**FACTSHEET 9 - Focus on…. Rights of LGBTI persons – Gender identity**

**Lexicon:**

The acronym ‘LGBTI’ persons stands for:.

1) "L" - lesbians;

2) "G" - gays;

3) "B" - bisexuals;

4) "T" - transgender people (see specific section below);

5) "I" - intersex people (see specific section below);

You may also come across slightly different terminology which we do not use at EU level at the moment, notably ‘LGBTIQ’ (Q standing for queer and questioning people) or ‘LGBTIQA’ (A standing for asexual or allies)

1. **What is the issue ?**

* General

In most countries in the world, LGBTI persons are subject of varying degrees of discrimination and hostility or even violence. In the NEAR region, the degrees of acceptance of LGBTI persons vary greatly. The issues relating to sexual orientation are well-known. Here we will concentrate on gender identity and the specific difficulties faced by transgender and intersex persons. While the importance conferred to sex as a classifier does not pose difficulties for most people, it does create serious problems for those who do not into the traditional understanding of the “female”/”male” dichotomy. The ability of intersex and trans people to enjoy their human rights is impacted by the current normative confines of sex and gender.

* Trans(gender) persons

*Definition:* People whose gender identity and/or gender expression differs from the sex they were assigned at birth. Gender identity is how we see ourselves – the internal and personalised perception of our own gender. Persons who identify as trans may or may not identify in the binary male or female and may or may not have had body modifications, including sex reassignment surgery (those who do are generally referred to as *transsexual*).

*The issues:* Trans persons face multiple challenges in the exercise of their human rights. Among the LGBT community, trans persons are the most likely to encounter discrimination, harassment or violence, with 1 in every 2 trans persons interviewed in the FRA EU-wide LGBT survey of 2012 reporting having been attacked or target of physical or verbal violence. Trans persons often face discrimination in healthcare, education and in the wider society, especially in countries where they cannot change the gender markers in personal documentation. In many countries, legal gender recognition is conditional upon, inter alia, compulsory diagnosis of a mental illness, forced sterilisation and/or compulsory divorce.

* Intersex persons

*Definition:* Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies. These can be neither wholly female nor wholly male; or a combination of female and male; or neither female nor male. Such variations may involve genital ambiguity, and combinations of chromosomal [genotype](https://en.wikipedia.org/wiki/Genotype) and sexual [phenotype](https://en.wikipedia.org/wiki/Phenotype) other than [XY-male and XX-female](https://en.wikipedia.org/wiki/XY_sex-determination_system). Intersex is an umbrella term used to describe a wide range of natural bodily variations. According to experts, between 0.05% and 1.7% of the population is born with intersex traits.

*The issues:* One of the main fundamental rights violations experienced by intersex persons are 'sex normalising' treatments, including on very young children (often younger than 6 months old). These medical interventions are often performed without the full, free and informed consent of the person concerned and can cause permanent infertility, pain, incontinence, loss of sexual sensation, and lifelong mental suffering, including depression.

Birth registration also remains a problem. Only a few EU member states allow sex-neutral identification (represented by categories such as 'other') or a delay of sex determination to a later stage.

1. **How to address these issues ?**

To address the issues described above, the first stage is for countries to adopt/amend the **anti-discrimination legislation and criminal measures against hate crime to cover sex characteristics, gender identity in addition to sexual orientation**.

However, addressing challenges faced by trans and intersex persons requires measures which many States are not always ready to take, especially as they would require moving away from traditional and permanent attributions of gender binary characteristics. Some of the main recommendations to address them are listed below:

* Trans(gender) persons:

🡪 **Legal gender recognition**:

* **Prior requirements**, including changes of a physical nature **for legal recognition of a gender reassignment**, should be regularly reviewed to **remove abusive requirements[[1]](#footnote-1)**.
* **Name and gender marker change**: measures should be taken to guarantee the full legal recognition of a person’s gender reassignment in all areas of life, including by making possible the change of name and gender in official documents in a quick, transparent and accessible way and also ensure recognition and changes by non-state actors with respect to other key documents, such as educational or work certificates[[2]](#footnote-2).

🡪 H**ealthcare:** as all citizens, guaranteed non-discriminatory access to quality healthcare (including HIV prevention and treatment). Availability **trans-specific healthcare**, including hormonal, surgical, psychological, or other medical treatment should be considered.

🡪 [**Depathologisation**](http://tgeu.org/issues/health_and_depathologisation/depathologisation-health_and_depathologisation/): trans identities should no longer be considered mental health conditions.

