

1 LGBTI+ inclusion in Germany: An overview

This introductory chapter summarises the report’s findings on the state of LGBTI+ inclusion in Germany. After investigating the life situation of LGBTI+ Germans, the report analyses the extent to which laws and policies conducive to LGBTI+ equality have been passed and implemented, at both the federal and state levels. The report yields three main takeaways: (i) despite improvements in social acceptance of sexual and gender minorities, anti-LGBTI+ discrimination and violence is a reality that hampers the well-being of millions in Germany; (ii) although legal achievements towards LGBTI+ equality have been substantial at the federal level, they remain modest at the state level; (iii) beyond laws, policy achievements towards LGBTI+ equality have been significant, at both the federal and state levels, although margins for improvement exist notably in the field of preventive policies.

1.1. Introduction and main findings

This report is the first country review undertaken as part of the OECD work on LGBTI+ inclusion (oe.cd/lgbti). It aims to explore legal and policy achievements towards LGBTI+ equality in Germany, a federal country, at both the national and subnational levels, to identify progress as well as remaining challenges and facilitate the sharing of good practices within and across different levels of governance.

Chapter 1 summarises the report's findings on the state of LGBTI+ inclusion in Germany. After investigating the life situation of LGBTI+ Germans, Chapter 1 analyses the extent to which laws and policies conducive to LGBTI+ equality have been passed and implemented, at both the federal and state levels.

Main findings

- Despite improvements in social acceptance of sexual and gender minorities, anti-LGBTI+ discrimination and violence is a reality that hampers the well-being of millions in Germany.
 - Assuming no overlap between non-heterosexual and non-cisgender individuals, the share of LGBTI+ Germans varies between 2.5% or 2.1 million people (the equivalent of the population of Slovenia) based on the Socio-Economic Panel (SOEP) and the German Health Update (GEDA 2019/2020-EHIS) and 14% or 11.6 million people (the equivalent of the population of Belgium) based on IPSOS' *LGBT+ Pride 2021 Global Survey*.
 - Despite improvements, social acceptance of sexual and gender minorities remains limited, especially with regard to transgender and intersex individuals: 59% of Germans are comfortable with having an LGB son- or daughter-in-law while this share falls to 45% when the son- or daughter-in-law is transgender or intersex, noting that these national averages hide strong disparities across states.
 - Anti-LGBTI+ discrimination and violence is a reality. In 2019, more than half of LGBTI+ Germans reported having personally felt discriminated against during the 12 months prior to the survey, while a little more than one-third reported having been physically or sexually attacked or threatened with violence in the past five years. Similar findings emerge from more objective evidence.
 - LGBTI+ Germans show lower levels of well-being than their non-LGBTI+ counterparts. In the late 2010s, life satisfaction of LGBTI+ Germans was 10% lower than among the general population, noting that, at least partly due to the stigma they face, LGBTI+ Germans are also characterised by worse mental and physical health outcomes.
- Although legal achievements towards LGBTI+ equality have been substantial at the federal level, they remain modest at the state level.
 - Considering the laws that are under the purview of the federal government (which coincide with all those viewed as critical to achieve equal treatment of sexual and gender minorities), Germany had walked more than three-quarters of the way towards full legal equality of LGBTI+ people in 2021. Yet, margins for improvement exist, including:
 - Adding sexual orientation in the list of grounds that the *Basic Law* protects from discrimination;
 - Closing the legal loopholes of the *General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – AGG)* that prevent sexual and gender minorities from being fully protected against discrimination in employment and in access to (and supply of) goods and services;
 - Granting automatic co-parent recognition to lesbian couples who rely on assisted reproductive technology;

- Basing legal gender recognition on self-determination rather than on validation by a third party to ensure complete depathologisation of being transgender;
- Reforming the law of parentage to guarantee 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, a prerequisite for outright equal treatment of transgender and intersex parents.
- Although German states have little scope for enhancing LGBTI+ inclusion through legislation, they still can take an active part in fostering legal LGBTI+ equality in two ways: (i) by introducing legislative initiatives in the Bundesrat in order to trigger LGBTI+-inclusive 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. Yet, few states exploit this room for action, despite the returns of doing so in terms of improved attitudes towards sexual and gender minorities and economic development. Notably, Berlin is the only state to have passed in 2020 an antidiscrimination law (*Landesantidiskriminierungsgesetz – LADG*) that enables people to take action against discrimination by state public entities, 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.
- Beyond laws, policy achievements towards LGBTI+ equality in Germany have been significant, at both the federal and state levels. But there is still room for the federal and state governments to continue joining forces to improve LGBTI+ inclusion through policies.
 - Although implementation power lies primarily with the subnational level, the federal government has undertaken landmark initiatives concerning all policies critical to achieve LGBTI+ equality.
 - Each German state has implemented a majority of these policies, noting that policy achievements positively depend on the number of successive action plans a given state set up, and on whether an advisory board oversees the execution of those action plans.
 - Follow-up policies needed to make further strides towards LGBTI+ equality include:
 - Better advertising low-threshold legal and psychosocial support for LGBTI+ victims of discrimination and violence while ensuring that greater outreach go hand in hand with high-quality service delivery;
 - Combining the establishment of an LGBTI+ unit or of LGBTI+ liaison officers within the police force with significant workload relief giving them time to fulfil the tasks associated with their role, on top of their regular policing activities;
 - Complementing protection plans aimed at ensuring the safety of LGBTI+ asylum seekers in reception facilities by detailed terms of reference for reception facility operators and regular inspection by an independent body;
 - Devising and administering school climate surveys throughout the national territory to create awareness among schools where homophobia and transphobia are pervasive and thus encourage them to enhance their reliance on LGBTI+-inclusive teacher and student training;
 - Ensuring that both public and private employers are properly trained on the *General Equal Treatment Act* and the set of grounds this Act protects from discrimination;
 - Expanding efforts to make the curriculum for the training of nurses more LGBTI+-inclusive to the training of personal care workers and doctors, and improving the demand of health care facilities for staff duly trained on dealing with LGBTI+ patients.

