was effective in no country in 1999);

- Legal LGBTI inclusivity attached to the item “Legal gender recognition” is equal to 95%, which indicates that a large majority of OECD countries (34 of 35) allow transgender people to change their gender marker on birth certificate and other identity documents at least in some parts of their national territory (this was the case of only 17 countries in 1999);
- Legal LGBTI inclusivity attached to the item “Legal gender recognition with no medical requirement” is equal to 37%, which denotes that a minority of OECD countries (14 of the 34 countries where gender recognition is legal) attach no medical requirement to this process at least in some of their subnational jurisdictions (no country had demedicalised this process in 1999).

Only a small minority of OECD countries (five) fully depathologise being transgender, which means that they comply with each of the three items mentioned above, although not always throughout their national territory (Annex Table 3.C.9). These countries are Canada, Denmark, France, Spain and the United States. Eleven countries fulfil two of these three conditions, and 18 countries comply with only one of them. In one country, Lithuania, being transgender is still fully pathologised, meaning that the law does not even permit transgender people to change their gender marker on birth certificates and other identity documents. The decision whether to grant this right, and under which conditions, is addressed by courts on a case-by-case basis, after the transgender person has filed a petition.²⁵

The removal of being transgender from the list of mental illnesses in national clinical classification is effective in five OECD countries.²⁶ In 2010, France became the first country worldwide to proceed to this declassification (Government order n°2010-125 of 8 February 2010). It was followed by the United States in 2013, when “gender identity disorder” was dropped from the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) maintained by the American Psychiatric Association. A new condition called “gender dysphoria” was added to diagnose and treat those transgender individuals who felt distress at the mismatch between their identities and their bodies. The new diagnosis recognised that a mismatch between one’s birth gender and identity was not necessarily pathological. It shifted the emphasis in treatment from fixing a disorder to resolving distress over the mismatch. In 2014, the Canadian Psychiatric Association adopted DSM-5. In 2016, citing a lack of progress of a pending decision by the World Health Organization (WHO) to remove transgender identity from its list of mental illnesses, the Danish Parliament voted for a unilateral change and removed transgender identity from the National Board of Health’s list of mental illnesses. This decision came into effect in 2017. Finally, starting from the mid-2010s, several autonomous regions of Spain, including the four most populous, have adopted a set of laws “guaranteeing the rights of LGBTI people” in which the health care system is forbidden from referring to being transgender as a pathology. This trend towards removing being transgender from the list of mental illnesses in national clinical classification should accelerate in the near future. Indeed, in 2019, the Member states of the World Health Organization adopted the eleventh edition of the International Classification of Diseases (ICD-11) that removed “gender incongruence” from the list of mental health disorders, noting however that Member states are free to adjust to ICD-11 at their own pace.

The change of gender marker on birth certificates and other identity documents is legal in at least some of the subnational jurisdictions of 34 of the 35 countries covered in this report. In a majority (21), legal gender recognition is conditioned on medical requirements in at least some parts of their national territory. Among those countries, sterilisation is explicitly required in five countries (Czech Republic, Finland, Japan, Korea and Turkey), while sex-reassignment surgery and/or treatment that can lead to sterilisation is a precondition to legal gender recognition in ten others (Australia, Israel, Italy, Latvia, New Zealand, Poland, Slovak Republic, Slovenia, Spain and Switzerland). Legal gender recognition is based solely on a mental health or “gender dysphoria” diagnosis in six countries: Austria, most provinces of Canada except for Alberta and Quebec where legal gender recognition is based on self-determination (see Section 3.3.2), Estonia, Sweden, the United Kingdom and most states in the United States.

In the remaining 13 countries, legal gender recognition necessitates no medical requirement. This situation typically results from amendments to the original legal gender recognition law that by and large occurred

after 2015, under pressure from international and regional human rights stakeholders (Chapter 2). On average, these amendments took place in 2017, several decades after legal gender recognition laws have been passed in these countries.

