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Legal achievements towards LGBTI+ equality in Germany

This chapter provides a comprehensive overview of the extent to which laws critical to achieve LGBTI+ equality have been passed in Germany, at both the federal and state levels. After clarifying what these laws are, the chapter investigates whether these laws are in force. It concludes by discussing how LGBTI+ equality in Germany could be further improved through legislation. This analysis reveals strong legal achievements towards LGBTI+ equality at the federal level, and more modest ones at the state level where little action has been taken to protect individuals, including sexual and gender minorities, against discrimination originating from state administration and authorities. That said, margins for improvement exist also at the federal level, for all categories of LGBTI+-inclusive laws.

3.1. Introduction and main findings

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, as of 2019, 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. Finally, the rights of intersex people are by and large ignored (OECD, 2020^[1]).

Chapter 3 provides a comprehensive overview of the extent to which laws critical to achieve LGBTI+ equality have been passed in Germany, at both the federal and state levels. After clarifying what these laws are, the chapter investigates whether these laws are in force. It concludes by discussing how LGBTI+ equality in Germany could be further improved through legislation.

Main findings

- Applying international human rights standards to LGBTI+ issues points to two broad categories of LGBTI+-inclusive laws:
 - General provisions that are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether: they entail protecting LGBTI+ individuals against discrimination and violence, and guaranteeing their civil liberties.
 - Group-specific provisions that seek to address the unique challenges faced by subgroups of the LGBTI+ population. These provisions can be further decomposed into LGB-specific and TI-specific provisions:
 - LGB-specific provisions aim to foster equal treatment of lesbians, gay men and bisexuals, relative to heterosexual individuals. They include equal treatment of same-sex and different-sex consensual sexual acts, legal recognition of same-sex partnerships, equal adoption rights, equal access to assisted reproductive technology, and ban on conversion therapies.
 - TI-specific provisions aim to foster equal treatment of transgender and intersex individuals, relative to cisgender and non-intersex individuals. They entail depathologising being transgender, i.e. not categorising being transgender as a mental illness in national clinical classification, permitting transgender people to change their gender marker in the civil registry, and not conditioning legal gender recognition on medical requirements. They also imply allowing a non-binary gender option in the civil registry and banning medically unnecessary sex-normalising interventions on intersex minors until they can provide informed consent.
- While legal achievements towards LGBTI+ equality have been substantial at the federal level, they remain modest at the state level.
 - Although all the aforementioned LGBTI+-inclusive laws fall, at least partly, under the purview of the German federal level, states can take an active part in fostering LGBTI+ equality through legislation in two ways: (i) by introducing legislative initiatives in the Bundesrat in order to trigger some of these laws at the federal level; (ii) by passing laws in their state parliament in order to protect LGBTI+ individuals against discrimination by state public entities.

- Germany shows high levels of legal LGBTI+ inclusivity, defined as the share of LGBTI+-inclusive laws that have been passed at the federal level among the aforementioned set of laws.
 - In 2019, Germany had walked more than two-thirds of the way towards full legal equality of LGBTI+ people, with a level of legal LGBTI+ inclusivity equal to 68% (as compared to 53% OECD-wide).
 - Legal LGBTI+ inclusivity is improving at a fast pace: it has increased nearly threefold between 1999 and 2019, and has again increased by 10 percentage points (or 15%) between 2019 and 2021, up to 78%.
 - While OECD countries are on average more active in passing general provisions than group-specific provisions, the opposite is the case for Germany. This pattern has been reinforced since 2019. Notably, Germany became in 2020 the first OECD country to implement a nationwide ban on conversion therapy on minors and unconsenting adults. Moreover, Germany became in 2021 the second OECD country to prohibit, throughout its national territory, medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent.
- Legal achievements towards LGBTI+ equality have been more modest at the state level.
 - A majority of German states either did not participate in launching any of the 10 legal initiatives (Lis) that were introduced since the early 2000s in the Bundesrat to foster LGBTI+ equality at the federal level, or contributed to launch only one of them.
 - With the exception of Berlin which passed an antidiscrimination law (*Landesantidiskriminierungsgesetz – LADG*) in 2020, no German state has taken significant action to protect individuals, including sexual and gender minorities, against discrimination originating from state administration and authorities, such as schools or the police.
- Legal achievements towards LGBTI+ equality are associated with greater acceptance of LGBTI+ individuals and with greater economic development.
 - These positive relationships have already been confirmed at the country level in the 2020 OECD report *Over the Rainbow? The Road to LGBTI Inclusion*.
 - Similar results hold at the German state level. For instance, states which were active in introducing LGBTI+-inclusive legislative initiatives in the Bundesrat are characterised by a level of social acceptance of LGBTI+ individuals that is 10% higher than in others (65% vs 59%); they are also characterised by a gross regional product (GRP) per capita that is more than EUR 2 600 larger than the average of other states.
- A number of legal next steps would help improve LGBTI+ equality in Germany.
 - At the federal level, margins for improvement exist for all categories of LGBTI+-inclusive laws, be they general, LGB-specific or TI-specific.
 - Regarding general provisions:
 - Sexual orientation is not part of the list of grounds that the *Basic Law* protects from discrimination (nor is gender identity or sex characteristics/intersex status, although the latter grounds are implicitly covered under the word “sex”). Following other OECD countries who ban discrimination explicitly based on sexual orientation in their national constitution, the federal government could consider proceeding to this change, which has been long advocated by various stakeholders.
 - Although the *General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG)* is supposed to protect individuals, including sexual and gender minorities,

against discrimination in employment relationships and in access to (and supply of) goods and services, this safeguard remains incomplete: religious exemptions to the law are allowed, and certain cases of private transactions lie outside the scope of the law, such as discrimination by landlords if they rent out less than 50 flats. Closing these legal loopholes is important to secure the rights of LGBTI+ individuals.

- Regarding LGB-specific provisions, Germany could consider granting automatic co-parent recognition to lesbian couples who rely on assisted reproductive technology.
- Regarding TI-specific provisions, full depathologisation of being transgender implies basing legal gender recognition on self-determination rather than on validation by a third party. Outright equal treatment of transgender and intersex individuals, relative to cisgender and non-intersex individuals, would also entail a reform of the law of parentage to ensure that parents who proceed to a legal change of their first name and civil status are referred to by their new first name and gender on their child(ren)'s birth certificate.
- At the state level, the Berlin antidiscrimination law (LADG) goes a long way in closing legal gaps by enabling people to take action against discrimination by state public entities, notably with the help of the Ombudsman's office (*Ombudsstelle*) whose powers to enforce people's rights are unprecedented. By following suit and implementing similar LADGs, other German states could make immense progress in protecting LGBTI+ individuals against discrimination together with other groups at risk of unfair treatment.

3.2. Which laws should be passed to advance LGBTI+ equality?

The protection of individuals on the basis of sexual orientation, gender identity and sex characteristics should not imply the creation of new or special rights for LGBTI+ people but, rather, extending the same rights to LGBTI+ persons as those enjoyed by everyone else by virtue of international human rights standards. These standards are at the core of treaties, conventions or charters issued by the European Union, the United Nations, the Council of Europe or the Organization of American States that have been signed and ratified by OECD countries.

Applying these standards to LGBTI+ issues points to two broad categories of LGBTI+-inclusive laws (OECD, 2020^[1]): (i) general provisions that are relevant for the inclusion of lesbian, gay, bisexual, transgender and intersex people altogether ; and (ii) group-specific provisions that seek to address the unique challenges faced by subgroups of the LGBTI+ population. The latter can be further decomposed into LGB-specific and TI-specific provisions.

3.2.1. General provisions

General provisions consist in protecting LGBTI+ individuals against discrimination and violence and in guaranteeing their civil liberties. They include five components.

Protecting LGBTI+ individuals against discrimination

The right of every person to equality before the law is universal, as unequivocally set forth by Article 1 of the Universal Declaration of Human Rights of 1948: "All human beings are born free and equal in dignity and rights." As such, protection of LGBTI+ people against discrimination should entail prohibiting discrimination explicitly based on sexual orientation, gender identity and sex characteristics (SOGISC) in all areas of life. More precisely, ban on SOGISC-based discrimination should prevail in:

- Public law that regulates interactions between the general population and the government, i.e.: all public entities (the administration, the police, courts, public schools and universities, etc.). At a minimum, this requirement entails that SOGISC-based discrimination be explicitly prohibited in the national constitution. Yet, this mention does not allow low-threshold enforcement of individuals' rights since it would in principle require that they bring their case to the Constitutional Court. It is therefore critical that an explicit ban in the national constitution be accompanied by complementary legislation that recognises the right to compensation of LGBTI+ individuals when they are discriminated in the context of public law activities.
- Private law that regulates interactions between private individuals, i.e. the provision of and access to goods and services under private-law contracts (while shopping, when going to a restaurant, in the housing market, when requesting or receiving treatment and services from care and medical professionals, when conducting insurance and banking transactions, etc.).
- Labour law that regulates interactions between job candidates or employees and employers.

