



European  
Commission

# Legal gender recognition in the EU

The journeys of trans people  
towards full equality

*Justice  
and Consumers*

**EUROPEAN COMMISSION**

Directorate-General for Justice and Consumers

Directorate D: Equality and Union Citizenship

Unit D1: Non-discrimination and Roma coordination

# **Legal gender recognition in the EU: the journeys of trans people towards full equality**

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## Key terms and abbreviations

### Key terms

Throughout the report, we have used the following terms and understand their definitions to be as follows below.

It is important to understand that many of these terms are debated and hold different meanings for different individuals. More information about our approach to language is available in Section 1.6.3 ('A note on language').

Two sources have been especially important in informing and shaping these definitions: the glossaries of the NGOs, Transgender Europe<sup>1</sup> and Stonewall<sup>2</sup>. Other sources include: the Yogyakarta principles (2006 and 2017); Joseph et al. (2017); OII Europe and ILGA-Europe (2019); World Professional Association for Transgender Health (WPATH, 2012) and the Gender Equality Glossary of the European Institute for Gender Equality (EIGE)<sup>3</sup>. Full information on these sources is available in Annex 1 (Bibliography).

Our understanding of key terms:

- **Cisgender or cis:** Someone whose gender identity is the same as the sex they were assigned at birth.
- **Coming out:** When a person first tells someone/others about their gender identity. Some participants in this study also used this term to refer to situations when, after transitioning to live according to their gender identity, they told someone about their trans status/history<sup>4</sup>. Trans people may have to, or want to, come out several times or even continuously, as some people are never perceived as their own gender.
- **Deadname:** A trans person's birth name, which they no longer use.
- **Deadnaming:** Calling someone by their birth name after they have changed their name.
- **EU 'acquis':** The body of common rights and obligations that are binding on all EU countries, as EU Members.
- **Gender:** Gender refers to the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.
- **Gender dysphoria/gender identity disorder:** Medicalised diagnoses used in the DSM-5<sup>5</sup> and the ICD-10<sup>6</sup> respectively, describing conditions whereby individuals may experience distress because of the discrepancy between the sex assigned at birth and their gender identity. Beyond the medical definition, the first term ('gender dysphoria') has sometimes been used by participants in this study to describe the experience of discomfort with certain parts of one's body that are gendered<sup>7</sup>. Receiving a gender dysphoria diagnosis is also a requirement for legal gender recognition in some countries. The second term ('gender identity disorder') is no longer used in the latest International Classification of Diseases (11<sup>th</sup> Revision: ICD-11) and is considered by some to be outdated and offensive<sup>8</sup>. It has only been used in this report when referring to legal rulings or participants' own words.

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<sup>1</sup> Glossary available here: <https://tgeu.org/glossary/>

<sup>2</sup> Glossary available here: <https://www.stonewall.org.uk/help-advice/glossary-terms>

<sup>3</sup> Glossary available here: <https://eige.europa.eu/thesaurus>

<sup>4</sup> A person's trans status or history may not be the same as their gender identity.

<sup>5</sup> Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (2013) is the taxonomic and diagnostic tool published by the American Psychiatric Association

<sup>6</sup> 10th revision of the International Statistical Classification of Diseases and Related Health Problems (ICD). The ICD is a medical classification list by the World Health Organization (WHO), which is currently now in its 11<sup>th</sup> edition.

<sup>7</sup> This feeling may fluctuate throughout time and different contexts.

<sup>8</sup> ICD-11 does not have a mental health diagnosis for trans identities. A new chapter was created, Conditions related to sexual health, which includes a new depsychopathologised diagnostic category "gender incongruence".

- **Gender expression:** How a person expresses their gender, within the context of societal expectations of gender. A person who does not conform to societal expectations of gender may not necessarily identify as trans.
- **Gender fluid:** Individuals with a dynamic identity fluctuating along the male and female identities or other gender identities.
- **Gender identity:** A person's gender identity is defined as each person's deeply felt internal and individual experience of their own gender, whether as a man, a woman or non-binary, which may or may not correspond to the sex assigned at birth.
- **Gender non-conforming/variant:** Term used to describe individuals with a gender expression that differs from the cultural norms prescribed for people of a particular gender. Such individuals may or may not be transgender.
- **Gender-affirming healthcare:** Procedures that a trans person chooses to undergo to modify their sex characteristics as part of their transition. This can include hormone therapy, hair removal, vocal procedures, and surgeries, among others. There is not one set path for these procedures; many trans people undergo some gender-affirming healthcare, while many others do not.
- **Genderqueer:** People who experience their gender identity outside of normative/binary gender identities, and/or experience their gender expression as falling outside the categories of man and woman. They may define their gender as falling somewhere in-between man and woman, or they may define it as wholly different from these terms.
- **Intersectionality / intersectional analysis:** For the purposes of this report, this is an analytical tool for studying, understanding and responding to the ways in which gender identity, for example, intersects with other personal characteristics/identities and considering how these intersections contribute to unique experiences<sup>9</sup>.
- **Intersex:** Intersex individuals are born with sex characteristics (sexual anatomy, reproductive organs, hormonal structure and/or levels and/or chromosomal patterns) that do not fit the typical definition of male or female. The term "intersex" is an umbrella term for the spectrum of variations of sex characteristics that naturally occur within the human species. Some, but not all, intersex individuals also identify as transgender.
- **Legal 'cluster':** Legal 'clusters' are groupings of countries that this study developed, according to national requirements for legal gender recognition (LGR). There are five clusters in use in this report, moving from the least accessible procedures (cluster 1 and 2) to the most accessible procedures (cluster 5).
- **Legal gender recognition (LGR):** The process(es) by which individuals request the changing of their first name and gender marker in their administrative records so that official registers and their documents, including identity documents, birth or civil status certificates.
- **Man or woman with a trans history:** Someone who identifies as male or female or a man or woman, but who was assigned a different sex at birth.
- **Non-binary:** An umbrella term for people whose gender identity is not encompassed or represented by 'man' or 'woman'. Non-binary identities are varied and can include people who identify with some aspects of binary identities, while others reject them entirely.
- **'Pass' or 'passing':** If someone is regarded, based on a brief interaction, to be a cisgender man or cisgender woman. As this is dependent on the perceptions of others rather than on immutable characteristics of the person, it can change from day to day or person to person.
- **Reflection period:** A set amount of time that a person must wait after initially making a declaration that they wish to change their legal gender marker. At the end of the period, they must make the declaration again, and then can have their marker changed.

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<sup>9</sup> The concept of intersectionality was first developed by Kimberlé Crenshaw.

- **'Real-life experience':** The so-called 'real-life experience' (RLE) requires a person to live for a certain period of time in line with their gender identity without official documents to support that identity. This is also referred to as the 'real-life test' and may be a requirement within an LGR procedure.
- **Self-determination:** Self-determination is a method to access legal gender recognition based on a statutory or notary statement by the trans person, with no additional requirements.
- **Sex:** As both a legal and medical category, sex is a classification of people as at birth, based on the appearance of their external anatomy. However, a person's sex is a combination of bodily characteristics including chromosomes, hormones, internal and external reproductive organs, and secondary sex characteristics. Persons whose sex cannot be clearly classified as either male or female are classified as intersex (see definition above).
- **Sexual orientation:** Each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.
- **Trans man or transgender man:** A term used to describe someone who was (most likely) assigned female at birth but who identifies as a man. Some also will use FTM (an abbreviation for female-to-male), although this term is considered outdated or offensive by some and is not used in this report.
- **Trans or transgender:** An umbrella term for people who have a gender identity that is different to the sex assigned at birth, and for people who wish to portray their gender identity in a different way to the sex assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer, gender-fluid, non-binary, cross-dresser, trans man, trans woman and several others (see Section 1.6.3 of Chapter 1 on the 'Note on language' for more information about gender identity categories in use).
- **Trans woman or transgender woman:** A term used to describe someone who was (most likely) assigned male at birth but who identifies as a woman. Some also will use MTF (an abbreviation for male-to-female), although this term is considered outdated or offensive by some and is not used in this report.
- **Transitioning:** The steps a trans person may take to live according to the gender with which they identify. Each person's transition will involve different things. For some, this involves medical intervention, such as hormone therapy and surgery, but not all trans people want this or are able to have it. Transitioning might also involve telling friends and family, dressing differently and changing official documents.
- **Transphobia:** A matrix of cultural and personal beliefs, opinions, attitudes and aggressive behaviours based on prejudice, disgust, fear and/or hatred directed against individuals or groups who do not conform to, or who transgress societal gender expectations and norms. Transphobia particularly affects individuals whose lived gender identity or gender expression differs from the gender role assigned to them at birth, and it manifests itself in various ways, e.g., as direct physical violence, transphobic speech and insulting, discriminatory media coverage, and social exclusion. Transphobia also includes institutionalized forms of discrimination.
- **Transsexual:** A term used by some people who have permanently altered – or seek to alter – their bodies through medical interventions (including but not limited to hormones and/or surgery). This is an older term that originated in the medical and psychological communities. Unlike transgender or trans, transsexual is not an umbrella term.



## **Abbreviations**

### **Country abbreviations**

**BE:** Belgium

**BG:** Bulgaria

**CZ:** Czechia

**DK:** Denmark

**DE:** Germany

**EE:** Estonia

**EU:** European Union

**IE:** Ireland

**EL:** Greece

**ES:** Spain

**FR:** France

**HR:** Croatia

**IT:** Italy

**CY:** Cyprus

**LV:** Latvia

**LT:** Lithuania

**LU:** Luxembourg

**HU:** Hungary

**MT:** Malta

**NL:** Netherlands

**AT:** Austria

**PL:** Poland

**PT:** Portugal

**RO:** Romania

**SI:** Slovenia

**SK:** Slovakia

**FI:** Finland

**SE:** Sweden

**UK:** United Kingdom\*

**EU-28:** 28 EU Member States\*

\*More information on the approach to the UK is available in Section 1.5 of Chapter 1 of the full report, in light of its departure from the EU.

## **Institution, convention and treaty abbreviations**

**CJEU:** Court of Justice of the European Union

**CoE:** Council of Europe

**ECHR:** European Convention on Human Rights

**ECtHR:** European Court of Human Rights

**EIGE:** European Institute for Gender Equality

**FRA:** EU Agency for Fundamental Rights

**ICCPR:** International Covenant on Civil and Political Rights

**PACE:** Parliamentary Assembly of the Council of Europe

## **Other frequently used abbreviations**

**HRT:** Hormone replacement therapy

**LGBT:** Lesbian, Gay, Bisexual, Transgender

**LGBTI<sup>10</sup>:** Lesbian, Gay, Bisexual, Transgender, Intersex

**LGR:** Legal Gender Recognition

**NGO:** Non-governmental organisation

**RLE:** 'Real-life Experience'

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<sup>10</sup> LGBTI is an acronym that stands for Lesbian, Gay, Bisexual, Transgender and Intersex. It can be expanded to LGBTQI (to include queer), LGBTQIA (to include queer and asexual), LGBTQI+ and other formulations. The discussion over the most inclusive acronym is ongoing. In this report, generally, LGBTI is used, as this reflects the most common usage of other institutions, whose reports and rulings are frequently referenced. Sometimes, LGBT or LGBTQI is used, when this matches the use of the speaker, author or institution in question.

## EXECUTIVE SUMMARY

The European Commission is committed to tackling discrimination and promoting equality for transgender people. To further this objective, the European Commission's department responsible for justice, consumer rights and gender equality (DG Justice and Consumers) commissioned and supervised this study. The research focused on the position and experiences of trans people in education, employment and later life, as well as their interactions with Legal Gender Recognition (LGR) procedures and their experiences of coming out. It also considered the impact of discrimination that trans individuals can face throughout their lifetime.

Focusing on these areas, the study had two key objectives: 1) providing an overview of the situation of transgender people in the EU and 2) understanding whether there is a positive correlation between inclusive policies allowing for Legal Gender Recognition (LGR) and the well-being of transgender people.

To achieve those two main objectives, the study consulted a total of 1,015 adults who identified as transgender across the 27 EU Member States and the UK, in addition to conducting a literature review, legal research and a quantitative analysis of available data. The results of these activities brought a wealth of insights into the challenges and barriers transgender people face across Europe. These formed the basis of recommendations at EU and Member State level.

### **I. Being trans - the position of transgender people in EU society**

#### **i. Coming out and transitioning**

Trans people's experiences of coming out and transitioning vary, depending on their age, gender identity, family support, the visibility and acceptance of other trans people in wider society, existing legal systems, and other factors. Many study participants noted that coming out processes can be long and complex, and can entail many phases.

Most trans people realise that their gender does not match their sex assigned at birth before reaching the age of 18, according to FRA's 2019 LGBTI survey. During this period, children's gender expression can be policed by parents, teachers and other members of society.

For some trans individuals, initial awareness of their identity in early childhood is sometimes accompanied by feelings of frustration or failure that they have not 'lived up' to societal expectations of their assigned gender. Amongst participants in this study, some of these incidents related to playing with toys that were stereotypically associated with another gender, internalising comments from adults about what was 'appropriate' behaviour, or being excluded from gender-segregated activities, such as team sports.

There can be a gap between trans individuals becoming conscious of their gender identity and first telling somebody about it. Even for those trans respondents who became conscious of their gender identity when they were young (e.g. ages 0-5, 6-9 and 10-14), it was on average not until they reached their early 20s that they first came out to someone (FRA's 2019 LGBTI survey). Some participants in our study had repressed their feelings about their gender identity and delayed coming out for decades rather than years, due to their strong fear of familial rejection or losing their jobs.

'I've known since I was little [...] I remember telling my mum [...] She [...] became like really upset and told me never to tell anybody... That's what I did... [I had] all these feelings my whole life. I hoped they would go away, but they never did.'

Trans woman, aged 35-44, residing in UK

'There was no information on this in Romania. [...] I couldn't go to anyone to help me define how I felt. As a result, it took me years ... I set aside my sentiments towards

my identity so that I could look after what I had in that moment, such as my children and family.'

Trans woman, aged 35-44, residing in Romania

Trans individuals can face a range of reactions from family and friends after disclosing their gender identity, reflecting the gaps in social understanding of trans identities and, in some cases, overt hostility towards them. Although many participants noted positive reactions, many others experienced rejection from family members. Some were left unable to see their children or facing divorce.

Coming out is not a one-time event, but rather a continuous and iterative process. The burden of repetitively coming out may have negative effects on the well-being of trans people. Additionally, coming out is not always a choice. Many trans people are forced to come out about their gender identity, especially in public places, such as post offices, banks, city hall, exam venues, bars, and any other location where ID is required. Of concern, some participants feared being perceived as trans in public, due to the risk of transphobic violence or other hostile responses. This is supported by large-scale survey data: approximately 30% of trans respondents in the FRA LGBTI survey reported that they 'always' or 'often' avoided expressing their gender through their physical appearance and clothing, for fear of being assaulted, threatened or harassed (2019).

As part of transitioning, some individuals may wish to undergo medical interventions, but this process may be hampered by difficulties accessing hormone therapy, a lack of support from healthcare professionals and negative reactions from others.

Having access to information about trans identities can be particularly useful for trans people in understanding their identity and coming out. Participants spoke of helpful sources such as the media, social media, other online sources, books and peer support groups. Relatedly, having the words to describe their gender identity was an important step for some. Conversely, many struggled to define their gender identity and come out without the appropriate terms and information. The presence of negative narratives about trans people in the media and wider society was also a barrier to coming out for many.

Understanding one's gender identity can be especially hard for some groups of trans people. For many people with non-binary identities, the binary structure of society – and often, their national language – may make it hard for them to 'find the words' to come to understand their gender identity and express it to others.

'My father complained about me not being normal, even as a trans person... My father told me, and I'm quoting, "a normal trans person is from male to female or female to male. I don't even know what you're doing, you're an extremist, like the Taliban".'

Non-binary person, aged 35-44, residing in Italy

Furthermore, trans people with autism and with speech or learning disabilities may face extra challenges in verbalising their gender identity. However, it is worth noting that some participants actually felt having autism had been beneficial to them in understanding their identity, as it meant they were able to question binary gender norms and their own gender identity at an early age.

## ii. Being trans in education

In 2019, the FRA LGBTI survey found that these were the highest educational qualifications that trans respondents had gained: secondary education (applied to 40.6% of trans respondents), post-secondary education other than college/university (12%), and tertiary education (43.6%). Around 3.8% of respondents had no formal education or had only completed primary education as their highest level.

There are some important differences in educational attainment within the trans population. For example, there are higher educational levels amongst trans women than trans men; nearly 40% of trans women had completed a form of tertiary education, versus less than 30% of trans men. The groups reflecting the highest educational attainment levels are genderqueer people and non-binary people (FRA LGBTI survey, 2019).

Trans students' experiences of education vary according to whether they choose to disclose and express their gender identity and the extent to which their peers and the staff of different education institutions are supportive. Participant testimonies in our study reflected that many trans people feel unable to come out about their identity in educational settings, due to (often well-founded) fears of bullying, harassment and violence. Some are not fully conscious of their identity and do not disclose this to others. For those who do disclose, or who are in the process of transitioning, educational settings can be very challenging for their mental and physical health.

'My mother told me that in Finland there is this culture that boys don't cry...then she said ... "You can cry at home after school" ... This meant I started bottling up my emotions and I prayed every night that I would magically turn into a girl.'

Trans woman, aged 25-34, residing in Finland

Between 15% and 37% of trans individuals (depending on their gender identity group) have experienced negative comments/conduct at school because of their identity 'always' or 'often' (FRA LGBTI survey, 2019). In addition, notable shares of trans individuals (25% or more) stated that this question did not apply to them, suggesting that they may not have had the chance to find out the reactions of others at school to their gender identity. All groups within the trans population can face discrimination when interacting with school/university personnel. Our study confirmed the impression that trans students can be affected by discrimination, prejudice or harassment based on their gender identity during all stages of their education, especially in educational settings for 11 to 18-year olds.

A lack of standardisation of policies relating to trans students points to the broader need to pay attention to gender identity and gender expression in school antidiscrimination and bullying policies, school materials and study plans. There also appears to be a clear need to educate teachers on how to support trans students more effectively. Many trans people had to educate staff and other students on the correct pronouns to use, which was frequently described as draining and leading to unwanted attention. In the most negative cases, participants explained that teachers were often aware of the bullying, harassment and violence that they faced as students but did little to challenge it. This suggests that teachers can sometimes be complicit in this negative treatment of trans students.

'I was beaten [at school] by 200 people and nobody cared. I felt abandoned. It was happening in the courtyard and no teacher noticed it? Teachers need to be aware of bullying.'

Trans person, age unknown, residing in Greece

There were even instances of teachers initiating these acts against trans students themselves.

Furthermore, many participants experienced exclusion from gender-segregated activities, such as school dances, sports and extracurricular activities. Some also recounted instances of exclusion from basic hygiene facilities like toilets, to the detriment of their health and well-being. In some instances, this was due to a lack of appropriate facilities being available. For example, a trans man residing in Ireland stated that the cubicles had been removed from the men's toilets at his university, leaving him

unable to use the facilities. He felt that although staff and his peers were accepting of his gender identity, they were unwilling to help with practical matters. This meant several months on campus without access to a bathroom.

In some cases, participants reported that they felt forced to escalate and highlight instances of discrimination to the media or to senior staff to receive equal treatment with their cisgender peers. This places an undue strain on trans students, who must divert their energy and focus away from their studies in order to deal with bullying and discrimination. For a few participants, a combination of negative experiences forced them to drop out of school or university. Some people limited the amount they socialised, or minimised their participation in school, due to their negative experiences. Several delayed their transition, due to being in unsupportive education environments.

None of the interviewees in this study referred to information on transgender identities at schools when becoming conscious of their gender identity. This reflects a gap in inclusive educational policies relating to trans identities in most EU Member States, as documented by the Inclusive Education Index of the International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Youth and Student Organisation (IGLYO). More positively, Eurobarometer findings reflect that most of the general public (65%) in the EU agree with the idea that school lessons can play a role in raising awareness of trans identities at school.

There are some positive and isolated examples of trans students benefiting from supportive teachers, departments and policies whilst in education. Examples included steps to increase knowledge of trans students' needs and create a culture of openness towards diverse identities, as well as the presence of systems to enable trans students and alumni to change easily their gender marker in school records. Nonetheless, the experiences of trans students in education in the EU remain concerning. They suggest that schools and other educational settings are often not safe spaces for trans students to be open about their gender identity, and that they frequently receive inadequate information to support them in coming out and transitioning.

### **iii. Being trans when applying for jobs and at work**

Available statistical data suggests that trans people experience lower employment rates, greater levels of economic inactivity and higher unemployment rates than the general population. For example, in 2019, almost 51% of trans respondents to the FRA survey were in paid work or self-employed, compared to 69.3% of the general population (aged 15-64) in this position (EU-28, 2019). Unemployment is a particular issue for trans women; in the FRA survey, they were nearly three times as likely to be unemployed as the general population average. Within the trans population, the lowest rate of employment is among trans men (38.9%), which is explained in part by a high proportion of trans men still in education due to their age (40.6%)<sup>11</sup>.

Several factors affect the position of trans people in the labour market. One challenge hindering the access of trans people to jobs is discrimination. The FRA LGBTI survey (2019) shows that all groups in the trans population have personally felt discriminated against when looking for a job in the last 12 months because of their identity, particularly trans women (19%) and trans men (15%).

Other factors that can make it harder for trans people to access work are problematic application processes and, for some, the challenge of having documents that do not match their gender identity. In our study, trans people who do not 'pass'<sup>12</sup> reported

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<sup>11</sup> FRA's study sample may have been affected by a similar issue to that in this study: namely, that young people were more likely to be participate. The FRA data in this report is weighted to increase its representativeness, although not specifically for age.

<sup>12</sup> 'Passing' covers situations when someone is regarded, based on a brief interaction, to be a cisgender man or cisgender woman. There is debate over the use of this term, as presented in section 1.6.3 of this report.

facing discrimination when they first spoke to or met an employer face-to-face, when their trans status became known. Additionally, trans people may also have concerns over the 'trans-friendliness' of different sectors and employers.

'I feel hesitant applying for certain jobs when I'm unsure if it will be okay to present myself according to my gender identity. It causes me a lot of stress and eventually I will even believe that I'm not suited for the job because I'm so unsure of myself. I also don't ever apply for jobs where I'm sure I'll never be able to disclose my gender identity to co-workers.'

Non-binary/genderqueer/gender non-conforming person, aged 18-24, living in Belgium

Taken together, these challenges mean that trans people may have a smaller pool of available vacancies to apply for, and may find it more burdensome to go through and succeed in recruitment processes, compared to cisgender people. The experiences of some participants suggest that these challenges are further amplified among trans people who belong to an ethnic minority or who have an immigrant background. Due to the challenges of accessing the labour market, some participants were not able to work in their preferred industry or within the formal labour market at all.

Many trans individuals will choose not to be open about their gender identity and/or their transgender history in the workplace. For example, the FRA LGBTI survey suggests that between 19.3% and 50.7% of trans individuals (depending on their identity) stated that they were 'never' open about being transgender with people that they meet at work (EU-28 average, 2019).

Disclosing one's identity in the workplace can bring risks for transgender people. The acceptance by employers and colleagues of trans employees can vary significantly. In the most negative cases, participants described how being open about their gender identity at work led them to be fired; face discrimination or harassment; have to change jobs; experience a change in duties, hours, or level of seniority; and find fewer opportunities for progression. Further backing this up, the FRA LGBTI survey (2019) found that all groups in the trans population have personally felt discriminated against at work because of their identity, especially genderqueer people (27%), trans women (25%), gender-fluid people (21%) and non-binary people (20%).

Existing research suggests that coming out in sectors that are very gender-stereotyped may be particularly challenging (Beagan et al, 2012; Phoenix and Ghul, 2016). Similarly, roles which require a gendered uniform may limit perceived employment choices (Shilt and Connell, 2007).

'I always tell myself that I have to be fully transitioned to be taken seriously as a person [...] If I go to another law firm and want to work there [...], I won't be taken seriously... It's just a reality in the Netherlands that there are certain areas of work, like most law firms, where the top is mostly male, and I see them not accepting me.'

Trans man, aged 25-34, residing in the Netherlands

Sexism also appears to have a bearing on the careers of trans people. Echoing the results of other research, several trans men described how they had benefitted from being viewed as men, in some cases improving their status and pay. In contrast, trans women described being disproportionately impacted by discrimination when accessing jobs and within the workplace. Non-binary people also noted that they could be affected by sexism in the context of employment.

'Now that I am a man, people listen to me when I talk. In particular, when they do not know that I am trans. It is a very sexist thing [...] I am not harassed anymore in the street; I can get angry without being told that I am hysterical [...]'

Trans man, aged 25-34, residing in France

'The technician from a conference [I was working at] came to discuss what we needed, and I explained that we needed a laptop to be connected to a screen. Then he turned to my male colleague and asked if we needed a HDMI cable or USB cable? And I was like "come on, I work in IT, I know that stuff!" ... He seemed confused that I knew what I was talking about.'

Trans woman, aged 35-44, residing in Hungary

'Basically being wrongly read as a woman means I get sexism directed at me a lot when applying for male-dominated jobs, and if I do get into a male-dominated job, then it's often really unsafe to be open about being non-binary.'

Non-binary person, aged 25-34, residing in the UK

Proactive actions by employers to create inclusive workplaces can make a difference. For example, within the online consultation of this study, participants emphasised that their experiences in the workplace were strongly influenced by the policies and processes in place to support transgender people, and the attitudes of their employers. Conversely, some participants described problems related to a lack of policies and processes to support transgender people. For example, participants in the UK and the Netherlands described difficulties in taking leave from work to access gender-affirming surgery. One suggested that a lack of experience supporting trans people might lead potential employers to decide against employing a transgender person, resulting in discrimination. Participants in Poland expressed fears and feelings of insecurity in relation to reporting their experiences of discrimination or harassment in the workplace. While some felt this was the case even in workplaces with anti-discrimination policies in place, others felt that affirmative actions in the workplace, such as disciplining employees where discrimination had been documented, had positive effects.

#### **iv. Later life experiences of being trans**

Later life can offer both opportunities and challenges for people to be open about their gender identity. Existing research highlights that some of these opportunities and challenges may arise from the ageing body offering some people greater androgyny. For some, this can help them to feel closer to their gender identity. For others, it is harder to present in a way that reflects their identity. These difficulties are compounded for older people who are unable to access – or who are required to cease – desired gender-affirming healthcare, for other health reasons.

Many trans people are deeply fearful about the prospects of entering long-term care in the future. Participants in our study raised concerns about whether their gender identity would be respected and whether professionals would be capable of supporting them appropriately. A concern was also raised that trans individuals may have to pay more to access trans-friendly care, creating challenges for their income.

'[Nursing homes are] a big fear of every LGBT person, because you lose power, you are in the hands of your carer, and if that carer is transphobic, you'll be in trouble.'

Trans man, aged 25-34, residing in Malta

The age distribution of participants in the study meant only a small number of individuals had direct personal experience of using long-term care services in later life. Among those who did, around one in four reported experiencing discrimination, harassment and prejudice linked to their gender identity. This included negative comments, being treated differently, physical and verbal abuse, and refusal of care. This reflects the work that may still be needed to ensure that staff in long-term care services are inclusive and respectful towards trans residents and respond appropriately to their health and other needs.



There is limited information on the financial ability of trans people to access the care that they need in later life. Generally, respondents to the online consultation who had personal experience of using long-term care services did not find that the cost of these caused them significant difficulty. However, this finding is based on a small number of responses and should not necessarily be taken as evidence that cost is not a barrier to long-term care for trans people.

There were mixed results when it comes to the impact of gender identity on the economic situation of trans people in later life. Although many participants were concerned about their income in later life, this related primarily to broader concerns about the future of pension entitlements in their country of residence, rather than their gender identity. Amongst the (small) number of participants who already accessed a pension, generally they had not had trouble in accessing this.

Nonetheless, over one-quarter of respondents to the online consultation of this study identified ways in which they believed that their gender identity had negatively impacted their overall pension entitlements. They emphasised their reduced opportunities to contribute to a pension, due to delays beginning work or time taken out of work (for example, to undergo medical procedures or as a result of feared or actual discrimination). Some pointed to difficulties in accessing formal, secure employment at an appropriate level. Others expected that they may face possible administrative difficulties in accessing a pension, following a change in their legal gender during or at the end of their working lives. Additionally, a few older people found that they were unable to access part or all of their pension entitlement after changing their legal name and gender.

The uncertainty about whether pension access would be an issue was a source of significant stress for some younger people. Given this, the situation of trans people in later life is an important subject of future research.

## **II. The design and lived experience of legal gender recognition procedures across the EU**

### **i. Legal requirements for getting your gender marker recognised across the European Union**

LGR is the procedure through which an individual can change their name and gender marker in official registers and documentation. This may allow an individual to access a new gender marker that matches their gender identity. The conditions for the procedure vary widely between countries and may encompass a range of medical, judicial, civil and/or administrative requirements.

Currently, 22 EU Member States and the UK have established clear legislation to allow individuals to go through LGR<sup>13</sup>. An additional five EU Member States (Bulgaria, Cyprus, Lithuania, Latvia, Romania) have not laid down a clear procedure in law. Instead, applicants in these countries must access the procedure in courts and rest upon the decision of judges. At the other end of the spectrum, six Member States (Belgium, Denmark, Ireland, Luxembourg, Malta, Portugal) base their LGR procedures on self-determination and fully comply with the Yogyakarta Principles (2017)<sup>14</sup>.

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<sup>13</sup> Austria, Belgium, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, UK. The remaining five countries (Bulgaria, Cyprus, Lithuania, Latvia, Romania) do not have any such legislation, although courts have recognised some LGR applications on a case-by-case basis.

<sup>14</sup> Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles, see: [http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf) These principles are non-binding and were developed by a panel of experts.

The legal requirements for individuals to change their legal gender differ substantially by Member State. Some legal requirements not only result in a difficult and disproportionate burden on transgender people, but in case of divorce<sup>15</sup> or sterilisation requirements, are in clear violation of the case-law of the European Court of Human Rights (ECtHR) and binding human rights standards.

Accessibility of LGR for minors varies between Member States. Most countries (17) explicitly prohibit LGR for children under 18 years old. Additionally, some Member States have imposed a timeframe on individuals in accessing LGR, for example requiring applicants to 'prove' that they have been living publicly in accordance with their gender identity for a certain period of time. The so-called 'real-life experience' (RLE) requires a person to live for a certain period of time in line with their gender identity without official documents to support that identity.

This study groups countries into legal 'clusters', depending on their medical and judicial requirements for LGR. The legal clusters do not take into account waiting requirements or age requirements. Countries in these clusters have been ranked from having the least accessible LGR procedures (clusters 1 and 2) to having the most accessible (cluster 5).

The least accessible requirements are based on a more paternalistic or pathologising approach, whereby either the state (through courts or other bodies) or medical experts is seen as best placed to assess the gender of a person. These legal frameworks reflect an approach whereby transgender individuals are seen as needing to be 'tested' on their commitment to their gender identity. The most accessible frameworks reflect the self-determination approach, with transgender people seen as best placed to identify their own gender, and swift and accessible procedures in place.

These clusters rest upon the assumption that national legal standards are being followed in practice. They were also defined in summer 2019 and do not take into account legal developments since then. It is relevant to note that, at the time of this report's publication, the Hungarian government adopted a bill to ban access of trans people to legal gender recognition<sup>16</sup>. The implication of this is that Hungary no longer falls under the study's classification below and may also no longer comply with international human rights standards<sup>17</sup>.

The cluster groupings are shown in the Table below.

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<sup>15</sup> If they cannot be converted into registered partnership. ECtHR, *Hamalainen v Finland*, no. 37359/09.

<sup>16</sup> See for example, Holroyd, M. (2020) 'Hungary passes bill ending legal gender recognition for trans citizens'. Euronews. 20 May 2020. Available at: <https://www.euronews.com/2020/05/20/hungary-passes-bill-ending-legal-gender-recognition-for-trans-citizens>

<sup>17</sup> See Statement of the Standing Committee of the Conference of INGOs of the Council of Europe adopted on 27 April 2020. 'Call on Hungarian Parliament to align legal gender recognition with internationally recognized human rights standards'. Available at: <https://www.coe.int/en/web/ingo/-/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards>

Table 1. Summary of legal clusters (as of summer 2019)

Cluster	Countries
1 (No procedure is laid down in the legislation)	Bulgaria, Cyprus, Lithuania, Latvia, Romania
2 (Medical requirements (sterilisation, surgery, hormone treatment))	Slovakia, Czechia, Poland*, Finland, Austria, Estonia* Spain, Italy*, UK <sup>18</sup>
3 (Diagnosis or supervision by medical body)	Slovenia, Germany, Hungary*, Croatia, Sweden, Netherlands
4 (No medical requirements but requires divorce or judicial procedure)	Greece*, France
5 (Self-determination)	Belgium, Denmark, Ireland, Luxembourg, Malta, Portugal

Note: Countries are grouped according to the accessibility of LGR. Countries with a divorce requirement have a \* attached. Clusters 1 and 2 have the least accessible procedures, and the procedures are progressively more accessible as the number of the cluster increases.

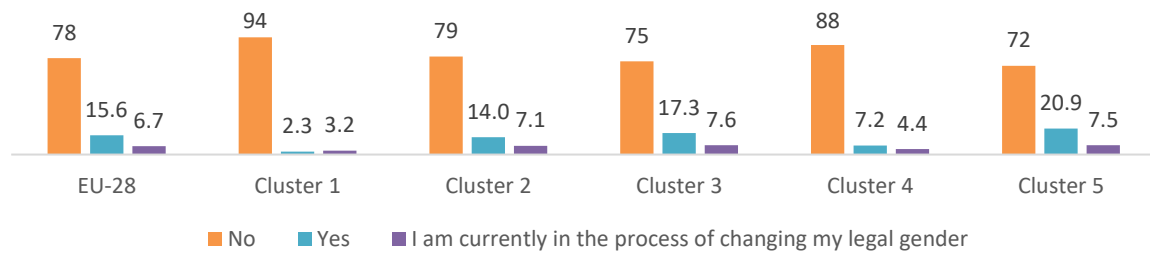
## ii. Overall use and accessibility of LGR procedures

Across the EU, more than three-quarters of trans individuals have not changed their legal gender (FRA 2019 LGBTI survey), suggesting that many are living with ID documents that are not aligned with their gender expression and/or identity. However, the gender identity of trans individuals is highly important in affecting the degree to which they use LGR procedures. While 57% of trans women and 46% of trans men have changed, or are changing, their legal gender in the EU, only 4% of non-binary people, and 2% or fewer cross-dressers and people who are genderqueer, gender-fluid, agender and polygender are doing so.

The design and requirements of the procedure available appear to play an important role in affecting overall take-up of LGR procedures. For instance, in cluster 1 countries - those that lack a clear procedure enabling LGR - nearly 95% of trans individuals have not used LGR procedures. As expected, the use of LGR procedures is highest in cluster 5 countries, where processes are based on self-determination. Here, one in five trans individuals having completed LGR and a further 7.5% in the process of doing so. In the EU as a whole, around one in five trans individuals who have not been through an LGR procedure stated that they would like to do so in the future.

<sup>18</sup> In the UK, applicants must have, or have had, a documented diagnosis of 'gender dysphoria'. In addition, applicants must undergo, have been prescribed or are undergoing treatment for the purpose of modifying sexual characteristics. There is no requirement for surgery or hormonal treatment per se, however there must be medical treatment involved.

Figure 1. Trans individuals who have changed their legal gender (%), by cluster and EU-28 average<sup>19</sup>



Study participants reported many motivations for going through an LGR procedure. These included overcoming issues with mismatching documents, gaining a sense of security or protection, accessing services, avoiding misgendering, overcoming the psychological burden of not living according to their gender identity, and obtaining recognition of their self.

By contrast, there are several reasons why trans individuals may choose not to make use of an LGR procedure. Most commonly, FRA LGBTI survey data (2019) suggest that trans people do not want to or feel it is unnecessary, although it is not possible to know why all individuals who stated this felt this way. Additionally, some individuals are put off by particular requirements in the law, by its difficulty/expense, or because they find it unclear. This suggests that, if features of the law were changed or became clearer, there may be greater demand for LGR in some countries.

Amongst those who have not been through LGR, trans women and trans men show the highest level of demand for it, with nearly 60% of each group stating that they would like to go through LGR in the future (FRA LGBTI survey 2019). It is unusual for trans women and trans men to show limited interest in LGR procedures.

Individuals with gender identities outside of the binary are less likely to desire a change in their legal gender marker. This may relate to the legal gender markers available within a country, as very few European countries offer a 'third gender' or gender-neutral option. It may also relate to individuals' personal experience of their gender identity. Although individuals with gender identities outside the binary generally appear to have less interest in LGR than trans women and trans men, there is nevertheless some demand among these groups. 17% of non-binary people and 13% of cross-dressers stated that they would like to go through LGR in future.

There are certain groups who face particular obstacles to accessing LGR. Some groups may be legally barred from accessing LGR, including minors, those without citizenship and those who desire a legal gender marker that is not available (for example, a non-binary or gender-neutral marker). People with chronic health issues or disabilities may also experience other barriers. For instance, some participants with mental health conditions highlighted the challenges of accessing LGR.

In our study, specific aspects of the law with which individuals disagreed included the restricted gender markers available, specific medical or legal requirements, or the idea of having their gender legally recognised at all. In some cases, it was also seen to be overly long, arduous or expensive.

'The process is too long and complicated for my mental health.'

Trans man, aged 18-24, residing in France (cluster 4)

<sup>19</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'Have you had your legal gender changed?' EU-28 weighted average. This was asked only of trans respondents. Base: Trans respondents in the EU LGBTI Survey II (n=20,143).

'[The] method is complicated, lengthy and expensive and that scares me off.'

Trans woman, aged 18-24, residing in Germany (cluster 3)

One in five of the online consultation respondents in our study cited family as a reason for not accessing LGR. This was a particular issue for participants in Poland, due to the legal requirement that trans people sue their parents as part of the LGR process. Others mentioned their family plans, such as wanting to delay LGR until after having a child.

Participants in our study had different views on the accessibility, clarity and speed of LGR processes, depending on the country. Countries with the fewest requirements for LGR (cluster 5) were viewed most positively by participants.

Generally, most respondents to the online consultation who had been through LGR disagreed that the LGR procedure they encountered was quick. Many participants noted that the length of time taken to complete their legal gender marker change was too long and they experienced negative impacts on their well-being as a result. One stated, 'It is long, painful and tedious. They do not realise that the fact of having to explain a journey from A to Z can be very painful for the person'. Another participant stated that it is common for individuals to suffer from depression due to the length of the procedures they face. The time-consuming process was often described as stressful, and in some cases led trans people to put their lives 'on hold'. Relatedly, many reported a lack of clear information on accessing available LGR procedures, usually remediated by support and guidance from NGOs, legal professionals or support groups active on social media.

In Member States where the LGR procedure is judicial, participants reported the arbitrary nature of court decisions on whether to grant LGR, with some judges requiring more conditions to access, evidence or documents than others.

There can be many negative consequences for individuals who do not go through LGR. In particular, several individuals explained their challenges related to mismatching documents, and the related professional difficulties. These included being unable to access employment services, being rejected from job interviews and having trouble with background checking agencies. Faced with these challenges, a range of 'workarounds' are used by trans individuals who cannot or do not want to take the steps to achieve LGR, such as changing one ID's picture (without changing one's legal gender) or adapting their gender expression depending on the situation. The fact that the design of LGR processes in some countries leads individuals to seek workarounds at all denies them access to full legal protection and recognition of their identity.

### **iii. Trans individuals' experiences of going through a legal gender recognition procedure**

This section considers participants' experiences after they decide to begin an LGR procedure.

Several European countries<sup>20</sup> require individuals to fulfil medical requirements as part of the LGR process, including gender dysphoria diagnoses, hormone treatments, surgery and sterilisation. Many trans individuals object to these requirements, warning that this makes LGR inaccessible to those who do not wish to, or cannot, undergo medical interventions. The experiences of those who do undergo medical requirements reveal problems and failings in how the system functions in most of these countries, which can result in substantial barriers for individuals who attempt to fulfil the state's medical requirements to access LGR.

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<sup>20</sup> Officially these countries have medical requirements in the LGR process: Slovakia, Czechia, Poland, Finland, Austria, Estonia, Spain, Italy, UK, Slovenia, Germany, Hungary, Croatia, Sweden, Netherlands. In addition, five countries do not have clear LGR requirements (Bulgaria, Cyprus, Lithuania, Latvia, Romania) and some participants from these countries reported having to fulfil medical conditions in practice.

Previous studies and FRA data suggest discrimination towards trans people by healthcare professionals is a common occurrence. Consistent with this, nearly half (47%) of the affected respondents to the online consultation of this study reported one or more disrespectful experiences in medical interactions linked to LGR. These experiences frequently reflected a serious lack of understanding and competence among healthcare professionals as to the health needs of trans individuals. For example, doctors not knowing 'what to do' with trans patients or the appropriate language to use, misdiagnosing patients, and failing to understand the side effects of hormones prescribed. Of concern, some testimonies also reflect obstruction by clinicians. For example, individuals shared stories of healthcare professionals being unwilling to see trans patients or provide the necessary expert opinion for LGR. Around one in ten respondents to the online consultation had been refused treatment because a medical professional did not approve, of those who had attempted to access this.

'They treated me like something unknown to them. Doctors and nurses who really respected me were in the vast minority.'

Trans woman, aged 25-34, residing in Poland

'[For those who] did not specialize in trans persons, I was constantly misrepresented and addressed with a false name, as my LGR had not been completed at that time.'

Man with a trans history, aged 18-24, residing in Austria

Many participants spoke of the harmful psychological impacts of undergoing forced treatments and/or negative interactions with clinicians, calling it 'disrespectful', 'psychologically traumatic', 'embarrassing' and 'absolutely degrading'. A transgender man who had been forced to undergo sterilisation surgery later reported that he was 'disgusted' and feels 'deprived of my ability to reproduce'.

Commonly, participants found the available supply of specialist professionals and clinics offering the necessary medical interventions for LGR to be inadequate, with long waiting lists. Such challenges were mentioned in Finland, Hungary, Italy, Lithuania, Netherlands, Romania and the UK, but may also affect other Member States. These types of structural failings can make it extremely difficult for individuals to fulfil the state's medical requirements. They suggest that Member States are introducing requirements without providing the necessary numbers of staff and facilities for all who need them within a reasonable timeframe. Other obstacles to fulfilling the medical requirements of LGR include state restrictions on medical professionals that can be consulted, and limited insurance coverage of relevant medical treatments.

Although legal interactions were generally seen more positively than those with medical staff, trans participants reported difficult, upsetting or intimidating interactions with civil or legal professionals. In particular, individuals living in cluster 1 countries (Bulgaria, Cyprus, Lithuania, Latvia, Romania) also face highly arbitrary requirements when it comes to the evidence and requirements requested by individual judges.

There are clear signs that an individual's situation plays a role in affecting how easily they can access and move through LGR processes. Some groups appear to face extra difficulties, for example, those with long-term health conditions and disability; non-citizens; those of a lower socio-economic status; and others. Relatedly, there appears to be a problem of gender stereotyping by legal professionals and psychologists, psychiatrists and other healthcare staff when making assessments about gender identity. These practices can make assessments especially stressful for non-binary people, who may feel obliged to 'perform' in a binary gender.

LGR can also have consequences for individuals' civil and family situation. Five countries (Poland, Estonia, Greece, Hungary, Italy) expect individuals to undergo divorce before receiving LGR. Many more countries do not recognise same-sex marriages and/or

registered partnerships (Bulgaria, Cyprus, Czechia, Estonia, Greece, Croatia, Hungary, Italy, Lithuania, Latvia, Poland, Romania, Slovenia, Slovakia), meaning that, in practice, individuals hoping to change their legal gender marker may be in relationships that become legally void or have an unclear status after they access LGR. These relationship effects of LGR reflect that gender-differentiated legal systems for marriage and civil partnerships facilitate discrimination against trans people and LGR cannot combat this.

Similarly, the design of other legal procedures can lead to other negative impacts of LGR for family life, related to parental rights, custody rights and assisted reproduction. Similar to marriage and civil union, trans people can sometimes experience the reverse situation, whereby their parental rights or access to assisted reproduction improve as a result of LGR. However, these consequences of LGR (positive and negative) are due to other laws that differentiate directly by gender, relationship status or sexual orientation.

There appear to be problems with the so-called 'real-life experience' (RLE) of some LGR procedures. The RLE requires a person to live for a certain period of time in line with their gender identity, without official documents to support that identity. Some individuals spoke of the difficulties they faced in living without official identity documents. The 'RLE' was even seen to be dangerous in some cases, because of the hostility of others and the lack of documents to offer additional protection.

It is difficult to get a clear and complete picture of the costs of LGR, due to varying conceptions of what these costs cover. However, these appear to be linked to the number/type of requirements one has to fulfil. The highest costs were seen in cluster 1 and cluster 2 countries (median costs were EUR 814 and EUR 822, respectively), where individuals either have intrusive medical requirements to fulfil or the requirements differ on a case-by-case basis. The lowest costs were observed in cluster 5 countries, where the process is more administrative (median cost of EUR 80). The highest costs reported (EUR 822 and EUR 814) are far higher than the monthly minimum wage in several Member States, representing a significant cost.

Substantial regional and local differences within a country affect individuals' experiences of LGR procedures, e.g. variations in courts' familiarity with LGR processes, the ability and willingness of courts to hear LGR cases and the 'trans-friendliness' of a region. Individuals from several countries provided clear and concerning examples of relevant legal and medical professionals failing to comply with the national LGR procedure. This can lead to legal standards being applied inconsistently and individuals being asked to fulfil (unnecessary) additional requirements to change their legal gender marker, including providing medical declarations. Failures to apply the correct legal standards may reflect a lack of adequate investment by the state to ensure that professionals are aware of the requirements linked to LGR and follow these correctly. In turn, this situation undermines the clarity and protections available to trans people under law.

### **III. The relationship between LGR procedures and the socioeconomic position of trans individuals**

#### **i. Overall effects and impact of the legal procedures**

When exploring the effects and impacts of LGR procedures on transgender people, the two main data sources (participant testimonies and the statistical data) initially appear to give a different picture.

On the one hand, at the individual level, participants shared several effects and impacts of undergoing LGR. Most commonly and across almost all EU Member States and the UK, participants experienced marked improvements to their well-being after gaining legal recognition, describing a sense of at last 'being seen' and validated in their identity. Many also underlined their improved health, a greater sense of personal safety, and more willingness to engage in education.



'I have never been so happy in my life.'

Trans woman (aged 25-34), residing in Spain (cluster 2)

'It has been a huge relief and a huge freedom to access ordinary civic freedoms and rights and to have my name and gender marker aligned with my identity.'

Man with a trans history (aged 35-44), residing in Cyprus (cluster 1)

Some more negative or mixed impacts were also observed, especially in countries with less accessible LGR procedures. This was especially the case for individuals' financial situation. There were also some negative psychological impacts of particular procedural requirements, such as medical conditions and divorce requirements, as well as the very long nature of LGR in some countries. Taken together, these individual-level impacts suggest that there could be many benefits for trans people by making LGR procedures quicker, cheaper and more accessible, as well as removing intrusive requirements.

On the other hand, the statistical data gives a different perspective. It finds no clear relationship between the accessibility of an LGR procedure and the overall socio-economic position of trans people in different areas of life. Specifically, there appears to be no correlation between the design of the legal system and the average reported experiences and perceptions of discrimination against trans people in employment, education, healthcare and social services, housing, and when using ID.

On closer examination, the apparent disagreement between these two sources of evidence may make sense, because:

- Many reforms to LGR procedures are likely to be too recent to produce observable effects at the aggregate level. It was only in 2014 that the first EU Member State (Denmark) permitted an individual to legally determine their own gender on the basis of self-determination. The other five Member States to do this introduced changes since then, including as recently as 2017 and 2018. Even in countries with the most accessible legal systems, only around one in five trans individuals have made use of an LGR procedure so far. Some trans individuals may be legally barred from accessing LGR, or face obstacles linked to their disability status, ethnicity, socio-economic situation or other factors.
- Reported individual-level impacts show that having a new legal gender (with matching documents) cannot always protect trans individuals from discrimination.
- There is considerable variation *within* each cluster. Member States differ substantially in their education, healthcare and social services systems, public and private housing markets, rules and regulations against work-place discrimination, and overall rates of acceptance and discrimination against trans people.

Therefore, whilst accessible, non-intrusive Legal Gender Recognition procedures can be important in improving the well-being of trans people, they will not automatically guarantee that trans individuals are treated with dignity and respect. There are additional difficulties for those who do not or cannot 'pass' as the gender on their documents, as well as further challenges for non-binary individuals who may have no appropriate legal gender available. If the benefits of LGR are possible only when trans individuals are seen to be cisgender and their trans history is unknown, this suggests wider society is not necessarily becoming more aware or accepting of trans identities.

#### **IV. Recommendations from this study**

The recommendations below have been developed based on the wealth of information from this study. These aim to advance the social inclusion of transgender people. They are aimed at both the Member States and the EU within the scope of its competence. With respect to the recommendations addressed to the EU, it is important to bear in mind that the EU does not have an explicit competence to protect the rights of transgender people as it lacks a clear legal basis to protect individuals from



discrimination on the grounds of gender identity. The CJEU<sup>21</sup> has extended the EU framework protecting individuals against discrimination on the ground of sex to a certain category of transgender people, i.e. people who have undergone, are undergoing or intend to undergo gender-affirming surgery, irrespective of whether or not the person has undertaken LGR. The EU framework, as defined by the CJEU, currently excludes transgender people who cannot or do not want to undergo gender-affirming surgery.

Lastly, Member States have competence regarding civil status and legal gender recognition. When exercising those competences, Member States must comply with EU law, in particular, with the provisions relating to the principle of non-discrimination<sup>22</sup> and with the international human rights instruments to which they are parties, such as the European Convention on Human Rights.

A selection of key recommended actions is presented below. The full list can be found in Section 10.3 of the report.

### **Recommendation 1 – Promote respect for transgender people and education and awareness-raising on trans identities and rights, within all levels of education and in wider society**

#### **Key actions at EU level:**

- Within the upcoming European Commission LGBTI+ Equality Strategy, the European Commission should include a separate chapter addressing transgender people, with key actions to tackle stigma, prejudice and discriminatory attitudes towards transgender people, by promoting respect for the variety of gender identities and education on gender stereotypes and stigma.

#### **Key actions at Member State level:**

- Ensure through the adoption of policies and legislation that there is appropriate and tailored education for students at all education levels (primary, secondary and tertiary) on the meaning of gender identity, including trans identities, as well as the issue of gender stereotypes and stigma. Educational material should be revised to reflect a true representation of the diversity of gender identities and tackle stereotypes.
- Adopt and implement a national strategy for tackling prejudice, discriminatory and biased attitudes and behaviour towards transgender people, including long-term education and awareness-raising programmes, and action to tackle gender stereotypes and stigma towards trans individuals in the media. The strategy should be prepared in consultation with organisations working with, and representing, trans people.
- Require social partners (such as trade union and employers' organisations) promote inclusive recruitment procedures; training for HR professionals; and the inclusion of gender identity considerations in organisational equality and diversity trainings.

### **Recommendation 2 – Ensure access to clear, transparent, swift and respectful legal gender recognition (LGR) procedures in law**

#### **Key actions at EU level:**

- The European Commission should review the EU acquis and assess how to ensure full protection of transgender people's rights under EU law, in its area of competence.
- The European Commission should facilitate the exchange of best practices on LGR legal and procedural requirements, as well as best practices in their practical

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<sup>21</sup> CJEU (1996). *P v S and Cornwall County Council*. Case C-13/94 [1996] ECR I-2143 [para. 20]; CJEU (2006). *Sarah Margaret Richards v Secretary of State for Work and Pensions*. Case C-423/04.

<sup>22</sup> CJEU (2018). *MB v Secretary of State for Work and Pensions*. Case C-451/16, para 29.

implementation. The European Commission can support mutual learning among Member States in the process of adopting a new LGR framework.

- The European Commission should facilitate the exchange of best practices and conduct research on the legal implications of introducing a third gender or non-binary legal marker, or the removal of the gender marker from identity documents, and convene spaces for mutual learning among Member States in the process of implementing new systems.

**Key actions at Member State level:**

- Member states should strive to adopt LGR procedures based on self-determination and meet the human rights principles set out in the Yogyakarta principles:
  - Take all necessary measures 'to legally recognise each person's self-defined gender identity'.
  - Take all necessary measures to 'ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity'.
  - 'Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned'.
  - 'No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity'.
  - 'No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity'.
  - 'Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy'.
  - Remove requirements to satisfy medical (including psychiatric), civil status, age preconditions or 'real-life experience' (RLE) requirements.
- Ensure the option of a neutral gender marker in identity documents for those who may desire them, such as non-binary and genderqueer people. It can take the form of a third gender marker, such as an 'X' marker, or Member State can offer multiple gender marker options, including a gender-neutral option. Yogyakarta Principle 31 encourages states to 'make available a multiplicity of gender marker options'.

**Recommendation 3 – Ensure access to transparent, swift and respectful legal gender recognition (LGR) procedures in practice**

**Key actions at EU level:**

- Facilitate the exchange of best practices and mutual learning on ensuring non-discriminatory access to swift, transparent and respectful LGR procedures in practice, among Member States in the process of implementing new systems and streamlined processes for changing identity and other official documents.

**Key actions at Member State level:**

- Ensure that the law's provisions are transparent and respected in practice, and that trans individuals do not face harassment, discrimination or obstruction when trying to access their legal rights to LGR and having their documents changed accordingly.
- Ensure that the LGR procedure is clearly and consistently followed within an entire Member State by civil servants and all others responsible for applying it.

**Recommendation 4 – Beyond LGR, ensure trans rights in all areas of life and tackle discrimination**

**Key actions at EU level:**

- The European Commission should encourage Member States to implement the recommendations made to them in this study, in particular those on improving access to LGR procedures under Recommendations 2 and 3.
- The European Commission should propose the introduction of the protection ground of gender identity and gender expression in the next revision of the TFEU.
- The EU should review its current gender mainstreaming policies and actions<sup>23</sup> to better account for the transgender perspective.

**Key actions at Member State level:**

- Adopt, and ensure the implementation of, national legislation to protect against discrimination in employment, health, social security, access to goods and services, housing and education on the grounds of gender identity and expression.
- Encourage employers to adopt policies and measures to protect trans employees from discrimination – for instance, ensuring that employers draw up individual plans with trans workers and Human Resources for supportive transitioning at work.

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<sup>23</sup> Those includes the European Pact for Gender Equality 2011-2020 and Gender Equality Strategy 2020-2025. The EU Gender Equality Strategy explains that “*the expression 'in all their diversity' is used in this strategy to express that, where women or men are mentioned, these are heterogeneous categories including in relation to their sex, gender identity, gender expression or sex characteristics.*”

## FULL REPORT

### 1 Introduction

#### 1.1 Why this study?

Many transgender people living in the European Union (EU) today experience direct and indirect discrimination based on their gender identity. This discrimination exists in the labour market, in access to health and social services, in schools and universities (FRA, 2014; FRA, 2019). It prevents the full and equal social and economic participation of transgender people and impedes their enjoyment of their rights. In addition, transgender people may face day-to-day transphobia, harassment and abuse. The gender identity of trans individuals is not always reflected in their legal and administrative documents, nor respected by the wider public.

The needs and status of transgender individuals are often considered within the wider remit of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI)<sup>24</sup> rights. The acronym is a unifying one, but trans individuals also represent a distinct group, with a unique set of challenges related to the prejudice they face.

The European Commission is committed to tackling discrimination and promoting equality for transgender people. In December 2015, the Commission released the 'List of Actions by the Commission to advance LGBTI equality'<sup>25</sup>. This outlined a range of policy activities in the period 2016-2019 to advance non-discrimination, tackle hate speech/hate crime and promote LGBTI equality in education, health, employment, free movement, asylum and other areas.

As part of the list of actions, the European Commission made a public commitment to 'study elements of gender recognition legislation (or lack of) that affect transgender people's position on the labour market and other areas'.

This study represents the fulfilment of this commitment. It was commissioned and supervised by the European Commission's department responsible for justice, consumer rights and gender equality (DG Justice and Consumers).

#### 1.2 What this study is about

##### 1.2.1 Areas of focus

The research focused on the position and experiences of trans people in education, employment and later life, as well as their interactions with Legal Gender Recognition (LGR) procedures and their experiences of coming out. It also considered the impact of discrimination that trans individuals can face throughout their lifetime.

Focusing on these areas, this study aims to provide an overview of the situation of transgender people in the EU and to identify whether there is a positive correlation between inclusive policies allowing for legal gender recognition (LGR) and the well-being of transgender people.

LGR is the procedure through which an individual can change their name and gender marker in official registers and documentation. As of 2019, 23 EU Member States had established clear legislation to allow individuals to go through LGR<sup>26</sup>. The conditions for the procedure vary widely between countries and may encompass a range of medical, judicial, civil and/or administrative requirements. In 2014, Denmark became the first EU Member State to permit an individual to legally determine their own gender on the

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<sup>24</sup> LGBTI is an acronym that stands for Lesbian, Gay, Bisexual, Transgender and Intersex. It can be expanded to LGBTQI (to include queer), LGBTQIA (to include queer and asexual) and LGBTQI+, depending on the context and audience. See key abbreviations for more information.

<sup>25</sup> Available at: [https://ec.europa.eu/info/sites/info/files/lgbti-actionlist-dg-just\\_en.pdf](https://ec.europa.eu/info/sites/info/files/lgbti-actionlist-dg-just_en.pdf)

<sup>26</sup> The remaining five countries (Bulgaria, Cyprus, Lithuania, Latvia, Romania) do not have any such legislation, although courts have recognised some LGR applications on a case-by-case basis.

basis of self-determination, without requiring medical interventions or divorce. In Europe, LGR based on self-determination is now permitted in six EU countries<sup>27</sup>. LGR procedures based on self-determination are important for allowing transgender people to live with greater dignity.

The specific objectives of this study are to:

- Provide a comprehensive and detailed overview of both the sociodemographic and socioeconomic position of transgender people in the EU, as well as the nature of the discrimination they face;
- Identify patterns among EU Member States that have similar LGR procedures, and to formulate 'clusters' that group Member States accordingly;
- Identify and analyse any correlation that exists between LGR and the well-being and socioeconomic position of transgender people;
- Provide recommendations to further advance the equality of transgender people across the EU.

It is important to note that the quality, availability and adequacy of healthcare for trans individuals is **not** a focus area of this study, except in the context of LGR procedures that have medical requirements. Nonetheless, existing studies on the experiences of trans people in a medical context suggest that misgendering, lack of professional knowledge and discrimination towards trans individuals remain serious problems in healthcare across many European countries (TGEU, 2017; FRA LGBTI survey of 2019).

### **1.2.2 Different research activities of the study**

This study involved several research activities during 2018 and 2019, including:

- A **literature review** of existing research during Winter 2018 and Spring 2019;
- Several consultation activities<sup>28</sup> with 1,015 transgender adults living in the EU during 2019, including:
  - In-depth **telephone interviews** with 73 trans individuals living across the EU, between 9 May 2019 and 20 November 2019;
  - Six **focus groups** held in Greece, Ireland, Italy, Lithuania, Poland and Portugal, which engaged a total of 77 trans individuals between 16 May 2019 and 15 October 2019;
  - A detailed **online consultation questionnaire** with trans individuals living across the EU. This was launched on 18 July 2019 and 31 July 2019 (for the English-language and multi-language versions respectively), and it remained open until 26 September 2019. 865 responses were subsequently included in the analysis for the study<sup>29</sup>.
- **Detailed legal mapping and analysis** of practices and procedures for LGR across the 28 EU Member States as of 2019, resulting in the creation of different legal 'clusters' of similar approaches across countries.
- **Quantitative analysis of existing statistical EU-wide data** on the socioeconomic and sociodemographic position of trans individuals living in the EU.

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<sup>27</sup> Belgium, Denmark, Ireland, Luxembourg, Malta and Portugal. Outside of the EU, Norway and Iceland also permit LGR on the same basis.

<sup>28</sup> Due to overlap in the topics of the consultation activities, trans individuals were encouraged to participate in only one consultation activity (telephone interview, focus group or online consultation).

<sup>29</sup> 12 respondents to the online consultation stated that they had already participated in a telephone interview. Due to topic overlap in these research modes, their responses were then excluded from the analysis of the online consultation. All interviews were analysed in-depth.

The consultation activities with trans individuals were undertaken in several languages to increase the reach of the research and to ensure good representation of the different approaches to LGR observed across the EU (see Annex 2). In carrying out its activities, the research team was guided by:

- **Three Senior Researchers and a Steering Committee** that brought together representatives of Transgender Europe (TGEU), Human Rights Watch, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe), TransgenderNI (Northern Ireland), and the European Union Agency for Fundamental Rights (FRA). These individuals held an essential advisory role throughout the study, providing feedback on the overall approach and reviewing research tools and draft results.
- **A network of 30 national voluntary and support organisations** working in the field of transgender rights specifically and LGBTI rights more generally, covering 22 Member States and the UK. These partners were crucial in creating awareness of the study at national level, advising on the language used in the research tools (in particular, translation quality), recruiting for and co-facilitating the focus groups, and providing their expertise to improve the quality of the research.

Further information on the research methodology/activities is available in Annex 2.

### **1.2.3 How transgender people contributed to this study**

Trans individuals living across the EU played many essential roles in this research:

- **Study participants:** In all, 1,015 trans people participated in one of the consultation studies of this study (interview, focus group or online consultation), and shared their overall experiences in education, employment and later life, as well as their interactions with (and views on) LGR procedures. Their experiences and outlook form the basis of the analysis in this report.
- **'Piloters':** Trans individuals were instrumental in testing the appropriateness and sensitivity of the interviews, focus groups and online consultation, and advising on improvements.
- **Researchers and expert reviewers:** Trans researchers and reviewers played an invaluable role in informing and improving the quality of the research approach and results of this study.

National and international organisations working in the area of trans rights were also instrumental in supporting the awareness-raising, recruitment and focus group activities related to this research.

## **1.3 Understanding the 'legal clusters' of this report**

Within several chapters, this report groups countries into 'clusters' according to how easy/difficult it is to access LGR. The least accessible systems are based on a more paternalistic or pathologising approach, where the state (via courts/other bodies) or medical experts are seen as best placed to assess a person's gender. The most accessible frameworks reflect the self-determination approach, whereby trans people are best placed to identify their own gender.

Legal clusters are ranked from the least accessible procedures (clusters 1 and 2) to most accessible procedures (cluster 5), as signified by the colours used below. The cluster groupings in this study are given in the Table below, while full information about LGR requirements per cluster is available in Chapter 6.

Table 1. Summary of legal clusters (as of summer 2019)<sup>30</sup>

Cluster	Countries
1	Bulgaria, Cyprus, Lithuania, Latvia, Romania
2	Slovakia, Czechia, Poland*, Finland, Austria, Estonia* Spain, Italy*, UK
3	Slovenia, Germany, Hungary*, Croatia, Sweden, Netherlands
4	Greece*, France
5	Belgium, Denmark, Ireland, Luxembourg, Malta, Portugal

These clusters rest upon the assumption that national legal standards are being followed in practice. They were also defined in summer 2019 and do not take into account legal developments since then. It is relevant to note that, at the time of this report's finalisation and publication, the Hungarian government adopted a bill to ban access of trans people to legal gender recognition<sup>31</sup>. The implication of this is that Hungary no longer falls under the study's cluster 3 classification and may also no longer comply with international human rights standards<sup>32</sup>.

## 1.4 Understanding the coverage and representativeness of the data used in this report

### 1.4.1 Challenges in gauging the size of the transgender population

A person's gender identity is not systematically monitored via population censuses across Europe. Information on the number of people who are transgender and the proportion of the overall population who are transgender is scattered. The age distribution of transgender people, their education and employment levels are also contested. Information on the sociodemographic and socioeconomic position of transgender people is highly dependent on sample selection and selection criteria used, as well as the socio-political context and timeframe in which the data are collected.

Population estimates of transgender people in the EU vary, with existing academic studies emphasising the lack of robust data in this area (Arcelus et al., 2015; Collin et al., 2016; Goodman et al., 2019; Keo-Meier and Labuski, 2013). As such, no peer-reviewed articles provide complete comparable data across the EU. A 2014 FRA report (as cited in Watts et al., 2017) estimated that 1% of the EU population may be transgender or experiencing gender incongruence. This would translate to around 5.1 million individuals in the EU in 2019<sup>33</sup>.

<sup>30</sup> Countries are grouped according to the accessibility of LGR. \* denotes EU Member States with a divorce requirement. Clusters 1 and 2 have the least accessible procedures, and the procedures are progressively more accessible as the cluster number increases.

<sup>31</sup> See for example, Holroyd, M. (2020) 'Hungary passes bill ending legal gender recognition for trans citizens'. Euronews. 20 May 2020. Available at: <https://www.euronews.com/2020/05/20/hungary-passes-bill-ending-legal-gender-recognition-for-trans-citizens>

<sup>32</sup> See Statement of the Standing Committee of the Conference of INGOs of the Council of Europe adopted on 27 April 2020. 'Call on Hungarian Parliament to align legal gender recognition with internationally recognized human rights standards'. Available at: <https://www.coe.int/en/web/ingo/-/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards>

<sup>33</sup> Source: Eurostat (2019) Population on 1 January by age and sex [demo\_pjan]. EU-28 (estimated and provisional data). Available at: [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo\\_pjan&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=demo_pjan&lang=en)



Three main considerations should be taken into account when analysing the number and proportion of people in the population in the EU who are transgender. Firstly, the rapidly increasing number of published studies warrants continuous re-evaluation of the available data (Goodman et al., 2019). Secondly, data estimating the size and proportion of transgender people can be divided into those conducted in specialised clinics and those that are population-based (Collin et al., 2016; Goodman et al., 2019). Thirdly, the results may depend heavily on the definition of *who* counts as transgender, with inclusion criteria varying substantially. They can, for instance, be based on legal data (change of name/gender marker), or on those who underwent hormone therapy or other gender-affirming procedures.

Within this study, self-identification was the most important guiding principle in determining participant eligibility.

#### 1.4.2 Overview of key sources

This report draws mainly from the following sources:

**Relevant literature:** The report uses academic literature and reports from organisations working in the area of trans equality to understand what was already known about the sociodemographic and socioeconomic position of trans people in the EU and how this may vary between Member States. This yielded some insights into 'coming out' and transition processes and experiences of discrimination in various contexts (see Bibliography in Annex 1 for a full list of sources). Where recent sources existed, these were used to gain initial insight into the legal situation in each country, with the information subsequently verified through in-depth legal research. The available literature tends to focus on trans people in a healthcare context, and there are many areas where further research is needed. For example, very little research has been done on the situation of trans people in later life.

**Experiences of study participants:** 1,015 trans individuals living across Europe directly contributed as participants in this study, via three modes: in-depth interviews, focus groups and an online consultation (see Section 1.2.3 for more on how trans people contributed to this study).

In this study, participants were eligible to take part in the three consultation activities if they met the following criteria:

- Currently identify as transgender or as having a transgender history;
- Aged 18 years old or older;
- Residing in a Member State of the EU.

Compared to the general trans population covered by the FRA LGBTI survey data (2019), participants in this study had greater experience of LGR procedures. For example, nearly half (44%) of all respondents to the online consultation in this study reported that they had changed, or were changing, their legal gender marker (the FRA survey reported slightly over 20%). This is likely due to the recruitment modes of this study, which strongly encouraged those with direct experience of LGR procedures to participate.

**Experiences of trans participants in the 2012 and 2019 LGBTI surveys conducted by the FRA:** The report uses the findings of the FRA 2012 LGBT survey and 2019 LGBTI survey. Data used from these surveys about trans individuals are designed to be as representative as possible of the wider trans population in the EU. They are also weighted to increase their representativeness at the EU level. These are the largest EU-wide surveys covering the trans population: the 2012 survey captured the views of 93,000 people from the LGBT community, including around 7000 trans respondents, while the 2019 survey received around 140,000 responses from the LGBTI community, including nearly 20,000 responses from trans people. Trans respondents were eligible to participate in the 2012 survey if they self-identified as trans, were aged 18 or older



and lived in the EU or Croatia (which was not at that time an EU Member State). Trans individuals were eligible to participate in the 2019 survey if they self-identified as trans, were aged 15 or older and lived in the EU or Macedonia. The findings of the FRA 2012 survey were published in a 2014 report, thus references to the FRA 2014 source refer to those 2012 data. Many participants in this study are highly likely to have also contributed to FRA's 2012 and 2019 surveys.

Further information on the gender identity categories *within* the trans population used by the FRA surveys and this study can be found in Section 1.6.3 of this report.

**Wider public opinions on equality and non-discrimination:** This study makes use of findings from EU-wide Eurobarometer surveys conducted in 2012, 2015 and 2019. These surveys focused on discrimination and social acceptance in the EU of different groups in society. In this report, the results were used in this study to understand public perceptions of the discrimination faced by the trans community and efforts to promote diversity, acceptance of trans people in society and public support for legal gender change. Eurobarometer surveys capture public opinion in general by interviewing a random sample of approximately 1,000 people per Member State. This information provides the contextual background of the society in which our participants' experiences are situated, mainly amplifying the relatively low awareness of discrimination and an ongoing lack of acceptance.

### **1.4.3 Overview of individuals consulted for this study**

Trans individuals with direct experience of LGR procedures were strongly encouraged to take part in the study. As their participation was self-selected, the sample was not drawn from a random selection of trans individuals and may not be representative of the entire trans population. The challenges outlined above in gauging the overall size and distribution of the transgender population across the EU means that it is not possible to assess the degree of representativeness.

Given these challenges, the results from this study are generally reported qualitatively. Where sociodemographic data on the situation of the wider trans population are included, FRA survey data were used, where available. Where the results of this study are reported quantitatively, the source and base number is noted in the footnote underneath the relevant Figures.

In total, 1,015 adults who identified as transgender (now or in the past) took part in this study. With our participants' consent, we collected various sociodemographic data, including their:

- Country of residence;
- Age;
- Gender identity;
- Health status;
- Residence status;
- Sexual orientation;
- Ethnicity;
- Highest level of education;
- Employment situation.

These data were important in understanding the diversity of our sample, as well as to highlight any intersectional issues faced by members of the transgender population.

As shown in Figure 1, the study consulted with trans individuals from across different regions of the EU. There were participants from the UK and nearly all EU Member States, except Bulgaria and Slovakia. The level of participation varied by country and cluster, due to variation in the size of each country and cluster and the distribution of the trans population in the EU. The team aimed to consult with at least 30 individuals from each legal cluster, and this quota was met (see Table 2). Participation was highest from

cluster 2, but this was also the cluster containing the greatest number of countries. Similarly, the study set minimum participation quotas by region of Europe, which were also met.