1.2. How do LGBTI+ individuals fare in Germany?

Despite improvements in social acceptance of sexual and gender minorities, anti-LGBTI+ discrimination and violence is a reality that hampers the well-being of millions in Germany.

1.2.1. How many Germans self-identify as LGBTI+?

Germany has been active in bridging the data gap to ease estimates of the size of the LGBTI+ population. It is among the very few OECD countries which collect information on sexual orientation (since 2016) and on gender identity (since 2021) in one of their nationally representative surveys, the Socio-Economic Panel (SOEP). While an estimate of the share of non-cisgender individuals based on SOEP 2021 is not yet available, it was estimated to amount to 0.6% by the German Health Update (GEDA 2019/2020-EHIS). As for the share of Germans who self-identify as lesbians, gays or bisexuals, it is equal to 1.9% according to SOEP. Assuming no overlap between LGB and non-cisgender people, these findings suggest that LGBTI+ Germans represent 2.5% of the population, hence 2.1 million people or the equivalent of the population of Slovenia.

Yet, the share of non-response or of individuals who indicate “prefer not to say” is high, suggesting that a significant percentage of LGBTI+ individuals do not yet live openly as such, or do not yet feel comfortable with disclosing this personal information in a survey conducted by public authorities.

In a context where respondents may feel more secure in disclosing sensitive information to non-governmental polling companies than to national statistical offices, attempts of these companies to measure the share of LGBTI+ individuals merit attention, although caution is warranted: in this field, polling companies typically rely on opt-in panels rather than probability sampling, meaning that findings may overstate the size of the LGBTI+ population. The *LGBT+ Pride Global Survey* that IPSOS conducted in 2021 is the first attempt to quantify the size of sexual and gender minorities across 27 countries, including 19 OECD countries. This survey reveals that:

- 11% of Germans self-identify as non-heterosexual: 2% as lesbian or gay, 6% as bisexual and 3% as “other”, i.e. “asexual”, “pansexual”, etc;
- 3% of Germans self-identify as non-cisgender.

Based on these estimates, the share of LGBTI+ individuals in the German population may be as high as 14% or 11.6 million people (the equivalent of the population of Belgium).

1.2.2. How do Germans perceive LGBTI+ individuals?

While cross-continent surveys like the World Values Survey (WVS) include questions on attitudes towards homosexuals since the early 1980s, the *Special Eurobarometer on Discrimination* has the advantage of also measuring acceptance of bisexuals (along with acceptance of homosexuals) since 2009, transgender individuals since 2015 and, most recently, intersex individuals (since 2019). Although data are limited to EU member countries and cover a shorter timeframe, they permit a more comprehensive estimate of acceptance of LGBTI+ individuals.

The *Special Eurobarometer on Discrimination* confirms the shift towards greater acceptance of sexual and gender minorities that has also been observed in non-EU OECD countries (OECD, 2019^[1]). Whereas the overall rate of social acceptance of LGBTI+ people in Germany was 10 percentage points lower than the EU-OECD average in 2015 (36% vs 46%), it had risen to 4 percentage points above this average by 2019 (57% vs 53%).

Yet, levels of social acceptance remain limited in 2019. This pattern is particularly obvious when the hypothetical LGBTI+ individual referred to in social acceptance questions is depicted as a family member. While 66% of Germans would feel comfortable with an LGBTI+ work colleague, only 50% report comfort

with the idea of their child being in “a love relationship” with an LGBTI+ person. Transgender and intersex individuals face lower social acceptance than do LGB individuals: 59% of Germans are comfortable with having an LGB son- or daughter-in-law while this share falls to 45% when the son- or daughter-in-law is transgender or intersex.

These national averages hide strong disparities across German states. Overall, levels of social acceptance of LGBTI+ individuals are higher in states of former West than former East Germany: the rate of social acceptance of LGBTI+ individuals is equal to 74% in Bremen, but only 50% in Saxony (Robert Bosch Foundation, 2019^[2]).