Protecting LGBTI+ individuals against violence

Governments have an obligation under international human rights law to protect individuals from being arbitrarily deprived of their life by others, as well as from being exposed to torture or other cruel, inhumane or degrading treatment.

The duty to safeguard the right of LGBTI+ individuals to be free from violence entails passing hate crime laws which permit deeming an offence motivated by bias against the presumed sexual orientation, gender identity or sex characteristics of the victim as an aggravating circumstance, *either by defining such an act as a distinct crime or by enhancing punishment of an existing offence*. To fully deter hate crimes, it is important to concomitantly outlaw severe forms of “hate speech” – while avoiding inappropriate restrictions on freedom of expression. Evidence on the causal relationship between incitement to hatred and hate crime is growing. In Germany for instance, anti-refugee sentiment on Facebook predicts crimes against refugees (Müller and Schwarz, 2020^[2]).

Protecting LGBTI+ individuals fleeing persecution abroad

International human rights stakeholders encourage countries to explicitly recognise persecution (or a well-founded fear of persecution) based on sexual orientation, gender identity or sex characteristics as a valid ground for granting asylum. This approach is essential to protect LGBTI+ asylum seekers coming from one of the 69 countries where same-sex conduct is still criminalised (ILGA, 2020^[3]).

Guaranteeing LGBTI+ people's civil liberties

The universal guarantee of the rights to freedom of expression, peaceful assembly and association constitutes the foundation of every free and democratic society. Against this backdrop, hindering expression promoting LGBTI+ people's rights, erecting barriers to the organisation of peaceful LGBTI+ public events such as pride parades, or impeding the registration, operation and access to funding of LGBTI+ human rights associations under the guise of preserving public morals and protecting children is incompatible with the underlying values of international human rights treaties.

Establishing an independent human rights institution

In order to enforce and improve equal treatment legislation, international human rights stakeholders have stressed the need for independent human rights institutions, e.g. equality bodies, ombudspersons or human rights commissions. These institutions should be entrusted with the responsibility to help all groups at risk of discrimination and violence seek redress when persecuted, including explicitly LGBTI+ individuals. More precisely, these human rights institutions should carry out three main activities:

- Informing victims of discrimination about their rights and helping them determine whether the unequal treatment they were subject to indeed constitutes an unlawful discrimination;
- Provided the discrimination case is substantiated enough, assisting victims of discrimination in taking further actions, e.g. contacting the presumed discriminators with the aim of reaching an amicable settlement, helping the victim file a discrimination complaint and bring the case to court, etc.;
- Monitoring levels and trends in discrimination (through the analysis of inquiries received, the running of surveys on perception of discrimination, the implementation of correspondence and audit studies conducted in different fields, etc.) and identifying legal loopholes that prevent full protection of individuals against discrimination.

3.2.2. Group-specific provisions

Group-specific provisions that seek to address the unique challenges faced by subgroups of the LGBTI+ population can be further decomposed into LGB-specific and TI-specific provisions.

LGB-specific provisions

LGB-specific provisions aim to more specifically foster equal treatment of lesbians, gay men and bisexuals, relative to heterosexual individuals. They can be broken down into 5 dimensions:

- *Equal treatment of same-sex and different-sex consensual sexual acts*: This objective first entails decriminalising same-sex conduct. It also requires abrogating laws setting a higher age of consent for same-sex conduct. Otherwise, young persons who engage in same-sex conduct would be subject to criminal penalties that do not apply to young persons of the same age who engage in different-sex conduct.
- *Legal recognition of same-sex partnerships*: This recognition entails passing registered or civil partnership laws which grant same-sex couples with the same pecuniary rights as married couples. Equal treatment of same-sex and different-sex couples should also be conducive to passing same-sex marriage laws to guarantee that same-sex partnerships are endowed with the same social significance as that attached to heterosexual marriage, a social institution with a long history viewed as more “symbolic” than registered/civil partnerships. Evidence indeed confirms the benefits for same-sex couples of being able to “upgrade” their civil partnership to a civil marriage, even in countries like the Netherlands where civil partnership and civil marriage are fully similar in terms of rights and obligations. More precisely, same-sex partners who transformed their civil partnership into marriage had a substantially lower separation rate following this change than similar partners who stayed in a civil partnership, which suggests that the symbolism of marriage is real and exerts a stabilizing effect on same-sex partnerships (Chen and van Ours, 2020^[41]).
- *Equal adoption rights*: In all countries, different-sex partners enjoy adoption rights, through joint-adoption by the two partners, and second-parent adoption by one of the two partners. The former type of adoption occurs when the two adopting partners become the two legal parents of the child (which typically means, given that the number of legal parents is limited to two in most countries, that the legal relationship between a child and her/his biological parents is extinguished). The latter type of adoption occurs when one of the two partners becomes the second legal parent of her/his partner’s biological or adopted children, without terminating the legal parent status of her/his partner. In principle, discriminating against same-sex couples in access to adoption rights could be justified if it were shown that children are worse off when raised by same-sex rather than different-sex parents. International human rights bodies have repeatedly stressed that there is no such thing as the right to a child, which implies that the child’s best interest be prioritised whenever her interest competes with the interest of the partners who want to adopt. Yet, compelling empirical evidence shows no well-being deficit among children living with same-sex parents. Quite the contrary, these

children are characterised by better education and health outcomes (Aldén, Bjorklund and Hammarstedt, 2017^[5]; Watkins, 2018^[6]; Mazrekaj, De Witte and Cabus, 2020^[7]; Kabátek and Perales, 2021^[8]). These positive results suggest that same-sex parents overinvest in their children's education in order to compensate for the unique stressors faced by same-sex families, including persistent stigma from society. Evidence is consistent with this supposition as same-sex parents spend more time with their children than different-sex parents. Women (regardless of their partners' sex) and partnered gay men engage in a similar amount of child-focused time with children (roughly 100 minutes per day). By contrast, partnered heterosexual men dedicate less than one hour to their children, on average (Prickett, Martin-Storey and Crosnoe, 2015^[9]). The higher education and health outcomes of children of same-sex parents conceived through assisted reproductive technology (relative to biological children of different-sex parents) may also reflect that same-sex parents who rely on this technology deliberately choose to be parents. As stressed by the sociologist Michael Rosenfeld, "same-sex couples cannot become parents through misuse of, or failure of birth control as heterosexual couples can. Parenthood is more difficult to achieve for same-sex couples than for heterosexual couples, which implies a stronger selection effect for same-sex parents. If gays and lesbians have to work harder to become parents, perhaps those gays and lesbians who do become parents are, on average, more dedicated to the hard work of parenting than their heterosexual peers, and this could be beneficial for their children" (Rosenfeld, 2010^[10]).

- *Equal access to assisted reproductive technology*: In many countries, infertile different-sex couples can rely on medically assisted techniques using donated sperm and/or egg. In a few countries, infertile different-sex couples in which the woman is unable to carry children on her own can also access surrogacy. The principle of non-discrimination requires equal treatment across different-sex and same-sex couples in access to such technology, as well as equal treatment regarding so-called "automatic co-parent recognition": the same-sex partner of the parent who gives birth through medically assisted techniques should be automatically recognised as the second legal parent, as is the male partner of a woman who procreates through these techniques.
- *Ban on conversion therapies*: Equal treatment of LGB and heterosexual individuals is obviously incompatible with conversion therapies, i.e. practices that aim to change an individual's sexual orientation from homosexual to heterosexual based on the false assumption that LGB people are suffering from a pathological condition which could be cured. These therapies have proven to be extremely harmful, and sometimes tantamount to torture. Such therapies should be banned altogether.

TI-specific provisions

TI-specific provisions seek to address the unique challenges faced by transgender and intersex individuals in their battle to live as who they are. Similar to general and LGB-specific provisions, TI-specific provisions include five dimensions.

The first three dimensions are all about depathologising being transgender, i.e. ensuring that being transgender is not viewed as a pathology. This objective requires three actions:

- *First, not categorising being transgender as a mental illness in national clinical classifications*. In 2019, the Member states of the World Health Organization adopted the 11th edition of the International Classification of Diseases (ICD-11) that removes "gender incongruence", the terminology used to refer to transgender identity, from the list of mental health disorders. ICD-11 is planned to come into effect in all Member countries on 1 January 2022. However, this important move towards depathologising being transgender might not be followed by significant shifts at the national level. The implementation date is indicative, not mandatory, meaning that Member states are free to adjust to ICD-11 at their own pace.