Figure 1. Participants' country of residence<sup>34</sup>

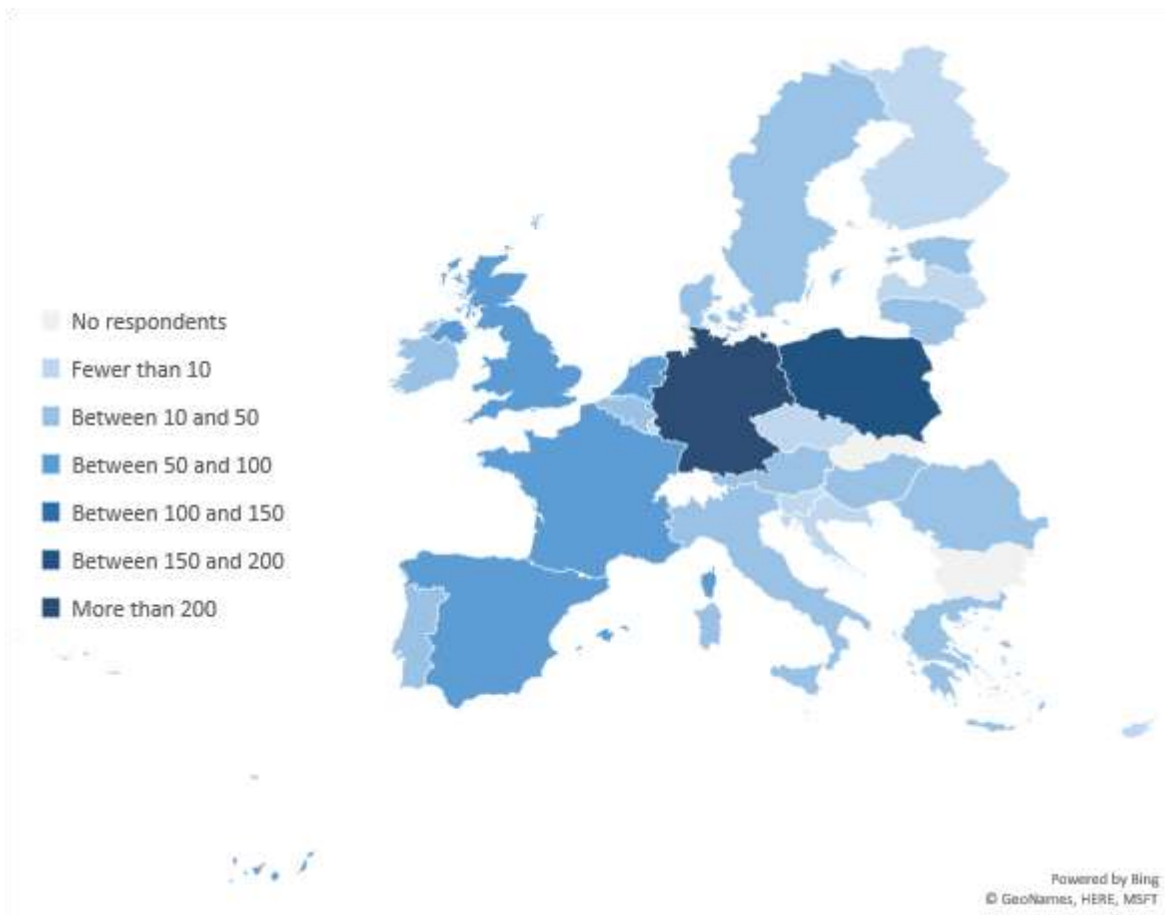


Table 2. Legal cluster of participants' country of residence<sup>35</sup>

Cluster	Number of participants
Cluster 1	38
Cluster 2	612
Cluster 3	148
Cluster 4	102
Cluster 5	115

<sup>34</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. The question asked: 'In which country do you live?'. Base: All participants (n= 1,015).

<sup>35</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. The question asked: 'In which country do you live?'. Base: All participants (n= 1,015).

Regarding age distribution, participants tended to be younger, with more than two-thirds aged 34 years or younger. Despite concerted efforts to consult with a range of age groups, only around 14% of participants were aged 45 or over.

It was important to recognise the diversity of the trans population and consult participants with a wide range of gender identities. While the majority of our participants had a binary gender identity (trans man or trans women), one in five participants had a non-binary gender identity. 6% described their gender identity in another way, which included people with a non-binary identity who identified more closely with either a masculine or feminine identity, people with a trans history who did not identify with the trans label, and those who identified simply as 'trans'.

In relation to other characteristics of those who participated:

- around four in 10 individuals reported a disability or long-term health condition.
- most participants (85% of total) were citizens of their country of residence
- participants had a diverse range of sexual orientations
- just over half of participants who provided an answer reported that they were in employment, 14% were unemployed, 38% were in education, 7% were unable to work due to sickness or disability and 3% were retired.<sup>36</sup>

In gathering information on ethnicity, the study prioritised self-identification and received a wide variety of responses. People understood their ethnicity in terms of national identity, skin colour and culture. As a result, there is some ambiguity around the proportion of our participants who belong to an ethnic minority group. Nonetheless, there was limited diversity in terms of ethnicity. Around 85% of participants identified as not belonging to an ethnic minority, up to 7%<sup>37</sup> of participants belonged to an ethnic minority and a further 8% of participants stated they preferred not to say.

The implications of the study sample are that participants were well-placed to provide insights into the experiences of trans individuals with a range of gender identities, and the experiences of those living in countries with diverse legal frameworks on legal gender recognition. The sample also provided several perspectives on how the intersections between gender identity and disability can affect experiences. Due to the sample's composition, participant testimonies provided fewer insights into the experiences of older trans people, trans people belonging to an ethnic minority and trans people who are not citizens of their country of residence. However, it was still possible to include some perspectives on the experiences of individuals in one or more of these groups. Trans people's experiences in later life are explored via a dedicated chapter (Chapter 5) and the experiences of trans people belonging to an ethnic minority and trans people who are not citizens are considered throughout other chapters. Examples include: discussion of how trans people belonging to an ethnic minority may have additional difficulties in accessing the labour market (Section 4.2), as well as consideration of the legal obstacles to accessing Legal Gender Recognition for those who are not citizens (section 7.2.3).

Further information on the study sample is available in Annex 2.

## **1.5 EU averages and references to the UK in this study**

The United Kingdom (UK) officially exited the EU on 31 January 2020. However, most of the research and writing for this study took place during 2018 and 2019, at a time

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<sup>36</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. The question asked: 'What is your current employment status? Please tick all that apply.' Base: All participants in the study excluding 88 respondents who chose not to provide a response (n=927). Note that some respondents selected more than one response for their employment situation and 4% selected "other".

<sup>37</sup> 6% of participants clearly identified as belonging to an ethnic minority. It was not clear from the responses of a further 1% of participants whether they considered themselves to belong to an ethnic minority. More discussion of these ambiguities is available in Annex 2.

when the UK was still an EU Member State. As a result, the UK is consistently included within the EU-28 averages presented, based on the available LGBTI survey data from FRA and Eurobarometer data (see Section 1.4.2).

## 1.6 Ethical dimensions

### 1.6.1 Overall approach

This study – in particular the consultation activities – raised several ethical risks. To mitigate and overcome these risks, the research team developed a detailed ethical protocol, informed by a range of best practice guidance (e.g. Adams et al, 2017; Aparicio-García et al., 2018; Orr and Bennett, 2009; Vincent, 2018). This informed all stages of the research, and all researchers were appropriately trained by a Senior Researcher and the Qualitative Research Lead. Annex 3 summarises important components of this protocol.

### 1.6.2 An intersectional approach

Given the varied experiences and heterogeneous nature of the transgender population, this study aimed to adopt an intersectional approach throughout. In practice, in this study, it involved studying, understanding and responding to the ways in which gender identity intersects with other personal characteristics/identities and considering how those intersections contributed to unique experiences of discrimination<sup>38</sup>.

Actions to promote an intersectional approach included:

- During recruitment, the research team worked with a diverse network of partners, who were themselves encouraged to recruit from a diverse range of backgrounds<sup>39</sup>.
- Specific actions were taken to boost research accessibility for some groups. For example, building on the lessons of a pilot focus group, all subsequent focus groups occurred in physical venues with step-free access.
- During consultation activities, the research monitored diversity among participants by collecting data on a range of sociodemographic characteristics. This allowed for targeted recruitment activities to boost the participation of under-represented groups (for example, trans people over 55 and trans people belonging to an ethnic minority).
- Targeted questions were built into the research to explore intersectional issues, for example considering how residence status for non-citizens can affect access to legal procedures; how certain disabilities and health conditions can reduce access to LGR; and other topics.

The analysis focuses primarily on differences across the trans population according to **age, gender identity** and **country of residence**, as these characteristics relate directly to the primary recruitment criteria of this study<sup>40</sup>. It considers: the unique challenges facing non-binary people in accessing LGR procedures; variations in the employment situation of trans women and men; how coming out experiences can vary according to age; and other relevant topics. Where possible with the data available, there is further analysis of how other personal characteristics (such as disability, residence status and ethnicity) affect the lived experiences of trans people.

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<sup>38</sup> The concept was first developed by Kimberlé Crenshaw. The definition here was adapted from EIGE's Gender Equality Glossary: <https://eige.europa.eu/thesaurus/terms/1263>

<sup>39</sup> As primary recruitment criteria, the team sought to recruit transgender individuals with a range of gender identities and age ranges, as well as countries of residence. These link to the eligibility criteria of the study (see Section 1.4 for more on how participants were screened). As secondary recruitment criteria, recruiters were encouraged to seek diversity in other sociodemographic characteristics.

<sup>40</sup> *ibid.*

An overview of the diversity of trans participants consulted – and the strengths/weaknesses of this sample for an intersectional perspective – is provided in Section 1.4.3.

To avoid the ‘othering’ of groups within the trans population, intersectional analysis is included directly within the body of individual chapters. To make these results easier to find, they are also frequently integrated into conclusions at the end of the chapters.

### **1.6.3 A note on language, pseudonyms and gender identity categories**

This report aims to reflect and value the experiences of trans individuals through sensitive and respectful language. However, the definition, use and acceptability of some terms is debated. Some reasons for this include: individual preferences for certain terms (such as when choosing to reclaim historically pejorative words); the negative connotation of some terms in a particular country, culture or context; varying intentions of the speaker(s); continuous evolution over time when it comes to the most respectful terms; and differences in the use and acceptability of terms in the many languages of the study.

The terms ‘trans’ and ‘transgender’ are used interchangeably throughout this report. Trans or transgender is an umbrella term to describe people who have a gender identity that is different to the sex assigned at birth, and for people who wish to portray their gender identity in a different way to the sex assigned at birth. Trans people may describe themselves using one or more of a wide variety of terms, including (but not limited to) transgender, transsexual, gender-queer, gender-fluid, non-binary, cross-dresser, trans man, trans woman and several others.

Throughout this study, it was important to the research team to ensure the use of the correct gender identities, following the principle of self-identification. All consultation activities (interviews, focus groups, online consultation) began with a screening question to confirm that each participant currently identifies as transgender, or has done in the past. Individuals were then given the option to specify their identity, although this occurred in slightly different ways, depending on the study mode. During the interviews, individuals stated their identity orally in response to an open-ended question. Similarly, during the focus groups, individuals gave their gender identity within an anonymised monitoring form that contained an open-text box for this purpose (without predefined categories). For the online consultation, individuals were given a list of common identities within the transgender population to choose from, but also had the chance to state their gender identity in an open-text box if they did not identify with one of the identities in the pre-set list. Within the online consultation, some of the pre-set categories were grouped together<sup>41</sup>.

As a general rule, the report gives individual quotes and case studies alongside the gender identity that each person specified during their participation. To enable the analysis of differences within the transgender population, this report regularly makes use of the categories of gender identities included in the online consultation, as most study participants (across the three modes) identified with one of these. For individuals who did not identify with one of these, their specified identity is given along with individual quotes and case studies, unless this identity was stated by a very low number of participants and including it could endanger their anonymity. In cases of risks to their anonymity, ‘transgender person with another gender identity’ is used.

In some cases, respondents chose not to specify their gender identity. Additionally, as the gender identity of participants was monitored anonymously during the focus groups, it was not possible to link this to particular contributions unless it was evident from their

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<sup>41</sup> Source: Online consultation of this study. The question asked: ‘How do you describe your gender identity at the present time?’. Answer categories: ‘Trans woman/transgender woman’; ‘Trans man/transgender man’; ‘Woman with a trans history’; ‘Man with a trans history’; ‘Non-binary/genderqueer/gender non-conforming’; ‘In another way (please specify)’.

quotes<sup>42</sup>. In all cases, when the gender identity of an individual was unknown, the report describes them as a 'transgender person' or 'trans person' and gender-neutral pronouns were used ('they/them').

During this research, the working definitions for the gender identities used in the online consultation were as follows:

- **Gender non-conforming/variant:** Individuals with a gender expression that differs from the cultural norms prescribed for people of a particular gender. Such individuals may or may not be transgender.
- **Genderqueer:** Individuals who experience their gender identity outside of normative/binary gender identities, and/or experience their gender expression as falling outside the categories of woman and man. They may define their gender as falling somewhere in-between woman and man, or as something wholly different.
- **Man with a trans history:** Someone who identifies as male or a man, but who was assigned a different sex at birth.
- **Non-binary:** An umbrella term for people whose gender identity is not encompassed or represented by 'man' or 'woman'. Non-binary identities are varied and can include people who identify with some aspects of binary identities, while others reject them entirely.
- **Trans man or transgender man:** A term used to describe someone who was (most likely) assigned female at birth but who identifies as a man. Some also will use FTM (an abbreviation for female-to-male), although this term is considered outdated or offensive by some and is not used in this report.
- **Trans woman or transgender woman:** A term used to describe someone who was (most likely) assigned male at birth but who identifies as a woman. Some also will use MTF (an abbreviation for male-to-female), although this term is considered outdated or offensive by some and is not used in this report.
- **Woman with a trans history:** Someone who identifies as female or a woman but who was assigned a different sex at birth.

Some participants may interpret these terms differently, as may other organisations that use such categories.

Although '**transsexual**' was not a gender identity included in the choice categories of the online consultation, some participants freely stated this as their identity. This is a term used by some people who have permanently altered – or seek to alter – their bodies through medical interventions (including, but not limited to, hormones and/or surgery). This is an older term that originated in the medical and psychological communities. Unlike transgender or trans, transsexual is not an umbrella term. Another term specified by respondents was '**gender fluid**', which is interpreted as describing individuals with a dynamic identity fluctuating between the female and male identities or other gender identities.

Importantly, FRA made use of a similar, but not identical, list of gender identity categories in its LGBTI survey of 2019. The categories of FRA that were also in the online consultation of this study were: trans woman, trans man, non-binary, genderqueer. The additional fixed categories used by FRA were: cross-dresser, gender-fluid, agender and polygender<sup>43</sup>. FRA's survey also provided an open-text box for individuals to specify an identity outside the predefined categories, to answer "Don't know" or "Prefer not to say". In FRA data, these respondents are given the respondent category "trans person". However, the numbers of survey respondents who chose these latter answer options was low, meaning that – to protect their anonymity and/or due to limits in the

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<sup>42</sup> This was evident when, for example, individuals began statements using phrases such as 'as a non-binary person, I ...', 'as a trans man, I ...', etc.

<sup>43</sup> FRA's definitions of these terms is not available at the time of this study.



representativeness of the data – they are generally not included in graphs using FRA data. In the notes to these graphs this is indicated as “Not shown: trans person.”

Where participants specified their pronoun, the authors have always used this in the report, such as after quotes and in the main body of the report. Where a pronoun was not specified, the pronoun used in the report was based on the gender identity given by the participant<sup>44</sup>.

To protect the identity and confidentiality of respondents, **any names used throughout the report are pseudonyms**. These pseudonyms were chosen to reflect the gender identity of participants, as well as the most common names in their country of residence.

In some cases, participants’ quotations were edited to increase readability or make minor grammatical amendments. Edits are shown through the use of square brackets and ellipses. After quotations, some descriptive information has been included. This is to show gender identity, age group, country of residence, and legal cluster (see Section 1.3 for more information on clusters). In some cases, participants chose not to specify this information, and this has been indicated in brackets (e.g. ‘age not given’).

Some terms used within this research are widespread but may also be evolving and/or the subject of debate. These include:

**Coming out:** The study understands this to cover situations when a person first tells others about their gender identity. Trans people may have to, or want to, come out several times or even continuously, as some people are never perceived as their own gender. Coming out takes many forms and may be a highly individual process. Transgender people come out to themselves about their gender identity over time, before disclosing this to others. However, coming out is not always a choice. For example, if a trans person is not perceived as cisgender, they may be forced to come out about their gender identity or trans history when questioned by others. For individuals who are perceived as cisgender and who possess official documents reflecting their gender, they may still have to decide whether to come out about their transgender status or transgender history to new people, such as colleagues or medical professionals.

- **‘Pass’ or ‘passing’:** This is widely used to cover situations when someone is regarded, at a glance, to be a cisgender man or cisgender woman. However, the quality of ‘passing’ is not an inherent characteristic of an individual, but rather relates to how an individual is perceived by others, which may change based on the ‘other’ in any given scenario. The concept of ‘passing’ is heavily discussed and debated within trans communities. It serves as an internal benchmark, where trans people may ask other trans people if they are likely to be perceived as cis by others, often on social media. It also is the nexus of ongoing discussion about the impact of societal gender norms, gender stereotypes, sexism, misogyny, and patriarchy on trans people, whether or not trans people should or can participate in these systems, and whether or not there is an individual and collective responsibility held by trans people and communities to challenge these systems. Some trans people perceive ‘passing’ as an oppressive system in itself and do not seek to ‘pass’ or be perceived as cisgender. Cisgender people frequently comment on whether or not a trans person ‘passes’; some trans people experience comments affirming their ‘passing’ as compliments while others find them insulting<sup>45</sup>. To reflect these debates, these terms are used with inverted commas in this report.

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<sup>44</sup> Participants who identified as a transgender/trans man, or man with a trans history were reported as ‘he’; participants who identified as a transgender/trans woman, or woman with a trans history were reported as ‘she’; participants who identified as non-binary/genderqueer/gender non-conforming/or in another way were reported as ‘they’.

<sup>45</sup> This summary was provided by a Steering Group member.

- **'Real-life experience' (RLE):** So-called 'RLE' requires a person to live for a certain period of time in line with their gender identity without official documents to support that identity. This is also referred to as the 'real-life test' and may be a requirement within an LGR procedure. However, the 'real-life' component of this is often challenged in trans communities and described as arbitrary, subjective, or abusive, as is the idea of it being an 'experience' or a 'test'. This phrasing, while commonly used, is contentious. To reflect this, it is used with inverted commas whenever it is written out in full in this report.

The fact that the research was conducted in several languages also posed challenges in terms of using the most appropriate terms. For the various languages, trans support organisations were consulted on the terms in use. When translating back into English for analysis, the translation process aimed to maintain speakers' original meaning as closely as possible, while acknowledging that a direct translation of some terms may not be possible.

This report seeks a balance between:

- Reflecting the identities and terms as chosen by individuals/institutions themselves (particularly when presenting quotes and the positions of reports and public statements);
- Using the most respectful terms commonly favoured by organisations working in the area of transgender rights (especially in the analysis of results);
- Ensuring that the language used in the report is clear and easy to understand.

## 1.7 How to navigate this report

The rest of this report is divided into four main parts, as shown in the box below.

Table 3. Key parts of this report

Part name and number	Description	Chapters included
PART I – Being trans: the position of transgender people in EU society	<ul style="list-style-type: none"> <li>• Focuses on the situation of trans people in different areas of <b>society</b>, namely <b>education, employment and later life</b>. It also begins with a chapter on the experiences that trans people shared when <b>coming out and transitioning</b>.</li> </ul>	<b>2</b> (Coming and out and transitioning) <b>3</b> (Education) <b>4</b> (Employment) <b>5</b> (Later life)
PART II – The design and lived experience of legal gender recognition procedures across the EU	<ul style="list-style-type: none"> <li>• Considers the <b>national legal systems</b> that exist across the EU to enable trans people to change their legal gender. It explores the formal <b>requirements</b> that exist in law, the degree to which these are <b>accessible</b> to trans people, the <b>lived experiences</b> of those who decide to go through them, and the consequences for those who cannot access these procedures.</li> </ul>	<b>6</b> (LGR requirements) <b>7</b> (Use and accessibility of LGR systems) <b>8</b> (Lived experiences of LGR)
PART III – The relationship between LGR procedures and the socioeconomic position of trans individuals	<ul style="list-style-type: none"> <li>• Assesses the <b>relationship between inclusive policies allowing for Legal Gender Recognition (LGR) and the well-being</b> of transgender people.</li> </ul>	<b>9</b> (Overall effects and impacts of LGR procedures)
PART IV – Conclusions and recommendations	<ul style="list-style-type: none"> <li>• Brings together the <b>Conclusions and recommendations</b> of the study.</li> </ul>	<b>10</b> (Conclusions and recommendations)



In addition, Annexes are included at the end of this report, bringing together bibliographic and methodological information, as well as further technical detail on key aspects of the research. Annex 4 is a practical tool intended to help anyone hoping to assess the accessibility of their own national process for legal gender recognition.

Key elements have been included in the report to make it easier to navigate:

- Each chapter includes a short description at the beginning of what it will cover;
- Each chapter has conclusions at the end of 1-1.5 page, to bring together its main results and implications for other themes/chapters;
- There is an Executive Summary at the beginning of the whole report, which summarises the results from all four Parts of the study (given in the Table above)
- Throughout the chapters, there are cross-references to other relevant parts.

The Table below gives some further tips for navigating the report.

Table 4. *Guidance on navigating this report*

What is your main area of interest?	Guidance on where to find this
The <b>overall results</b> from the study but not the full detail.	Read the Executive Summary. If you have time, you should also read Part IV (Conclusions and Recommendations).
The <b>study recommendations</b>	Read Part IV (Conclusions and Recommendations). If you have limited time, these are summarised in the Executive Summary.
The <b>social situation of trans people in the EU.</b>	Read Part I of the report. If you have limited time, this is summarised in the Executive Summary.
The national <b>systems for legal gender recognition and how these function</b> in practice.	Read Part II of the report. If you have limited time, this is summarised in the Executive Summary.
The <b>formal requirements</b> for legal gender recognition only	Read Chapter 6 (in Part II)
The <b>overall use and accessibility of Legal Gender Recognition</b> systems	Read Chapter 7 and Chapter 8 (in Part II)
The <b>testimonies and experiences</b> of trans individuals	These are included in detail in Parts I, II and III in quote and case study boxes, with supporting analysis. The chapters with the most information on this are: 2, 3, 4, 5, 7, 8 and 9.
Trans experiences and <b>intersectionality</b>	The starting point is Section 1.6 in the introductory chapter. This explains in detail how an intersectional perspective has been taken and the ways in which this is reflected in the report.
The <b>connections between a country's legal framework and the social situation</b> of trans people.	Read Part III of the report. If you have limited time, this is summarised in the Executive Summary.
A particular <b>theme</b> – for example, the situation of trans people at work.	Use either the previous Table or the report's Table of Contents to find the right chapter. Social themes are covered in the chapters of part I and legal themes in part II. The connection between social and legal themes is explored in part III.
The available information from <b>statistical sources</b>	This is integrated into most chapters of Part I, II and III. It is normally shown early in a chapter, although it depends on the theme. You may be especially interested in Annex 6 and section 9.5 of Chapter 9 (Part III), which brings together the results of a convergence analysis and correlation analysis. Section 1.3 of the introductory chapter also explains more the types of data sources in use in this report.

The **context** and  
**methodological approach**

Read Chapter 1 and Annex 2. If you have time, you may also want to read about the Ethical Framework in Annex 3.

## **PART I – BEING TRANS: THE POSITION OF TRANSGENDER PEOPLE IN EU SOCIETY**

Part I of this report focuses on the situation of trans people in different areas of society, namely education, employment and later life. It begins with a chapter on the experiences of trans people when coming out and transitioning.

### **2 Coming out as trans and transitioning**

This chapter explores the experiences of coming out and transitioning that transgender people shared. It considers how individuals became conscious of their gender identity, the most common ages at which this happened, and the wide-ranging reactions of family, friends and strangers. It also presents (less common) stories of those who became conscious of their gender identity and came out as trans in later life. It ends by highlighting positive ways to support trans people when coming out.

#### **2.1 Coming out processes**

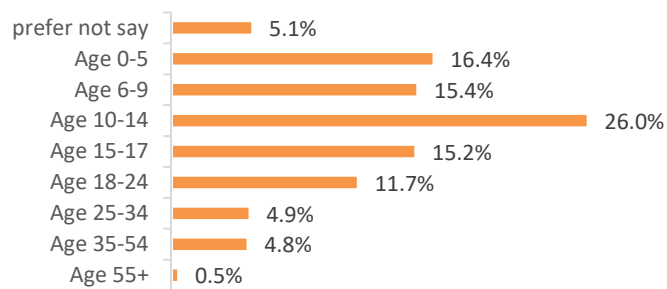
Coming out takes many forms. Initially, transgender people become conscious of their gender identity over time. They may choose to disclose this to others, coming out to friends and family by discussing their gender identity with them, or demonstrating it as part of their gender expression. Another facet of coming out is public life, where transgender people often have to disclose their gender identity involuntarily. If a trans person does not 'pass' then they may be forced to come out about their gender identity when questioned by others, or they may have their transgender status revealed by their official documents. Individuals who 'pass' and have official documents reflecting their gender may still have to decide whether to come out about their transgender status or transgender history to new people, such as colleagues or medical professionals.

Many trans participants noted that coming out processes can be complex, entailing many phases. This is supported by existing research, which suggests that the coming-out process is iterative and ongoing, arising in various settings throughout the life course, including the home (Watts et al., 2017; Dierkx and Platero, 2018; Catalpa and McGuire, 2018), educational settings, workplaces (Phoenix and Ghul, 2016; Beauregard et al., 2016), healthcare services (Lindroth, 2016; Bristowe et al., 2018), and, in older age, in the context of retirement and social care services (Siverskog, 2014; Leyerzepf et al., 2018). This is explored further in the following sections.

#### **2.2 Becoming conscious of, and exploring, your gender identity**

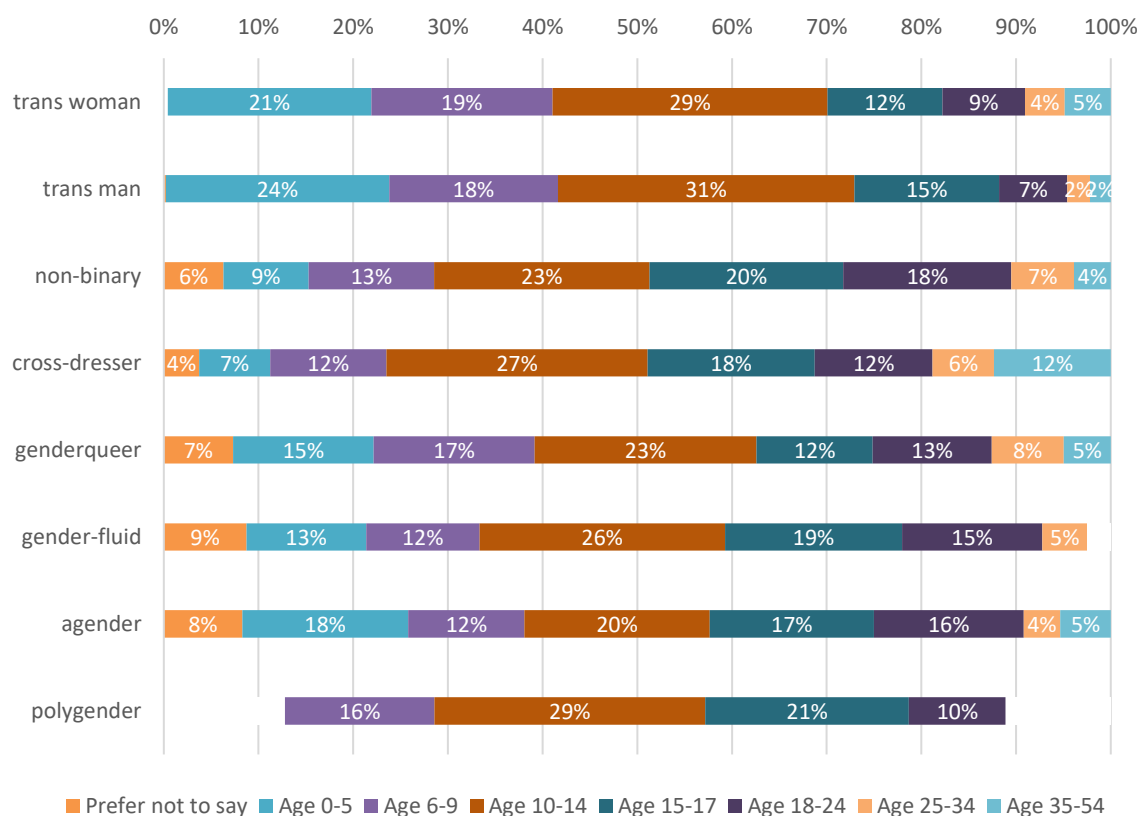
The FRA survey data below shows that in all legal clusters and in the EU-28 as a whole, the greatest single group of respondents realised that their feelings about their gender did not match their assigned gender when they were aged 10-14. However, this also commonly occurred among individuals in other stages of childhood, for example the age groups 0-5, 6-9 and 15-17. In other words, most trans individuals will have realised that their gender does not match that assigned at birth by the time they are 18.

Figure 2. Age when individuals first realised that their gender did not match that assigned at birth, EU-28 (%)<sup>46</sup>



The breakdown by gender identity group shows that there are variations (see Figure 3 below). Trans men and trans women realise that their gender does not match that assigned at birth at a younger age than non-binary respondents and cross-dressers.

Figure 3. Age when individuals first realised that their gender did not match that assigned at birth, by gender identity group, EU-28 (%)<sup>47</sup>



<sup>46</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'At what age did you first realise that your feelings about your gender did not match the gender assigned to you at birth?'. Base: Trans respondents to the EU LGBTI Survey II (n=19,445). EU-28 weighted average.

<sup>47</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'At what age did you first realise that your feelings about your gender did not match the gender assigned to you at birth?'. Not shown: "prefer not to say," "Age 0-5," "Age 25-34" and "Age 35-54" for polygender respondents, "Prefer not to say" for trans men and trans women, and "Age 55+" for all respondents due to small sample sizes. Base: Trans respondents to the EU LGBTI Survey II (n=19,445). EU-28 weighted average.

Similarly, throughout the interviews and focus groups for this study, most participants noted that they started to become aware of their gender identity in early childhood, when they were younger than 10. Some transgender people have been aware of their gender identity since their earliest memories, from as young as two years old.

'It began with my early childhood memories which always felt off. I always wished to be a girl because the life I had to live didn't feel real, it didn't fit and it was very hard to bear [...] I simply failed as a boy because I was always beaten and chased home and belittled by PE [Physical Education] teachers, or in the street men would stop me and call me a "faggot".'

Woman with a trans history, aged 55-64, residing in Germany (cluster 3)

'At an early age I knew I was in the wrong body, but my parents insisted on raising me as a boy.'

Trans woman, aged 26-34, residing in Hungary (cluster 3)

'When I was a three-year old little boy, I told my sister that I was a girl and wanted to be treated like that by her and the rest of my family, but after that everything was forgotten. My family has always been very transphobic...they never paid attention to that.'

Trans woman, aged 25-34, residing in Spain (cluster 2)

The language used by participants to describe the early childhood period was of feeling that 'something was not right', feeling 'different' or feeling 'disconnected' to their sex or gender assigned at birth. Some participants experienced rejection of their emerging trans identity from their family (see Section 2.3). For some participants, this was only clear later, when reflecting back on their childhood after having come out as transgender.

For some trans individuals, initial awareness of their identity in early childhood was sometimes accompanied by feelings of frustration or failure that they had not 'lived up' to societal expectations of their assigned gender. Some incidents related to playing with toys that were stereotypically associated with another gender, internalising comments from adults about what was 'appropriate' behaviour, or experiencing exclusion from gender-segregated activities, such as team sports.

'Looking back at photos of myself as a five or six-year old, I see how obvious it was that I was a boy...I tried to accept my sex [assigned at birth] during my teenage years by growing my hair out and wearing female clothes but this didn't work out.'

Trans man, aged 18-25, residing in Belgium (cluster 5)

'I've known since I was little [...] that something was off. But then [...] everybody was certain I was supposed to be a boy, so I didn't question it. [...] I remember when I was, like, seven and I kind [of imagined] that every boy felt like this and nobody talked about it. I remember telling my mum [...] She [...] became like really upset and told me never to tell anybody...Yeah, so that's what I did... [I had] all these feelings my whole life. I hoped they would go away but they never did. I never really knew... I'd heard the term transsexual and stuff but [it had negative connotations], so nobody really talked about it except when they made fun about it.'

Trans woman, aged 35-44, residing in UK (cluster 3)

**Reactions from family, teachers and peers was key in shaping some trans people's initial awareness of their gender identity.** Some were punished for expressing their gender identity in non-conforming ways and repressed their gender expression as a result. For example, one trans woman recalled being punished for trying on her sister's and mother's clothes when she was four. This caused her to feel that her

gender expression was shameful and so she decided to hide it in future. This illustrates the ways in which trans people's gender expression can be policed by others from childhood. The experiences of a trans woman (detailed below) who grew up in Nigeria and who now resides in the UK provides further indication of this. She was physically beaten for participating in stereotypically feminine activities. (Experiences of physical violence and harassment are also explored in other chapters – for example, see Sections 3.3 and 4.3 on such experiences in education and at work).

'As a child [growing up in Nigeria] ... I [asked] my mum why she didn't give birth to me as a girl and she beat the living daylights out of me [...] I didn't feel comfortable at all and it was very confusing [...] When I tried to cook with my grandma, or play with girls' toys or play with the girls, they would beat me up and tell me not to do that [...] Between three and five years' old, as soon as I started talking, I discovered my innate sense of self, that I was a girl. But ...I withdrew back into my shell and didn't tell people.'

Trans woman, age unknown, residing in UK (cluster 3)

Some participants noted that the realisation of their gender identity occurred during their teenage years. A large proportion of 18-24 year old respondents to the online consultation of this study became fully aware of their gender identity between the ages of 13 and 17. This was the largest share of any age group. Through the interviews and focus groups, some trans people reported being fully aware of their gender identity but being unable to transition or live according to this. Others noted that a lack of information or knowledge about transgender people was a barrier to understanding their gender identity.

'I became aware at the age of 10 or a little later that something was not right. I think [I] was 12 when I was able to verbalise it. I could say at the age of 12 that I wanted to be a girl and that I did not belong with the boys...That was great, because before that I just felt different and I did not know what was different about me but then I could say with confidence that I wanted to be a girl – it just didn't seem possible to do it at the time.'

Woman with a trans history, age unknown, residing in Hungary (cluster 3)

'When I got to my teenage years, I do recall that there were many times when I just wished to be a girl and I just wasn't fitting other boys... Many times, I wished that I would wake up and everything would magically change. But I also didn't have any information. I didn't even know such a thing as transgender even existed. I just thought it was something crazy that had come to my mind. When I was 15-16, I thought this was just [a] daydream and I needed to move on.'

Trans woman, aged 18-25, the Netherlands (cluster 3)

Physical changes as a result of puberty were sometimes distressing and resulted in some becoming fully aware of their gender identity. For one person living in the Netherlands, his parents did not force him to conform to gender stereotypes growing up. However, going through puberty and experiencing his first period was disturbing and prompted him to become fully aware that his gender identity did not match his birth certificate. A trans woman living in Germany also felt that the experience of going through puberty had negative impacts on her mental health.

'The realisation of my gender identity came to me when I was about nine. I thought it was weird that people addressed me as male [...] It was a hard struggle back then... When I was 13, I fell into a deep depression ... I literally locked myself up from everyone and I honestly didn't feel anything for a long time and then it was just pain.'

Trans woman, aged 18-24, residing in Germany (cluster 3)

The complexity of becoming conscious of your gender identity is evident in the responses from a few participants, who reported that they identified with other gender identities before fully realising their trans identity. A few people also explored and realised their sexual orientation before understanding their gender identity.

'By the end of my 20s, I had already said that there is a lesbian woman inside me. That was the closest I got to knowing I was trans. And then I kept falling into repeated periods of depression and I couldn't understand why.'

Trans woman, aged 35-44, residing in Hungary (cluster 3)

Throughout the process of realising their gender identity, many searched for, or happened upon, information from sources such as the media, social media, other sources on the internet, books and other trans people. Some were unable to find this information, but for those who did, these sources were often from outside of their country of residence, showing that the international community of trans people can be a source of support for those at different stages of coming out and transitioning. For example, a trans woman (aged 35-44) living in Hungary (cluster 3) noted that she realised she was trans while reading a book called 'The Power of Vulnerability' by Brené Brown, which discusses the idea of not conforming to other people's expectations. The trans man below explained that the process of understanding his gender identity started when he met a trans woman for the first time.

'I was 30 or 31 years old when I first met a transgender woman. After that first encounter, I started to feel more and more interested in the trans world, watching videos, consulting webpages, meeting other transgender [people]. After six months of actively gathering information on the topic, [...] I started to question myself about whether this applied to me. I had never thought of it before being exposed to all that information. One year after that first encounter, I finally decided to go to the psychologist and the psychologist saw it very clearly, and I was diagnosed with [gender] dysphoria.'

Trans man, aged 25-34, residing in Spain (cluster 2)

The role of language is important, as **having the words to describe their gender identity was an important step for some participants in becoming fully conscious of their gender identity**. This was detailed by many people, who struggled to define their identity without these words. For some, coming across the term 'transgender' allowed them to contextualise their feelings and to understand that they were not alone in struggling with their gender identity. A number of people noted that they were made aware of the term 'transgender' by a psychiatrist or therapist, while others found this on the internet.

'I saw a video of an English transgender guy [on Facebook] who was telling his history. [...] I stopped and I watched the video again. The more I was watching, [the more] I had the thought that this was how I was feeling. Before there was something that I was not getting, but I did not have the words to describe it [...] The problem of our society is that it does not provide the correct words for storytelling. Before, for me the word trans was [associated with] a prostitute [...] nobody ever explained to me that it could have been something else.'

Trans man, aged 18-24, residing in Italy (cluster 2)

'I felt the opposite to what I was seeing in the mirror and what people saw me as since I was a child but I didn't know how to define trans identity. Not knowing how to



define it, you can't create a "model" in your mind and even though you know you feel different, you don't understand why.'

Trans woman, aged 35-44, residing in Romania (cluster 1)

'Completely by accident, I happened to stumble upon something on the internet and I got curious from there, I was like "Oh! That's the word I've been searching for". I don't even really remember the context of it [...]; it was just [...] a friend of mine's status or something, and then that's where I got rolling.'

Trans man, aged 18-24, residing in the Netherlands (cluster 3)

The above quotes emphasise findings from the focus group in Ireland, where participants explained how coming out is partly a process of coming out to oneself, not just to other people.

During the Irish focus group, some **non-binary people noted particular difficulties in coming out about their gender identity**, as it involved challenging accepted gender norms, as well as challenging transgender narratives. For example, one participant noted that the perception that parents would notice transgender 'traits' in childhood (such as clothing preferences and wanting to play with toys associate with other genders) can be damaging for anyone who does not fit this narrative. Another non-binary person living in Italy pointed to a lack of understanding about the diversity of transgender identities, and of what it means to be non-binary, explaining that this posed a particular difficulty when coming out to their family. Their father had an extreme reaction to their non-binary identity, highlighting the lack of understanding of non-binary identities.

'My father complained about me not being normal, even as a trans person... My father told me, and I'm quoting, "a normal trans person is from male to female or female to male. I don't even know what you're doing, you're an extremist, like the Taliban".'

Non-binary person, aged 35-44, residing in Italy (cluster 2)

Media and societal narratives about trans identities can be a barrier to coming out for some people. As noted by a trans man quoted above, the term 'trans' may be negatively associated with prostitution, which can be a barrier to some when trying to understand their gender identity. This further reinforces the importance of increasing the visibility and understanding of the variety of trans identities in society.

This was also discussed in the Irish focus group, where one participant noted that through working with the media, they felt that they had to 'sanitise' their experience of coming out to match societal narratives.

'[I felt I had] to package a story that the mainstream public could consume, and so it wasn't actually my story a lot of the time. I wasn't talking about being non-binary, I wasn't talking about the fact that I didn't realise I was trans until I was 16... There were things that I was almost trained to not say [...] to make it more acceptable to the general public to be a trans person [...] As the years went by, thankfully the general public seemed to become slightly more used to hearing trans stories in general, so it is a bit more authentic, but for a long time I was trying to sanitise my story.'

Non-binary person, age unknown, living in Ireland (cluster 5)

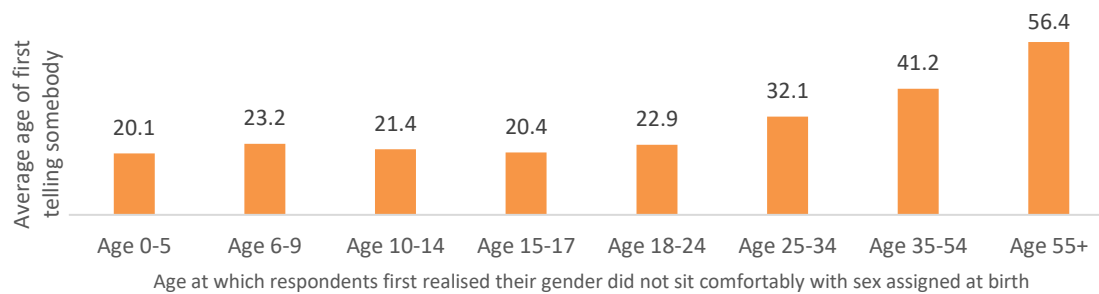
More positively, a trans woman living in France noted that she feels that the media discourse there about trans people has changed over time and has become less derogatory. This shift enabled her to identify with narratives about trans people in the media.



## 2.3 Coming out to family and friends

Results from FRA’s 2019 LGBTI survey show that there can be a gap between trans individuals becoming conscious of their gender identity and first telling somebody about it. As Figure 4 below shows, even for those trans respondents who became conscious of their gender identity when they were young (e.g. ages 0-5, 6-9 and 10-14), it was on average not until they reached their early 20s that they first came out to someone.

Figure 4. Average age of trans respondents first telling somebody about gender/sex variation for each incongruence awareness age category, 2019<sup>48</sup>



Research suggests that trans young adults can face particular difficulties in coming out to their parents. For example, parents may reject their children on finding out about their identity, leading to ‘lasting family breaks’ (Catalpa and McGuire, 2018, p. 98). Family members may ask them to leave or even inflict physical violence on them. The literature also notes that some trans youth experience ‘a lifetime of parents’ reactions to gender variance’, including ‘acceptance, rejection, negativity, ambiguity, ambivalence, positivity, support, advocacy, and reconciliation’ (Catalpa and McGuire, 2018, p. 98). Participants of all ages echoed these findings in the interviews and focus groups. For example, one participant in the Irish focus group noted that they delayed coming out to their parents as a teenager due to fears about their reaction and because they were financially reliant on them.

‘One of the biggest things that I noticed coming out – I was 14 at the time – was that I felt like my parents controlled everything... You know, when you’re a teenager or a kid, you can’t do anything by yourself...it couldn’t be just what I wanted to do [...] In the short term, it was like: “I don’t want to come out because if my parents aren’t ok with that then I’m still stuck here in this house for a minimum of another 4 years in that tension”... because I’m still reliant on them.’

Trans person, age and gender identity unknown, living in Ireland (cluster 5)

**Many people in this study reported difficult relationships with members of their family who do not understand their gender identity.** A trans woman in Hungary shared her experience of coming out to her family, saying that they were initially not very accepting of her and were physically violent towards her after she came out. Now her family ‘accepts [my] trans identity but they are not happy about it’, refusing to use her chosen name or to ask questions about her private life. A trans man found that his parents refused to accept his gender identity at first. They thought he would ‘grow out of it’ and that he was not old enough to decide that he was trans. This is supported by the peer-reviewed literature. For example, Castañeda (2014, cited in Dierckx and Platero, 2018) found that trans youth may face doubts about their identity, due to perceptions that children are in the ‘process of becoming’, which may constitute a barrier to coming out. This was echoed by a trans man from Malta, who noted that some of his

<sup>48</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: ‘How old were you when you first told someone about this?’. Base: Trans respondents in the EU LGBTI Survey II (n=19,445). EU-28 weighted average.

friends who are lesbians thought he might be going through a phase. He noted that 'they weren't taking it seriously, which is a pity, coming from the [LGBTI] community'.

Other people detailed the rejection they faced from their family when they initially disclosed their gender identity to them, with some noting that this rejection has been long-lasting. Some people have not been allowed to see their children in person due to the wishes of their ex-partners, who refuse to accept their gender identity and gender expression. Others have no contact with key family members, due to relatives' reactions to their gender identity.

'My ex-wife told me that she wanted to continue with our relationships but only if I didn't change my sex. When I decided to transition, our relationship ended. I've not been able to see my children since I made the transition. I have a relationship with them over the phone, nothing more. My brothers: some accepted me, and others didn't. I don't see my parents often, and when I see them, I have to go without a skirt.'

Trans woman, aged 55-64, residing in Spain (cluster 3)

'Close friends and family responded well to my gender identity, they were fine with it. The only exception is my sister, who initially responded well, but then had a problem with it. [...] We're no longer in contact.'

Trans man, aged 45-54, residing in Ireland (cluster 5)

For some participants, their family was aware of their gender identity but did not support or acknowledge this. For others, this lack of support manifested as a refusal to discuss their gender identity. In some cases, an initial period of acceptance and willingness to discuss their gender identity was followed by rejection and the closing down of discussions to do with their gender identity.

'On my side of the family, my parents know but they do not acknowledge it...I'm pretty sure my other family knows because of Facebook, I put photos up there... I had a few conversations [with my cousins] and they were quite supportive but my aunts and uncles, I'm pretty sure they do know but we've never had a conversation about.'

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

'My father and paternal grandfather have the biggest problem with my transgender identity. While living at home, I had to get dressed and do my make up in the forest. Sometimes I had to get up at 5am because I wouldn't make it to school otherwise. [...] When I moved out, things got much better. My sister, who was 10 back then, was supportive from the first time I came out to her. My mother was in between my father and my sister; she was torn apart. My father was very cruel to me [...] I don't fit in [the] picture of the world he has, so he kicked me out of it.'

Trans woman, aged 18-24, residing in Germany (cluster 3)

'Initially [my mum] was supportive but because she didn't have any education [about trans issues] she was very afraid about what it meant ... She became quite transphobic.'

Trans man, aged 18-24, discussing experiences of living in Romania (cluster 1)

Trans people with autism and trans people with speech or learning disabilities may face additional barriers to coming out about their gender identity (Murphy et al., 2020). Trans people with autism noted that they struggled to verbalise their feelings about their gender identity. Some also found it difficult to connect with other people, which may have been compounded by the isolation they felt due to their gender identity. On a positive note, others noted that having autism meant that they were able to question binary gender norms and their own gender identity at an early age. This sentiment was

similarly expressed by neurotypical<sup>49</sup> participants. Some of the perspectives of trans people with autism are reflected in the box below.

'[I was aware of my gender identity] probably quite a lot of the time, but for most of my life I did not have the language to explain or understand. Being autistic, there is a different way that autistic people express those feelings [...] I did not explain it as a feeling, it was more a wish that I could be a boy. I didn't really have a way of articulating what I was experiencing and thought it was impossible therefore to change the gender I were assigned at birth.'

Trans man, aged 25-34, residing in UK (cluster 3)

'Autism has a very logical link with not exactly trans identity but being able to question my identity. I grew up completely disconnected from the other kids, so I was not easily influenced by gender stereotypes. So, I was able to build my own identity from very early on. How I wanted to present, how I was acting with people, the way I move in spaces, etc. So, I feel that my transition is a lot smoother ... psychologically, because I didn't have many preconceptions to shed. Recent studies show a massive prevalence of autism in transgender people and transgenderism in autistic people and that is a very logical link for me.'

Trans woman, aged 35-44, residing in France (cluster 4).

**Family members' religious beliefs were reported as a barrier for some trans people in their coming-out and transitioning.** A number of respondents (97) to the online consultation in Poland, Germany, Spain and France stated that their close family members' religious beliefs affected their decision about whether to live according to their gender identity. Respondents to the online consultation living in Austria, Belgium, the Netherlands and the UK also mentioned this, although less frequently. This barrier affected participants in multiple ways, ranging from family members finding it difficult to accept their trans identity, trans people hiding their trans status from family members, to those disowned by their family on religious grounds and who no longer had contact with them. The role of religion in Lithuania was particularly discussed in that focus group. Many mentioned the strong role that the Catholic Church plays in public debates relating to trans people's rights. Others mentioned that many trans people felt pressure to adapt their gender expression to cisgender norms. Two participants noted that their parents had wanted an exorcism after their child came out about their trans identity. Another participant mentioned that they would be expelled from the Catholic Church if they transitioned medically. Despite these negative experiences, many other respondents to the online consultation noted that their close family members identified with a religious belief but that this had not affected their decision about whether to live according to their gender identity.

By contrast, many people noted that their family and friends had positive reactions to them disclosing their gender identity. Some stated that their loved ones needed time to adjust after they disclosed their gender identity but that efforts to use the correct name and pronouns were more important than getting it right every time. Others commented that they were surprised by how positively their family and friends reacted, and that they did not conform to stereotypes about older people being unaccepting of LGBTI identities.

'My family is quite traditional. I was afraid of coming out to my family because of that. So, it was a very pleasant surprise to have a massive support from the whole family ... from cousins, my aunts and my grandmother who is very old. [My aunt] said "I would prefer to have a happy niece then an unhappy nephew" ... Being old doesn't

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<sup>49</sup> Term used to describe people who are not on the autistic spectrum.

mean being close-minded. Some older people have seen everything, so they are not surprised by anything!’

Trans woman, aged 35-44, residing in France (cluster 4)

‘When it comes to friends, even if they are slightly shocked at first because nothing in my appearance would suggest that I’m trans, after we talk it through and they see that we have a lot of things in common, automatically the fact that I am trans becomes second place and does not matter. I try to surround myself with people like this...I’m a lot more than just a trans person and my friends can see this, which makes me happy.’

Trans woman, aged 25-34, residing in Romania (cluster 1)

‘I did my coming out in batches and I gave everyone the time to adapt. In general, it went well: I am accepted by family and friends ... The first reaction was not positive, but the second reaction was very positive after a few months.’

Trans man, aged 18-24, residing in Italy (cluster 2)

Other existing studies also indicate that relatives can learn from the experience of a trans family member coming out. For instance, all parents of transgender children in a study by Dierckx and Platero (2018) (n=15) noted that their child’s transition provided insights into their role as a parent, and, for some, it facilitated new engagements with social movements.

Positive reactions from family and friends had a number of impacts. Some participants reported feelings of relief or contentment after their family and friends reacted positively to their gender identity. For some, this acceptance was an important step in transitioning.

Others stated that having their gender identity received positively meant that they did not have to think about their gender identity as much. A number of people noted that they had to conform to gender stereotypes or minimise parts of themselves in order to protect themselves from negative reactions from others, suggesting that positive reactions from family and friends lessened the need for such behaviour.

## 2.4 Coming out to new people

In addition to coming out to their friends and family, trans people may have to assess whether they should come out to new people they meet in different contexts, for multiple reasons. For example, if a trans person has not changed their legal gender marker, then their official documents may not match their gender expression, leading others to guess their gender identity. Some trans people may be in the process of transitioning and may not ‘pass’ as their gender identity. Additionally, they may have changed their name to one associated with a particular gender that may not match the gender on their documents (see Chapter 7, especially Section 7.4).

Within the Irish focus group, participants explained that when a transgender person has come to terms with their own gender identity, it takes some time to feel comfortable coming out to someone else for the first time. They noted that coming out does not have a finite start and endpoint but is considered a **constant cycle, with people coming out multiple times**. One participant stated, ‘It feels like you come out to your family five or six times’. Another participant at the Irish focus group spoke to each person at work individually, which was considered very stressful. This is supported by the existing academic studies, which found that the repetitive nature of coming out can take a toll on trans people, as encapsulated by a participant in a Swedish qualitative study: ‘It is wearing to have to come out (as transgender) all the time... you don’t come out once, you don’t come out twice, you don’t come out five times, you come out seven hundred and fifty thousand times, in all new situations’ (Lindroth, 2016; see also Motmans et al., 2017).

Participants in the Irish focus group also noted that when coming out to people they do not know well, they are often asked very personal questions about their bodies or their medical and personal history, as they may be the first trans person that the other has met. The participants highlighted that it would not be appropriate to ask these types of personal questions in any other context and that these intrusive questions can be draining. Participants in Ireland and the Netherlands expressed their frustration that, after coming out, people no longer see the other facets of their identity and that they are only seen through the lens of their gender identity.

'Prior to [coming out], everybody just solely associated me with music. No one ever saw me that way again. No one ever looked at me and thought "Oh, that person can sing, and that person can play guitar, that's really cool let's talk about that". They looked at me like "Oh, that person is trans, so we're going to talk about that instead".'

Trans person, age unknown, residing in Ireland (cluster 5)

'The process of deciding if you are going to come out happens with every new friend you make and might want to try to get closer to. Sometimes I [choose not to] come out, but [I] have to think about it a lot.'

Trans man, aged 18-24, residing in the Netherlands (cluster 3)

## 2.5 Coming out in public life

The interviews conducted for this study indicated that having to come out in public life is closely related to trans people 'passing' in line with their gender identity.

Many respondents were **forced to come out about their gender identity**. They noted that this is particularly the case in public places and that this experience varies across EU Member States, a finding that is echoed in the peer-reviewed literature (Bristowe et al., 2018; Beauregard et al., 2016). For example, people reported being forced to come out in post offices, banks, city hall, during driving exams, when going to bars and nightclubs, and any other location where ID is required.

'I only come out in situations when I am forced to ... at post offices, at banks, basically any time I have to present my ID – which is pretty regularly in Hungary, more so than in other countries ... I have to present my ID at the bowling alley in Hungary.'

Trans woman, aged 35-44, residing in Hungary (cluster 3)

'Almost always when I have an appointment [at City Hall], the first question I get is "We're sorry, we see in our register that you are a male but you don't look it. How does that work?" That does get annoying ... Also, for things that shouldn't be related [to my gender identity], like driving exams, I get that every time...It's hard because they do recognise that I'm a woman, so from [my] appearance and such, I'm doing not badly. But it's just frustrating every time I need to explain that I'm transgender...and you just don't want to share that with a complete stranger.'

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

'I feel disadvantaged in daily life.... The problem is the grey zone: in your life, you are something, but in the documents, you are something else. It is embarrassing when you need to show your documents, because you need to give information and justify what you are.'

Trans man, aged 18-24, residing in Italy (cluster 2)

Some noted that while they are able to live according to their gender identity at home, they are unable to do so in public for fear of transphobic violence. This is tied up with the notion of 'passing', as trans people who 'pass' perceive themselves to be less at risk of being forcibly outed in public or to be victims or harassment or violence in public.

This was mentioned in the Portuguese focus group, where participants described how, outside of Lisbon, in rural areas, trans people are afraid to walk down the street with their partner, due to fear of verbal abuse.

These fears are supported by the statistical evidence available via FRA's LGBTI survey. In this, approximately 30% of trans respondents reported that they 'always' or 'often' avoided expressing their gender through their physical appearance and clothing, for fear of being assaulted, threatened or harassed (EU-28, 2019).

**Language can be a barrier** to feeling respected and accepted by others. A non-binary participant in the Irish focus group indicated that they had been forced to use binary pronouns in some aspects of their life. Other participants noted the difficulties of gendered Romance languages. Participants reported that efforts are being made by trans people to create gender-neutral language options. For example, a non-binary person living in Italy explained that 'the Italian language is very gendered, and all Roman-rooted languages are tricky. In trans feminist queer spaces we use 'u' as plural and to address non-binary people'. However, there may be limits to how willing others are to use gender-neutral pronouns and terms, which this individual viewed as 'disturbing'.

The importance of using the correct pronouns was highlighted by many people. Failure to respect these pronouns was described by some as 'invalidating' and 'silencing'.

## 2.6 Becoming conscious of your gender identity and coming out later in life

Becoming conscious of one's gender identity can be a **long process**. For some people, it may take years.

'At puberty I knew I preferred wearing female clothes, but I didn't understand why and it took me until the age of 37 before I realised that it was more than just clothing.'

Trans woman, aged 35-44, residing in Hungary (cluster 3)

For some people, the length of time stemmed from repressing their feelings about their gender identity or not living in an environment that enabled them to disclose that identity. Fear of rejection saw others waiting until they had raised a family or established a career before coming out about their gender identity, to themselves and others. The emotional and mental impact of coming out under these circumstances was described by some participants.

'I knew that I was transgender two years ago [aged 39]. Before that, I always questioned myself, and I felt that something did not fit since I have a memory. But I never had the courage to raise it.'

Non-binary person, aged 35-44, residing in Italy (cluster 2)

'There was no information on this in Romania. Until 2002, homosexuality was criminalised in Romania, let alone there being information on trans people. I couldn't go to anyone to help me define how I felt. As a result, it took me years ... I set aside my sentiments towards my identity so that I could look after what I had in that moment, such as my children and family.'

Trans woman, aged 35-44, residing in Romania (cluster 1)

Experiences in relation to this were also shared in the Irish focus group. For example, a participant explained that they came out in 1993 to their doctor, who put them on hormones straight away and sent them to hospital. They lost their partner and started drinking heavily. This individual expressed regret at not coming out sooner in life.



Another participant stated that they came out in their forties, when they had a career and three children. They lost contact with their family after coming out.

'I was partly jealous for not doing it earlier, but I grew up in a different time where it was less accepted'

Trans person, age unknown, residing in Ireland (cluster 5)

The idea of being 'free' to come out in later life was conveyed by some participants. One trans woman in France (aged 45-54) felt free to come out about her gender identity after she had retired. Several felt able to come out after their parents died. Another trans woman residing in France (cluster 4) was explicitly asked by her mother to wait to disclose her gender identity to her siblings after her death.

A few participants noted that they were able to come out after being encouraged by a close friend or partner. For example, one trans woman aged 35-44, living in Belgium (cluster 5) felt able to come out after a close friend said she 'should not be afraid to be who she is'.

Some expressed the joy and freedom they felt after coming out later in life and felt that coming out had a very positive impact on their well-being.

'What is the best thing about being my true self, after [more than 70] years of suppressing all I am inside? Freedom, wholeness, and truthfulness - having nothing to hide any more [...] I was born during the Second World War, so repression and self-discipline was ingrained very deeply for me. I couldn't become myself until I had fulfilled all my obligations [after my wife died and my children were grown up]. I finally realised I must become my true self at whatever cost. Now I'm really alive for the first time in my life.'

Trans woman, aged 75 or older, residing in UK (cluster 3)

Some other participants in this study had spent years struggling with their gender identity and mental health. The participant below felt an enormous societal pressure to be masculine and to fulfil the expectations of her wife. She disclosed her gender identity (which she considers to be a medical condition), to her wife, who became aggressive towards her. She suffered the breakdown of her marriage and repeated bouts of depression and attempted suicide over the course of many years, before being able to disclose her gender identity again.

Annie lives in the UK. She described feeling a sense of obligation to her family which meant that she conformed to societal expectations. Annie said she was unsure if she would ever have transitioned if her parents were still alive, and that she tried to conform to the role of a 'good' husband. She struggled with her mental health for years during this period.

'I always prayed for a cure for this condition. [...] I struggled on well into my 50s [...] I felt that I couldn't burden my ex-wife, or my GP [General Practitioner], or any other member of my family, with my big secret.'

Annie felt she could not confide in anyone. When her (now ex-) wife found out about her gender identity, she became angry that Annie had 'married her under false pretences'. Their relationship deteriorated over time.

She was fearful of negative reactions from her family, and of losing these relationships. However, her 60<sup>th</sup> birthday marked a turning point and motivated her to transition.

'Coming up to my 60<sup>th</sup> birthday, I had resigned myself to not being able to go on like this and the only ways were to [commit suicide] or to transition.'

The mental and physical impact of disclosing her identity to her wife and other members of her family is clear. Sadly, Annie now has little contact with her children and grandchildren, but her mental health has improved since transitioning.

Trans woman, aged 65-74, residing in the UK (cluster 2)

## 2.7 Transitioning

Transitioning can be a long and complex process, interwoven with experiences of coming out, and it can have both medical and non-medical aspects. A number of problems relating to medical transitioning were discussed by the participants in the study, including **difficulties in accessing hormone therapy**, **lack of support** from healthcare professionals and **negative reactions** from others. Although this study does not directly focus on trans experiences in health, some relevant results are summarised here.

Access to hormone replacement therapy was discussed as a barrier to transitioning for some people. A trans man had had experiences of accessing, or considering accessing, hormones in both the UK and Romania. Whilst he felt that this process in the UK had generally worked well, in Romania, he felt it is a “**much harder process and sadly sometimes it is not even under supervision of a medic, because we have very few doctors who are knowledgeable about hormone therapy**”. The case study below further demonstrates that the ease of accessing hormone therapy varies by Member State. This participant felt that trans people have unequal access to hormone therapy for the purpose of transitioning in comparison to cisgender people in their Member State who may access hormones for treatment related to fertility, menopause or cancer.

Connor noted that in Ireland, ‘**there’s a difference between the way that access to the same hormones is given if you have a transgender diagnosis, or if you don’t.**’

He views this as a serious form of discrimination against trans people. Connor noted that there are situations in which cisgender people are prescribed testosterone or testosterone blockers, receive mastectomies or breast reductions, but that it is much more difficult for trans people to access these procedures.

‘**If you’re trans, you have to go through a whole bunch of other hoops and get special referrals, and referrals from mental health professionals and from an endocrinologist...in healthcare, the discrimination is rampant.**’

Transgender man, age 45-54, residing in Ireland (cluster 5)

In Italy, participants in the focus group criticised the compulsory psychological therapy to access treatments. The modification of a sex characteristic (e.g., through hormonal treatment) is required in order to qualify for LGR in Italy. They noted that the psychologists involved act as gatekeepers for hormone therapy and that this particularly impacts on non-binary people and those who do not conform to gender stereotypes, who may not fit the characteristics that healthcare professionals are looking for in order to determine if someone is trans. The group stated that, in some instances, trans people have to change their gender expression in order to be considered for hormone therapy.

Others reported having difficulties buying hormones because their gender identity did not match their legal documentation.

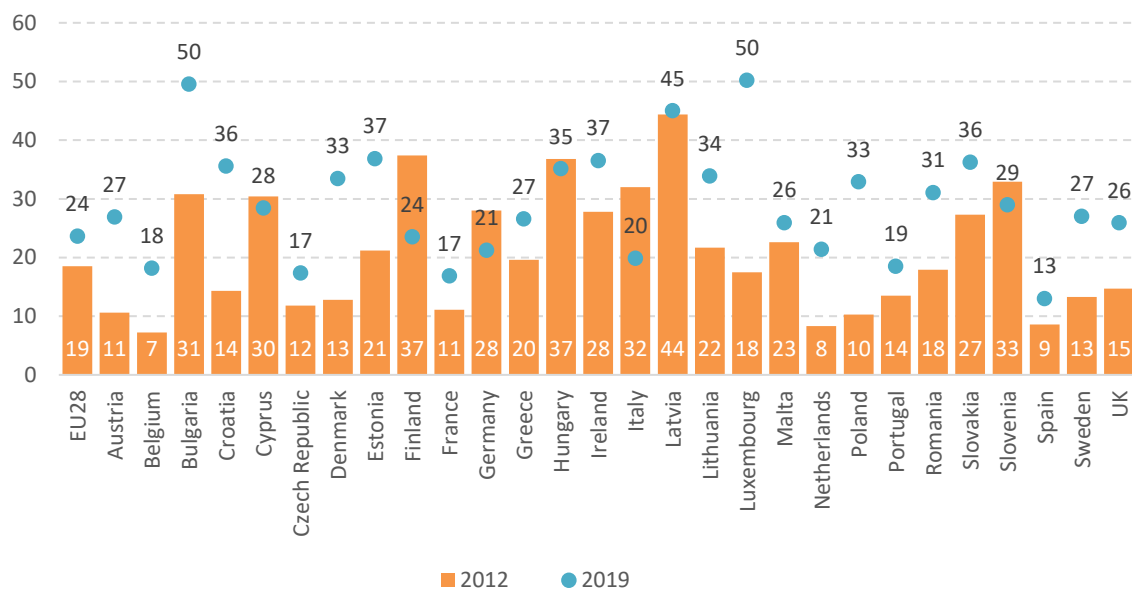
‘**I had problems [buying] hormones because I had female ID. There is a directive from the drug agency which means that testosterone cannot sometimes be sold to people with female documents (as an anti-doping measure) ... It does not happen often; it depends who you encounter and how much they understand what you are explaining... With [some] pharmacists I did not have any problems because the drug was regularly prescribed by a specialist.**’



Trans man, aged 18-24, residing in Italy (cluster 2)

Others, mainly in Italy, were unable to access hormones due to country-specific shortages. Figure 5 below shows that in the EU-28 as a whole and in most Member States there was an increase between 2012 and 2019 in the share of trans people who have either gone abroad or considered going abroad for medical treatment to alter their physical appearance, including buying hormones over the internet from other countries. This shows the difficulties experienced by some people in accessing the hormones that may be part of their transitioning process or a prerequisite for accessing LGR.

Figure 5. Going abroad for medical treatment to alter physical appearance, including buying hormones over the internet from other countries, EU-28 (%)<sup>50</sup>



Consistent with the results of the FRA surveys, participants in our study from France, Germany, Hungary, Italy and Spain referred to the steps they had taken either to move abroad or to consider moving abroad as part of the LGR process or when transitioning. This was most commonly mentioned by those in Italy and Spain. Reasons for moving abroad frequently related to a lack of access to procedures in their Member State, long waiting times, or greater confidence in the availability and quality of healthcare services in other Member States.

Some respondents, particularly in Italy and Spain, accessed surgical procedures in another country, due to the long waiting times and difficulty accessing these in their country. This was particularly the case for those undergoing a mastectomy. One trans man living in Italy noted that 'I would have preferred to have the surgery in Italy if the Italian state would not ask for around two years' process to have the authorisation to do the surgery'. Instead, he was supported by his parents to have a mastectomy privately in Belgium (EUR 5,500). One participant noted a lot of gatekeeping of healthcare services in Italy, which led them to access hormones and other healthcare services in Germany, using their European Health Insurance Card (EHIC).

For some individuals in Italy, the lack of access to hormone therapy meant that they accessed hormones illegally, outside of medical supervision. A trans woman residing in

<sup>50</sup> Source: FRA (2012). EU LGBT Survey; FRA (2019). EU LGBTI Survey II. The question asked: 'Have you gone or considered going abroad for medical treatment to alter physical appearance, including buying hormones over the internet from other countries?'. Base: Trans respondents in the EU LGBT Survey (n=6,771) and EU LGBTI Survey II (n=19,445). EU-28 weighted average.

France, had bought oestradiol<sup>51</sup> injections on the black market in Switzerland. A few trans people reported undergoing gender-affirming surgery relating to transitioning outside of their Member State, including in Thailand and Canada. Two participants reported contacting a private clinic in England (UK) to access hormones.

In terms of the social impact of transitioning, some noted that undergoing surgery helped them in their transition process and had positive impacts on their well-being. A trans man, aged 25-34, living in France, reported feeling like he has a new life since having a mastectomy.

Others experienced **breakdown in their relationships** as a result of having surgery. For example, a trans woman aged 45-54, residing in Italy, reported that her boyfriend left her after she decided to have surgery. Another trans woman experienced verbal abuse from her mother and did not speak to her family for three months after her surgery.

'[The gender-affirming surgery] is something I have been waiting for my whole life. In the hospital, I was the most excited. The other girls were nervous; I wasn't, I was super excited... my mum started screaming at me on the phone and said I will never be a woman, even if I get the surgery ...The [3 months] that I didn't speak to my family was the best time of my life because it allowed me to heal properly.'

Trans woman, age unknown, living in UK (cluster 2)

## 2.8 Supporting trans people when coming out

Participants in the Irish focus group considered **awareness and education** to have a substantial impact on coming out. A lack of education about transgender identities can create a barrier when coming out to others and can influence their reaction. One participant explained that their mother was already aware of transgender identities, which made it easier for them to come out. Conversely, a non-binary participant explained that it is particularly difficult to explain their identity to people, as they do not fit within the socially constructed categories of man or woman. It is generally considered to be time-consuming and draining to explain to people what being transgender means.

'A lot of the stress that comes from having to really live as who you are comes from having to educate other people.'

Non-binary person, age not given, residing in Ireland (cluster 5)

The focus group participants in Ireland suggested that fear of discrimination from employers may stop some transgender people from coming out and that further awareness-raising is needed to show that this does not have to be the case (see Section 4.3 of this report). The role of **peer support groups** was mentioned by some study participants. These groups allowed some to understand the variety of transgender identities and to get practical support throughout coming out processes. In some cases, they can also enable individuals to challenge common 'tropes' about trans identities and to legitimise their own personal experiences that do not conform to these.

'I was really lucky to attend a support group: they helped me a lot, they were the heroes for me really. Through them, I had a one-to-one appointment with social workers - personal meetings about my gender identity, all the questions I had and all the problems I had - every 2-3 weeks [...] We had group meetings with other trans people: to see other people who are kind of similar, kind of not and to understand the variety of trans people [out there] and not just hear that typical "I was born and the

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<sup>51</sup> Type of oestrogen.

first day I realised I was a boy". That is the typical description on the internet. Through the group I realised that wasn't the only way.'

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

Similarly, some participants noted that **meeting other trans people** was a key step in understanding their gender identity. This gave them a chance to interact with other trans people and to share experiences with them.

'I started to identify with feminine things such as clothes at aged 13 or 14. Then at 15 I came out as a gay guy. Eventually I got into the gay scene and then I started to get to know other trans [people] and I realised that that was what I liked. I started to ask people to call me [name].'

Non-binary person, aged 35-44, residing in the Netherlands (cluster 3)

'It took me a while to realise that the difference I was feeling was something that was shared by other people [...] First I had to see trans people in the media and then meet trans people [in person] to actually see that it was what I was living too. The representations I saw when I was around 20 were all very negative; so first I rejected my trans identity because I didn't want that [negative] one to apply to me.'

Trans woman, aged 35-44, residing in France (cluster 4)

## 2.9 Conclusions from this chapter

Trans people's experiences of coming out and transitioning vary, depending on their age, gender identity, family support, the visibility and acceptance of other trans people in wider society, existing legal systems, and more.

Most trans people realise that their gender does not match their sex assigned at birth before reaching the age of 18, according to FRA's 2019 LGBTI survey. During this period, children's gender expression can be policed by parents, teachers and other members of society. There can be a gap between trans individuals becoming conscious of their gender identity and first telling somebody about it. Even for those trans respondents who became conscious of their gender identity when they were young (e.g. ages 0-5, 6-9 and 10-14), it was on average not until they reached their early 20s that they first came out to someone. Some participants in our study had repressed their feelings about their gender identity and delayed coming out for decades rather than years, due to their strong fear of familial rejection or losing their jobs. The religious background of family members also led some individuals to delay coming out.

Trans individuals can face a range of reactions from family and friends after disclosing their gender identity, reflecting the gaps in social understanding of trans identities and, in some cases, overt hostility towards them. Although many participants noted positive reactions, many others experienced rejection from family members. Some were left unable to see their children or facing divorce.