Annex Table 3.C.9. Only five OECD countries have fully depathologised being transgender

Overview of whether being transgender is depathologised in OECD countries as of 30 June 2019

No depathologisation of being transgender	Depathologisation of being transgender		
	Being transgender is not categorised as a mental illness in national clinical classification	It is legal for transgender individuals to change their gender marker on their birth certificate and other identity documents (legal gender recognition)	When gender recognition is legal, it necessitates no medical requirement
Lithuania	Canada (2014) Denmark (2017) France (2010) Spain (2014 in Catalonia, 2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia) United States (2013)	Australia (1995 in New South Wales, 2000 in Western Australia, 2003 in Queensland and 2004 in Victoria) Austria (1983) Belgium (2007) Canada (1973 in British Columbia and Alberta, 1978 in Ontario, 1991 in Quebec) Chile (2018) Czech Republic (2000) Denmark (1929) Estonia (2002) Finland (2003) France (1992) Germany (1981) Greece (1976) Iceland (2012) Ireland (2015) Israel (1986) Italy (1982) Japan (2004) Korea (2006) Latvia (2013) Luxembourg (1975) Mexico (2004 in Mexico City) Netherlands (1985) New Zealand (1995) Norway (2016) Poland (1978) Portugal (2011) Slovak Republic (1995) Slovenia (2005) Spain (2007) Sweden (1972) Switzerland (1993) Turkey (2001) United Kingdom (2005) United States (1970s in New York, 1989 in Texas, 1995 in California and 2004 in Florida)	Belgium (2018) Canada (2016 in Quebec, 2018 in Alberta) Chile (2018) Denmark (2014) France (2017) Germany (2011) Greece (2017) Iceland (2019) Ireland (2015) Luxembourg (2018) Mexico (2015 in Mexico City) Netherlands (2019) Norway (2016) Portugal (2018) United States (2019 in California)

Note: This table indicates whether being transgender is depathologised in OECD countries as of 30 June 2019. The expression “France (2010)” in the column entitled “being transgender is not categorised as a mental illness in national clinical classification” means that France removed being transgender from the list of mental illnesses in its national clinical classification in 2010.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Allowing a non-binary gender option on birth certificates and other identity documents

Legal LGBTI inclusivity attached to the item “Non-binary gender option on birth certificates and other identity documents” is equal to 19% as of 2019, which reflects that eight OECD countries allow for such an option, at least in some parts of their subnational jurisdictions (only two countries did so in 1999): Australia (New South Wales), Austria, Canada (Alberta, British Columbia and Ontario), Germany, Iceland, Netherlands, New Zealand and the United States (California and New York – New York City to be precise). In most of these countries, the legalisation of a non-binary option occurred recently, after 2015.

The use of a non-binary gender option is reserved to intersex individuals in Austria, Germany, Netherlands and New Zealand. In the Netherlands and New Zealand, it is possible since 1995 to state on a birth certificate “sex cannot be determined” or “sex indeterminate” when the sex of a newborn is unclear.²⁷ Austria and Germany go a step further by granting access to a non-binary gender option called “diverse” to *all* intersex individuals since 2018 and 2019 respectively. In other words, intersex adults who were assigned as female or male at birth can change this gender marker to “diverse”. Both intersex and non-binary transgender individuals have access to a non-binary gender option in the remaining jurisdictions. This option is called “non-specific” in New South Wales (2014), “X” in Alberta (2018), British Columbia (2018), Ontario (2018), Iceland (2019) and New York City (2018), and “non-binary” in California (2019).

Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent

International human rights stakeholders are exerting increased pressure on their Member countries to postpone medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent. They all call for governments to ban these practices.

But a legal ban is not the only option and there is a range of actions countries can take to positively address this issue. For instance, publishing guidelines that urge medical practitioners to refrain from performing non-consensual normalisation surgery on intersex minors is one such possibility. Most importantly, it is critical to proactively engage in preparatory steps aimed at gathering support for guidelines or laws banning unconsented non-vital medical interventions so as to ensure proper enforcement of these bans. These preparatory steps include (i) inquiring into the treatment of intersex minors in order to show the extent to which unconsented medically unnecessary sex-normalising treatment or surgery are performed on intersex minors; (ii) increasing acceptance of intersex individuals among the general public so as to alleviate the social pressure for categorising a newborn as either female or male; (iii) consulting with all stakeholders, chief of which are intersex people, parents and medical practitioners in order to build consensus around a set of recommendations that serve as a starting point to a nationally consistent human-rights based approach to decision-making about medical interventions on intersex minors.