1.2.3. Are LGBTI+ Germans exposed to discrimination and violence?

In 2012 and 2019, the European Union Agency for Fundamental Rights (FRA) conducted the first two cross-country surveys among non-heterosexual and non-cisgender individuals (93 000 LGBT respondents in 2012 and 140 000 LGBTI respondents in 2019). LGBTI+ Germans report strong feelings of being discriminated against as well as high levels of violence. Contrary to the evolution of social acceptance of sexual and gender minorities, perception of discrimination and experience of violence self-reported by LGBTI+ individuals have worsened over time. Rather than an increase in discriminatory and violent acts against non-heterosexual and non-cisgender individuals (that would be difficult to reconcile with greater acceptance of this population), these two opposite trends suggest greater readiness of sexual and gender minorities to report the unfair treatment they are subjected to. More precisely, in 2019:

- More than half (58%) of LGBTI+ Germans reported having personally felt discriminated against during the 12 months prior to the survey in at least one of eight hypothetical situations, including in education, labour market or health care settings: 41% among LGBs and 66% among transgender and intersex respondents, which is slightly more than the EU-OECD average. Feelings of discrimination have generally increased across the EU since 2012, a trend mainly driven by transgender respondents. Germany is no exception: the share of LGBTI+ Germans reporting discrimination was nearly 10 percentage points higher in 2019 than in 2012.
- A little more than one-third (36%) of LGBTI+ respondents reported having been physically or sexually attacked or threatened with violence in the past five years prior to the survey (as compared to 33% on average across EU-OECD countries): 26% among LGBs and 41% among transgender and intersex respondents. Germany is among the few OECD countries where self-reported experience of violence by sexual and gender minorities has increased rather than decreased since 2012, a trend that concerns both non-heterosexual and non-cisgender individuals.

Similar findings emerge from more objective evidence:

- Analyses based on SOEP 2016-19 reveal significant unexplained gaps in labour market outcomes between LGBTI+ and non-LGBTI+ Germans. Although these groups show similar employment rates, LGBTI+ Germans have a 30% higher risk to be engaged in precarious work than their non-LGBTI+ counterparts. LGB Germans are also characterised by lower hourly wages, a result driven by men: the hourly wage of homosexual and bisexual men is 15% lower than that of heterosexual men. As for homosexual and bisexual women, they earn as much as heterosexual women, despite facing fewer family responsibilities. Although field experiments are scarce, they confirm suspicions of anti-LGBTI+ discrimination. In Munich for instance, a correspondence study conducted in 2012 unveiled that straight female candidates were between 20% and 30% more likely to be invited to a job interview than lesbian candidates with similar CVs and letters of application.
- Measures of anti-LGBTI+ violence that go beyond subjective accounts also reveal a worrying situation for sexual and gender minorities. In 2020, violent hate crimes motivated by the presumed sexual orientation of the victim accounted for more than 10% of all violent politically motivated crimes. This figure is over ten times higher than it was two decades ago, when their share constituted less than 1%, presumably due to massive underreporting. When the gender identity of the victim is taken into account (an information introduced in 2020), this share rises above 15%.

1.2.4. How do LGBTI+ Germans compare in terms of well-being?

LGBTI+ Germans show lower levels of well-being than their non-LGBTI+ counterparts. In the late 2010s, life satisfaction of LGBTI+ Germans was 10% lower than among the general population: when asked to report on a scale from 0 to 10 how satisfied they are with their life, LGBTI+ individuals responded 6.7, as compared to 7.4 across the German population at large (OECD, 2020^[3]; FRA, 2020^[4]). Consistent with stigma impairing health, LGBTI+ Germans are characterised by worse mental and physical health outcomes than the rest of the German population. LGBTI+ Germans are (Kasprowski et al., 2021^[5]):

- 2.6 times more likely to have ever been diagnosed with a depressive disorder compared to heterosexual cisgender Germans (26% vs 10%).
- 30% more likely to have ever been diagnosed with any physical health condition. In particular, they are 2.5, 1.7 and 1.3 times more likely to have been diagnosed with a heart disease, with migraines and with chronic back pain respectively.

The coronavirus pandemic contributed to worsen these health disparities (BMFSFJ, 2021^[6]; OECD, 2021^[7]; LSVD, 2021^[8]; ILGA Europe, 2020^[9]).

1.3. Legal steps towards LGBTI+ equality in Germany: Achievements and way forward

Although legal achievements towards LGBTI+ equality have been substantial at the federal level, they remain modest at the state level.