Coming out is not a one-time event, but rather a continuous and iterative process. The burden of repetitively coming out may have negative effects on the well-being of trans people. Coming out is also not always a choice. Many trans people are forced to come out about their gender identity, especially in post offices, banks, city hall, exam venues, bars, and other locations where ID is required. Of concern, some feared being perceived as trans in public, due to the risk of transphobic violence or other hostile responses. Approximately 30% of trans respondents in the FRA LGBTI survey reported that they 'always' or 'often' avoided expressing their gender through their physical appearance and clothing, for fear of being assaulted, threatened or harassed (2019).

As part of transitioning, some individuals may wish to undergo medical interventions, but this process may be hampered by difficulties accessing hormone therapy, a lack of support from healthcare professionals and negative reactions from others. Nearly one

in four trans individuals (EU-28) reported going abroad for medical treatment to alter physical appearance, including buying hormones over the internet from other countries (FRA LGBTI survey, 2019).

Having access to information about trans identities can be particularly useful for trans people in understanding their identity and coming out. Participants spoke of helpful sources such as the media, social media, other online sources, books and peer support groups. Relatedly, having the words to describe their gender identity was important for some. Conversely, many struggled to define their gender identity and come out without appropriate terms and educational information. Negative narratives about trans people in the media and wider society was also a barrier to coming out for many.

Understanding one's gender identity can be especially hard for some groups of trans people. For many people with non-binary identities, the binary structure of society – and often, the national language – may make it hard for them to 'find the words' to come to understand their gender identity and express it to others. Furthermore, trans people with autism and with speech or learning disabilities may face extra challenges in verbalising their gender identity. However, some participants actually felt having autism had been beneficial to them in understanding their identity, as it meant they were able to question binary gender norms and their own gender identity at an early age.

The next chapter explores the experiences of transgender people in school and other educational settings. Coming out and transitioning in educational settings is one key topic considered. Building upon this chapter, the next chapter suggests that schools are often not safe spaces for trans students to be open about their gender identity, and that they frequently receive inadequate information in the classroom to support them in coming out and transitioning.

### 3 Being trans in educational settings

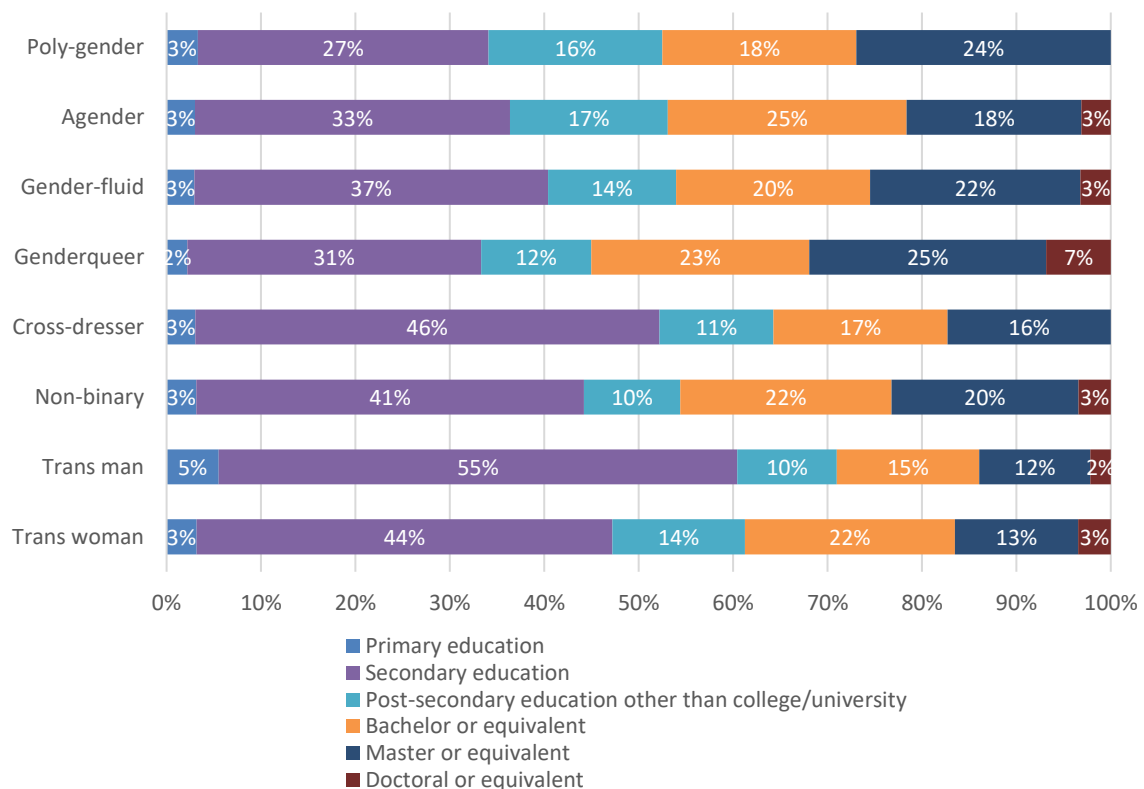
This chapter considers the educational attainment levels of trans people and the experiences of trans students in schools, universities and other educational settings. It explores the information that students receive in the classroom about trans identities. It also reports on trans students' experiences when coming out disclosing their gender identity, and the prevalence of bullying, harassment and violence they face.

#### 3.1 The educational background and situation of trans individuals

The FRA LGBTI survey of 2019 is one of the largest, most reliable and most recent sources of data on the educational background of trans people. In 2019, the FRA LGBTI survey found that these were the highest educational qualifications of trans respondents had gained: secondary education (applied to 40.6% of trans respondents), post-secondary education other than college/university (12%), and tertiary education (43.6%). Only 3.8% of respondents had no formal education or had only completed primary education as their highest level.

Figure 6 below shows the EU-28 breakdown for trans respondents, by gender identity category. Although not shown in this figure, the FRA LGBTI survey of 2019 suggests that the educational attainment levels among the trans population are generally not as high as among the wider LGBTI population.

Figure 6. Highest educational level completed among different gender identity groups<sup>52</sup>



<sup>52</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'What is the highest level of education you have completed?'. Not shown: No formal education for all identity groups and Doctoral or equivalent for poly-gender due to small sample sizes. Combined lower and upper secondary education. Base: Trans respondents in the EU LGBTI Survey II (n=19,445). EU-28 weighted average.

The difference between the shares of trans women and trans men who have completed tertiary education is notable. Whereas nearly 40% of trans women had completed some form of tertiary education (Bachelor/Master/Doctorate), for trans men the figure was less than 30%. Conversely, a greater share of trans men (55%) than trans women (44%) had completed secondary education as their highest level. In other words, there are signs of higher educational levels among trans women.

Within the trans population, the groups reflecting the highest educational attainment levels are genderqueer people (around 55% had completed tertiary education and a further 12% had completed post-secondary education other than college/university) and non-binary people (approximately 45% had completed tertiary education and a further 10% had completed post-secondary education other than college/university). With the data available, it is not possible directly to consider if there is a link between individuals' educational attainment levels and their level of openness about their gender identity.

### 3.2 Coming out and disclosing gender identity in educational settings

Most trans individuals become conscious of their gender identity before the age of 18 (see Section 2.2), meaning that they are in the process of realising their gender identity while at school. Often, participants in the study reported not disclosing this to others, including their peers and teachers. A number of respondents detailed their **fears about coming out in educational settings** such as schools and college, as these environments can be particularly problematic for young trans people. Schools and educational settings were frequently cited as sources of discomfort, fear and anxiety. For those who were aware of their gender identity at school, most chose not to disclose this to their fellow students and staff due to fear of bullying and not being supported.

'I suffered some typical comments that a girl that likes football and dressed in male clothes will suffer. At [school]...they called me "the lesbian". The discrimination was more due to my sexual orientation than my gender identity.... I was not very affected by that until "dating time" arrived... When I was 16, I was fed up and decided to adopt a super feminine expression... At university I developed strong transphobia. I was very scared of how I could be discriminated [against] if I came out.'

Non-binary person, aged 25-34, residing in Spain (cluster 2)

'[In Kindergarten] I knew [...] I didn't want to be a girl but due to the environment and education at the time, I didn't feel comfortable saying I was a boy ... With teachers [in high school] I avoided coming out to them because I didn't feel safe [...] The [...] education system offers absolutely no LGBT education [...] I never worried about physical abuse, I highly doubt mental abuse would have happened [...] but I was worried about being made unwelcome [...] Basically, I was worried about teachers not knowing what to do with that information and out of ignorance, making mistakes that would harm me.'

Trans man, aged 18-24, living in Romania (cluster 1)

One participant recounted their experience of coming out to a large group of their peers and teachers on the same day. The barrage of questioning about his gender identity was draining, and likened to an interrogation.

'I effectively had a mass coming out experience [...] 200 people or so found out I was trans in one day... [It's] really frustrating and stressful because they don't all ask you the intrusive questions at the same time; they wait until they get you alone [...] Even though all of these people found out in one go and theoretically it was fine [...], people would continue to interrogate me until I left school.'

Trans person, age unknown, living in Ireland (cluster 5)

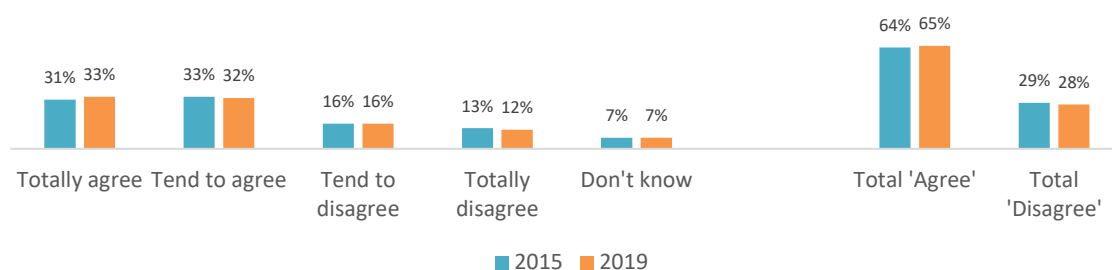
A few participants noted that not having a culture of acceptance of minorities meant that they were fearful of coming out or disclosing their gender identity. Ethnic minority students may have additional fears around disclosing their gender identity in spaces that are only accepting of cis-‘passing’, white-‘passing’ children.

The grey literature similarly suggests that **LGBT youth are fearful of coming out in an educational context**. A 2015 survey conducted by Spanish NGO, COGAM (2015), covering 5,605 secondary education students and 30 teachers, highlighted that few LGBT young people come out, due to fears that visibility will lead to increased discrimination and aggression from others. Trans students in that study were seven-and-a-half times more likely to report experiences of verbal aggression than the rest of the study population, and two-thirds of the trans students had experienced some form of transphobia from other students<sup>53</sup>. There is a lack of trans-specific academic research on this subject, indicating that further research is needed in this area.

None of the interviewees referred to information on transgender identities at schools when becoming conscious of their gender identity. This indicates a **gap in inclusive educational policies relating to trans identities**. The IGLYO Inclusive Education Index (2018) shows that, according to data collected by civil society organisations, only three EU Member States (France, Malta, Sweden) have mandatory teacher training on LGBTQI awareness. Within this training, it is unclear if and to what extent transgender students’ needs are considered. In France, gender identity and expression is not explicitly mentioned in the relevant provisions<sup>54</sup>.

More positively, Eurobarometer findings reflect that most of the general public in the EU agree with the idea of school lessons can play a role in raising awareness of trans identities at school (see Figure 7). However, this result remained static between 2015 and 2019, suggesting little progress in increasing support. More than one in four continue to disagree.

Figure 7. Level of agreement with the idea of school lessons and material including information about diversity in terms of being transgender, EU-28, 2015 and 2019 (%)<sup>55</sup>



Once trans students have left education, schools can remain a source of discomfort. For example, one respondent contacted his secondary school to change the gender on his diploma certificates (see also Section 9.2 for more on ID-changing procedures). This had to be signed by one of his teachers who later gossiped about his trans identity to former classmates at his high school reunion. Another respondent noted they were forced to come out as trans while working as a teacher, which in turn forced them to

<sup>53</sup> Note that this is based on a small number of trans participants (n=9).

<sup>54</sup> Index results available here: <https://www.iglyo.com/wp-content/uploads/2018/01/LGBTQI-Inclusive-Education-Index-Preview.pdf>

<sup>55</sup> Source: Eurobarometer on Discrimination in the EU, 2015 and 2019. The question asked: ‘To what extent do you agree or disagree with each of the following statements? School lessons and material should include information about diversity in terms of being transgender’. Base: All Eurobarometer respondents (2015 n=27,718, 2019 n=27,438).



transition earlier than they had planned. The below quote emphasises that decisions relating to coming out are sometimes made without the consent of the transgender person who they affect.

'[Whilst I was working as a teacher] the headteacher asked if I was gay, and that the conversation would be kept confidential. I told them about being trans and within two weeks everyone knew. This forced me into a full transition and was all very sudden.'

Trans woman, aged 55-64, residing in Germany (cluster 3)

As indicated in Chapter 2, for those who come out, failure by others to use the correct pronouns in educational settings can be particularly distressing for trans people. Having to educate staff and other students on the correct pronouns to use can be draining and create unwanted attention and scrutiny of gender identity. As reflected by the case study below, experiences can differ, however, depending on the department and teacher.

Andi is currently studying for a PhD in Gender Studies. He feels that because he is studying within a Gender Studies department, people are generally more open or accepting towards trans people. However, he notes a few uncomfortable situations. For example, he participates regularly in a colloquium with other students where they present their work. At the beginning of one semester, they were asked to do an introduction round. There was one other trans person there and both he and the other trans person introduced themselves with their pronouns, which no one else had done. This was 'equal to coming out as trans' in that setting. For himself and the other trans person present, it was a 'weird and uncomfortable experience'.

Non-binary person, aged 25-34, residing in Germany (cluster 3)

Similarly, a participant in the Portuguese focus group noted that they were frequently misgendered in school, even after changing their legal documents.

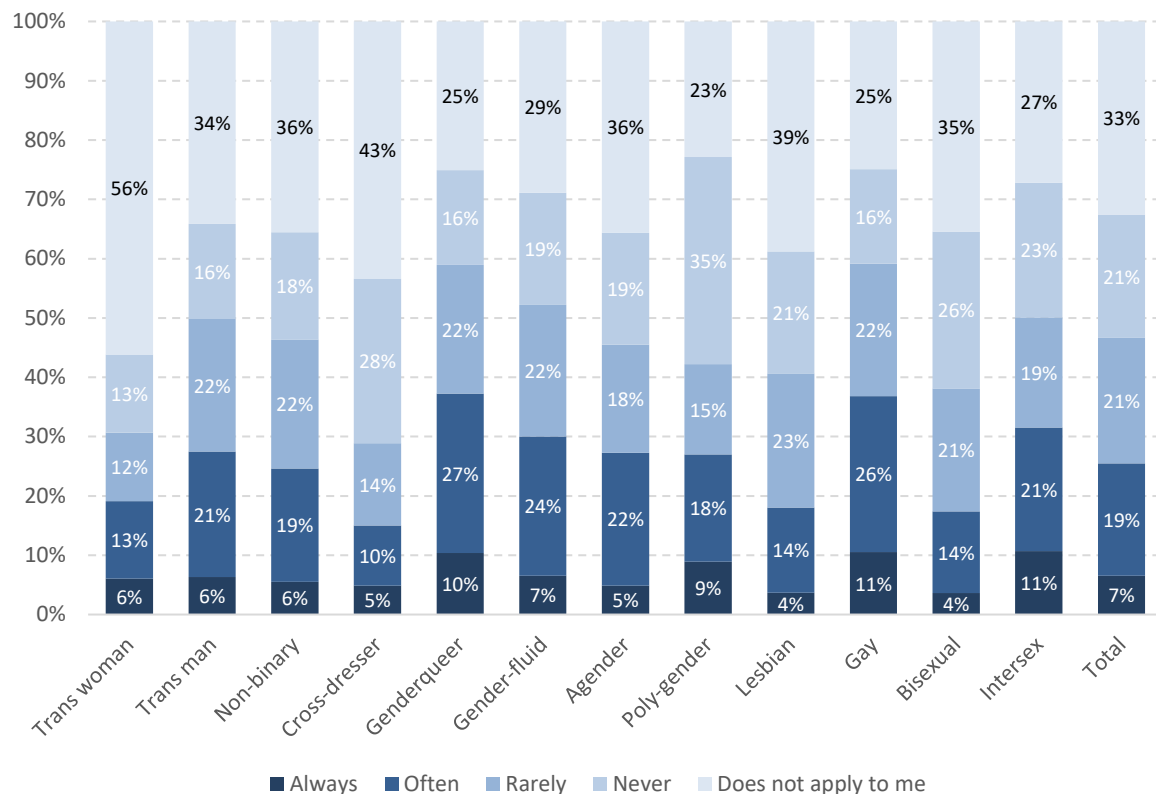
### **3.3 Experiences of bullying, harassment, violence and discrimination in education**

FRA's 2019 survey explored the extent to which LGBTI individuals had faced negative comments or behaviour at school because of their identity. Figure 8 below shows the results for different groups within the trans population, as well as (for comparative purposes) the results for lesbian, gay, bisexual and intersex individuals. The findings reflect that between 15% and 37% of trans individuals (depending on their gender identity group) had experienced such comments/conduct 'always' or 'often'. For most gender identity groups among trans respondents (specifically, trans women, trans men, non-binary people, genderqueer people, gender-fluid people and agender people), fewer than one in five (20%) stated that this had 'never' happened.

The results suggest that a substantial proportion of trans individuals with different gender identities may not have come out at school, thus may not have been directly exposed to others' negative behaviour or comments because of their gender identity. For example, more than half (56%) of trans women, 43% of cross-dressers, 36% of trans women and agender people, and 34% of trans men stated that this question did not apply to them. If one excludes those to whom the question does not apply, the shares of trans individuals who had experienced negative comments/conduct 'always' or 'often' jumps substantially for most groups, as well as for lesbian, gay, bisexual and intersex individuals.



Figure 8. Experience of negative comments or conduct at school, by identity group, EU-28<sup>56</sup>



This study found that **bullying, harassment and violence were the most common negative experiences in educational settings** reported by participants. In the education system, and most often in primary and secondary levels of education<sup>57</sup>, transgender people often face both open and hidden bullying, negative reactions from others and psychological and physical violence. This was emphasised in the Polish focus group, where numerous incidences of physical violence were recounted. It was also indicated by trans individuals living in Greece and the UK, as shown by the box below.

'I was beaten [at school] by 200 people and nobody cared. I felt abandoned. It was happening in the courtyard and no teacher noticed it? Teachers need to be aware of bullying.'

Trans person, age unknown, residing in Greece (cluster 4)

'I came to the UK and went to boarding school where I was able to experiment and express the way I felt. Unfortunately, this led to a lot of bullying and physical attacks as well.'

Trans woman, age unknown, residing in UK (cluster 1)

This correlates with findings from the focus groups and existing studies, which found that trans individuals were subject to bullying, harassment and violence while in

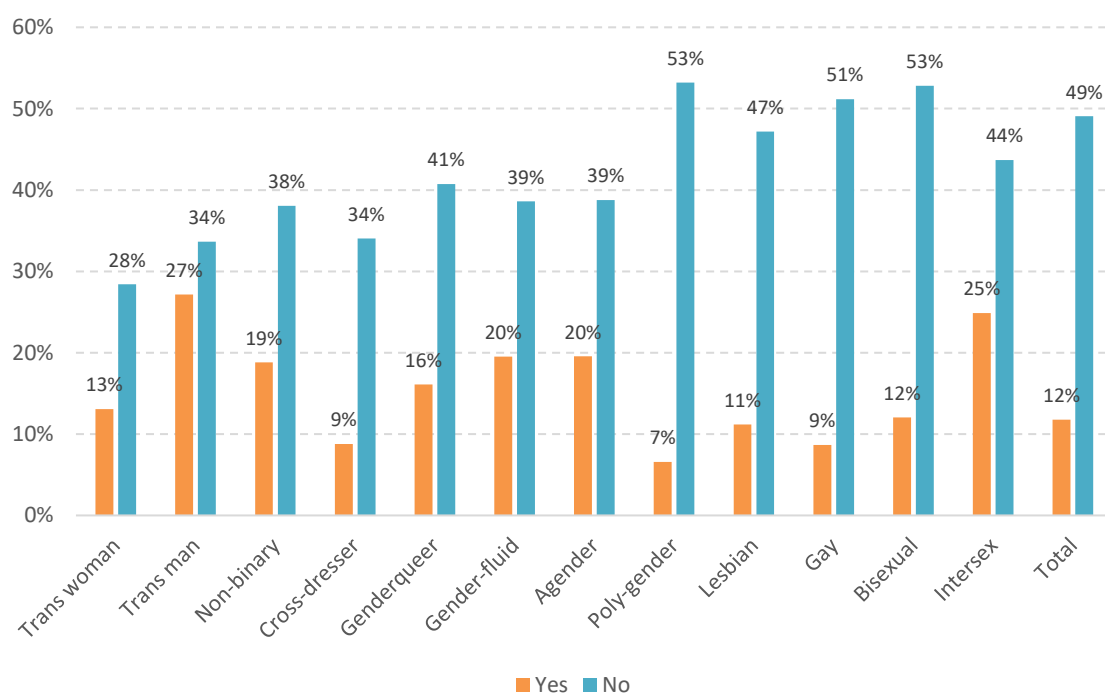
<sup>56</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'During your time in school in {COUNTRY}, did you experience negative comments or conduct at school because of you being {RESPONDENT\_CATEGORY}?. Not shown: Trans person identity group. Base: All respondents in the EU LGBTI Survey II (n=137,508). EU-28 weighted average.

<sup>57</sup> International Standard of Classification of Education (ISCED): <http://uis.unesco.org/sites/default/files/documents/international-standard-classification-of-education-isced-2011-en.pdf>

education. Several authors explore the extent to which LGBTI youth experience discrimination or bullying in an educational context, and the resultant negative mental health impacts of these experiences (e.g. de Graaf et al., 2018; Aparicio-Garcia et al., 2018; McDermott et al., 2017). In a UK survey of 798 LGBT young people, 70.8% had experienced homophobia, biphobia or transphobia (McDermott et al., 2017). This frequently took place within a school setting, as well as in public settings, on the internet and at home. Hatchel et al. (2018) state that schools and relationships with peers are a key source of stress for trans youth, due to internalised, expected or external transphobia, drawing on Meyer’s (2003, in Hatchel et al., 2018) minority stress model.

FRA’s 2019 survey results provide information on the levels of discrimination reported by trans individuals by school/university personnel in the last 12 months, due to their identity<sup>58</sup>. Figure 9 below shows the results for different groups within the trans population, as well as (for comparative purposes) lesbian, gay, bisexual or intersex individuals. The results show especially high levels of self-reported discrimination among trans men (27%), gender-fluid individuals and people who are agender (20%) and non-binary individuals (19%). With the exception of cross-dressers and poly-gender people, reported discrimination levels are higher for trans respondents than for lesbian, gay and bisexual individuals. However, it is worth noting that the second highest levels of discrimination (besides trans men) were reported by intersex people. Substantial proportions of respondents (not shown) either ‘had not done this’ (i.e. had not had interactions with relevant personnel) or ‘did not know’.

Figure 9. Experience of discrimination in the last 12 months by school/university personnel, by identity group, EU-28<sup>59</sup>



Several participants in our study reported having experienced discrimination at school. Almost half (434) of respondents to the online consultation reported that they had

<sup>58</sup> This was asked of people both in their capacity as students but also as parents.

<sup>59</sup> Source: FRA (2019). EU LGBTI Survey II. the question asked: ‘During the last 12 months, have you personally felt discriminated against because of you being {RESPONDENT\_CATEGORY}’ – By school/university personnel. This could have happened to you as a student or as a parent. Not shown: ‘Don’t know’ and ‘Have not done this’ answer options; Trans person identity group. Base: All respondents in the EU LGBTI Survey II (n=137,508). EU-28 weighted average.

experienced discrimination, prejudice or harassment based on their gender identity during stages of their education. This was particularly strong in educational settings for 11 to 18-year olds compared to those for students aged 18 or older. The online consultation results showed that a smaller share of participants aged 18+ at university and in further education experienced discrimination, prejudice or harassment from fellow pupils/students (23%, n=208). This is consistent with findings from Motmans et al. (2017) who noted that negative experiences were less frequent in higher educational settings<sup>60</sup>. The same study found that the more negative experiences a respondent reports, the worse their general health. Trans men report significantly more negative experiences than trans women, but the study (Motmans et al, 2017) found no significant difference for non-binary respondents.

The type of discrimination, prejudice or harassment varied by educational setting. Respondents to the online consultation most frequently reported negative comments relating to their gender identity. A large proportion of respondents reported having experienced negative comments relating to their gender identity from age 11 to 18 (31%, n=271). A slightly smaller proportion of respondents felt that they were treated differently based on their gender identity, from age 11 to 18 (26%, n=231).

Verbal and physical abuse were experienced by a number of respondents to the online consultation. The largest share of verbal abuse and physical abuse was experienced by participants when they were aged 11 to 18 (35%, n=308). Few respondents reported experiencing physical abuse in educational settings at the age of 18 or above (4%, n=39).

Participants from a variety of Member States noted that they were bullied for being 'different', being perceived as 'outsiders' or due to their (often incorrectly) perceived sexual orientation.

'At school, everybody was just horrible to me because I was not like others, I felt a real outsider at my school.'

Trans person, age unknown, residing Lithuania (cluster 1)

'I had small gender expressions which were different from everyone else, but I had not assumed this gender identity. Everyone saw me as a boy, not a girl...usually they associated me with being a boy who is gay or bisexual...there were certain stupid jokes made by kids at the time based on this.'

Trans woman, aged 35-44, residing in Romania (cluster 1)

This experience was also noted by a trans man with autism, who resides in Spain. He did not question his gender identity at school but had problems socialising with others due to his autism and also because he had hearing difficulties. He preferred to play with boys at school and felt that, in combination, these factors meant that he suffered severe bullying throughout his life.

Another participant experienced bullying throughout her school years and especially after starting hormone therapy.

Andreea experienced bullying from other students and felt that this was not dealt with appropriately by her teachers.

'There were instances where I felt that this is imposing on my life in a negative way...The bullying phenomenon was very strong for me and no one did anything about it, even if I insisted and tried to find help.'

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<sup>60</sup> Based on participants in a Belgian study who were students in the previous two years.

She experienced this throughout school, and it intensified from the ages of 15-17 while she was going through hormone therapy.

'The peak moment was at 16 years old when I had already started hormonal treatment and the changes were obvious so I couldn't hide. I experienced every type of bullying...In class 10 [16 years old] I experienced a very unpleasant incident where a student ... publicly humiliated me. I tried to find help from my teacher and headteacher, but no one did anything about it and they brushed it under the carpet. This student had told me that they would stop bullying me the moment that I hanged myself.'

Trans woman, aged 25-34, residing in Romania (cluster 1)

Participants in the Greek and Polish focus groups emphasised that transgender people are excluded from the education system because of bullying that takes place with teachers' knowledge. They see teachers' lack of intervention as making them complicit in this bullying. Similarly, participants from Hungary, Lithuania and Spain noted that the lack of action by teachers and staff in respect of their duty of care indicated a potential inequality between cis and trans students and showed a worrying lack of protection for trans students.

'I suffered bullying in all five [schools I attended], it has been hell...I complained about being bullied, my parents even talked with the directors, but nothing was done... According to the school I was strange, and that was my problem.'

Trans woman, aged 25-34, residing in Spain (cluster 2)

'I had a harder time than my peers. There was one teacher who was committed to getting me expelled from the school. I don't know to this day what I did to deserve this, but she was very, very committed - but didn't succeed. There were conflicts with my teachers all the time... I was an odd one in their eyes.'

Woman with a trans history, age unknown, residing in Hungary (cluster 3)

'I told the social worker at school that I want to feel safe at school with my new gender identity, and she told me that my head is full of devils and told me to see a psychiatrist.'

Trans person, age unknown, residing in Lithuania (cluster 1)

Milla recounted her experiences of gender-segregated schooling in Finland. She noted that growing up she was always separated by boys and girls. For her this was very hard because:

'I didn't identify with the boys but I belonged with them...I didn't actually have many male friends [...] There was always this talk that I needed to "man up" and be a better man and so on. This is hard. Then there was this very typical teasing with guys, that if you're emotional or softer than the others...that you're gay or a girl, or so on. Like there's something bad about being a woman. This was coming from all around. And because I was insecure I had to prove that I'm not [a woman] and it made me feel even worse...I went with that portrayal for close to two decades.'

Milla felt that her teachers did not help her during these periods of bullying. The response from teachers about negative behaviour from her peers was that 'boys will be boys; they always play rough around each other'. She also felt that because she performed well academically, the teachers did not notice that she was depressed and had social anxiety. Milla felt additional pressure from her mother to be good at school and to excel academically.

Trans woman, aged 25-34, residing in Finland (cluster 2)

For some participants, not only were staff unsupportive and failed to protect them from bullying, they actually initiated bullying, harassment and violence against trans students.

Sofia lives in Germany came out about her trans identity two years ago and experienced negative reactions from staff at her school.

'Three days after I came out at school, my school director called me to him; he completely misunderstood me and continually misgendered me [...] He was there with the vice-director [...] They also [went] into details which [were] just dumb: that my lipstick was too red and my mascara was too big... This went on for a week. Then he invited me and a friend (who is gay and also wears makeup) to his office. There were three people there (including the school therapist) and they were trying to convince us to 'stop all of that'. My director said things like 'come on, you're a nice little guy, what are you doing?'. I felt really uncomfortable, my friend was crying. Then they sent us out.'

A week after this incident, the students' union at Sofia's school heard about the maltreatment of both students and - without Sofia's knowledge - advised the director that if he did not adjust his prejudices and treatment of these students, they would go public with the incident. Sofia only heard about this from peers a month later.

'That made me feel so great and really supported. Minority against superiority is the best thing one can imagine.'

Since the intervention from the students' union, the director has allowed Sofia to dress as she chooses, and Sofia reports that the few interactions they have had since then have been positive. The director also approved a day to raise awareness of LGBT issues.

Sofia also experienced bullying from her peers, including racism, homophobia and transphobia. Some would send her derogatory messages and she was subject to a death threat. The negative effect on her learning meant that she had to repeat a year of school. However, her new class is much more supportive and has sometimes exceeded her expectations. Students have defended her in front of the whole class when she has been called by her deadname by teachers and students.

Trans woman, aged 18-24, residing in Germany (cluster 3)

Other participants faced difficulty and discrimination related to changing their name and gender on institutions' systems (see Section 9.2), with school administrators acting as gatekeepers in some instances. The testimony below also provides an example of a recurrent theme, whereby trans people were forced to escalate and highlight these instances of discrimination to senior staff or the media in order to receive equal treatment to their cisgender peers.

At university, Anton felt that he had to be open about his gender identity with his lecturers so that they would call him by his preferred name, but could not request an administrative name change because he had not gone through the LGR procedure.

One of the two departments under which he was studying simply sent an email on his behalf to his lecturers to notify them of his wishes. The other department, however, refused: when Anton asked a secretary to send an email to the lecturers on his behalf, asking them to call him by a different name, she told him she could not do it and that he should speak to someone in student services. This was a surprise to Anton, who had expected the secretary to be helpful:

'She got super upset [...] I asked her, "So you are going to arrange a meeting, with people [who] don't know me ... to decide if my lecturers should call me with my name?" She told me "Yes".'

Shocked at this treatment, Anton shared his experience on social media, leading to one of professors rectifying the situation. Anton had another issue with the same secretary after his exams, after he had changed his documents to reflect his legal gender marker. The secretary was responsible for changing the name on his certificates and took a year to do this. She only got in touch with him to say that it had been done once she saw him in the media. The participant found out that the secretary was very religious, which he believes was why she had an issue with him. Although he did not need the certificates at the time, it could have had a negative impact on his job search.

Trans man, aged 25-34, residing in Malta (cluster 5)

Accessing LGR and changing secondary educational qualifications prior to going to university remains a problem for many trans youth, given the restrictions on LGR for individuals under the age of legal adulthood (van den Brink and Dunne, 2018).

Some of the experiences above reflect instances when students sought and were denied support from teachers and other staff. However, not all trans students will feel comfortable seeking help, and a more proactive approach from teachers is needed to ensure that these students are not victims of bullying, harassment and violence. The participant below did not feel entitled to support, due to guilt about her gender identity. Ultimately, teacher support, however, had a positive impact on her.

'I wasn't out as trans in school, high school or university but I was very visibly queer.... It meant that I was an easy target for bullying ... From a teacher's point of view, I was an ideal pupil. I didn't have a lot of support in interactions with other teachers ... The violence came from the other students ... Once I was beaten by someone and I didn't feel like I could complain about that, but I didn't want to hide the bruises on my face. I had a very compassionate music teacher who asked me what had happened ... I told her what happened and the person who did it was suspended and sent home. I felt supported by her and there was no other violence towards me in school after that.'

Trans woman, aged 35-44, residing in France (cluster 4)

Several testimonies above indicate a lack of standardisation of policies relating to trans students pointing to a broader issue of the need to pay attention to gender identity and gender expression in school antidiscrimination and bullying policies, school materials and study plans. Such policies and plans must recognise that not all transgender students will be conscious of their gender identity or open about it in educational settings.

### 3.4 Exclusion from educational settings, activities and spaces

Some participants in this study recounted instances of exclusion from spaces and activities in educational settings. Troublingly, some trans people were **unable to use basic hygiene facilities**, such as bathrooms, to the detriment of their health and well-being. In some instances, this was due to a lack of appropriate facilities being available. For example, a trans man residing in Ireland stated that the cubicles had been removed from the men's toilets at his university, leaving him unable to use the facilities. He felt that although staff and his peers were accepting of his gender identity, they were unwilling to help with practical matters. This meant several months on campus, where he spent most of his time, without access to a bathroom. 'Their heads were in the right place, their hearts were in the right place, but the practicalities were not addressed'.



These examples indicate a lack of safeguarding of the health and well-being of trans students in some education institutions.

In other instances, staff and other students have stopped trans people using facilities. For example, a study participant recounted experiences in elementary school of being barred from using both the girls' and boys' bathrooms, by cleaning staff and peers respectively. As a consequence, this individual would avoid using the toilets and stopped drinking water. This highlights the need for staff training and their duty to ensure that all students have safe facilities to maintain their personal hygiene. Other examples of exclusion included that of a trans man residing in Hungary, who noted that as part of the traditional (and socially significant) graduation celebration, his class organised separate dances for boys and girls. Some of his classmates suggested that he should not join the boys' dance. The whole class then voted on the issue, with the majority voting in favour of him joining the boys' dance. This may indicate a need for staff to pay particular attention to inclusivity when running gendered activities and to consider properly the needs and preferences of trans students.

A trans man residing in France felt **excluded from some activities** as part of his Bachelor's degree. In a theatre class, the teacher wanted to group individuals by the pitch of their voice. The student had not yet come out about their trans identity and felt forced to come out when he refused to be in the girls' group. The participant noted that the lack of awareness that voices are not linked to gender was exclusionary. He felt similarly excluded when people referred to 'pregnant women', which overlooks trans men who may also be able to give birth.

A participant in the Greek focus group noted a case of two transgender women being refused a place at night school due to their gender identity, which shows discrimination in access to education. Sports departments and classes were mentioned as another area of school life that excludes trans students, partly due to the prevalence of gender-segregated sports teams and activities.

### 3.5 Negative impacts on education and well-being

For several participants in the interviews and focus groups, a combination of **negative experiences forced them to drop out of school or university**. These individuals then had to enter the labour market without their desired qualifications, with potentially lifelong negative socioeconomic impacts.

Participants in the interviews detailed various reasons for leaving school or university. In some cases, this was due to bullying from peers and teachers. Others were explicitly asked to leave.

'I was asked [by the school] to go to a special school because I set a bad example for the rest of the kids.'

Trans person, age unknown, residing in Greece (cluster 4)

'I couldn't concentrate on any classes so it didn't make sense for me to go there as I wouldn't get anything [from it] and would just feel worse. After a while I just stopped going. I got a job instead.'

Woman with a trans history, age unknown, residing in Hungary (cluster 3)

The online consultation also highlighted that some students felt forced to drop out of the education system, especially where they had health problems, illness or disability. Most students who left education early because of discrimination, prejudice or harassment also had chronic physical or mental health problems, illness or disability.

Some participants were unable to complete their degree due to worries about their gender identity being compounded by financial trouble. A trans woman residing in France noted that her parents refused to support her financially through her studies

after she came out as trans. This meant that she had to drop out of her law degree after studying for two years. Another trans man took a year out before attending university to earn money to fund his surgery as part of his transition process. He then started university once his surgery had been completed.

A trans man residing in France reported experiencing financial hardship from not attending higher education, as his gender identity meant he was estranged from his parents.

'I struggled a lot in my life because I could not study for higher education since my parents threw me out of the house [when I came out]. At the time, I wanted to study for [a] Bachelor's but the school refused to register me because they wanted proof of the taxable income of my parents. They did not accept my explanation that I could not obtain those from my parents as they threw me out of the house. I had to work. I did a lot of temp jobs until I got a full contract.'

Trans man, aged 25-34, residing in France (cluster 4)

Some people **limited their socialising due to negative experiences** in educational settings, e.g. restricting their extracurricular activities, not socialising with their peers or being wary of socialising with people years after leaving school. Two people noted that they were not able to fully participate in group work at school and at university, which negatively affected their grades.

'The discrimination I experienced was very mild, it didn't affect me long-term. Because of my gender expression, I was a more masculine expressing kid. There were lots of questions, I was often asked if I was a boy or a girl in a derogatory manner in order to make fun of me. In that moment it affected my self-esteem and confidence and it limited me in socialising with other people; I felt out of place and inappropriate being myself.'

Trans man, aged 18-24, residing in UK (cluster 1)

'It's a vicious circle where there is causality between bullying, harassment, non-attendance and inclination towards jobs or education pathways where you try to avoid human interaction as much as possible. Even now after so many years where I am 100% open, I still try to avoid human interaction as much as possible in a professional sense.'

Trans woman, aged 25-34, residing in Romania (cluster 1)

One participant noted that he was unable to participate fully in class due to fears of having to come out about his gender identity multiple times. He felt that this had a negative impact on his ability to learn and subsequently on his grades.

'I am usually not very chatty, but in working groups that are a part of my course, people are expected to participate and are sometimes graded on how much they participate. However, at times, I did not feel comfortable using my voice when I presented as male. The working groups rotated so I was always with different people in the group and I felt like I had to out myself again. Because of this, I would rather not speak and participate, which affected my grade and [stopped me from] participating fully in my studies.'

Trans man, aged 25-34, residing in the Netherlands (cluster 3)

Others altered their choice of career based on their gender identity.



'When I was 16, I wanted to go to nursing school...but my father talked me out of it because he said that it's not good and that it's only washing other people and so on. I believed him back then. And I went to be an electrician, to get a "male" vocation.'

Trans woman, aged 25-34, residing in Finland (cluster 2)

One participant in the Polish focus group, whose child is currently in primary education, reported that private schools seem to be more accepting of trans people (both as students and parents) than state schools. In their opinion, this creates a financial burden for parents while trying to guarantee an acceptable education for their child and avoid stigma and discrimination.

Some participants mentioned **delaying their transition** due to being in unsupportive education environments. A trans man residing in France waited to finish his Master's in 2017 before transitioning. He was disappointed that the professors of sociology and gender studies were not well prepared for transgender students' needs. For example, they seemed unaware of the differences between different types of trans people and conflated this with sex workers. He found it difficult to explain these topics to professors and teaching assistants, especially during evaluations. He is in contact with openly trans students now doing the same Master degree and thinks that the course has since improved.

### 3.6 Positive experiences

Participants reported some positive experiences during their time in education, where they were supported by individual teachers, peers and institutional systems. The literature review shows that more recent literature suggests an expansion of the ways in which LGBTI youth experiences within education are conceived, encompassing more positive experiences (e.g. Bryan, 2016).

'Now I live in Denmark, I can wear a dress every day, put make up [on] every day...I live as a woman. When I'm in school...they have to call me a woman's name. Wherever I go, they have to call me [participant's name], because I'm a woman now. I live as a transgender female.'

Trans woman, aged 25-34, residing in Denmark (cluster 5)

Some participants pointed out that these positive experiences may have been due to their department of study. A participant in the Portuguese focus group, for example, mentioned that students in the Humanities department were supportive. As mentioned previously, an individual studying in the Gender Studies department noted that peers and staff were open and accepting of trans people. This study identified examples of promising practices and these are detailed below. These examples cover a range of regions and legal clusters, which may suggest they are the result of individual schools and teachers rather than any systematic or policy shifts towards being open and supportive of trans students.

#### Italy

Some universities in Italy offer a type of career document for transgender people, called 'Alias'. In these documents, the student has their name and sex assigned at birth obscured. This is particularly useful for those that do not have yet their gender marked aligned in their documents. When the student is being evaluated, the professor will not see that they have a different gender marker. To obtain the 'Alias' document, a student must provide relevant paperwork and must be in the 'real-life test' step of LGR in Italy.

#### Greece

Some teachers in Greece have made concerted efforts to increase their knowledge of transgender identities and bullying within the education community, including co-working with trans support organisations.

### **Hungary**

A trans man residing in Hungary noted that his school environment was very accepting. He was open about his gender identity in secondary school and started to use his new name in the first year there. All of the teachers encouraged him, even those whose reaction he feared. The school allowed him to use the boys' uniform and also used his new name in official events.

### **UK**

A trans man noted that the staff he encountered at university were supportive. For example, his tutor helped him to change his name in the school system and took the initiative to make sure that this happened in a timely manner. He also felt supported by the university's mental health professional, who provided counselling and helped him to access some LGBT-related supports and resources. He also felt that the university takes harassment seriously and said he would know who to go to if he had any problems with other students.

Changing his name on the university's system was very easy, primarily because it is considered an administrative procedure unrelated to LGR, and so universities cannot ask for additional documentation. Many other students use the name change procedure to simplify long names.

### **Spain**

A trans man shared his experience on enrolling onto an online Bachelor's degree in Computer Science. He sent an email at the beginning of the academic year informing staff of his gender identity, preferred pronouns and name, and has found everyone to be respectful.

### **The Netherlands**

A trans man experienced some discrimination in his first school in Italy. He contrasted this to his experiences in the Netherlands, where he came out about his gender identity to his peers and staff. He felt that the environment was more open and that his gender identity was totally accepted and respected by teachers and students.

### **Portugal**

A trans person in the Portuguese focus group noted that textbooks at their school included information about genders outside of the male/female binary. For example, a sociology textbook contained a definition of gender that covered trans and non-binary people as well as cisgender people.

Participants in the focus group pointed out that new guidelines in Portugal make it obligatory for schools to accommodate trans students by allowing them to choose which items of school uniform to wear and to use their bathroom that matched their gender identity. The needs of non-binary students were not mentioned in the guidelines, however.

### **France**

A trans woman in France noted that her peers are informed about trans people and use the right pronouns, which she says is likely due to her studying in the sociology department. She also feels that her university and administrative staff are informed, as there are more and more trans students at the university.

Some trans people stated they had positive experiences in education only because others were not being fully aware of their gender identity, as they chose not to express

or disclose it in educational settings, or as they themselves were not fully aware of their gender identity.

'At school, only a friend knew that I did not feel female. As I was not explicit, I did not have problems related to this...Not being out and not having asked to be called with a different name, I did not experience particular problems.'

Trans man, aged 18-24, residing in Italy (cluster 2)

'I never experienced discrimination at school...I hid it [gender identity] very well so that no one knew.'

Trans woman, aged 55-64, residing in Germany (cluster 3)

### 3.7 Conclusions from this chapter

In 2019, the FRA LGBTI survey found that these were the highest educational qualifications of trans respondents had gained: secondary education (applied to 40.6% of trans respondents), post-secondary education other than college/university (12%), and tertiary education (43.6%). Only 3.8% of respondents had no formal education or had only completed primary education as their highest level.

There are some important differences in educational attainment within the trans population. For example, there are higher educational levels amongst trans women than trans men; nearly 40% of trans women had completed a form of tertiary education, versus less than 30% of trans men. The groups reflecting the highest educational attainment levels are genderqueer people and non-binary people.

Our study suggests that trans students' experiences of education vary according to whether they choose to disclose and express their gender identity and the extent to which their peers and the staff of different education institutions are supportive.

Many trans people feel unable to come out about their identity in educational settings, due to (often well-founded) fears of bullying, harassment and violence. Some are not fully conscious of their identity and do not disclose this to others. For those who do disclose, or who are in the process of transitioning, educational settings can be very challenging for their mental and physical health.

Between 15% and 37% of trans individuals (depending on their gender identity group) have experienced negative comments/conduct at school because of their identity 'always' or 'often' (FRA LGBTI survey, 2019). In addition, notable shares of trans individuals (25% or more) stated that this question did not apply to them, suggesting that they may not have had the chance to find out the reactions of others at school to their gender identity. All groups within the trans population can face discrimination when interacting with school/university personnel as students and parents, especially trans men, gender-fluid individuals, people who are agender and non-binary individuals.

Some participants explained that teachers were often aware of the bullying, harassment and violence that they faced as students. There were even instances of teachers initiating these acts against trans students. Furthermore, many participants experienced exclusion from gender-segregated activities, such as school dances, sports and extracurricular activities. Some also recounted instances of exclusion from basic hygiene facilities like toilets, to the detriment of their health and well-being. Many trans people had to educate staff and other students on the correct pronouns to use, which was frequently described as draining and leading to unwanted attention. Some faced discrimination relating to changing their name and gender on institutions' systems.

In some cases, participants reported that they felt forced to escalate and highlight instances of discrimination to the media or to senior staff to receive equal treatment with their cisgender peers. This places an undue strain on trans students, who must

divert their energy and focus away from their studies in order to deal with bullying and discrimination.

There may be differences in experiences by educational level. The online consultation results showed that a smaller share of participants aged 18+ at university and in further education experienced discrimination, prejudice or harassment from fellow pupils/students (23%, n=208), relative to those who had these experiences in educational settings for 11 to 18-year olds. This is consistent with findings from existing academic research (Motmans et al., 2017) who noted that negative experiences were less frequent in higher educational settings.

For a few participants, a combination of negative experiences forced them to drop out of school or university. Some people limited the amount they socialised, or minimised their participation in school, due to their negative experiences. Several delayed their transition due to being in unsupportive education environments.

None of the (73) interviewees in this study referred to information on transgender identities at schools when becoming conscious of their gender identity. This reflects a gap in inclusive educational policies relating to trans identities, as documented by the International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Youth and Student Organisation (IGLYO) Inclusive Education Index.

This chapter explored the overall experiences of trans people in education in the EU. Despite some positive and isolated examples of supportive teachers, departments and policies (see Section 3.6), these experiences remain concerning. The next chapter moves on to consider the experiences of trans individuals in employment. It reflects that, while many trans individuals are achieving professional success, modern workplaces also still have a long way to go before becoming fully inclusive to trans employees.

## **4 Being trans when applying for jobs and at work**

This chapter considers the overall experiences of trans individuals in the labour market. It explores the employment situation of transgender people and the impact of gender on career choices. It also considers trans individuals' experiences of discrimination in accessing jobs and the impacts that this can have, as well as the situation of trans individuals at work.

### **4.1 Employment situation of transgender people**

To understand the employment situation of transgender people, it is helpful to compare their situation against that of the general population. Considering the entire general population average (both cisgender and transgender individuals), EU-wide data for 2019<sup>61</sup> show that:

- 74.1% of the total population were in the labour force. This is also known as economically 'active' (i.e. either employed or unemployed)
- A sizable share (25.9%) of the total population were not economically active – i.e. neither formally 'employed' or 'unemployed'. This includes, for example, students, those on sick leave, retired individuals and those in other situations.

Considering employment and unemployment specifically, in 2019, 69.3% of the total population were in employment<sup>62</sup>, including those who were self-employed. Given the proportion of individuals (74.1%) in the labour force, it can be inferred that the total

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<sup>61</sup> Source: Eurostat [lfsi\_emp\_a]. Data for EU 28. Activity rate reflects the proportion of the total population aged 15-64 who were active.

<sup>62</sup> Source: Eurostat [lfsi\_emp\_a]. Data for EU 28. Employment rate reflects the proportion of the total population aged 15-64 who were employed.

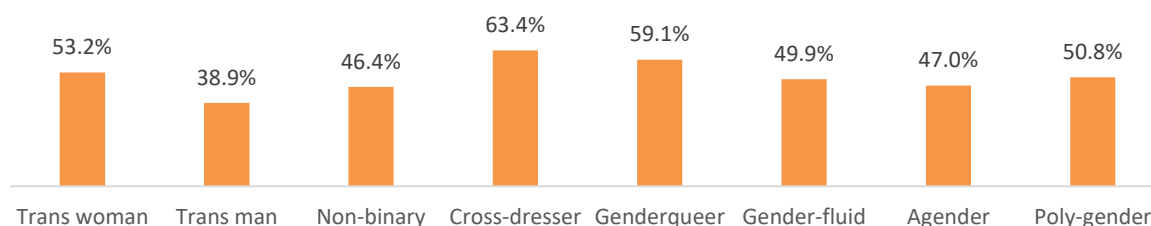
proportion of the general population (aged 15-64) who were unemployed was 4.8%<sup>63</sup>. It is important to bear in mind that this is a different unit of measure to the more commonly reported 'unemployment rate'<sup>64</sup>.

EU and national research on the employment situation of transgender people generally typically suggests **lower employment rates compared to the population average**, although there may be some limits to comparability<sup>65</sup>.

The FRA 2019 LGBTI survey is one of the largest, most reliable and most recent sources of data on the employment situation of trans people. FRA survey data suggest that trans individuals face lower employment levels and higher levels of economic inactivity relative to the general population. In 2019, almost 51% of trans respondents to the FRA survey were in paid work or self-employed (including on paternity or other temporary leave)<sup>66</sup>. A further 8.3% of respondents were unemployed<sup>67</sup>. Additionally, 26% were students and a little over 11% of trans respondents were in unpaid or voluntary work, retired, unable to work due to long-standing health problems, fulfilling domestic tasks, or in compulsory military or civilian service.

The FRA survey results found that employment levels of different groups in the trans population were consistently below the EU average for the general population (69.3%). The FRA survey also shows variation in the employment situation of trans people by gender identity (see Figure 10).

Figure 10. Proportion of transgender people in the EU-28 who are employed, by gender identity (%)<sup>68</sup>



These results show that within the trans population, the lowest rate of employment is among trans men (38.9%), which is explained in part by a high proportion of trans men in education<sup>69</sup>. The employment levels among non-binary people and agender people

<sup>63</sup> If using the broader age band of 15-74 (rather than 15-64), the proportion of the total population who were unemployed was 4.1%. EU 28. Source: Eurostat [Code: tps00203].

<sup>64</sup> Instead of focusing on the proportion of the entire population aged 15-64 who are unemployed (as this paragraph does), the unemployment rate specifically considers unemployed persons as a percentage of the labour force. The labour force is the total number of people employed and unemployed. It also uses a different age range (15-74).

<sup>65</sup> Although the FRA survey covers people aged 15 and older (which is the same lower bound as the Eurostat employment data given), there are some older respondents in the survey than in the Eurostat employment bracket, as there was no age cap in the FRA survey.

<sup>66</sup> This compares to 69.3% of the general population (aged 15-64) in the same situation, although note there are some limits to comparability, due to the age bands in use.

<sup>67</sup> This compares to 4.8% of the general population (aged 15-64) in the same situation, although note there are some limits to comparability, due to the age bands in use.

<sup>68</sup> Source: FRA (2019). EU LGBTI Survey II. Question asked: 'Which of the following best describes your status? This includes people in employment, including on paternity or other temporary leave, and those who are self-employed'. Base: Trans respondents (n=19,445). EU-28 weighted average.

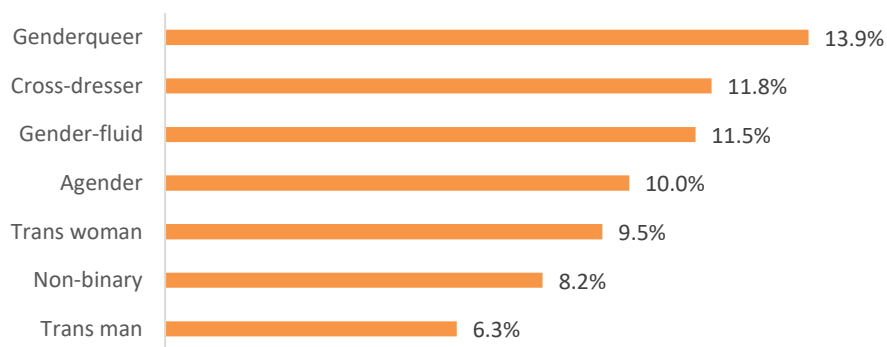
<sup>69</sup> FRA's study sample may have been affected by a similar issue to that in this study: namely, that young people were more likely to be participate. The FRA data in this report is weighted to increase its representativeness, although it is not clear the degree to which this has occurred for age.

were also especially low (46.4% and 47%, respectively). The highest rates of employment were seen among cross-dressers.

Some national-level research in Germany, the UK and Belgium has examined the employment rate of transgender people. Eyssel et al. (2017) surveyed 415 transgender people aged 16-76 in Germany in 2015 and found an overall employment rate of 70.8%, which is higher than the EU average but lower than the German average for that year<sup>70</sup>. Within a sample of 104 transgender individuals attending a gender identity clinic in the UK, Davey et al. (2015) found an employment rate of 44.2%, which is much lower than the average employment rate for the EU or the UK in 2015<sup>71</sup>. By contrast, Motmans et al. (2014) found that when comparing existing clinical and social data in Belgium, equally high proportions of trans men and women were employed (63% in the clinical data, 64% in the social survey data), which compares favourably with the national employment rate and is similar to the EU average in 2014<sup>72</sup>. However, Motmans et al. (2014) also found variation in employment situation by gender identity among their study participants. This is consistent with the results of the FRA survey data, which show significant variation in the employment situation of trans people by gender identity (see Figures 10, 11 and 12).

The available data show **mixed results on the prevalence of self-employment** among transgender people. The FRA 2019 survey found that rates of self-employment varied significantly between groups (see Figure 11). For example, around one in 7 genderqueer people (13.9%) reported that they were self-employed, compared to only approximately one in 16 trans men (6.3%). At national level, a study conducted by the Scottish Transgender Alliance (Morton, 2008, as cited in Beauregard et al., 2016) found that 20% of respondents in their study were self-employed, compared to a national average of 13% (Beauregard et al., 2016). Similarly, Eyssel et al. (2017) found that 17% of the people within their sample were self-employed.

Figure 11. Proportion of transgender people in the EU-28 who are self-employed, by gender identity (%)<sup>73</sup>



As mentioned above, the level of unemployment amongst trans individuals is 8.3%, which is higher than the EU average of 4.8% amongst the total population (aged 15-64). The FRA 2019 survey also shows that all groups of trans people face higher rates of unemployment than the EU average (4.8%). As shown in Figure 12, this is a **particular issue for trans women**, who are nearly three times as likely to be

<sup>70</sup> Employment rate of 65.6% for the EU and 74.0% for Germany for 2015. Source: Eurostat [lfsi\_emp\_a].

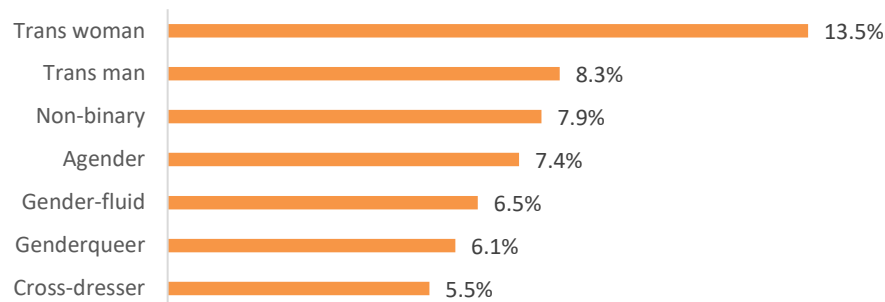
<sup>71</sup> Employment rate of 65.6% for the EU and 72.7% for the UK for 2015. Source: Eurostat [lfsi\_emp\_a].

<sup>72</sup> Employment rate of 64.8% for the EU and 61.9% for Belgium for 2014. Source: Eurostat [lfsi\_emp\_a].

<sup>73</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'Which of the following best describes your status?'. This includes people in employment, including on paternity or other temporary leave, and those who are self-employed. Base: Trans respondents (n=19,445). EU-28 weighted average. Polygender respondents from Figure, excluded due to small sample.

unemployed as the general population. A similar trend of high levels of unemployment and disproportionately high unemployment among trans women was seen among participants in our study. 14% of all participants were unemployed and 23% of trans women were unemployed<sup>74</sup>. This is explored further in Section 4.2 (accessing job opportunities) and Section 4.3.4 (sexism and gender stereotyping in the workplace).

Figure 12. Proportion of transgender people in the EU who are unemployed, by gender identity (%)<sup>75</sup>



Studies in Germany, the UK, Belgium, Italy and Denmark found **substantially higher unemployment rates among the trans population** compared to the population average. Eyssel et al. (2017) found an unemployment rate of 17.6%, higher than the EU or German general population average for 2015. Similarly, while Davey et al. (2015) found an unemployment rate of 12.5%, again higher than the EU or UK average. A study of applicants for gender confirmation surgery at a single institute in Italy (Cussino et al., 2017; n=196) found that unemployment rates of applicants were significantly higher than those of the general population (Italian National Institute of Statistics (ISTAT), 2014, cited in Cussino et al., 2017). A quantitative study of 108 trans individuals who had undergone gender-affirming treatment in Denmark also found a higher proportion of unemployment among this population compared to the Danish average (16-19%) (Simonsen et al., 2015). The authors suggested that a higher prevalence of unemployment may be due to the marginalisation and social exclusion experienced by trans individuals, as found in previous studies. Motmans et al. (2014) suggested that trans people who fulfil social expectations about masculinity and femininity do relatively well job-wise, but transgender persons who cross the gender norms experience all kinds of problems in the labour market.

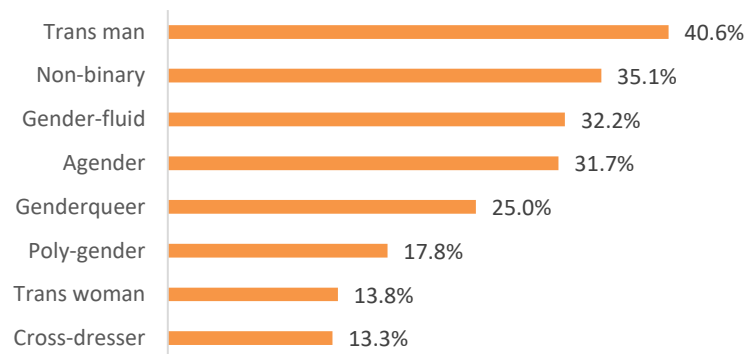
Nearly 37% of trans respondents in the LGBTI survey of 2019 were economically inactive, although this was often the result of being in education. Overall, 26.5% of trans respondents were in education. The FRA 2019 survey found that more than one-third of non-binary people and trans men are in education, although lower proportions were found for trans women and cross-dressers (see Figure 13).

<sup>74</sup>Source: Online consultation of this study. Question asked: 'What is your current employment status? Please tick all that apply.'. Base: all respondents to the online consultation excluding those who did not respond to this question (n=854). Note that trans women were the group with the highest level of unemployment within our study with the exception of those who described their gender identity "in another way", for which there was a small sample size.

<sup>75</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'Which of the following best describes your status?'. Base: Trans respondents (n=19,445). EU-28 weighted average. Not shown: Polygender respondents (due to small sample); Trans person identity group.



Figure 13. Proportion of transgender people in the EU who are in education, by gender identity (%)<sup>76</sup>



Considering those who were economically inactive for other reasons, 5.7% of trans respondents to the 2019 LGBTI survey were unable to work due to long-standing health problems, 2.8% were retired, 1.2% were fulfilling domestic tasks, 1.2% were in unpaid or voluntary work, and the remainder were in compulsory military service or in 'other' situations. Broken down by gender identity, the higher share of trans women (almost 8%) who are unable to work due to long-standing health problems is notable.

National studies similarly suggest a **relatively high proportion of trans people who are economically inactive**, for example as a result of education, sick leave or retirement. Eyssel et al. (2017) found that 22% of their study sample was in education and a further 6% were in vocational training. Similarly, Davey found that 14.4% of their sample were in education. Motmans et al. (2014) found that the number of participants in the 'otherwise non-working' group (retired, students and others, e.g. those on sick leave) was relatively high (23%) in clinical data, although rather low (7%) in social survey data.

Our study also presents a picture of high economic inactivity among the trans population. A considerable proportion (more than one-third) of trans people who took part in the study were in education<sup>77</sup>. A further 10% were economically inactive for other reasons. In some cases, economic inactivity seemed to relate to the person's gender identity. For example, one person reported being on sick leave after experiencing severe discrimination and harassment in the workplace, while another person took sick leave after experiencing a breakdown, related to difficulties in accepting their gender identity. Others reported being on sick leave for the duration of their medical transition.

Of the participants in this study who were in employment, many were working with LGBT organisations, either as employees or volunteers. Several participants were also working in the tech industry. As Beauregard et al. (2016) highlights, many roles in this sector can be done from home, allowing greater privacy and control. Given the high level of education they identify within the trans population, they suggest this sector may be 'particularly well suited' to them.

A few participants within this study similarly emphasised that the tech industry is an accepting place because of high demand for skilled employees, although they did not focus on the possibility for remote working. These participants felt that people in the tech industry are primarily interested in whether you are good at what you do and are 'willing to overlook that detail [your gender identity]' if this is the case.

<sup>76</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'Which of the following best describes your status?'. Base: Trans respondents (n=19,445). EU-28 weighted average.

<sup>77</sup> This may also relate to the high prevalence of young people amongst participants.

'In the IT sector, there aren't enough developers. They are very careful not to lose a good developer. So, if someone is respected in terms of being able to do their job, then they will do everything in their power to make them stay...and for creative industries diversity is a huge market advantage.'

Trans woman, aged 35-44, residing in Hungary (cluster 3)

However, another participant working as a software engineer felt that it was still relatively unusual for transgender people - specifically transgender women - to work in this industry.

'People don't expect to see trans women in that kind of business.'

Trans woman, aged 35-44, residing in the UK (cluster 2)

Among those in other formal employment (i.e. not in a relevant NGO or in tech), participants reported working in a variety of roles and sectors, including administration, banking and finance, the beauty industry, education, engineering, the health sector, local government, law enforcement and tourism and hospitality.

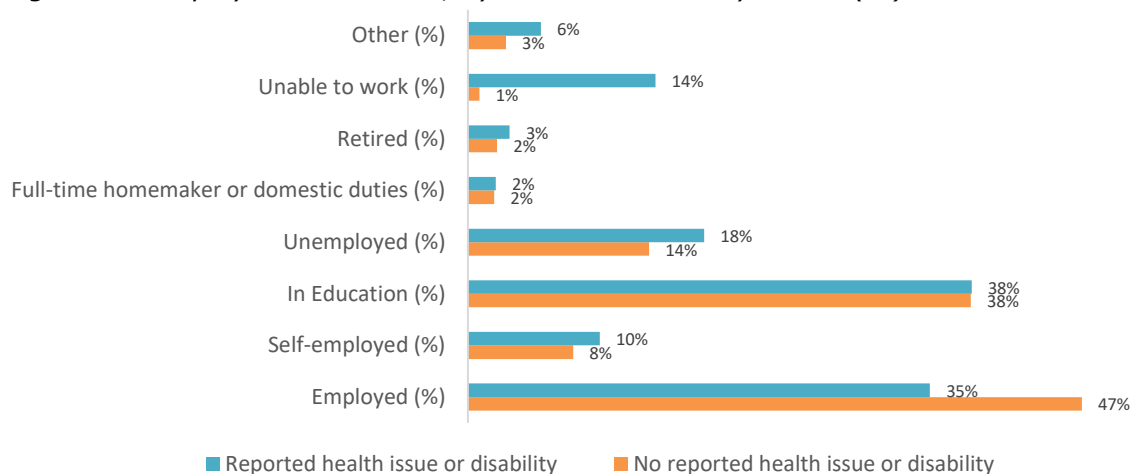
Fewer than one in 10 online consultation and interview participants reported being self-employed. One person explained this works better for them as a person with ADHD, and also because they feel it would be challenging to maintain employment as a visibly transgender person.

'As a person with ADHD I would never survive a full-time job in an office. I know my limitations. I am very much aware that as a non-'passing' trans person it would be difficult to have access to dependable employment in an office environment.'

Non-binary person, aged 35-44, residing in the Netherlands (cluster 3)

Online consultation **respondents who reported a long-term health issue or disability were less likely to be employed** than those who reported no long-term health issue or disability. This is accounted for by the higher proportion of people with a health issue or disability who were unemployed, self-employed, or unable to work (see Figure 14).

Figure 14. Employment situation, by health or disability status (%)<sup>78</sup>



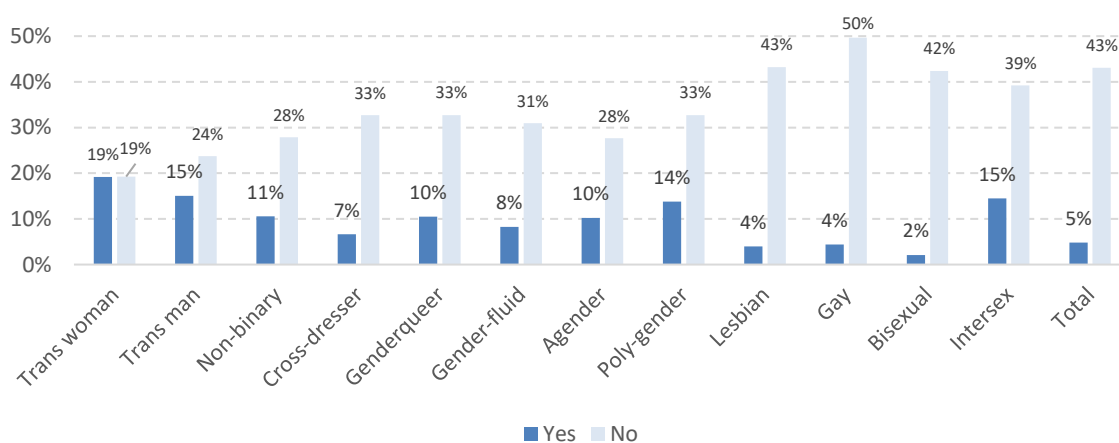
## 4.2 Accessing job opportunities

### 4.2.1 Experiences of discrimination in accessing the labour market

There are a variety of reasons why trans people may find it more challenging to access employment. These include discrimination on the basis of gender identity, concerns over the ‘trans-friendliness’ of different sectors and employers, problematic application processes and challenges linked to documents not matching trans individuals’ gender identity.

Using FRA survey data (2019), Figure 15 below shows the level of reported discrimination in accessing job opportunities. It covers different groups within the trans population, as well as (for comparative purposes) amongst lesbian, gay, bisexual and intersex people. The graph shows that all groups have personally felt discriminated against when looking for a job because of their identity, suggesting it is more difficult for them to access the labour market. Amongst the trans population, the rates are highest amongst trans women (19%), trans men (15%) and poly-gender people (14%).

Figure 15. Experience of discrimination in the last 12 months when looking for a job, EU-28<sup>79</sup>



<sup>78</sup> Source: Online consultation of this study. The questions asked: ‘What is your current employment status? Please tick all that apply’. All respondents excluding 448 who reported no health issue or disability, and 377 whom reported a health issue or disability (n=825).

<sup>79</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: ‘During the last 12 months, have you personally felt discriminated against because of you being {RESPONDENT\_CATEGORY}’ –

The FRA 2019 survey results are reflected by our study. Specifically, amongst those for whom the question was applicable, 42% of trans respondents to the online consultation reporting experiences of prejudice, harassment or discrimination when accessing job opportunities over the last 5 years<sup>80</sup>. Similarly, in a Spanish survey of 532 LGBTI people (of whom 180 identified as transgender and 80 as non-binary), 53% of the transgender participants and 55% of the non-binary participants reported experiences of discrimination in seeking employment, compared to 21% of cisgender participants (Aparicio-García et al, 2018). Consistent with the picture of variation by gender identity, our online consultation found that trans women are the group most likely to have experienced prejudice, discrimination or harassment when applying for job opportunities, while the group least likely to have such experiences are men with a trans history. These findings suggest that the level of 'passing' and sexism are key factors that contribute to the level of discrimination experienced when seeking employment, as echoed in the results of other chapters (see Section 4.3.4).

It is worthwhile to consider how discrimination against trans people is perceived by the wider public. Figure 16 shows that the share of the general public who believe that being transgender is a disadvantage when applying for a job has decreased since 2015 but nevertheless remains higher than in 2012. In 2019, around one in four individuals (24%) believed that a candidate's gender identity could place them at a disadvantage during hiring processes. This varies significantly by Member State, with the highest perceived discrimination in Greece (44%), Sweden (41%) and the Netherlands (39%) and the lowest perceived discrimination in Czechia (15%), Romania (13%) and Latvia (12%). This does not necessarily mean that there is less discrimination in Czechia, Latvia and Romania; indeed, these rates may be caused by people being less aware of it.

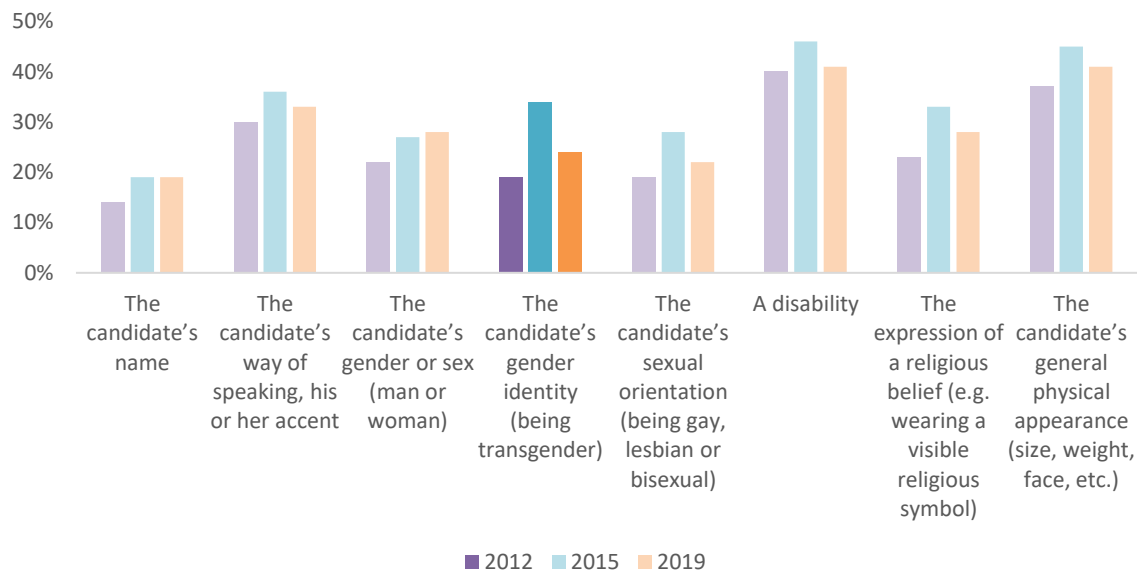
Compared to other characteristics, such as general appearance, way of speaking, disability status, religious expression and gender, there is a relatively low perception of discrimination in hiring based on gender identity. However, it is worth bearing in mind that Figure 16 provides information about perception only, and respondents to the Eurobarometer survey may not personally know anybody who is transgender. Furthermore, some transgender individuals may experience discrimination as a result of their gender identity *and* one or more of the other characteristics considered in this graph. For instance, trans individuals may experience intersecting forms of disadvantage and discrimination if their way of speaking, name or general physical appearance is perceived as different or distinctive by hirers, if they belong to a religious minority, if they have a disability and/or if they are not straight. Whether an individual is perceived as a man or woman can also be significant, as discussed in more detail in Section 4.3.4 of this chapter.

