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**Observatory for
Sociopolitical Developments
in Europe**

LGBTI policies in Europe

overview and outlook

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EU country codes

Belgium (BE)	Greece (EL)	Lithuania (LT)	Portugal (PT)
Bulgaria: (BG)	Spain (ES)	Luxembourg (LU)	Romania (RO)
Czech Republic (CZ)	France (FR)	Hungary (HU)	Slovenia (SI)
Denmark (DK)	Croatia (HR)	Malta (MT)	Slovakia (SK)
Germany (DE)	Italy (IT)	Netherlands (NL)	Finland (FI)
Estonia (EE)	Cyprus (CY)	Austria (AT)	Sweden (SE)
Ireland (IE)	Latvia (LV)	Poland (PL)	United Kingdom (UK)

1 Summary

This paper by the Observatory for Sociopolitical Developments in Europe reviews the state of development of LGBTI policies in Europe on the basis of the *Rainbow Europe* information package.¹ The purpose of the paper is to highlight sociopolitical measures in European countries which, in view of the situation in Germany, may be of interest to the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth [BMFSFJ], and to identify relevant trends and developments in LGBTI policies at European and international level. The following results of this research should be noted in particular:

- The new criteria of the 2017 index focus mostly on inter- and transgender issues. Germany fails to meet any of them.
- At international level, Malta continues to play a model role in developing new approaches, measures and laws to improve the situation of LGBTI people. Malta is the first country in the world to have banned so-called “conversion therapy” (cf. footnote 4) and genital operations on intersex babies and infants.
- The index continues to reveal a heterogeneous legal, social and sociopolitical situation for LGBTI people in Europe in general as well as in EU Member States. Following the EU enlargements of 2004, 2007 and 2013, differences have also become clear between the EU-15 Member States (excluding Italy and Greece) and the new EU Member States (except Malta), especially in the categories of *Family* and *Hate crime & hate speech*.
- In 2016, LGBTI policies continued to increase in relevance on the agenda of the institutions of the EU, the Council of Europe and the United Nations. Particular progress was made that year on the one hand with the decision to appoint an independent expert for protection against violence and discrimination on the basis of sexual orientation and gender identity within the scope of UN human rights and on the other hand with the request of the EU Council to the Commission to improve the collection of data on discrimination against LGBTI people within the EU, to initiate measures to raise awareness and to systematically report discrimination cases in the Member States.

¹ Cf. *Rainbow Europe 2017* at: <http://www.ilga-europe.org/rainboweurope> (last accessed on 22 May 2017).

2 Rainbow Europe 2017 – new criteria

Each annual issue of the *Rainbow Europe* index includes new criteria. Compared to last year's edition, the 2017 index has five new criteria.² Germany fails to meet any of the new criteria of the 2017 index. This paper will now present the new criteria and list the states that meet them.

- Prohibition or rejection of “**conversion therapy**”³ for sexual orientation and gender identity (*Conversion therapy*; category: Equality & non-discrimination).
 - Malta: In December 2016, the National Parliament of Malta passed the *Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act*. According to this law, referral to “conversion therapy” or actual treatment according to this type of psychological therapy constitutes a criminal act. Practitioners who continue to mediate, recommend or perform such practices are liable to fines of up to EUR 10,000 and imprisonment for up to a year. Malta is the first European state to legally ban “conversion practices”.
 - Spain (regional): In July 2016, the Autonomous Community of Madrid adopted a law protecting people against LGBTI phobia (*Ley 3/2016 de Protección Integral contra la LGTBifobia y la Discriminación por Razón de Orientación e Identidad Sexual*). The law prohibits “conversion therapy” and provides for fines ranging from EUR 20,000 to EUR 45,000 if such practices are implemented (cf. Art. 70 and 72).
 - United Kingdom: In 2015, the *National Health Service* (NHS), the *Royal College of Psychiatrists* and other relevant bodies in the field of psychotherapy in the United Kingdom signed a Memorandum of Understanding rejecting and strongly criticising the use of “conversion therapy” (Memorandum of Understanding on Conversion Therapy in the UK. 2005). Nevertheless, “conversion therapy” has not yet been prohibited by law.
- Implementation of **guidelines** and **measures** to improve the situation of **intersex persons** (*Policies, intersex*; category: Equality & non-discrimination).⁴

² The *Rainbow Europe 2017* index consists of a total of 58 criteria divided into the following six categories: “Equality & non-discrimination”, “Family”, “Hate crime & hate speech”, “Legal gender recognition & bodily integrity”, “Civil society space” and “Asylum”.