- Second, *permitting transgender people to change their gender marker in the civil registry*, i.e. their sex and first name revealing their gender. To the extent that being transgender is *not* a mental disorder, a person whose gender identity does not match their sex at birth should not receive psychiatric therapy for the purpose of re-aligning their self-perceived gender with their body. Rather, transgender individuals should be entitled to legal gender recognition exactly as cisgender individuals are (the only difference being that this recognition occurs by default for cisgender individuals while it implies a change in the civil registry for transgender individuals).
- Third, *not conditioning legal gender recognition on medical requirements*, including sterilisation, sex-reassignment surgery and/or treatment, or psychiatric diagnosis.

The 4th and 5th dimensions of TI-specific provisions focus on the inclusion of intersex individuals more specifically. An intersex individual is a person whose sex characteristics are neither wholly female nor wholly male. Babies who are born with ambiguous genitals or gonads are often exposed to so-called medically unnecessary “sex-normalising” surgeries. These interventions are nevertheless presented by medical practitioners as “medically necessary” to the extent that they are viewed as beneficial to the child’s psychosocial development in a society that would otherwise stigmatise them for not conforming to the female-male binary system. However, the physical and psychological sufferings of these irreversible forced procedures often outweigh the negative effects of being potentially exposed to stigma.

One first way to protect intersex minors against these interventions is to allow *a non-binary gender option in the civil registry*: on top of ensuring recognition of non-binary individuals, i.e. individuals who do not self-identify as either female or male, this legal provision alleviates the pressure to assign an intersex baby into one of these two categories and, hence, contributes to reduce the perceived need for unconsented medically unnecessary sex-normalising interventions on intersex minors.

A second way to protect intersex minors against these surgeries is to *explicitly ban such interventions until intersex minors can provide informed consent*.

3.3. Are laws fostering LGBTI+ equality in force in Germany?

After presenting how the legislative power is shared between the federal and state levels of governance in Germany, Section 3.3 provides an overview of legal achievements towards LGBTI+ equality. It concludes by investigating the extent to which legal efforts to achieve LGBTI+ equality are associated with greater acceptance of LGBTI+ individuals and with greater economic development.

3.3.1. A brief overview of the legislative process in Germany

The sharing of the legislative power between the federal and state levels of governance in Germany is set forth in the German Constitution (*Basic Law*).

The federal level of governance

Except for antidiscrimination laws applying to state public entities for which German Länder are responsible, the LGBTI+-inclusive laws presented in Section 3.2 are under the purview of the German Federation. That said, the Länder have the possibility to trigger at least some of these laws at the federal level by introducing legislative initiatives in the Bundesrat (Box 3.1).¹

Box 3.1. Law making at the German federal level

The *Basic Law* established Germany as a parliamentary democracy with separation of powers into executive, legislative, and judicial branches. The executive branch consists of the Federal President and the Federal Chancellor, the head of government. The legislative branch is represented by the Bundestag (the German federal parliament) and by the Bundesrat (the legislative body representing the 16 German Länder). The judicial branch is headed by the Federal Constitutional Court which oversees the constitutionality of laws.

About initiating new legislation

New legislation can be initiated by the Federal Government, the Bundesrat, or by the Members of the Bundestag.

- If the Federal Government wishes to amend or introduce a law, the Federal Chancellor must initially transmit the bill to the Bundesrat. As a rule, the Bundesrat then has a period of six weeks in which to deliver its comments on the bill, to which the government may in turn respond with a written counterstatement. The Federal Chancellor then forwards the bill to the Bundestag with the Bundesrat's comments. One exception to this procedure is the draft Budget Act, which is transmitted simultaneously to the Bundesrat and the Bundestag.
- A similar procedure applies when legislative initiatives are introduced by the Bundesrat. Once the majority of the Members of the Bundesrat have voted in favour of a bill, it goes first to the Federal Government, which attaches its comments to it, usually within six weeks, and then forwards it to the Bundestag.
- Draft laws may also be initiated by Members of the German Bundestag, in which case they must be supported by either at least one of the parliamentary groups or at least five percent of the Members of the German Bundestag. Bills introduced in this way do not have to be submitted first to the Bundesrat.

About adopting bills

Federal laws are adopted by the Bundestag, in general with a majority of the votes cast. The participation of the Bundesrat in the legislative process depends on whether its consent is constitutionally required for a bill to become law, which includes, for example, acts that affect the finances and administrative competencies of the Länder. If consent is not required, the Bundesrat can only object to the bill and the Bundestag can overturn its objection by passing the bill by an absolute majority.

Source: German Federal Ministry of the Interior and Community (<https://www.bmi.bund.de/EN/topics/constitution/legislation/legislation-node.html>).

The state level of governance

According to the *Basic Law* (Article 70), German states are entitled to adopt their own legislation as regards the regulation of their public entities. Against this backdrop, state parliaments (Box 3.2) have the possibility to pass laws that effectively protect individuals against discrimination by state public entities, by allowing them to seek redress in this case.

Box 3.2. State parliaments in Germany

In the federal system of the Federal Republic of Germany, all 16 German states are parliamentary republics in which the legislative branch of government is assigned to an elected parliament. Since the abolition of the Bavarian Senate in 1999, all state parliaments are unicameral. In 13 of the 16 German states, the state parliament is known as the *Landtag* (an old German term that roughly means state parliament). In the city states of Bremen and Hamburg, the state parliament is called *Bürgerschaft* (Citizenry), while it is called *Abgeordnetenhaus* (House of Representatives) in Berlin.

Among the most important functions of the state parliaments are the election of the minister President, the control of the state government and the adoption of state laws. They have no influence on federal legislation but participate in the election of the President of Germany by electing state electors to the Federal Convention.

3.3.2. Legal achievements towards LGBTI+ equality at the federal and state levels

This section provides an overview of federal- and state-level legal efforts to foster LGBTI+ equality in Germany.

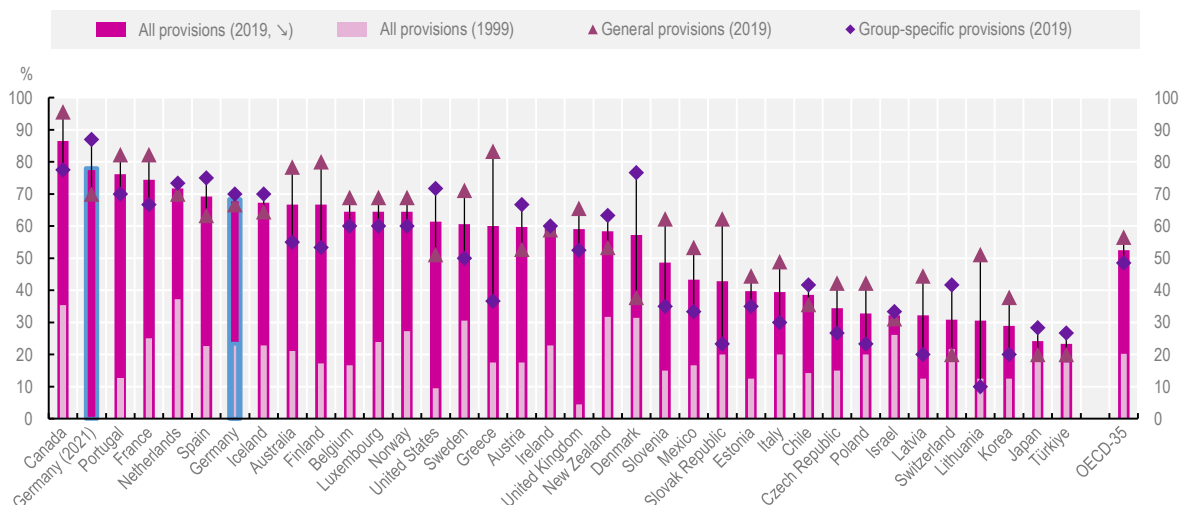
Legal achievements towards LGBTI+ equality at the federal level

Federal-level legal efforts towards LGBTI+ equality are measured by computing “legal LGBTI+ inclusivity” defined as the share of LGBTI+-inclusive laws that have been passed by the German Federation among the set of laws presented in Section 3.2. More precisely, legal LGBTI+ inclusivity as of 2021 is assessed based on the OECD questionnaire on LGBTI+-inclusive laws that was sent to all OECD Member countries in 2019, in preparation of the OECD publication *Over the Rainbow? The Road to LGBTI Inclusion* (2020), and that was sent again to the German Federal Government in 2021 for an update (see Annex 3.A). The methodology to compile Germany’s responses to the 2021 questionnaire is the same as that implemented to compute legal LGBTI+ inclusivity in 2019 (see Annex 3.B).