In this framework, legal LGBTI inclusivity for the item “Postponing medically unnecessary surgery on intersex minors” is equal to:

- 0 if the country has taken no significant step in this direction;
- 1/3 if the country is engaged in one or several of the preparatory steps aimed at gathering support for guidelines or laws explicitly banning unconsented non-vital medical interventions on intersex minors;
- 2/3 if the country has published guidelines that explicitly urge medical practitioners to refrain from performing non-consensual normalisation surgery on intersex minors;
- 1 if the country has passed laws explicitly prohibiting medically unnecessary sex-normalising treatment or surgery on intersex minors.

Legal LGBTI inclusivity attached to the item “Postponing medically unnecessary surgery on intersex minors” is equal to 24% as of 2019 which reflects that the protection of intersex minors is still in its infancy

in OECD countries: on average, OECD countries lie between inaction on the issue and engagement in one or several of the preparatory steps mentioned above.

More precisely, 16 OECD countries are active on that issue (Annex Table 3.C.10). Among them, only two countries have passed laws explicitly prohibiting medically unnecessary sex-normalising treatment or surgery on intersex minors, at least in some of their subnational jurisdictions: Portugal and Spain.

Annex Table 3.C.10. Only eight OECD countries have issued guidelines directed at medical practitioners or passed laws explicitly banning non-consensual medically unnecessary interventions on intersex minors

Overview of whether OECD countries have taken significant steps towards explicitly postponing medically unnecessary surgery on intersex minors as of 30 June 2019

No significant step towards explicitly postponing medically unnecessary surgery on intersex minors	Significant steps towards explicitly postponing medically unnecessary surgery on intersex minors		
	Preparatory steps aimed at gathering support for guidelines or laws explicitly banning non-consensual medically unnecessary interventions	Guidelines directed at medical practitioners explicitly banning non-consensual medically unnecessary interventions	Law explicitly prohibiting non-consensual medically unnecessary interventions
Belgium	Australia (2013)	Austria (2018)	Portugal (2018)
Canada	Finland (2019)	Chile (2015)	Spain (2016 in the Community of Madrid, 2018 in Andalusia and 2019 in Valencia)
Czech Republic	France (2018)	Denmark (2014)	
Estonia	Germany (2016)	Israel (2017)	
Greece	Luxembourg (2018)	Mexico (2019)	
Iceland	Netherlands (2019)	Switzerland (2012)	
Ireland	New Zealand (2016)		
Italy	United Kingdom (2019)		
Japan			
Korea			
Latvia			
Lithuania			
Norway			
Poland			
Slovak Republic			
Slovenia			
Sweden			
Turkey			
United States			

Note: This table indicates whether OECD countries have taken significant steps towards explicitly postponing medically unnecessary surgery on intersex minors as of 30 June 2019. The expression “Germany (2016)” in the column entitled “preparatory steps aimed at gathering support for guidelines or laws banning non-consensual medically unnecessary interventions” means that Germany engaged in these steps in 2016.

Source: OECD questionnaire on LGBTI-inclusive laws and policies (2019).