1.3.1. Achievements and way forward at the federal level

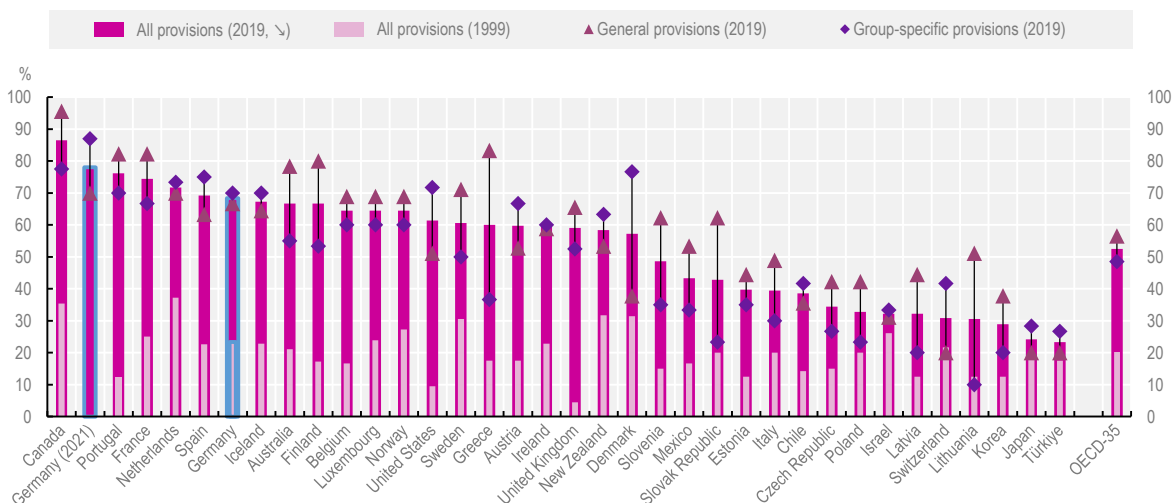
All the laws viewed as critical to achieve equal treatment of sexual and gender minorities (see Box 1.1) fall under the purview of the federal government. By 2021, Germany had walked more than three-quarters of the way towards full legal equality of LGBTI+ people. Yet, margins for improvement exist.

Legal achievements at the federal level

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 set summarised in Box 1.1. 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 1.1).

Figure 1.1. 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 1.2). 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 1.2. 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)	
	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 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	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 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 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
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	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**
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	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
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	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.

“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.

Box 1.1. 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^[10]):

- 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.

Possible legal next steps at the federal level

A number of legal next steps at the federal level, that concern all categories of LGBTI+-inclusive laws would help improve LGBTI+ equality in Germany:

- 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. Last but not least, following legal initiative 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.

1.3.2. Achievements and way forward at the state level

Although states have little scope for enhancing LGBTI+ inclusion through legislation, they still can take an active part in fostering legal LGBTI+ equality in two ways: (i) by introducing legislative initiatives in the Bundesrat in order to trigger LGBTI+-inclusive 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. Yet, German states have fallen short of exploiting this room for action.

Legal achievements at the state level

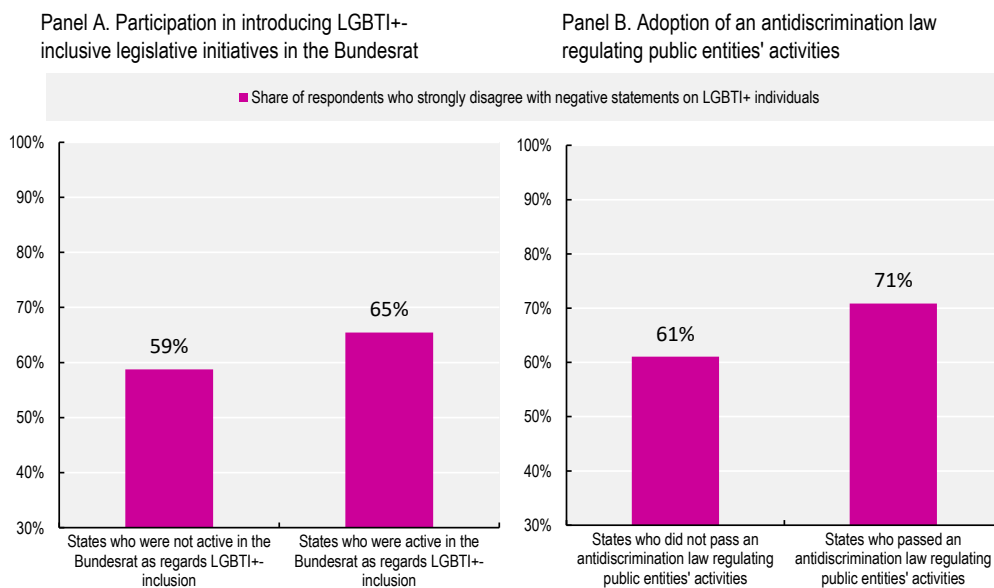
In the past two decades, a total of 10 legal initiatives (LIs) were introduced in the Bundesrat to foster LGBTI+ equality at the federal level. Yet, a majority of states (9) either remained outside the process (Bavaria and Saxony) or contributed to launch only one of the 10 LIs (Baden-Württemberg, Hesse, 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.

In addition, Berlin is the only state to have passed in 2020 an anti-discrimination law (*Landesantidiskriminierungsgesetz – LADG*) that enables 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.