As of 2019, Germany was one of 17 countries in the OECD that have most legal protections for sexual and gender minorities.² These countries 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 (Figure 3.1). In 2019, Germany had walked more than two-thirds of the way towards full legal equality of LGBTI+ people, with a level of legal LGBTI+ inclusivity equal to 68% (as compared to 53% OECD-wide), noting that the trend is strongly upward: legal LGBTI+ inclusivity in Germany has increased nearly threefold between 1999 and 2019, and has again increased by 10 percentage points (or 15%) between 2019 and 2021, up to 78%.

Figure 3.1. Legal LGBTI+ inclusivity in Germany is improving at a fast pace

Legal LGBTI+ inclusivity as of 1999 and 2019 (plus 2021 for Germany), by OECD country (all provisions, general provisions and group-specific provisions)



Note: Colombia, Costa Rica and Hungary are absent from the analysis. Hungary decided not to participate while Colombia and Costa Rica were not yet OECD Members when the analysis was initiated.

Source: OECD questionnaire on LGBTI+-inclusive laws (2019) and its 2021 update for Germany.

While OECD countries are on average more active in passing general provisions than group-specific provisions, the opposite is the case in Germany. This pattern has been reinforced since 2019, with most of the strides made by Germany directed at further addressing the unique challenges faced by LGB, transgender, and intersex individuals: in 2021, legal LGBTI+ inclusivity attached to LGB-specific and TI-specific provisions soared to 93% and 80% respectively (Figure 3.2). Notably, Germany became in 2020 the first OECD country to implement a nationwide ban on conversion therapy on minors and unconsenting adults. Moreover, Germany became in 2021 the second OECD country to prohibit, throughout its national territory, medically unnecessary sex-normalising treatment or surgery on intersex minors until they can provide informed consent (Portugal was the first in 2018).

Figure 3.2. Germany shows high levels of LGBTI+ inclusivity, ranging from 70% for general provisions to 87% for group-specific provisions

Legal LGBTI+ inclusivity in Germany as of 2021, by component

Legal LGBTI+ inclusivity 2021 level: 78% (up from 68% in 2019)		
General provisions (50% wgt) 2021 level: 70% (up from 67% in 2019)	Group-specific provisions (50% wgt) 2021 level: 87% (up from 70% in 2019)	
Protecting LGBTI+ people against discrimination (10% wgt) 2021 level: 67% (same as in 2019) Up: SOGISC-based discrimination explicitly banned in labour law and in part of private law since 2006 Down: no explicit protection against SOGISC-based discrimination in the Basic Law	LGB-specific provisions (25% wgt) 2021 level: 93% (up from 73% in 2019)	TI-specific provisions (25% wgt) 2021 level: 80% (up from 67% in 2019)
Protecting LGBTI+ people against violence (10% wgt) 2021 level: 17% (up from 0% in 2019) Up: SO-based hate speech explicitly criminalised since 2021 Down: no explicit criminalisation of SOGISC-based hate crime and of GISC-based hate speech	No criminalisation (5% wgt) 2021 level: 100% (same as in 2019) Same-sex conduct decriminalised since the late 1960s and age of consent equalised since 1994	Clinical classification (5% wgt) 2021 level: 0% (same as in 2019) ICD-11 not yet implemented in Germany
Protecting LGBTI+ people against persecution abroad (10% wgt) 2021 level: 67% (same as in 2019) Up: SOGI-based persecution explicitly recognized as a valid ground for granting asylum since 2013 Down: no explicit recognition of SC-based persecution as a valid ground for granting asylum	No conversion therapy (5% wgt) 2021 level: 100% (up from 0% in 2019) Conversion therapy on minors and unconsenting adults banned since 2020	Legal gender recognition (5% wgt) 2021 level: 100% (same as in 2019) Change of gender marker in the civil registry legal since 1981
Guaranteeing LGBTI+ people's civil liberties (10% wgt) 2021 level: 100% (same as in 2019) No restriction on the freedom of expression, peaceful assembly and association of LGBTI+ individuals since the late 1960s	Partnership recognition (5% wgt) 2021 level: 100% (same as in 2019) Registered Life Partnerships and same-sex marriage legal since resp. 2001 and 2017	No medical requirements (5% wgt) 2021 level: 100% (same as in 2019) Legal gender recognition not conditioned on medical requirements since 2011**
LGBTI+-inclusive human rights institution (10% wgt) 2021 level: 100% (same as in 2019) The Federal Anti-Discrimination Agency contributes to enforce and improve equal treatment legislation, in particular for LGBTI+ people, since 2006	Adoption rights (5% wgt) 2021 level: 100% (same as in 2019) Joint adoption and second-parent adoption* by same-sex partners legal since resp. 2017 and 2005	Non-binary gender (5% wgt) 2021 level: 100% (same as in 2019) Non-binary gender option legal for intersex and transgender individuals since resp. 2019 and 2020
	Assisted reproduction (5% wgt) 2021 level: 67% (same as in 2019) Up: Equal access since 1991 Down: No automatic co-parent recognition	No sex-normalising surgery (5% wgt) 2021 level: 100% (up from 33% in 2019) Medically unnecessary sex-normalising interventions on intersex minors banned since 2021

Note: *Adoption of the biological child(ren) of one registered partner by the other partner ("stepchild adoption") became legal in 2005. Adoption of the adopted child(ren) of one registered partner by the other partner ("successive adoption") became legal in 2013. In 2020, stepchild and successive adoption were opened up to cohabitating same-sex partners, meaning that they ceased being reserved only to same-sex registered or married partners.

**Yet, legal gender recognition is still not based on self-determination.

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 Annex 3.B for further details on how legal LGBTI+ inclusivity is computed.

"SO" refers to "sexual orientation", "GI" to "gender identity" and "SC" to "sex characteristics".

Source: OECD questionnaire on LGBTI+-inclusive laws (2019) and its 2021 update for Germany.

Legal achievements towards LGBTI+ equality at the state level

Based on Section 3.3.1, there are two ways in which German states can take an active part in enacting laws fostering LGBTI+ equality: (i) by introducing legislative initiatives in the Bundesrat in order to trigger some of these laws at the federal level; (ii) by passing laws in their state parliament in order to protect LGBTI+ individuals against discrimination by state public entities.

State-level efforts to introduce LGBTI+-inclusive legislative initiatives in the Bundesrat

In the past two decades, a total of 10 legal initiatives (LIs) were introduced in the Bundesrat to foster LGBTI+ equality at the federal level (Box 3.3). On average, each German state participated in introducing between 2 and 3 of these 10 LIs. However, this average masks strong disparities (Table 3.1). A majority

of states (9) either remained outside the process (Bavaria and Saxony) or contributed to launch only one of the 10 LIs (Baden-Württemberg, Hesse, Lower Saxony, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Saarland and Saxony-Anhalt). Among the 7 states who participated in introducing three or more of them, Berlin and Bremen have been the most active (see Annex 3.C for a detailed overview).

Table 3.1. A majority of German states were not active in introducing LGBTI+-inclusive legislative initiatives in the Bundesrat

Overview of German states' participation in introducing LGBTI+-inclusive legislative initiatives in the Bundesrat since the 2000s, as of 2021

States who were not active in introducing LGBTI+-inclusive legislative initiatives in the Bundesrat	States who were active in introducing LGBTI+-inclusive legislative initiatives in the Bundesrat
Baden-Württemberg (1)	Berlin (7)
Bavaria (0)	Brandenburg (6)
Hesse (1)	Bremen (7)
Lower Saxony (1)	Hamburg (3)
Mecklenburg-Western Pomerania (1)	Rhineland-Palatinate (5)
North Rhine-Westphalia (1)	Schleswig-Holstein (4)
Saarland (1)	Thuringia (4)
Saxony (0)	
Saxony-Anhalt (1)	

Note: The digit between parentheses represents the number of LGBTI+-inclusive legislative initiatives that the German state under consideration introduced in the Bundesrat since the 2000s.

Source: Bundesrat database (<https://www.bundesrat.de/DE/bundesrat/laender/laender-node.html>).