³ Conversion or reparative therapy is a psychological therapy that aims to transform the sexual orientation of lesbians, gays or bisexuals into heterosexuality.

⁴ Andorra is one of the three European states to receive points for this criterion of the index (*Policies, intersex*). However, it meets the criterion only because its public health system provides financing for hormone treatment for trans and intersex people by virtue of the Social Insurance Act (*Llei de la CASS*) (cf. Jover Martin 2015)

- Malta: In 2015, the Maltese National Parliament passed the *Gender Identity, Gender Expression and Sex Characteristics Act* (abbreviation: *GIGESC Bill*). The law created a rapid, transparent and accessible gender identity recognition procedure for trans and intersex people (ILGA-Europe 2017). It also introduced inclusive measures to improve the situation of trans and intersex individuals in the fields of health, non-discrimination and criminal justice. It prohibits genital surgery for intersex babies and toddlers – making Malta the first country in the world to have banned this practice.
- Malta's current education strategy (2014-2024) includes a *Trans, Gender Variant and Intersex Students Policy* package. Among other aspects of this package, a school education initiative on gender diversity has been launched to promote social awareness, acceptance and respect for trans and intersex children in schools (Ministry for Education and Employment 2015).

The Maltese government's *LGBTIQ Action Plan 2015-2017* includes further measures aimed at improving the situation of intersex people in Malta.

- Norway: In 2016, the Norwegian government adopted a National Action Plan for *Security, openness and diversity: government action plan against discrimination based on sexual orientation, gender identity and gender expression*. This plan focuses on ensuring safe neighbourhoods and public spaces as well as on providing equitable public services to LGBTI people. It includes measures focussing specifically on improving the social situation of intersex people.⁵
- Implemented action plans or measures to **overcome and prevent hostility** towards **intersex people** (*Policies tackling hatred, intersex*; category: Hate crime & hate speech).
 - Malta: In addition to the measures of the national *LGBTIQ Action Plan 2015-2017*, the Maltese government, in August 2016, launched a package entitled *Trans, Gender Variant & Intersex Inmates Policy* (Trans, Gender Variant & Intersex Inmates Policy – Correctional Services. 2016). The aim of the measures included in this action plan is to take into account the gender iden-

In other European countries, such as Germany, public financing of hormone treatment for trans and intersex people is already common practice.

⁵ Barne- og likestillingsdepartementet (n.d.): Trygghet, mangfold, åpenhet. Regjeringens handling plan mot diskriminering på grunn av seksuell orientasjon, kjønnsidentitet og kjønnsuttrykk. Available online at: https://www.regjeringen.no/contentassets/6e1a2af163274201978270d48bf4dfbe/lhbti_handlingsplan_web.pdf (last accessed on 30 June 2017).

tity and sexual characteristics of prison inmates (for example, allocation of inmates according to their gender expression, use of an inmate's preferred name and pronoun, provision of information and training for employees and inmates on gender diversity and gender identities).

- **No age restriction for changes of first names** due to sexual identity (*No age restriction, name change*; category: Legal gender recognition & bodily integrity)
 - in eleven European countries, eight of which are EU Member States:⁶ DK, FI, FR, LU, MT, RO, SK and UK.
- **Measures or services for intersex refugees** (*Policy/other positive measures, intersex*; category: Asylum)
 - in some regions of Spain.⁷

⁶ Under the German transsexuality law, minor-age citizens can apply for name and civil status changes. However, this requires the consent of a parent or guardian. For this reason, Germany does not meet the criteria of this category of the index.

⁷ Cf. *Rainbow Europe 2017*. Our desktop research did not identify any specific measures or services offered to intersex refugees in Spain.

3 Situation of LGBTI people in Europe – still a heterogeneous picture

The 2017 index, as in past years, continues to show a heterogeneous legal, social and sociopolitical situation for LGBTI people in Europe in general as well as in EU Member States.⁸ Following the EU enlargements of 2004, 2007 and 2013, differences have also become clear between the EU-15 Member States (excluding Italy and Greece) and the new EU Member States (except Malta). These differences are particularly evident in the categories of *Equality & non-discrimination* and *Hate crime & hate speech*.