These modest achievements preclude German states from reaping the returns that advancing legal LGBTI+ equality entails in terms of improved attitudes towards sexual and gender minorities and economic development. Indeed, evidence shows that, while countries with greater acceptance of LGBTI+ individuals are more likely to pass LGBTI+-inclusive laws, legal changes in favour of sexual and gender minorities in turn do cause positive changes in attitudes towards this population (Sansone, 2019^[11]; Aksoy et al., 2020^[12]). Legal LGBTI+-inclusivity also contributes to economic development by reducing anti-LGBTI+ discrimination and its huge cost (Carcillo and Valfort, 2023^[13]). Consistent with cross-country analyses that confirm these positive relationships (OECD, 2020^[10]), legal achievements towards LGBTI+ equality at the German state level are associated with greater acceptance of LGBTI+ individuals and with greater economic development, noting that causation can run in both directions. German 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%), as shown in Figure 1.3. They are also characterised by a gross regional product (GRP) per capita that is more than 2 600 EUR larger than the average of other states (Figure 1.4).

Figure 1.3. 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

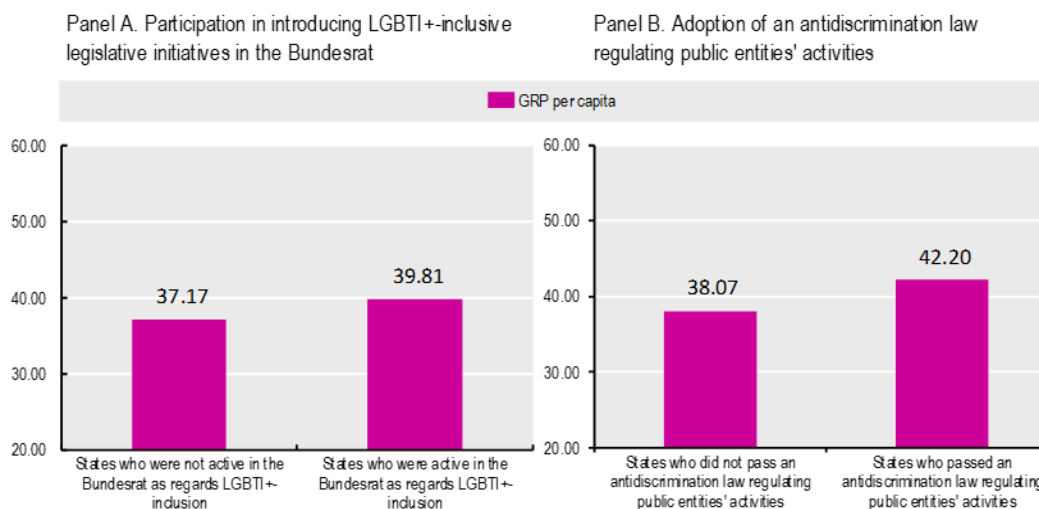


Note: The share of respondents who strongly disagree with negative statements on LGBTI+ individuals is computed as the average of the share of respondents who answer “strongly disagree” to the following four statements: “It is disgusting when homosexuals kiss in public”; “The fact that homosexuals could 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).

Figure 1.4. 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).

Possible legal next steps at the state level

Legal loopholes still exist in Germany regarding protection against discrimination. 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.

Against this backdrop, the Berlin antidiscrimination law (LADG) goes a long way in closing legal gaps. 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.

1.4. Beyond laws: Policies to achieve LGBTI+ equality in Germany

Guidelines by international and national human rights stakeholders highlight several policies critical to achieve LGBTI+ equality, beyond passing LGBTI+-inclusive laws:

- Remedial policies aimed at enforcing laws that protect LGBTI+ individuals against discrimination and violence. They entail low-threshold legal and psychosocial support for LGBTI+ victims of discrimination and violence, actions to help these victims view the police as trustworthy, and guaranteeing the safety of LGBTI+ asylum seekers in reception facilities
- Preventive policies aimed at fostering a culture of equal treatment of LGBTI+ individuals in key areas, chief of which at school, in the workplace, and in health care.

1.4.1. Policy achievements at the federal level

Although implementation power lies primarily with the subnational level, the federal government supports states in their journey towards LGBTI+ equality by undertaking landmark initiatives concerning all categories of policies critical to advance LGBTI+ inclusion.

These initiatives are primarily spearheaded by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend – BMFSFJ*) whose commitment to combat “anti-Semitism”, “antigypsyism”, “islamophobia”, “racism against black people”, as well as “homophobia and transphobia” was formalised by the launch in 2017 of a “National Action Plan against racism”. These initiatives benefit from strong partnerships with several nationwide LGBTI+ CSOs that manage both federal- and state-level projects, for instance in the framework of the “Live Democracy!” programme that the BMFSFJ set up in 2015. Policy achievements at the federal level are expected to be further enhanced with the launch in Fall 2022 of a national plan specifically focused on LGBTI+ inclusion.