Box 3.3. LGBTI+-inclusive legislative initiatives in the Bundesrat

In the past two decades, 10 legal initiatives (LIs) aimed at fostering LGBTI+ equality at the federal level were introduced in the Bundesrat. Three of them concern general provisions:

- LI 572/07 introduced on 20 August 2007 to amend the Criminal Code (one of the proposed amendments consists in explicitly criminalising offences based on the presumed sexual orientation of the victim);
- LI 225/18 introduced on 30 May 2018 to amend the *Basic Law* (the proposed amendment consists in explicitly prohibiting discrimination based on sexual orientation and gender identity);
- LI 713/20 introduced on 24 November 2020 to amend the *General Equal Treatment Act (AGG)* to protect people more effectively against discrimination (one of the proposed amendments consists in explicitly including “gender identity” as a prohibited ground of discrimination to better protect transgender individuals).

The other seven LIs concern group-specific provisions, hence provisions seeking to more specifically address the unique challenges faced by LGB, transgender, and intersex individuals.

- The majority (5) focus on equally treating lesbians, gays and bisexuals:
 - LI 189/15 launched on 28 April 2015 to rehabilitate men convicted after 1945 for same-sex sexual conduct;
 - LI 274/15 launched on 05 June 2015 to introduce the right to marriage for persons of the same sex;
 - LI 343/18 launched on 19 July 2018 to improve rehabilitation, compensation and care of men convicted after 1945 for same-sex sexual conduct;
 - LI 161/19 launched on 04 April 2019 to forbid conversion therapies;
 - LI 223/21 launched on 18 March 2021 to ensure automatic co-parent recognition for female same-sex couples, i.e. ensuring that the same-sex partner of a woman who procreates through medically assisted insemination can become the second legal parent without having to go through adoption. This legal initiative also calls for transgender and intersex parents who proceed to a legal change of their first name and civil status to be referred to by their new first name and gender on their child(ren)’s birth certificate.
- The remaining two focus on equally treating transgender and intersex individuals:
 - LI 362/17 launched on 04 May 2017 to ensure legal gender recognition based on self-determination;
 - LI 226/18 launched on 30/15/2018 to ensure: (i) enforcement of the Federal Constitutional Court’s decision to allow a third gender option in the civil registry; and (ii) legal gender recognition based on self-determination.

State-level efforts to protect LGBTI+ individuals against discrimination by public entities

A few German states have tried to compensate the lack of explicit (and implicit) ban on discrimination based on sexual orientation in the *Basic Law* by explicitly prohibiting discrimination based on this ground in their own constitution³ (Box 3.4) – according to a 2017 decision of the Federal Constitutional Court, gender identity is implicitly covered by the word “sex” in Article 3 (Paragraph 3) of the *Basic Law*, meaning that the rights of transgender and intersex individuals are formally safeguarded when they deal with federal and state public entities (Bundesverfassungsgericht, 2017^[11]).

However, even an explicit ban on discrimination based on sexual orientation, gender identity and sex characteristics in the national constitution would in practice provide only little protection to LGBTI+ individuals against unfair treatment in fields governed by public law. For this protection to be effective, it should be accompanied by complementary legislation that provides for sanctions for discriminating public entities, and for redress for their victims. Yet, given that most public entities individuals deal with are regulated at the state level in Germany, protection against the discrimination by these entities does not fall within the purview of the main federal antidiscrimination law, i.e. the *General Equal Treatment Act* (*Allgemeine Gleichbehandlungsgesetz – AGG*), but within the purview of *state* antidiscrimination laws (if any).

As of today, Berlin is the only German state which has passed an antidiscrimination law (*Landesantidiskriminierungsgesetz – LADG*). Since 2020, the LADG protects individuals (including sexual and gender minorities) against discrimination from all public bodies of the Land of Berlin. More precisely:

- The LADG covers 13 grounds of discrimination: gender, ethnic origin, racial ascription, anti-Semitic ascription, language, religion, belief, disability, chronic illness, age, *sexual identity*, *gender identity* and social status;
- The LADG binds all of the public administration and all public authorities: the Senate of Berlin, district administrations (e.g. citizens' offices), schools and higher education institutions, the police, courts and authorities of the public prosecutor's office, etc.

Moreover, the LADG ensures the implementation of three elements of EU antidiscrimination directives critical to maximise the effectiveness of antidiscrimination protection:

- *The burden of proof*: the LADG adapts the rules on the burden of proof when there is a *prima facie* case of discrimination, i.e. the burden of proof shifts from the plaintiff to the defendant when evidence of discrimination is brought;
- *Right to compensation*: the LADG provides for effective, proportionate and dissuasive sanctions in case Berlin public entities breach their obligation of non-discrimination;
- *Participation of associations in litigation*: the LADG allows individuals to transfer their litigation powers to recognised antidiscrimination associations that can represent them in court.

In addition to the aforementioned, the enactment of the LADG was accompanied by the establishment of an Ombudsman's office (*Ombudsstelle*) aimed at helping victims of discrimination enforce their rights through out-of-court settlements (noting that it also provides the plaintiff with useful legal advice in case she wants to bring the case to the court). Notably, in instances where a public entity is found guilty of discrimination and after an unsuccessful attempt at an amicable settlement, the Ombudsman must complain to this entity and request a remedy.

Several other German states have passed laws that establish a state ombudsman in charge of mediating tensions between citizens and the public administration. This is the case in Bavaria, Baden-Württemberg, Hesse, Mecklenburg-Western Pomerania, Rhineland-Palatinate and Thuringia.⁴ In four of those states (Baden-Württemberg, Hesse, Mecklenburg-Western Pomerania and Rhineland-Palatinate), this ombudsman is also responsible for dealing with issues involving the state police. In this case, the ombudsman works as a complaint office for citizens who wish to bring misconduct by individual police officers to its attention, and as a point of contact that police officers can turn to if they want to address internal problems or grievances. Yet, the lack of a state antidiscrimination law implies that this ombudsman has much less power than the Berlin Ombudsman's office to investigate and seek redress in case of discrimination, in particular when it is directed against LGBTI+ individuals.

Box 3.4. Which German states protect sexual orientation in their constitution?

While Paragraph 1 of Article 3 of the *Basic Law* proclaims citizens' equality before the law ("All persons shall be equal before the law"), Paragraph 3 does not explicitly refer to "sexual orientation" (or "sexual identity") in the limited list of grounds that the national constitution protects from discrimination: "No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith or religious or political opinions. No person shall be disfavoured because of disability."

Yet, six German Länder explicitly prohibit discrimination based on sexual orientation in their state constitution. This is the case of:

- Berlin (since enactment of the state constitution in 1995): "No one may be discriminated against or given preferential treatment because of his or her gender, ancestry, race, language, home country and origin, faith, religious or political views or *sexual identity*" (Article 10, Paragraph 2).
- Brandenburg (since enactment of the state constitution in 1992): "No one shall be favoured or discriminated against on the grounds of (...) *sexual identity* (...)" (Article 12, Paragraph 2).
- Bremen (since 2001): "No one shall be favoured or discriminated against on the grounds of (...) *sexual identity* (...)" (Article 2, Paragraph 2).
- Saarland (since 2011): "No one may be disadvantaged or favoured because of his or her (...) *sexual identity*" (Article 12, Paragraph 3).
- Saxony-Anhalt (since 2020): "No one shall be discriminated against or given preference on the grounds of (...) *sexual identity* (...)" (Article 7, Paragraph 3).
- Thuringia (since enactment of the state constitution in 1993): "No-one may be favoured or disadvantaged because of his or her (...) *sexual orientation*" (Article 2, Paragraph 3).

3.3.3. Are legal achievements towards LGBTI+ equality associated with greater acceptance of LGBTI+ individuals and with greater economic development?

Section 3.3.3 investigates the extent to which legal efforts to achieve LGBTI+ equality are associated with greater acceptance of LGBTI+ individuals and with greater economic development.

Legal achievements towards LGBTI+ equality and acceptance of LGBTI+ individuals

While jurisdictions 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_[12]). 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_[13]). 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_[14]).