Annex 3.D. Threats to LGBTI people's civil liberties among OECD countries

LGBTI people's civil liberties appear at risk in three of the 35 OECD countries covered in this report:

- In Lithuania, the Law on the Protection of Minors against the Detrimental Effect of Public Information (2002) was amended in an ambiguous way that leaves room for restricting freedom of expression on LGBTI issues. Initially, Article 4 of the Law bans public information detrimental to “the physical, mental or moral development of minors”, including “incitement to discrimination based on nationality, race, gender, origin, disability, sexual orientation, religion or other characteristics” (Article 4-9). In 2010, Article 4 was amended to include two potentially conflicting clauses. One is in line with the original spirit of the law since it forbids information promoting bullying, specifically based on sexual orientation (Article 4(12)). This is not the case however of the second clause. Although the amendment that more explicitly banned the promotion among minors of “homosexual, bisexual, and polygamous relations” was eliminated following protestation from the European Parliament (European Parliament, 2009^[20]), it was replaced by a ban on information that encourages “the notion of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania” (Article 4(13)). As both the Lithuanian Constitution (Article 38) and Civil Code (Articles 3.7 and 3.12) define marriage as between a man and a woman, this new piece of legislation was strongly criticised by human rights organisation for posing a threat to civil liberties. There have been three notable instances where the Law on the Protection of Minors against the Detrimental Effect of Public Information was deployed to undermine freedom of expression, following the 2010 amendment. In 2013, the Law was successfully referenced by the Inspector of Journalist Ethics to restrict one advertisement related to the Vilnius Gay Pride 2013 to be broadcast at only night time and with the adult content logo, because one person in the advertisement had a T-shirt with an inscription in Lithuanian “For the diversity of families”. In 2014, based on similar grounds, the same institution recommended restricting the distribution of a children's book of tales titled “Gintarinė širdis” (“Amber Heart”) published by the Lithuanian University of Educational Sciences, because two stories in it were related to same-sex relationships. The Inspector ordered the book to be labelled “Not suitable for children under 14 years”, which led to the termination of the dissemination of the book on the initiative of the publisher. The third instance relates to the social advertising clips created by an LGBT rights organisation called the Lithuanian Gay League. Although the clips did not have any overt sexuality-related content in 2013, the national broadcaster refused to broadcast them and in 2014 commercial broadcasters did the same.²⁸ In both cases, the Lithuanian Gay League lodged a complaint. The Inspector established in these two instances that the information provided in the social video clip was classified as the information which had a detrimental effect according to the Law on the Protection of Minors against the Detrimental Effect of Public Information (UN Human Rights Committee, 2016^[21]). However, a recent decision of the Lithuanian Constitutional Court may contribute to mitigate these threats to LGBTI people's civil liberties: in January 2019, the Court ruled that the concept of “family” enshrined in the Constitution is gender-neutral, meaning that residence permits must be granted to foreign same-sex partners of Lithuanian citizens even though same-sex partnerships are not legally recognised in Lithuania.
- In Poland, freedom of expression, freedom of peaceful assembly and freedom of association of LGBTI individuals are under threat. A recent and worrisome trend has been the promulgation of “LGBT-free zones” declarations over the course of year 2019, particularly among local

governments in the south-eastern part of the country. In December 2019, the European Parliament passed a resolution that strongly condemns the more than 80 Polish municipal or local governments who proclaimed themselves to be “free from LGBTI ideology”. The enforcement of such declarations remains ambiguous but the dissemination of “LGBT-free zone” stickers have fed an atmosphere of hatred and violence towards the LGBT population. The phenomenon is not new, however. For instance, in response to witnessing two participants in the 2018 Equality March in Częstochowa carry a rainbow flag with the Polish state symbol of a white eagle, a complaint was filed, prompting the Minister of Interior and Administration to declare via social media that there would be a formal investigation into the possible crime of slandering Polish symbols (ILGA EUROPE, 2018^[22]). In 2016, Poland’s Parliament adopted an amendment to the Law on Assemblies that introduces the concept of “cyclical assemblies”, which are typically the celebration of important events for the history of the Republic of Poland and religious assemblies. According to the amendment, regional governors are responsible for deciding if the assembly can be considered as cyclical or not. Moreover, the amendment provides that regular assemblies of citizens cannot be organised at the same time and place as cyclical assemblies, meaning that, in case of overlap, the “non-cyclical” assembly should be prohibited. Despite protests from Poland’s ombudsman and a number of non-government organisations, the amendment was deemed constitutional by Poland’s Constitutional Court. This situation led the European Parliament to issue a resolution on the situation of the rule of law and democracy in Poland on 15 November 2017. The resolution expresses concern about “the Law on Public Assemblies, as amended in December 2016, which allows for excessive limitations on the right of assembly, including prioritisation of so-called ‘regular/cyclical assemblies’ devoted to patriotic, religious and historic events and the possibility for the authorities to ban counter-demonstrations.” The resolution “calls on the Polish Government to respect the right of freedom of assembly by removing from the current law on assembly the provisions prioritising government-approved ‘cyclical’ assemblies; urges the authorities to refrain from applying criminal sanctions to people who participate in peaceful assemblies or counter-demonstrations and to drop criminal charges against peaceful protesters” (European Parliament, 2017^[23]). Finally, in 2017, a law was passed granting government control over the process of distributing the funds to NGOs. Following this law, a new body decides which NGOs receive public funds. Although a board of directors oversees this body, NGO representatives make up only a minority of this board with the remainder appointed by the government, meaning that the government can severely hinder the work of organisations it doesn’t approve of (Civil Liberties Union for Europe, 2017^[24]).