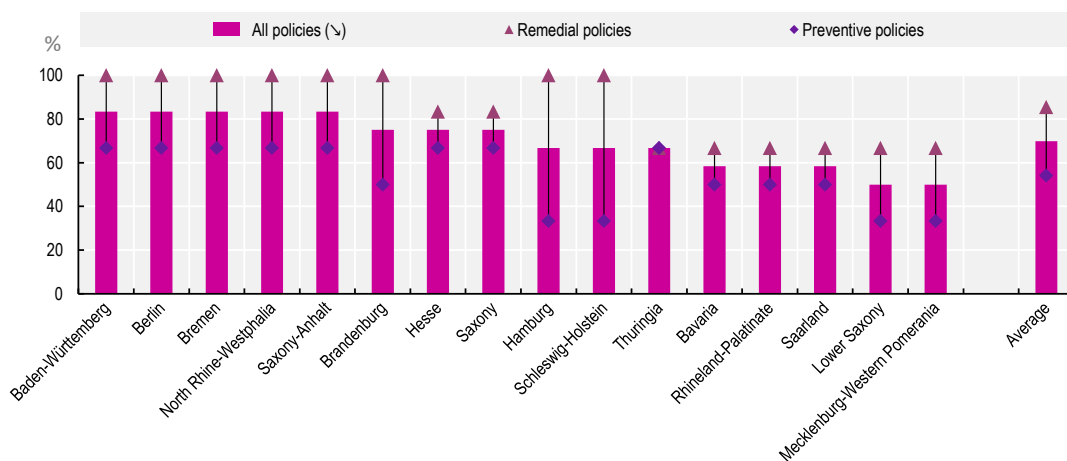
1.4.2. Policy achievements at the state level

All 16 German states have established partnerships with local LGBTI+ CSOs that they subsidise to foster LGBTI+ equality. With the exception of Bavaria where substantial collaboration around LGBTI+ inclusion with civil society organisations started only recently (in 2021), these partnerships are formalised by an ongoing state-wide action plan that typically covers both the remedial and preventive policies mentioned above. In two states, Berlin and North Rhine-Westphalia, the current action plan is already the second implemented, noting that a third action plan is planned for launch in Berlin in 2023. In the other 13 states, the ongoing action plan is unprecedented, with start years varying between 2013 (Rhineland-Palatinate) and 2020 (Saarland).

German states have been successful in putting many of the good intentions expressed in their action plan into practice. German states show high levels of policy-based LGBTI+ inclusivity, defined as the share of LGBTI+-inclusive policies that are implemented among the aforementioned set of policies. In 2021, policy-based LGBTI+ inclusivity is equal to 70%, with moderate variation by state: it ranges from 50% in Lower Saxony and Mecklenburg-Western Pomerania to 83% in Baden-Württemberg, Berlin, Bremen, North Rhine-Westphalia and Saxony-Anhalt (Figure 1.5).

Figure 1.5. German states have been successful in putting many of the good intentions expressed in their action plan into practice

Policy-based LGBTI+ inclusivity in 2021, by German state (all policies, remedial policies and preventive policies)



Source: OECD questionnaire on LGBTI+-inclusive policies at the German state level (2021) and desk research conducted by the OECD.

German states are better at implementing remedial than preventive policies. More than 80% of remedial policies are carried out across German states, noting that this observation holds irrespective of the component considered. By contrast, this is the case of only 54% of preventive policies, with strong variation by component: policies to foster a culture of equal treatment of LGBTI+ individuals are implemented at an average rate of 94% in education but 41% in the labour market and 28% in health care (Figure 1.6).

Figure 1.6. German states are better at implementing remedial than preventive policies

Policy-based LGBTI+-inclusivity across the 16 German states as of 2021, by component

Policy-based LGBTI+ inclusivity 2021 level: 70% (min: 50%; max: 83%)		
Remedial policies (1/2 wgt) 2021 level: 85% (min: 67%; max: 100%)	Preventive policies (1/2 wgt) 2021 level: 54% (min: 33%; max: 67%)	
Low-threshold legal and psychosocial support for LGBTI+ victims of discrimination and violence (1/6 wgt)	Fostering a culture of equal treatment of LGBTI+ individuals at school (1/6 wgt) 2021 level: 94% (min: 50%; max: 100%)	
2021 level: 81% Up: effective in 12 states Down: partly or not effective in 4 states: HE (p), NI (ne), RP (ne) and SN (p)	LGBTI+-inclusion is an explicit objective of the state school curriculum in primary and secondary education (1/12 wgt) 2021 level: 94% Up: effective in 15 states Down: not effective in 1 state: SH	Fostering acceptance of LGBTI+ individuals in the classroom is part of the teacher training offer (1/12 wgt) 2021 level: 94% Up: effective in 15 states Down: not effective in 1 state: MV
LGBTI+ liaison officer(s) or LGBTI+ unit within the police (1/6 wgt)	Fostering a culture of equal treatment of LGBTI+ individuals in the workplace (1/6 wgt) 2021 level: 41% (min: 0%; max: 100%)	
2021 level: 88% Up: effective in 14 states Down: not effective in 2 states: BY and TH	LGBTI+-inclusion is part of the training offer for HR staff, managers and all other interested employees in the public sector (1/12 wgt) 2021 level: 69% Up: effective in 11 states Down: not effective in 5 states: SH, HH, NI, SL and SH	Support and/or incentives are given to employers in the private sector to help them create an inclusive environment for LGBTI+ individuals (1/12 wgt) 2021 level: 13% Up: effective in 2 states: BE and NW Down: not effective in 14 states
Safety measures for LGBTI+ asylum seekers in reception facilities (1/6 wgt)	Fostering a culture of equal treatment of LGBTI+ individuals in healthcare (1/6 wgt) 2021 level: 28% (min: 0%; max: 50%)	
2021 level: 88% Up: effective in 14 states Down: not effective in 2 states: MV and SL	LGBTI+-inclusion is part of the training of care professionals, i.e. nurses and personal care workers (1/12 wgt) 2021 level: 56% Up: effective in 9 states Down: not effective in 7 states: BE, BB, HH, NI, MV, NW and RP	LGBTI+-inclusion is part of the training of medical professionals, i.e. doctors (1/12 wgt) 2021 level: 0% This policy is effective in none of the 16 German states