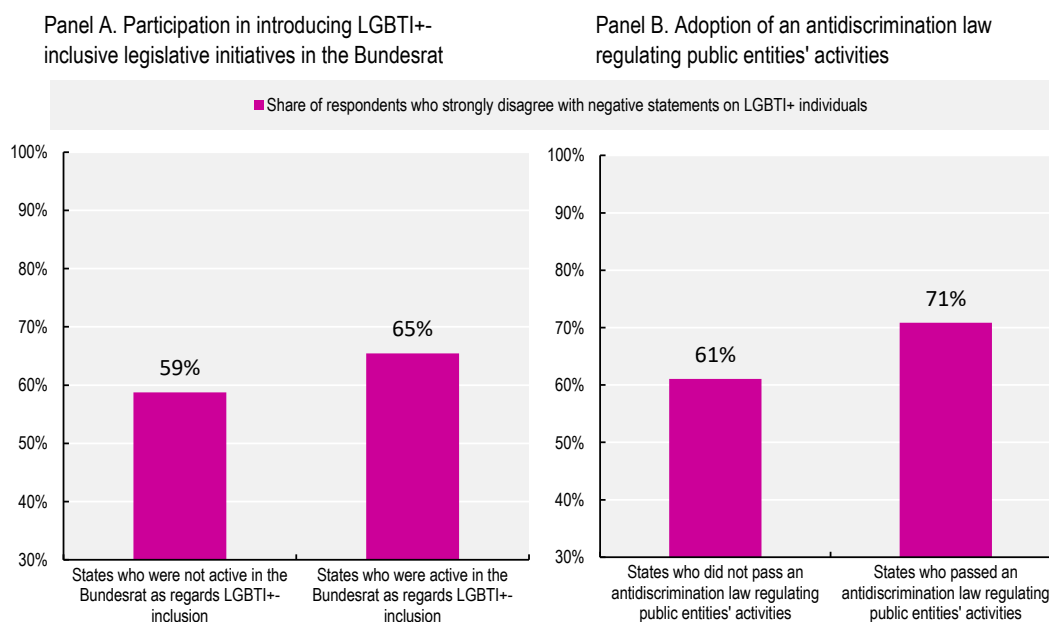
The positive relationship between legal LGBTI+ inclusivity and acceptance of homosexual, bisexual, transgender and intersex individuals has already been confirmed at the country level (OECD, 2020_[11]). As of 2019, an increase in legal LGBTI+ inclusivity from its average value (25%) among the three lowest-performing OECD countries (Türkiye, 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;
- 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%;
- A more than 25% increase in the share of respondents who support transgender people, from 34% to 43%;
- A more than 50% increase in the share of respondents who support intersex people, from 28% to 43%.

Zooming in on the German state level, a positive relationship between legal efforts towards LGBTI+ equality and acceptance of LGBTI+ individuals (as measured in the “Diversity Barometer” presented in Chapter 2) emerges. In states which were active in introducing LGBTI+-inclusive legislative initiatives in the Bundesrat, the share of respondents who strongly disagree with negative statements about non-heterosexual and non-cisgender individuals is 10% higher than in others (65% vs 59%), as revealed in Panel A of Figure 3.3. Similarly, in Berlin, the only jurisdiction who passed a state antidiscrimination law, respondents are nearly 20% more likely to be supportive of LGBTI+ individuals than in other German states (Panel B of of Figure 3.3).

Figure 3.3. Legal achievements towards LGBTI+ equality are associated with greater acceptance of LGBTI+ individuals at the German state level

Share of respondents who strongly disagree with negative statements on LGBTI+ individuals



Note: The share of respondents who strongly disagree with negative statements on LGBTI+ individuals is computed as the average of the share of respondents who answer “strongly disagree” to the following four statements: “It is disgusting when homosexuals kiss in public”; “The fact that homosexuals could raise their own children is simply unthinkable”; “Changing one’s gender is against nature”; “Transsexual people should stay among themselves”.

In Panel A, the mention “states who were not active in the Bundesrat as regards LGBTI+ inclusion” refers to states who, as of 2021, participated in introducing none or one of the 10 LGBTI+-inclusive legislative initiatives in the Bundesrat since the 2000s. By contrast, the mention “states who were active in the Bundesrat as regards LGBTI+ inclusion” refers to states who participated in introducing more than 3 of the 10 LGBTI+-inclusive legislative initiatives in the Bundesrat since the 2000s.

Source: “Diversity Barometer” (*Vielfaltsbarometer*) conducted in 2018 by the Robert Bosch Foundation and the Bundesrat database (Panel A).

Legal achievements towards LGBTI+ equality and economic development

Legal achievements towards LGBTI+ equality should be associated with economic development through a wide range of channels (Box 3.5). A cross-country analysis confirms this positive relationship (OECD, 2020^[11]): as of 2019, 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 (in purchasing power parity).⁵

Box 3.5. Why legal achievements towards LGBTI+ equality should be associated with economic development

Economic development is conducive to education (Chevalier et al., 2013^[15]) 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^[16]). 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^[17]).

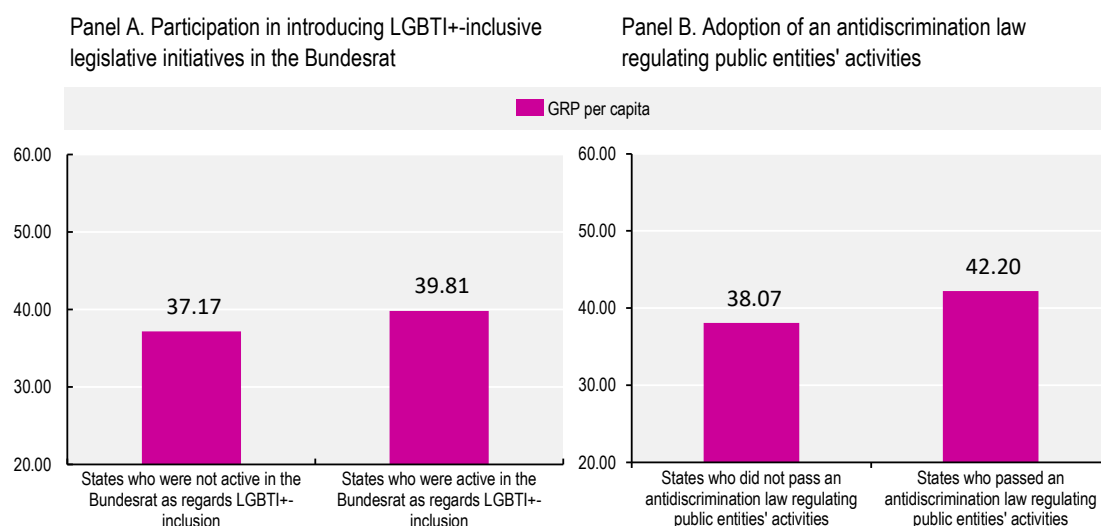
In turn, legal LGBTI+ inclusivity contributes to economic development by reducing the massive cost of anti-LGBTI+ discrimination (Carcillo and Valfort, 2023^[18]). Anti-LGBTI+ discrimination reduces demand for labour of LGBTI+ people, which reduces their wages, their access to employment and confines 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 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. Such is the widespread psychological distress that discrimination causes among the LGBTI+ population (see Chapter 2 for further details).

A similar result holds at the German state level. States who were active in introducing LGBTI+-inclusive legislative initiatives in the Bundesrat are characterised by a gross regional product (GRP) per capita that is more than EUR 2 600 higher than the average across other states (Panel A of Figure 3.4). Likewise, the GRP capita in Berlin exceeds that in other states by more than EUR 4 000 (Panel B of Figure 3.4).

Figure 3.4. Legal achievements towards LGBTI+ equality are associated with greater economic development at the German state level

Gross regional product (GRP) per capita in 2020 (in thousands EUR)



Note: In Panel A, the mention “states who were not active in the Bundesrat as regards LGBTI+ inclusion” refers to states who participated in introducing none or one of the 10 LGBTI+-inclusive legislative initiatives in the Bundesrat since the 2000s. By contrast, the mention “states who were active in the Bundesrat as regards LGBTI+ inclusion” refers to states who participated in introducing more than 3 of the 10 LGBTI+-inclusive legislative initiatives in the Bundesrat since the 2000s.

Source: Federal Statistical Office of Germany (*Statistisches Bundesamt*) and the Bundesrat database (Panel A).

3.4. How could LGBTI+ equality in Germany be further improved through legislation?

A number of legal next steps would help improve LGBTI+ equality in Germany. Section 3.4 discusses the way forward, at both the federal and state levels (see Table 3.2 for a summary).

Table 3.2. Further actions at both the federal and state levels are needed to improve LGBTI+ equality in Germany through legislation

Possible legal next steps towards LGBTI+ equality in Germany, as of 2021

Possible legal next steps	
FEDERAL LEVEL	
General provisions	Adding the ground “sexual identity” (or “sexual and gender identity”) in Article 3 (Paragraph 3) of the <i>Basic Law</i> . Closing legal loopholes in the <i>General Equal Treatment Act</i> (AGG) regarding the regulation of both employment relationships and access to (and supply of) goods and services.
LGB-specific provisions	Granting automatic co-parent recognition to lesbian couples who rely on assisted reproductive technology
TI-specific provisions	Basing legal gender recognition on self-determination. Reforming the law of parentage to ensure that parents who proceed to a legal change of their first name and civil status are referred to by their new first name and gender on their child(ren)’s birth certificate.
STATE LEVEL	
	Passing a state antidiscrimination law similar to the <i>Landesantidiskriminierungsgesetz</i> (LADG) in Berlin

Source: OECD analysis.