- In Turkey, LGBTI civil liberties are also under pressure. In 2017, under Turkey’s state of emergency, the Ankara governor indefinitely banned all LGBTI-related events occurring in the provincial area and justified this discriminatory action by listing “social sensitivities and sensibilities”, as well as “protection of public health and morality” as reasons for the ban’s implementation (CoE Parliamentary Assembly, 2018^[25]). Although the emergency rule concluded in July of 2018, the governor refused to lift the ban. In 2018, Ankara’s 4th and 13th Administrative Courts upheld the ban and in April, the Ankara-based LGBTI NGO Kaos GL brought the case to the Constitutional Court. In April of 2019, the court ruled the ban to be unlawful and found that it restricted rights in unconditional, vague and disproportionate ways, emphasising the state’s responsibility to protect peaceful assembly rather than simply ban the events. Significant barriers have also been erected to the organisation of peaceful LGBTI public events in Istanbul. Although Istanbul Pride had been held annually since 2003, it was banned in 2015 over “security concerns”. It was banned again in 2016, 2017, 2018 and 2019. Overall, LGBTI organisations are reporting a sharp increase in campaigns of intimidation and harassment targeting individuals or planned events demonstrating support of LGBTI rights (Amnesty International, 2018^[26]).

Notes

¹ The Constitution of Latvia was amended in 2006 and the Constitution of the Slovak Republic was amended in 2014 to define marriage as the union between a man and a woman and, hence, constitutionally ban same-sex marriage. In the United States, in a draft memo leaked to The New York Times in 2018, the Department of Health and Human Services proposed to establish a legal definition of whether someone is male or female based solely and immutably on the genitals they are born with.

² In this chapter, the terms “OECD countries” and “Member countries” refer to 35 of the 37 OECD countries since Hungary decided not to participate in the analysis and Colombia was not yet an OECD Member when the report was initiated.

³ These 12 member countries are Australia, Chile, Denmark, Finland, France, Iceland, Ireland, Netherlands, Norway, Sweden, Switzerland, and the United States.

⁴ The prefilled OECD questionnaire on LGBTI-inclusive laws and policies was sent to the relevant ministries of the 36 OECD Member countries for their review in July 2019 (Colombia was not yet an OECD Member at that time). By October 2019, nearly all OECD countries had welcomed and supported this initiative. Most of the 32 countries that thoroughly verified the answers prefilled by the OECD provided valuable complementary information that enhanced the understanding of domestic laws related to LGBTI inclusion. Moreover, the draft of this report was sent to OECD Member countries in April 2020 to give them the opportunity to review, correct and complete its content. A total of 15 member countries provided the OECD with detailed and constructive feedbacks which are all taken into consideration in this publication.

⁵ For issues that are regulated at both the national and subnational levels, priority is given in the analysis to the national level.

⁶ The Movement Advancement Project (MAP) is an independent non-profit think tank founded in 2006 that provides rigorous research in order to measure inclusion of minority groups in all 50 US states. In particular, the MAP provides an overview of laws and policies within each state that helps drive equality for LGBT people. See <http://www.lgbtmap.org/>.