Note: The abbreviation “wgt” in the figure refers to “weight”. It recalls that remedial and preventive policies are given equal weight when computing the average level of policy-based LGBTI+-inclusivity associated with all 16 German states.

Germany state codes are defined as follows: Baden-Württemberg: BW; Bavaria: BY; Berlin: BE; Brandenburg: BB; Bremen: HB; Hamburg: HH; Hesse: HE; Lower Saxony: NI; Mecklenburg-Western Pomerania: MV; North Rhine-Westphalia: NW; Rhineland-Palatinate: RP; Saarland: SL; Saxony: SN; Saxony-Anhalt: ST; Schleswig-Holstein: SH; Thuringia: TH.

Concerning the component “Low-threshold legal and psychosocial support for LGBTI+ victims of discrimination and violence”, “(p)” stands for “partly effective” and “(ne)” stands for “not effective”.

Source: OECD questionnaire on LGBTI+-inclusive policies at the German state level (2021) and desk research conducted by the OECD.

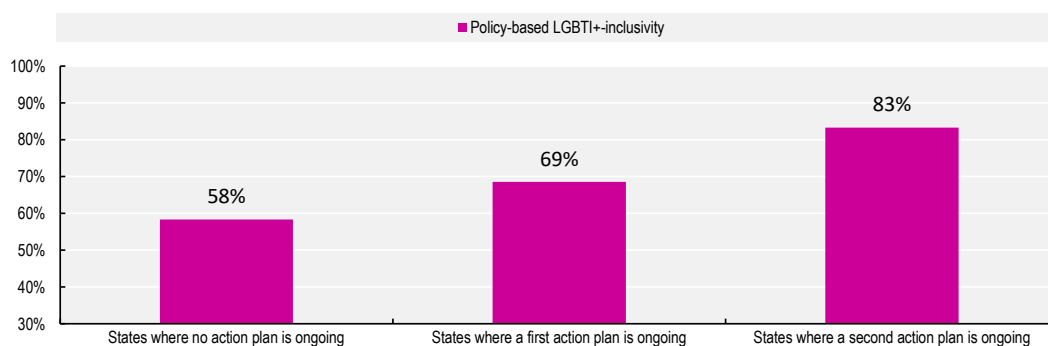
1.4.3. Policy achievements depend on whether and how an action plan is implemented

By establishing concrete goals and clear timelines, action plans should help public authorities make significant progress towards LGBTI+ equality. Figure 1.7 confirms that policy-based LGBTI+-inclusivity is positively associated with implementation of an action plan: it is equal to 58% in the only German state with no ongoing (nor past) action plan (Bavaria), 69% in the 13 states where a first action plan is ongoing and 83% in the two

states (Berlin and North Rhine-Westphalia) where already a second action plan is ongoing. Implementation of a second action plan not only helps deepen initiatives undertaken under the previous one, but also provides an opportunity to cover issues that this previous action plan failed to address (Schürer, 2018^[14]).

Figure 1.7. Policy-based LGBTI+-inclusivity is positively associated with the number of state-wide action plans implemented

Policy-based LGBTI+-inclusivity in German states as of 2021, by number of state-wide action plans implemented