3.4.1. The way forward at the federal level

Margins for improvement exist for all categories of LGBTI+-inclusive laws, be they general, LGB-specific or TI-specific.

General provisions

In critical federal legislation, reference to LGBTI+ individuals is neither explicit nor implicit. Notably, sexual orientation is not part of the list of grounds that the national constitution protects from discrimination (nor is gender identity or sex characteristics/intersex status, although the latter grounds are implicitly covered under the word “sex” according to the Federal Constitutional Court). Since 1994 and the attempt of the Joint Constitutional Commission of the Bundestag and Bundesrat to include the prohibition of discrimination based on sexual identity in the *Basic Law*, several stakeholders have been pushing for introducing this mention. This is for instance the case of several German states who, in 2018, submitted a draft bill to the Bundesrat to amend Article 3 of the *Basic Law* by adding the characteristics “sexual and gender identity” (legislative initiative LI 225/18 mentioned in Annex 3.C) that is still under discussion.⁶ Following other OECD countries who ban discrimination explicitly based on sexual orientation in their constitution (Canada, Mexico, New Zealand, Portugal and Sweden), the federal government could consider proceeding to this change (Molter, 2022^[19]).

Moreover, the scope of some LGBTI+-inclusive laws already in force could be broadened. This is the case of the *General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG)*. The fact that this federal antidiscrimination law does not cover relationships between individuals and public entities (except when they unfold in the framework of an employment contract or private transactions) has already been stressed and justified by the fact that most public entities individuals deal with are regulated at the state level. Nevertheless, legal loopholes persist even in the fields that the AGG is supposed to regulate, i.e. labour law and private law. According to the AGG, employers must observe the ban on discrimination when publishing job advertisements, during the application procedure, and in existing employment relationships. In addition, in the field of private law, the AGG applies to access to and supply of good and services, “for example when shopping, visiting a restaurant or a nightclub, searching for a flat, or conducting insurance and banking transactions.”⁷ Key legal gaps remain though:

- Religious exemptions are granted under Article 9 of the AGG, allowing churches and other places of worship to discriminate against workers in some cases, “taking into account the self-understanding of the respective religious community or association with regard to its right of self-determination or according to the nature of the activity”. However, as of now, the extent of these exemptions has not been clarified by the courts.⁸ This issue has been repeatedly raised by civil society organisations in Germany.⁹
- Although racial and ethnic protection extends to all types of contracts for goods and services, for other characteristics such as sexual orientation, protection only applies in the case of “bulk business”, i.e. exchange of goods and services without regard to the individual involved. This exemption leaves several private transactions outside the scope of the AGG. For instance, “the letting of residential space is only treated as a form of bulk business when a landlord lends out more than 50 flats” (Antidiskriminierungsstelle, 2019, p. 20^[20]). In other words, if a landlord lends out less than 50 flats, discrimination against people based on their sexual orientation, gender identity or sex characteristics is not illegal from the AGG’s viewpoint.

Closing these legal loopholes would contribute to strengthen LGBTI+ equality in Germany.

LGB-specific provisions

Access to assisted reproductive technology is still not fully equal across German same-sex and different-sex partners (Lange, 2022^[21]). Access to surrogacy is equally prohibited for both forms of partnership. However, equal treatment regarding access to artificial insemination and *in vitro* fertilisation is not completely guaranteed: although such access is not illegal for lesbian couples, it is not explicitly legal either. Consequently, while the non-biological father in a different-sex couple which has a child through artificial insemination or *in vitro* fertilisation is automatically recognised as a legal parent, this is not the

case of the non-biological parent in a same-sex couple since she must go through an adoption procedure for this recognition to happen. In a context where nearly half of OECD countries ensure fully equal access to assisted reproductive technology to same-sex and different-sex couples (OECD, 2020^[11]), Germany could consider legal reforms to grant automatic co-parent recognition to lesbian couples, as encouraged by a recent legislative initiative in the Bundesrat (LI 223/21 – see Annex 3.C for further information).

TI-specific provisions

Germany has devoted significant efforts to implementing ICD-11 (Guethlein et al., 2021^[22]). By mid-2022, the new ICD-11 catalogue should be transposed into national law and hence yield a depathologisation of transgender people in the medical system: transsexualism will be coded in the section “Conditions affecting sexual health,” thus not as a mental illness.

However, this achievement should not mark the end of Germany’s legal strides to ensure equal treatment of transgender and intersex individuals. Further action is needed to guarantee that legal gender recognition is fully depathologised. 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) base 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.¹⁰ Yet, Germany belongs to the minority (5) of these 14 countries where legal gender recognition is not based on self-determination: it requires validation by a third party. More precisely, although the request for sterilisation and sex-reassignment surgery enshrined in the 1980 *Transsexual Act* was removed in 2011 following a ruling by the *German Constitutional Court*, the process still involves going to court and getting the opinion of two experts. These experts are 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. These conditions entail a risk of re-medicalising legal gender recognition since applicants are tempted to include medical assessments in their application and even rely on sex-reassignment surgery or treatment to increase their chance of being validated. To fully depathologise legal gender recognition, Germany should base legal gender recognition on self-determination, as advocated by several German states in the framework of already two legislative initiatives in the Bundesrat (LI 362/17 and LI 226/18 – see Annex 3.C for further information).

Last but not least, following LI 223/21 introduced in 2021 by Berlin, Hamburg and Thuringia in the Bundesrat, the German federal government could consider reforming the law of parentage to ensure that parents who proceed to a legal change of their first name and civil status are referred to by their new first name and gender on their child(ren)’s birth certificate (Lange, 2022^[21]).

3.4.2. The way forward at the state level

Legal loopholes still exist in Germany regarding protection against discrimination. As it is clear now, although the *General Equal Treatment Act (AGG)* covers several areas of labour and private law since 2006, it does not apply to public law activities. In other words, while it protects (although imperfectly) against discrimination by an employer or a landlord it cannot provide redress if discrimination originates from state administration and authorities, such as schools or the police (Molter, 2022^[19]).

Against this backdrop, the Berlin antidiscrimination law (LADG) goes a long way in closing legal gaps by enabling people to take action against discrimination by state public entities, notably with the help of the Ombudsman’s office (*Ombudsstelle*) whose powers to enforce people’s rights are unprecedented. Not only does the LADG support victims if discrimination from state public entities occurs, it also plays a deterrent role by obliging the entire state public sector to take concrete actions to prevent discriminatory behaviour. By following suit and implementing similar LADGs, other German states could make immense progress in protecting LGBTI+ individuals against discrimination together with other groups at risk of unfair treatment.

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Annex 3.A. 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 Section 3.2 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 of inquiries, 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, beyond employment?
- Is discrimination based on *gender identity* explicitly prohibited in a broad range of fields by the national law, beyond employment?
- Is discrimination based on *sex characteristics* and/or *intersex status* explicitly prohibited in a broad range of fields by the national law, beyond employment?

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

- Is discrimination based on *sexual orientation* explicitly prohibited by the national constitution?
- Is discrimination based on *gender identity* explicitly prohibited by the national constitution?
- Is discrimination based on *sex characteristics* and/or *intersex status* explicitly prohibited by the national 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 Section 3.2 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?

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?

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)".

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 intersexuality, 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.B. Compiling responses to the OECD questionnaire on LGBTI+-inclusive laws

Legal LGBTI+ inclusivity is calculated based on responses to the OECD questionnaire on LGBTI+-inclusive laws. For illustration, the component “Protection of LGBTI+ people against violence” is used. As is apparent in Annex 3.A, 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);
- 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, but where no such provision exists concerning sex characteristics. In this case, legal LGBTI+ inclusivity associated with 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 associated with each of the 15 components of the OECD questionnaire on LGBTI+-inclusive laws 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 associated with 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 associated with 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 associated with 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 associated with 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 (Annex Box 3.B.1).

Annex Box 3.B.1. 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} .

Annex 3.C. German states' efforts to introduce LGBTI+-inclusive legislative initiatives in the Bundesrat

Legislative initiatives aimed at passing LGBTI+-inclusive general provisions at the federal level

Since the early 2000s, three legislative initiatives aimed at passing LGBTI+-inclusive general provisions at the federal level have been introduced in the Bundesrat. Annex Table 3.C.1 provides the list of German states who did or did not participate in the introduction of these legislative initiatives.