- In the *Family* category (measuring the equality of rainbow families), scores for the EU-15 (excluding IT and EL) range between 50 and 100 per cent, while five of the thirteen new EU Member States (BG, LT, LV, PL, and RO) fall below 10 per cent for this category. All new EU Member States (with the exception of MT and SI) score below 50 per cent in this category.
- In the *Hate crime & hate speech* category, the average score for all EU Member States is low: 34 per cent. Most countries that score less than 15 per cent in this categories belong to the group of new EU Member States (BG, BG, CZ, DE, EE, IE, IT, LT, PL, RO and SI).

Like most of the new EU Member States, EU candidate countries also show room for improvement in their LGBTI policies. All seven EU candidate countries have scores ranging between 39 per cent and 9 per cent, thus falling below EU average (Montenegro 39 %, Bosnia and Herzegovina 31 %, Albania 33 %, Kosovo 30 %, Serbia 30 %, Macedonia 16 %, Turkey 9 %).

3.1 Equality & non-discrimination

- **Constitutional protection** against discrimination: A state has either constitutional provisions explicitly prohibiting discrimination on the basis of sexual orientation or gender identity, or its constitutional courts have ruled against discrimination based on these characteristics (*constitution, sexual orientation, gender identity*).
 - **Constitutional protection** against discrimination due to **sexual orientation**. In ten European countries, including six EU Member States: AT, FI, MT, PT, SK and UK.

⁸ The following evaluations and data are based on the *Rainbow Europe 2017* index. The data collection process takes place in cooperation between ILGA-Europe and its member organisations: national experts of the respective member organisations in the evaluated countries collect the data on the basis of the survey criteria set by ILGA-Europe. Readers should be wary of certain index results: closer examination of the index reveals that the data in some categories show certain discrepancies with the corresponding survey criteria. We can assume that these discrepancies arise because of different interpretations of individual survey criteria on the part of member organisations.

- **Constitutional protection** against discrimination **due to gender identity**. In three EU Member States: AT, MT and UK.
- Legal prohibition or rejection of **conversion therapy** (*conversion therapy*). In three EU Member States: ES (in some regions) MT and UK.
- Implementation of a **national action plan** for gender equality of LGBTI and to combat violence based on sexual orientation or gender identity (*Equality action plan, sexual orientation, gender identity*). In twelve European countries, including six EU Member States: FR, HR, MT, NL, PT and UK.

3.2 Family

- **Same-sex marriage** (*Marriage equality*). In twelve European countries, including ten EU Member States: BE, DK, ES, FI, FR, IE, LU, NL, PT and SK.
- **Joint adoption**: Same-sex couples enjoy joint adoption rights. They can jointly apply for an adoption (*joint adoption*). In sixteen European countries, including thirteen EU Member States: AT, BE, DK, ES, FI, FR, IE, LU, MT, NL, PT, SK and UK.⁹
- Legal **recognition of both parents at the birth of the child**. Children born within same-sex marriages or registered partnerships are legally recognised immediately as children of both parents (*Automatic co-parent recognition*). In eleven European countries, including eight EU Member States: AT, BE, DK, ES, FI, FR, IE, LU, MT, NL, PT, SK and UK.¹⁰
- Right to **medically assisted reproduction** or factual possibilities for this and non-discrimination (*Medically assisted insemination*):
 - *Singles*: Non-discrimination of single persons based on their sexual orientation when accessing medically assisted reproduction is either clearly regulated by law or there are no factual barriers or discrimination in this practice. In 26 European countries, including seventeen EU Member States: BE, BG, CY, DK, EE, EL, ES, FI, HR, HU, IE, LU, LV, NL, PL, PT, SK and UK.
 - *Marriages or registered partnerships*: Non-discrimination of same-sex marriages or registered partnerships when accessing medically assisted reproduction is clearly regulated by law or there are no factual barriers or discrim-

⁹ Article 1742 (2) sentence 2 of the German Civil Code now applies to same-sex couples: "A married couple can adopt a child only jointly." This means that spouses will now be able to adopt a child jointly and legally become the joint parents of the child.

¹⁰ Cf., for example, Article 144 of the Austrian General Civil Code.

ination in this practice. In fourteen European countries, including twelve EU Member States: AT, BE, DK, ES, FI, FR, IE, LU, MT, NL, PT, SK and UK.