* Intersex persons:

🡪 **Legal recognition:** the right to self-identification is important in recognition of intersex individuals and in provision of birth certificates, civil registration documents, identity papers, passports and other official personal documentation.

🡪 **Birth registration**: introduction of measures to enable postponing of sex assignment until later in life and/or allowing alternative gender markers to be used;

🡪 **Healthcare:** "sex normalisation" surgery without full and informed consent of an intersex person themselves (outside of medical emergency cases) should not be performed. Sex assignment treatment, if they so desire, should be available to intersex individuals at an age when they can express their free and fully informed consent.

1. **Is there EU acquis/European standards?**

* EU:

To foster the rights of LGBTI persons, the Commission adopted in 2016 its [List of Actions to Advance LGBTI Equality](http://ec.europa.eu/justice/discrimination/files/lgbti_actionlist_en.pdf) while the Council in 2013 adopted the [Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) Persons](http://data.consilium.europa.eu/doc/document/ST-11492-2013-INIT/en/pdf) to be used in its external action.

Gender identity is not explicitly recognised as a ground of discrimination in any EU treaty. However, trans people are partially protected against discrimination in the areas of employment and goods and services on the ground of “gender reassignment”. Additionally, gender identity is recognised in different pieces of EU legislation.

For example, gender identity and gender expression have been explicitly recognised as grounds in the [Victims' Rights Directive](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN).

The [EU has taken a position in favour of the depathologisation of trans identities](http://www.lgbt-ep.eu/intergroup-documents/summary-achieving-the-right-to-health-of-lgbti-people/) for the next WHO International Classification of Diseases (ICD) edition which is due in 2018.

The Fundamental Rights Agency has been active on this issue also publishing

* Council of Europe

[Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a) provides specific measures to be adopted to ensure rights of LGBT persons are guaranteed and in particular includes provisions on legal gender recognition procedures. The CoE also has a compilation of its standards on [Combating discrimination on grounds of sexual orientation or gender identity](https://rm.coe.int/168047f2a6).

The Sexual Orientation and Gender Identity Unit has produced [a short guide to legal gender recognition](https://rm.coe.int/1680492119) which explains the difficulties and the standards to be met.

Recommendations are also included in the Issue Papers published by the Commissioner for Human Rights on [Human Rights and Gender Identity](https://rm.coe.int/16806da753) and on [Human Rights and Intersex People](https://rm.coe.int/16806da5d4).

Although gender identity is not explicitly listed in the grounds for which discrimination is prohibited in the exercise of the rights protected by the European Convention on Human Rights or its Protocol 12, this has been interpreted by the court as being covered under the "other status" and also "sex" by the [European Court of Human Rights](http://www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf). A very useful [Factsheet on gender identity issues](http://www.echr.coe.int/Documents/FS_Gender_identity_ENG.pdf) which compiles some landmark judgements has been updated in April 2017.

The Council of Europe’s Parliamentary Assembly (PACE) also passed a wide-ranging [Resolution 2048 (2015) on Discrimination against transgender people in Europe](http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en) which reflects the needs and discriminatory obstacles currently faced by trans people in Europe.

* United Nations:

In 2016, the UN [Human Rights Council Resolution on Protection against violence and discrimination based on sexual orientation and gender identity](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2).

**4. More studies and reports can be found here:**

P:\Cote Rule of Law and Fundamental Rights\Fundamental Rights\LGBTI

* European Commission Trans and Intersex People: Discrimination on the grounds of sex, gender identity and gender expression <http://ec.europa.eu/justice/discrimination/files/trans_and_intersex_people_web3_en.pdf>
* Fundamental Rights Agency (FRA) Focus paper on The fundamental rights situation of intersex people <http://fra.europa.eu/en/publication/2015/fundamental-rights-situation-intersex-people>
* FRA Comparative analysis of EU LGBT survey data on Being Trans in the European Union <http://fra.europa.eu/en/publication/2014/being-trans-eu-comparative-analysis-eu-lgbt-survey-data>
* Council of Europe Sexual Orientation and Gender Identity (SOGI) Unit: An insight into respect for the rights of trans and intersex children in Europe <https://rm.coe.int/168047f2a7>
* The European Commission Against Racism and Intolerance of the CoE has covered LGBTI in its fifth monitoring round. The country reports can be found under: <http://www.coe.int/t/dghl/monitoring/ecri/activities/countrybycountry_en.asp>
* Transgender Europe's Human Rights and Gender Identity: Best Practice Catalogue <http://tgeu.org/human-rights-gender-identity-best-practice-catalogue/>

1. Council of Europe Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity: <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a>). [↑](#footnote-ref-1)
2. *Ibid* [↑](#footnote-ref-2)