Annex Table 3.C.1. A small majority of German states contributed to the emergence of LGBTI+-inclusive general provisions at the federal level

Overview of whether German states participated in introducing legislative initiatives (LIs) in the Bundesrat aimed at passing LGBTI+-inclusive general provisions at the federal level, as of 30 June 2021

German states who did not participate in introducing LIs in the Bundesrat aimed at passing LGBTI+-inclusive general provisions at the federal level	German states who participated in introducing LIs in the Bundesrat aimed at passing LGBTI+-inclusive general provisions at the federal level		
	LI 572/07 launched on 20 August 2007 in order to amend the Criminal Code (one of the proposed amendments consists in explicitly criminalising offences based on the sexual orientation of the victim and/or in considering them as an aggravating circumstance)	LI 225/18 launched on 30 May 2018 to amend the Basic Law (the proposed amendment consists in explicitly prohibiting discrimination based on sexual orientation and gender identity)	LI 713/20 launched on 24 November 2020 in order to amend the General Equal Treatment Act (AGG) so as to protect people more effectively against discrimination (one of the proposed amendments consists in explicitly including "gender identity" as a prohibited ground of discrimination to better protect transgender people)
Baden-Württemberg Bayern Hesse Lower Saxony North Rhine-Westphalia Saarland Saxony	Brandenburg Mecklenburg-Western Pomerania Saxony-Anhalt	Berlin Brandenburg Bremen Hamburg Rhineland-Palatinate Schleswig-Holstein Thuringia	Berlin Bremen

Source: Bundesrat database (<https://www.bundesrat.de/DE/bundesrat/laender/laender-node.html>).

Legislative initiatives aimed at passing LGBTI+-inclusive group-specific provisions at the federal level

Since the early 2000s, seven legislative initiatives aimed at passing LGBTI+-inclusive group-specific provisions at the federal level have been introduced in the Bundesrat: five that target LGB-specific provisions and two that target TI-specific provisions.

LGB-specific provisions

Annex Table 3.C.2 provides the list of German states who did or did not contribute to the emergence of LGB-specific provisions at the federal level.

Annex Table 3.C.2. A large majority of German states contributed to the emergence of LGB-specific provisions at the federal level

Overview of whether German states participated in introducing legislative initiatives (LIs) in the Bundesrat aimed at passing LGB-specific provisions at the federal level, as of 30 June 2021

German states who did not participate in introducing LIs in the Bundesrat aimed at passing LGB-specific provisions at the federal level	German states who participated in introducing LIs in the Bundesrat aimed at passing LGB-specific provisions at the federal level				
	LI 189/15 launched on 28 April 2015 to rehabilitate men convicted after 1945 for same-sex sexual conduct	LI 274/15 launched on 05 June 2015 to introduce the right to marriage for persons of the same sex	LI 343/18 launched on 19 July 2018 to improve rehabilitation, compensation and care of men convicted after 1945 for same-sex sexual conduct	LI 161/19 launched on 04 April 2019 to forbid conversion therapies	LI 223/21 launched on 18 March 2021 to ensure automatic co-parent recognition for female same-sex couples, i.e. ensuring that the same-sex partner of a woman who procreates through medically assisted insemination can become the second legal parent without having to go through adoption
Bayern Mecklenburg-Western Pomerania Saxony Saxony-Anhalt	Berlin	Baden-Württemberg Brandenburg Bremen Hamburg Lower Saxony North Rhine-Westphalia Rhineland-Palatinate Schleswig-Holstein Thuringia	Berlin Bremen	Berlin Brandenburg Bremen Hesse Rhineland-Palatinate Saarland Schleswig-Holstein	Berlin Hamburg Thuringia

Note : It is worthwhile stressing that, as early as 2010, Berlin introduced in the Bundesrat a resolution on the opening of marriage to same-sex couples. Although they are not legally binding, resolutions are complements to legislative initiatives that notably allow federal states to draw attention on specific issues.

Source: Bundesrat database (<https://www.bundesrat.de/DE/bundesrat/laender/laender-node.html>)

TI-specific provisions

Annex Table 3.C.3 provides the list of German states who did or did not contribute to the emergence of TI-specific provisions at the federal level.

Annex Table 3.C.3. Only a minority of German states contributed to the emergence of TI-specific provisions at the federal level

Overview of whether German states participated in introducing legislative initiatives (LIs) in the Bundesrat aimed at passing TI-specific provisions at the federal level, as of 30 June 2021

German states who did not participate in introducing LIs in the Bundesrat aimed at passing TI-specific provisions at the federal level	German states who participated in introducing LIs in the Bundesrat aimed at passing TI-specific provisions at the federal level	
	LI 362/17 launched on 04 May 2017 to ensure legal gender recognition based on self-determination	LI 226/18 launched on 30/15/2018 to ensure (i) enforcement of the Federal Constitutional Court's decision to allow a third gender option in the civil registry and (ii) legal gender recognition based on self-determination
Baden-Württemberg Bayern Hamburg Hesse Mecklenburg-Western Pomerania Lower Saxony North Rhine-Westphalia Saarland Saxony Saxony-Anhalt	Berlin Brandenburg Bremen Rhineland-Palatinate Thuringia	Brandenburg Bremen Rhineland-Palatinate Schleswig-Holstein

Source: Bundesrat database (<https://www.bundesrat.de/DE/bundesrat/laender/laender-node.html>)

Notes

¹ Resolutions are increasingly used by German states as a political complement to the right of initiative. These resolutions are generally addressed to the Federal Government, and seek to draw attention to particular problems, present the Bundesrat's position on a specific topic or urge the Federal Government to initiate a legislative procedure on a particular point. Resolutions are however not legally binding.

² These countries are Australia, Austria, Belgium, Canada, Finland, France, Germany, Greece, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, United Kingdom and the United States.

³ As the German constitution (*Basic Law*) defines the Federal Republic of Germany as a federation, each German state has its own constitution. The *Basic Law* gives the states a broad discretion to determine their respective state structure, only stressing that each German state has to be a social and democratic republic under the rule of law and that the people in every state must have an elected representation, without giving further details (Article 28.1).

⁴ More information on the ombudsman in those states can be found on the following websites: <https://www.buergerbeauftragter.bayern/> in Bavaria; <https://www.buergerbeauftragte-bw.de/> in Baden-Württemberg; <https://www.giessener-allgemeine.de/hessen/hessens-erster-polizeibeauftragter-90998307.html> in Hesse (no official website yet); <https://www.buergerbeauftragter-mv.de/> in Mecklenburg-Western Pomerania; <https://www.diebuergerebeauftragte.rlp.de> in Rhineland-Palatinate; <https://buergerbeauftragter-thueringen.de/> in Thuringia.

⁵ For additional evidence on the positive relationship between legal achievements towards LGBTI+ equality and economic development, see (Badgett, Waaldijk and Rodgers, 2019^[23]).

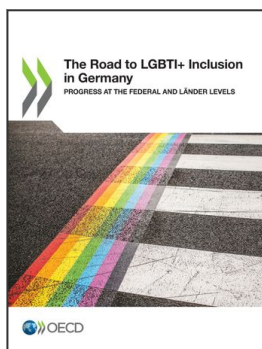
⁶ For more information, see the section related to the amendment of Article 3 of the Basic Law on the website of the Lesbian and Gay Association in Germany (Lesben- und Schwulenverband in Deutschland – LSVD): <https://www.lsvd.de/de/ct/1825-Ergaenzung-von-Artikel-3-im-Grundgesetz-um-quot-sexuelle-Identitaet-quot>.

⁷ *Antidiskriminierungsstelle – General Equal Treatment Act*. (n.d.). Retrieved 8 February 2022, from <https://www.antidiskriminierungsstelle.de/EN/about-discrimination/order-and-law/general-equal-treatment-act/general-equal-treatment-act-node.html>.

⁸ Federal Anti-Discrimination Agency, (n.d.). *Guide to the General Equal Treatment Act Explanations and Examples*, 13.

⁹ *10 Jahre Allgemeines Gleichbehandlungsgesetz*. (n.d.). Retrieved 8 February 2022, from <https://www.lsvd.de/de/ct/274-10-Jahre-Allgemeines-Gleichbehandlungsgesetz>.

¹⁰ These countries are Belgium, Chile, Denmark, Iceland, Ireland, Mexico (Mexico City), the Netherlands, Norway and Portugal. 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.



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