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When looking for a job. Not shown: 'Don't know' and 'Have not done this' answer options. Base: Trans respondents in the EU LGBTI Survey II (n=19,445). EU-28 weighted average.

<sup>80</sup> Source: Online consultation of this study. Question asked: 'In the last 5 years, have you experienced prejudice, or discrimination or harassment, because of your gender identity, when applying for job opportunities?' Base: respondents to this question of the online consultation (n=446).

Figure 16. Perceived disadvantage in hiring among members of the general public, EU-28 2012, 2015, 2019 (%)<sup>81</sup>



In contrast to the relatively low proportion of the general population who believe that transgender people face discrimination in hiring, many trans people in this study described experiencing difficulties in finding a job, which they felt was due to **discrimination** based on their gender identity.

'When I started looking for a job again, I realised that it was my first time looking for a job as a woman. And I have a very good resume, and during that year and a half [of] unemployment I had 50 job interviews. And after these job interviews, I was called back twice. And one of them was to tell me that we would have chosen you but we found someone else.'

Trans woman, aged 35-44, residing in France (cluster 4)

'I looked very actively for around six months, and in most cases I just got rejected. I never got an invitation to interview. In only one case I got an invitation to interview and it was at a trans rights organisation.'

Non-binary person, aged 25-34, residing in Germany (cluster 3)

'During my year and a half of unemployment I applied to more than 250 jobs and participated in almost 100 interviews without any success, although I was qualified with decent professional experience. I hadn't got any job refusals before when I lived in the gender assigned at birth.'

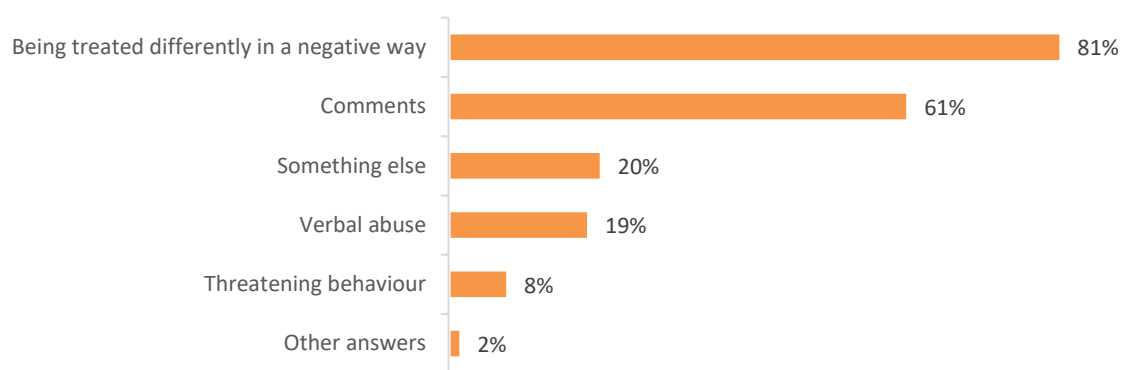
Trans woman, aged 35-44, residing in Sweden (cluster 3)

Of the online consultation respondents who indicated having experienced prejudice, harassment or discrimination when applying for job opportunities in the past five years and who elected to provide more information (n=178), 80% reported being treated differently in a negative way, 61% reported receiving comments amounting to

<sup>81</sup> Source: Eurobarometer on Discrimination in the EU 2012, 2015 and 2019. Data for 2012 are for EU-27. The question asked: 'In (OUR COUNTRY) when a company wants to hire someone and has the choice between two candidates with equal skills and qualifications, which of the following criteria may, in your opinion, put one candidate at a disadvantage?' Answer not shown: The candidate's address. Base: All Eurobarometer respondents (2012 n=26,622, 2015 n=27,718, 2019 n=27,438).

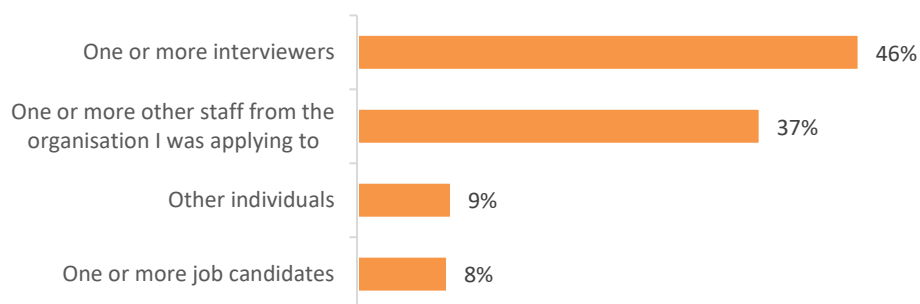
prejudice, discrimination or harassment, and 19% experienced verbal abuse. Approximately 8% of respondents reported experiencing threatening behaviour (8%). 20% reported that their experience consisted of something else. Some respondents mentioned that their experience took an unfavourable turn once gender-displaying documents had been reviewed: one respondent cited that their children's' birth certificates revealed their transgender status, resulting in their failing to secure a job as a school teacher. Another respondent from the UK had a job offer rescinded on three separate occasions once their national insurance number<sup>82</sup> (which denoted their birth name and sex) was reviewed. Other respondents raised difficulties related to 'passing': one stated that they were denied a job because of the 'mismatch' between their image and name, while another stated that they were not accepted as they did not 'look like a girl'.

Figure 17. Forms of prejudice, discrimination or harassment faced when applying for a job<sup>83</sup>



Respondents who elected to provide information on the instigators of such behaviour (n=179), reported that it came from one or more interviewers (46%) or one or more other staff of the organisation to which they were applying (37%). Additionally, 8% of respondents reported receiving such treatment from one or more job candidates, while 9% reported that it came from other individuals, most commonly employment agencies and recruiters.

Figure 18. Instigators of prejudice, discrimination or harassment faced when applying for a job<sup>84</sup>



<sup>82</sup> A personal record number assigned to every person working in the UK.

<sup>83</sup> Source: Online consultation of this study. The question asked: 'What form did the harassment/discrimination take?'. Base: online consultation respondents who experienced prejudice, discrimination or harassment when applying for a job in the last five years (n=178).

<sup>84</sup> Source: Online consultation of the study. Responses to the question: 'From which of the following individuals did you experience prejudice, discrimination or harassment because of your

Some participants noted that they were **selective about the roles that they applied for**, based on how 'trans-friendly' they expected them to be (see Section 4.2.2 for more on this). Taken together, these challenges mean that **trans people may have a much smaller pool of vacancies** from which to choose and may find it more burdensome to undergo and succeed in recruitment processes, compared to cisgender people.

While there were many experiences of discrimination when applying for jobs, there were also stories of positive experiences from people who were open about their transgender identity during a recruitment process. This included employers who were actively supportive of transgender applicants and employers who dealt sensitively and professionally with the disclosure of a transgender identity during the recruitment process.

'[In contrast to negative experiences, there were] some other interviews where I felt really supported to talk about my trans identity and to feel compassion from the people across the table and who said that they don't feel it is normal for me to have struggled [to find a job] as much as I have with the resume I have.'

Trans woman, aged 35-44, residing in France (cluster 4)

'At the first interview they would know me as a woman, as [name]. And for both companies I worked for, I only raised it when signing the contracts and would talk to HR. And for both companies they acted really professionally and it really stayed within HR and my manager... They didn't talk about it with any colleagues.'

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

The impact of **informed HR personnel** or recruiters was cited by some participants. One explained that their recruiter being a member of the LGBTI community meant that they were sensitive to anxieties around finding work during transition. The recruiter found them work and informed the employer that the participant would need to take time out to have surgery. The employer had no issue with this but simply noted that they only needed to know in advance in order to find replacement staff while they recovered. Another participant noted that using a recruiter helped her to see that people were interested primarily in her skills (rather than her identity). After beginning her job, she found out that someone in the HR department had a transgender stepmother and this awareness had made them advocate on her behalf.

Some participants reported having positive experiences in accessing the labour market because their transgender status went undetected (see Section 4.2.3). One participant stated that because they 'passed' as a woman, they had not had any negative experiences in applying for jobs, which was an experience echoed by others who were able to 'pass'. Such experiences do not point to the presence (or indeed absence) of progressive recruitment frameworks in place, rather that the individual was perceived to be cisgender.

#### 4.2.2 Impacts of challenges in accessing the labour market

Participants in our study from some countries (Greece, Italy, the Netherlands, Spain and Croatia) shared personal experiences or described others' experiences of not being able to find employment due to their gender identity. Reflecting the findings of previous research, the FRA 2019 survey and the experiences of participants in this study (see Section 4.1), some of the Greek focus group participants explicitly stated that they believe transgender people experience **disproportionate levels of unemployment**, as outlined in the box below.

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gender identity?' Base: online consultation respondents who experienced prejudice, discrimination or harassment when applying for a job in the last five years (n=179).



'There are no surveys in Greece to estimate the percentage of unemployed transgender people but based on our experience this percentage is not only disproportionately high, but extremely high. Probably [it is] the highest.'

Transgender person, unknown age, residing in Greece (cluster 4)

As described in earlier sections of this chapter, **trans women seem to experience particularly high levels of unemployment**, which is perhaps unsurprising, given the higher level of discrimination that this group faces in accessing job opportunities (see Figure 15 above).

Due to the difficulty or impossibility of joining the formal labour market, some participants are not able to work in their preferred industry or within the formal labour market at all. For example, one participant who had intended to begin a career in academia was unable to find a position, due to perceived discrimination. This resulted in this participant being forced to go back to a previous employer, which this individual had previously left due to an uncomfortable atmosphere.

'Going back to [my current employer] was Plan B, because I planned to make an academic career, so I really wanted to get a job at the university. But I still ended up there.'

Non-binary person, aged 25-34, residing in Germany (cluster 3)

Several trans women and a non-binary person described how exclusion from the formal labour market had led them to take on informal work, including sex work. These individuals were living in Romania, Italy, Greece and the Netherlands. They emphasised that this was something they had to do to survive, rather than a choice they had made. Similarly, Van Schuylenbergh et al. (2019) found that the vast majority (83%) of their sample of 46 trans sex workers living in Belgium were female, emphasising the impacts of labour market discrimination for some trans women.

'I was forced, along with the job that I am doing, to work as a sex worker for 17 years.'

Transgender person, unknown age, residing in Greece (cluster 4) 'I had to do jobs that I would have avoided to survive because I could not do otherwise. I am also talking about prostitution. I had also to do that in my life because the transphobia does not allow me to have a job.'

Trans woman, aged 45-54, residing in Italy (cluster 2)

'I know many trans people not being hired because of their gender identity; I have 20-year old trans friends who work in prostitution because they are not hired anywhere else.'

Non-binary person, aged 18-24, residing in Spain (cluster 2)

Other participants, including in the Greek and Italian focus groups and a participant living in Spain, noted that they were aware of others taking on sex work due to lack of employment options, and sometimes to pay for medical treatment.

Several participants emphasised that trans people who belong to **other minority groups**, such as being an ethnic minority or an immigrant, faced additional discrimination in accessing the labour market (as well as more broadly). This reflects the findings of Van Schuylenbergh et al. (2019), who found a strong link between sex work and ethnicity among their study sample, more than three-quarters of whom were of Latin-American descent. One person noted that being a sex worker can put (often already more marginalised) individuals at further risk of discrimination. A trans woman of colour also described the difficulty of knowing the cause of discrimination, due to

feeling at risk of discrimination because of multiple facets of her identity: namely, her gender identity, her skin colour and the fact she was born in a different country.

'This is all the intersectionalities, marking us. It makes [it] more profound, the stigma, you know? Because, okay I am a transgender, but then I am an immigrant ... I am a sex worker ... Layers and layers and layers of endless discrimination that I suffer.'

Non-binary person, aged 35-44, residing in the Netherlands (cluster 3)

'I suffer because I am trans ... because I was not born here, because my skin is not white. A number of things [so] you do not understand which is the origin of the discrimination. [...] I hear this also from other people.'

Trans woman, aged 45-54, residing in Italy (cluster 2)

Based on previous experiences of discrimination or expectations that they may be discriminated against when applying for a job, many transgender people reported carefully considering how to present their gender identity during job applications, including **choosing not to reveal that they are transgender**. Some explicitly stated that they had not experienced discrimination in this context because they have not disclosed that they are transgender or have a transgender history. Similarly, one participant described adapting how they present themselves during interviews, to try and protect themselves.

'What I've realised is when I don't mention in the interview that I'm trans, everything goes smoothly. But when I mention that I'm trans, their behaviour completely changes because they're shocked or surprised [...].'

Trans woman, age unknown, residing in the UK (cluster 2)

'In the job application on paper, I would not state openly that I am transgender even if this creates problems later on.'

Transgender person, age unknown, residing in Lithuania (cluster 1)

'In some interviews, I mentioned my trans identity and in others I did not. In some interviews I was very badly viewed by some people who insisted on calling me "Sir", to the point that I left one interview [...] if you are not showing me a basic respect during the interview then there is no point me trying to work with you.'

Trans woman, aged 35-44, residing in France (cluster 4)

#### 4.2.3 Relationship between discrimination during an application process, documents and 'passing'

Phoenix and Ghul (2016) highlighted the challenge faced by some trans individuals in searching for a job where their employment history, qualifications and references are under another name. While this did present a challenge for some of the participants in this study, people highlighted the broader issue of discrimination during a job application process once their potential employer saw them as a transgender person. For people who do not 'pass', this could happen when they first spoke to or met face-to-face with a potential employer. In these cases, people emphasised that it did not matter whether or not their documents matched their gender identity.

'I looked more like a transvestite male with makeup on and had a strong feminine expression. Many times, when I sent a CV or email - I avoided phone calls due to my voice - I mentioned that I am a trans person so that they don't get surprised when they see me in person in the interview. They responded by asking me to send them a photo of myself...after sending the photo, I did not receive a response...'

Trans woman, aged 35-44, residing in Romania (cluster 1)

'It doesn't matter if you have the gender identity recognition in your ID, because the discrimination is there anyway. When they see you are trans, [they say] "we will call you". And that telephone never rings, you never get a message from them. So I know how it is. I know how people look when you are in a job interview [...].'

Non-binary person, aged 35-44, residing in the Netherlands (cluster 3)

As highlighted by a participant in the Italian focus group, people who have a non-binary identity do not fit into the narrative of 'passing' and, as with trans people with a binary identity, they may experience discrimination in the labour market to the extent that their gender identity is recognised. Similarly, some people highlighted that they received negative responses while they were transitioning but once this was completed and they were recognised in their gender identity, these negative reactions vanished. This was the case for participants with a binary or non-binary identity who had undergone some form of transition.

'There was a time when I was not recognised as a woman or a man...This was a bad moment, because people did not understand who I was, what I was, how to speak to me [...] the more I became a woman (also externally) people's behaviour changed in a positive way. [...] The quality of my life got much better since then. This is a huge problem for those that do not want to undertake a medicalisation or do not "pass".'

Trans woman, age unknown, residing in Italy (cluster 2)

'My boss and colleagues are not uncomfortable with me anymore. I think this has to do with how I look now after several years on hormone therapy; I have also grown a beard, which I think actually helps a lot.'

Non-binary person, aged 25-34, residing in Germany (cluster 3)

For those who do 'pass', they may be **outed** during a recruitment process by official documents, educational certificates and other professional certificates that do not match their gender identity. Similarly, a person's gender identity might be revealed by background checks. One person described the extensive background checks their position required, which required that they share their old name.

'They asked me for documents. Once they got them and they figured out I was trans, suddenly [they said] "No, we're not interested" ... [This] is because the university document took me a long time to change.'

Trans woman, aged 35-44, residing in the UK (cluster 2)

'I work in banking. If I do my current position and anything higher, I have to have a background check done by the central bank. They will need my old name and gender to do this, they will go back 10 years. So even though I've legally changed my gender...if I continue in my field, I'm going to constantly be giving out my old information [...] I tried to contact the union [...] but there's not a process in place.'

Trans person, age unknown, residing in Ireland (cluster 5)

By contrast, those who 'pass' as cisgender and have documents that reflect their gender identity find this makes applying for jobs (and other areas of life) much easier.

'I "pass", so having matching documents is such a privilege and makes life seamless most of the time.'

Trans woman, aged 35-44, residing in the UK (cluster 2)

'No [I have never felt at a disadvantage when I applied for jobs], because the documents reflect who I am, and I totally "pass" as a male. So, if I go to an interview, no one would ever think I am transgender.'

Trans man, aged 25-34, residing in Malta (cluster 5)

Some people whose educational or professional certificates did not match their gender identity reported that they had not had any problems because of this. For example, some reported that they were not required to show these documents when applying for a job. However, even some of those whose documents have not negatively impacted their employment situation **were very anxious about the potential impact of non-matching documents.**

'It hasn't yet caused a problem but I'm nervous about it every time.'

Trans man, aged 45-54, residing in Ireland (cluster 5)

'I had one uncomfortable situation where I went to translate at a seminar... and I didn't know I had to sign anything. It was a two-day thing, and on the second day, they told me I needed to sign an honorary contract. I thought "Oh my God, I'll have to put my legal name on it" ... and it was before I had changed my papers. I was stressed, but they didn't mention it afterwards.'

Non-binary transgender person, aged 25-34, residing in Germany (cluster 3)

#### 4.2.4 Impact of gender identity on career choices

A person's gender identity and their level of openness about their identity in the workplace can have a variety of positive and negative impacts on their employment situation (see Section 4.1). Many study participants told us that their gender identity had also impacted their career choice, including the sectors they worked in, the roles they chose and the roles they were able to access, although people did not always feel there was a connection between their gender identity and their careers.

Some participants noted that they were **selective about the roles that they applied for**, based on their perceptions of how trans-friendly their employer and colleagues might be. Some described these actions as forms of self-protection. This was highlighted as a particular issue for focus group participants in Poland, who stated that it was very challenging to find a workplace that would accept a trans person due to prejudices in Polish society. Some people from other countries described the psychological burden of applying for a job, due to fears of discrimination, harassment or prejudice during the recruitment process, or a lack of trans-friendly procedures, which limited the number of applications they were able to complete.

'I didn't even try looking for another job because I fear discrimination and harassment, and if I hide my identity it would only lead to more depression and anxiety.'

Non-binary/genderqueer/gender non-conforming person, aged 25-34, living in Germany (cluster 3)

'Now I choose to protect myself [...] It's hard to deal with rejection [...] when it has to do with work when I know that I am qualified and I am the only trans person applying for the job and they give it to a person who is cisgender but doesn't have the same qualifications as me.'

Trans person, unknown age, residing in Portugal (cluster 5)

'I feel hesitant applying for certain jobs when I'm unsure if it will be okay to present myself according to my gender identity. It causes me a lot of stress and eventually I will even believe that I'm not suited for the job because I'm so unsure of myself. I

also don't ever apply for jobs where I'm sure I'll never be able to disclose my gender identity to co-workers. Not that they discriminate overtly but people who have a very binary worldview scare me a lot.'

Non-binary/genderqueer/gender non-conforming person, aged 18-24, living in Belgium (cluster 5)

**Gendered job advertisements** or recruitment processes also presented issues. Where vacancies specified gender or sex, some people described concerns about applying for these roles. Participants in the Portuguese focus group expressed surprise that these kinds of advertisements were even permitted. Similarly, where job applications required the inclusion of your gender or sex, this could deter people from applying. These were particular challenges for non-binary people and those whose documents do not match their gender identity.

'We have a problem with employment agencies which is linked to the non-conformity of the documents. They do not recognise an alias career<sup>85</sup>, so they would present you with your "original" name. So, you go to the interview and they will not see the person that they are expecting. We can't use the employment agencies until we will have changed of our name.'

Trans person, age unknown, residing in Italy (cluster 2)

'Job applications are often - mostly unintentionally - very trans-exclusionary. It can make it very difficult to apply for jobs when you are required to out yourself in non-confidential parts of the application or are forced to apply under an old name with no opportunity to correct it.'

Trans person, age unknown, aged 18-24, residing in the UK (cluster 2)

Some noted that their **choice of career** was informed by experiences of discrimination, prejudice or harassment. For example, a few people mentioned their interest in working in the health sector or within government to support trans people, following their own negative experiences with professionals. Similarly, many people were involved in - or had established - LGBTI organisations supporting people who were facing challenges related to their gender identity. One participant felt that her decision to become a social worker was influenced by the empathy she developed through dealing with bullying and other negative reactions from others, due to her gender identity.

'The empathy that you reach with these kinds of things - the bullying and so on - I don't know, they make you empathise with other people.'

Trans woman, aged 25-34, residing in Spain (cluster 2)

As mentioned above, many people stated that they selected their sector or workplace based on how 'trans-friendly' they expected them to be. This may also help to explain the high proportion of people involved with an LGBTI organisation, as these were typically perceived to be very accepting or indeed encouraging of trans people's involvement. Similarly, people mentioned other sectors that they believe to be more accepting, particularly the creative industries.

'I was at the arts school so it was kind of OK to be different, but I could still feel that some people were disapproving of me somewhat.'

Trans person, age unknown, residing in Lithuania (cluster 1)

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<sup>85</sup> In Italy, some universities provide for an 'alias career' for trans students, under which the university issues a career document for transgender people, called 'Alias'. In these documents, the student has their name and sex assigned at birth obscured.

'[When I was working for LGBT or queer NGOs] I felt that I could be out right away, and it was good.'

Non-binary person, aged 25-34, residing in Germany (cluster 3)

Conversely, people selected against industries they believed would be challenging to work in, even where these would have been their preferred career.

Beyond certain specific sectors broadly viewed as more accepting, the type of workplace considered most likely to be suitable varied. In some Member States, participants felt that it was easier to be openly transgender in the public sector than in the private sector. However, others felt that large, well-established companies with strong anti-discrimination policies were most suitable. Among participants in the Polish focus group, people agreed that international corporations, in particular, offered a more trans-friendly work environment than small businesses or the Polish public sector, both of which were viewed as less likely to create or implement anti-discrimination policies.

'[In the case of a small business, it] depends only on the owner's will if there is a specific procedure in place to combat discrimination and how it is implemented.'

Trans person, age unknown, residing in Poland (cluster 2)

Others felt that small, friendly companies were preferable. This was reported by individuals in Hungary, Italy and Sweden, for example.

'I am lucky that I work in a small environment; my colleagues are also quite young. I was introduced to this job through a connection who informed my colleagues about the situation ... These people did not even have an idea of trans people, but they turned out to be very sensitive. ... [It is a] very cosy environment.'

Trans man, aged 18-24, residing in Italy (cluster 2)

**Healthcare, education and law enforcement are perceived to be particularly difficult** sectors to work in. Some participants who previously wanted to work in healthcare, for example, felt that it would not be as accepting as others. One participant also described how she was initially put off working in healthcare because the role she wanted was stereotypically considered to be female and she was assigned male at birth.

'I also have a dream [of becoming] a nurse, but I think now that dream is not [for me] any more...'

Trans woman, aged 25-34, residing in Denmark (cluster 5)

Within the education sector, one participant felt that working in religious schools would be particularly challenging, although they noted that they did have some friends who were doing this. Others felt that it would not be possible to work in the education sector at all in their country.

'The education sector would be a big no-no. In the instance that I would try to apply at a university or any other public education sector, there would be a huge public outcry.'

Trans woman, aged 25-34, residing in Romania (cluster 1)

Many participants did have experience in the education sector. Two, a trans woman and a woman with a trans history, both residing in France, described positive experiences. They transitioned while in employment (although one took a leave of absence for this period) and both found their employers supportive. They highlighted that others may not have such positive experiences. For example, one participant emphasised that her



employer is particularly inclusive and supportive. Both participants described changes they made to their roles to help facilitate their transition, including taking time away from work during their transition and choosing to move into a less public-facing role.

'For me it was extremely helpful going back to work a year after I completed my transition. I went back to work with this support... this inclusion... They were exemplary.'

Woman with a trans history, aged 55-64, residing in France (cluster 4)

Other participants who worked in education had much more negative experiences. A woman with a trans history, living in Germany, described having her gender identity disclosed by her employer without her consent, a lack of support from her colleagues in explaining her gender identity to her students, and misgendering. As a result of this discrimination, her health was negatively impacted and she had to take sick leave. She has since moved to another role, where her gender identity is not an issue. Other participants who worked in education were not open about their gender identity in their role, for fear of discrimination or negative impacts on their career.

Some people felt that they would be not able to work in the police. In one case, this was because they had had previous traumatic experiences with the police. For another participant it was because they had concerns about their physical performance as a trans man compared to cisgender men, and about having to shower in a group. They also noted the 'masculine mindset' of the police as a potential issue. By contrast, however, a trans woman living in Germany stated that it was easy for her to transition in the police as they have a strong LGBTI network. She believes it would have been more difficult in the private sector, mentioning a friend who works in the private sector who has not been able to be open at work.

Another person felt that it would be particularly difficult to work in prisons, viewing these as a similarly masculine environment. More broadly, one person highlighted that they would not want to work 'anywhere women would feel uncomfortable'.

'For a woman [working in a prison] is a very hostile environment, for [a trans woman], it is the worst.'

Non-binary person, aged 35-44, residing in the Netherlands (cluster 3)

Others emphasised that they would not want to work in a position where they had to interact a lot with others, for example customer service roles or roles where their bodies would be on display, such as a swimming instructor. This was often explained by fears or experiences of negative reactions from others (see Section 4.3.3). For example, one person did not want to work in a customer service after having heard stories of transgender people being confronted by members of the public. Another person characterised their preference for roles with little interaction with others, as a response to a 'vicious circle' of bullying and harassment and avoidance. Another participant noted having chosen not to pursue a career in law or as a tax advisor, for fear of discrimination. The words of this individual, and another participant, are included in the box below.



'I wanted to work in the area of tax law and if trans people weren't discriminated against then I would be an attorney at law or a tax advisor or both at the same time. I feel that I don't have as many rights as cis people.'

Trans man, aged 25-34, residing in Poland (cluster 2)

'I was even told a few years ago when interviewing at a restaurant: "If people make fun of you, what do you want me to do? There's nothing I can do - deal with it." There are companies like this where it doesn't interest them to implement such anti-discrimination policies.'

Trans woman, aged 35-44, residing in Romania (cluster 1)

### 4.3 Experiences in the workplace

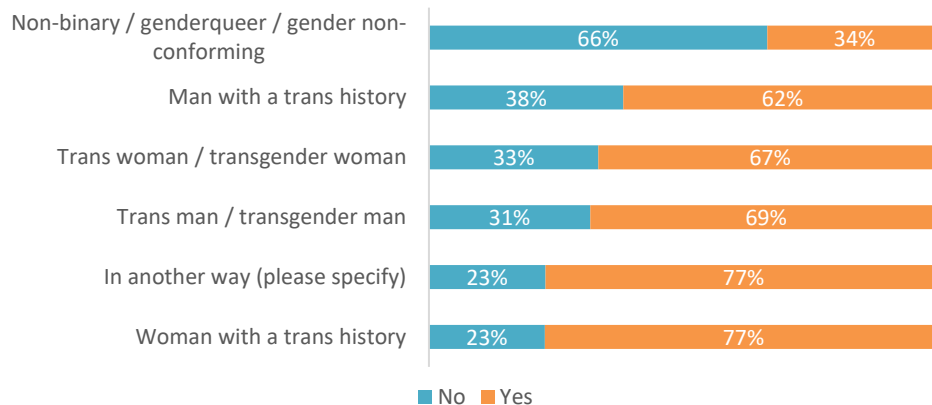
This section describes trans experiences in the workplace. Section 4.3.1 begins by exploring the extent to which people are able to be open about their gender identity in the workplace, including the extent to which they are able to live in accordance with their gender identity in the workplace and to be open about their trans identity or history. The impacts of openness are discussed in Section 4.3.2. While there can be positive impacts of openness, there are also many negative impacts, including discrimination, harassment and prejudice (Section 4.3.3). Additionally, the gender stereotyping or sexism that trans people may experience after transitioning is described in Section 4.3.4.

#### 4.3.1 Openness in the workplace

Many trans individuals will choose not to be open about their gender identity and/or their transgender history in the workplace. For example, the FRA LGBTI survey suggests that between 19.3% and 50.7% of trans individuals (depending on their identity) stated that they were 'never' open about being transgender with people that they meet at work (EU-28 average, 2019). The groups least likely to ever be open were cross-dressers (50.7%) and gender-fluid people (38.4%). Depending on their identity group, at least one in three trans individuals were 'never' or 'rarely' open. Those most likely to 'always' be open were trans women (24.6%).

The peer-reviewed literature suggests that **coming out in the workplace can be very challenging and, as a result, may be avoided**. Whittle et al. (2007, cited in Ozturk and Tatli, 2016) found that in a study of 872 trans individuals in the UK, more than 40% felt unable to express their gender identity for fear of negative reactions in the workplace, while around 25% changed jobs due to pressures from workplace discrimination. Phoenix and Ghul (2016) found that trans participants in several studies had expressed concerns about coming out in the workplace. For example, a UK qualitative study including 30 participants found that concerns about job loss or discrimination as a result of coming out resulted in some trans people waiting until retirement to transition (Hines, 2010, cited in Phoenix and Ghul, 2016). Lorenzetti and Viggiani (2016) highlighted that coming out may not be possible at all for trans people in particular jobs and Member States. For example, trans individuals are not permitted to work in the Italian army, due to ongoing perceptions that a trans identity is a mental illness.

Figure 19. Openness about gender identity in the workplace<sup>86</sup>



Reflecting the findings of Whittle et al. (2007), while the majority (62%) of respondents to the online consultation in this study were open about their gender identity at work, around four in 10 (38%). It should be noted that being open about your gender identity can mean different things to different people. For example, some people explained that they were living according to their gender identity in the workplace but had chosen not to share their trans history with their colleagues. Some non-binary, genderqueer and gender non-conforming respondents highlighted that they have not had a transition experience in the same way that those with a binary identity might. As Figure 19 shows, this group of respondents were much less likely to be open about their gender identity than other groups.

Openness in the workplace is not necessarily a choice. As highlighted in Section 4.2.3, those who do not 'pass' may not be able to choose whether to disclose or conceal their gender identity. People may also have their gender identity or trans status shared without their consent. Some participants told us that they were forced to come out due to references to their birth-assigned sex or name in workplace documents, while one participant described being forced to come out after a confidential conversation with their employer was shared with other colleagues. On the other hand, some people may attempt to be open about their gender identity but face difficulties in doing so.

'I told my boss about [my gender identity] during the application process. She told me then that it would not be acceptable and that if I wanted the job, I would need to present as a man. In the end, I didn't have much choice because I needed the money, so I went with it. And that wasn't so great. I was there for three months.'

Trans woman, aged 18-24, residing in Germany (cluster 3)

Of those who chose to disclose their gender identity, several participants cited physical changes following the beginning of a medical transition process as a reason for disclosure. Others simply described a desire to present themselves in a way that reflects their gender identity.

'[After seeking support from a psychologist], that's when I decide to be myself and the whole process [began]...Little by little I tell my family, my work colleagues and everyone else.'

Trans woman, aged 55-64, residing in Spain (cluster 2)

<sup>86</sup> Source: Online consultation of this study. The question asked 'In your current / most recent job, have/had you transitioned to go to work and openly present according to your gender identity?'. Base: respondents to the online consultation (n=874).

In all, 211 respondents to the online consultation of this study provided details about why they were, or were not, open in the workplace. **Fear of discrimination, harassment or prejudice** in the workplace was the most commonly stated reason for those decisions (75%), with around half of respondents mentioning fear of losing their job and fears of not 'passing'. Around one-third mentioned fears of discrimination, harassment or prejudice on their way to work, and just under one-quarter noted family pressures. Many participants in interviews or focus groups said that they were not open about their gender identity in the workplace due to concerns about the impact this would have on their employment situation.

'If I came out at work as a transgender person, I would get a lot of problems and would be dismissed straight away from my current job.'

Trans person, unknown age, residing in Lithuania (cluster 1)

'I still have not been through gender recognition in order to survive in the male-dominated environment of my work. I will lose my job.'

Trans person, unknown age, residing in Greece (cluster 4)

On a positive note, recent data from the Eurobarometer shows an increase in members of the public in the EU comfortable with having a transgender colleague with whom they are in daily contact. The share rose from 67% of the general public in 2015 to 76% of the general public in 2019 (grouping those who were 'comfortable' and 'moderately comfortable'). Nonetheless, around one in six people (15%) remained uncomfortable with the idea of a transgender colleague. Others did not know, were indifferent or stated 'it depends'.

#### 4.3.2 Impact of openness in the workplace

Academic and grey literature highlight that trans people may be at risk of discrimination in the workplace after disclosing their gender identity or trans history. Within a qualitative Swedish study (Siverskog, 2014), a trans participant who worked as a teacher and had spoken publicly about his gender identity experienced harassment from colleagues as a result and was subsequently offered early retirement. A 2016 qualitative study conducted by ILGA-Europe in Italy (Lorenzetti and Viggiani, 2016), including 25 of 117 respondents who identified as trans, reported a high prevalence of discrimination in the workplace, particularly among those who were openly LGBTI (85%, compared to 75% across the sample), while FRA (2014) found a 'strikingly strong correlation' between gender expression and discrimination experiences in multiple contexts, including employment. Despite the risks of discrimination, Phoenix and Ghul (2016) found there may also be benefits of staying in employment while transitioning, namely that it offers a sense of familiarity, can help to ensure financial stability, and can be another source of support if colleagues are supportive (Pepper and Lorah, 2008; Budge et al., 2010, cited in Phoenix and Ghul, 2016). Even here, however, the authors highlighted that misuse of names and gender pronouns were common.

Across the study, participants described the impact of coming out or transitioning on their employment situation and experiences in the workplace. They reported both negative changes and positive changes (see below). However, most respondents to the online consultation noted that they experienced no change in their employment situation. This can be interpreted positively or negatively, depending on the original employment situation of the respondent. For example, it could signify that a person has been able to continue in their position without issue, or it might signify that a person has continued to be unemployed or underemployed. Some people also described changes that are not clearly positive or negative, such as a change in position. While most respondents (61%) reported that their employment situation had not changed since transitioning, nearly four in 10 (39%) reported that their employment situation had changed.

The online consultation respondents who had experienced a change in their employment situation since transitioning were more likely to describe a negative change (one-third) than a positive impact (one-quarter). All others described impacts that were not clearly positive or negative, or were unrelated to their gender identity, such as beginning work after completing education. Some interview and focus group participants also described negative impacts of transitioning or being open about their gender identity.

Negative impacts described included:

- Being fired from their job;
- Experiences of discrimination, prejudice or harassment in the workplace;
- Needing to change job - sometimes multiple times - due to discrimination, prejudice and harassment or due to fear of gender identity being revealed;
- A change in duties, hours, or level of seniority;
- Greater difficulty in finding a job (see Section 4.2.1);
- Fewer opportunities for progression;
- Experiences of sexism (for those with a feminine identity, see Section 4.3.4)

Testimonies of these negative impacts are given in the box below.

'I worked as a chef for 18 years. Once I started my transition, I was fired based on the fact that I was considered to have gone crazy. This was happening in a private workplace where I wouldn't have been able to prove that I lost my job based on discrimination. I was then unemployed for two years.'

Trans woman, aged 35-44, residing in Romania (cluster 1)

'My pattern would be to change jobs every two-three years because I feared closeness, I didn't want to let anyone in. Because if I did, I feared they would guess my big secret.'

Trans woman, aged 65-74, residing in the UK (cluster 2)

'Lots of people struggle with depression and stuff [...] and they just cannot get on for years because of [the legal requirements]. Then they miss deadlines and have to start all over... Many of them drop out of their jobs.'

Trans woman, aged 35-44, residing in the UK (cluster 2)

Positive changes in employment situations following transition included:

- Improved mental health, confidence or well-being, allowing a return to work or improved work performance;
- Fewer problems due to greater ability to 'pass';
- A perception of more options in terms of sectors or employers, enabling some people to begin a career in a new field;
- Gaining employment;
- Increased pay;
- Improved relationship with colleagues;
- Benefitting from being perceived as male (see Section 4.3.4).

Where their employment situation had not changed following the disclosure of their gender identity, people described the reactions of their employer or colleagues. **These were mostly supportive**, although the reaction of others can influence whether a person's employment situation has changed (i.e. where a person experiences negative reactions they may also face the negative impacts described above).

'Nobody has ever commented on my appearance or my name or my hair. At the start, they knew that my documents and my new name did not match but they just wanted

to ... let me do it, their body language also respected my gender identity. They also tried to reflect my situation in the work documentation.'

Transgender person, unknown age, residing in Lithuania (cluster 1)

'[After dressing in a female outfit at a work event] I said, "You better become accustomed to that because this is me and I'm transgender and I won't change anything". It was a very easy-going [...] Most were positive.'

Trans woman, aged 55-64, residing in Germany (cluster 3)

'My colleagues have accepted me and this has been great. I don't have any problem at my workplace.'

Trans woman, aged 55-64, residing in Spain (cluster 2)

Some people were tentative at first about revealing their gender identity but were pleased to find that their employer and colleagues were accepting. One person noted that their position as an established employee within their company may have helped to facilitate their smooth transition.

'I realise that people are not as hostile towards transgender people as I thought they were, so I felt safe to come out to my boss and she was totally supportive.'

Woman with a trans history, age not given, residing in Hungary (cluster 3)

'When I started my transition, in my workplace everything went very well. At the beginning I was cautious: I did not always tell everything [...] But then there were no issues at all [...] I never felt disadvantaged.'

Trans woman, aged 35-44, residing in France (cluster 4)

'I have had very few bad experiences in the workplace as a trans woman. In that regard, too, I feel very privileged. When I started [to] transition [...] I started wearing more high heels, skirts ... And then, when I realised I had never experienced a bad word, never a complaint, I started to go to work every day with my new name...I was the assistant to the manager of the company so I was in the position of processing my new name in the system [...] I had been in the company long enough to justify my place [...] and no one would dare question that, I think.'

Trans woman, aged 35-44, residing in France (cluster 4)

However, some still experienced some forms of **discrimination or harassment**. For example, one participant mentioned offensive jokes in her workplace before her transition. Even though many of her colleagues were supportive after she came out, she found there was ignorance due to a lack of knowledge about trans people.

For one person whose employment situation had not changed after undergoing an LGR process, this reflected their inability to leave their current employment due to a technical issue with their contract.

'This year I was working and when I changed the gender marker, I faced a bureaucratic problem which meant that I could not resign. My contract was registered with a name I no longer associated with. The internet procedure to resign could not be activated with the new name. For three months I was "prisoner" there, in that job.'

Transgender person, age unknown, residing in Italy (cluster 2)

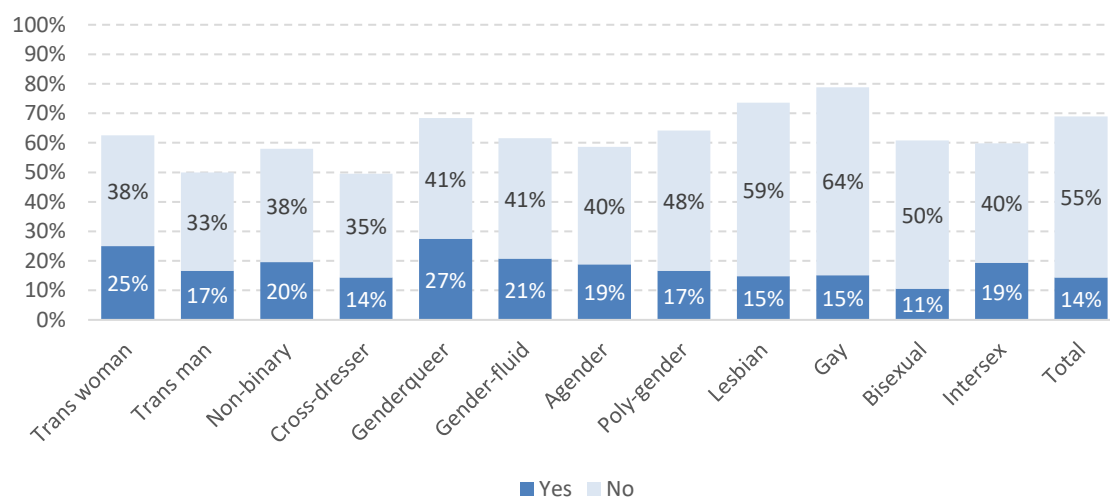
### 4.3.3 Discrimination, prejudice and harassment in the workplace

Figure 20 below shows the level of reported discrimination at work. It covers different groups within the trans population, as well as (for comparative purposes) among lesbian, gay, bisexual and intersex people. The graph reflects that **all groups have**

**personally felt discriminated at work against during the last 12 months** because of their identity. Among the trans population, the rates are highest amongst genderqueer people (27%), trans women (25%), gender-fluid people (21%) and non-binary people (20%). The higher prevalence of discrimination and harassment among trans women reflects the broader trend of higher rates of discrimination and harassment among all women compared to all men. For instance, in 2015, 1.2% of women reported experiencing harassment in the workplace, compared to 0.3% of men<sup>87</sup>. The reasons for higher levels of discrimination faced by individuals with non-binary/dynamic identities (genderqueer people, gender-fluid people, non-binary people) are unknown, although this may relate to more limited public understanding/acceptance of these (for example, see Section 7.2.4 for more on the public acceptance of a third gender marker).

It is worth noting the high shares of individuals (not shown in this Figure) who stated that they did not know or could not have experienced this, such as around 50% of trans men and cross-dressers. This suggests that much of the trans population may not have had the chance to find out if they will face discrimination at work.

Figure 20. Experience of discrimination in the last 12 months at work, by identity group, EU-28<sup>88</sup>



Similarly, existing academic research shows a **high prevalence of discrimination against trans people in the workplace**. For example, in a UK study consisting of a literature review followed by 14 qualitative interviews, Ozturk and Tatli (2016) found that trans individuals often experience exclusion, marginalisation and stigmatisation in the workplace. Beaugard et al. (2016) pointed to literature that suggests that most trans employees experience some form of mistreatment in the workplace, or actively protect themselves to avoid such mistreatment (Grant et al., 2011, cited in Beaugard et al., 2016). Phoenix and Ghul (2016) found that where trans individuals remained in the same job after their transition, they were often addressed using their former name or with incorrect pronouns. This was done deliberately in (at least) some cases (Barclay and Scott, 2006, cited in Phoenix and Ghul, 2016). In a study of 263 trans participants (Brewster and Velez, 2012, cited in Phoenix and Ghul, 2016), 80% had experienced

<sup>87</sup> Source: EIGE Gender Statistics Database, available at: [https://eige.europa.eu/gender-statistics/dgs/indicator/genvio\\_sex\\_harass\\_sur\\_ewcs\\_harassment/datatable](https://eige.europa.eu/gender-statistics/dgs/indicator/genvio_sex_harass_sur_ewcs_harassment/datatable). The question asked: 'Over the last 12 months, during the course of your work have you been subjected to harassment? (% of respondents, 15+ workers)'. EU-28 average.

<sup>88</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'During the last 12 months, have you personally felt discriminated against because of you being {RESPONDENT\_CATEGORY}' - At work. Not shown: Don't know and Have not done this answer options; Trans person identity group. Base: Respondents in the EU LGBTI Survey II (n=137,508). EU-28 weighted average.



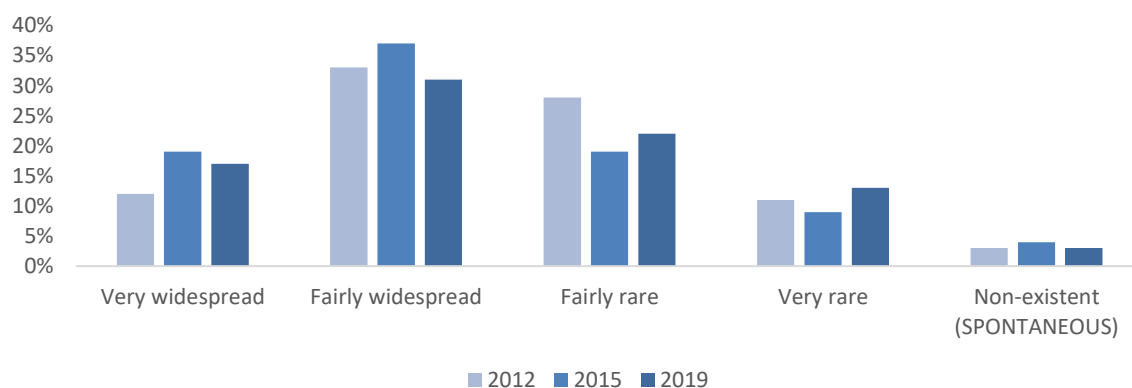
some form of discrimination or negative reaction in the workplace, including being ignored, receiving transphobic comments, and colleagues avoiding touching them. Following disclosure of their trans identity in the workplace, trans individuals' fitness to work may be questioned (e.g. MacDonnell and Grigorovich, 2012, cited in Beauregard et al., 2016), and they may even lose their jobs (e.g. Budge et al., 2010, cited in Beauregard, 2016).

Reflecting the existing research and results of the FRA survey, many participants in this study described their experiences of discrimination, prejudice or harassment in the workplace. These ranged from explicit discrimination, such as being misgendered or called by the wrong name, to changes to their role (for example, being made to work in a position that was not public-facing) or being asked inappropriate questions. This is reflected in the findings of the online consultation, where more than one-third of respondents (n=389; 38%<sup>89</sup>) reported having experienced prejudice, discrimination or harassment in the workplace in the last five years, due to their gender identity.

Research conducted by NGOs has found a similarly high prevalence of discrimination in employment, **particularly among trans women**. A study conducted by ILGA-Europe (Lorenzetti and Viggiani, 2016) found that 75% of LGBTI survey respondents in Italy reported experiences of discrimination in the workplace, with the highest prevalence of discrimination reported by trans women (87%). This included discrimination from employers (43%) and colleagues (32%), primarily relating to exclusion practices but also harassment, including sexual harassment.

Figure 21 below shows that members of the public were most likely to view discrimination on the grounds of being transgender as fairly widespread between 2012 and 2019, although the proportion decreased between 2015 and 2019. However, these views do not reflect the lived experience of trans individuals but, rather, the views of the general population.

Figure 21. Perceived frequency of discrimination on the basis of being transgender among the general public in 2012, 2015 and 2019 (%)<sup>90</sup>



Available statistical evidence from the FRA's 2019 survey reflects that nearly 30% of trans people have faced negative conduct or comments at work because of being trans, rarely, often or (more unusually) always. Figure 22 below shows the experience of negative conduct/comments by different groups within the trans population, as well as

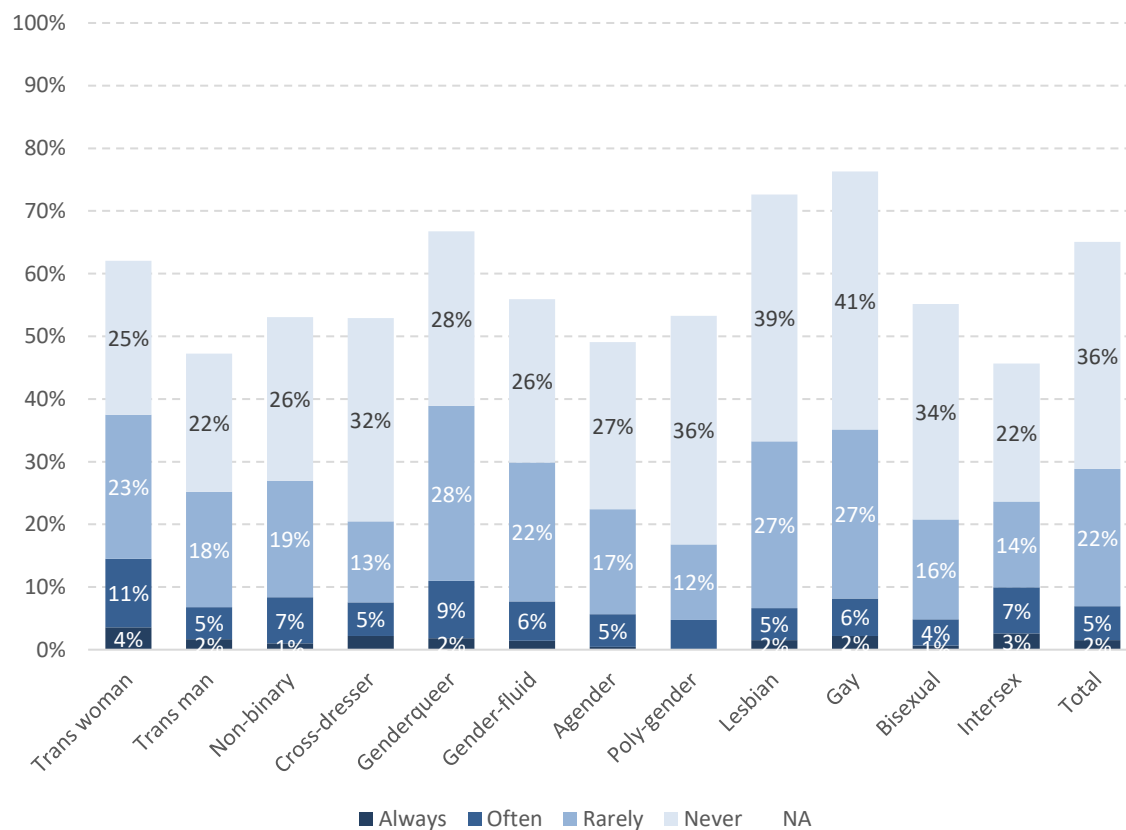
<sup>89</sup> This includes only those respondents who gave a response of "yes" or "no", and excludes those who did not provide a response or gave the response "prefer not to say".

<sup>90</sup> Source: Eurobarometer on Discrimination in the EU 2012, 2015 and 2019. Data for 2012 are for EU-27. The question asked: 'For each of the following types of discrimination, could you please tell me whether, in your opinion, it is very widespread, fairly widespread, fairly rare or very rare in (OUR COUNTRY)?' Discrimination on the basis of being transgender. Base: All Eurobarometer respondents (2012 n=26,622, 2015 n=27,718, 2019 n=27,438).



by lesbian, gay, bisexual and intersex people. Some groups are especially likely to experience this, particularly trans women and genderqueer people (nearly 40% for both groups). It should be emphasised that, while reports of “always” or “often” experiencing negative conduct or comments in the workplace are fairly uncommon (reported by between 5% and 15% of those with trans identities), it is concerning that any individuals are experiencing such persistent negative reactions in the workplace.

Figure 22. Experience of negative comments or conduct at work, by identity group, 2019, EU-28<sup>91</sup>



Similar to the results of the FRA survey, respondents to the online consultation in this study (149) reported having experienced prejudice, discrimination or harassment because of their gender identity at work, with the majority indicating that this consisted of comments (84%) or being treated in a negative way (73%). In addition, 30% of respondents reported receiving verbal abuse and 18% reported being the recipients of threatening behaviour. Open-text answers included experiences that consisted of inappropriate behaviour: ‘teasing’; ‘putting stickers on my desk with embarrassing images’; ‘general childish whispers and looks’; ‘personal overstepping questions’; ‘intrusive questions of my gender identity/body’; and ‘microaggressions, jokes and remarks as if there were no trans people present’. Other answers signal behaviour which could have an impact on an individual’s professional standing: ‘[the] refusal to train me, refusal to work with me’; ‘not being treated seriously and losing clients’; ‘obstructing

<sup>91</sup> Source: EU LGBTI Survey II. The question asked: ‘During your employment in the last five years, have you experienced negative comments or conduct at work because of you being {RESPONDENT\_CATEGORY}?’ 0% of agender and poly-gender people stated ‘always’, so this is excluded from labels. Not shown: Does not apply to me; Not applicable; Trans person identity group. Suppressed due to low numbers: ‘Always’ answer for cross-dressers, gender-fluid people and poly-gender people; ‘Often’ answer for polygender people. Base: Respondents in the EU LGBTI Survey II (n=137,508). EU-28 weighted average.

the performance of my professional duties. Additional (pointless) supervision while undertaking my duties’.

The majority of respondents to the online consultation reported that the instigators of such behaviour were one of more colleagues at their level (61%) and one or more colleagues more senior to them (52%). There were also other instigators; 38% reported such treatment by customers and/or service users, 26% by colleagues more junior than them, 22% from HR and 18% from staff from partner organisations. 11% reported that such treatment came from other individuals, including ‘members of the public’ and, for another, ‘contractors’.

Participants in other study activities provided further testimonies on these types of negative behaviours.

‘In my workplace, some used to call me [a male name] and others [a female name]. Now, even though I believe that this is happening for other reasons, after 43 years, when I am present, they call me with the name I choose.’

Trans person, age unknown, residing in Greece (cluster 4)

‘As soon as colleagues knew I was transgender, they started asking questions like when I was going to start hormones, which I found inappropriate and said in response: “This is something I discuss with my doctor or my lover, not you”.’

Trans person, age unknown, residing in Lithuania (cluster 1)

One participant, who worked in the beauty industry, described how difficult it was for her to gain the trust of her customers, with some telling her that they were afraid to use her services based on her gender identity.

‘Now, at my job [as an aesthetician] it is like passing exams every day. It still hurts me when they tell me “I can’t come because you are trans” or “You are trans, I am afraid to come” [...] But there are also persons that say, “When I first came, I was biased, but [...] you earned my trust”.’

Trans person, age unknown, residing in Greece (cluster 4)

The issue of how **public-facing roles** can expose individuals to a greater degree of discrimination and prejudice was raised in interviews and focus groups, reflecting the fears described in Section 4.2. Participants from different Member States revealed that working in public-facing roles made them subject to discrimination from clients themselves and colleagues (i.e. how they anticipated the public would react to their transgender status).

One individual recalled working for a public health service helpline and being told explicitly not to disclose their transgender identity, while another person described resistance from their employer when they wanted to wear a uniform that matched their gender identity, due to the public-facing nature of their role.

‘I was told to not tell the callers anything that would reveal that I was trans. ... [they told me] “So if they call you ‘Sir’ then just pretend like that’s appropriate”. Which is actually what I would have done because I was there to look after their health. But I think that was my decision to prioritise their health over my comfort at work and not within the province of my line manager to decide that...’

Trans person with another gender identity, age not given, residing in Netherlands (cluster 3)

‘I was working in a bakery and we had a uniform. I asked for a male uniform, and they did not [deny this request], but there was some reticence [...] At the beginning

they were not really positive [about having] someone with a female look wearing a male uniform being in contact with the public.'

Trans man, aged 18-24, residing in Italy (cluster 2)

One participant in the Greek focus group recalled the treatment of a transgender woman working at a post office who experienced prejudicial treatment related to how her employer perceived that she would be received by the public. She was ultimately forced to move to another position in the building where she could not see any clients. A participant residing in Germany noted how their public-facing role was made difficult by a lack of understanding on the part of their clients, and the potential for misgendering that subsequently arose.

'Communicating with clients became very hard. When I introduced myself, I would say my name [and] they wouldn't hear me right. They didn't read me as a man, boy, whatever, they just assumed they had misheard me, and they then called me some other ... name which sounded similar but was a female one. That was very stressful.'

Non-binary person, aged 25-34, residing in Germany (cluster 3)

A trans woman civil servant in Spain and a trans man working in finance in France both believed that they do not experience discrimination or harassment in their current roles because their roles are not customer-facing.

Others described situations in which they felt they had been **treated less favourably** than a cisgender employee. For example, one person's employer made it difficult for them to take the time they needed to attend medical appointments, while others felt that trans employees were viewed less positively than their cisgender colleagues.

'I had a talk with HR because they wanted to understand what it means to be transgender. [They said because] my gender confirmation surgery is a "voluntary surgery", it's only fair that I take it from my own vacation time...I was in the meeting thinking, "Did that just happen?" [...] That [...] was really the point for me that I decided to leave the company.'

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

'In a way, to get and keep the job, trans people are expected to perform better than cisgender employees.'

Trans person, age unknown, residing in Poland (cluster 2)

'I am suffering still today about this type of discrimination. Because I am a trans, my professional knowledge is questioned.'

Trans woman, aged 45-54, residing in Italy (cluster 2)

Echoing results in relation to educational settings (see Section 3.4), academic literature highlights that, in the workplace, **gendered spaces** such as toilets may cause problems for trans individuals. In their 2016 literature review, which included studies from the UK, the US, Canada and Thailand, Phoenix and Ghul found that trans individuals had difficulty deciding which toilets to use in the workplace, largely due to a lack of acknowledgement of their gender identity from their employers until after gender-affirming surgery had been performed. Several studies highlighted that colleagues of trans employees were unhappy for them to use gendered toilet facilities, and, as a result, they were required to use (non-gendered) facilities for those with a disability. All nine of the studies reviewed emphasised the impact of being (un)able to use gendered spaces in the context of the workplace during the transition process on trans individuals' self-esteem. The grey literature also highlights the challenges presented by gendered

spaces (such as workplace toilets) and gendered dress codes, and the impact that transitioning can have on trans individuals' roles and future employment.

Participants in this study also noted problems in the workplace related to toilets and changing rooms. This had a significant impact on the people affected. In one case, a person left their long-term role, while others reported taking legal action against their employers. One person residing in Hungary stated that she was not permitted to use the women's changing rooms in the office due to her colleagues' fears that she might sexually assault them. As a result, she was required to take her employer to court. Despite this, her colleagues continue to identify her as 'gay' rather than transgender. While she was not fired from her position, she was given tasks and deadlines that were impossible to complete in order to force her to quit. She is currently on long-term sick leave.

'[After female employees complained about me using the bathrooms and HR suggested using separate bathrooms two floors up] that was the point that I quit... They didn't even try to stop me from leaving. I worked there for seven years and I really liked the company. And, actually, I don't like my new company as much but at least they know what a trans woman is... she is a woman.'

Trans woman, aged 35-44, residing in Hungary (cluster 3)

'[The] biggest problem was with women at work: they didn't let me go to the bathroom. Now, it's arranged through an order that I can use them: that's it.'

Trans woman, aged 55-64, residing in Germany (cluster 3)

Positively, many participants reported experiencing **no discrimination** in the workplace.

'In my daily work I do not face the public, which has also prevented me from encountering problems or any kind of discrimination...My colleagues have accepted me, and this has been great, I don't have any problem at my workplace.'

Trans woman, aged 55-64, residing in Spain (cluster 2)

One participant felt that their positive experience was linked to their own level of openness, stating 'if you give a certain topic more visibility, then society will change'. This point is reflected in the literature, which highlights that while **trans people's lack of visibility in the workplace is often caused by actual or feared discrimination, this may in turn contribute to further discrimination**. Beauregard et al. (2016) described this as a 'vicious circle', where lack of visibility contributes to marginalisation, and marginalisation contributes to a lack of visibility. They argued that this circle contributes to increased exclusion of trans people in the workplace and facilitates ongoing discrimination. McCann and Sharek (2014) similarly highlighted that LGBT people may choose to conceal their identities, both for financial reasons and for their personal safety, which may contribute to 'further isolation and invisibility'. This circle was described by one of our participants.

'[Colleagues at lunch time in my old company said] "Yeah there are now people who are also thinking about changing their age now, because some people change their gender now [...]" I tried to take the positive from it, that they really didn't know I was trans. But I did think I could really teach them a lesson by telling them that I'm trans. But I was also worried it would make my life hell if I told them.'

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

Ozturk and Tatli (2016) noted that a lack of organisational diversity or framework may contribute to ongoing discrimination against trans workers. Similarly, participants

reported that their experiences in the workplace were strongly influenced by the **policies and processes in place** to support transgender people, and the attitudes of their employers (see recruitment processes in Section 4.2.1).

Some people described problems related to a lack of policies and processes to support transgender people. For example, participants in the UK and the Netherlands described difficulties in taking leave from work to access gender-affirming surgery. One suggested that a lack of experience supporting trans people might lead potential employers to decide against employing a transgender person, resulting in discrimination. Participants in the Polish focus group expressed fears and feelings of insecurity in relation to reporting their experiences of discrimination or harassment in the workplace. While some felt this was the case even in workplaces with anti-discrimination policies in place, others felt that affirmative actions in the workplace, such as disciplining employees where discrimination had been documented, had positive effects.

'There was nothing trans-specific in the employee handbook, but it did say if you have any operations that will be on the company always. It said if you need to have a larger operation then to tell them in advance so they can plan for that. But I have never heard of anyone having to take vacation time for an operation.'

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

'Their sickness policy ...must have been legal, but it seemed to assume that you could schedule in advance when you were going to be ill. Like a lot of trans people, I don't have great health, I don't have great mental health and it was a very stressful job.'

Trans woman, age unknown, residing in the UK (cluster 2)

Others described how their positive experiences in the workplace related to the level of acceptance and support from their employer or colleagues, including employers who were also part of the LGBTI community. This was highlighted in the Polish focus group, where participants agreed that the well-being of a trans person in the workplace depends to a large extent on the attitude of their employer.

'My old boss was very open; he was a drag queen.'

Trans person, age unknown, residing in Ireland (cluster 5)

'[Following difficulties at work] I knew I had to tell [my colleague] because we have a very good relationship [...] We ended up discussing my identity. It was great because I knew I had to have someone supportive at work. I had seen her reaction to a couple of trans girls at the company and was sure that she would be a good ally. She does everything in her power to make things easier for me. I hope my other team members will be the same, but I cannot be sure until I come out to them.'

Woman with a trans history, age not given, residing in Hungary (cluster 3)

A few participants highlighted differences in the level of support and acceptance in the workplace by Member State. One participant living in Italy highlighted the contrast in the level of inclusion in the workplace in Italy and Germany, while another contrasted Hungary and Sweden.

'In Germany, there is so much inclusion in the workplace. Commercial or mainstream supermarkets have non-"passing" trans people as employees, occupying positions talking to the public. This would never happen in Italy. In Italy, the more job opportunities you want, the more you need to "pass".'

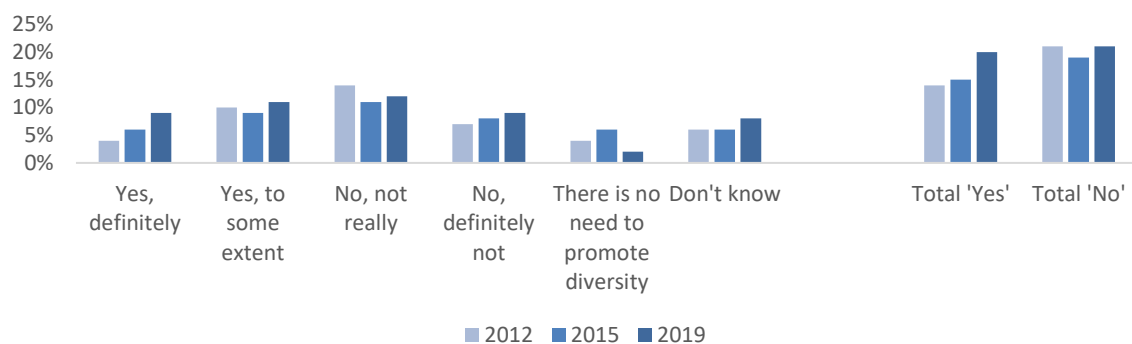
Non-binary person, aged 35-44, residing in Italy (cluster 2)

**'Even a seemingly transgender person in Sweden has not so much trouble, but in Hungary that is not the case.'**

Trans woman, aged 35-44, residing in Sweden (cluster 3)

Figure 23 below shows a marked increase in the share of members of the general public who believe enough is being done at the workplace to promote diversity in terms of being transgender, in 2012, 2015 and 2019. However, the share of respondents who say that not enough is being done has remained stable since 2012. These results are somewhat difficult to interpret, as they may reflect that more is happening at work to promote diversity or simply that employees are more aware of these topics.

*Figure 23. Is enough being done at the workplace to promote diversity as far as being transgender is concerned, 2012, 2015 and 2019 (%)<sup>92</sup>*



Other participants felt there was no need to discuss their gender identity with their colleagues, or were only open about their gender identity when the subject came up.

**'I haven't been open, because working as a freelancer from a distance, you are sat behind a computer and you could be anyone. If there is no need to say it, I prefer to be judged on my professional competences and not based on my gender identity...I don't think it would help my clients in any way to know this detail.'**

Non-binary person, aged 35-44, residing in the Netherlands (cluster 3)

**'I wasn't open about my gender identity: not because I'm hiding who I am but because I find it irrelevant for my colleagues to know that.'**

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

**'It never really came up ... and they are just my workmates, they are not my friends, so I didn't feel the need.'**

Trans man, aged 25-34, residing in Malta (cluster 5)

The academic literature found that coming out in sectors that are very gender-stereotyped may be particularly challenging (Beagan et al, 2012, cited in Phoenix and Ghul, 2016). Similarly, roles which require a gendered uniform may limit perceived employment choices (Shilt and Connell, 2007, cited in Phoenix and Ghul, 2016). Several participants shared this view.

<sup>92</sup> Source: Eurobarometer on Discrimination in the EU 2012, 2015 and 2019. Data for 2012 are for EU-27. The question asked: 'Do you think that enough is being done to promote diversity in your workplace as far as each of the following is concerned?' – Being transgender. 'There is no need to promote diversity' answer offered spontaneously. Base: All Eurobarometer respondents (2012 n=26,622, 2015 n=27,718, 2019 n=27,438).



'I always tell myself that I have to be fully transitioned to be taken seriously as a person [...] When I get to the more serious environments of my prospective job... the feeling is that if I go to another law firm and want to work there [...], I won't be taken seriously...It's just a reality in the Netherlands that there are certain areas of work, like most law firms, where the top is mostly male, and I see them not accepting me.'

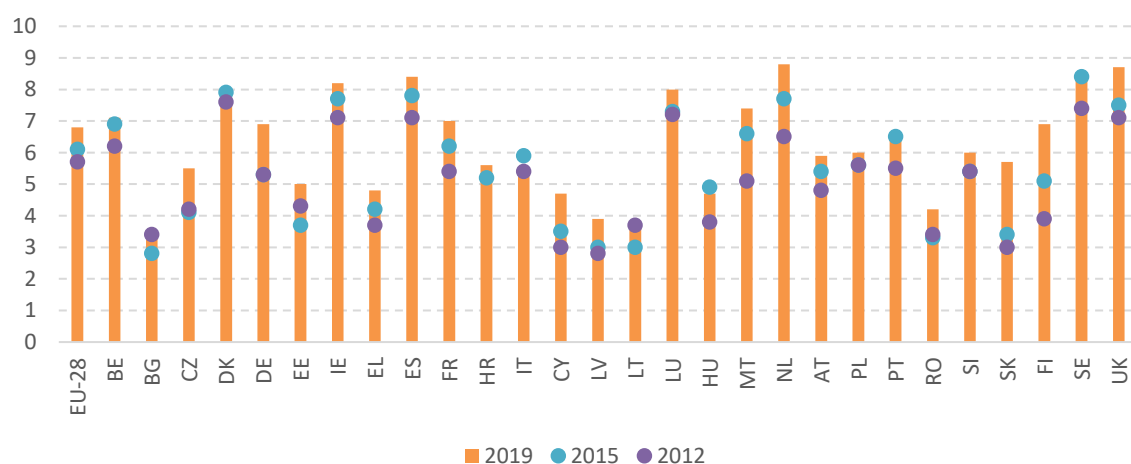
Trans man, aged 25-34, residing in the Netherlands (cluster 3)

Despite these challenges, some Member States require individuals to be in employment and live openly according to their gender identity in order to gain access to publicly funded gender-affirming treatment, and sometimes legal gender recognition (see Section 6.2.6). This may motivate trans individuals to come out in the workplace despite the risks they face by doing so.

Overall, social acceptance of transgender people appears to be increasing across the EU. The results above indicated that members of the public may be becoming more 'comfortable' with transgender colleagues. As a different indicator of social acceptance, the Eurobarometer indicates that there has been an increase in the average share of respondents in the EU who are comfortable with having a transgender person in the highest political office in their country, between 2012 and 2019. Meanwhile, the share of people who are uncomfortable has decreased.

The EU picture may, however, may hide important variations at national level. Figure 24 shows the change in the average level of comfort with having a transgender person in the highest political office in the EU-28 (ranked from 1 to 10, where 1 indicates 'not at all comfortable' and 10 indicates 'totally comfortable'). In most countries, the average level of comfort has increased since 2015, with the exception of Denmark, Italy, Hungary and Portugal. Furthermore, respondents in other countries continue to report a low level of comfort with the idea of having a trans person in the highest political position in 2019. For example, Bulgaria, Estonia, Greece, Cyprus, Latvia, Lithuania, Hungary and Romania all have average comfort scores of 5 or less.

Figure 24. Public level of comfort with the idea of having a trans person in the highest political position 2012, 2015, 2019<sup>93</sup>



<sup>93</sup> Source: Eurobarometer on Discrimination in the EU 2012, 2015 and 2019. Data for 2012 is for EU-27. The question asked: 'Using a scale from 1 to 10, please tell me how you would feel about having a person from each of the following groups in the highest elected political position in (OUR COUNTRY)'. '1' means that you would feel 'not at all comfortable' and '10' that you would feel 'totally comfortable'. Answers refer to the average score for each country. Base: All Eurobarometer respondents (2012 n=26,622, 2015 n=27,718, 2019 n=27,438).



#### 4.3.4 Sexism and gender stereotyping in the workplace

The peer-reviewed literature highlights that trans individuals may experience gender stereotyping or discrimination in the workplace following their transition. In their literature review, Phoenix and Ghul (2016) found that trans individuals were given different, gendered work tasks following their transition (e.g. trans women no longer asked to carry out manual labour tasks, where this was part of their duties prior to transitioning). These changes were received positively by some, while others felt they were being stereotyped. Similarly, trans women participants within one qualitative study (Schilt and Connell, 2007, cited in Phoenix and Ghul, 2016) reported that their ability to perform their roles or their productivity was questioned following their transition. By contrast, trans men in that study reported workplace benefits from their male gender. A 2008 study of 43 trans individuals found that earnings for trans men increased after transitioning, while earnings for trans women decreased (Schilt and Wiswall, 2008, cited in Beauregard, 2016). This reflects the wider issue of the disparity between all women's and men's incomes: in 2017, women's average hourly earnings in the general population were 17% lower than men's<sup>94</sup>.

As highlighted earlier in this chapter, the FRA 2019 LGBTI survey shows that trans women in the EU are more likely to experience unemployment compared to trans men (13.5% of trans women were unemployed compared to 8.3% of trans men). The findings of the FRA 2019 survey also showed that trans women are more likely than trans men to experience discrimination when looking for a job (19% compared to 15%) and are more likely to experience discrimination at work (25% compared to 17%).

Many participants within our study reflected on how sexism had impacted their careers. In keeping with the literature, several trans men described how they had benefitted from being perceived as men. One trans man shared his realisation that he had formerly been held back in his career by sexism. He described how he 'instantly started making more money' and 'leaped forward five years in experience' in the eyes of others following his transition. By contrast, he has friends who are trans women who have experienced the reverse situation, in which they are now being discriminated against in the workplace as women. Similarly, another trans man experienced 'the type of discrimination that girls face in a man's world' in the workplace before transitioning, but now is viewed as more capable by his colleagues and is paid more. Some participants described using their new-found privilege to try and tackle sexism and support women.