⁷ Due to space constraints, the label of each component presented in Figure 3.2 was shortened compared to what it is in the OECD questionnaire on LGBTI-inclusive laws and policies, except for “Legal gender recognition” (TI-specific provision). Concerning general provisions: (i) “Protection against discrimination” refers to “Protection of LGBTI people against discrimination”; (ii) “Protection of civil liberties” refers to “Protection of LGBTI people’s civil liberties”; (iii) “Protection against violence” refers to “Protection of LGBTI people against violence”; (iv) “Protection against persecution abroad” refers to “Protection of LGBTI people fleeing persecution abroad”; and (v) “LGBTI-inclusive human rights institution” refers to “Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission”. Concerning LGB-specific provisions: (i) “No criminalisation” refers to “Equal treatment of same-sex and different-sex consensual sexual acts”; (ii) “No conversion therapy” refers to “Ban on conversion therapy”; (iii) “Partnership recognition” refers to “Legal recognition of same-sex partnerships”; (iv) “Adoption rights” refers to “Equal adoption rights”; and (v) “Assisted reproduction” refers to “Equal access to assisted reproductive technology”. Concerning TI-specific provisions: (i) “Clinical classification” refers to “Being transgender not categorised as a mental illness in national clinical classification”; (ii) “No medical requirements” refers to “No medical requirement attached to legal gender recognition”; (iii) “Non-binary gender” refers to “Availability of a non-binary gender option on birth certificates and other identity documents”; and (iv) “No

sex normalising treatment” refers to “Postponing medically unnecessary sex-normalising treatment or surgery on intersex minors”.

⁸ The contribution of each component to the rise in legal LGBTI inclusivity is computed by taking their weight into account. For example, legal LGBTI inclusivity attached to the component “Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission” increased by 58 percentage points between 1999 and 2019. Given that this component is assigned a 10% weight (and that legal LGBTI inclusivity attached to all provisions increased by 32 percentage points), this means that the increase in the component “Existence of an LGBTI-inclusive equality body, ombudsman or human rights commission” explains $(10\% \cdot 58) / 32 = 18\%$ of the overall increase in legal LGBTI inclusivity.

⁹ These countries are Czech Republic, Estonia, Italy, Japan, Korea, Latvia, Poland, Slovak Republic, Slovenia, Sweden and Turkey.

¹⁰ While the share of EU Members in the 35 OECD countries covered in this report amounts to approximately 60%, they stand for 70% of countries with an above-average level of legal LGBTI inclusivity.

¹¹ These 13 countries are Australia, Canada, Denmark, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, New Zealand, Norway, Spain and Sweden.

¹² These 13 countries are Chile, Czech Republic, Estonia, Italy, Japan, Korea, Latvia, Lithuania, Mexico, Poland, Slovak Republic, Slovenia and Turkey.

¹³ On top of the question on the justifiability of homosexuality and on the perception of local social acceptance of lesbians and gay men, a third question has been asked in prominent cross-continent or regional surveys to measure attitudes of the general public towards LGB people. This question reflects whether the respondent would be comfortable with homosexuals as neighbours. However, the wording of this question is not consistent across surveys. In fact, the Americas Barometer is the only survey where this question explicitly refers to “homosexuals”: *Are you comfortable with homosexuals as neighbours?* In the other surveys, respondents have to choose people they would *not* like to have as neighbours, among a list that includes “homosexuals” or “gays”. An additional drawback of this question flows from the fact that answers are difficult to interpret. No selection of the “homosexuals” or “gays” items by the respondents is interpreted as equivalent to accepting homosexuals as neighbours. Yet, this omission may reflect instead that the respondent considers these items as taboos, i.e. words to be proscribed due to the unacceptable reality they depict.

¹⁴ Information on the share of respondents who support transgender people is missing for Korea, which means that the average of this share among lowest-performing OECD countries is computed across two countries (Turkey and Japan), not three countries.