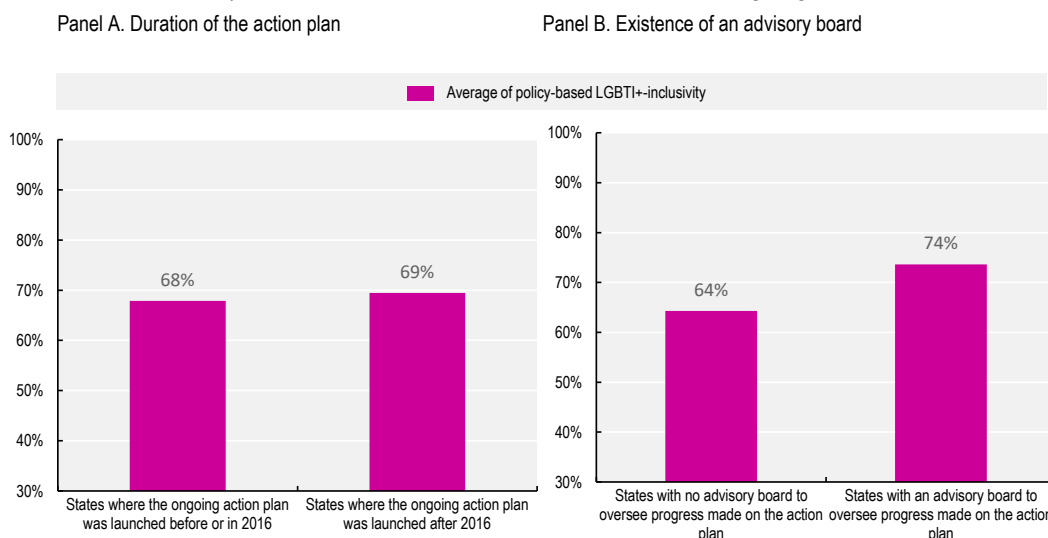


Source: OECD questionnaire on LGBTI+-inclusive policies at the German state level (2021) and desk research conducted by the OECD.

Zooming in on the 13 states where a first action plan is ongoing, it appears that the time elapsed since the launch of the action plan is not correlated with greater policy achievements (Panel A of Figure 1.8). The way the action plan is implemented does seem to matter however (Panel B of Figure 1.8). Oversight from an advisory board composed of all stakeholders who meet regularly (at least once a year) to discuss progress made turns out to be essential: the share of policies critical for LGBTI+ equality that have been implemented in states with such advisory board is 10 percentage points higher (74% vs 64%) than in states with no advisory board.

Figure 1.8. While the duration of an ongoing action plan is unrelated to policy achievements towards LGBTI+ equality, oversight from an advisory board does matter

Policy-based LGBTI+-inclusivity in German states where a first action plan is ongoing, as of 2021



Note: 2016 is the average year when the action plan was launched in states where a first action plan is ongoing. It is thus used as a cut-off point in Panel A.

Source: OECD questionnaire on LGBTI+-inclusive policies at the German state level (2021) and desk research conducted by the OECD.

1.4.4. Further improving LGBTI+ equality in Germany through policies

Although policy achievements towards LGBTI+ equality have been significant, challenges remain that call for further actions as part of the continuing collaboration between the state and the federal levels. Possible next steps concerning remedial policies include:

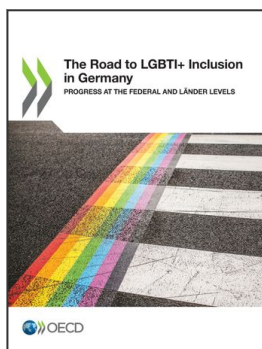
- Better advertising low-threshold legal and psychosocial support for LGBTI+ victims of discrimination and violence while ensuring that greater outreach go hand in hand with high-quality service delivery;
- Combining the establishment of an LGBTI+ unit or of LGBTI+ liaison officers within the police force with significant workload relief giving them time to fulfil the tasks associated with their role, on top of their regular policing activities;
- Complementing protection plans aimed at ensuring the safety of LGBTI+ asylum seekers in reception facilities with detailed terms of reference for reception facility operators and regular inspection by an independent body.

Further action is also needed concerning preventive policies:

- LGBTI+-inclusive policies in education are characterised by low outreach. To push *all* schools to engage in LGBTI+-inclusive teacher and student training, especially those where homophobia and transphobia are pervasive, the federal and state levels of governance could join forces to devise and administer school climate surveys throughout the national territory. These surveys could be conducted on a regular basis among school staff and students in primary schools and in secondary general and vocational schools to monitor levels and trends in school bullying based on a set of protected grounds, including sexual orientation and gender identity.
- Similarly, outreach is low with regards to preventive policies in the labour market, especially in the private sector. The federal and state governments could co-operate to make training on the *General Equal Treatment Act* and the set of grounds this Act protects compulsory for both public and private employers (such training is mandatory in France, for instance). To help employers fulfil their training obligations in an effective way, public authorities could devise detailed terms of reference for training providers based on results flowing from rigorous impact evaluation on what works to counter discriminatory attitudes and behaviours in the workplace. In addition, to avoid imposing a financial burden on employers, public authorities could develop and give access to free-of-charge e-learning modules complying with these terms of reference.
- In health care, efforts to make the curriculum for the training of nurses more LGBTI+-inclusive could be expanded to the training of personal care workers and doctors. To foster compliance, action could be taken to increase the demand of inpatient care facilities and outpatient care services for staff duly trained on dealing with LGBTI+ patients, which entails improving their buy-in of the certification programme “Diversity as a Place to Live – Seal of quality” (*Lebensort Vielfalt – Qualitätssiegel*). This objective could be achieved by broadening the scope of this certification programme to ensure it is not viewed as only focused on the well-being of LGBTI+ patients, and by advertising this change among health care facilities and beyond throughout the national territory.

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