'I can remember exactly the moment when I realised that [the reason] I was underpaid in my career, under-recognised and had to fight too hard [...] was because of sexism. [On returning to work after transitioning] during the very first meeting I went to as a male employee instead of a female one, when it was my turn to talk, I started to talk and the whole room got quiet. I literally turned around and looked behind me to see what all of these people were looking at and listening to, because I'd never experienced before the feeling of being looked at and listened to in a meeting. And that's when the penny dropped.'

Trans man, aged 45-54, residing in Ireland (cluster 5)

'Being transgender, it's not easy, but being a transgender woman, it's twice [as] hard in our system. [...] I've [gained] a lot of male privilege ... I tried to take my male privilege to do some stuff. Like the other day I had a client [...] and he was saying [bad] words about a woman and I was like, "OK sir, either you stop, or you go out".'

Trans person, unknown age, residing in Portugal (cluster 5)

'Now that I am a man, people listen to me when I talk. In particular when they do not know that I am trans. It is a very sexist thing. I always try to use this position to

<sup>94</sup> Eurostat, gender pay gap statistics: [https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender\\_pay\\_gap\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics)

valorise female colleagues, etc. I am not harassed anymore in the street; I can get angry without being told that I am hysterical [...]'

Trans man, aged 25-34, residing in France (cluster 4)

Other people who worked in sectors that were stereotypically aligned with their birth-assigned gender, found that they were viewed as less capable in these sectors or, in the case of a trans woman who used to work as a plumber, no longer felt comfortable in their roles. A trans man described his difficulties in finding a role due to perceptions that caring for young children is a female occupation. Trans women working in IT also described these types of experiences.

'The technician from a conference [I was working at] came to discuss what we needed, and I explained that we needed a laptop to be connected to a screen. Then he turned to my male colleague and asked if we needed a HDMI cable or USB cable? And I was like "come on, I work in IT, I know that stuff!" and he seemed confused that I knew what I was talking about.'

Trans woman, aged 35-44, residing in Hungary (cluster 3)

'It is true that a woman can be a plumber, but a [male] plumber that [has] become female like me and continued to be a plumber is something else. [...] I have now started another independent job that I could do as a woman, at my own expense.'

Trans woman, unknown age, residing in Italy (cluster 2)

Two non-binary participants highlighted the difficulties they face working in male-dominated environments. Both emphasised the risks they face as non-binary people in such contexts, including exposure to sexism based on perceptions of a feminine identity and fear of discrimination or harassment.

'Not being too masculine [...] could create situations of embarrassment in a work environment where toxic masculinity can be a problem. Everyone in the [technology] sector is male. This, together [with] the fact that my presentation is not stereotypically feminine or stereotypically masculine, could expose [me] to different types of discrimination.'

Non-binary person, aged 18-24, residing in Italy (cluster 2)

'Basically being wrongly read as a woman means I get sexism directed at me a lot when applying for male-dominated jobs, and if I do get into a male-dominated job, then it's often really unsafe to be open about being non-binary.'

Non-binary person, aged 25-34, residing in the UK (cluster 2)

#### 4.4 Conclusions from this chapter

Available data suggests that overall trans people experience lower employment rates, greater levels of economic inactivity and higher unemployment rates than the general population. For example, in 2019, almost 51% of trans respondents to the FRA survey were in paid work or self-employed, compared to 69.3% of the general population in this position (EU-28, 2018). Unemployment is a particular issue for trans women, who are nearly three times as likely to be unemployed as the general population average. However, there are some limits to comparability, due to the different age ranges used.

Several factors affect the position of trans people in the labour market. One challenge hindering the access of trans people to jobs is discrimination. The FRA LGBTI survey (2019) shows that all groups in the trans population have personally felt discriminated against when looking for a job in the last 12 months because of their identity,

particularly trans women (19%), trans men (15%) and poly-gender people (14%) (EU-28 weighted averages).

Other factors that can make it harder for trans people to access work are problematic application processes and, for some, the challenge of having documents that do not match their gender identity. In our study, trans people who do not 'pass' reported facing discrimination when they first spoke to or met an employer face-to-face, and when their trans status became known. Additionally, trans people may also have concerns over the 'trans-friendliness' of different sectors and employers.

Taken together, these challenges mean that trans people may have a smaller pool of available vacancies to apply for, and may find it more burdensome to go through and succeed in recruitment processes, compared to cisgender people.

The experiences of some participants suggest that these challenges are further amplified among trans people who belong to other minority groups, such as those from an ethnic minority or those who are immigrants. One trans woman of colour described the difficulty of knowing the cause of discrimination, due to feeling at risk of discrimination because of multiple facets of her identity: namely, her gender identity, her skin colour and the fact she was born in a different country. Due to the challenges of accessing the labour market, some participants were not able to work in their preferred industry or within the formal labour market at all.

Many trans individuals will choose not to be open about their gender identity and/or their transgender history in the workplace. For example, the FRA LGBTI survey suggests that between 19.3% and 50.7% of trans individuals (depending on their identity) stated that they were 'never' open about being transgender with people that they meet at work (EU-28 average, 2019). Cross-dressers and gender-fluid people were most likely never to be open.

Disclosing one's identity in the workplace can bring risks for transgender people. The acceptance by employers and colleagues of trans employees can vary significantly. In the most negative cases, participants described how being open about their gender identity at work led to them being fired; facing discrimination, prejudice or harassment; needing to change jobs; experiencing a change in duties, hours, or level of seniority; having greater difficulty in finding a job; and finding fewer opportunities for progression. Further backing this up, the FRA LGBTI survey (2019) found that all groups in the trans population have personally felt discriminated against at work because of their identity, especially genderqueer people (27%), trans women (25%), gender-fluid people (21%) and non-binary people (20%).

Sexism also appears to have a bearing on the careers of trans people. Echoing the result of other research, several trans men in our study described how they had benefitted from being viewed as men, in some cases improving their status and pay. In contrast, trans women described being disproportionately impacted by discrimination when accessing jobs and within the workplace. Non-binary people also noted that they could be affected by sexism in the context of employment.

Proactive actions by employers to create inclusive workplaces can make a difference. For example, within the online consultation of this study, participants emphasised that their experiences in the workplace were strongly influenced by the policies and processes in place to support transgender people, and the attitudes of their employers.

The next chapter moves on to explore the experiences of trans people in later life. In many ways, the employment situation of trans people is relevant to their experiences as they get older. Trans people's experiences in the labour market have a bearing on how easily they can access occupational pension schemes and may also affect their ability to save for the future.

## 5 Later life experiences of being trans

This chapter presents trans experiences during later life: a subject about which less is known. It explores the extent to which people feel able to be open about their gender in their later life, and it considers the economic situation of trans people in later life, the impact of gender identity on pension entitlements and the expectations/experiences of formal care services.

### 5.1 Openness in later life

Limited research has been carried out on the situations of older trans people, although much exists that covers the wider LGBTI population. The academic literature on openness about gender identity in later life presents a mixed picture. Trans individuals may feel greater freedom to express their gender identity in later life, or may feel that they now need to conceal their identity. In a Swedish qualitative study of six older trans people, participants reported that it seemed easier to come out about their gender identity later in life due to changes in cultural and social norms (Siverskog, 2014). The authors found that retirement prompted some trans people to transition, due to fears about transitioning while in employment, and the opportunity presented by retirement to explore their gender identity (Siverskog, 2014). This is supported by Phoenix and Ghul (2016), who found that individuals may choose to wait until retirement to come out, due to the fear of losing their job or experiencing discrimination. Coming out later in life may present opportunities. A qualitative study of 36 older LGBT individuals in Ireland (Higgins et al. (2016) found that some had joined LGBT groups (such as choirs, sports groups and political groups), which gave them the opportunity to develop new skills and meet new people.

As explored in Section 2.2 and 2.6 of this report, a small number of participants within the study reported waiting until later life to be open about their gender identity. Conversely, Siverskog (2014) found that some participants in their study 'decided to go back in the closet' (p. 393), for example when they moved to an area where they felt less likely to be accepted. Similarly, in a qualitative study of LGBT and non-LGBT care residents and staff in the Netherlands (Leyerzapf et al. (2018)), some LGBT older people reported feeling a need to hide their identity in a care home context, while others were explicit about their identity. The difference was largely attributed to age: the 'older elderly' were more likely to conceal their identity, while the 'younger elderly' were more likely to be explicit about it. The authors suggest that this is due to the changes in social norms during the lifetimes of these cohorts. This idea of generational differences was echoed by one of the participants in this study, a trans man living in Italy, who felt that 'the new generation of transgender people think in a different way from the previous generation. We [the younger people] are much more flexible, fluids, non-binary and more "who cares?". We have more expectations.' However, the findings of Siverskog (2014) and Leyerzapf et al. (2018) relate to LGBT experiences more generally rather than trans experiences specifically.

Siverskog (2014) highlighted how the **ageing process can positively and negatively impact individuals' experiences of coming out**. Some participants in their study felt that the ageing body is more androgynous, which helped them to feel closer to their gender identity. On the other hand, some felt that the ageing body limited their opportunities for expressing their gender identity (e.g. due to wrinkles, being unable to walk in heels and different body shapes). Two participants in that study noted that the opportunity to undergo gender-affirming treatment was not be possible because of their age. Of the participants aged 55 or over in our study, one noted that she had been refused gender-affirming treatment on medical grounds. Another was concerned that she might be forced to come off hormones in her old age (for health reasons) and was fearful that this would reverse her medical transition. She also felt that she was having to choose between preserving her gender expression and protecting her health.

Veronica is aged 55-64 and is in the process of getting LGR in her country of residence as well as her country of origin. She is aiming to get hormone therapy, which is required for LGR in her country of residence, as well as gender-affirming surgery.

In October 2018, her endocrinologist told her that she would begin a hormone regime and then have surgery. However, in December 2018, she was told this would no longer be possible due to her age and health status:

'They closed the door completely on me [...] I was very close to committing suicide, I was up on the railings...I broke down for a couple of days and then I got mad.'

She spoke to a psychiatrist in the hospital but there was nothing they could do.

Trans woman, aged 55-64, residing in Spain (cluster 2)

## 5.2 Formal care

### 5.2.1 Expectations of formal care services

Participants in Bristowe's (2018) qualitative study reported 'overwhelming concern' about discrimination in care institutions, as a result of which they attempted to avoid care settings or reluctantly considered hiding their gender identity. Similarly, **fears around using formal care in later life** were raised in the focus groups in Italy and Poland, by several interviewees and by some respondents to the online consultation. More specifically, concerns related to the appropriateness of the care available, how individuals might be treated by professionals, and the vulnerability of their situation. In some cases, these concerns were based on previous experiences with medical professionals who were not knowledgeable about trans identities. For example, a man with a trans history, who was living in Germany, felt that it would be difficult for him to access care in later life, based on his experiences of being misgendered and refused medical care.

'[Nursing homes are] a big fear of every LGBT person, because you lose power, you are in the hands of your carer, and if that carer is transphobic, you'll be in trouble.'

Trans man, aged 25-34, residing in Malta (cluster 5)

'I'm 67 now and I fear what will happen to me with end-of-life care. I fear what could happen to me should I develop some form of dementia. Where will I regress to, how will I react? If I need intimate personal care, how is that going to be provided to me? Who needs to know my history? There are real concerns around that.'

Trans woman, aged 65-74, residing in the UK (cluster 2)

'Do we age, or do we die before? I would say that there will not be guarantees about the treatment that we will receive when we will not be self-sufficient anymore. I prefer not to think about it.'

Transgender person, age unknown, residing in Italy (cluster 2)

One respondent to the online consultation highlighted that trans-friendly care services may be more expensive, which contributed to their concerns about their income in later life.

'I expect to have to be picky about late-in-life care, because of the horror stories around trans people in these kinds of care. I expect that it will be more expensive than the average, to ensure that I am not forcibly de-transitioned.'

Trans person with another identity, aged 35-44, residing in Belgium (cluster 5)

## 5.2.2 Experiences of formal care services

Few participants in this study had personal experience of using formal long-term care, given the age profiles concerned. One interview participant had experience with sheltered housing, while 16 respondents to the online consultation had experience of formal care services in their home, or care in a residential or nursing home. These experiences are not specific to formal care in later life: of those with experiences of care services, only two were aged 55 or over, while the remaining 14 were aged under 55. All of these respondents reported a disability or long-term health condition.

While most of the people who had experiences of care services reported that they had not experienced prejudice, discrimination or harassment in this context<sup>95</sup>, some participants reported facing prejudice, discrimination or harassment in one or more of the care services they had used. This included negative comments, being treated differently, physical and verbal abuse, and refusal of care. One participant shared her experience as a trans person living in sheltered housing in the UK. She reported that her trans history was disclosed to other residents and members of staff without her consent and she was misgendered by a member of staff in front of others. This had a significant impact, making her afraid of leaving her room in case she encountered other residents.

Fortunately, of the respondents to the online consultation who had experience of one or more care services, most reported that the cost of these services had not caused them significant difficulty. It was rare for respondents to describe the impact of cost of one or more of these services as 'very difficult'. Some reported that the cost of one or more of these services was 'a little difficult', while most reported this cost was 'not difficult at all'<sup>96</sup>. It is not possible to assess if any of these care services were publicly subsidised, which may have a bearing on the overall cost.

Although they did not have a personal experience of using formal care services, participants in the Greek focus group discussed the **difficult situation of trans older people**, highlighting their reliance on the transgender community for support after being excluded from health services, or needing to hide their gender identity to access long-term care, in keeping with Leyerzapf et al.'s (2018) findings.

'Transgender elders are receiving great support by the community. They are people excluded from health services because they cannot stand being abused anymore. Transgender persons over the age of 70 often go back into the closet because they cannot find carers to undertake their care.'

Trans person, age unknown, residing in Greece (cluster 4)

## 5.3 Access to pension entitlements

### 5.3.1 Impact of gender identity on pension entitlements

Participants in the study were asked whether they felt their gender identity has negatively impacted their access to pension entitlements. Of the respondents to the online consultation who answered this question, most reported not knowing if there had been an impact (64%). This high level of uncertainty may be due to the young average age of respondents: nearly half (45%) of respondents to the online consultation were aged 18-24 years old, while only 6% of respondents were aged 55 or above. A quarter (27%) reported that their gender identity had not negatively impacted their pension

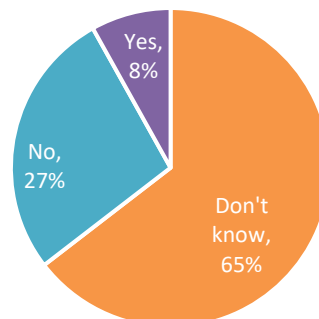
<sup>95</sup> Of the 17 people who reported experience of formal care services, nine had not experienced prejudice, discrimination or harassment, two were unsure, and four people had experienced this. Two people did not respond.

<sup>96</sup> Some respondents had experiences of more than one formal care service and reported different levels of difficulty depending on the service.



entitlements, and just under one in 10 respondents (8%) reported that their access to pension entitlements had been negatively impacted.

Figure 25. Perceived impact of whether gender identity has affected pension entitlements<sup>97</sup>



As shown in Figure 25, more than one-quarter of people reported that their gender identity has not had an impact on their access to pension entitlements, although this did not necessarily mean that they expected their pension entitlements would be sufficient (see Section 5.4). On the contrary, several people felt that pensions in their country were unreliable for everyone, regardless of gender identity.

Among the participants who felt that their gender identity has negatively affected their access to pension entitlements, concerns related to time taken out of work, for example to undergo medical procedures or due to health conditions, difficulties accessing formal, secure employment at an appropriate level, and a lack of recognition of pension entitlements, due to a change in legal name and gender.

A few people mentioned that they had experienced **delays in beginning their career**, due to fear of discrimination, psychological factors, or procedures related to a medical transition. They had concerns that this would negatively impact their pension entitlements, as they would not have as many years in employment to build up their pension contributions. Others mentioned that they **needed to take time out of employment due to health conditions** related to their gender identity. For example, some people reported needing to take time off work for mental or psychological reasons.

Among those who felt their access to pension entitlements would be negatively impacted due to their gender identity, **challenges in accessing (formal) employment** was the most frequently mentioned concern. People described how they had experienced difficulties finding formal employment, leading to periods of unemployment or time spent in jobs that are not pensionable.

'It has been difficult for me to obtain and keep regular employment for long periods of time. As a result, my pension is spotty at best.'

Trans man, aged 45-55, residing in the Netherlands (cluster 3)

'[I have had] less access to stable jobs, [so it has been] impossible to properly financially contribute.'

Trans woman, aged 25-34, residing in France (cluster 4)

Some participants, who did not necessarily have concerns about their own pension entitlements, described challenges that some trans older people are currently facing as a result of exclusion from the formal labour market during their working age years.

<sup>97</sup> Source: online consultation of this study. The question asked: 'In your view, has your gender identity negatively affected your access to pension entitlements?'. Base: respondents to the online consultation of this study (n=852).



'Transgender women over the age of 60, who [...] were working as sex workers ... are living in conditions of extreme poverty and wretchedness, without any access to social security.'

Transgender person, age unknown, residing in Greece (cluster 4)

'[Older trans people who worked as sex workers in my country] do not receive any pension at all and are fighting for that.'

Non-binary person, aged 25-34, residing in Spain (cluster 2)

'[While I am not worried about my pension entitlements] I am aware that for most trans people this is not the case. There is an immense inequality in the access to pensions. Mainly because most of the people my age that were trans have not been able to work and contribute the years that I had.'

Trans woman, aged 55-64, residing in Spain (cluster 2)

Several participants were concerned that they would have fewer opportunities for progression within employment, which would impact the amount of money they could contribute to their pension. For example, one person (at the beginning of their career) expressed concerns that they would not progress to their desired level of seniority, although they expected that this was a concern common to many young people.

Some feared that they would have difficulties accessing existing pension entitlements, where they had undergone LGR during or at the end of their career, fearing that the years they spent working under a former name and the contributions made to their pensions under that name would not be recognised. A few participants had experienced this.

'My payslips refer to a man. For me, it will be an enormous problem. They will tell me [I] never worked. Either I will have to reexplain the journey and provide the documents, or I will let it go and say: "you are right, I never worked".'

Trans woman, aged 45-54, residing in France (cluster 4)

'[My pension] stopped and was paid out to my ex, and not to me because my name wasn't stated in the legal documents.'

Trans person with another identity, aged 45-54, living in the Netherlands (cluster 3)

Other impacts of gender identity on pension entitlements were highlighted but not necessarily perceived negatively. Some people noted that they would now receive their pension earlier or later than they otherwise would have, based on differences in pension entitlements for women and men in their country.

### 5.3.2 Experiences of accessing pensions

A minority of all trans participants in this study had already accessed a pension<sup>98</sup>. This includes a small number of people who were receiving a pension other than an old-age pension, such as a disability pension. Four respondents were also retired but not receiving a pension, although this did not relate to their gender identity or they were unsure.

Of those participants who were accessing a pension, most (22 out of 27) reported that their gender identity had not negatively impacted access to their pension entitlements, contrasting with the widespread fears expressed above. All the interviewees who reported having no difficulties stated this had transitioned in mid-life or later-life, after retiring. As such, they did not experience some of the issues that contribute to difficulties in building up a sufficient pension, such as longer job searches or slower/lack

<sup>98</sup> Applied to 6 out of 73 interviewees and 21 out of 865 online consultation respondents.

of career progression due to discrimination. Similarly, most respondents to the online consultation in this group who had been through an LGR process had completed this when aged 45 or over.

Victoria reported that accessing her state pension had been straightforward, describing it as a 'part of the system that works', although accessing a private pension had required 'a fair amount of paperwork'. Interestingly, she also found that her life insurance premiums had been reduced by changing her gender on her policy.

Woman with a trans history, aged 75 or over, residing in the UK (cluster 2)

A small number of study participants reported challenges in accessing their pension, due to their gender identity. Some described their difficulties in contributing to a pension because of their struggles to access employment. Others described difficulties in accessing their pension entitlements, as shown in the box below.

'I had problems because of LGR with changing my pension account [...]. A lot of phone calls were necessary until everything worked.'

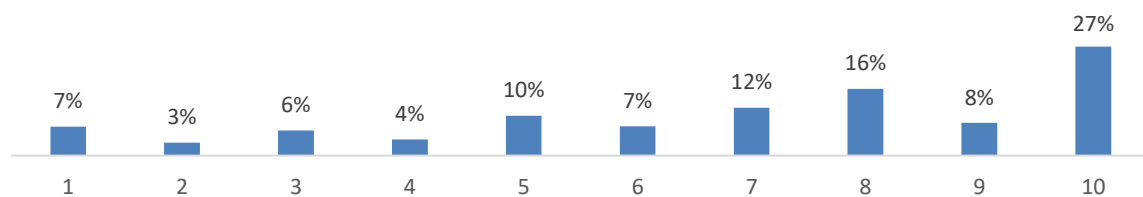
Trans woman, aged 25-34, residing in Germany (cluster 3)

A woman with a trans history (aged 65-74) living in the UK had experienced difficulties in accessing her pension, because her pension entitlements were backdated to the day she received her legal gender certificate. This created a two-year delay in accessing her pension. As a result, Emma experienced financial difficulties and was not able to pay off a loan or begin her Master's degree as planned. She reports being continually worried about money.

#### 5.4 Economic situation later in life

All participants were asked about their actual or expected economic situation in later life. Respondents to the online consultation noted their **concerns about the sufficiency of their income in later life**. As shown in Figure 26, of those respondents who provided a response, more than one-quarter reported being extremely worried about their income in later life. Many interviewees had similar concerns.

Figure 26. Level of concern about income in old age, on a scale of 1 to 10<sup>99</sup>

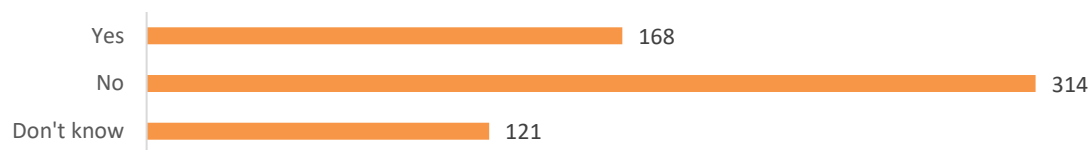


Among those who were not actively concerned, some simply reported that they are not yet thinking about their economic situation in later life, as other concerns are more pressing, such as their current financial situation or saving for medical treatments.

Interestingly, participants' concerns about income in old age were often not related specifically to their gender identity. This is reflected in the findings of the online consultation: of the 603 people who answered when asked if any of their income concerns related to their gender identity, more than half (52%) stated that their concerns did not relate to their gender identity, compared to over one-quarter (28%) who stated that it did.

<sup>99</sup> Source: online consultation for this study. The question asked: 'On a scale of 1 to 10, how worried are you, if at all, that your income in old age will not be sufficient? 1 means not worried at all, 10 means extremely worried.' Base: respondents to this question (n=862).

Figure 27. Whether concern about income in old age relates to gender identity<sup>100</sup>



Participants who took part in a telephone interview or focus group whose concerns about their income in later life did not relate to their gender identity cited the current economic climate and national pension provision.

'The problem of the pension is very big, I think that this concerns the general population: losing of rights, increase of retirement age [...] I am really scared about my future, I do not know what type of pension I will have, but probably just a misery.'

Trans woman, aged 45-54, residing in Italy (cluster 2)

'I honestly don't trust the government to provide any public services when I get to be that old. The pension situation is a time bomb, I don't think we will have pensions at that point.... But I'm not worried about that because I'm trans, I'm worried about that for everyone.'

Trans woman, aged 35-44, residing in Hungary (cluster 3)

'The biggest fear I have is will I ever get a state pension... or will the age get so high that I'll get it when I'm 95? I think, being a millennial, that's what we're all worried about! But that's not to do with being transgender.'

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

Of those whose concerns about their income in later life related to their gender identity, actual or feared discrimination in accessing employment was their primary worry (see Section 5.3.1).

'If I wasn't trans, I could get jobs very easily due to my qualification, but now I know the only decent paying option for me is sex work.'

Trans woman, aged 35-44, residing in Romania (cluster 1)

'Due to discrimination, it has been difficult for me to follow a regular career path [...] As a result, my income has suffered quite a bit, as has my ability to save for old age.'

Trans man, aged 45-54, residing in the Netherlands (cluster 3)

'I fear that I may face so many problems because of my identity that I won't be able to get professional education/get a proper job to pay for my retirement.'

Non-binary person, aged 25-34, residing in Germany (cluster 3)

'If you lose your current job, you have trouble finding a new one (companies that accept transgender people are too few in Poland). [This] may mean retirement benefits at the lowest level, insufficient for a decent life.'

Trans man, aged 45-54, residing in Poland (cluster 2)

<sup>100</sup> Source: online consultation for this study. The question asked: 'Do any of your income concerns relate to your gender identity?' Base: respondents who answered this question (n=862).

Other respondents' concerns related to the financial and time costs of medical care, their ability to work due to their mental or physical health, and the concern that their pension contributions would not be recognised.

## **5.5 Conclusions from this chapter**

Later life can offer opportunities for people to be open about their gender identity, but also brings new difficulties. For example, existing research highlights that the ageing body may present opportunities and challenges for an individual's expression of gender identity. For some, later life offers greater androgyny, which can help some people to feel closer to their gender identity. For others, it is harder to present in a way that reflects their identity. This is compounded for older people who are unable to access – or who are required to cease – desired gender-affirming healthcare, for health reasons.

Many trans people are deeply fearful about the prospects of entering long-term care in the future. Participants raised concerns about whether their gender identity would be respected and whether professionals would be capable of supporting them appropriately. A concern was also raised that trans individuals may have to pay more to access trans-friendly care, creating challenges for their income.

The age distribution of participants in the study meant it was rare for individuals to have direct personal experience of using long-term care services in later life. Among those who did, around one in four reported experiencing discrimination, harassment and prejudice linked to their gender identity. This included negative comments, being treated differently, physical and verbal abuse, and refusal of care. This reflects the work that may still be needed to ensure that staff in long-term care services are inclusive and respectful towards trans residents and respond appropriately to their health needs.

There is limited information to assess the financial ability of trans people to access the care that they need in later life. Generally, respondents to the online consultation who had personal experience of using long-term care services did not find that the cost of these caused them significant difficulty. However, this finding is based on a small number of responses and does not definitively show that cost is not a barrier to long-term care for some trans people.

There were mixed results when it comes to the impact of gender identity on the economic situation of trans people in later life. Although many participants were concerned about their income in later life, this related primarily to broader concerns about the future of pension entitlements in their country of residence.

Amongst the (small) number of participants who already accessed a pension, generally they had not had trouble in accessing this. Nonetheless, over one-quarter of respondents to the online consultation identified ways in which they believed that their gender identity had negatively impacted their overall pension entitlements. They emphasised their reduced opportunities to contribute to a pension, due to delays beginning work or time taken out of work (for example, to undergo medical procedures or as a result of feared or actual discrimination). Some pointed to difficulties in accessing formal, secure employment at an appropriate level. Others expected that they may face possible administrative difficulties in accessing a pension, following a change in their legal gender during or at the end of their working lives. Additionally, a few older people found that they were unable to access part or all of their pension entitlement after changing their legal name and gender.

The uncertainty about pension access was a source of significant stress for some younger people. Given this, the situation of trans people in later life is considered an important subject of research in the future. This chapter marks the end of Part I of the report and the focus on the social situation of trans people. The next chapter is the beginning of Part II, which explores the design and lived experiences of legal gender recognition procedures.

## PART II – THE DESIGN AND LIVED EXPERIENCE OF LEGAL GENDER RECOGNITION PROCEDURES ACROSS THE EU

Part I of this report explored the situation of trans people within different areas of society. Part II takes a different focus and considers the national systems that exist across the EU to enable trans people to change their legal gender. It explores the formal requirements that exist in law, the degree to which these are accessible to trans people, the lived experiences of those who decide to go through them, and the consequences for those who cannot access these procedures.

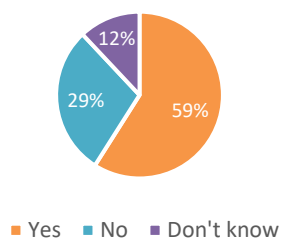
### 6 Legal requirements for getting your gender marker recognised across the European Union

This chapter presents and compares the legal requirements (as of 2019) to change one's gender marker across the Member States of the EU. It considers ways in which the requirements differ in each country, with some countries having simpler procedures in place and others having more cumbersome or intrusive requirements, such as medical conditions or obligations to appear before a judge. It is important context for understanding why procedures in some countries are more accessible than others.

#### 6.1 Legal differences across the EU

Legal Gender Recognition (LGR) process(es) allow individuals to change their first name and gender marker in their administrative records so that official registers and their documents, including identity documents, birth or civil status certificates, match their gender (usually female or male, with few countries allowing for a non-binary marker)<sup>101</sup>.

Figure 28. Support for the ability to change civil documents to match a person's gender identity, 2019<sup>102</sup>

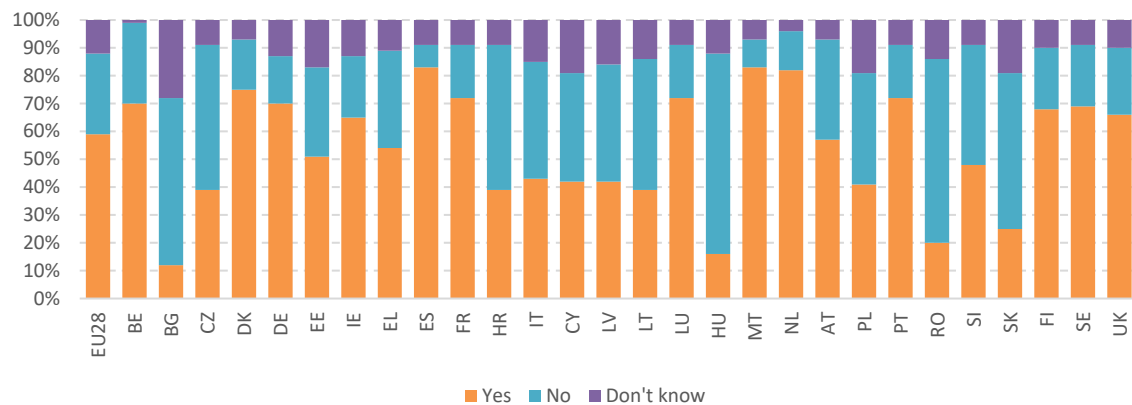


In 2019, on average more than half of the individuals living in the EU agreed that transgender persons should be able to change their civil documents to match their gender identity. However, almost one-third of respondents do not (see Figure 28), and the levels of acceptance are much lower in some countries, particularly in Bulgaria, Hungary, Romania and Slovakia.

<sup>101</sup> Some individuals may not be able to access a legal gender marker that matches gender, most commonly those with non-binary identities.

<sup>102</sup> Source: 2019 Eurobarometer on Discrimination in the EU. The question asked: 'Do you think that transgender persons should be able to change their civil documents to match their inner gender identity?' Base: All Eurobarometer respondents (n=27,438).

Figure 29. Whether the general public agree with Legal Gender Recognition<sup>103</sup>



## 6.2 What are the legal requirements to obtain LGR across the EU?

All EU Member States and the UK allow for LGR of transgender individuals or have permitted individuals to be recognised in accordance with their gender identity. However, the requirements set out in national law vary widely. Legal practices for recognition of gender tend to be a combination of complex legal and medical requirements, with the border between the two often blurred (Hammarberg, 2009). The requirements range from administrative formalities reflecting transgender persons’ right to self-determination to intrusive medical requirements, such as sterilisation. Legal requirements can be categorised as follows:

- Self-determination requirements involving self-declaration of one’s identity via a written statement, declaration or request with a competent authority;
- Procedural requirements;
- Medical requirements.
- Requirements linked to the relationship and family situation of the applicant;
- Time requirements;
- Age requirements;

Not having citizenship in the country of residence also be a formal barrier to accessing LGR, as discussed in more depth in Section 7.2.3.

Each category results in transgender people having to fulfil requirements, provide certain types of evidence or undergo certain processes in order to access LGR. The requirements often reflect the national approach to allowing transgender people to have their gender recognised. Some requirements reflect the self-determination approach, where transgender people are those best placed to identify their own gender. Other procedures take a more paternalistic approach, where the state (through courts, or other bodies) are seen as best placed to assess a person’s gender, or the pathologising approach, with trans identities viewed in medicalised terms and medical experts thus seen as the best placed to determine gender. A snapshot of what each type of requirement may entail is presented below. Further information in relation to human rights standards and LGR is available in Annex 5.

### 6.2.1 Self-determination

An LGR procedure based on self-determination has been advocated by the Parliamentary Assembly of the Council of Europe (PACE) Resolution and Yogyakarta Principles (PACE,

<sup>103</sup> Source: Eurobarometer on Discrimination in the EU (2019). The question asked: 'Do you think that transgender persons should be able to change their civil documents to match their inner gender identity?' Base: All Eurobarometer respondents (n=27,438).

2015). This approach is the most respectful of transgender people and reflects the highest human rights standards (see Annex 5), as well as being the most accessible.

Under this type of LGR requirement, applicants may change their legal gender via a written statement, a declaration or request with a competent authority, such as the municipality civil status officer. The procedure does not require mental health diagnosis or any third-party intervention, compulsory medical intervention, surgery or sterilisation, or compulsory divorce.

Six EU Member States have adopted a self-determination approach. Denmark was the first EU country to implement this procedure in 2014<sup>104</sup>, followed closely by Malta<sup>105</sup> and Ireland<sup>106</sup> in 2015. Belgium<sup>107</sup>, Luxembourg<sup>108</sup> and Portugal<sup>109</sup> put similar procedures in place in their national legislation via recent amendments.

### 6.2.2 Procedural obligations

International human rights standards are increasingly moving towards the promotion of a quick and accessible procedure for LGR, as reflected in rulings of the European Court of Human Rights (ECtHR)<sup>110</sup>. Two different types of LGR procedures exist, namely a **judicial** and an **administrative** procedure. In both cases, procedures can contravene human rights standards by being unreasonably lengthy, costly and opaque in their decision-making.

In countries where the procedure for LGR is not explicitly detailed in the legislation, or where doubts remain, the procedure is much longer, as files are evaluated on a case-by-case basis. In Bulgaria, Cyprus, Lithuania, Latvia, Romania, Italy and Poland, no legislation establishes the LGR requirements and the procedure is done by the courts.

In two countries, the case-law has set clear standards (Italy, Poland), while the other five (Bulgaria, Cyprus, Lithuania, Latvia, Romania) extend a wide margin of discretion to the judge. In Poland, a court decision is required for an amendment to the birth certificate. The jurisprudence has developed into a practice according to which transgender people file a case to 'sue' their parents. If a transgender person has a spouse and children, it is assumed they also have legal interest in the proceeding and must thus be indicated as co-defendants, together with the parents of the transgender person.

Judicial procedures are often more burdensome and costly than administrative procedures. Even if they may conform to human rights standards currently set by the ECtHR (accessibility, transparency and length, see Annex 5), they can place transgender people at a higher risk of discrimination, as they live in a transition phase where they live as one gender without having their papers in order. This is the case in France, where the legislative framework adopted in 2016<sup>111</sup> reformed access to LGR and eliminated all medical requirements, while limiting grounds for refusal. A judicial procedure is still necessary and court approval is required to recognise a gender change.

In Slovakia and Slovenia, LGR is an administrative procedure and its requirements arose from administrative practice.

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<sup>104</sup> Amendment Act L182 Denmark, 2014.

<sup>105</sup> Gender Identity, Gender Expression and Sex Characteristics Act, 2015.

<sup>106</sup> Gender Recognition Act, July 2015.

<sup>107</sup> Gender Recognition Act Belgium, 25 June 2017.

<sup>108</sup> *Loi relative à la modification de la mention du sexe et du ou des prénoms à l'état civil et portant modification du Code civil*, 10 August 2018.

<sup>109</sup> Portugal Decree (XIII 3 105), July 2018.

<sup>110</sup> The ECtHR held that rigid and long judicial LGR procedures leave transgender individuals vulnerable and are against the aims of the European Convention on Human Rights (ECHR). ECtHR, *S.V. v. Italy* No. 55216/08, para 72.

<sup>111</sup> *Loi N° 2016-1547 du 18 novembre 2016 de modernisation de la justice du XXI<sup>e</sup> siècle, JORF n° 0269*.



### 6.2.3 Medical requirements in LGR procedures

The European Court of Human Rights (ECtHR) has established some standards related to LGR in applying Article 8 of the European Convention on Human Rights (ECHR). The ECtHR holds that Council of Europe (CoE) Member States<sup>112</sup> are obliged to legally recognise the gender of transgender persons who have gone through medical gender-affirming reassignment. The ECtHR also found that requirements of irreversible changes in the individual's metabolism, such as sterilisation, in order to access LGR are a violation of the right to physical integrity and the right to private life<sup>113</sup>. However, the ECtHR leaves broad discretion to (CoE) Member States on determining the conditions to access LGR. For instance, the ECtHR considered that the requirements to demonstrate the existence of a gender identity disorder and to undergo medical examination are not contrary to the Convention's rights<sup>114</sup>.

Soft law human rights standards set by the Yogyakarta Principle have moved away from the medical approach in LGR procedures, considering that 'no one shall be forced to undergo medical procedures as a requirement for legal recognition of their gender identity'<sup>115</sup>. Medicalisation of procedures has been highly criticised, as it undermines transgender people's right to bodily integrity and self-determination. However, in 2019, a majority (20)<sup>116</sup> of EU Member States still adopted a medical or pathologising approach to LGR and imposed medical preconditions, including:

- Gender-affirming surgery;
- Sterilisation;
- Medical test, often intended to demonstrate that the gender identity is irreversible, or confinement to a medical facility;
- Hormonal treatment;
- Mandatory diagnosis of mental disorder by a psychologist, a general practitioner, a specialist in gender topics, or another medical professional, who must confirm a diagnosis of gender dysphoria, gender identity disorder, or transsexualism.

Member States requiring sterilisation and surgery are in violation of binding international human rights law.

Table 5 below lists the main medical requirements identified in 20 EU Member States as of 2019, based on the information collected in the questionnaires of the European network of legal experts in gender equality and non-discrimination (2018) and, where needed, additional desk research. Countries that have adopted self-determination procedures (Denmark, Luxembourg, Portugal, Belgium, Malta, Ireland) are not included in the Table as they do not impose any medical condition. Countries in which legal requirements remain unclear due to the lack of an explicit procedure in the legislation (Cyprus, Bulgaria, Lithuania, Latvia, Romania) are denoted as 'UNK' (unknown).

Table 5. Medical requirements in 20 Member States as of 2019<sup>117</sup>

MS	Surgery	Sterilisation	Medical tests	Hormone treatments	Mental health diagnosis
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<sup>112</sup> This covers the UK and the 27 EU Member States.

<sup>113</sup> ECtHR, *AP, Garçon and Nicot v. France* No. 79885/12, 52471/13 and 52596/13 of 6 April 2017, para 126-128.

<sup>114</sup> ECtHR, *AP, Garçon and Nicot v. France* No. 79885/12, 52471/13 and 52596/13 of 6 April 2017, para 126-128.

<sup>115</sup> UN Yogyakarta Principle No 3.

<sup>116</sup> Austria, Bulgaria, Cyprus, Czechia, Germany, Estonia, Spain, Finland, Croatia, Hungary, Italy, Lithuania, Latvia, Netherlands, Poland, Romania, Sweden, Slovenia, Slovakia, UK.

<sup>117</sup> Source: Questionnaires collected for the European network of legal experts in gender equality and non-discrimination (2018). Member States with a self-determination approach are not included as they do not have any medical requirements (Denmark, Luxembourg, Portugal, Belgium, Malta, Ireland). Two others also lack medical requirements (France, Greece).

AT				✓	✓
BG				✓	✓
CZ	✓	✓	✓	✓	✓
CY	✓	✓			✓
DE					✓
EE			✓	✓ <sup>118</sup>	✓
ES				✓	✓
FI		✓		<sup>119</sup>	✓
HR					✓
HU			✓		✓
IT				✓ <sup>120</sup>	✓
LT <sup>121</sup>	UNK	UNK	UNK	UNK	UNK
LV <sup>122</sup>	UNK	UNK	UNK	UNK	UNK
NL					✓ <sup>123</sup>
PL			✓	✓	✓
RO <sup>124</sup>	✓ <sup>125</sup>	✓ <sup>126</sup>	UNK	✓ <sup>127</sup>	✓
SE					✓

<sup>118</sup> Article 3 General Requirements on Medical Procedures for the change of Gender.

<sup>119</sup> Hormone treatment in Finland is considered sufficient to make a person incapable of having children, surgery for sterilisation is not required. The applicant has the choice between surgical sterilisation and hormone treatment.

<sup>120</sup> The Court of Cassation appeared to suggest that while surgery could not be required, authorities could mandate evidence of medical treatment, including hormone therapy. State authorities can legitimately require hormone interventions. However, the Constitutional Court judgment of July 2015 remains vague regarding the requirement for hormone therapy (Court of Cassation of Italy, No. 15138 (20 July 2015); Constitutional Court of Italy, Decision No. 221).

<sup>121</sup> No procedure laid down in national law, thus unclear requirements.

<sup>122</sup> *ibid.*

<sup>123</sup> It is unclear if this is a psychological diagnosis, but consultation with a medical expert and confirmation via a statement that the applicant is clear about belonging to the other sex is necessary for LGR. The expert must certify that the applicant understands their transgender status and has a genuine belief in it. However, there does not have to be a diagnosis of gender identity disorder or gender dysphoria.

<sup>124</sup> No procedure laid down in national law, thus unknown requirements.

<sup>125</sup> Requirements and procedures differ considerably, according to the interpretation of Article 43 of the Law 119/1996 on civil status documents, as the assessment is made on a case-by-case basis by the courts. See *Judecătoria Piatra Neamț, Civil Judgment No.257 of 31.01.2017, Tribunalul Constanța, Civil Decision No.2039 of 01.09.2016, Judecătoria Petroșani, Civil Judgment No.3821 of 30.12.2015, Judecătoria Timișoara Civil Judgment No.13740 of 24.11.2015, Judecătoria Râmnicu Vâlcea, Civil Judgment No.2985 of 30.05.2014, Judecătoria Câmpeni, Civil Judgment No.1042 of 24.07.2008.*

<sup>126</sup> Given the case-by-case nature of the LGR procedure in Romania, many people who do obtain LGR from specific judges are required to show surgical transition.

<sup>127</sup> Some judges have explicitly required applicants to start hormone treatment.

SI <sup>128</sup>	129	130		131	✓
SK	✓	✓	✓	✓	✓
UK	132			133	✓

#### 6.2.4 Unclear requirements

Five EU Member States do not provide for clear procedures by which competent authorities can change the name and/or gender markers of transgender individuals in their records. In Bulgaria, Cyprus, Lithuania, Latvia, and Romania, national legislation recognises the right to change the gender marker on official documents but does not specify the procedure to follow, leaving applicants in a state of legal uncertainty. The requirements are thus established by civil servants or courts on a case-by-case basis or following a certain practice/ jurisprudence.

#### 6.2.5 Requirements linked to the applicant's family situation

LGR national requirements can include conditions affecting the applicant's family and civil status, such as divorce. While the ECtHR has refused to consider it a violation of the Convention where the conversion of the marriage of a transgender woman into a registered partnership is a precondition of LGR<sup>134</sup>, the UN Human Rights Committee has condemned the divorce requirement as incompatible with the International Covenant on Civil and Political Rights (ICCPR)<sup>135</sup>.

At present, 14 EU Member States do not recognise same-sex marriage, which creates an important legal issue for married applicants for LGR (Bulgaria, Cyprus, Czechia, Estonia, Greece, Croatia, Hungary, Italy, Lithuania, Latvia, Poland, Romania, Slovenia, Slovakia). Various options have been implemented in these countries to address this legal inconsistency. In the best case, the divorce requirement is mitigated by the possibility to change marital status to a legal partnership that safeguards some rights of the spouses and their children<sup>136</sup>. In other cases, divorce is explicitly stated as a precondition to LGR (Greece, Estonia) or administrative practice (Hungary, Slovakia).

Finally, nine countries<sup>137</sup> have a legal void with respect to the marital status of LGR applicants. It is unclear whether divorce is required by the legislation, but the prohibition

<sup>128</sup> Legal requirements and requirements in practice are very different in Slovenia.

<sup>129</sup> Slovenian legislation provides that the applicant must submit a certified statement which 'clearly states that a person has changed their sex'. It is unclear what this formulation entails and whether gender-affirming surgery is required via this provision.

<sup>130</sup> There is no explicit statutory requirement for the sterilisation of persons before the change of their legal gender, but in practice most of the persons who applied for the change were undergoing hormone therapy at a minimum.

<sup>131</sup> The majority of individuals who apply for LGR in Slovenia are undergoing hormone therapy. However, the law does not require hormone therapy.

<sup>132</sup> In the UK, applicants must have, or have had, a documented diagnosis of 'gender dysphoria' by a doctor or psychologist from the Gender Recognition Panel's list of experts. In addition, applicants must undergo, have been prescribed or are undergoing treatment for the purpose of modifying sexual characteristics. There is no requirement for surgery or hormonal treatment per se, however there must be medical treatment involved. Either some type of surgery modifying sexual characteristics or hormone treatment must be undergone. Gender Recognition Act 2004 and UK Trans Info, Guide to UK legal gender recognition, 2015.

<sup>133</sup> See previous footnote.

<sup>134</sup> ECtHR, *Hämäläinen v. Finland* No. 37359/09 (2014); See also *Parry v. the United Kingdom* No. 42971/05 and *R. and F. v. the United Kingdom* No. 35748/05.

<sup>135</sup> *G v Australia* (CCPR/C/119/D/2172/2012).

<sup>136</sup> Legal partnership is not equivalent to marriage in respect of the rights granted to the spouse and/or children.

<sup>137</sup> Croatia, Romania, Slovakia, Slovenia, Latvia, Lithuania, Bulgaria, Cyprus, Czechia.

of same-sex marriage in these countries makes some unions legally void or leaves them in an unclear legal situation once the gender change is legally recognised.

Another important impact of LGR on a transgender person's family situation is the recognition of their gender on their parental status. Only three Member States (Belgium, Netherlands, Sweden) allow transgender individuals to be recognised as '(co)mother', '(co)father' or 'parent'. In Malta, the law now designates individuals as 'Parent 1' and 'Parent 2' (rather than mother and father). Italy allowed a trans woman, who had been registered as the 'father', to re-register as 'mother'.

Denmark<sup>138</sup>, Germany<sup>139</sup> and Greece<sup>140</sup> have officially rejected the recognition of an individual's gender in their parental status, while other Member States have not yet ruled on the topic.

Finally, Poland has the relatively unique requirement that LGR applicants must file a case against their parents. This is discussed in more detail in Section 6.2.2 above.

### 6.2.6 Time requirement

Some Member States have imposed a timeframe on individuals in accessing LGR. Time requirements are implemented at different stages of the procedure. In some cases, applicants must prove that they have been living publicly in accordance with their gender identity for a certain period of time<sup>141</sup>. The so-called 'real-life experience' (RLE) requires a person to live for a certain period of time in line with their gender identity without official documents to support that identity. This can be a particularly burdensome experience for transgender individuals, who must live in their gender without legal recognition, 'prove' that they effectively identify with this, as well as for persons with a non-binary gender identity, who must 'act' a gender identity that is not theirs in order to fit the assessment of a binary 'real-life experience'.

By contrast, Malta has explicitly established a maximum (short) duration of the procedure in its legislation.

Table 6. Malta good practice - Clear LGR timeline

#### Malta good practice - Clear LGR timeline

An LGR request filed with the Director for Public Registry must be noted in the birth certificate of the applicant within 15 days. No later than one month from the publication of the declaratory deed containing a copy of the applicant's birth certificate, the applicant must indicate which other acts of civil status need to be amended. Within 15 days of the Director's note, the applicant must request amendment and issuing of a new identity card and other identification documents indicating the gender and the first name of the person, reflecting the amendment to the person's birth certificate<sup>142</sup>.

### 6.2.7 Age requirement

Accessibility of LGR for minors varies between Member States. In 2019, most countries (17)<sup>143</sup> explicitly prohibited LGR for children under 18 years old.

<sup>138</sup> Laid down in the Children's Act, No. 1097 of 07/10/2014.

<sup>139</sup> Constitutional Court, 1 BVR 3295/07, 11 January 2011.

<sup>140</sup> Law 4487/2017 on the legal recognition of gender identity.

<sup>141</sup> Austria, Bulgaria, Cyprus, Czechia, Germany, Estonia, Spain, Italy, Lithuania, Latvia, Poland, Sweden, Slovakia, UK.

<sup>142</sup> Malta Gender identity, gender expression and sex characteristic Act of 14 April 2015.

<sup>143</sup> Bulgaria, Cyprus, Czechia, Denmark, Estonia, Spain, Finland, France, Hungary, Lithuania, Latvia, Poland, Romania, Sweden, Slovenia, Slovakia, UK.

Countries<sup>144</sup> allowing minors to apply for LGR include additional requirements, such as medical and psychological tests or attestations, parental approval, or burdensome procedural requirements. It is important to be aware that the existence of age restrictions regulating access to LGR are debated within the trans community. The scope of this study is restricted to LGR procedures for trans adults.

### 6.3 Full overview of LGR requirements across the EU and legal 'clusters' for this study

To encompass similar approaches, this report has developed legal 'clusters' of the EU Member States and the UK, depending on their requirements for LGR. Table 7 presents an overview of these. The human rights standards identified in Annex 5 form the baseline against which the national LGR legal requirements are measured for the clustering exercise.

As of 2019, the Member States could be clustered into five different groups. This categorisation is based on the level of intrusiveness of the requirements necessary to access LGR, the complexity and opacity of the procedure (often reflecting a paternalistic approach to LGR).

The countries are clustered based on the types of legal requirements they established to access LGR. They are structured about some of the requirements described above, although waiting time and age requirements were not decisive in the categorisation of countries. Instead, the presence of self-determination requirements, medical requirements, unclear requirements, judicial procedures and family-related requirements played a role in the groupings of these clusters.

Clustering countries based on legal requirements has inevitable limitations. While the legal requirements may appear in line with human rights standards, the implementation of these standards can be problematic (see Section 8). These clusters rest upon the assumption that national legal standards are being followed in practice.

Table 7. Summary of legal clusters based on types of LGR legal requirements

Cluster	Countries in cluster	LGR requirements
1	Bulgaria Cyprus Lithuania Latvia Romania	Cluster 1 comprises five countries which, although having previously recognised legal changes of gender marker, <b>do not lay down LGR procedures</b> , thus leaving decision-making bodies free to impose the requirements arbitrarily. Although there are no formal divorce requirements in these countries, none of the five Member States recognise same-sex marriage, meaning that same-sex unions may become legally void in practice when some individuals access LGR. Only Cyprus recognises same-sex civil unions (since 2015), while the other countries do not recognise any formal form of same-sex relationship status.
2	Slovakia Czechia Poland* Finland Austria Estonia* Spain	Cluster 2 gathers countries imposing <b>intrusive medical requirements</b> , such as gender-affirming surgery, sterilisation or gender-affirming hormone therapy. Those nine countries have established preconditions to LGR that include physical intervention requirements (sterilisation, surgery, hormone therapy), often combined with a requirement of diagnosis of

<sup>144</sup> Austria, Belgium, Germany, Greece, Croatia, Ireland, Italy, Luxembourg, Malta, Netherlands, Portugal.

	Italy* UK <sup>145</sup>	'gender dysphoria'. This cluster includes countries with (*) and without divorce requirement.
3	Slovenia Germany Hungary* Croatia Sweden Netherlands	Cluster 3 groups countries imposing <b>requirements for mental health diagnoses</b> or at least medical supervision/opinions on applicants. These six countries contain a (legal) diagnosis requirement, in the form of official diagnosis, testimonies or opinions of a psychiatrist, psychologist and other medical professionals such as endocrinologist, or other forms of medical or psychological supervision. This cluster includes countries with a divorce requirement (*) and those without.
4	Greece* France	Cluster 4 includes countries that do not require any medical intervention or diagnosis but have <b>procedural requirements</b> . The two countries in this cluster have no medical requirements (either physical interventions or mental health diagnoses) but require either divorce (*) or a judicial procedure.
5	Belgium Denmark Ireland Luxembourg Malta Portugal	Cluster 5 gathers countries implementing the most accessible LGR procedures, i.e. those where <b>self-determination</b> prevails in procedures. This cluster includes the countries across the EU following the highest human rights standards of the legal requirements set in their legislation to access LGR.

Note: EU Countries with a divorce requirement have a \* attached.

These clusters also do not take into account legal developments since this time. At the time of this report's publication, the Hungarian government adopted a bill to ban access of trans people to legal gender recognition<sup>146</sup>. The implication of this is that Hungary no longer falls under the study's cluster 3 classification and may also no longer comply with international human rights standards<sup>147</sup>.

## 6.4 Conclusions from this chapter

LGR is the process(es) by which individuals request their first name and/or gender marker to be changed in their administrative records so that official registers and their documents, including identity documents and birth or civil status certificates, match their gender identity.

<sup>145</sup> In the UK, applicants must have, or have had, a documented diagnosis of 'gender dysphoria' by a doctor or psychologist from the Gender Recognition Panel's list of experts. In addition, applicants must undergo, have been prescribed or are undergoing treatment for the purpose of modifying sexual characteristics. There is no requirement for surgery or hormonal treatment per se, however there must be medical treatment involved. Gender Recognition Act 2004 and UK Trans Info, [Guide to UK legal gender recognition](#), 2015.

<sup>146</sup> See for example, Holroyd, M. (2020) 'Hungary passes bill ending legal gender recognition for trans citizens'. Euronews. 20 May 2020. Available at: <https://www.euronews.com/2020/05/20/hungary-passes-bill-ending-legal-gender-recognition-for-trans-citizens>

<sup>147</sup> See Statement of the Standing Committee of the Conference of INGOs of the Council of Europe adopted on 27 April 2020. 'Call on Hungarian Parliament to align legal gender recognition with internationally recognized human rights standards'. Available at: <https://www.coe.int/en/web/ingo/-/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards>

As of 2019, LGR practices existed across all EU Member States to allow transgender people to have their gender recognised, although five countries (Bulgaria, Cyprus, Lithuania, Latvia, Romania) had not laid down a clear procedure in law. Instead, applicants in these countries must access the procedure in courts and rest upon the decision of judges. At the other end of the spectrum, six Member States (Belgium, Denmark, Ireland, Luxembourg, Malta, Portugal) base their LGR procedures on self-determination and fully comply with what are seen to be the highest possible human rights standards, as set out in the Yogyakarta Principles (see Annex 5).

The legal requirements for individuals to change their legal gender differ substantially by Member State. Access to LGR remains challenging in most EU Member States. Some legal requirements not only result in difficult and disproportionate burden on transgender people, but in the case of divorce or sterilisation requirements, are in clear violation of the case-law of the European Court of Human Rights (ECtHR) and binding human rights standards.

Accessibility of LGR for minors varies between Member States. Most countries (17) explicitly prohibit LGR for children under 18 years old. Additionally, some Member States have imposed a timeframe on individuals in accessing LGR, for example requiring applicants to 'prove' that they have been living publicly in accordance with their gender identity for a certain period of time. The so-called 'real-life experience' (RLE) requires a person to live for a certain period of time in line with their gender identity without official documents to support that identity.

The study groups countries into legal 'clusters', depending on their medical and judicial requirements for LGR. The legal clusters do not take into account waiting requirements or age requirements.

Countries in these clusters have been ranked from having the least accessible LGR procedures (clusters 1 and 2) to having the most accessible (cluster 5). The least accessible requirements are based on a more paternalistic or pathologising approach, whereby either the state (through courts or other bodies) or medical experts are seen as best placed to assess the gender of a person. These legal frameworks reflect an approach whereby transgender individuals are seen as needing to be 'tested' on their commitment to their gender identity. The most accessible frameworks reflect the self-determination approach, with transgender people seen as best placed to identify their own gender, and swift and accessible procedures in place. These clusters were defined in summer 2019 and do not take into account legal developments since this time.

This chapter is important for understanding the formal standards for accessing legal gender recognition across different EU Member States, as of 2019. The next chapter takes a different focus and considers the use and accessibility of procedures in practice. The formal design of legal procedures (presented in Chapter 6) has a direct consequence when it comes to how accessible they are (as shown in the next chapter).



## 7 Overall use and accessibility of legal gender recognition procedures

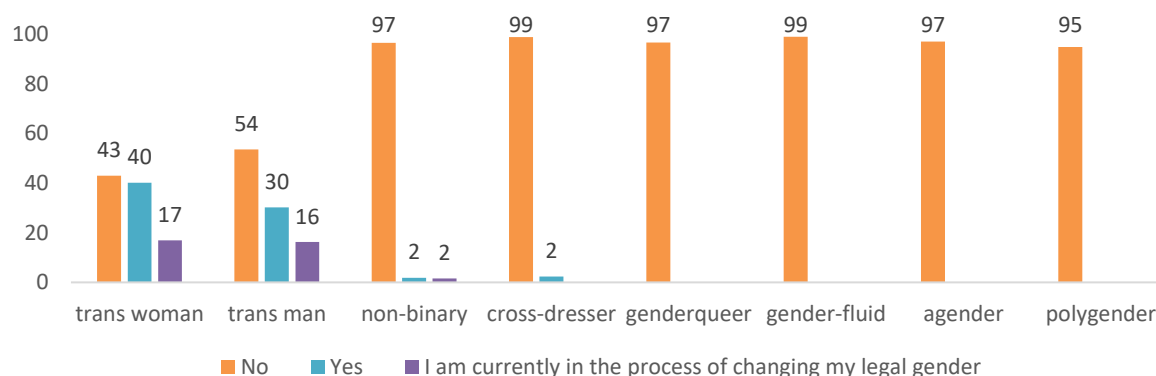
Whereas the last chapter looked at the official requirements to change one’s gender, this chapter considers how much individuals access and make use of LGR procedures in practice. It also considers motivations/reasons why individuals may want to use LGR procedures (or not). The design of the law itself may be one cause, but there are also other factors affecting LGR use. Finally, the chapter considers some consequences for those who are unable to access recognition of their gender before the law.

### 7.1 Use of LGR procedures and level of unmet demand

LGR procedures are used at relatively low levels by the overall trans population. Around three in four trans individuals (78%) living in the EU have not changed their legal gender (FRA LGBTI survey, 2019). This may make it harder for individuals to live fully according to their gender identity and is potentially problematic for several other reasons (see Section 7.4).

When interpreting these data, it is important to note that the **gender identity of trans individuals is highly important in affecting the degree to which they use LGR procedures** (see Figure 30 below). While 57% of trans women and 46% of trans men have changed, or are changing, their legal gender in the EU, only 4% of non-binary people, and 2% or fewer cross-dressers and people who are genderqueer, gender-fluid, agender and polygender are doing so. In other words, 95% or more of the identity groups represented in the trans population in the EU other than trans women and trans men have not changed their legal gender (FRA LGBTI survey, 2019). The groups who have not used LGR are also most likely not to have an appropriate gender marker available to them within the system, due to the existence of only gender-binary options in most EU Member States (see Section 7.2.4).

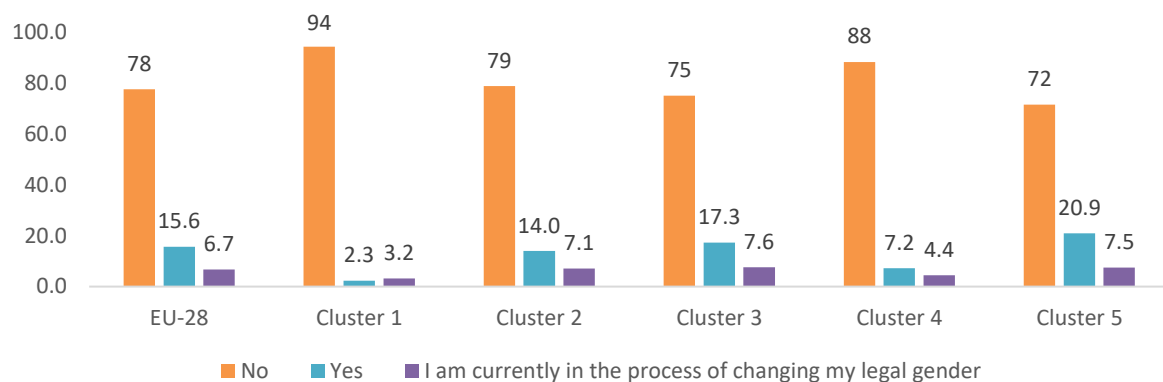
Figure 30. Trans individuals who have changed their legal gender, by identity group (%), EU-28 average<sup>148</sup>



The design of LGR procedures has an important bearing on their use. As shown in Figure 31, only 1 in 50 trans individuals change their legal gender when living in countries with unclear LGR procedures (cluster 1), yet around 1 in 5 of those living in countries with more accessible processes do so, according to the FRA LGBTI survey data (2019).

<sup>148</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: ‘Have you had your legal gender changed?’ Base: Trans respondents in the EU LGBTI Survey II (n=20,143). Not shown: respondents who answered ‘Other, please specify’, ‘Prefer not to say’, and ‘Don’t know’ on Question A6\_1 How would you describe your current gender identity?. Also not shown: ‘Yes’ for genderqueer, gender-fluid, agender and polygender, and ‘I am currently in the process of changing my legal gender’ because there are fewer than 20 observations in these cells. EU-28 weighted average.

Figure 31. Trans individuals who have changed their legal gender (%), by cluster and EU-28 average<sup>149</sup>



A range of other factors can also affect motivations to make use of an LGR procedure and these are described in more detail in the following section.

## 7.2 Motivations and reasons for (not) using LGR procedures

While the reasons for using LGR procedures varied between and within clusters, key motivations included:

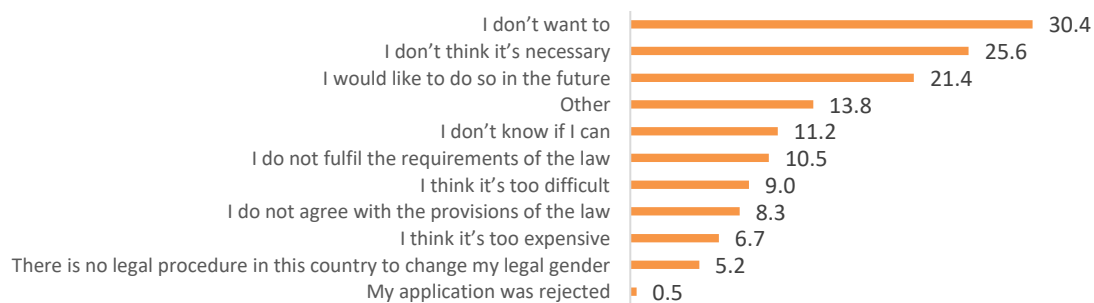
- Overcoming ID problems/avoiding being outed;
- Legal protection or sense of security;
- Accessing medical or administrative services (e.g. name change);
- Recognition of self;
- Avoiding misgendering;
- Relieving psychological burden.

Equally, trans individuals point to a range of motivations for choosing not to make use of an LGR procedure. As reflected by the FRA LGBTI survey data (see Figure 32 below), most commonly, trans people do not want to or feel it is unnecessary. It is not possible to know the reasons why individuals felt this way. Some individuals are also put off by particular requirements in the law, by its difficulty/expense, or because they find it unclear.

Trans individuals may have multiple reasons for not going through LGR, and the data in the Figure below allows for the possibility that individuals selected several answers. For instance, a share of those who stated that they did not want to go through LGR also selected other reasons for not accessing this procedure. This may indicate potential demand in some cases, as it may show that (if the other obstacles were overcome), individuals would change their minds and wish to go through LGR.

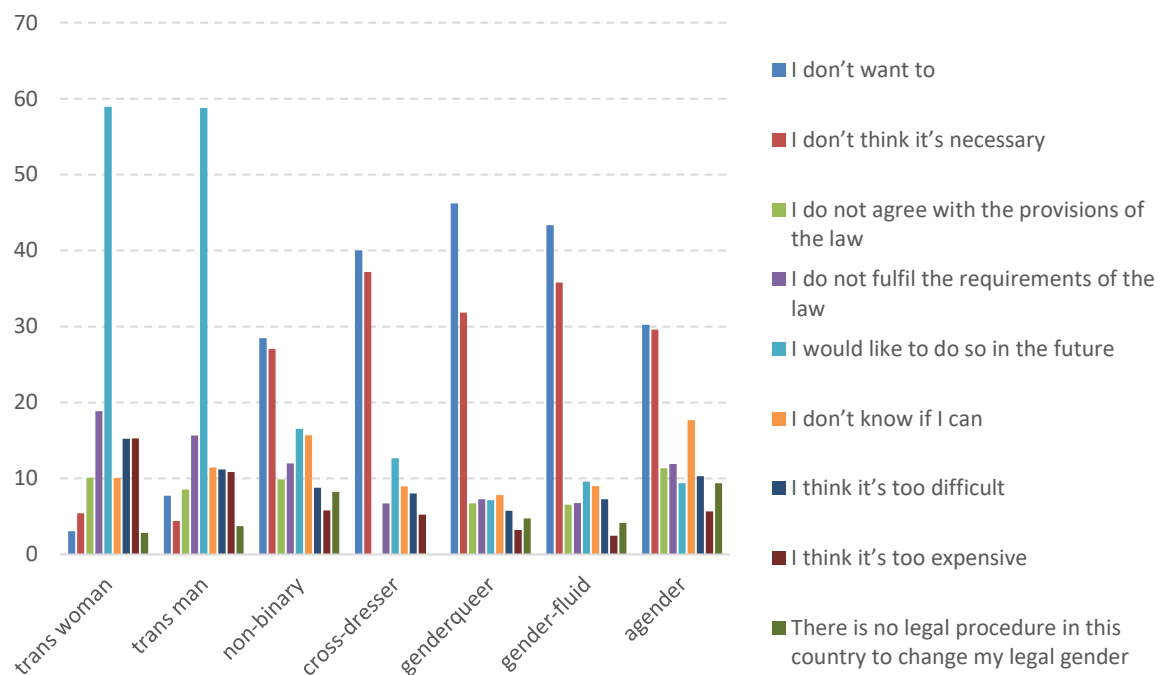
<sup>149</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'Have you had your legal gender changed?' EU-28 weighted average. This was asked only of trans respondents. Base: Trans respondents in the EU LGBTI Survey II (n=20,143).

Figure 32. Reasons for not changing legal gender, EU-28, % of trans respondents who have not changed their legal gender<sup>150</sup>



As shown in Figure 33, there are substantial differences by gender identity in trans individuals' reasons for choosing not to go through LGR procedures. In particular, there are large variations in the apparent demand for LGR.

Figure 33. Reasons for not changing legal gender, EU-28, % of trans respondents who have not changed their gender, by gender identity<sup>151</sup>



**Trans women and trans men show the highest level of demand for LGR**, with nearly 60% of each group stating that they would like to go through LGR in the future. The other most common reasons why these two groups had not undergone LGR were

<sup>150</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'Is there a reason why you did not have your legal gender changed yet?' Multiple answers possible. Base: Trans respondents who have not changed their legal gender (n=15,726). EU-28 weighted average.

<sup>151</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'Is there a reason why you did not have your legal gender changed yet?' Multiple answers possible. Base: Trans respondents who have not changed their legal gender (n=15,726). EU-28 weighted average. Not included due to low base numbers: those who identified as polygender, those who answered 'Other', 'Don't know' and 'Prefer not to say' when asked about their gender identity, those who answered 'My application was rejected', cross-dressers who stated 'I do not agree with the provisions of the law' and 'There is no legal procedure in this country to change my legal gender'. 'Other' reasons excluded for simplicity.

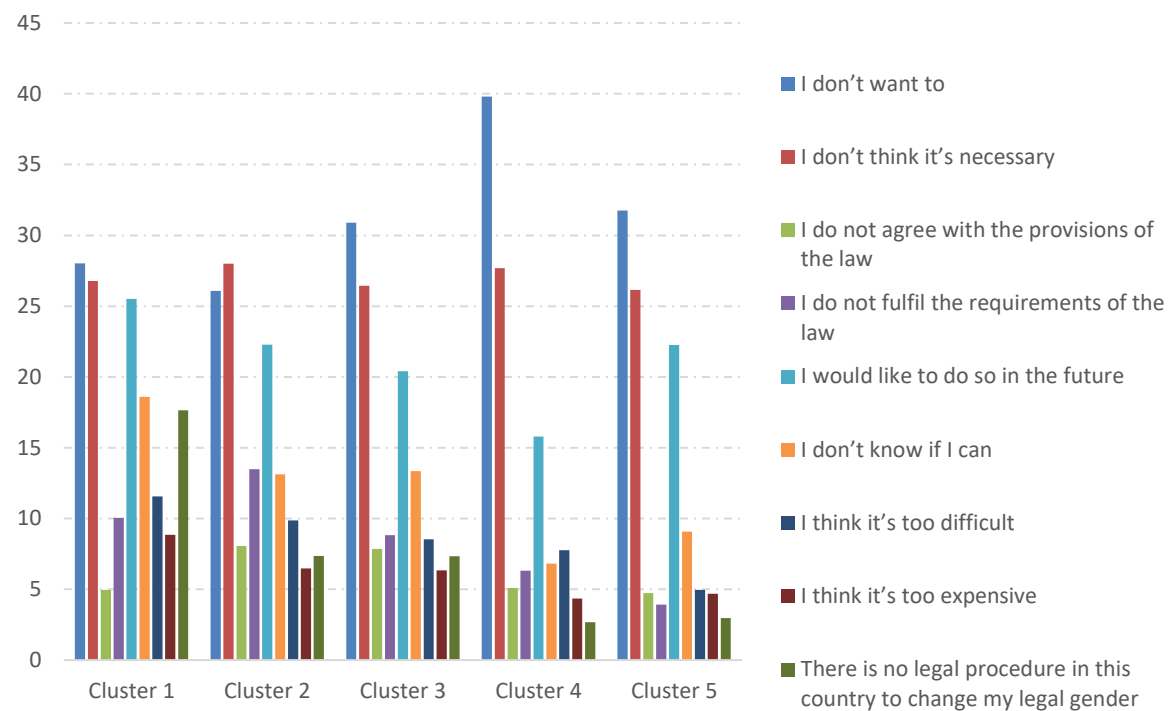
linked to the obstacles arising from the design and implementation of the law, e.g. not fulfilling the law's requirements or objecting to its difficulty and expense. It is unusual for trans women and trans men to show limited interest in LGR procedures. Fewer than 5% of trans women and fewer than 10% of trans men stated that the reason they had not gone through LGR was because they did not want to or because they did not think it was necessary.

**Individuals with gender identities outside of the binary are less likely to desire a change in their legal gender marker.** For example, 40% or more of people who are genderqueer, cross-dressers and gender-fluid 'do not want' to undergo LGR (the most common reason that these groups gave). This is also the most frequently given reason by non-binary people and agender people for not changing their legal gender (approximately 30% of each). As mentioned, this may relate to the legal gender markers available within a country. For example, very few European countries offer a 'third gender' or gender-neutral option (see Section 7.2.4), which may be the preferred option for some non-binary and genderqueer people. It may also relate to individuals' personal experience of their gender identity. For instance, some individuals with a more dynamic identity may not wish to be categorised in a singular way.