3.3 Hate crime & hate speech

- Legal protection against hate speech:
 - *Sexual orientation*: Hate speech motivated by the sexual orientation of victims is expressly identified as a criminal offense and/or aggravating circumstance in national criminal law. In 28 European countries, including 21 EU Member States: AT, BE, DK, ES, FI, FR, IE, LU, MT, NL, PT, SK and UK.
 - *Gender identity*: Hate speech motivated by the gender identity of victims is expressly identified as a criminal offense and/or aggravating circumstance in national criminal law. In fourteen European countries, including eleven EU Member States: BE, CY, EL, ES, FI, FR, HR, HU, MT, PT and UK (in some regions only).
- Legal protection against hate crime:
 - *Sexual orientation*: Hate crimes motivated by the sexual orientation of victims are expressly identified as criminal offenses and/or aggravating circumstances in national criminal law. In 26 European countries, including seventeen EU Member States: AT, BE, DK, ES, FI, FR, IE, LU, MT, NL, PT, SK and UK.
 - *Gender identity*: Hate crimes motivated by the gender identity of victims are expressly identified as criminal offenses and/or aggravating circumstances in national criminal law. In fourteen European countries, including nine EU Member States: BE, CY, EL, ES, FI, FR, HR, HU, MT, PT and UK (in some regions only).
 - *Gender characteristics*: Hate crimes motivated by the gender characteristics of victims are expressly identified as criminal offenses and/or aggravating circumstances in national criminal law. In four EU Member States: BE, EL, ES (in some regions only), MT and UK (in some regions only).
- Nationally implemented **measures or action plans** to combat and prevent hate crime and hate speech motivated by the sexual orientation and/or gender identity of the victims. In seven EU Member States: BE, DK, FR, HR, MT and NL.

3.4 Legal gender recognition

- **No age restriction for changes of first names** due to sexual identity (Cf. #section 2 on p. 5).
- There are no diagnoses or psychological assessments to identify gender identity disorders within the process of legal recognition of gender identity (*No Gender Iden-*

tity Disorder diagnosis/psychological opinion required). In six EU Member States: DK, ES (in some regions only), FR, IE, MT and UK (in some regions only).

3.5 Asylum

- **Asylum rights for intersex people:** Persecution on the basis of gender characteristics is explicitly recorded in national asylum legislation as a reason for fleeing one's home country (*Law, intersex*). In three European states: BE, Norway and ES.
- **Measures or services for intersex refugees** (*Policy/other positive measures, intersex; category: Asylum*): in some regions of Spain.¹¹

¹¹ Cf. *Rainbow Europe 2017*. Our desktop research did not identify any specific measures or services offered to intersex refugees in Spain.

4 New LGBTI policies – progress at international and European level

- In June 2016, the United Nations Human Rights Council (UNHRC) decided to appoint an independent expert on protection against violence and discrimination based on sexual orientation and gender identity. Thus, reporting on human rights violations based on sexual orientation and gender identity is for the first time systematically integrated into the work of the UNHCR (OHCHR n.d.).
- The Parliamentary Assembly of the Council of Europe (PACE) has formulated recommendations for the Member States of the Council of Europe, including in the fields of education (Parliamentary Assembly of the Council of Europe 2016a), child protection and children's rights (Council of Europe 2016), and sports (Parliamentary Assembly of the Council of Europe 2016b).
- In 2016, the European Court of Human Rights (ECtHR) passed new judgements that will help improve the situation of LGBTI people in Europe, including in the fields of asylum law for LGBTI refugees (e.g. OM v. Hungary), protection against hate crimes (e.g. MC and AC v. Romania and Identoba v. Georgia), and family reunification (e.g. Pajic v. Croatia).
- In 2016, in response to the list of measures to promote LGBTI gender equality published by the European Commission in December 2015, the EU Council adopted conclusions on gender equality and LGBTI equality. The EU Council calls on the Commission to improve data collection on discrimination against LGBTI persons in the EU and to raise awareness and systematically report on cases of discrimination in the Member States (EU Council 2016). In 2016, the EU Parliament also called on the Commission and on EU agencies to collect data on human rights violations based on sexual orientation, gender identity or gender characteristics (EU Parliament 2016).

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