¹⁵ Information on the share of respondents who support intersex people is missing for Korea, which means that the average of this share among lowest-performing OECD countries is computed across two countries (Turkey and Japan), not three countries.

¹⁶ See for instance *Ferguson v. JONAH*, New Jersey Superior Court No. L-5473-12 (N.J. Super. Ct. Law. Div. 2015), a landmark LGBT civil rights case in which a New Jersey jury unanimously determined that conversion therapy constituted consumer fraud.

¹⁷ In some of these countries, the applicant may still be requested to provide a statutory declaration stating that he or she (i) has a settled and solemn intention of living in the preferred gender for the rest of her or his life; (ii) understands the consequences of the application; and (iii) makes the application of his or her

free will. A reflection period of up to 6 months from the date of the application is sometimes required after which the applicant must confirm her or his application. All or some of these requirements prevail for instance in Belgium, Denmark or the Netherlands.

¹⁸ For a critique of this procedure in France, see <https://www.sos-homophobie.org/article/decret-sur-le-changement-d-etat-civil-des-personnes-trans-est-encore-loin-du-changement-d>.

¹⁹ In federal countries where LGBTI-related issues are regulated at the subnational level, we remind that this report analyses the situation that prevails in the *four most populous states*. The case of other states is not addressed.

²⁰ On top of allowing a non-binary gender option on birth certificates and other identity documents in these three Canadian provinces, Canada introduced in June 2019 a non-binary gender option ('X' for 'Another Gender') on its passports, citizenship certificates and permanent resident cards in order to recognise Canadian citizens and residents who do not identify exclusively as female or male.

²¹ In Brazil, Resolution 1/99 issued by the Federal Council of Psychology, prohibits the “pathologisation of homoerotic behaviours and practices” and orders all licenced psychologists to “refrain from coercive or unsolicited treatment to homosexuals”. It also prohibits their participation in events or services offering a “gay cure”. In Ecuador, Article 151(3) of the *Penal Code 2014* criminalises any act of torture (defined in broad terms) perpetrated with the intention of modifying a persons’ sexual orientation. In Malta, the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act that came into effect in 2016 prohibits the performance of conversion therapy both by professionals (Section 3.b) and by non-professionals (Section 3.a). In Taiwan, the Ministry of Health and Welfare issued a letter to all local health authorities in 2018 which effectively banned conversion therapy.

²² On 9 March 2020, the Canadian Minister of Justice introduced Bill C-8, An Act to amend the Criminal Code (conversion therapy), in the House of Commons and it was given first reading: <https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=10686845&Parl=43&Ses=1&Mode=1&View=8>. Also, in the province of Alberta, the two cities of Edmonton (St Albert) in 2019, and Calgary in 2020, have banned conversion therapy.

²³ See http://www.lgbtmap.org/equality-maps/conversion_therapy.

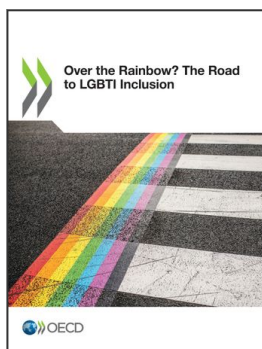
²⁴ Civil marriage does not exist in Israel. Only marriages sanctioned by the religious authorities may be performed, meaning that those who choose to get married must turn to one of the 15 religious marriage courts recognised by the state. Yet, none of these courts allow for same-sex marriage.

²⁵ However, when the right to change gender marker is granted by a court in Lithuania, it requires neither sterilisation nor sex-reassignment surgery and/or treatment.

²⁶ Since 1 January 2020, Norway has also removed being transgender from the list of mental illnesses in its national clinical classification.

²⁷ Since 2013, a blank gender entry is available in Germany for intersex babies whose sex cannot be determined, in response to the German Ethics Council. But this option was widely criticised by the German Constitutional Court as well as international stakeholders. Indeed, this option suggests that the complainants see themselves as genderless persons, while the reality is that these persons perceive themselves as having a gender beyond male or female.

²⁸ See <https://www.youtube.com/watch?v=3rLit2Pc3lg&feature=youtu.be>.



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