Although individuals with gender identities outside the binary generally appear to have less interest in LGR than trans women and trans men, there is nevertheless some demand among these groups. For instance, 17% of non-binary people and 13% of cross-dressers stated that they would like to go through LGR in future.

Figure 34 shows important differences by cluster with respect to the barriers/reasons why trans individuals do not go through LGR. For example, it was most common for those living in a cluster 1 country to say that they did not know if they could access LGR (18%). This is likely to relate to the fact that these countries do not lay down a clear LGR procedure. Individuals from cluster 2 countries were most likely to find LGR unnecessary, to state they did not agree with the provisions of the law or not to fulfil the requirements of the law. The difficulty of the LGR procedure was most commonly reported as an obstacle by those from cluster 1 countries, followed by cluster 2, and then cluster 3.

Figure 34. Reasons for not changing legal gender, by legal cluster (%)<sup>152</sup>



The consultation activities of this study provided further insights into some of the LGR barriers and motivations that the FRA survey identified. These are presented in the following sections.

### 7.2.1 Complicated or unclear procedures

One reason that trans individuals give for not making use of LGR procedures is because they are seen as **unclear or overly difficult**. Around 11% of all trans respondents stated that they did not know if they could go through LGR, and 9% stated that it was too difficult (FRA LGBTI survey, 2019 – see Figure 32 above). Individuals living in cluster 1, cluster 2 and cluster 3 countries are most likely not to know if they can use a procedure of this kind or to find it too hard.

Similarly, some respondents to our online consultation who had decided not to go through an LGR process, or who were uncertain about doing so, noted their lack of understanding of the requirements. Some interview participants also stated that they found the process complicated and intimidating, which had contributed to their decision not to go through it.

*'Most people don't get legal recognition because it's too complicated or expensive or they don't have the time.'*

Trans man, aged 25-34, residing in the UK (cluster 2)

*'The process is too long and complicated for my mental health.'*

Trans man, aged 18-24, residing in France (cluster 4)

*'Method is complicated, lengthy and expensive and that scares me off.'*

Trans woman, aged 18-24, residing in Germany (cluster 3)

<sup>152</sup> Source: FRA (2019). EU LGBTI Survey II. The question asked: 'Is there a reason why you did not have your legal gender changed yet?' Multiple answers possible. Base: Trans respondents who have not changed their legal gender (n=15,726).

Of the respondents to the online consultation who had not yet been through an LGR procedure, nearly one in six (16%) reported the lack of a clear procedure as the reason. Similar to the findings from the FRA LGBTI survey (2019), it was a commonly cited reason among respondents in a cluster 1 country and was also reflected in interviews and focus groups with participants residing in a cluster 1 country. For example, the respondent below shows that requirements vary depending on the judge's requests, highlighting potential inconsistencies within Romania.

'The actual requirements are not very clear, as the legislation on this is very vague. It depends on what the judge requests.'

Man with a trans history, aged 18-24, residing in Romania (cluster 1)

Several participants residing in Hungary reported that the LGR process had been suspended in practice<sup>153</sup>. A trans woman living in Hungary described the process as a 'complete catastrophe'. As a result, she is considering moving to another country to access LGR, but expects she would endure a significant wait to get citizenship there, as this is often a pre-requisite for LGR (see Section 7.2.3).

The **role of NGOs was frequently highlighted as essential** to supporting individuals to navigate the LGR process and – in some cases – mitigating the barriers of complex or unclear procedures. For example, participants in focus groups in Greece and Portugal described the work of NGOs in raising awareness of the law, providing legal support to trans people, and seeking clarifications from the government where processes are unclear. Participants in the Lithuanian focus group similarly emphasised the crucial role of NGOs in supporting individuals but noted that people must first be aware of these NGOs, which is itself an obstacle, especially for those living outside of big cities.

Within countries with more complex procedures, such as those with medical requirements, there may be additional barriers. Some participants explained that they intend to change their legal gender marker but are struggling to access relevant medical professionals, to fulfil the LGR requirements. These challenges are further discussed in Section 8.2.

'I am just starting the diagnosis phase, and without papers from specialists (which are expensive and hard to find) I can't start.'

Trans man, aged 25-34, residing in Poland (cluster 2)

'[The LGR procedure in my country of residence] requires hormone treatment, which is difficult and expensive. I live in a big city but would need to commute 100 km to the nearest competent sexologist.'

Trans man, aged 18-24, residing in Poland (cluster 2)

'There is a long waiting list here. It's over two years. I'm on the waiting list and until they call me up, I cannot change my gender legally. Being on a waiting list for so long is tough.'

Non-binary person, aged 25-34, residing in the Netherlands (cluster 3)

<sup>153</sup> This account pre-dates the latest legal developments in Hungary. In spring 2020, the Hungarian government adopted a bill to ban the access of trans people to legal gender recognition. This bill means Hungary no longer falls within cluster 3 and may no longer be compliant with international human rights standards. See Statement of the Standing Committee of the Conference of INGOs of the Council of Europe adopted on 27 April 2020. 'Call on Hungarian Parliament to align legal gender recognition with internationally recognized human rights standards'. Available at: <https://www.coe.int/en/web/ingo/-/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards>

### 7.2.2 Cost

The FRA LGBTI survey (2019) reveals that **cost can prevent individuals from accessing the LGR** procedure, particularly those living in cluster 1 countries. Similarly, among respondents to the online consultation of our study, affordability was frequently given as the reason for not going through or being uncertain about LGR. This was a particular issue among those who are unemployed. Of the (75) respondents who were unemployed and provided detail on why they had not been through an LGR process, more than 40% stated that they could not afford to. This reflects the findings in Chapter 4 on the barriers that trans people face in accessing employment, as well as the impression of high costs for LGR given later in this report (Section 8.4).

A few participants in our study also highlighted the economic impacts of going through an LGR process, beyond the direct costs. For example, participants in the Italian focus group described the negative impacts of the waiting times to receive new documents. One participant, who is a business owner, feared that going through the LGR process would negatively impact her company.

'If I start the LGR [process], I will spend all this money, but then there will be a span of time between the documents in which you are nobody.'

Transgender person, age unknown, residing in Italy (cluster 2)

Others emphasised other types of costs, such as the amount of time that the process takes and the emotional toll on the individual. One woman with a trans history in Germany stated that it is 'emotionally stressful' and spoke of her fear of the 'negative psychological consequences'. Others made similar comments.

'The process [is] time-consuming, expensive and potentially humiliating.'

Trans woman, aged 25-34, residing in Germany (cluster 3)

'I don't feel like I'm able to stand up in the court and explain that I feel like myself, a man. And it's not a choice, like what socks do I want to wear today, but just my life. I'm afraid that the judge will not be supportive [...] I'm not ready to go and listen - not in a normal conversation but in court - that I'm lying and should stay normal.'

Trans man, aged 18-24, residing in Poland (cluster 2)

### 7.2.3 Legal barriers to access

Legal barriers may make LGR processes inaccessible to, amongst others, those without citizenship, minors and those who desire a new gender marker that is not available (for example, a non-binary or neutral gender marker). Around one in 10 trans individuals stated that they had not been through an LGR procedure because they do not meet certain legal requirements (FRA LGBTI survey, 2019). This was most frequently stated among respondents in cluster 2 countries, and least frequently among respondents in cluster 5 countries, suggesting this may relate to the extent to which aspects of the LGR procedure (including medical requirements) are accessible. Overall, the groups most likely not to meet legal requirements were trans women (19%), trans men (16%), non-binary people (12%) and agender people (12%) (FRA LGBTI survey, 2019).

**Residence status** creates barriers to accessing LGR procedures in some Member States. There are additional challenges for people who emigrated or fled from their country of origin due to discrimination or persecution related to their gender identity. In this study, among respondents to the online consultation who had not been through LGR, 2% of respondents cited their migration status as the reason.

Several interviewees described the challenges they had faced in accessing LGR due to their residence status. One was advised that they would most likely not be successful in accessing the LGR procedure in their country of residence because they do not have



citizenship, but even if they were able to, they would require their country of birth to issue a new passport, which they felt was unlikely.

'[I consulted with a trans rights organisation] and my basic question was: [as a person without German citizenship] can I use the process in any way? And together we came to the conclusion that my chances to get my legal gender changed in Germany were low. And it made little sense to me [to try to go through the process in Germany], because I still wouldn't be able to change my gender identity on my passport, which is my main identifying document. I could go to court, and if the court decision was positive, the next step for me would be, logically, to take this court decision and go to the embassy [for my country of origin] to ask them to issue me a new passport. But they would most probably disregard a German court decision, because they have no obligation to respect it.'

Non-binary person, age 25-34, residing in Germany (cluster 3)

Representing a similar and concerning result, a participant residing in the Netherlands but without Dutch citizenship was concerned that accessing the LGR procedure in the Netherlands would negatively impact her residence status, as she was unable to get confirmation that the time she has spent living in the Netherlands under her current name would be counted in her citizenship application.

'If I changed my name in the Netherlands, then I risked losing the fact that I've lived in the Netherlands for the past six years and so would lose out on being able to apply for Dutch citizenship...I asked the Department to give me official recourse that that wouldn't happen, and they couldn't give me that written assurance.'

Trans woman, aged 18-24, residing in the Netherlands (cluster 3)

One trans woman living in the UK highlighted that **language barriers** can create challenges for people applying for LGR. This participant is trying to change her legal gender marker in two countries. She notes that she is 'barred' from the process in one Member State where she was previously resident, as she no longer lives there, and also highlights the barriers she has experienced in accessing medical services due to her language abilities.

**Refugees and those seeking asylum may be excluded** from LGR procedures in their country of residence. One participant who is currently in the process of claiming asylum in Denmark stated that they were unable to access the LGR procedure currently but would be able to once asylum had been granted. In other Member States, people seeking asylum may continue to face difficulties even when asylum has been granted. One participant residing in Germany, for example, highlighted that refugees there are unable to access the LGR procedure and are unable to go to their country of origin, so are stuck in a 'legal hole'. Similarly, participants in a focus group in Greece noted that the right to LGR in their country is only granted to those with a Greek birth certificate, meaning the process is inaccessible for immigrants and refugees.

'There are cases of transgender people that have received asylum in Greece and they have no right to obtain legal gender identity recognition.'

Trans person, age unknown, residing in Greece (cluster 4)

Reflecting a positive experience, one trans woman who had sought asylum in a cluster 2 country noted that although she had to endure a legal battle to receive asylum on the grounds of her gender identity, she was automatically given a passport that reflected her gender identity when she was granted asylum. In her words, 'A few months later my passport arrived [...] I checked the gender marker on my passport and it was female

[...] I didn't have to ask them to change it, they did it automatically. I was so happy, I was screaming'. However, she has been unable to change her birth certificate.

A participant residing in Malta similarly highlighted that the LGR procedure in the country is accessible to refugees and felt this should be replicated elsewhere.

'Refugees that come here and declare that they are trans and want to be recognised as the gender they want... They are obliged to register ... with the gender they feel comfortable with. And that's what other countries should do, basically.'

Trans man, aged 25-34, residing in Malta (cluster 5)

**Age** can present a legal barrier to accessing LGR procedures for minors. They may not be able to access LGR procedures at all, or, where they are able to access them, may face more stringent requirements. Although this study focused on LGR procedures for adults and thus does not provide an in-depth analysis of LGR procedures for minors, a few participants nevertheless highlighted these challenges. For example, several participants felt that it should be made easier for trans children and young people to access LGR procedures to help prevent physical developments during adolescence that do not align with their gender identity, to ensure recognition of their gender identity and access to gendered facilities that align with their gender identity.

One participant residing in Ireland had themselves gone through an LGR procedure as a minor and was subject to additional requirements as a result, including seeking confirmation from their GP and endocrinologist that they were mature enough to go through the process, before going before a judge. They found the process humiliating and frustrating.

'It was mortifying to be 17 and to have to stand in front of this judge and say "Well, am I male enough, sir? Is this good enough for you?".'

Transgender person, age unknown, residing in Ireland (cluster 5)

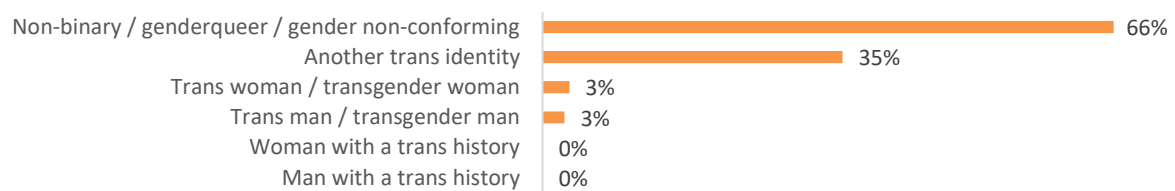
Another legal barrier that can prevent access to LGR is the lack of appropriate gender markers for trans individuals, such as non-binary people, genderqueer people and gender-fluid people. This is discussed in more detail in the following section.

#### 7.2.4 Limited choice of gender markers

LGR procedures often only allow a person to change their legal gender marker from one binary gender to another (i.e. from female to male, or from male to female), **and do not allow for accurate and full recognition of trans individuals with non-binary or dynamic gender identities**. While some people within these groups may still go through an LGR procedure where they feel that the other binary gender marker better reflects their identity than their birth-assigned sex, for others the procedure does not meet their needs. People who do identify with a binary marker but who disagree with the limited options available may also decide not to engage with the procedure, as a protest or a mark of solidarity with those who cannot access the appropriate markers.

Within the online consultation, the absence of a correct legal gender marker option was highlighted as a reason for not going through LGR by one-quarter of respondents. This included respondents residing in all five clusters and in most Member States. Respondents in a cluster 5 country were most likely to give this as a reason, while respondents in a cluster 4 country were least likely to give this reason. Perhaps unsurprisingly, this reason was most frequently given by people who identified as non-binary, gender queer or gender non-conforming. Within this group, two-thirds of respondents who had not been through LGR cited this reason (see Figure 35).

Figure 35. Proportion of respondents to the online consultation who gave 'Because the legal gender I want is not available' as a reason for not going through LGR, by gender identity (%)<sup>154</sup>



Dissatisfaction with current binary gender markers was also expressed by interviewees and focus group participants across the legal clusters, including by those residing in Lithuania, Italy, the UK, Spain, and France.

'There is only male and female, but I would like there to be a third gender, just like in Germany, but this would probably take another two lifetimes in Lithuania.'

Trans person, age unknown, residing in Lithuania (cluster 1)

'Being non-binary there would not be any gender marker changes able to meet my needs. Having the F on my ID card would perhaps be better than having the M, but it will not change too much.'

Non-binary person, aged 18-24, residing in Italy (cluster 2)

'No, I haven't changed my gender marker because I want a third gender "neutral" to appear in my ID and this is not an option in Spain at the moment.'

Non-binary person, aged 25-34, residing in Spain (cluster 2)

A non-binary person residing in Italy highlighted that even where a non-binary person does choose to go through an LGR process, they may face **challenges fulfilling certain requirements**, such as the 'real-life test', due to binary ideas about gender. They also suggested it may create difficulties accessing support within public healthcare, even among private medical professionals, where they are not specialists in trans healthcare.

'I am someone that does not [appear] in a gender conforming way because I do not wear clothes that are stereotypically feminine. This makes me think that those that will have to verify after the real-life test will not understand. I can see a certain level of gatekeeping, especially with those people that are gender non-conforming. That would be an additional obstacle [...].'

Non-binary person, aged 18-24, residing in Italy (cluster 2)

As a result, this participant, along with others, noted that non-binary people may feel obliged to act as though they have a binary identity in order to access treatment.

Several people mentioned the LGR procedure in Germany as an example of good practice, with one person even considering moving to Germany to access a wider range of legal gender markers. However, it should be noted that the third gender marker available in Germany is only officially available to people who are intersex<sup>155</sup>. Some

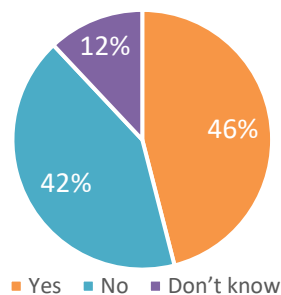
<sup>154</sup> Source: Online consultation of this study. The question asked: 'Can you please explain why you haven't changed your legal gender marker, or why you are uncertain? Please select all answers that apply to you', by gender identity. Base: Proportion of respondents who selected 'Because the legal gender I want is not available' (n=481).

<sup>155</sup> European Commission (2018). Trans and intersex equality rights in Europe – a comparative analysis, p. 67. Available at: [https://ec.europa.eu/info/sites/info/files/trans\\_and\\_intersex\\_equality\\_rights.pdf](https://ec.europa.eu/info/sites/info/files/trans_and_intersex_equality_rights.pdf)

participants also highlighted the non-binary legal gender marker options within LGR procedures in specific US states.

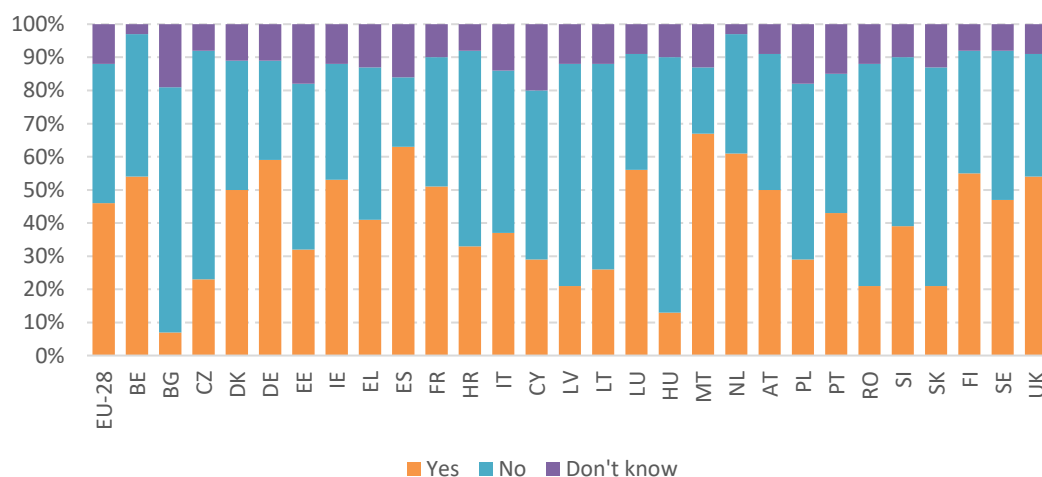
Acceptance of a third gender option remains a challenge across the EU. In the recent Eurobarometer survey on discrimination, an almost equal share of members of the public were for and against a third gender option on official documents (see Figure 36). This is much lower than the proportion of people who agree that people should be able to change their gender (59%). This low level of public opinion may be an indicator of limited social acceptance of non-binary people and of the ongoing challenges that trans organisations may face in advocating for legal recognition of the full range of identities within the transgender population.

Figure 36. Support for a third gender option on official documents, 2019<sup>156</sup>



As shown in Figure 37, public acceptance of a third gender marker option varies significantly by Member State. Particularly low levels of agreement are seen in Bulgaria (7%) and Hungary (13%), although levels are also low (less than 25%) in Czechia, Romania and Slovakia. The highest levels of agreement are found in Malta (67%), the only Member State to currently offer a third option for non-binary people, followed by Spain and the Netherlands. Notably, cluster 1 countries (Bulgaria, Cyprus, Latvia, Lithuania, Romania) tend to have the lowest levels of agreement (30% or less), while cluster 5 countries have higher than average levels of agreement (50% or more).

Figure 37. Public acceptance of a third option for gender marker, 2019 (%)<sup>157</sup>



<sup>156</sup> Source: Eurobarometer on Discrimination in the EU (2019). The question asked: 'Do you believe that official documents, like passports and birth certificates, should have a third option, such as X or O (other) beside male (M) and female (F) for those persons who do not identify as female and male?' Base: All Eurobarometer respondents (n=27,438).

<sup>157</sup> Source: Eurobarometer on Discrimination in the EU (2019). The question asked: 'Do you believe that official documents, like passports and birth certificates, should have a third option,

### 7.2.5 Barriers for those with long-term health conditions or a disability

People with physical and mental illnesses or disabilities can face barriers in accessing LGR. In countries with medical requirements, **a health condition or disability may limit a person’s ability to access the LGR procedure.** This is described by one participant in Romania, who noted that a person with a disability may be unable to go through LGR if they cannot go through hormone treatment. Similarly, a participant living in Spain described how they have been unable to go through LGR, as medical professionals have judged that they are not well enough to do so.

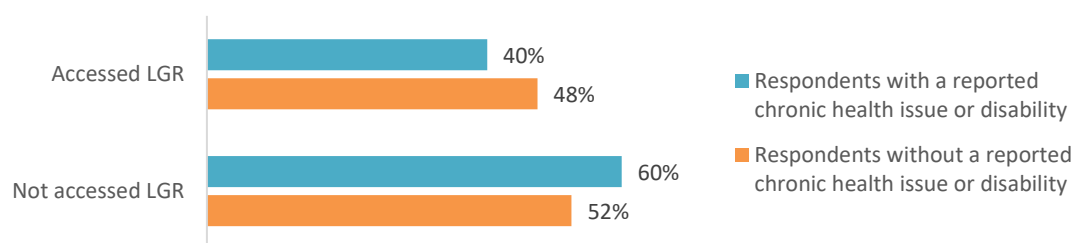
In some countries, those with mental health issues may also face difficulties accessing LGR procedures. One participant in Italy described how people with mental health issues – such as depression or anxiety – can be delayed in accessing LGR, or unable to access it at all. Another participant in Italy shared their experience as a person with a mental health condition. She described how her identity is questioned due to her condition. Due to the difficulties that trans people with health issues can face, she suggests that some trans people are quick to emphasise that they are well. However, she feels this further stigmatises those who *do* have a health condition. The testimony of this individual is given in the box below.

‘Indirectly, they stigmatise the person with mental health problems. In Italy, if you are a trans person you need to show that you do not have any mental health problems ... I suffer from bipolarism and borderline disorders, I am in psychological and psychiatric care, and I am also a trans person. I live the drama that I need to show that my self-determination is stronger than my disorders. Every time that a trans person says “I am not sick”, [it] is discriminating [against] those who are sick. There is nothing bad in saying that a trans person can have diabetes, thyroid problems, can be crippled, any other thing, but can also suffer from mental health disorders. If a person suffers of bipolarism, like in my case, they should not feel less in their [self-]determination.’

Trans person, age unknown, residing in Italy (cluster 2)

Some participants residing in cluster 2 countries also highlighted the issues that trans people with Asperger’s or autism can experience. One trans woman living in Spain reported that some of her colleagues with autism were unable to complete the procedure, while a trans man in Italy suggested that people with Asperger’s or autism might face difficulties collecting necessary evidence where they do not yet have a diagnosis.

Figure 38. Proportion of respondents to online consultation who have accessed an LGR process, by health or disability status (%)<sup>158</sup>



such as X or O (other) beside male (M) and female (F) for those persons who do not identify as female and male?’ Base: All Eurobarometer respondents (n=27,438).

<sup>158</sup> Source: Online consultation of this study. Question: ‘Do you have any chronic (long-standing) physical or mental health problems, illness or disability?’ Base: respondents to this question (n=825).

Other participants highlighted that even where there are no legal restrictions, accessing LGR procedures can still be more difficult for people with physical and mental illnesses, disabilities and neurodiversity. This is reflected in the proportion of respondents to the online consultation of this study with a chronic illness or disability who have accessed an LGR process, compared to respondents who did not report a chronic illness or disability. As shown in Figure 38, respondents with a chronic illness or disability were more likely not to have accessed an LGR process than those without.

### 7.2.6 Readiness

Around one in five respondents to the online consultation of our study who had not yet been through an LGR process stated that they need more time. Similarly, some interviewees explained that they were not yet ready to go through an LGR process, for example where they were in the process of coming out or transitioning, which they wanted to complete before going through the LGR process, or because they were waiting for a change in their circumstances.

'I moved back [to] France. I [will] wait to be more stable before starting the procedure.'

Non-binary person, aged 25-34, residing in France (cluster 4)

'I think I will start doing it when I start on hormones because I will be more secure about myself.'

Trans woman, aged 25-34, residing in Spain (cluster 2)

Another respondent, a trans man living in the Netherlands, felt that it would be 'too much of a hassle' to change his legal gender marker currently, but is planning to do so once he has transitioned, including undergoing hormone therapy. He described how he feels he currently has to live according to his birth-assigned sex, to avoid having to continually explain his gender identity to others.

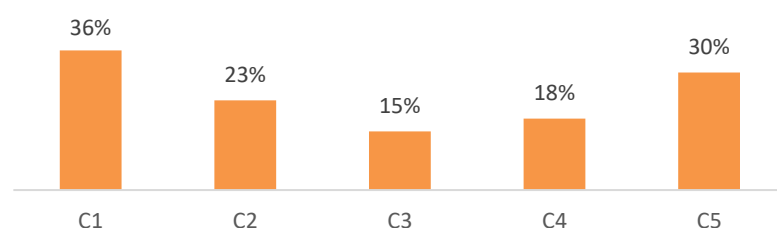
'I work at an office and people are constantly confused [...] To avoid this, I list myself as female again, just to not have to explain it every time I have to call someone or do something where they, mostly based on my voice, see me as female, and I'm listed as male...they aren't able to do one plus one.'

Trans man, aged 25-34, residing in the Netherlands (cluster 3)

### 7.2.7 Family

Around one in five respondents to the online consultation of this study cited family as the reason for not going through an LGR process or for being uncertain about doing so. It was most frequently cited by respondents in clusters 1 and 5 (see Figure 39).

Figure 39. Proportion of respondents to the online consultation who gave 'Because of my family' as a reason for not going through LGR, by cluster (%)<sup>159</sup>



<sup>159</sup> Source: Online consultation of this study. Proportion of respondents in each cluster who selected 'Because of my family' as a response to the question: 'Can you please explain why you



One participant, a trans man residing in Romania, provided an example of how family can impact the decision whether to go through an LGR process. He discussed the relationship between transitioning and parenthood and the impact that LGR has on both of these processes. He noted that he has chosen to transition later in life, after raising a child with his partner and felt that he would therefore not be able to prove his gender identity in court. He is also concerned that going through the LGR process would force him to come out, possibly to friends and family, and also in public.

'[As I am] not so fixed on transitioning due to procreation reasons (I am in a monogamous relationship where we want a child of our own and I have chosen to transition later in life after this is achieved), changing my gender legally, I feel, would not only be a tedious process here but would out me to people who disapprove ... [This would] put a strain on my relationship, as well as it being a very difficult process in proving my validity to the court if I don't choose to transition fully before pursuing it.'

Trans man, aged 18-24, residing in Romania (cluster 1)

Similarly, another participant noted that they wanted to have a child and was concerned about the amount of parental leave they would be able to access if they were legally recognised according to their male gender identity.

As explained in more detail in Chapter 6, respondents residing in Poland highlighted the strain that the Polish system can create between trans people and their families due to the requirement that they have to **sue their parents**. Participants in the Polish focus group were also concerned that their parents would not agree to the process.

'The LGR procedure requires us to take parents to court, which is absurd, causes conflict and imposes on human dignity.'

Non-binary person, aged 25-34, residing in Poland (cluster 2)

'I do not want to sue my parents, but in [Poland] it is necessary.'

Trans man, aged 18-24, residing in Poland (cluster 2)

### 7.2.8 Objection to LGR processes

Around 8% of trans individuals in the EU noted disagreement with the provisions of the law as the reason they had not changed their legal gender (FRA LGBTI survey data, 2019). This is highest in cluster 2 and 3 countries, likely reflecting the more burdensome requirements in those countries compared to countries in other clusters.

Participants in our study similarly expressed their objection to the LGR processes in the country they live in, in some cases on the grounds that they are discriminatory.

'The current procedure is discriminatory, patronising and humiliating and violates my privacy.'

Trans man, aged 25-34, residing in Germany (cluster 3)

Others **criticised the use of legal gender markers** altogether, on the grounds that they did not think a record of a person's legal gender is necessary or relevant. One participant was strongly opposed to going through a process that didn't allow self-determination, although noted that it would be preferable for the record of their gender to be 'one degree more accurate' (Non-binary person, residing in the Netherlands, cluster 3). Another described their objection in more detail below.

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haven't changed your legal gender marker, or why you are uncertain? Please select all answers that apply to you.' Base: respondents to this question (n=481).

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'I basically don't believe in LGR for anyone. I don't think that a legal gender marker is something we should have. I think it only serves regressive purposes to box people in that way. Of course, you need it for equality monitoring but we also don't legally assign someone's race on their birth certificate but that doesn't mean that we can't monitor racial equality in other ways. I guess it comes down to pride, I don't want to ask "please sir can I be a woman now", because I am one regardless of what they say. It's a fact and they can record it as they wish.'

Trans person with another gender identity, age unknown, living in the Netherlands (cluster 3)

Another participant raised concerns about the safety of having their gender identity on their documents. As a non-binary person who is also a migrant, a person of colour and a person with a disability, they feared that a non-binary marker could create an additional layer of differences which would hinder their application for a passport in their country of residence. They stated, 'ideally we would remove the gender marker'.

Other participants did not necessarily disagree with LGR processes in general, but did not want to fulfil certain medical or legal requirements, including hormone treatment, sterilisation and divorce. Several people described how they had waited until there was a change in the law in their country of residence before accessing the LGR process in order to avoid such requirements. Of the online consultation respondents who stated why they had not gone through an LGR process, or were uncertain about doing so, 22 (5%) stated they did not want to be sterilised, while four respondents (1%) did not want to get divorced.

### 7.3 Accessibility, clarity and speed of LGR procedures

Online consultation respondents with experience of an LGR procedure stated whether they agreed or disagreed that the LGR procedure was quick, transparent and accessible. Overall, respondents were more likely to disagree<sup>160</sup>.

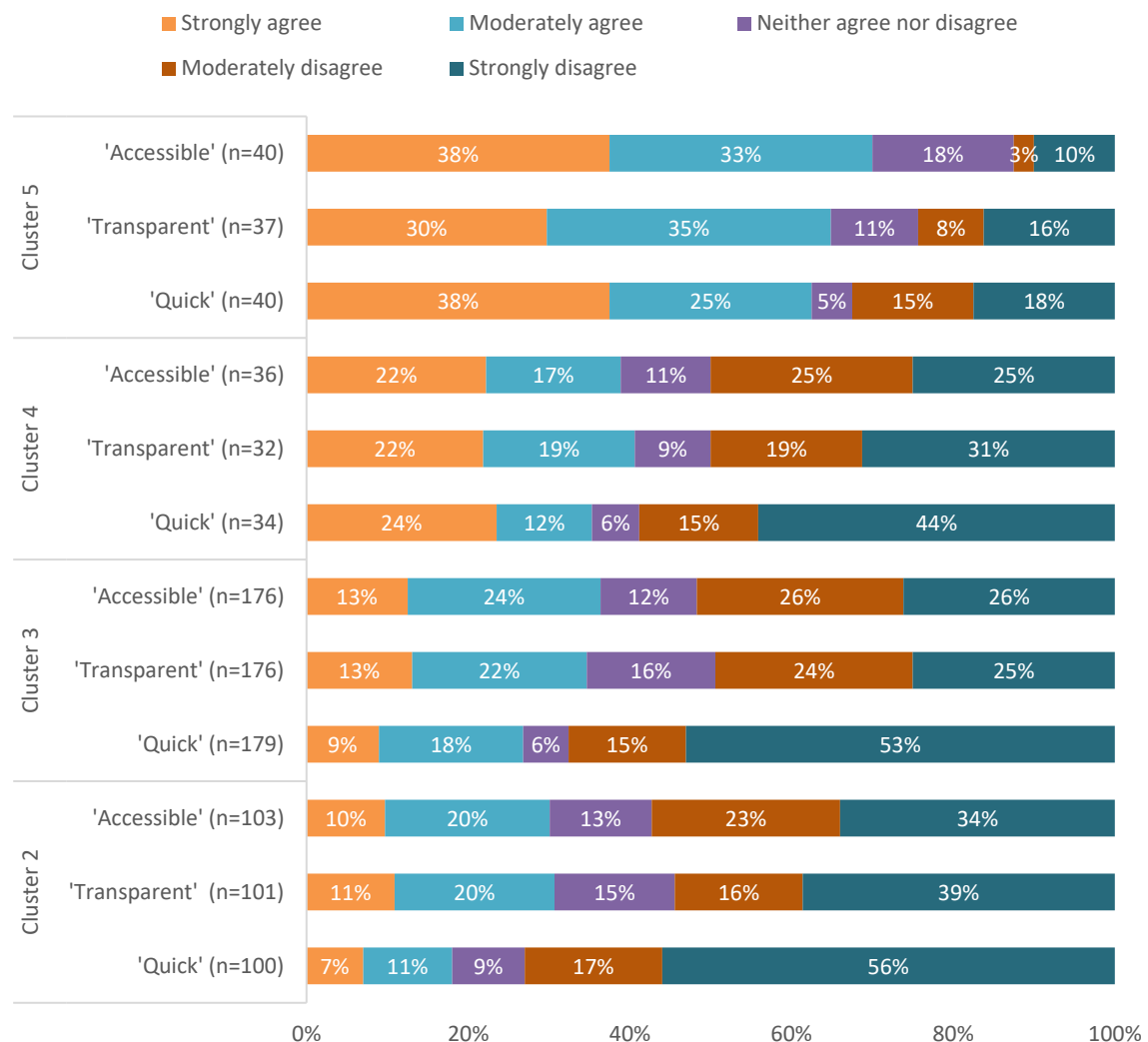
The extent to which respondents agreed that the procedure was quick, transparent and accessible varied significantly between the legal clusters, reflecting the differences in procedures between clusters. Overall, the level of agreement that the procedure was quick, transparent and accessible increased through the clusters, with highest levels of disagreement among respondents living in a cluster 2 country and lower levels of disagreement among those living in a cluster 5 country. Due to a low base number, it is not possible to analyse quantitatively the levels of agreement in cluster 1 countries.

The levels of agreement are much higher among respondents in cluster 5 countries than in any other cluster. This is the only cluster in which respondents were more likely to agree than disagree with the idea that the LGR procedure they experience was quick, transparent and accessible.

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<sup>160</sup> This finding reflects the views of all respondents with experience of an LGR procedure in their country of residence, including those who went through older LGR procedures that are no longer in force.

Figure 40. Level of agreement that the LGR procedure experienced is 'quick', 'transparent' or 'accessible', by cluster (5)<sup>161</sup>



Generally, **most respondents were negative about the speed of the LGR procedure encountered**: overall, nearly half strongly disagreed that this was quick, and a further 15% moderately disagreed<sup>162</sup>. Many participants noted that the length of time taken to complete their legal gender marker change was too long and they experienced negative impacts on their well-being as a result. One trans woman (aged 45-54) living in France – who had been through the previous LGR procedure and experienced significant delays – stated, 'It is long, painful and tedious. They do not realise that the fact of having to explain a journey from A to Z can be very painful for the person'. Another participant residing in the UK stated that it is common for individuals to suffer from depression due to the length of the procedures they face. The time-consuming process was often described by the participants at the Greek focus

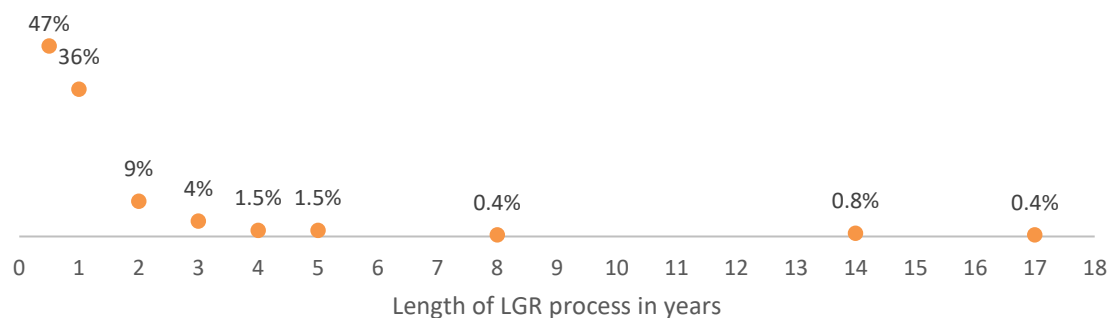
<sup>161</sup> Source: Online consultation of the study. Responses to the questions: 'In theory, countries should have quick, transparent and accessible procedures in place for LGR. To what extent do you agree that the LGR process you have experienced was/has been quick?', 'To what extent do you agree that the LGR process you have experienced was/has been transparent?' and 'To what extent do you agree that the LGR process you have experienced was/has been accessible?'. Base: (n=353 for 'quick', n=346 for 'transparent', n=355 for 'accessible'). 'Prefer not to say' and 'Don't know' answers excluded. Cluster 1 answers excluded due to low base number. Based on responses from respondents with personal experience of an LGR procedure.

<sup>162</sup> Based on 357 responses to the online consultation.

group as 'exhausting' and 'stressful', and was seen to seriously affect the mental health and daily life of trans people. A trans man in the Netherlands noted that, 'because of the lengthy procedure my life was on hold and my career did not advance as quickly as it could have. My income has suffered as a result'.

As shown in Figure 41, among respondents to the online consultation who had completed an LGR procedure, nearly half said it had taken them less than one year<sup>163</sup>. Around one-third stated that it had taken a year, while around one in 10 stated that it had taken them two years<sup>164</sup>. A small proportion of respondents had experienced an LGR process that had taken three years or more. The longest length reported was 17 years. The fact that just over half of those who go through LGR spent more than a year on the process demonstrates the significant commitment required.

Figure 41. Proportion of respondents by length of time spent on an LGR process, for those who have completed the process<sup>165</sup>



The next sections experience, by cluster, the experiences transgender people had when accessing LGR, in terms of their overall accessibility, clarity and speed.

### 7.3.1 Cluster 1: accessibility, clarity and speed of LGR procedures (Bulgaria, Cyprus, Lithuania, Latvia, Romania)

Participants in a cluster 1 country generally felt that the process was **long, complicated and unclear** and pointed to a high level of complexity and a lack of clear information. This is, perhaps, unsurprising, given that LGR practices in these countries are not laid down in law and national courts tend to exercise a high degree of discretion in allowing such cases to proceed.

Several participants in Romania provided detail on the length of time the process takes, stating that this can vary substantially from case to case and by region, as the process depends on the decision of a judge. For one participant, the process had taken seven months. Another had heard of instances where the process had taken eight months and others where it had taken 10 years. During the focus group in Lithuania, several participants underlined the notion of a complex procedure, requiring a lot of documentation and taking a long time. This is especially evident in the comments in the box below.

'It felt like getting a new document or appointment every second day, going back and forth all the time. It was too much, waiting all the time and having to keep track of everything at the same time.'

<sup>163</sup> Based on respondents who stated that they had begun and completed an LGR process in the same year.

<sup>164</sup> Based on the year in which the respondent began the LGR process and the year in which the respondent completed the process.

<sup>165</sup> Source: Online consultation of this study. Length of LGR process estimated based on calendar year in which the respondent began and ended the process, taking the mid-point of the year as the start or end date. In practice this means that lengths may be over- or under-estimated by nearly a year. Base: online consultation respondents (n=265).

Trans person, age unknown, residing in Lithuania (cluster 1)

'Without taking hormonal therapy for some time, the court would not consider my process and in my case the court questioned why I started the hormonal therapy only recently.'

Trans person, age unknown, residing in Lithuania (cluster 1)

Interviewees from Cyprus and Romania echoed the notion of complicated procedures. For example, one participant from Cyprus found the whole process arduous, frustrating and expensive, pointing to the many steps he had taken to track down a lawyer willing to undertake the process, the amount of money required to pay the lawyer and the rebuffs he had faced from various ministries. Other stories are shown in the box below.

'Very slow and way too much paperwork for something as basic as changing your name and gender. It is also painful to think that you require some sort of validation from a judge to align your identity on your ID.'

Man with a trans history, aged 18-24 years old, residing in Romania (cluster 1)

'The process I [went] through...I [had] to do a ton of long-distance travel. I [lived] in the other part of the country, and I have to go to Bucharest every now and then for the process and the jury meetings. It is pretty stressful and it does require time to go through all of it. It can also be pretty costly to be frankly honest. I would describe it as stressful.'

Trans woman, aged 18-24, residing in Romania (cluster 1)

'It requires a court decision to change my documents. That ... takes too long and is too complicated.'

Trans woman, aged 35-44, residing in Lithuania (cluster 1)

Respondents to the online consultation living in cluster 1 countries also highlighted the complicated procedures required, emphasising the time it takes to fulfil each requirement and the impact this has on the overall length of the process. For example, one respondent residing in Romania noted that the legal process they went through first required the judge to determine whether they had competence to judge on the issue. After the judge ruled that they did not have competence, the respondent was required to appeal the decision and then begin a new trial.

Others noted additional delays in the process due to time spent waiting for trial dates or court decisions. One participant residing in Romania noted that the waiting time for a court date can vary depending on the county and the workload of the court at the time - a person they knew had waited a year for their trial.

To varying extents, participants from Lithuania, Cyprus and Romania discussed the **arbitrary nature of court decisions on whether to grant LGR**. Individuals in Lithuania, Romania and Cyprus spoke of being required to take medical steps to support their legal application (for example, hormone therapy or gender-affirming surgery), despite this not being a formal requirement. For example, a trans man living in Romania noted that he is trying to find a suitable healthcare professional in order to access Hormone Replacement Therapy but, until then, 'There is no way I can get my gender legally recognised at this point'. Several interviewees from Romania rejected the idea that a standardised decision-making process is being followed by the courts, stating that, in practice, the approach can vary from case to case and from county to county.

'At the moment, we have no guarantee that the judge's decision will be positive and in our favour. So again, it's hit and miss.'

Trans woman, aged 25-34, residing in Romania (cluster 1)

'We need to have a clear legal procedure that any judge can follow. It should be a standardised procedure; you shouldn't have to explain your position in front of a judge and hope that [they] accept it.'

Trans man, aged 18-24, residing in Romania (cluster 1)

In one case, a transgender woman in Romania decided to reopen an application, as she viewed this as simpler than appealing the (negative) judgment of the first court. Following this, it took her around 2-3 months to gain LGR. She also commented that the physical appearance of the applicant can have a bearing on the outcome of LGR applications, explaining 'for other people, it is a lot harder... [for] some people who have an androgynous appearance...' This idea that gender stereotypes play a significant role in the assessment of gender identity by medical and legal authorities was even more apparent for countries in other clusters.

Focus group attendees from Lithuania generally agreed that it would be extremely difficult for transgender individuals to navigate the national LGR process without the support and guidance provided by NGOs and legal professionals – a theme that emerged for several other countries across Europe. For example, one stated: 'without him (the legal professional), I would have had no chance to go through the legal process to the end, he told me exactly what to do on each occasion [...] Without his help I would not have known where to start and how to get through the process'.

Unlike in other countries, participants from Lithuania spoke of their fear about sharing information with other members of the community, due to the possible consequences in the future. In the words of one participant 'once you know whom to contact and where to go, you keep that close to your chest and do not share information with others'. This contrasts with the results from other countries, where other transgender individuals are seen as an important source of information about available LGR procedures.

In a few cases, 'gatekeepers' were seen to play a role in obstructing access to LGR procedures. This was especially the case in Romania, for which some interviewees argued that individuals in the medical profession could block an individual's progress through the system.

'There are people who go to psychiatrists and psychologists to get evaluations and the professionals tell them they are crazy and that they should go to church or go home, because it's not possible for a woman to become a man, or for a man to become a woman.'

Trans woman, aged 35-44, residing in Romania (cluster 1)

### 7.3.2 Cluster 2: accessibility, clarity and speed of LGR procedures (Slovakia, Czechia, Poland, Finland, Austria, Estonia, Spain, Italy, UK)

Interviewees and respondents to the online consultation from cluster 2 countries who had experienced LGR procedures **generally disagreed that they were quick, accessible or transparent**. This may relate to the more intrusive medical requirements that exist in these countries.

There was a high level of disagreement that the process was quick, with nearly three-quarters of online consultation respondents taking this view. The length of the process was also highlighted by participants in interviews and focus groups, with participants in Italy, Finland, Spain, Poland and the UK noting that it often takes two-three years. One woman with a trans history residing in the UK noted that it had taken her four-and-a-half years to get her legal gender marker changed, due to her GP delaying to ensure that her feelings remained constant over time, medical waiting lists and the time required to collect all necessary documentation. A trans woman residing in Spain noted that the process was very slow, although, with persistence, she sped it up to some degree.

It was commonly noted that it is hard to find information about the steps of the process, how it works and how long it takes. One UK-based participant stated that it requires 'some skill to navigate through' and that she was 'very lucky' to have met people early on who told her about gender recognition. A trans woman from Finland criticised the lack of information available from the transgender clinic she attended. Similarly, a transgender man in Italy expressed his frustration at being kept in the dark about when to expect to gain access to the hormonal therapy necessary for the process, stating 'I need to make my life plan'. These negative psychological impacts of unclear/long LGR procedures were also discussed by participants in countries from other clusters (for example, see Cluster 1 discussion in Section 7.3.1 above).

People described time-consuming requirements of the LGR processes they had experienced, including 'RLE' and hormone therapy. This is summarised by a trans man living in Italy, who characterised the requirements as 'hoops' a person has to jump through.

'In Italy, you first need to do a number of sessions with a therapist who will diagnose the gender dysphoria. [...] After the diagnosis, you will go to see an endocrinologist who will prescribe the hormonal therapy. From this, [there is] the "real-life test": for one year, you live according to your gender identity ... Then, you will have to hire a lawyer and go to court ... The judge [...] may ask for additional documentation. So, the bureaucratic timing becomes longer.'

Trans man, aged 18-24, residing in Italy (cluster 2)

Respondents residing in Spain, Italy and Poland reported being required to undergo hormone therapy for a specified amount of time. In Italy and Poland, this was six months, while in Spain, it was two years. This added a significant amount of time on to the process. Five respondents also reported waiting times to access hormone therapy, ranging from six months to four years, with an average waiting time of just under two years. In some cases, these periods of waiting related to the scarcity and unavailability of suitable medical professionals (see Section 7.2.1). One respondent reported that they met with three medical professionals before finding one that was not unhelpful or rude, causing a delay of nearly a year before they were able to start hormone therapy.

In some cases, delays in legal processes may relate to the nature of the law itself, similar to the situation facing individuals in cluster 1 countries. For example, one trans man found it 'frustrating' that LGR procedures in Poland had originated from case-law, as it allows 'courts [to] differ in how they proceed'. His case in the Polish courts was still being processed after two-and-a-half years, and he was unsure why. Several respondents to the online consultation described waits related to judicial processes, such as time spent waiting for experts to be appointed by the courts, and time spent waiting for a verdict to be delivered.

Participants from Finland, Italy, Poland and the UK highlighted a range of 'gatekeepers' who regulate and can restrict access to LGR procedures, including clinicians, judges and expert witnesses and parents. The discretion left to judges was also highlighted as a problem by participants in Italy, Poland and Spain.

A particular problem was highlighted in relation to parents acting as gatekeepers in Poland. Although it is relatively common for parents or legal guardians to play a gatekeeping role in respect of LGR procedures for trans minors (see Section 6.2.7), Poland is unusual in that parents must continue this role even for those aged over 18. More specifically, individuals in Poland who wish to change their legal gender marker must sue their parents to 'prove' that they assigned them the wrong gender at birth, with their parents (or, in the absence of a parent, a court-chosen clerk) acting as 'defendants'. Polish respondents to the online consultation frequently cited this requirement as the main obstacle to them accessing LGR procedures (even when on good terms with their parents), fearing the emotional impact on their family. One



participant in the Polish focus group had been waiting four years to complete LGR but was unable to do so because their father did not agree. Similarly, an interviewee from Poland explained the steps his father had taken to undermine his access to the LGR procedure.

### **The role of Filip's father in preventing him from changing his legal gender in Poland**

When Filip was in the process of changing his legal gender marker, his father applied to the court to show evidence (e.g. old photos) and to provide witnesses to 'prove' that he was female. These steps effectively blocked Filip's access to a new legal gender marker. Since May 2018, the courts have been examining this new 'evidence' and it will also be reviewed by an expert witness in the field of sexology. It is unclear how long it will take before Filip learns the outcome of the case.

Trans man, aged 25-34, residing in Poland (cluster 2)

During the focus group in Poland, trans participants underlined the problems that can arise when the court selects a clerk or administrative employee to be the named 'defendant' in the absence of a parent or legal guardian. This was highlighted as particularly stressful and not seen to be fair, with one individual stating: 'They bring in someone external, completely unknown to me, and expect them to help me obtain my legal gender: this is extremely unfair'.

Generally, several participants from cluster 2 countries were critical of the role that strangers play during LGR procedures in assessing their gender identity, describing the pressure that they felt to 'follow a script' or to play up to certain gender stereotypes (echoing results from Section 7.3.1 above). Such comments were made by study participants in Poland, Spain and the UK, but most frequently by those in Italy. For example, one participant in the focus group stated: 'I felt that I had to stick to a "packaged" storytelling from the protocol of the ONIG<sup>166</sup> just to obtain the recognition that I needed'. A trans woman living in Italy explained that one of the main problems in the system is that health professionals and judges are used to following stereotypes – for example, expecting transgender women to go to court with nail polish and in skirts to confirm their 'new gender'. The presence of gender stereotyping in the Italian LGR procedure is further demonstrated by the comments below.

'If the professional does not have knowledge of the topic, some people are discriminated [against] because they do not display some of the characteristics that the psychotherapist is looking for to be sure that the person is trans to grant them access to hormone therapy. This concerns non-binary [people], but also trans [people] that do not follow the stereotype [...] Often lawyers and other professionals require a physical change in the person, a sort of credibility based on the appearance/gender expression.'

Trans man (aged 18-24), Italy (cluster 2)

These participants' testimonies highlight the particular challenges facing non-binary people in Italy because of gender stereotyping in the system. One participant described non-binary people feeling they have to 'fake' their gender identity to succeed in the LGR procedure, stating that, for non-binary people: 'It is a performance. If you really want to change the gender marker, you need to do a pantomime... If you go there with revolutionary intentions, you will not go further'. For this individual, some non-binary people could decide not to change their legal gender at all, because they would not be willing to engage in a 'pantomime' of this kind. This echoes some of the reasons given by participants for not going through LGR, including a lack of relevant gender markers

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<sup>166</sup> ONIG is the Osservatorio Nazionale Identità di Genere, or the National Observatory for Gender Identity, in Italy.



(see Section 7.2.4). The idea that non-binary people are forced to 'perform' in LGR procedures is supported by the comments of a non-binary person aged 18-24 living in Italy, who stated that they constantly needed to demonstrate that they fitted within binary categories. Some participants pointed out that most people performing gender identity evaluations are cisgender, which may further feed into binary understandings of trans identities.

Some interviewees from cluster 2 countries described the external assessment of their gender identity as intrusive and degrading, and underlined how psychologically demanding this can be. This is considered further in Section 8.2.1 of this report.

Some respondents described the challenges they faced in going through the LGR process because they were born in another country, with resulting additional delays. One participant in the UK noted that they were not able to get their documents changed in their country of origin due to the time this would take, so instead they are going through a citizenship process in the UK in order to access the LGR procedure. This has potentially added several years to the length of their LGR procedure, which currently stands at five years. Another participant experienced a delay of a year in getting a passport in the UK, because their passport from their country of origin did not reflect their gender identity. A trans woman living in Italy described a lengthy process, spanning four years. She explained that it took this long because she had to carry out a procedure in her country of origin as well as in her country of residence, and within Italy she had to complete two legal procedures.

### **7.3.3 Cluster 3: accessibility, clarity and speed of LGR procedures (Slovenia, Germany, Hungary, Croatia, Sweden, Netherlands)**

There continue to be obstacles to access to LGR in cluster 3 countries, the most **substantial obstacles of which appear to be in Hungary**. Many interviewees from Hungary reported that it was no longer possible to undergo the normal procedure for LGR because the responsible ministry had suspended and delayed the processing of all requests. Several respondents to the online consultation living in Hungary reporting waiting up to a year or more as a result for any progress in their case. The exact cause of the suspension was not clear to study participants. Some in Hungary who had not been through LGR explained that they would like to in the future, if the process were resumed. However, at the time of this report's finalisation (during May 2020), the Hungarian government adopted a bill to ban access of trans people to legal gender recognition<sup>167</sup>. The implication of this is that Hungary no longer falls under this study's cluster classifications and may also no longer comply with international human rights standards<sup>168</sup>, whereby Council of Europe members are obliged - at a minimum - to legally recognise the gender of transgender persons who have gone through reassignment (see Chapter 7).

Compared to clusters 1 and 2, participants living in cluster 3 countries generally held more mixed views of the accessibility and speed of LGR procedures. Several interviewees from Germany, the Netherlands and Sweden explained that **their own experience of the LGR procedure had been relatively quick** (taking place in a matter of months). However, a relatively large share of respondents to the online consultation living in cluster 3 countries reported long processes and significant delays.

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<sup>167</sup> See for example, Holroyd, M. (2020) 'Hungary passes bill ending legal gender recognition for trans citizens'. Euronews. 20 May 2020. Available at: <https://www.euronews.com/2020/05/20/hungary-passes-bill-ending-legal-gender-recognition-for-trans-citizens>

<sup>168</sup> See Statement of the Standing Committee of the Conference of INGOs of the Council of Europe adopted on 27 April 2020. 'Call on Hungarian Parliament to align legal gender recognition with internationally recognized human rights standards'. Available at: <https://www.coe.int/en/web/ingo/-/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards>

For instance, 53% of those affected strongly disagreed that the procedure they had undergone was quick (see Figure 40 above). Individuals who held this view were living in Croatia, Germany, Hungary, the Netherlands and Sweden. Most had started LGR in 2015 or later, although a few had been through older procedures. Like the respondents living in cluster 2 countries, this most commonly related to 'RLE' requirements, waiting times for appointments with legal or medical professionals, medical requirements and waiting times related to judicial processes.

Interviewees residing in a cluster 3 country reported some variation in the length of time the procedure had taken. In the Netherlands, one participant estimated that the process takes between one and two years. In Croatia, a participant noted that the process used to take a year or more, but now should take no more than six months. One participant living in Sweden noted that it had taken them less than six months, which they felt was quite fast, while another Swedish resident reported needing to have two years living 'in transition' and one year in contact with medical professionals or trans care before submitting an application. One participant living in Germany stated that the process took 11 months, but they felt that there had been unnecessary delays within this, believing 'there is no reason why the process could not have taken a week'.

The respondents who had undergone a 'real-life experience' requirement reported lengths of between one and three years. Participants living in the Netherlands and Sweden described delays of up to three years while they waited to get appointments with medical or legal experts, waited for trial dates, or waited for the outcomes of judicial processes. In the Netherlands, this issue primarily delayed the beginning of the LGR process and was often due to a shortage of specialist medical and legal professionals (see Section 8.2.2). In Germany, one respondent experienced a delay in receiving a trial date. They noted that this was because the LGR process goes through the district courts, which also deal with family matters, and cases involving children are given priority. Two respondents, living in Sweden and the Netherlands, respectively, described delays while they waited for their applications to be processed.

Generally, **gatekeeping** is still considered to limit access to LGR, with individuals from Germany, the Netherlands and Sweden stating that health professionals (in particular, psychiatrists) play a role in reducing access. This is particularly problematic because of the limited number of providers of trans healthcare and the concentration of relevant professionals in and around cities (mentioned in relation to Hungary and the Netherlands). This relates to the requirement for medical supervision, which is part of the LGR processes in these countries.

Reflecting results of other clusters (see for example Sections 7.3.1 and 7.3.2 above), several trans interviewees from cluster 3 countries – Croatia, Germany, the Netherlands and especially Hungary – pointed to the importance of civil society organisations, the wider trans community and trans allies (such as a network of supportive doctors) in providing assistance for those going through LGR procedures. Some warned that, without this support, they would not have been able to access clear and user-friendly information on how to undergo LGR. This suggests there may be gaps in the public provision of information on accessing LGR procedures in some countries (this issue was reported by those in Croatia, Hungary and Germany).

#### **7.3.4 Cluster 4: accessibility, clarity and speed of LGR procedures (France, Greece)**

Compared to cluster 3, respondents to the online consultation were **more likely to agree that the procedure they experienced was quick** (around one-third, compared to one-quarter of cluster 3 respondents). They showed similar levels of agreement on accessibility and transparency, at around 35% to 40%. Despite their greater agreement that the process is quick, participants in the Greek focus group emphasised how time-consuming the LGR procedure in their Member State could be, taking perhaps one to two years. Only one participant in the focus group reported that

their experience of the LGR procedure was fairly quick, stating that they had simply been lucky.

'It is not at all quick. It is possible for it to last much more than a year, as especially in large cities, like Athens, the day of the trial is likely to be confirmed after some months. The court decision is likely to be issued after a further four-five months; then there is another time-consuming process to change the identity documents in the population register of the municipality and the regional decentralised administration. This may last almost three months. In sum, from the beginning until the end, the process may last one and a half years or even more.'

Transgender person, age unknown,, residing in Greece (cluster 4)

Where details were provided, participants mentioned the waiting times to receive a court date and the amount of time for applications to be processed. Several respondents in Greece and France described waiting periods of up to six months for a court date, and many respondents living in cluster 4 countries mentioned delays in their applications being processed.

Respondents in cluster 4 reflected on some of the difficulties in accessing the process in their country. One trans woman noted that the process is costly for some, not easily accessible, and that there is a lack of knowledge of the procedures by civil professionals. This was echoed by another respondent, who had to explain the LGR process to a legal clerk who had not been trained in this area. Once again, these results suggest trans individuals are often required to take the 'educator' role for others, as was seen in earlier chapters of this report in relation to educational settings, and seen later in the report in relation to healthcare settings.

'LGR procedures are very slow (average time is one year or more) and the cost is too much for people that have no/small income. The process itself is not difficult [...] However, there is the need to be present at the court and go through a sort of "interview", stating your reasons for changing your documents. Also, most civil professionals are not yet properly informed on how to update the info (e.g. when it comes to the order certain documents need to be updated: ID card, birth certificate, social security number, etc.) and it is not very clear for individuals as well where they should start to change everything.'

Trans woman, aged 25-34, residing in France (cluster 4)

The clarity of the process in cluster 4 countries varies by country. Despite the introduction of a **new process in France** in 2016 – removing certain medical requirements - interviewees still stated that the current process is unclear and subject to interpretation. One interviewee highlighted that the court may still require more burdensome requirements to be met, such as obtaining psychiatric opinions, even though these are not strict requirements of the procedure. By comparison, they found the name change process quick and easy. Another interviewee stated that the lack of clarity stems from the way the process has been established.

By contrast, participants in the focus group in Greece felt that the process was generally clear, instead pointing to other problematic aspects, such as the lack of access for married trans people, additional requirements for minors aged 15-17 and the lack of a process for minors under 15, and the inability of trans people with children to change their parental status. However, a few members of the group sought additional clarifications on the process or felt they did not yet fully understand it, suggesting a considerable degree of complexity. Participants also noted that awareness of the process varies among the trans population in Greece, with lower awareness in the countryside.

'I think that as a procedure, the legislation for LGR is understandable. I could not say that there are "grey" points. It's clear. Problematic, obviously, as it maintains the court process and has limitations, but still understandable.'

Transgender person, age unknown, residing in Greece (cluster 4)

### 7.3.5 Cluster 5: accessibility, clarity and speed of LGR procedures (Belgium, Denmark, Ireland, Luxembourg, Malta, Portugal)

Most respondents to the online consultation with personal experience of an LGR procedure **agreed that the process in cluster 5 countries is quick, accessible and transparent**. Participants thus viewed the procedures in these countries most favourably, out of all five clusters. This likely relates to the legal framework in cluster 5 countries, whereby accessing a new legal gender marker is based on self-determination and is essentially a solely administrative procedure. For instance, one participant from Malta explained that it entails going to a notary and signing a declaration that you want to change your legal gender and name.

Interviewees and focus group participants typically viewed LGR processes in these countries in a positive light, even if they had not gone through them personally. Generally, they did not see gatekeeping as a problem in restricting access to LGR. One trans man resident in Malta noted how *'in one month, maximum one month, they give you your ID card and whatever you need.'* Another participant, from Ireland, gave the following assessment.

'It seems really straightforward to me [...] At no point do you have to go before a judge, you're not required to have had any kind of surgeries, you're not required to have completed or done any kind of medical transition. There's really not very much gatekeeping at all. So, from a legal standpoint, it really seems very straightforward.'

Trans man, aged 45-54, living in Ireland (cluster 5)

Despite largely positive views in cluster 5 countries, there were still some who disagreed that the LGR process is quick, accessible and transparent, in particular when asked about the speed of procedures. More specifically, around one in three respondents disagreed that the LGR procedure was quick in a cluster 5 country. As described in Section 8.3.1, in some cluster 5 countries including Belgium and Denmark this relates to mandatory reflection periods, where people are required to wait for a specific amount of time after an initial declaration that they wish to change their gender marker before they are permitted to do so.

Regional differences in the interpretation and (mis)application of legal standards affect an individual's experience of LGR (see Section 8.5). The length of the procedure may also vary depending on the circumstances of the individual. For example, one respondent living in Ireland described a two-year wait for an appointment with a specialist. However, another respondent living in Ireland noted that it had taken them *'less than a week'* to get a gender recognition certificate.

Challenges linked to the transparency and clarity of procedures also remain. When participants at the Portuguese focus group were asked how they perceive the legislation on the LGR process, for example, some reported feeling very confused as the laws are constantly changing. This suggests that information about the law and corresponding rights is not always communicated clearly to trans people - and a wider audience. One participant described how, in September 2018, one doctor provided them with incorrect information, stating that they still needed to submit a medical diagnosis report to access LGR (which was no longer required).

Some participants questioned other minor aspects of LGR procedures in cluster 5 countries. These included problems linked to the non-alignment of name change and

LGR procedures, with one individual, for example, receiving their new legal gender marker before officially receiving their new legal name.

#### 7.4 Reported consequences of lacking LGR

Several individuals who had not gone through LGR procedures (across multiple clusters) explained their challenges related to mismatching documents and other factors. This was mentioned by many participants in the Polish focus group, with one stating: 'the identity card is a very painful reminder of how emotionally draining and difficult my life is as a transgender person in Poland'. Many participants in the focus groups in Italy and Greece explained the **difficulties for trans people without matching documents to find work**, with one calling it 'awful'. For participants in Greece, this was seen as part of the reason why trans women – who have limited access to the labour market – are marginalised and resort to working in more precarious sectors (see Section 4.3.4).

In some cases, not going through LGR can lead trans individuals to turn away from certain sectors/jobs altogether. For example, an individual whose 'ideal job' would be teaching had decided not to pursue this, because he did not feel comfortable at the idea of teaching under a different name and in the wrong gender.

'If I do not undertake the LGR, I can't change my name. This means that I [would have] to teach with a female name and I will be bullied, like when I was 12.'

Transgender person, age unknown, residing in Italy (cluster 2)

Several other participants spoke of the professional challenges they faced due to having documents mismatched to their gender. These included:

- Obstacles to using public employment services and private employment agencies that do not recognise trans individuals' gender identities. Fears that these agencies would introduce them to employers in the wrong gender led trans individuals in Italy to conclude that 'we are totally blocked [from] the use of employment services as a service'.
- Difficulties in performing professional legal functions. For example, a lawyer in Poland talked about the difficulties they faced in interacting with tax services when representing clients.
- Being rejected from job interviews due to inconsistencies between ID documents.
- Pressure on trans business owners to present in the wrong gender when renting properties, signing contracts, etc. For example, due to non-conforming documents, a non-binary person who ran a business stated that they would go to formal meetings 'dressed like a man, with trousers, without make-up [...] to avoid embarrassment'.
- Problems with background-checking agencies used by employers 'outing' trans applicants for jobs.
- Having client testimonials and recommendation letters in the wrong name and gender.

The experiences shared by study participants suggest that **a range of 'workarounds' are used** by trans individuals who cannot or do not want to take the steps to achieve LGR. However, the fact that the current LGR process in some countries leads individuals to seek workarounds at all denies them access to full legal protection and recognition of their identity. Participants from different legal clusters shared examples of informal 'workarounds', including the following:

- Changing their picture on their ID, but not their gender. One participant living in Italy explained that she changed her ID card to have a female picture, and that this is generally accepted by those she shows it to. She reflected, 'when I go to the post office nobody says anything. They see the document; they see that in the document there is my picture as female [...] If I still had my male picture in my ID card, that would be a problem'.



- Changing their name and gender on their CV or educational qualifications to match their gender identity, even though it was not legally recognised. For example, a trans man from Poland explained that after a year of hormone treatment, he applied for jobs with a male name on his CV, even though this did not (yet) match his ID. Others reported taking similar steps.

In some cases, 'workarounds' are available through institutions, although these may be restricted to those who have started the LGR. For example, many Italian universities allow individuals to change their birth name and gender marker on university passes, email addresses, etc (the so-called 'alias career' – see Section 3.6 of this report). The 'alias career' is valid only within the university and it is not possible to extend this to official documents, such as degree certificates, Erasmus certificates, etc. The alias career is available to those who have started the LGR process. Similarly, one interviewee explained that UK universities often offer students the ability to choose their 'preferred name' during their education (although this was not specifically introduced with the needs of trans individuals in mind).

Workarounds can support individuals to live according to their gender identity, with less fear of being 'outed' against their will. However, they are not without their problems. For example, Italian participants explained that the procedure for accessing the alias career can differ by university, with some warning that this left the requirements 'random'. As the alias career is not linked with the official change of an individual's gender marker in Italy, it might create a number of administrative problems. For example, an individual's personal tax code (*codice fiscale*) changes along with their records, and those with an alias career can end up with two different codes. Workarounds may also be limited when it comes to the nature of benefits that they offer and who can take advantage of these.

'The alias career only works for university students but does not include other roles [e.g. professors or administrative staff] [...] Also, the alias career does not allow access to some of research sites [...] I can access libraries (outside the university) only if I show an ID document. In the past two years, I had to decide whether to come out with the librarian or not.'

Trans person, age unknown, residing in Italy (cluster 2)

## 7.5 Conclusions from this chapter

Across the EU, more than three-quarters of trans individuals have not changed their legal gender (FRA 2019 LGBTI survey), suggesting that many are living with ID documents that are not aligned with their gender expression and/or identity. However, the gender identity of trans individuals is highly important in affecting the degree to which they use LGR procedures. While 57% of trans women and 46% of trans men have changed, or are changing, their legal gender in the EU, only 4% of non-binary people, and 2% or fewer cross-dressers and people who are genderqueer, gender-fluid, agender and polygender are in this situation. The groups that have not made use of an LGR procedure are also those who are least likely to desire a binary gender marker (very few European countries offer a 'third gender' or gender-neutral option).

The design and requirements of the procedure available appear to play an important role in affecting overall take-up of LGR procedures. For instance, in cluster 1 countries - those that lack a clear procedure enabling LGR - nearly 95% of trans individuals have not used LGR procedures. As expected, the use of LGR procedures is highest in cluster 5 countries - where processes are based on self-determination - with one in five trans individuals having completed LGR and a further 7.5% in the process of doing so. In the EU as a whole, around one in five trans individuals who have not been through an LGR procedure stated that they would like to do so in the future.

Study participants reported many motivations for going through an LGR procedure. These included overcoming issues with mismatching documents, gaining a sense of security or protection, accessing services, avoiding misgendering, overcoming the psychological burden of not living according to their gender identity, and obtaining recognition of their self.

By contrast, there are several reasons why trans individuals may choose not to make use of an LGR procedure. Most commonly, FRA LGBTI survey data (2019) suggest that trans people do not want to or feel it is unnecessary. However, it is worth noting that some individuals are put off by particular requirements in the law, by its difficulty/expense, or because they find it unclear. This suggests that, if features of the law were changed or became clearer, there may be greater demand for LGR in some countries.

Amongst those who have not been through LGR, trans women and trans men show the highest level of demand for it, with nearly 60% of each group stating that they would like to go through LGR in the future (FRA LGBTI survey 2019). Other common reasons why they had not undergone LGR were linked to the obstacles arising from the design and implementation of the law. It is unusual for trans women and trans men to show limited interest in LGR procedures. Individuals with gender identities outside of the binary are less likely to desire a change in their legal gender marker, although there is nevertheless some demand among these groups, especially non-binary people and cross-dressers.

There are certain groups who face particular obstacles to accessing LGR. Some groups may be legally barred from accessing LGR, including minors, those without citizenship and those who desire a legal gender marker that is not available (for example, a non-binary or gender-neutral marker). People with chronic health issues or disabilities may also experience other barriers, including being unable to undergo certain medical requirements for health reasons. Some participants with mental health conditions also highlighted the challenges of accessing LGR.

In our study, specific aspects of the law with which individuals disagreed included the restricted gender markers available, specific medical or legal requirements, or the idea of having their gender legally recognised at all. For those who are required to fulfil certain medical requirements, or who wish to access medical treatments before having their legal gender recognised, an inability to access the relevant professionals also presents a barrier (explored further in Section 8.2.2).

One in five of the online consultation respondents to our study cited family as a reason for not accessing LGR. This was a particular issue for participants in Poland, due to the legal requirement that trans people sue their parents as part of the LGR process. Others mentioned their own family plans, such as wanting to delay LGR until after they have a child.

Participants in our study had different views on the accessibility, clarity and speed of LGR processes, depending on the country. Countries with the fewest requirements for LGR (cluster 5) were viewed most positively by participants.

In Member States where the LGR procedure is judicial, participants reported the arbitrary nature of court decisions on whether to grant LGR, with some judges requiring more conditions to access, evidence or documents than others, depending on the cluster.

Many participants (residing in countries of several legal clusters) reported a lack of clear information on accessing available LGR procedures, usually remediated by support and guidance from NGOs, legal professionals or support groups active on social media.

There can be many negative consequences for individuals who do not go through LGR. In particular, several individuals explained their challenges related to mismatching documents, and the related professional difficulties. These included being unable to



access employment services, being rejected from job interviews, having trouble with background checking agencies, and feeling pressured to adapt their gender expression depending on the situation. Faced with these challenges, a range of 'workarounds' are used by trans individuals who cannot or do not want to take the steps to achieve LGR. The fact that the current LGR process in some countries leads individuals to seek workarounds at all denies them the legal protections to which they are entitled.

Whereas this chapter focused on the overall use/accessibility of LGR procedures, the next chapter considers the experience of going through particular requirements once individuals decide to go through the process – for example, medical requirements, civil requirements and family-related requirements.

## 8 Trans individuals' experiences of going through a legal gender recognition (LGR) procedure

The two previous chapters focused on the formal requirements for LGR, the level of use of existing procedures and the motivating factors for individuals making these choices. This chapter zooms in on participants' experiences after they decide to begin an LGR procedure. For example, it considers the types of interactions that trans people have with medical and legal professionals when moving through the LGR process, as well as the overall costs of the system and how it feels to undergo certain requirements.

### 8.1 Recap of legal clusters

As shown in Chapter 6, this report groups countries together into 'clusters', depending on how easy or difficult it is to access LGR. The least accessible requirements are based on a more paternalistic or pathologising approach, whereby the state (via courts or other bodies) or medical experts are seen as best placed to assess the gender of a person. The most accessible frameworks reflect the self-determination approach, where trans people are best placed to identify their own gender.

Legal clusters are ranked from the least accessible procedures (clusters 1 and 2) to the most accessible procedures (cluster 5). The cluster groupings in this study are given in Table 8 below and were agreed upon in 2019<sup>169</sup>. Full information about LGR requirements per cluster are available in Chapter 6.

Table 8. Summary of legal clusters<sup>170</sup>

Cluster	Countries in cluster
1	Bulgaria, Cyprus, Lithuania, Latvia, Romania
2	Slovakia, Czechia, Poland*, Finland, Austria, Estonia* Spain, Italy*, UK
3	Slovenia, Germany, Hungary*, Croatia, Sweden, Netherlands
4	Greece*, France
5	Belgium, Denmark, Ireland, Luxembourg, Malta, Portugal

### 8.2 Medicalisation of LGR procedures and interactions with clinicians

Previous studies on the healthcare experiences of trans people suggest that discrimination from healthcare professionals is a common occurrence. For example, FRA (2014) found that 14% of trans individuals reported foregoing treatment for fear of discriminatory reactions, 21% reported that their needs were ignored, and more than 10% reported difficulties in accessing healthcare, having to change healthcare provider due to negative reactions, or discriminatory treatment from medical staff. As a result of actual - or expected - discrimination, some trans individuals will not disclose their gender identity in a healthcare context, or may avoid using healthcare services altogether, leading to unmet health needs within the trans population. In the context of

<sup>169</sup> It is worth being aware of possible upcoming legal changes in Hungary, which may mean it no longer falls into cluster 3. See Statement of the Standing Committee of the Conference of INGOs of the Council of Europe adopted on 27 April 2020. 'Call on Hungarian Parliament to align legal gender recognition with internationally recognized human rights standards'. Available at: <https://www.coe.int/en/web/ingo/-/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards>

<sup>170</sup> Note: Countries are grouped according to the accessibility of LGR. EU Countries with a divorce requirement have a \* attached. Clusters 1 and 2 have the least accessible procedures, and the procedures are progressively more accessible as the number of the cluster increases.

countries with medical requirements for LGR, this may also be a significant barrier to going through this process.

Within general healthcare, studies suggest that inappropriate or insensitive treatment from professionals is largely due to a **lack of knowledge**. A Swedish qualitative study highlighted that health and social care staff often had little knowledge of trans people. One participant described needing to bring information materials to a doctor's visit (Siverskog, 2014). Another qualitative Swedish study similarly found that participants encountered ignorance during their interactions with healthcare providers (Linander et al., 2017). In the context of a qualitative study in Spain and Belgium, participants who were part of families with trans children reported negative experiences with mental health professionals, explaining that 'often professionals knew less than themselves about trans\* issues' (Dierckx and Platero, 2018). In a survey of 166 UK medical students, Parameswaran et al. (2017) identified a lack of LGBT-specific medical education, and a resulting lack of confidence in dealing with LGBT patients.

Individuals can also face discrimination from healthcare professionals within trans-specific healthcare. Studies highlight that those who do not conform to certain gender stereotypes, including people who are not heterosexual, those who are non-binary, and those who do not want to undergo a full medical transition, may be at greater risk of discrimination. For example, Lindroth (2017) highlights an instance of a trans individual being challenged over their desire to have gender-affirming surgery, due to their sexual orientation.

As explained in Chapter 1, this study considers healthcare experiences specifically in the context of LGR, rather than more generally. As only clusters 1, 2 and 3 countries include medical requirements as part of the current LGR procedure, the rest of Section 8.2 will focus on the experiences of individuals living in these clusters. Although cluster 1 brings together those countries without clear LGR procedures, in practice the processes undergone by many interviewees and focus group participants had medical components ('pathologised approach'). For example, one participant in Romania explained that she had to get the necessary medical documents (including evaluations from a psychologist, a psychiatrist and an endocrinologist) and that these had 'counted' hugely in court. Another interviewee from Romania stated that it is much easier for trans people who have had gender-affirming surgery to change their gender marker, as they do not need to have as much evidence.

Study participants from several countries<sup>171</sup> in clusters 1, 2 and 3 objected to the requirement to undergo medical interventions in order to access ('pathologised') LGR. Many participants explained that such requirements are discriminatory and make LGR inaccessible to those who do not wish to experience medical interventions. Some also felt that trans individuals may internalise the stigma of having to receive a medical diagnosis or treatment. The quotes below demonstrate the rejection of this type of forced medical treatment.

'The process is without sense and it is humiliating for trans people. [...] When you are forced to receive a psychiatric diagnosis, this is in violation of your moral and psychological integrity. I do not want to have a psychiatric diagnosis, but I need to do it [to access LGR]. I think that this is a violation of my right.'

Trans man (aged 18-24) living in Italy (cluster 2)

'As for the medical issue, what if you're trans but don't feel like you need medical attention. Maybe you don't want hormone treatment or are in a happy place and don't need to talk to a therapist [...] So why do you need at least a year of trans care?'

Trans man (aged 25-34), Sweden (cluster 3)

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<sup>171</sup> Cyprus, Hungary, Italy, Poland, Spain, Sweden. For Cyprus, this was mentioned in relation to the old legal system, which required medical interventions.

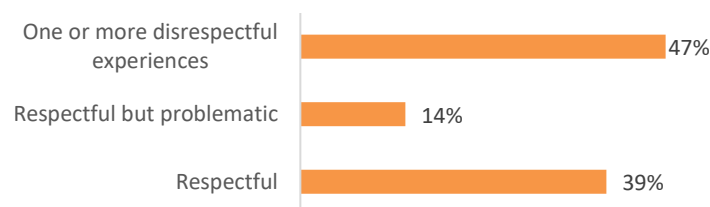
The rejection of a pathologised approach to LGR conforms with the Yogyakarta Principles (see Chapter 6). It is also consistent with the latest disease standards laid down by the World Health Organization (WHO)<sup>172</sup>.

For those who do undergo medical requirements to access LGR, their experiences reveal serious problems and failings in how the system functions in virtually all countries in clusters 1, 2 and 3. Consistent with the existing research, this study suggests that problems within national healthcare systems can result in substantial barriers for individuals who attempt to fulfil the state's medical requirements to access LGR. These problems include problematic/disrespectful interactions with healthcare professionals as part of LGR, limited provision of the professionals/services required, state restrictions on the medical professionals that can be consulted, and limited insurance coverage of relevant medical treatments/services. Each of these challenges is discussed in more detail below.

### 8.2.1 Problematic and disrespectful interactions with healthcare professionals as part of LGR

Study participants in nearly all cluster 1, 2 and 3 countries<sup>173</sup> reported that they had had disrespectful or problematic interactions with medical professionals when attempting to access LGR. For example, within the online consultation (see Figure 42), nearly half (47%) of the respondents reported one or more disrespectful experiences in medical interactions. A further 14% had respectful experiences that were nonetheless problematic – for example, situations where professionals lacked appropriate knowledge to provide an effective diagnosis or did not know of further information to direct individuals towards. One participant from Estonia stated 'I haven't encountered malice, though all professionals are [...] oblivious to trans specific healthcare, and will not educate themselves'.

Figure 42. Extent to which interactions with medical professionals involved in the LGR process were respectful, clusters 1, 2 and 3 (%)<sup>174</sup>



<sup>172</sup> The International Statistical Classification of Diseases and Related Health Problems (ICD) is a medical classification list by the World Health Organization (WHO), which is currently now in its 11th edition. ICD-11 does not have a mental health diagnosis for trans identities. A new chapter was created, Conditions related to sexual health, which includes a new depsychopathologised diagnostic category "gender incongruence".

<sup>173</sup> Individuals from these countries had disrespectful or problematic interactions with medical professionals: Austria, Croatia, Estonia, Germany, Hungary, Lithuania, Netherlands, Poland, Romania, Spain, UK. Note the following countries had no participants: Bulgaria, Slovakia. Data from FRA's LGBTI survey (2019) suggests that trans individuals in Bulgaria, Czechia, Slovakia and Sweden can also face discrimination in healthcare.

<sup>174</sup> Source: Online consultation of this study. The question asked: 'Overall, how would you describe your interactions with medical professionals during the process of changing your legal gender marker? Were they respectful of your decisions?' and 'Up to now, how would you describe your interactions with the medical professionals during the overall process of changing your legal gender marker? Were they respectful of your decisions?'. Base: respondents to these questions of the online consultation from respondents living in a cluster 1, 2 or 3 country (n=170). Responses were categorised by a researcher based on the content of the response. 'Respectful' responses are those where all interactions were respectful or positive; 'respectful but problematic'

Mirroring the results of existing research, participants' disrespectful experiences frequently reflected a serious lack of understanding and competence among healthcare professionals when it comes to the health needs of trans individuals. For example, doctors not knowing 'what to do' with trans patients or the appropriate language to use, misdiagnosing patients with 'diseases', and failing to understand the side effects of hormones prescribed or the difference between treatments (such as gender dysphoria diagnosis and gender-affirming surgery). Participants in the Lithuanian focus group explained that even when necessary psychiatrists can be identified, they may lack appropriate knowledge on how to interact with transgender people, and service users may face a negative, insensitive or demeaning response from the clinician. The failure by clinicians to provide an acceptable service to trans patients is further shown by the quotes below.

'They treated me like something unknown to them. Doctors and nurses who really respected me were in the vast minority.'

Trans woman, aged 25-34, residing in Poland (cluster 2)

'Disrespectful treatment when referring to me in the feminine. Improper whispering.'

Trans man, aged 18-24, residing in Spain (cluster 2)

Experiences often varied according to the service the person was using, with some respondents reporting positive interactions with specialist trans healthcare, compared to other services. In some cases, participants had specifically looked for specialists with experience of trans issues and/or from the LGBT community. One respondent stated that 'both the doctor and the therapist I consulted before/during my legal gender change were part of the LGBT community and very supportive'. Another stated, 'I chose specialists who understand and work on the topic and who are supportive of the cause'. There were other pockets of good practice mentioned in relation to individuals with expert knowledge of trans issues.

Despite pockets of good practice, there appears to be a basic inadequacy of healthcare accessed by many trans individuals, due to the 'roulette' they experience when it comes to clinical responses.

'Some like my GP and local [Gender Identity Clinic] have been extremely helpful. [Others] like the hospital and other medical services often use my old name and gender, even after asking at various times for [my] name and marker to be changed.'

Trans woman, aged 65-74, residing in UK (cluster 2)

'[For those] did not specialize in trans persons, I was constantly misrepresented and addressed with a false name, as my LGR had not been completed at that time.'

Man with a trans history, aged 18-24, residing in Austria (cluster 2)

'In general, specialists not dealing with LGR specific problems (e.g. gynaecologists, GPs) usually have no knowledge of patient care for transgender persons.'

Trans man, aged 25-34, residing in Poland (cluster 2)

In some cases, participants reported that healthcare professionals questioned their gender identity and medical decisions (reported for Hungary, the Netherlands, Romania). For instance, some shared stories of clinicians being unwilling to 'believe' their trans identity, conflating gender identity with sexual orientation, asking them why

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interactions describe those where professionals were respectful, but the interaction was otherwise problematic, for instance where the professional lacked knowledge; 'one or more disrespectful experiences' describes responses where the respondent stated or suggested that they had had one or more interaction which was disrespectful.

they had decided not to undergo gender-affirming surgery or even 'coercing' them into getting a surgical intervention. This type of concerning and disrespectful interaction is illustrated in the quotes below.

'My mum chose [a therapist] [...] based on accreditation and his expertise but he was completely ignorant of any gender identity-related stuff [...] he often misunderstood gender identity for sexuality and he made inappropriate comments that made it seem like I was making a choice [...] the kind of comments that you wouldn't want to have in therapy.'

Trans man, aged 18-24, residing in Romania (cluster 1)

'The first GP [General Practitioner] I went to told me that there is no such thing as being transgender. So I moved elsewhere where the GP was more understanding ... Most GPs are not very well educated on the subject ... When I had to change doctors, I was freaking out, because I thought, I don't want to have to keep explaining myself over and over again.'

Trans woman, age unknown, residing in UK (cluster 2)

Participants' experiences reflect a level of obstruction by clinicians. For example, individuals shared stories of important professionals – such as doctors and urologists – being unwilling to see trans patients, provide access to hormones or provide the necessary expert or medical opinion necessary for LGR (reported for Hungary, Germany, Lithuania, Poland).

Of the 139 respondents to the online consultation who were required to fulfil one or more medical requirements (and who provided a response), around one in 10 had been refused treatment because a medical professional did not approve<sup>175</sup>. Respondents described being refused for hormone therapy, gender dysphoria diagnoses, psychological opinions, and sterilisation. One person had experienced refusal of medical care more broadly, including fertility treatment and gynaecological care. Grounds given for refusal included a lack of clarity about the law or process or the mental health of the respondent. In one instance, a trans man from Hungary had to wait for more than a year for examination and opinion by a doctor. Others were forced to turn to private healthcare because of the inadequacy of the service they received via the public system.

Another respondent described how they were denied hormone treatment because they did not want to go through the 'real-life experience' at that time in their lives.

'At 16/17 [I was refused] the HRT treatment because I did not want to undergo the 'real-life test' because I still attended school.'

Trans woman, aged 18-24, living in Germany (cluster 3)

A particularly frequent experience reported by those living in cluster 2 and 3 countries was stressful or 'dehumanising' interactions, in which individuals had to answer invasive or 'outdated' questions from a room of medical professionals. Difficult or intimidating assessments by psychiatrists and psychologists – for example, as part of gender dysphoria diagnoses – are demonstrated by the following quotes.

'It can be very traumatising for some people. [...]. Putting yourself out there, being very vulnerable and open and putting your life, your future transition [...] into the hands of a psychologist is difficult enough. Let alone being put in front of a whole room of people who can ask you pretty much everything. So it's pretty dehumanising.'

Trans man (aged 18-24), residing in Croatia (cluster 3)

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<sup>175</sup> Of those living in a cluster 1, 2 or 3 country.

'Many things that ended up in the [psychological] assessment were too personal to be shared with the judge or with the German state, for example, [...] on my parents' and siblings' mental illness [...] [It's] completely out of order, because that has nothing to do with whether or not I am trans.'

Man with a trans history (aged 34-44), residing in Germany (cluster 3)

'[During the gender dysphoria diagnosis] It's quite hard for people to constantly question what you're feeling and thinking, it is ... stressful ... They tried their best to make it as comfortable as possible [...] But it's the subject-matter... you're getting your identity questioned and you have to defend yourself.'

Trans man (aged 18-24), residing in the Netherlands (cluster 3)

'I felt it was intrusive, demeaning. People that I would never [usually] meet or see or interact with, were sitting and judging my gender. [I felt] that I didn't own my gender until these faceless people, lawyers and doctors who had never met me... said "yes, we accept that".'

Trans woman (aged 65-74), living in the UK (cluster 2)

As discussed within Section 7.3 of this report, there appears to be a related problem of gender stereotyping by psychologists, psychiatrists and other healthcare staff when making assessments about gender identity. A trans woman (aged 18-24) residing in Germany (cluster 3) reported finding it stressful to speak to assessors and the judge, because she felt she constantly needed to 'prove' herself and that she always needed to present as 'femininely' as possible. Similarly, another participant stated that she felt their LGR procedure had been delayed due to perceptions that she did not sufficiently adhere to gender stereotypes and did not appear to be in enough psychological pain.

'Diagnosis took 12 months instead of 6. I was told I did not dress feminine enough and have also been told that I did not look like I was suffering all that much [...] The process took twice as long [as expected].'

Woman with a trans history, aged 25-34, residing in the Netherlands (cluster 3)

These practices were seen to make medical assessments especially **stressful for non-binary people**, who reported frequently feeling obliged to 'perform' in a gender other than their identified gender.

Many participants spoke of the harmful psychological impacts of undergoing forced treatments and/or negative interactions with clinicians, calling it '**disrespectful**', '**psychologically traumatic**', '**embarrassing**' and '**absolutely degrading**'. Several participants in the focus group in Poland described the medical and psychological examinations they experienced as stressful and degrading, involving highly invasive questions about their sexual preferences. One individual stated that it made them '**question if I am worthy of living**'. These consequences can also affect those who went through older legal procedures in cluster 4 and cluster 5 countries (when medical interventions were still required). For example, a transgender man (aged 18-24) living in Belgium who went through the previous legal procedure had been required to undergo sterilisation surgery. While he did not question this at the time, he later reported that he was '**disgusted**' and feels '**deprived of my ability to reproduce**'.

In some cases, participants explained that their treatment by medical professionals placed them in dangerous situations or left them in physical pain. This suggests another way in which clinicians can fail to live up to their duty of care towards trans patients, as shown by the following comment.



'When I was in pain after the gender reassignment surgery and called for the nurse, a particularly Catholic specimen said to me that I should not interrupt her praying for my lost soul ...'

Woman with a trans history, 35-44, residing in Germany (cluster 3)

Such consequences are of serious concern and reflect that the medical requirements of LGR processes can expose individuals to psychological harm or physical risk. It shows a basic failure of Member States to fulfil their responsibility to promote a high standard of physical and mental health among their population, including trans people.

### **8.2.2 Limited capacity in the healthcare system for the medical requirements of LGR**

One of the most common difficulties faced by participants when aiming to fulfil the medical requirements of LGR was that the available supply of specialist professionals and clinics that offered the necessary medical interventions was inadequate, contributing to long waiting lists. Such challenges were mentioned in relation to Finland, Hungary, Italy, Lithuania, Netherlands, Romania and the UK, but are also likely to affect other Member States. For example:

- An individual from Finland explained that there are only two gender diagnosis clinics for over 5 million residents in Finland, and these take around 500 new patients annually, contributing to a five-month wait for her first appointment.
- A trans woman from the UK experienced an 18-month wait between receiving a GP referral and visiting a gender identity clinic (GIC), then a further wait of around two years to see an appropriate clinic psychologist.
- Participants from Lithuania explained that the key starting point for the national LGR process is for transgender people to receive an appropriate attestation from a psychiatrist, but it can be very difficult to find a professional who will do this. Such psychiatrists are rare in Lithuania, and the few that exist appear to have become increasingly reluctant to deal with transgender people (most likely due to high demand).
- An interviewee in Romania spoke of a shortage of reliable services to recommend to others.
- Participants from Hungary and the Netherlands reported difficulty in finding the right doctors and specialists to provide expert opinions and diagnoses. As a result, individuals were reliant on a limited number of professionals and clinics, with one trans man from the Netherlands reporting friends who had been on a waiting list for two years. Another individual from the Netherlands gave further details of her experience, stating 'the one trans hospital [in the Netherlands], it's always overbooked. You have one appointment every two months and the appointment is an hour, so if you really have any issues that is not going to be solved in that time.'

The requirement for several medical diagnoses can increase the length of time needed to complete LGR. Interviewees from Finland, Italy and the UK explained the challenges with the speed with which referrals are made between clinicians, and the high number of medical professionals that must be consulted.

'If you want to start LGR, you have to start HRT [Hormone Replacement Therapy] and be on this for a year, so that you can get proof of sterility from a gynaecologist. Then you have to get a second opinion from another clinic [...] that you really have been living as your "felt gender" for a year. From the moment of going to the GP it may take up to 3 years to get your gender legally recognised.'

Trans woman (aged 25-34), Finland (cluster 2)

These types of structural failings are problematic, as they can make it extremely difficult for individuals to fulfil the medical requirements that the state has laid down. They suggest that Member States are introducing requirements for LGR without providing the necessary numbers of staff and facilities for all who need them within a reasonable timeframe.

### **8.2.3 State restrictions on the choice of medical professionals**

Some participants discussed the limited level of discretion that trans individuals have in selecting a clinician/legal professional of their choice as part of the LGR process. Participants from Croatia and the Netherlands explained that applicants in the LGR process must choose from an approved list of psychologists and/or psychiatrists, who are considered qualified to make assessments relating to gender identity. One respondent to the online consultation stated 'One of the reviewers whom the court repeatedly mandates is badly rated in our community ... Despite the efforts of a local LGBTIQI association to make the court aware of our concerns, this reviewer is still mandated.'

In cases where individuals were able to choose, **recommendations by others** were important in supporting them to find the right professionals, and they appreciated having this degree of discretion. A man with a trans history residing in Germany explained that he had been able to request specific psychologists and that he preferred this, because he had already dealt with some psychologists as part of medical transitioning. A trans woman with experience of living in Germany provided a similar example.

'Sometimes you can request [the medical professionals within the LGR process], so actually I did it the other way round. First, I was looking for people, went to see them, and then went to court and gave the names. [...] I'm kind of glad they [took my opinions into account] because if they hadn't it would have been all for nothing. [...].'

Trans woman (aged 35-44) with experience of living in Germany (cluster 3)

Restrictions in some countries that limit the access of LGR applicants to particular professionals undermine trans individuals' ability to choose the type of care that they receive: a right normally granted by European governments to all medical patients and service users.

### **8.2.4 Limited insurance coverage for covering LGR's medical requirements**

Across all EU countries, around four in ten respondents in the online consultation of this study reported being refused funding from a state insurance scheme for a medical treatment they needed to access as part of an LGR process (base: 94 respondents to the question). More than one-fifth reported being refused funding by a private healthcare scheme (base: 73 respondents to the question). This included hormone therapy, gender-affirming surgery, medical tests and appointments with specialists. Where grounds for refusal were given, they included maximum amounts the insurance scheme would cover and the perception that certain treatments were 'cosmetic treatments' only. In some instances, respondents described their struggle to submit the evidence necessary to access treatment. These experiences compound the financial difficulties faced by many trans people in accessing LGR (see Section 8.4) and further undermines their access to recognition before the law.

## **8.3 Administrative and civil requirements within LGR procedures**

Respondents to the online consultation described the requirements they had to fulfil to undergo the LGR recognition procedure in their country of residence. Of those who had

begun an LGR procedure since 2018<sup>176</sup>, some respondents in all clusters reported completing a form and providing evidence of a name change (often including evidence of a change to the gender of their name). Respondents in all clusters except cluster 5 mentioned having to provide documentary evidence of not being married. This is to be expected, given that clusters 1-4 all contain countries with divorce requirements and/or restrictions on same-sex union. In Poland, participants also described the requirement to 'sue' their parents as part of LGR (see the cluster 2 section of Section 7.3, where the challenges of this requirement are discussed in detail).

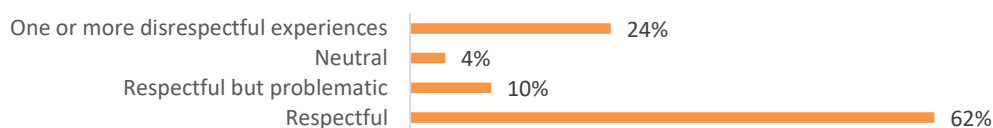
Given the need to prepare documentary evidence and complete forms, individuals going through an LGR procedure can be expected to encounter a range of legal and civil professionals, such as judges, lawyers, staff at town halls and civil registries, civil servants and others.

This section focuses on study participants' experiences in these civil and legal settings. It discusses the requirements linked to applicants' civil status and family life, as well as enforced waiting periods (such as 'real-life experience' and reflection periods).

### 8.3.1 Legal and civil interactions

In all, 239 respondents to the online consultation described the interactions they had with legal or civil professionals during the process of changing their legal gender marker<sup>177</sup>.

Figure 43. Descriptions of interactions with legal or civil professionals during an LGR procedure (%)<sup>178</sup>



Nearly one-quarter of those who responded described one or more disrespectful interaction. When looking only at interactions under current LGR procedures, this trend broadly holds, with 25% of respondents who have begun going through LGR since 2018 reporting one or more disrespectful interactions, and 60% reporting respectful interactions<sup>179</sup>. While most individuals reported respectful interactions, the fact that one in four individuals had had disrespectful experiences in legal and civil settings is concerning.

<sup>176</sup> Due to recent changes across the EU in relation to legal gender recognition procedures, the information in these introductory paragraphs about the requirements that applicants had to fulfil for LGR to those respondents who had started a process in 2018 or later.

<sup>177</sup> As part of any LGR process, not restricted to those who went through post-2018 procedures.

<sup>178</sup> Source: Online consultation of this study. Responses to the question: 'How would you describe your interactions with legal/civil professionals during the overall process of changing your legal gender marker? Were they respectful of your decisions?'. Based on a total of 239 responses. Responses were categorised based on the content of the response. 'One or more disrespectful experiences' describes responses where the respondent stated or suggested that they had had one or more interaction with a legal/civil professional as part of the LGR procedure where they were not treated with respect; 'neutral' responses were those where the interaction was described as neither respectful nor disrespectful, or used the word 'neutral' to describe the interaction; 'respectful but problematic' interactions describe those where professionals were respectful, but the interaction was otherwise problematic (e.g. where the professional lacked knowledge); and 'respectful' responses are those where all relevant interactions were respectful or positive.

<sup>179</sup> Source and questions asked: same as above. Base: online consultation responses from respondents who have begun an LGR process since 2018, excluding five Member States with recent legal changes (BE, DE, FR, LU, PT) (n=72).

The extent to which legal and civil professionals were respectful varies slightly by legal cluster. Respondents in cluster 2 were most likely to report one or more disrespectful experiences, while respondents in clusters 3 and 5 were least likely to report this. Respondents highlighted the relationship between the level of knowledge of professionals and the extent to which they were respectful. Among those who described being treated with respect, some emphasised the level of experience of the professional they were dealing with.

'They behaved professionally. It was evident they previously participated in a similar procedure.'

Man with a trans history, aged 18-24, residing in Poland (cluster 2)

'Some were not too trained, but I was immediately redirected to the only employee of the municipality trained for this and he handled it like any administrative document.'

Trans man, aged 18-24, residing in Belgium (cluster 5)

Conversely, many of those who had respectful but problematic interactions noted the **low level of knowledge** of the professionals involved. A few respondents characterised the professionals they dealt with as 'respectful but uninformed' or 'charming [but] ignorant'. One respondent described being sent to the wrong department several times because the professionals did not know how the process worked, but reported a positive experience once they finally reached the correct department. Several respondents described how they had to educate the legal or civil professionals on how to access the process, due to the professionals' lack of knowledge – for example, showing them the text of the law and explaining its provisions. This echoes the finding of Chapter 2 that trans people may be burdened with the role of educating others, due to the low levels of awareness of those around them. Negative experiences reported also included lawyers not having knowledge of the specific provisions of the law (for example, processes for changing parental status on children's birth certificates). A few respondents noted significant gaps in knowledge where a new law had recently been introduced, highlighting the need for adequate training around the law. One participant, a trans man aged 25-34 living in Ireland, stated, 'The law was new and [civil/legal professionals] did not understand it, I had to educate everyone I interacted with throughout the process.'

Lack of knowledge and **acceptance of trans people** also contributed to disrespectful interactions, while insufficient cooperation between different government bodies created difficulties or delays. One respondent living in a cluster 5 country described their experience of trying to access the LGR procedure in the country they live in following a change to the law. They had been in contact with the relevant civil professionals in advance to notify them that they intended to access the process on the first day that it was available but found that they were unprepared on their arrival. They were also treated in an inappropriate way, with staff being disrespectful and disregarding data protection rules, 'talking through the room to other colleagues, within earshot of other citizens present for other procedures' and 'using offensive terms'. Similarly, a trans woman from Sweden (aged 35-44) reported a feeling of underlying hostility when changing her ID card, stating 'you could feel in the air that they weren't really ok with me'. One respondent, residing in Belgium, reported that people who had gone through the LGR procedure were 'systematically called by the police to answer rather invasive questions' afterwards. They had also been misgendered throughout the procedure.

Another person described how they had to try to access the procedure many times, as the professionals they met were unable or unwilling to provide support.

'They didn't know what they were doing. I had to go back several times as they themselves did not know the procedures. I had to wait for one of the civil "professionals" to [return from] leave, as the others couldn't or wouldn't help me.'

Trans man, aged 18-24, residing in Belgium (cluster 5)

Some participants highlighted a **lack of information sharing** between ministries, which could contribute to delays in their application. A participant from Cyprus felt that there was insufficient cooperation between the ministries responsible for processing his case. At one point, his case was being handled by someone in a migration department (because changing gender data comes under the Interior Ministry), who was especially uncooperative. The Health Ministry was also involved and had some delays. In his view, the case took a long time not only because there was no established procedure but also because there was more than one ministry involved. Some participants in a cluster 3 country also described mixed experiences with the efficiency of their application and the degree of information-sharing between authorities. For example, a trans man residing in Germany reported having to contact the District Court repeatedly to make sure that his file was not forgotten. A trans woman (aged 35-44) reported facing many delays in receiving her court-issued name and gender marker in Germany, then had to undertake 'lots of chasing around' and apply pressure to have this order enforced by local authorities. Many individuals from cluster 3 countries had to return to their places of birth to have their birth certificates changed.

Study participants described being misgendered by legal or civil professionals. This could occur even among professionals who were respectful, due to lack of knowledge or experience, but also could be done carelessly, or even maliciously. Several participants noted that they were misgendered or their old name was used in official documents (for some, even after it had been legally changed). Participants described how frustrating or upsetting being misgendered could be, even where it was accidental.

'On the whole they were very respectful. There was some trouble with information that had to go from my birth township to the one where I currently live. I had to phone a few times about that and the person I was talking to became terribly confused about me being male or female and what the information should be, and addressing me incorrectly. This was very frustrating.'

Trans man, aged 25-34, residing in the Netherlands (cluster 3)

'They were respectful, but I felt they didn't quite understand gender. I was wearing a skirt and makeup and they said I looked pretty 'as a woman'. I know it's meant as a compliment but gender [is how] you identify, your inner self. So the focus on body and how well I can do makeup is unsolicited... When I left they said: "Have a nice day MISTER" ... It's exhausting.'

Trans woman, aged 25-34, residing in Belgium (cluster 5)

Many participants described how their physical appearance, gender expression and ability to 'pass' as cisgender had affected how they were perceived and treated by others. One respondent to the online consultation living in Belgium felt that they were 'very lucky to have the "cis-passing" privilege' and noted that 'this makes things easier for people to gender me correctly'.

Several respondents described experiences where legal or civil professionals showed a lack of regard for them or their case, for example by not listening to or acknowledging their views or by prolonging their procedure. Several respondents described having to undergo additional requirements to those required by law, due to the professionals involved failing to apply the correct legal standards (see Section 8.5). For example, professionals reportedly asked for additional psychological evaluations or required the completion of psychological treatment before allowing an individual to change their

gender marker, increasing the difficulty, length, and (at least in one case) cost of the process. This may constitute a violation of human rights standards.

There is also evidence of gender stereotyping influencing the decisions of legal and civil professionals, as described below. Many individuals from Poland raised this challenge, as shown by the words of the individual in the box below.

'The court clerks and experts to whom I was assigned for the LGR process [were] so brazen in their opinion of me as being a homosexual woman pretending to be a transsexual man [...] They pointed out my "insufficiently masculine" clothing, ignored half the evidence of psychotherapists and psychologists (among other things, completion of therapy on gender identity, [with] more than two years' of real-life test), they took my statements out of context [...] Despite the fact that I have functioned fully as a man for over three years, accepting testosterone for 1.5 years, they referred me for more psychological evaluations, and denied me the right to change my gender marker [...] To date, I have experienced only discrimination, ignorance and total lack of respect for human rights.'

Man with a trans history, aged 18-24, residing in Poland (cluster 2)

Participants from Italy and Poland criticised the length and degree of **arbitrariness** in judges' and courts' decision-making during LGR procedures. Participants in the Polish focus group reported that most people, including trans people, did not know what exactly the process was or which documents were required. The requirements are believed to differ by court and by judge, with one participant stating that it seemed to be based on 'random events'. The length of the process was seen as psychologically draining, with one trans man (aged 18-24) from Italy saying, 'Not everyone can make it. From an [economic] point of view, but also psychological. A person I know has needed three years, three years of battles in court... Three years that you throw away'. Such experiences caused some individuals in both Italy and Poland to give up on the LGR procedure altogether, they noted. This is a serious concern, as it suggests the design of the system resulted in these individuals foregoing their right to recognition before the law.

Others described delays to their process, which they felt was due to their case being viewed as unimportant by legal or civil professionals. One respondent described how their case was categorised as a 'less important file that does not deserve to be taken care of before the end of year or early next year'. Another respondent reported that court officials clearly considered their case to be 'an extremely unimportant matter', while one person described a delay of several hours to their hearing, which they felt was because the judge had forgotten about it and viewed it as unimportant. This suggests a minimising of trans people's needs and concerns by some legal and civil professionals.

Some respondents reported inappropriate behaviour, including excessive or inappropriate questioning. Participants in the Lithuanian focus group explained that courts and judges can create a lot of stress for transgender people during the hearings and do not always treat the person in front of them with respect and dignity. This can include asking highly invasive or personal questions, such as the appearance of their sex organs, the procedure of taking hormones and how they influence the biological changes of the person's body involved.

'The judge did not treat me like a normal human being. I was more like an amusement to him or a freak of nature. I came out all red after the hearings. He also asked such long questions that I even did not understand the question in the end after 10 minutes of his question.'

Transgender person, age unknown, residing in Lithuania (cluster 1)

'Legal witnesses wanted to write a very comprehensive opinion and they were quite



intrusive ... They [...] asked very private questions about my sex life, my erotic experiences, if I ever bit anyone during sex ... In my opinion it is not necessary in a legal, democratic society to ask such questions.'

Trans man, aged 25-34, living in Poland (cluster 2)

A few respondents even reported experiences of sexual harassment and abuse during their interactions with legal and civil professionals. One trans man (aged 18-24) from Italy reported that his lawyer had treated his gender identity as a 'fetish' and treated him 'in a sexual way', making him feel 'very uncomfortable'.

Some respondents highlighted variations in their experiences between different types of professionals. Several noted that their lawyers had been respectful, while civil professionals had been disrespectful. Similarly, individuals residing in cluster 1 countries pointed to mixed interactions with judges and other civil servants. For example, a transgender woman from Romania explained she had had bad experiences with the police in the past (who had made fun of her), but that 'the judge who decided to approve changing my civic documents came very well prepared to the trial with all European decisions from the last few years, and precedent case-law from Europe and Romania, which I found exemplary [...] unfortunately, these cases are rare'.<sup>180</sup> It is also worth bearing in mind that interactions can be different for every person, and respectful interactions to date do not guarantee respectful interactions in the future.

Most participants who provided information reported respectful interactions with legal professionals, civil servants and judges. This was the case for individuals from Finland, France, Germany, Hungary, Poland, Spain and the UK. Many participants from France complimented the speed with which their change of name and gender had occurred, and the efficiency of hearings they attended<sup>180</sup>. Many also explained that the court staff and legal professionals involved in their case had been very respectful and friendly. In one instance, a trans woman from France stated that the interaction with municipality staff had been very positive and that the staff had been trained to help with the procedures linked to LGR, such as supporting individuals to obtain a new ID. However, for some participants, the requirement to go through a court process at all was 'stressful', even though the professionals involved were respectful. One participant especially valued the lack of need to appear in court in person, which made the process easier.

A few participants were 'amazed' or 'surprised' by positive interactions. A woman with a trans history from the UK described what was, for her, a surprisingly good experience, stating 'amazingly, I was accepted respectfully and understood by both sets of solicitors who needed to be involved ... Also by my bank, insurers, landlord, and over 90% of those with whom I have interacted.' Another participant, a trans woman living in Germany, stated 'I [...] was surprised that everything went so well'. This suggests that these participants were not expecting those they encountered to be competent or respectful. Their experiences suggest that these perceptions may be based on negative experiences of interactions in other contexts or the reported negative experiences of others.

There are clear signs that **privilege** plays a role in affecting how easily people can access and move through LGR processes (for more on this, see also Sections 7.2.3, 7.2.4 and 7.2.5, which explores legal obstacles to LGR for some groups and barriers to LGR for those with long-term health conditions and disability). Two trans women from France pointed to factors that they believed had facilitated their interactions with legal and civil professionals. One stated that it had likely improved the quality of her interactions that she is older, has a professional background, is well-educated and uses her humour to win the support of others. She felt that if she had been in a place of depression or difficulty, she might have found aspects of the interactions harder (such as being misgendered). Similarly, the other participant felt her family ties to the local

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<sup>180</sup> Some of these individuals had been through the older LGR system.



municipality office helped her to understand how the process worked and may have led to her application being processed faster. Other comments suggested a link between positive experiences and an individual's level of assertiveness and self-advocacy. For instance, a trans woman aged 45-54 and living in the Netherlands stated, 'I'm an assertive person so I mostly find my way' and a trans woman aged 25-34 living in Belgium said 'with my tenacity and understanding of my interlocutors, everything was quickly arranged'.

There may also be additional problems in accessing LGR for non-citizens, even where there are no formal legal barriers based on residence status (see Section 7.2.3). One respondent described their experience of trying to gain access to LGR in Belgium. They were aware that they could access this without being a citizen, but council staff members they encountered were unwilling to believe this and refused to look up the law. After returning with a hard copy of the relevant law, they were finally able to access the process.

From an intersectional perspective, these testimonies reflect the ways in which the personal characteristics of trans people can interact with their gender identity to result in unique experiences of difficulty and/or discrimination. In these instances, prior biases of legal and civil professionals led some groups of trans individuals to have both easier and more difficult experiences when attempting to access LGR.

### 8.3.2 Changes to civil status and family life

As discussed in Chapter 6, five countries drawn from clusters 2, 3 and 4 (Poland, Estonia, Greece, Hungary, Italy) expect individuals to undergo divorce before receiving LGR. Many more countries do not recognise same-sex union (Bulgaria, Cyprus, Czechia, Estonia, Greece, Croatia, Hungary, Italy, Lithuania, Latvia, Poland, Romania, Slovenia, Slovakia), meaning that, in practice, individuals hoping to change their legal gender marker may be in unions that become legally void or may have an unclear status after they access LGR.

In this study, several trans women residing in cluster 2 countries and trans men in cluster 3 countries noted that because same-sex marriage is illegal in their Member State, they are unable to get married to their partner after changing their legal gender marker.

'Well, since my partner is cis female, I can't marry her anymore.'

Trans woman, aged 18-24, residing in Estonia (cluster 2)

Participants from Poland highlighted difficult aspects of the divorce requirement. For example, focus group attendees explained that obtaining a divorce can be a bureaucratic and emotionally difficult process. One participant expressed great distress at this requirement, as their marriage was an extremely significant moment in their life and a source of great happiness. Another interviewee from Poland highlighted technical issues with the requirement, explaining that in Poland it is only possible to get divorced if a marriage has completely broken down, so individuals may be required to lie and say that this has occurred in order to fulfil the divorce requirement in the LGR process. Representing a new legal area, a non-binary person (aged 18-24) living in Germany felt that it was unclear how the addition of the third gender option in Germany would affect their right to marriage.

These relationship effects of LGR are not caused by the broader principle of legal recognition. Rather, they reflect that gender-differentiated legal systems for marriage and civil partnerships can facilitate discrimination against trans people and LGR cannot combat this. By contrast, some participants were able to get married to their opposite-sex partners after changing their legal gender marker.

Similarly, the design of other legal procedures can also lead to other negative impacts of LGR for family life, related to parental rights, custody rights and assisted reproduction. Some trans people had lost custody of their children after changing their legal gender marker as they were no longer recognised as the parent of their children. The implications of this are long-lasting and may have profound impacts on the child, the family and society. One man with a trans history (aged 35-44) felt at risk when travelling abroad due to a mismatch between his identity documents and the identity on his son's birth certificate. Another trans man decided to give birth in Sweden, due to concerns about being registered as a mother instead of a father in Germany.

'As a trans man, I will not be recognised as a father, as I am the one giving birth. That's why I went to Sweden for the birth of my first child. Still, I'll probably be entered in the German system as the mother and with my old name and lose my legally recognised name. That affects me greatly.'

Trans man, aged 35-44, living in Germany (cluster 3)

The difficulties faced by trans parents were also described in the Greek focus group. In Greece, the name and gender of the parents on a child's birth certificate cannot be changed, even after LGR. Consequently, one participant at the focus group is unable to collect her daughter from school. Similarly, a non-binary person in France felt excluded from being a parent, as their child's birth certificate would list them as either female or male.

There can be particular **challenges for intersex individuals**. One trans woman, who is intersex and living in France, felt forced to divorce her partner to protect her children. She felt that intersex people are particularly marginalised with regard to parental rights, as the state only recognises people assigned female at birth as being able to reproduce. After changing her legal gender marker, the courts proposed to refuse her parental authority and asked that she adopt her children. However, the courts then allowed her to retain her parental authority but only if she left a number of key documents as her male gender. She found it difficult to find an apartment for her and her children, as there were inconsistencies in the gender on her documents.

Several trans people in France detailed problems with accessing IVF and gamete preservation. One trans woman in France found it very difficult to find a medical centre that would preserve her gametes before she medically transitioned. She was told that as the law in France does not permit two women to access fertility treatment, there would be no point in preserving her gametes as she could not use them with a cis woman in future.

Similar to marriage and civil union, trans people can sometimes experience the reverse situation, whereby their parental rights or access to assisted reproduction improve as a result of LGR. For example, a trans man living in Germany (aged 35-44) was able to adopt his stepchild after changing his legal gender marker. Several respondents noted that changing their legal gender marker opened up the possibility of having children by using sperm donors. However, these consequences of LGR (both positive and negative) only exist because of other laws that differentiate directly by gender, relationship status and/or sexual orientation.

### **8.3.3 Enforced waits: 'Real-life experience' (RLE) and reflection periods**

As discussed in Chapter 6, the so-called 'real-life experience' (RLE) requires a person to live for a certain period of time in line with their gender identity, without official documents to support that identity. This applies in Austria, Czechia, Estonia, Finland, Germany, Sweden and the UK (all cluster 2 or cluster 3 countries). Some study participants talked of the challenges that they had faced with the 'real-life experience'.

Respondents in Spain, Finland, Italy and the UK reported having to live according to their gender identity for one to two years to fulfil the 'RLE' requirement. One participant

highlighted that, in practice, this could amount to more than two years, as this time needs to be evidenced. In their case, they also experienced an initial delay in accessing medical support, which amounted to several months they were unable to count towards the mandated time.

A participant in the UK explained that during the 'RLE', she was expected to apply for documents in her new name from public institutions and banks, but that this could be extremely challenging, due to a lack of straightforward procedures for this. Nor did she have other 'official' documents to support her in these applications, such as a passport matching her gender identity. In her view, the 'RLE' phase of the LGR process was the least supported, and she spoke at length of the difficulties she faced in living without documents reflecting her gender identity.

'What is called social transitioning is the hardest part of the [legal gender recognition] process, because I was making my way in the world as my new self, interacting with many people – not just shopping or everyday interactions. I was a volunteer for my local branch of [a health charity], fundraising at public events [...] It's important for a full life to be able to do such things, and I'm grateful for the support I received from the [health charity] and others, but throughout this period I was aware at every moment that I could be criticised as no more than a man in a frock.'

Woman with a trans history, aged 75 or over, living in the UK (cluster 2)

Participants from Italy and Poland also reflected on the 'real-life experience'. One trans man (aged 18-24) from Italy felt that the '**real-life experience' is often a redundant requirement**, because many trans individuals are already living publicly according to their gender identity. This was true in his case, and he judged it also applied '**especially [to] the new generations**'. He explained, '**it is a step of the LGR process, but in reality the person can already be in another stage**'. A trans woman aged 25-34 living in Sweden questioned the 'real-life test' requirement in her national law, as it was unclear to her what it would mean to 'live as her intended gender': '**Do I have to wear dresses? Is that how you live in your intended gender?**'.

The experience of one trans man from Poland (see box below) shows that the real-life text can also expose individuals to harm, particularly in certain areas of the country.

'I lived in a big city so I didn't feel that someone would try to attack me, but I know that a lot of people feel that 'real-life experience' is humiliating or even dangerous.'

Trans man (aged 25-34), Poland (cluster 2)

One trans man living in the UK similarly highlighted the difficulty of collecting all the necessary evidence to access the LGR procedure, where there is a 'real-life test' requirement. In his experience, applications for LGR can be rejected based on minor 'evidential errors', such as a council tax bill in a former name. He emphasised the particular difficulty this poses for people with chaotic lifestyles or who have moved house frequently.

A distinct legal requirement, as explained in Chapter 7, is that some countries require a 'reflection period' before individuals can change their gender. This is a set amount of time that a person must wait after initially making a declaration that they wish to change their legal gender marker. At the end of the period, they must make the declaration again and can then have their marker changed. It was relatively unusual for study participants to discuss in detail their experiences of reflection periods. However, some respondents living in Belgium and Denmark (cluster 5) described reflection periods at the beginning of the process, which were between three and six months in length. Two respondents living in Denmark commented on the wait they had experienced, with one describing the current reflection period requirement as '**excessive**'.

## 8.4 Costs of legal gender recognition procedures

The financial burden of LGR procedures varies significantly by Member State and by legal cluster. In addition to direct administrative costs of the process, trans people may have to cover indirect costs to access LGR, such as changing important identity documents, consulting medical specialists and travel costs. Even within Member States, costs can vary for individuals.

During this study, individuals were asked to estimate the overall costs (to them) of going through LGR. The results are presented in the following section. However, it is important to note that individuals conceived these costs differently, particularly what 'counts' as being directly and indirectly part of the LGR process. This reduces the comparability of numbers given. Limitations are noted throughout this section.

Examples of the types of costs that may be included in individual cost estimates including legal fees, medical fees (public and private), processing fees, travel fees and others. The box below shows an overview of costs relating to LGR processes, by cluster.

### LGR costs – key results

The overall financial cost of going through LGR for those who completed the process in 2018 or later ranged from EUR 15,000 in Spain (based on one respondent) to six respondents who stated that the process was free in Belgium, Denmark, France, and Spain.

The median overall financial cost of going through a recent LGR process was **EUR 250**<sup>181</sup>.

Table 9 below shows the median financial cost of going through LGR process, by cluster. To gain insight into the latest LGR processes, only participants who completed LGR procedure in 2018 or later were included in this analysis. The number of participants who provided cost information in cluster 1 was low (<5), reducing the reliability of this information.

Table 9. Median reported costs of LGR, by cluster

Legal cluster	Overview of LGR requirements according to our clustering	Median cost of LGR (EUR)
1	No procedure is laid down in the legislation	814 (low base number of respondents)
2	Medical requirements (sterilisation, surgery, hormone treatment)	822 <sup>182</sup>
3	Diagnosis or supervision by medical body	250 <sup>183</sup>
4	No medical requirements, but requires divorce or judicial procedure	200 <sup>184</sup>
5	Self-determination	80 <sup>185</sup>

<sup>181</sup> This figure is based on 121 respondents to the online consultation and 14 interviewees.

<sup>182</sup> Source: Online consultation of this study. The question asked: 'Up to now, what would you estimate has been the overall financial cost to you of going through the LGR process? Please specify the amount in your national currency'. Base: 26 respondents to online consultation, 3 interviewees (n=29). Note: the health-related costs here may be a mixture of those accessing public and private healthcare providers.

<sup>183</sup> Source and question asked: same as above. Base: 61 respondents to online consultation, 7 interviewees (n=68).

<sup>184</sup> Source and question asked: same as above. Base: 14 respondents to online consultation, 3 interviewees (n=17).

<sup>185</sup> Source and question asked: same as above. Base: 19 respondents to online consultation, 0 interviewees (n=19).

The median overall financial cost of LGR process was highest for respondents in cluster 2 countries.

The highest costs reported (EUR 822 and EUR 814) are higher than the monthly minimum median wage in several Member States, representing a significant cost. As of January 2020, these costs were higher than the minimum wages per month in Bulgaria, Latvia, Romania, Hungary, Croatia, Czechia, Slovakia, Estonia, Lithuania, Poland, Portugal, Greece and Malta<sup>186</sup>.

There were some examples of costs being significantly higher than the median costs. This financial strain can have potentially negative impacts on peoples' well-being and can affect individuals' decisions on employment, education and reliance on family and friends for financial support (see Section 8.4.6 for more on how trans individuals pay for LGR).

Throughout all research activities, many participants noted that the cost of LGR was too high in their Member State. This is illustrated by the case of a trans man who lives in Italy, who listed several costs associated with LGR, including:

- Sessions with a therapist;
- Health centre visit
- Medical tests
- 3-4 blood tests annually;
- Full medical check-up annually;
- Medical evaluations and feedback, which are official documents;
- Legal fees, unless eligible for legal aid;
- Admin stamps for documentations (*marche de bollo*);
- Renewal of documents e.g. ID cards, driving licence;
- Travel and accommodation relating to surgery.

Another person noted that the overall cost of LGR process in Hungary was based largely on the cost of getting a diagnosis of gender dysphoria. The amount paid to relevant healthcare professionals may vary widely for trans people in Hungary.

A number of participants noted that they had chosen to access LGR in another Member State due to differences in costs. One trans woman living in Germany who has French citizenship decided to access LGR in France, as she felt that the process in Germany was too expensive. However, she noted that the trade-off was that the LGR process takes slightly longer than in Germany. She was willing to do this, due to being a student with minimal disposable income.

Some participants noted that, as students, they had missed out on financial support, such as legal aid, because of their parents' financial income, even though they were not financially supported by their parents. Many trans young people experience rejection from family members due to their gender identity and may not be financially supported by their parents (see Section 2.3 for more on experiences of coming out to friends and family).

A number of direct and indirect costs were identified by participants to change their legal gender marker. These related to changing important identity documents, healthcare costs not always covered by Member States, costs relating to travel to appointments, and legal fees, such as for lawyers and payment to registry offices.

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<sup>186</sup> Countries are presented in ascending order of their minimum wages. Note that six Member States lack a minimum wage: DK, IT, CY, AT, FI, SE. Source: Eurostat, Minimum wages, January 2010 and January 2020 (EUR per month and %), data code: earn\_mw\_cur.

### 8.4.1 Medical requirements of LGR procedures

Medical requirements of LGR were found to be costly in many Member States. For respondents living in cluster 2 countries (which have medical requirements such as sterilisation, surgery and/or hormone therapy to access LGR), medical fees were often covered by the state, with some personal contribution necessary per procedure or per prescription. In Italy, for example, trans people contribute an amount per procedure, but this can add up to a significant amount over time.

#### **Marco's experience**

Marco noted that although the LGR procedure in Italy is supposed to be free, every trans person has to pay a fee (ticket) for each treatment, including to see a psychologist or endocrinologist. This, in the long term, can become quite expensive. Marco stated the he was in receipt of legal aid, but would still have to save around EUR 100 per month for the medical and legal costs related to LGR.

Trans man, aged 18-24, residing in Italy (cluster 2)

This experience compares to some participants living in Spain (cluster 2) and France (cluster 4), where medical costs were minimal. One trans man who lives in Spain had minimal fees relating to LGR, as his medical appointments were all publicly funded. Another trans woman noted that she did not pay any medical fees related to LGR in France, which is consistent with their LGR requirements.

### 8.4.2 Cost of divorce

Where same-sex marriage is illegal, some Member States may (formally or in practice) require individuals to get divorced before they can change their legal gender marker (see Section 6.2.5 for more on these requirements). A number of people reported that they had to get divorced due to LGR requirements and that this had negatively impacted them financially. For example, one individual who lives in the UK and who went through LGR before same-sex marriage was made legal estimated that this had cost them upwards of GBP 1,000 (EUR 1,174).

### 8.4.3 Fees for changing ID or important documents

Administrative fees for individuals to change their gender and name on documents such as birth certificates, passports, driving licences, bank accounts and housing contracts were generally under EUR 100 per document. However, many noted that changing multiple documents was cumbersome and costly.

Table 10 below shows some of the costs relating to changing documentation, as reported by respondents.

*Table 10. Example of costs of changing ID or documentation given by respondents to online consultation and interviews of this study*

	Cluster 2		Cluster 3		Cluster 5	
	Finland	Croatia	Netherlands	Ireland	Malta	Belgium
Name change (e.g. through deed poll)	EUR 45			EUR 75		
Driving licence	EUR 25				EUR 20	EUR 35
ID card			EUR 50		Free	
Bank card			EUR 50		Free	
Education certificates		EUR 7			EUR 40	
Passport	EUR 50				EUR 80	EUR 35

#### 8.4.4 Legal fees

Legal fees contribute significantly to the overall cost of going through LGR procedures in some Member States.

For Member States where LGR procedures require trans people to have legal representation, the costs are extremely high. One trans woman in Germany (cluster 3) noted that legal fees depend on 'luck', as individual judges decide how much evidence you need to submit. This relates to the idea of professional failures to uphold the law and apply the correct standards (see Section 8.5).

Participants in the focus group in Greece strongly felt that the national LGR process is not accessible to all trans persons, as the financial cost of the process poses a significant barrier. This then has financial impacts of its own, if the lack of LGR means that individuals struggle to find work, to some extent representing a cyclical problem.

All participants in the focus group in Greece who had changed, or were in the process of changing, their legal gender marker emphasised the high cost of the process, as well as the additional costs. These extra costs included travel costs to go to their place of birth to register the court decision and declare the legal recognition.

One participant noted that she requested legal aid from the Bar Association due to her economic situation. However, no lawyer agreed to handle her case. She made an official complaint to the Greek Ombudsman and finally had to seek support from a transgender charity to get legal representation.

Participants in the focus group noted the financial burden that trans people face due to social and labour market exclusion and explained that this has a significant economic impact. One judged that 'It is a procedure that discriminates on the basis of class' and another felt that 'including lawyer's fees, the total cost of the process may reach or exceed EUR 1000.'

Generally, in countries where legal fees were a necessary part of accessing LGR, participants stated they had spent between EUR 1,000 and EUR 5,000. The exact amount paid by participants depended on whether they were eligible for legal aid.

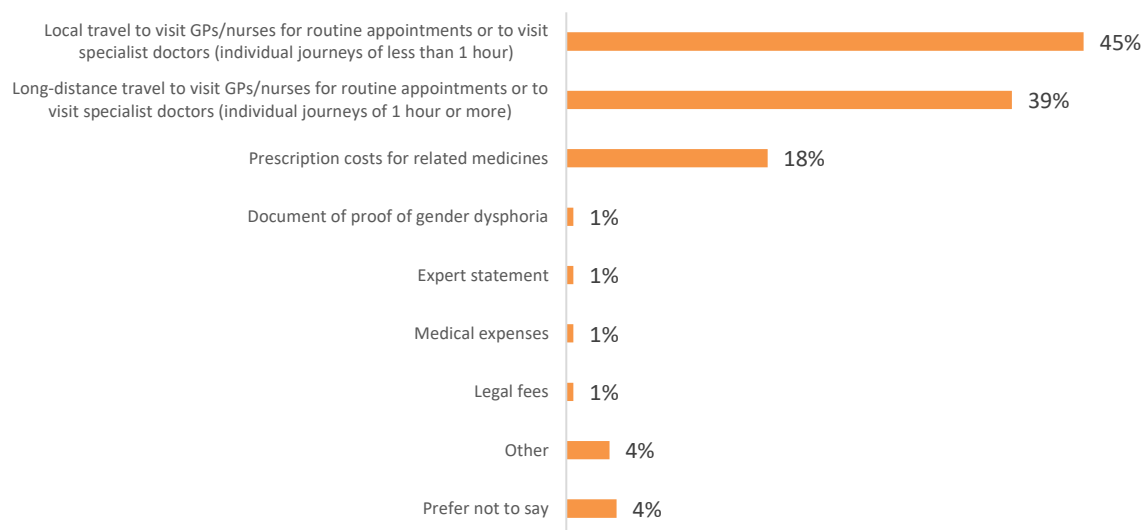
In addition to legal fees, respondents to the online consultation noted that they also had to pay for travel to registry offices and law courts. Over one-third of respondents paid for this as part of the LGR process.

#### 8.4.5 Indirect costs

Participants detailed a number of indirect costs incurred through changing their legal gender marker, chiefly travel costs to fulfil healthcare requirements. Nearly half of the respondents to the online consultation who completed the LGR process in 2018 or later personally had to pay costs relating to local travel for healthcare appointments as part of the LGR process. Around two-fifths paid for long-distance travel for healthcare appointments as part of the LGR process. Around one-fifth had to pay for prescription costs that were a necessity for completing LGR process.



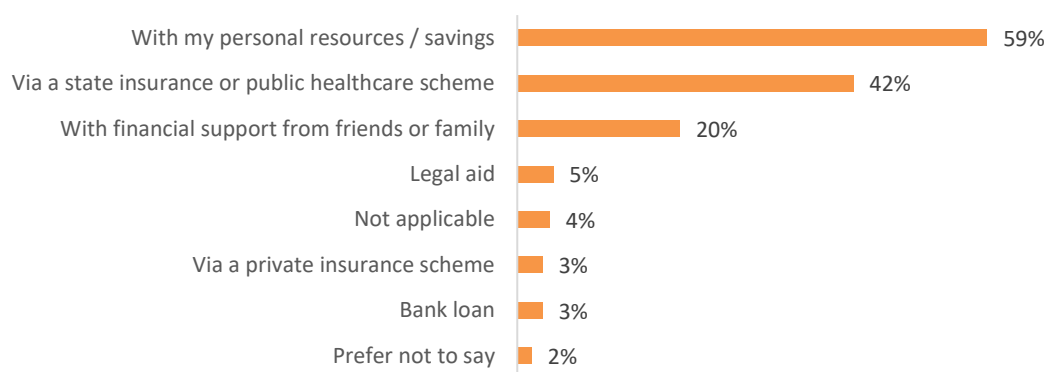
Figure 44. Indirect medical costs covered by participants as part of LGR<sup>187</sup>



#### 8.4.6 Paying for LGR

Study participants detailed the various ways they paid for LGR (see Figure 45 below). Almost six out of 10 respondents to the online consultation who had completed the LGR process in 2018 or later paid for it using their personal savings. Two-fifths used a state or public healthcare scheme. One-fifth did so with financial support from their family and friends. Very few participants received legal aid, used a bank loan or a private insurance scheme to pay for their LGR process.

Figure 45. Ways that participants paid for LGR<sup>188</sup>



During the interviews and focus groups, some participants reported using other methods to pay for the LGR process. One trans man (aged 18-24) who lives in Italy noted that he paid for the LGR process with an inheritance from his father and by opening a crowdfunding page online. An emerging body of research, mainly in the US context,

<sup>187</sup> Source: Online consultation of this study. The question asked: 'In addition to the cost of the treatment, did you personally have to pay for any of the following costs as part of the Legal Gender Recognition process? Please tick all that apply to you'. Multiple answers possible. Restricted to respondents completing LGR process in 2018 or later (n=159 respondents, who provided 171 responses).

<sup>188</sup> Source: Online consultation of this study. Question number CHECK\_3 and CHECK\_3\_2 combined: 'How did you pay for the medical treatment (s) that you received as part of the Legal Gender Recognition process? Please tick all that apply'. Base: respondents to this question in the online consultation (n=220). Note that respondents could choose multiple responses.

analyses web-based crowdfunding to raise money for healthcare expenses. Specifically in relation to trans people, Barcelos and Budge (2019) examined the distribution and determinants of transgender medical crowdfunding. They found that those with pre-existing social, economic and racial privileges<sup>189</sup> disproportionately used crowdfunding to raise money for gender-affirming care. As Member States in clusters 2 and 3 have medical requirements as part of their LGR process, this may mean that those from low socioeconomic backgrounds and ethnic minorities may be unable to pay for these requirements via crowdfunding. As noted in the literature and Chapter 4 of this report, trans people experience barriers to employment, which may have limited their income and thus their personal resources and savings. As shown in Section 2.3, some trans people may experience rejection from their family and therefore may not be financially supported by them.

Five respondents – from Romania, Poland, Austria and Hungary – to the online consultation noted that they had been refused funding from a state insurance scheme for medical treatments they required as part of the LGR process in their Member State. These participants had to pay for this with their savings or receive financial support from their family or friends. Participants also reported a time cost associated with LGR processes, such as many hours spent collating the necessary documents.

'It's not just the legal cost, but [cost of] getting all the information in order, the costs of getting backdated bank account statements and stuff like that. There's a massive time cost...you don't readily have your birth certificate, your marriage certificate.'

Trans woman, aged 65-74, residing in UK (cluster 3)

## 8.5 Failure to follow the law and regional 'pot luck'

Study participants from all legal clusters and regions of Europe drew attention to substantial regional and local differences within a country that can undermine individuals' access to their entitlements under LGR procedures. For one individual, the interaction with the LGR process 'depends a lot if one is lucky to be born in the right region or in the right city'.

Too often, individuals' experiences reflect a failure by civil servants to uphold the law, and the creation of a potentially discriminatory system. Participants from several countries provided clear and concerning examples of relevant legal and medical professionals failing to comply with the national LGR procedure. This can lead to legal standards being misapplied, and individuals being asked to fulfil (unnecessary) requirements to change their legal gender marker. For instance, study participants from Italy saw judges in some parts of the country as more likely to request unnecessary elements as part of the LGR process, such as the certification of a psychiatrist and potentially an external commission. Likewise, interviewees from France repeatedly gave examples of courts and town halls that required individuals to provide medical documents to access LGR, or questioned them when they did not do so. Given there are no medical requirements to access LGR in France, this is a concern. The failure by courts to apply the correct standards is reflected particularly strongly in the words of the trans woman below.

'I was fortunate to be in Paris where they request a minimum amount of things. I know that some other tribunals in France still request medical proof that you have transitioned. [...] Paris is less demanding [...] [That is] definitely not the case in other cities in France. We know there is a district to the west of Paris which has been very difficult with people applying for a change in their sex [marker], asking for medical details even though the law says they don't have to [...] It's in the hands of individuals, instead of there being a very clear set of rules.'

<sup>189</sup> Term used by that study's authors.

Trans woman, aged 35-44, residing in France (cluster 4)

Undermining access to effective LGR, there can be variations in the ability and willingness of courts to hear LGR cases, due to their overall caseload and the attitudes of the individual lawyers and judges involved in a case. For example, a trans woman from Romania (aged 25-34) knew of an individual who waited a year for trial date, and warned that it depends a lot on luck. Likewise, the '**trans-friendliness**' and political leanings of a region appear to have a bearing, with gatekeeping more of a problem in certain regions. For several participants, the region directly related to the level of acceptance that trans individuals can expect when transitioning. In Italy, for example, Emilia Romagna was perceived as a 'happy island', where judges are seen as more understanding.

Failures to apply the correct legal standards may reflect a lack of adequate investment by the state to ensure that professionals are aware of the requirements linked to LGR and follow these correctly. In turn, this situation undermines the clarity and protections available to trans people under law.

In some cases, these problems forced individuals to move within the country to access the LGR procedure. One participant from Lithuania decided to change their place of registration to the capital city (Vilnius) to apply to a court where they would have greater experience with the LGR process and it therefore would be easier. Likewise, a Greek participant (again, calling themselves 'lucky') had moved to a county court outside of Athens to receive a faster court decision. One trans woman from Romania (aged 35-44) explained that lawyers often encourage individuals who wish to go through LGR to move to another district, if it means that the judges will be more open to the case.

In addition to the formal requirements of LGR procedures, the effects of LGR processes not being properly followed can be equally important in undermining the well-being of trans people. This challenge was extensively discussed at the focus group in Greece. For example, while the national law in Greece requires the LGR procedure to take place 'in a private office without publicity', participants felt that this is often not applied, due to either a lack of necessary infrastructure (e.g. private offices with a transcription system available) or due to a lack of knowledge of the law among relevant professionals. The violation of legal provisions can have a serious impact on the person who goes through the process of legal recognition, including undermining their privacy significantly. These challenges are reflected in the quotes of two participants in the box below.

'County court judges in provincial towns are not aware of the procedure, even though they are obliged [to be aware].'

Trans person, age unknown, living in Greece (cluster 4)

'Several times [...], [legal professionals] leave the hearing/trial of our cases for the end of the day or the hearing is held on camera. This is not what the law says. This causes a huge hassle for those [...] waiting all day for their turn to come. It shows disrespect and seems punitive.'

Trans person, age unknown, living in Greece (cluster 4)

Regional differences also affected individuals' experience of LGR procedures. There can be differences in the pressures on gender identity clinics/specialist medical services<sup>190</sup>, and entitlements by region (for example access to legal aid to cover the cost of appointments with lawyers). The costs that individuals must cover to see relevant professionals for LGR can also differ, such as the travel costs of attending specialist

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<sup>190</sup> The pressures on health services will vary in importance, depending on the role they play in the LGR process.

medical appointments several hours away from one's home. These types of variations suggest that the state has not created a universally accessible system for effective LGR.

Although regional differences and deviation from the correct legal standards were commonly highlighted, it was unusual for them to be mentioned by individuals from cluster 5 countries. This may relate to the simpler LGR requirements in these countries, meaning that there is less potential for deviation at regional level. Nonetheless, there remains room for improvement in these countries for national governments to ensure that relevant professionals are aware of the provisions of the law. For example, participants in the focus group in Portugal pointed to reports that civil registries are not aware of the new law (introduced in 2018) and that they may request some unnecessary documents. This reflects the need to ensure that key professionals receive appropriate training to be able to transmit accurate information to trans persons on LGR.

## 8.6 Conclusions from this chapter

This chapter gave insights into trans individuals' experiences after they decide to begin an LGR procedure – for example, the types of interactions with medical and legal professionals, the costs of the system and how it feels to undergo certain requirements.

Several European countries require individuals to fulfil medical requirements as part of the LGR process, including gender dysphoria diagnoses, hormone treatments, surgery and sterilisation<sup>191</sup>. Many trans individuals object to these requirements, warning that this makes LGR inaccessible to those who do not wish to, or cannot, undergo medical interventions. The experiences of those who do undergo medical requirements reveal problems and failings in how the system functions in most of these countries, which can result in substantial barriers for individuals who attempt to fulfil the state's medical requirements to access LGR.

Consistent with previous studies, study participants in nearly all EU countries with medical requirements reported that they had had disrespectful or problematic interactions with medical professionals when attempting to access LGR. Nearly half (47%) of the affected respondents to the online consultation reported one or more disrespectful experiences. Participants' disrespectful experiences frequently reflected a serious lack of understanding and competence among healthcare professionals – for example, doctors not knowing 'what to do' with trans patients or the appropriate language to use, misdiagnosing patients, and failing to understand the side effects of hormones prescribed. Of concern, some participant testimonies also reflect obstruction by clinicians. Many participants spoke of the harmful psychological impacts of undergoing forced treatments and/or negative interactions with clinicians, calling it 'disrespectful', 'psychologically traumatic', 'embarrassing' and 'absolutely degrading'. A transgender man who had been forced to undergo sterilisation surgery later reported that he was 'disgusted' and feels 'deprived of my ability to reproduce'.

Commonly, the available supply of specialist professionals and clinics offering the necessary medical interventions for LGR was inadequate, contributing to long waiting lists. Such challenges were mentioned in relation to Finland, Hungary, Italy, Lithuania, Netherlands, Romania and the UK, but are also likely to affect other Member States. These types of structural failings can make it extremely difficult for individuals to fulfil the medical requirements that the state itself has laid down. Other obstacles that can make it harder for individuals to fulfil the medical requirements of LGR include state restrictions on the medical professionals that can be consulted, and limited insurance coverage of relevant medical treatments/services.

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<sup>191</sup> Officially these countries have medical requirements in the LGR process: Slovakia, Czechia, Poland, Finland, Austria, Estonia, Spain, Italy, UK, Slovenia, Germany, Hungary, Croatia, Sweden, Netherlands. In addition, in five countries without clear LGR requirements (Bulgaria, Cyprus, Lithuania, Latvia, Romania), some participants reported having to fulfil medical conditions.

Although legal interactions were generally seen more positively, trans participants reported some difficult, upsetting or intimidating interactions with civil or legal professionals. As explained in Chapter 7 (section 7.3), individuals living in cluster 1 countries (Bulgaria, Cyprus, Lithuania, Latvia, Romania) also face highly arbitrary requirements when it comes to the evidence and requirements requested by individual judges, due to the lack of clear conditions in these countries.

LGR can have consequences for individuals' civil and family situation, due to divorce requirements and/or a lack of recognition of same-sex union. This means that, in practice, individuals hoping to change their legal gender marker may be in unions that become legally void or may have an unclear status after they access LGR. These relationship effects of LGR are not caused by the broader principle of legal recognition, but reflect that gender-differentiated legal systems for marriage and civil partnerships can facilitate discrimination against trans people and LGR cannot combat this. Similarly, the design of other legal procedures can also lead to other negative impacts of LGR for family life, related to parental rights, custody rights and assisted reproduction.

Some individuals pointed to difficulties of the so-called 'real-life experience' (RLE) requirement of some LGR procedures. The 'RLE' was even seen to be dangerous in some cases, because of the hostility of others and the lack of accompanying documents. The idea of documents acting as a 'shield' and increasing personal safety for those who have undergone LGR is further explored in Chapter 9.

There are clear signs that privilege plays a role in affecting how easily people can access and move through LGR processes. For instance, some participants felt that they had had an easier experience of LGR due to having a high level of education, being older and/or having family ties to the relevant municipal office. There are additional problems in accessing LGR for non-citizens. Relatedly, there appears to be a particular problem of gender stereotyping by legal and medical professionals when making assessments about gender identity, with some participants speaking of the pressure to 'prove' themselves. This can make assessments especially stressful for non-binary people.

It is difficult to get a clear and complete picture of the costs of LGR, although these appear to be linked to the number/type of requirements one has to fulfil. The highest costs were seen in cluster 1 and cluster 2 countries (median costs were EUR 814 and EUR 822, respectively), where individuals either have intrusive medical requirements to fulfil or the requirements differ on a case-by-case basis. The lowest costs were observed in cluster 5 countries (median cost of EUR 80). Those without pre-existing resources may struggle to pay for LGR, especially in countries with the greatest costs.

In several countries, there were clear and concerning examples of legal and medical professionals failing to comply with the national LGR procedure. This can lead to individuals being asked to fulfil (unnecessary) additional requirements to change their legal gender marker, including providing medical declarations. Failures to apply the correct legal standards may reflect a lack of adequate investment by the state to ensure that professionals are aware of, and follow, the requirements linked to LGR. In turn, this situation undermines the clarity and protections available to trans people under law.

Whereas this chapter considered the experience and impact of individual requirements in LGR processes, the next chapter moves on to explore the overall effects and impacts of undergoing legal gender recognition, once the process is complete.

## PART III – THE RELATIONSHIP BETWEEN LGR PROCEDURES AND THE SOCIOECONOMIC POSITION OF TRANS INDIVIDUALS

Part I of this report focused on the social situation of trans people and Part II considered the design and lived experience of LGR procedures. Part III seeks to go one step further, by understanding whether there is a positive correlation between inclusive policies allowing for Legal Gender Recognition (LGR) and the well-being of transgender people.

### 9 Overall effects and impact of the legal procedures

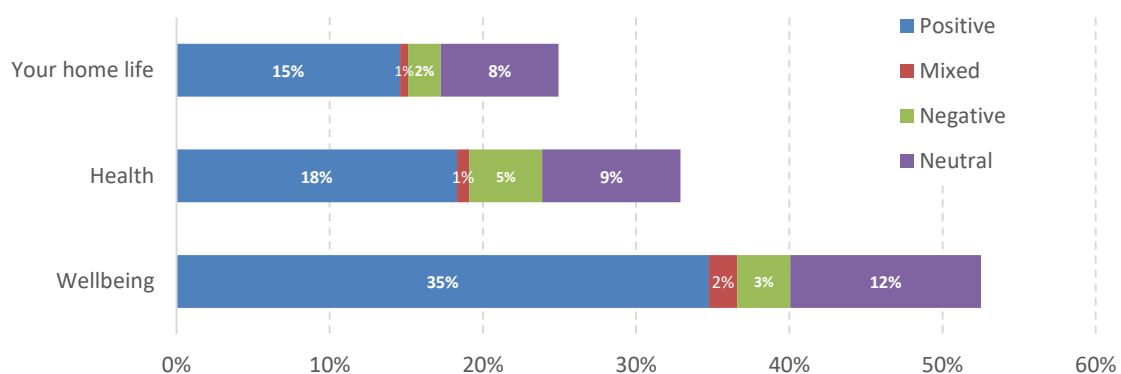
This chapter considers the overall effects and impact of the LGR procedures. The first Sections (9.1, 9.2, 9.3, 9.4) present the results of the consultation activities conducted for this study: the testimonies of trans participants. The second half (Section 9.5) uses statistical data to explore whether there is a correlation between the accessibility of an LGR procedure and the average socio-economic position of trans people in different areas of life. The chapter concludes by considering whether and how far the results of the consultation of trans people is reflected in the broader statistical picture.

#### 9.1 Well-being and health

Many trans people in the study – from across all legal clusters and regions of EU – stated that **obtaining LGR had positively impacted their well-being**. As discussed further below, these impacts can take many forms, including a strong sense of happiness and relief, internal feelings of validation, reduced stress in public settings, health benefits (particularly in terms of mental health), self-confidence, and reduced fear of the future.

Indeed, the most common impact of LGR, as reported by 35% of respondents to the online consultation was on their sense of well-being. These changes included improvements in mental health and self-confidence; not feeling distress or shame when presenting legal documents such as passports and ID cards; and reduced stress levels. Some noted feelings of relief now that their legal status matched their gender identity. 18% and 15% of those that completed LGR reported positive impacts to their health and home life respectively.

Figure 46. Reported impact of completing LGR for respondents to the online consultation (on well-being, health and home life)<sup>192</sup>



<sup>192</sup> Source: Online consultation for this study. The question asked: 'Has obtaining legal gender recognition had an impact, whether positive or negative, on any of the following aspects of your life? Please tick all that apply' and 'For each choice selected, we invite you to explain the impact (s) this has had'. Multiple answers possible. Note that there are limits to the representativeness of this sample. Responses categorised as 'neutral' were where a respondent had chosen a category but did not indicate whether the impact was positive or negative. Base: respondents who answered these questions in the online consultation (n=337).

Study participants from most EU countries – including Austria, Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Spain, Sweden and the UK – spoke of the positive effects on their well-being that arose after they completed LGR procedures. Many pointed to the enormous sense of **relief and happiness** that they experienced, and the validation that came from having a legal gender marker that matched their gender identity. One trans woman (aged 45-54) living in France (cluster 4) felt that ‘from the moment of this change, I started to live better. For me, everything changed’. She was able to change other documents and her social security number. She also felt comfortable travelling by plane, which she would not have done before her legal gender marker change, due to the risk of being questioned on her identity. Similarly, she now feels able to attend medical appointments without worrying that they will address her as ‘Mr’. Similarly, a trans woman (aged 35-44), living in Romania felt more confident after finishing LGR as ‘I knew that from now on, I will be recognised wherever I go and authorities can’t question it.’ This is further discussed by the participants below.

‘I have never been so happy in my life.’

Trans woman, aged 25-34, residing in Spain (cluster 2)

‘It has been a huge relief and a huge freedom to access ordinary civic freedoms and rights and to have my name and gender marker aligned with my identity.’

Man with a trans history, aged 35-44, residing in Cyprus (cluster 1)

‘I did not think the LGR would have any impact other than freedom to marry, but it did in fact have an enormous effect on my well-being - finally I feel justified, authorised, legitimate, whole, completed, validated...’

Woman with a trans history, aged 75 or older, residing in the UK (cluster 3)

‘When I changed my name ... I couldn’t get over the fact that having a piece of paper with the right gender in my hand was just like, so elevating! I look at it each day when I come home.’

Transgender person, age unknown, living in Ireland (cluster 5)

‘It is such a relief to be able to go anywhere with your ID, which matches who you really are.’

Trans man, aged 18-24, residing in Spain (cluster 2)

‘Not having to worry about being asked for ID and having to explain the discrepancy between stated gender and name on the one hand, and presentation on the other, is a great relief. In addition, holding an official document with the right gender and name on it is a very validating experience and a great joy.’

Trans woman, aged 55-64, residing in the Netherlands (cluster 3)

‘There are no more humiliating moments where I need to explain my entire life each time there are official papers involved ... I do not need to justify anymore who who I am because the state has recognised who I am.’

Trans man, aged 18-24, residing in France (cluster 4)

Generally, participants who had not gone through an LGR procedure expected that it would have the same positive impacts on well-being as discussed above.

Many participants pointed to the **greater ease that they experienced in their day-to-day life** after LGR procedures as a result of having ID documents that matched their gender identity and gender expression. Some stated that they are no longer forced to come out about their trans identity in public life, with processes such as security checks, going to the bank, or presenting their ID in other contexts being made easier. Some



noted that not only are these instances reduced, but they no longer have to worry about the possibility of being outed before going into some public settings (see Section 2.5). Greater ease and reduced stress in day-to-day life are shown by the quotes in the box below.

'It took a weight out of me... the fear to have to present [non-conforming] papers at police checks... I always had this apprehension [...] Now I do not have the fear of what others think [...] no more fear that papers could betray me... I'm a lot more at ease.'

Trans woman, aged 35-44, residing in France (cluster 4)

'Not having to worry about security checks and everyday transactions is certainly helpful for my mental health.'

Trans man, aged 25-34, residing in Greece (cluster 4)

'I do not have to justify myself or get anxious in the moments of my daily life where it is necessary to prove my identity.'

Trans man, aged 18-24, residing in France (cluster 4)

'[My life] has improved by me not being afraid of facing everyday situations like: travelling and having to show identification with which I do not identify; make card payments without people thinking that I have stolen the card; or collecting letters and parcels at the post office without having to provide legal documentation of my change of name and gender.'

Trans man, aged 25-34, residing in Spain (cluster 2)

Positively, some individuals **felt empowered by the change in their legal gender marker**, and more willing to do new things. A few individuals shared that they had gained greater confidence to travel once they had received their new legal gender marker and faced less questioning as a result. One trans man (aged 18-24) living in the Netherlands stated that 'I [no longer face] nearly the same amount of suspicion [as I did] before over how I was presenting myself and what these documents were saying I was. [Once] it matched up [...] that made it a lot easier for me'. In his view, the new documents led to a positive change in security officials' attitudes. In one case, a participant explained that it had led her to consider applying for the disability benefits that she was entitled to, or to engage in political life.

'It felt very good. And it was the first step to having other documentation changed: ID card, passport, driving licence [...] I felt I was able to do a lot of other things with these papers that I wouldn't dare to do before, like applying for disability benefits for autism [...], and considering running for office.'

Trans woman, aged 35-44, residing in France (cluster 4)

For those who had not yet changed their gender marker, many stated that having legal documents that matched their gender identity in the future would **stop them having to come out about their trans identity in public**. One trans man residing in France (cluster 4, aged 18-24) intended to change his gender marker in the future and felt that he would not have to explain his trans history to anyone when showing his ID, which would reduce the frequency of these stressful interactions. Similarly, for a trans woman residing in Romania (aged 25-34) (cluster 1), beginning the LGR process was an important step towards further controlling the coming out process. She explained how, in the past, she could not hide her gender identity because it would always have been obvious from her ID documents, stating: 'I had no control. The moment one person found out, it spread like wildfire.'

Many respondents discussed how they would be able to use their legal gender marker as 'proof' to those who questioned their gender identity. One trans woman (aged 25-

34) living in France (cluster 4) felt that 'showing an identity card with F as a gender marker will allow me not to have to justify my identity anymore'. Among others, she expected a benefit during interactions with officers at police controls. Study participants living in other countries and clusters also described their expectations of this positive impact.

For non-binary people who had not changed their gender marker, the expected impact was validation of their gender identity, which can often be misunderstood or not acknowledged by others.

'I would feel more valid and accepted by society. Right now, we non-binary people are really invisible and it is easy for ignorant people to say that we do not even exist. Legal recognition would help a lot.'

Non-binary person, aged 35-44, residing in Finland (cluster 2)

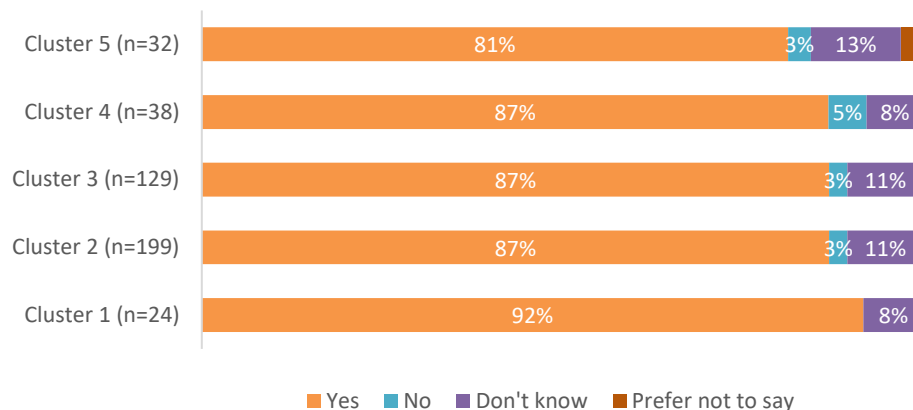
'Having an official document to prove that I'm non-binary [...] would also give me the leverage to not be misgendered anymore. Currently, my healthcare insurance, my bank, the unemployment office [...] [all] use "Ms". And even my professional registration [...] It really takes a toll on my mental well-being [...] Imagine if your title was the wrong gender. It [would] probably annoy you no end.'

Non-binary person, aged 25-34, residing in the Netherlands (cluster 3)

Several respondents who had not started to change their legal gender marker stated that they would like to in the future as it would allow them to be registered as their gender on their death certificate. It was also considered to offer potential benefits in terms of supporting individuals' privacy. For instance, one trans man in France felt it would allow me some protection in my private life' and reduce stress in his professional life, due to not having to hide who he was at work. Many study participants felt that having their gender identity recognised by the state was important in terms of **validation** and for their transitioning process, which in turn can have positive impacts on their well-being. Many spoke of the idea that they were finally being 'seen' and that their legal gender marker would enable them to live as their authentic selves. A trans woman and resident of Sweden reflected that, 'The impact was enormous because I could finally live within my true gender.'

Those who had not been through LGR also pointed to these positive impacts. One trans woman (aged 25-34) living in Hungary believed that after gaining recognition of her legal gender, her life would improve significantly and she 'would be able to live like a normal citizen'. Likewise, a trans man (aged 25-34) living in the Netherlands felt that LGR would improve his overall level of well-being, because having the wrong gender marker on his passport 'feels not right'.

Figure 47. 'Do you expect that obtaining legal recognition of your gender identity will have an impact on your overall level of well-being?'<sup>193</sup>



Depending on the cluster, between 81% and 82% of respondents to the online consultation who indicated wanting to access LGR in future felt that this would have beneficial impacts on their well-being (see Figure 47).

For some people, getting their gender marker changed was also an **important step in their transitioning process**, and it is clear that delays to this process can have negative impacts on well-being. As shown below, one respondent benefited from having their gender identity recognised legally. Another person (also shown below) felt that this validation may also result in people educating themselves more about non-binary people.

'I can feel more whole and complete now that my gender is recognised at an official level as well.'

Trans man, aged 25-34, residing in Greece (cluster 4)

'Being legally recognised gives a sort of validation; even if society will probably still not see my gender as valid, at least the state does...It can be some form of proof that I exist...Maybe if there is legal recognition people will...educate themselves more and maybe even recognise a gender outside of the binary.'

Non-binary person, aged 18-24, residing in Belgium (cluster 5)

Some noted improvements in their **self-esteem** and **confidence** as a result of changing their legal gender marker. One participant explained that in a work setting they had become more confident and things had been going well in their jobs. Others felt that after they changed their gender marker, they no longer had to adhere to societal expectations of their assigned gender.

'Very positive impact because I did not have to "play the role" [of being] a man, which did not fit me!'

Trans woman, aged 25-34, residing in Belgium (cluster 5)

Participants who had completed LGR procedures also pointed to the **health benefits** they experienced after changing their legal gender markers, especially in their mental health. The online consultation showed around one-fifth (18%) of those who had completed LGR reported positive improvements in their health. Generally, the following aspects of health were reported by participants: reduced symptoms of depression;

<sup>193</sup> Only respondents who indicated that they wanted to access LGR in future are included.

reduced anxiety; reduced stress; reduced psychological distress; reduced gender dysphoria.

One participant living in Spain explained that completing the LGR procedure enabled him to gain a sense of well-being and happiness after experiencing anxiety and suicidal thoughts in the past. In another case, a man with a trans history who lives in Denmark (aged 18-24) explained that changing his gender marker had greatly improved his mental health, such that he had stopped self-harming. He had previously suffered from panic attacks, headaches and didn't feel comfortable going outside of his home. These symptoms ceased since changing his gender marker.

Another individual noted that being able to have their gender identity recognised by society in turn meant that they were able to **access the job market**, improve their financial situation, and thus their health. A resident of Hungary (aged 25-34) described how his mental health improved significantly after LGR and his anxiety decreased. The quotes below further highlight that the impacts of changing a gender marker can be connected to many aspects of people's lives that impact on their health.

'Overall my mental health has improved very much because I can function in society as a woman now. This also reflects positively on my desire to keep my body healthier than before...Being less depressed means I could apply for jobs better, which improved my financial situation.'

Trans woman, aged 25-34, residing in Finland (cluster 2)

'It gives me more peace. I don't have gender dysphoria attacks as much as I used to do, and it reduces my stress levels significantly. I don't have to stress about my appearance no longer matching my assigned gender at birth.'

Trans man, aged 45-54, residing in the Netherlands (cluster 3)

Similar positive health impacts were anticipated by those who had yet to go through LGR. One trans man (aged 18-24) living in Hungary believed that his mental health would significantly improve after LGR, due to the anxiety he currently experiences when using his student ID.

Some respondents to the online consultation experienced physical health improvements as a result of changing their legal gender marker. Two had increased their physical activity, one started playing sports again and another noted that they had lost 15kg in weight due to being able to sign up to a gym, as their legal gender marker now matches their gender identity. One participant noted that during an appointment related to hormone therapy, they were diagnosed with a health condition for which they could receive treatment. Another stated that they felt a sense of closure with the past which had very positive effect on their physical health.

The impact of going through LGR procedures may be more limited for those who are already using 'workarounds' to live according to their gender identity (see Section 7.4). For example, a participant in the Italian focus group, who is at the final stages of the LGR process explained that having non-conforming documents had had only a small impact for her life and well-being. This was mainly because she had already changed her ID card to have a 'female' picture (matching her gender identity), even though the official gender marker on the ID showed 'male'. The picture reduced the level of pushback she experienced when showing her ID to others, even though officially it was a non-conforming document.

It is also worth noting that some participants explained that the design of LGR procedures in some Member States caused psychological distress and other negative impacts on well-being. For example, many described the process as burdensome, stressful and frustrating. These types of impacts are described more in Section 7.3.

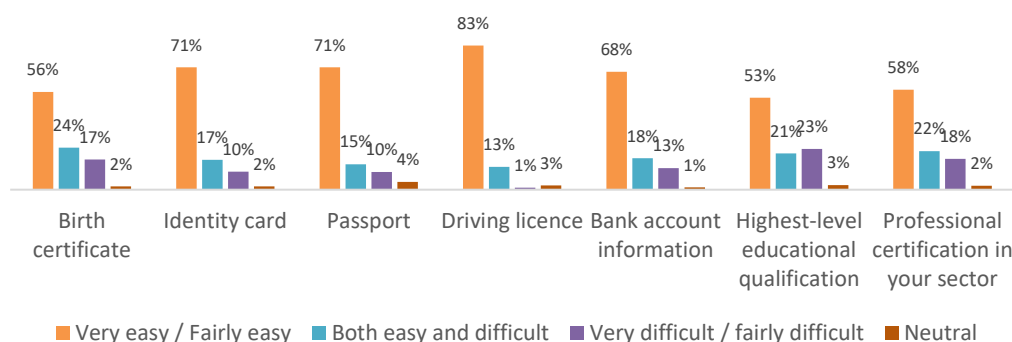
## 9.2 Changing ID after LGR is complete<sup>194</sup>

Respondents from all clusters and regions reported **difficulties in changing their gender on important documents, following completion of an LGR process**. As highlighted in Section 7.4, being unable to change the gender on key ID significantly can limit the positive impacts of legal processes, as it can cause serious bureaucratic issues for trans individuals when trying to access work, education and services. It can also mean that individuals are likely to be 'outed' about their trans history against their will.

The level of difficulty involved in changing the gender on important documents following the completion of an LGR process varies by document type (see Figure 48). Respondents were most likely to report difficulties changing their highest-level educational qualification, with nearly one in four stating that this had been fairly or very difficult. Nearly one in five respondents also stated that it was fairly or very difficult to change their professional certification. Having educational/professional qualifications that do not match your gender identity can negatively impact a person's employment situation, as it means they are not able to prove that their certification or educational level fulfils the expectation of particular employers (see Section 4.2 on accessing job opportunities).

Around one in five also reported challenges when changing their marriage or partnership documents and national residence cards, although this is based on a small sample. Nearly one in seven (13%) reported difficulties with changing their bank account information, while one in ten respondents reported that it was fairly or very difficult to change their identity card or passport. It was very unusual for respondents to report difficulties in changing their driving licence.

Figure 48. Ease or difficulty of changing documents to reflect change in legal gender marker (%)<sup>195</sup>



<sup>194</sup> There may be some ambiguity as to when LGR 'ends', and some trans individuals may consider the aspects discussed in this section as effects of the design of the LGR system, as opposed to consequences of gaining legal recognition. For simplicity, they have been included here because several of the ID documents discussed are subject to change based on the direct decisions of entities that may or may not be publicly owned, such as educational institutions and banks. However, ID-changing procedures are indirectly within the control of the state.

<sup>195</sup> Source: Online consultation of this study. The question asked: 'How easy/difficult was it to transfer important documentation to match your legal gender marker?'. 'Very easy' and 'fairly easy' categories grouped; 'very difficult' and 'fairly difficult' categories grouped. Base: respondents who have been through the LGR procedure in their country of residence and changed at least one form of important documentation to reflect their legal gender (n=267). For individual documents, base varies and is as follows: birth certificate (n=206), identity card (n=221), passport (n=136), driving licence (n=160), bank account information (n=232), highest-level educational qualification (n=115), professional certification in your sector (n=45). Responses relating to national residence cards, kinship documents of offspring, marriage/partnership documents and asylum identification documents have not been presented graphically due to the low numbers of respondents.

The reasons that individuals may still face bureaucratic problems in their daily lives linked to non-conforming documents, even if their official legal gender marker has changed relates to the fact that in many Member States there are difficult, cumbersome or non-existent systems to enable individuals to change their gender marker easily in all important documents (e.g. educational certificates, bank account details, birth certificates of children, etc.). This means that while the 'official' legal process is complete, many do not consider it finished because of the administrative steps outstanding.

Participants in the Greek focus group highlighted the slow processes that exist to change other documents (e.g. driving licence, bank accounts, property titles) once their legal gender marker has changed, and that these can expose transgender people to abusive environments. One individual in Italy provided further insights into this issue.

'People are totally lost [...] I refer to those that are in contact with [...] services and [who] need to change documentation (health, banks, welfare services). Each person hopes that they will find someone sensitive, because there are no procedures for that. So, you go there to the bank hoping to find someone that does their job and change the gender marker.'

Trans man, aged 18-24, residing in Italy (cluster 2)

A trans man in Hungary (aged 25-34) noted that there is a lack of legal continuity between his deadname and sex assigned at birth, and his name and gender identity after going through LGR. Some authorities are reluctant to accept an official letter from the ministry that details the legal change.

National procedures may not exist for trans parents to change their genders within the birth registration documents of their children. One trans woman (aged 25-34) in Finland explained that it was not possible to change the birth registration documents of her children to reflect her new legal gender, as Finnish birth certificates must list a mother and father, and she was currently listed as the father. This situation was also seen to adversely affect lesbian and gay couples, with this study participant judging that '[Finnish documents are way out of date.](#)' She was successful in changing the documents on her child support and agreement of custody, but this was mostly as a result of a social worker being respectful of her gender identity, who changed them by hand.

The following section considers the impacts of LGR on trans individuals' level of social inclusion.

### 9.3 Social inclusion

Positive impacts of LGR related to social inclusion were detailed by several study participants across all research activities. Many explained that completing the LGR process had led to **greater acceptance of their identity in daily life, amongst family members and in wider society**. One trans man (aged 25-34) living in France commented that before doing LGR, people did not take him seriously when he came out and thought it was a joke. Only after LGR, did his friends and others take him seriously. He also reflected, '[I don't have a knot in my stomach anymore when having to deal with \[an\] administration.](#)'

Several participants described how their legal gender marker legitimised their gender identity to their family. These people experienced improvements in their well-being, as their family took their gender identity more seriously after they had changed their legal gender marker. 15% of respondents to the online consultation reported improvements in their home life as a result of changing their legal gender marker. Reasons given for this included:

- Friends and relatives understanding and accepting their identity, and using the correct name;



- Family not misgendering them;
- Feeling free to be themselves;
- Feeling that they 'fit' in their family;
- Not hiding their identity at home;
- Gained friends or strengthened existing friendships.

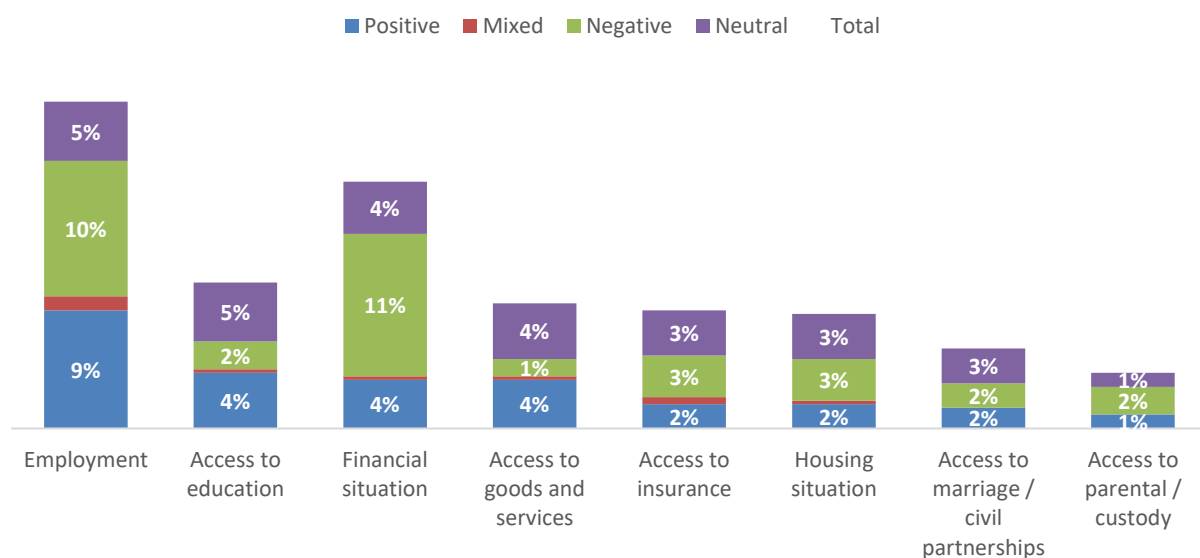
'LGR helped with my family. It was "the click" for [them]. They live in the countryside; the mentality is not the same as in big cities. The fact that there is an official recognition from the state helps with family, social and professional inclusion.'

Trans woman, aged 55-64, residing in France (cluster 4)

Considering other types of impacts of LGR (both positive and negative), around one in four respondents to the online consultation reported impacts for their **employment**, and one in five reported impacts for their **financial situation** (see Figure 49 below). Less commonly, impacts were also reported in other areas (access to education, access to goods and services, access to insurance, housing situation, access to marriage/civil ceremony and access to parental custody). These areas may not all have been relevant to an individual's situation at the time of answering the online consultation. For example, an individual who has not attempted to access education after completing LGR is not in a position to assess whether this has an impact.

The impacts for individuals' employment appear to be mixed, and impacts for individuals' financial situation are more negative than positive. It is worth noting that some of these negative financial impacts may relate to the cost of LGR, which is substantial in several countries, particularly in those with medical requirements (see Section 8.4). These costs, however, are ultimately within the control of national governments, as they relate to the number and types of LGR requirements that exist.

Figure 49. Impact of completing LGR for respondents to the online consultation<sup>196</sup>



<sup>196</sup> Impacts on employment, education, financial situation, access to goods and services, access to insurance, housing situation, access to marriage/civil partnerships and parental/custody rights. Answers to the questions 'Has obtaining legal gender recognition had an impact, whether positive or negative, on any of the following aspects of your life? Please tick all that apply' and 'For each choice selected, we invite you to explain the impact (s) this has had'. Note that there are limits to the representativeness of this sample. Responses categorised as 'neutral' were when a respondent had chosen a category but did not indicate whether the impact was positive or



Study participants further reflected on the impacts of LGR (lived and perceived; positive and negative) in several areas of social inclusion. Each area is discussed in more detail below.

### 9.3.1 Education

A number of positive educational impacts of LGR were noted by those who had subsequently been in education or who planned to access it. Firstly, some trans people felt better able to **access higher education** due to having their gender marker aligned with their gender identity, as this would avoid their being outed. One trans man (aged 18-24) living in France described the great relief he experienced at being able to apply for his MA degree under his name and gender, so that he was not obliged to tell his fellow students and teachers about his trans identity. A trans woman living in Austria noted that since changing her legal gender marker she no longer has to disclose her trans identity in educational settings.

'My identity is no longer in question. I do not have to discuss in advance with teachers how to address me and then be reliant on their good will. I am no longer forced to come out through attendance lists and online learning platforms.'

Trans woman, aged 25-34, residing in Austria (cluster 2)

Similarly, a trans man (aged 25-34), residing in Greece (cluster 4), had postponed completing his BA degree in order to change his legal gender marker before he graduated. He described feeling 'safer' when applying for education and training programmes without having to worry about staff and peers knowing about his trans identity or using his 'deadname'. This indicates that fear of being forced to come out may be a barrier to education for some individuals. Similarly, a trans man (aged 18-24 in Poland) felt that studying another subject at university was now possible, as he felt that he would avoid bullying if he were not forced to come out.

There are some signs that LGR can improve how much individuals benefit from education, as some people felt **better able to engage in their education** after completing the LGR process. For one participant, completing LGR meant that they had more time to study. A trans man (aged 18-24 in Poland (cluster 2) felt more confident after changing his gender marker, which made it easier for him to study. A non-binary person in Germany (aged 18-24) felt able to attend university events and to engage in university life, as they are able to insist that their name and gender is properly documented on lists, registers and certificates. Before changing their gender marker, they would avoid these situations. A trans man in Germany (aged 25-34) felt that after completing the LGR process, he had more time to study instead of spending time and energy on the LGR process.

Negative impacts on education were also described by some respondents in clusters 2 and 4. For one respondent who went through LGR whilst studying, the process made it impossible to concentrate on studying. This negative impact is potentially a consequence of the design/length of the LGR procedure, rather than the principle of legal gender recognition itself.

Many other respondents noted that they were unable to change their qualification certificates in line with their gender identity or name change. This reinforces the idea that educational qualifications may be especially difficult to update after LGR (see Section 9.2). This is a cause for concern given that it may be necessary to show these to access new professional opportunities. Several individuals reported instances of universities being unwilling or unable to change degree certificates and diplomas. This often related to a lack of established procedures within universities and other

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negative. The proportion of individuals who chose 'mixed' impacts for each of these impacts was 1% or less and is not shown in the Figure. Base: (n=337).

educational institutions to allow trans students and alumni to make these changes, and/or the need for trans people to instigate such processes themselves. For some study participants, they remained unable to change their educational documents, meaning that they were no longer able to prove their level of qualification.

'I no longer have a diploma due to the refusal to mark my titles with my new identity.'

Trans woman, aged 35-44, residing in France (cluster 4)

'A rather negative aspect [has been that] I no longer have a degree of secondary education that corresponds to my gender and name and that the procedure allowing me to get it changed is rather blurred.'

Trans man, aged 18-24, residing in Belgium (cluster 5)

### 9.3.2 Employment

Many respondents reported improvements in accessing the labour market as a result of changing their legal gender marker, including around one in ten (9%) respondents to the online consultation, as well as interviewees and focus group participants. This chiefly stemmed from not having to disclose their trans identity to employers during interviews and recruitment. As shown in Section 4.2 of this report, trans people can face implicit and explicit discrimination from employers during the interview process.

'Being officially recognised as my true gender allows me to meet potential employers in my comfortable gender expression without my original birth name "outing" me, bringing a whole host of issues with it.'

Trans woman, aged 25-34, residing in Hungary (cluster 3)

Once a job offer has been made, trans people may face difficulties when presenting their ID to employers as part of the induction process. Having a legal gender marker that matches their gender identity can mean that trans people are not forced to come out. For some, the fear of being forcibly outed can be a prominent barrier in seeking employment. One participant felt able to apply for a job after they had changed their gender markers because almost all employers ask for a photocopy of the ID card as part of the induction process.

'[I was] able to apply for a childcare assistant position for which the first information requested is the sex with photocopy of ID card.'

Woman with a trans history, aged 45-54, residing in France (cluster 4)

Other benefits were the responses of employers, colleagues and customers. One participant living in Portugal stated that after completing LGR, 'this was a relief to me, because I applied for gardening jobs and other workers did not make fun of me anymore'. Several respondents stated that having their gender legally recognised meant that their employer had to respect this, thus avoiding discriminatory practices (see Section 4.3). Another noted that since changing their legal gender marker, they no longer have to hide their work badge. Previously, this badge displayed a gender marker that did not correspond to their gender expression.

Generally, many in employment appreciated not having to explain to colleagues, managers and clients why their physical appearance did not match their ID. One participant (trans man, aged 18-24) felt that '[LGR] has been very useful to ensure that my trans identity is not known in my current employment environment' and that this would not have been the case if he had not completed the LGR process. While this example shows an improvement for the participant, it illustrates trans people's fear of discrimination in the workplace (see Section 4.3), which may lead them to hide their gender identity. These impacts were also expected by some who had not been through

LGR. One trans man (aged 25-34) residing in France stated that it would facilitate his employment inclusion and enable him to have more economic stability, since at the moment he only has temporary contracts.

There may also be **unforeseen consequences** of changing legal gender markers. For example, one individual in Italy reported that they were forced to stay as a 'prisoner' in a particular job after going through the LGR procedure because their contract was in a different name and they were unable to launch the resignation procedure with the new name. Less commonly, respondents in the online consultation reported negative impacts of LGR for their employment.

### 9.3.3 Financial situation

As mentioned, LGR negatively affected the financial situation of some participants (see also Section 9.4). Some noted that the length of LGR procedure caused them to put their life on hold and to **miss out on promotions or opportunities for career advancement**. Others were forced to take on **precarious employment**, such as freelance or temporary employment. Some participants noted that changing their gender marker from male to female meant that they were **subject to discrimination** as a result of the gender pay gaps in their field. Others had negative impacts on their financial situation, due to going through a divorce as a result of LGR.

Some respondents had gone into **debt** or used up their savings due to costs relating to changing their legal gender marker. One respondent residing in France had gone into EUR 4,300 of debt to fund legal and travel expenses relating to changing their gender marker. Some also noted the financial strain, due to costs such as hormones, medical and legal fees. A trans man (aged 18-24) living in Luxembourg noted that he was financially burdened by changing his legal gender marker as, although he is a student, he was not eligible for legal aid because his parents' earnings were over the threshold in place. This was despite his parents not paying any fees relating to his legal gender marker change.

Several respondents noted **issues with banks and insurance companies** after changing their legal gender marker. Some cluster 2 country residents were unable to access their bank accounts after changing their gender marker. The woman quoted below was unable to access her money for a month and had to go through additional administrative procedures to prove her identity.

'I felt like I was left in the dark after I changed gender marker. My bank account stopped working for a month and during that time they deleted all of the money from my savings account. I then had to prove that I actually had them from taxes and so on.'

Woman with a trans history, aged 18-24, residing in Finland (cluster 2)

Another participant living in Ireland explained how the central bank uses their deadname, even though they have legally changed their gender. While it is acknowledged that authorities sometimes need to share past data to check a person's identity, the participant does not feel comfortable with people using and sharing their deadname – 'sometimes I am put in situations where I don't have a choice'. Individuals in Italy and Greece also pointed to challenges that trans people face in changing bank account details, as shown by the examples below.

'I went to the bank to change my personal details. I approached the employee and within a short time everyone was looking at me and was making comments. This is when privacy disappears.'

Transgender person, unknown age, residing in Greece (cluster 4)

'I went to a bank and was not allowed to change my data as the employee did not understand that I was the same person, but only the data was different.'

Transgender person, unknown age, residing in Italy (cluster 2)

'I have two bank accounts and I have been recommended to close one to reduce the problems that I will have. They already told me: you will have problems.'

Transgender person, unknown age, residing in Italy (cluster 2)

Two respondents (from Austria and Germany) noted that they were unable to get access to credit after changing their legal gender marker as they 'had not existed' under their new legal identity for long enough. Another noted that they were not able to access life insurance or home insurance, as this would involve disclosing their medical history, which would have disclosed their trans status.

Several respondents in clusters 2, 4 and 5 also experienced an increase in costs relating to health insurance. One trans man (aged 35-44) who lives in Austria (cluster 2) reported that his health and life insurance policy excluded trans people and so he was forced to increase contributions in order to get appropriate coverage after changing his legal gender marker. A trans man (aged 18-24) who lives in Belgium (cluster 5) also said that because he is legally male, his insurance company will not cover gynaecological expenses. Similarly, a non-binary person who also lives in Belgium, stated that their insurance policy only covers hormone replacement therapy if the persons' gender marker matches the hormones they are prescribed. These challenges are discussed by the participant below.

'Reimbursement of certain health costs are gendered in Belgium. Therefore, trans men who have not had any genital surgery and go to the gynaecologist, cannot be reimbursed and because a lot of trans people face discrimination in employment, a lot are poor and can't afford to pay full medical appointments so they stop going.'

Man with a trans history, aged 25-34, residing in Belgium (cluster 5)

Perceived negative financial impacts may also restrict access to LGR for some trans individuals without pre-existing socio-economic privileges, such as individuals from ethnic minority groups (see Section 8.4, especially 8.4.6).

#### 9.3.4 Medical entitlements, access to healthcare and social security

Some participants explained that going through LGR had made it **easier for them to access medical entitlements** they desired as part of their transitioning process. One non-binary person in Ireland reported having undergone the LGR process to get surgery more easily, which would otherwise have required two psychiatric evaluations. A trans woman (aged 25-34) in Finland also reported that changing her legal gender was necessary for accessing gender-affirming surgery.

Several participants noted that they had improved access to and experiences of health services after changing their legal gender marker. One participant is now able to book their own doctors' appointments, which they were previously unable to do, due to a discrepancy between their legal gender marker and their gender expression. Another participant felt comfortable going to the doctor, as they would be addressed with the correct pronoun.

However, there can also be problems linked to accessing medical services and social security, especially when it comes to changing medical IDs and social security numbers. Linda's experience below demonstrates these challenges especially well.

### **Linda's difficulties in accessing her public healthcare entitlements in the UK**

Linda is a woman with a trans history who lives in the UK. She completed the LGR procedure in the UK and most of her important documents now match her legal gender marker, including her birth certificate, passport, driving licence, bank account information, and marriage/partnership documents.

However, she noted a particular issue in the UK relating to the public healthcare system: the number by which you are identified by the National Health Service (NHS) is created in part using your legal gender marker. This was only discovered following her efforts to understand why she was still receiving letters with the incorrect title. As such, transgender people are at risk of being misgendered by medical services unless they receive a new NHS number that reflects their legal gender (e.g. she has received letters with the title 'Mr').

It does not appear that there is any formal process in place to produce new NHS numbers for people whose legal gender is changed. In this case, the respondent's GP created a new NHS number for her – at a 'personal risk' to her – and personally transferred the respondent's entire medical history to the new number.

In practice, individuals like Linda may also risk losing access to their entire medical history if there are no standardised procedures for transferring records between NHS numbers.

Similar examples were shared in relation to social security more generally. For instance, a transgender woman (age 35-44) living in France explained that, during a period of unemployment, she had changed her legal name but not yet completed the LGR procedure. As a result of this, she was unable to change her social security number and access her entitlements. A participant in Finland mentioned that there may be issues with a new social security number, as it can mean trans individuals no longer have a medical history. Similarly, a trans woman (aged 25-34) living in Sweden expected her new social security number to cause her 'hassle' due to the large number of documents she would have to change as a result. A trans man (aged 18-24) who lives in Belgium stated that the tax authorities refused his change of civil status and he was therefore not eligible to social care, social housing or legal aid.

These types of challenges reflect limits in the design of national social security systems, which may fail to make adequate provisions for individuals who change their legal gender.

### **9.3.5 Housing**

With regard to housing, after completing LGR, several respondents were able to find accommodation in the private rental sector without facing discrimination from landlords.

'My ID card is consistent with the way I present myself. I do not have to explain that I am trans to my landlord.'

Woman with a trans history, aged 45-54, residing in France (cluster 4)

Another respondent felt that they were taken more seriously when trying to buy a house as their documents matched their gender expression.

Some people in clusters 2 and 3 noted that they had lost their home as a result of changing their legal gender marker, either due to the breakdown of their relationship or having to divorce a partner in order to change their gender marker. Others faced discrimination in the private rental sector as mentioned previously, both before and after changing their gender marker.

### 9.3.6 Personal safety

Many individuals spoke more generally of a greater feeling of **safety in public places** once they received their new legal gender marker. This especially came out from the Irish focus group, as shown by the box below.

'I'm non-binary and I've used the LGR process [...] There's safety in it. I use it for when I'm going to the bathroom, when I'm going to work.'

Non-binary person, age unknown, residing in Ireland (cluster 5)

'[I] have that passport with an M on it in my pocket like a bloody shield. Like if anyone tells me, "Get out", that's when I'm going to show them [...] I carry my passport card with me. I specifically got a passport card so that if I ever got tried to get kicked out of the bathroom [...] I'd have a legal form of ID that says I'm allowed to be there.'

Transgender person, age unknown, residing in Ireland (cluster 5)

Many who had not yet been through LGR also expected that it would increase their sense of safety and the ease with which they lived. This was mentioned by respondents in Croatia, France, Romania, Poland and the UK. Further detail was provided by a trans man (aged 25-34) living in France, who thought that it would reduce the risk of harassment at work. A trans man (aged 18-24) explained that, in Romania, there were places where he would feel unsafe showing his ID (with a female marker), explaining 'at best I would be accused of impersonating a family member, and at worst people would realise I'm transgender and possibly respond violently.' From his perspective, changing his ID after LGR would 'safeguard me from that and it would take a lot of stress off of my shoulders when showing my ID'. Similarly, a trans man (aged 18-24) living in Croatia explained that he was often treated with suspicion by police officers and security guards, due to the mismatch between his ID and gender presentation. He had also been forced to come out at work. The impact of not having the right ID left him feeling 'grounded', as explained by the box below.

'I feel like I'm "grounded" and am sitting at home and just waiting to be able to go outside. That's kind of what it feels like without my gender marker being changed to male. I'm waiting to live my life in the way I want to. Gym memberships, every part of my life I'll feel free. I don't have to hide or cover my gender marker with my fingers when I show someone my ID because they don't believe that I'm 23.'

Trans man, aged 18-24, residing in Croatia (cluster 3)

### 9.3.7 Marriage and civil partnerships

Completing an LGR procedure can provide both opportunities and barriers to marriage, civil partnership and assisted reproduction. As these are often consequences of other legislation and/or procedural requirements rather than the wider principle of recognition before the law, they are covered in Section 8.3.3 of this report.

## 9.4 Factors affecting impacts of LGR

The ability of individuals to experience the positive impact of gaining matching documents through LGR may relate in part to their gender expression and the degree to which this conforms to **broader societal expectations** linked to how people of different genders should look, dress and behave. Some participants in the Irish focus group gave examples of people in their lives who were unwilling to respect their legal gender identity after they went through the LGR procedure. In one instance, a participant had to phone their doctor to ask that a member of staff in the doctor's surgery stop addressing them by their deadname. Other similar examples included:

- A trans man in the Polish focus group who had completed LGR had a negative interaction with a physician who disrespected his identity and even filled a medical



document noting him as a woman. Other participants confirmed that such experiences are not unusual.

- Trans participants at the Italian focus group stated that, in addition to having documents in the correct gender, good 'passing' is essential for getting and keeping a job.
- A trans woman, aged 35-44, living in Romania, explained that even with the documents in front of them, some people will address trans individuals based on how they look.
- A trans man, aged 18-24, living in France, stated that, because he does not 'pass', he does not expect LGR to change much for him (when he completes the process), other than improving his peace of mind.

Such examples reflect that LGR procedures will not automatically guarantee that trans individuals are treated with dignity and respect if their trans status becomes known, due to gaps in others' understanding – and sometimes overt hostility – as well as failures on the part of the state to protect individuals from discrimination. It particularly reflects the difficulties for those who do not or cannot 'pass' as the gender on the documents, as well as the additional challenges for non-binary individuals who may have no legal gender available to them. It is highly problematic if the benefits of LGR are possible only when trans individuals are seen to be cisgender and their trans history is unknown. This is because it suggests that wider society is not necessarily becoming more aware or accepting of trans identities.

'Since [my company closed], I could find three full contracts because I do not have any issues with my papers, since I changed them and the diplomas are aligned. If I had to be honest with any of those three employers and I had said I was trans, I'm not sure they would have hired me.'

Trans man, aged 25-34, residing in France (cluster 4)

In some cases, individuals simply stated that they prioritised other goals above LGR. For instance, a trans man (aged 25-34) living in the UK stated that access to quality healthcare for trans people is more important, and that a national-level consultation on LGR can distract from this. Others judged that their medical transition was more important and 'liberating' for them than LGR.

## 9.5 Effects of LGR at the cluster level

This section aims to determine, using statistical data, whether there is an observable link between the five legal clusters identified through the legal analysis and the socio-economic situation of trans people. Measured by ten selected indicators from the FRA LGBTI and Eurobarometer surveys, we have employed a country-cluster correlation analysis. The Figures below present data on the ten indicators (EU-28 weighted average for the trans respondents) in each Member State for 2012 and 2019, arranged in the five legal clusters.

As with the convergence analysis presented in Annex 6, the correlation analysis focuses on ten indicators of experience and perceptions of discrimination against trans people in employment, education, healthcare and social services, housing, and using document of identification. The choice of indicators was based on two main considerations: 1) the indicators' importance for understanding the socio-economic position of trans people in the EU, and 2) the comparability of survey questions across the 2012 and 2019 waves of the FRA LGBTI survey and the 2012, 2015 and 2019 Eurobarometer surveys on discrimination.

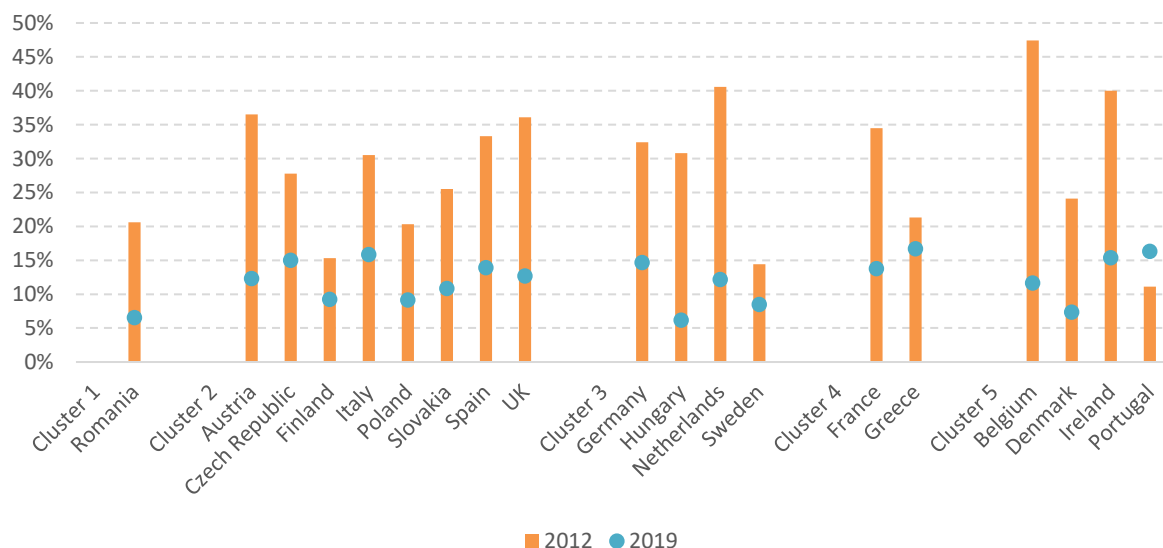
Overall, there is no clear relationship between the legal clusters and the ten indicators. There is considerable variation *within* each cluster on each indicator of the indicators. The LGR procedures do not appear to have a bearing on the overall position of trans people at the Member State level, when judged in terms of reported discrimination.



However, this is not a surprising finding as in each cluster there are Member States that differ substantially in their education, healthcare and social services systems, public and private housing markets, rules and regulations against work-place discrimination, and overall rates of acceptance and discrimination against trans people. Access to healthcare, education and housing is driven by other factors such as the general openness and equality of these systems and the overall quality of services. Moreover, many of the LGR reforms discussed in this chapter are too recent to produce observable effects at the aggregate level. In particular, all countries in cluster 5 adopted a self-determination based LGR procedures after 2014, including as recently as 2017 and 2018<sup>197</sup>. Since it usually takes months (or even years) for legislation to be effectively implemented in practice, many trans people in those countries only went through LGR very recently. It is thus too early to identify clear impact on social inclusion.

Figures 50 and 51 below show the share of trans respondents who have experienced discrimination in the past 12 months while looking for a job and at work in 2012 and 2019. There is more variation between Member States in the share of respondents who experience discrimination while looking for a job than in the share of respondents who experience discrimination at work. This shows that trans people have considerably different experiences entering the labour market in different countries. In almost all Member States, however, there has been an improvement – the share of respondents who have experienced discrimination while looking for a job is lower in 2019 than in 2012. The two exceptions are Slovenia (cluster 3) and Portugal (cluster 5). Moreover, the differences between countries within each legal cluster – and across the EU overall – are smaller in 2019 than they were in 2012. Mostly, the share of those who have faced discrimination at work has also dropped.

Figure 50. Share of trans respondents who experienced discrimination in the past 12 months when looking for a job, by country and legal cluster, 2012 and 2019 (%)<sup>198</sup>



<sup>197</sup> 2018 for Luxembourg and Portugal. 2017 for Belgium. 2015 for Ireland and Malta. 2014 for Denmark.

<sup>198</sup> Source: FRA (2012), EU LGBT Survey, FRA (2019). EU LGBTI Survey II. The question asked: 'During the last 12 months, have you personally felt discriminated against because of being [Respondent category] in any of the following situations: when looking for a job?' Base: Trans respondents in the EU LGBT Survey (n=6,771) and EU LGBTI Survey II (n=19,445). EU-28 weighted average. Results not statistically reliable for Austria, Belgium, Czech Republic, Denmark, Hungary, Ireland, Portugal, Romania and Slovakia in 2019. Not shown because cell has fewer

Figure 51. Share of trans respondents who experienced discrimination in the past 12 months at work, by country and legal cluster, 2012 and 2019 (%)<sup>199</sup>

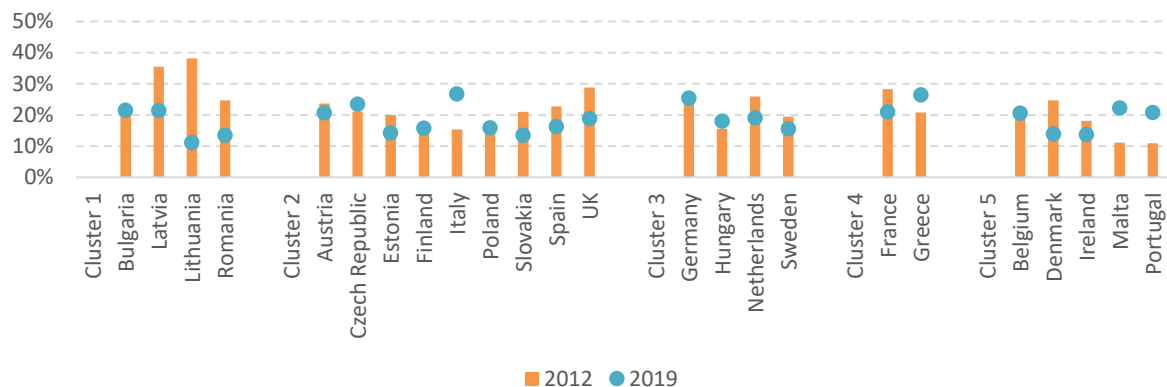
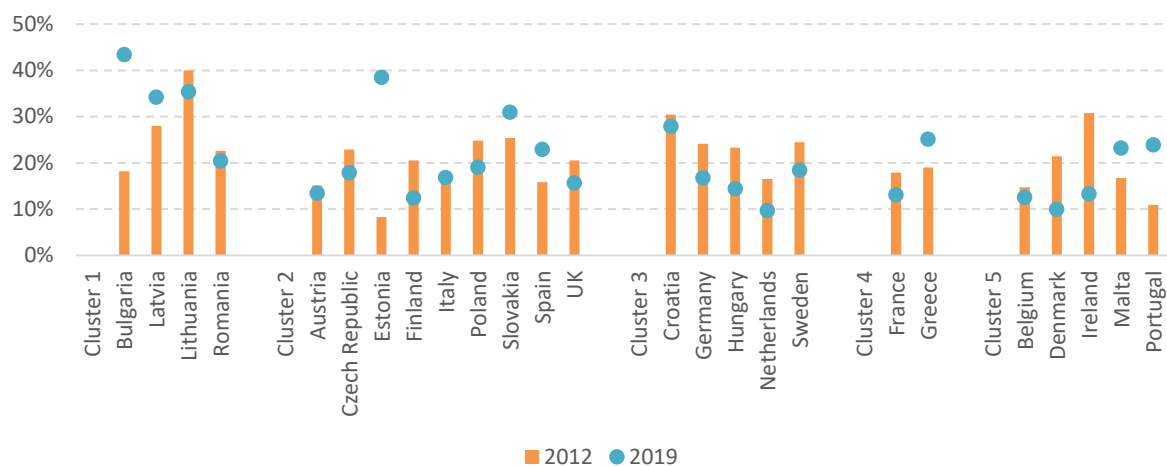


Figure 52 below shows the share of respondents who in the past 12 months have experienced discrimination by school/university personnel either as students or parents. There is no clear relationship between the legal clusters and indicator. There is considerable variation within each cluster, and there is no clear pattern in the change over time since 2012.

Figure 52. Share of trans respondents who in the past 12 months have experienced discrimination by school/university personnel, by country and legal cluster, 2012 and 2019 (%)<sup>200</sup>



than 20 observations: Bulgaria, Croatia, Cyprus, Estonia, Latvia, Lithuania, Luxemburg, Malta and Slovenia in 2019.

<sup>199</sup> Source: FRA (2012), EU LGBT Survey, FRA (2019). EU LGBTI Survey II. The question asked: 'During the last 12 months, have you personally felt discriminated against because of being [Respondent category] in any of the following situations: at work?' Base: Trans respondents in the EU LGBT Survey (n=6,771) and EU LGBTI Survey II (n=19,445). EU-28 weighted average. Results not statistically reliable for Bulgaria, Estonia, Latvia, Lithuania, Malta, Romania and Slovakia in 2019. Not shown because cell has fewer than 20 observations: Croatia, Cyprus, Luxemburg and Slovenia.

<sup>200</sup> Source: FRA (2012), EU LGBT Survey, FRA (2019). EU LGBTI Survey II. The question asked: 'During the last 12 months, have you personally felt discriminated against because of being [Respondent category] in any of the following situations: by school/university personnel?' Base: Trans respondents in the EU LGBT Survey (n=6,771) EU LGBTI Survey II (n=19,445). EU-28 weighted average. Results not statistically reliable for Croatia, Latvia and Malta. Not shown because cell has fewer than 20 observations: Cyprus, Luxemburg and Slovenia.

Figures 53 through to 55 show the experiences of discrimination in the healthcare and social services systems in 2012 and 2019. Again, the country clusters do not reveal any clear patterns. There is considerable variation within each cluster, and there is no clear pattern in the change over time since 2012. It should be noted, however, that in many Member States there has been an increase in the share of respondents who have experience discrimination, have had difficulty accessing the healthcare system and have either gone or considered going abroad for medical treatment to alter physical appearance, including buying hormones over the internet from other countries.

Figure 53. Share of trans respondents who experienced discrimination in the past 12 months by healthcare or social services personnel, by country and legal cluster, 2012 and 2019 (%)<sup>201</sup>

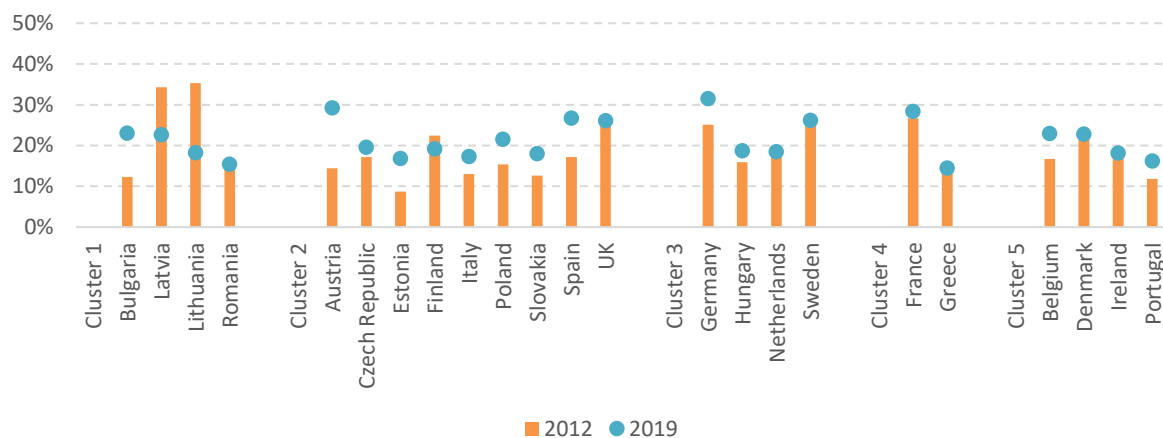
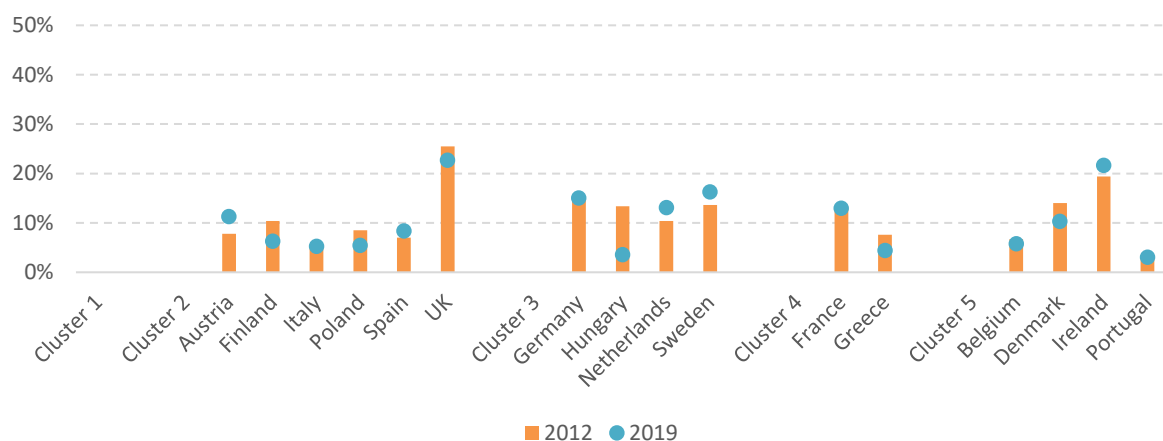


Figure 54. Share of trans respondents who have experienced difficulty in gaining access to healthcare, by country and legal cluster, 2012 and 2019 (%)<sup>202</sup>



<sup>201</sup> Source: FRA (2012), EU LGBT Survey, FRA (2019). EU LGBTI Survey II. The question asked: 'During the last 12 months, have you personally felt discriminated against because of being [Respondent category] in any of the following situations: by healthcare or social services personnel?'. Base: Trans respondents in the EU LGBT Survey (n=6,771) EU LGBTI Survey II (n=19,445). EU-28 weighted average. Results not statistically significant for Bulgaria, Estonia, Latvia and Lithuania. Not shown because cell observations are fewer than 20: Croatia, Cyprus, Luxemburg, Malta and Slovenia.

<sup>202</sup> Source: FRA (2012), EU LGBT Survey, FRA (2019). EU LGBTI Survey II. The question asked: 'Have you experienced any of the following situations when using or trying to access healthcare services as a [Respondent category] person - difficulty in gaining access to healthcare?' Base:

Figure 55. Share of trans respondents who have gone abroad or considered going abroad for medical treatment altering physical appearance, by country and legal cluster, 2012 and 2019 (%)<sup>203</sup>

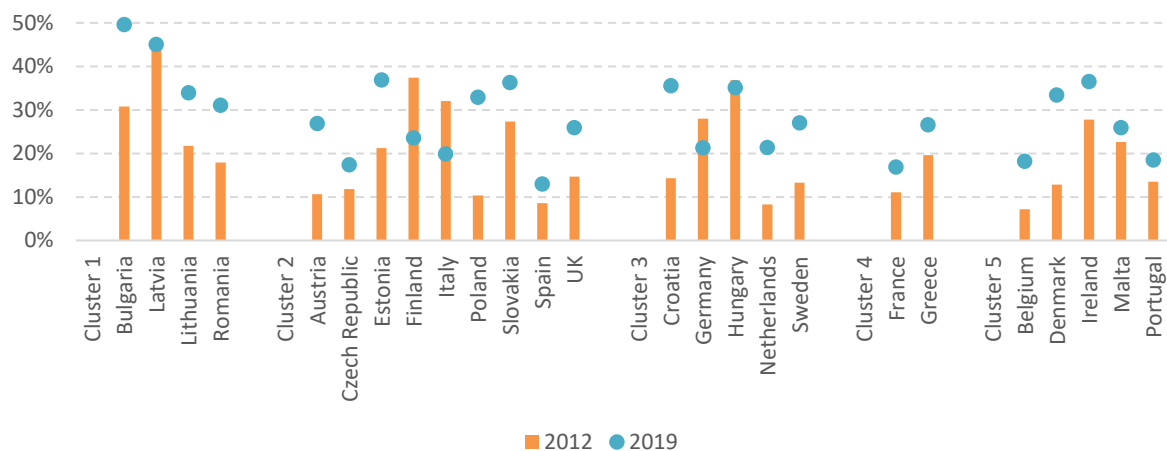
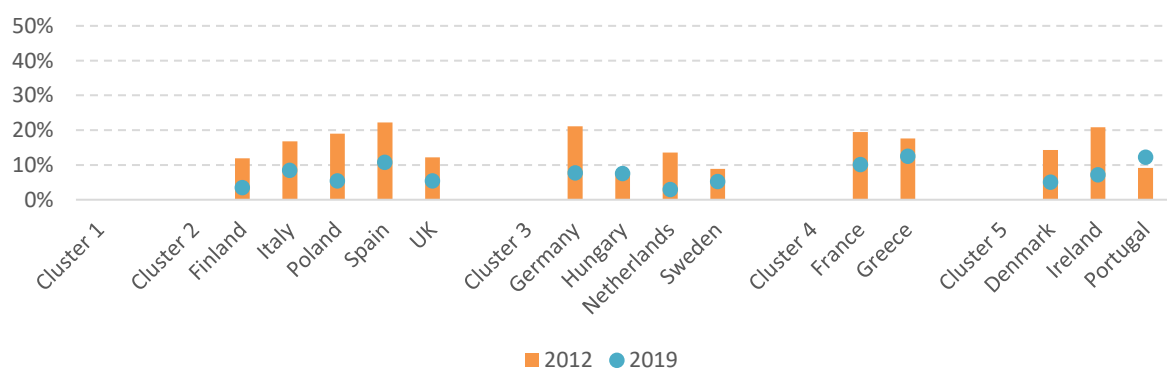


Figure 56 below shows the share of trans respondents who in the past 12 months experienced discrimination when looking for a house. The country clusters do not reveal any clear patterns. There is considerable variation within each cluster. In almost all countries – except Bulgaria, Cyprus, Slovenia and Portugal – there has been a decrease in the share of respondents who have experienced discrimination while looking for housing from 2012 to 2019.

Figure 56. Share of trans respondents who in the past 12 months experienced discrimination when looking to buy or rent a house or apartment, by country and legal cluster, 2012 and 2019 (%)<sup>204</sup>



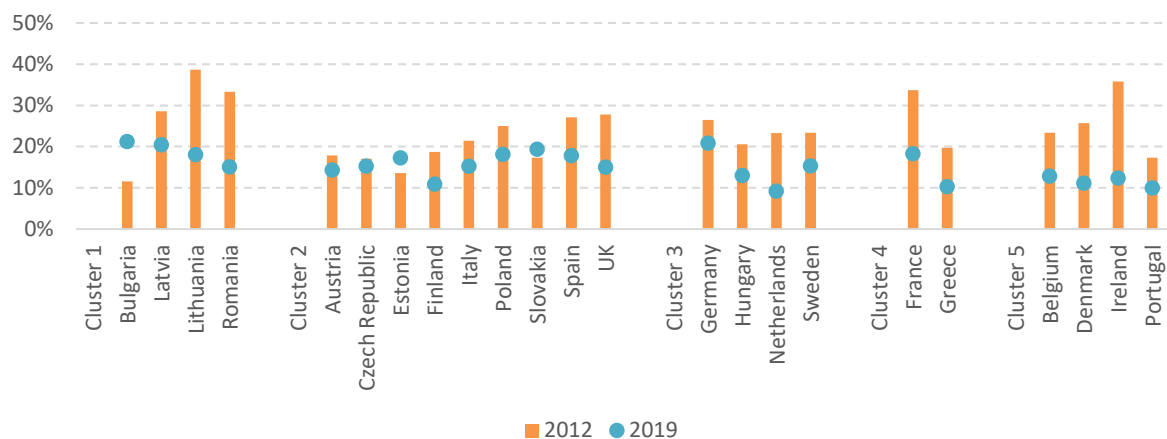
Trans respondents in the EU LGBT Survey (n=6,771) and EU LGBTI Survey II (n=19,445). EU-28 weighted average. Results not statistically significant for Austria, Belgium, Greece, Hungary, Italy and Portugal. Not shown because cell observations are fewer than 20: Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Luxemburg, Malta, Romania, Slovakia and Slovenia.

<sup>203</sup> Source: FRA (2012), EU LGBT Survey, FRA (2019). EU LGBTI Survey II. The question asked: 'Have you gone abroad or considered going abroad for medical treatment to alter your physical appearance, including buying hormones over the internet from other countries?' Base: Trans respondents in the EU LGBT Survey (n=6,771) and EU LGBTI Survey II (n=19,445). EU-28 weighted average. Results not statistically reliable for Croatia and Malta. Not shown because cell has fewer than 20 observations: Cyprus, Luxemburg, Slovenia.

<sup>204</sup> Source: FRA (2012), EU LGBT Survey, FRA (2019). EU LGBTI Survey II. The question asked: 'During the last 12 months, have you personally felt discriminated against because of being [Respondent category] in any of the following situations: when looking for a house or apartment

And last, Figure 57 below shows the share of trans respondents who in the past 12 months experienced discrimination when showing ID or any official document identifying sex. This is the indicator for which one might expect a stronger cluster pattern as it relates directly to the LGR procedures. However, here again, there is considerable variation within the clusters.

Figure 57. Share of trans respondents who in the past 12 months experienced discrimination when showing ID or any official document identifying sex, by country and legal cluster, 2012 and 2019 (%)<sup>205</sup>



In terms of *perceptions* of discrimination, there is also no clear relationship between the legal clusters and the two selected indicators (see Figures 58 and 59 below). There is more variation within the clusters in the first indicator than in the second indicator. These two indicators on perceptions of discrimination exhibit more variation both within each cluster and across the EU as a whole than the indicators on self-reported experience of discrimination. This is in part a product of the two different data sources: FRA LGBTI survey and the Eurobarometer. Perceptions of discrimination can also be especially hard to compare across countries, due to differing understandings of what constitutes discrimination across varying cultures and contexts, and the fact that countries with higher perceptions of discrimination may also be those where individuals have greater awareness of it.

to rent or buy (by people working in a public or private housing agency, by a landlord)?' Base: Trans respondents in the EU LGBT Survey (n=6,771) EU LGBTI Survey II (n=19,445). EU-28 weighted average. Results not statistically reliable for Denmark, Greece, Hungary, Ireland, the Netherlands, Portugal and Sweden. Not shown because there are fewer than 20 cell observations: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Luxemburg, Malta, Romania, Slovakia and Slovenia.

<sup>205</sup> Source: FRA (2012), EU LGBT Survey, FRA (2019). EU LGBTI Survey II. The question asked: 'During the last 12 months, have you personally felt discriminated against because of being [Respondent category] in any of the following situations: when showing your ID or any official document that identifies your sex?' Base: Trans respondents in the EU LGBT Survey (n=6,771) and EU LGBTI Survey II (n=19,445). EU-28 weighted average. Results not statistically reliable for Bulgaria, Estonia, Latvia, Lithuania, Portugal and Slovakia. Not shown because observations in the cell are fewer than 20: Croatia, Cyprus, Malta, Luxemburg and Slovenia.

Figure 58. Share of respondents who say discrimination on the basis of being transgender is widespread in their country, by country and legal cluster, 2012 and 2019 (%)<sup>206</sup>

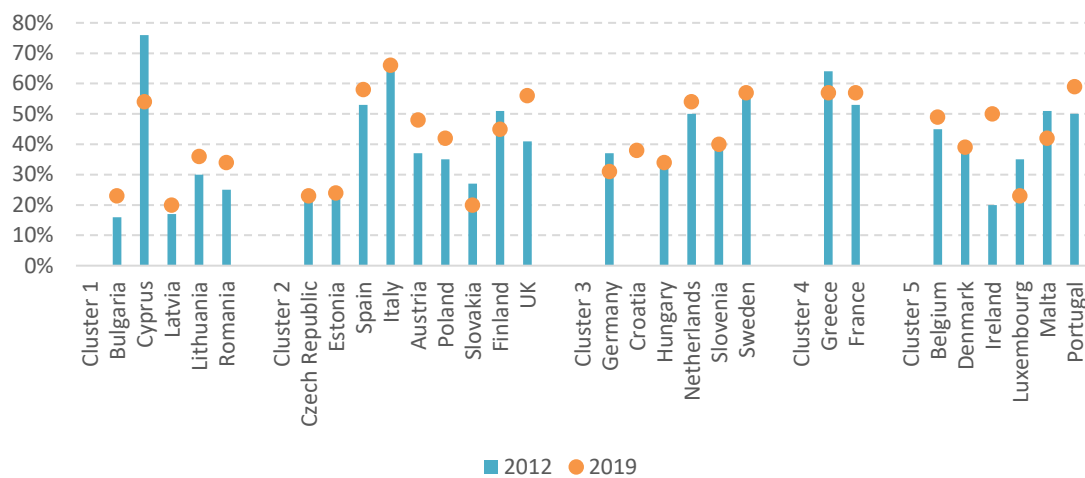
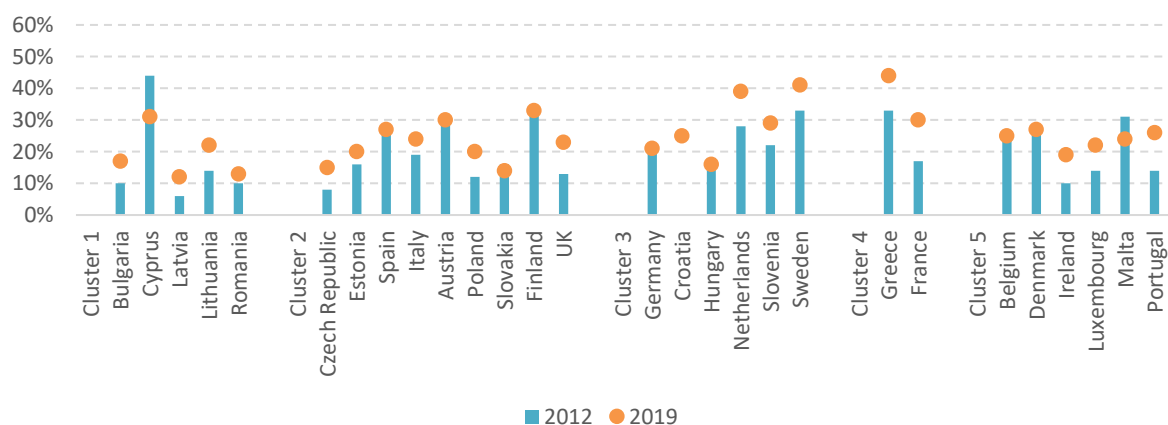


Figure 59. Share of respondents who say that transgender people are at a disadvantage when looking for a job, by country and legal cluster, 2012 and 2019 (%)<sup>207</sup>



## 9.6 Conclusions from this chapter

On first sight, the results of this chapter are hard to interpret, because the two main data sources (participant testimonies and the statistical data) appear to give a different picture.

On the one hand, at the individual level, participants shared several effects and impacts of undergoing LGR. Most commonly and across almost all Member States and the UK, participants experienced marked improvements to their well-being after gaining legal

<sup>206</sup> Source: Eurobarometer on Discrimination in the EU 2012 and 2019. Data for 2012 are for EU-27. The question asked: 'For each of the following types of discrimination, could you please tell me whether, in your opinion, it is very widespread, fairly widespread, fairly rare or very rare in (OUR COUNTRY)?' Discrimination on the basis of being transgender. Base: All Eurobarometer respondents (2012 n=26,622, 2019 n=27,438).

<sup>207</sup> Source: Eurobarometer on Discrimination in the EU 2012 and 2019. Data for 2012 are for EU-27. The question asked: 'In (OUR COUNTRY) when a company wants to hire someone and has the choice between two candidates with equal skills and qualifications, which of the following criteria may, in your opinion, put one candidate at a disadvantage? – The candidate's gender identity (being transgender)' Discrimination on the basis of being transgender. Base: All Eurobarometer respondents (2012 n=26,622, 2019 n=27,438).

recognition, describing a sense of at last 'being seen' and validated in their identity. Many also underlined their improved health, a greater sense of their personal safety, and more willingness to engage in education. Some more negative or mixed impacts were also observed, especially in countries with less accessible LGR procedures. This was especially the case for individuals' financial situation. There also appear to be limits in the design of national social security systems in some countries, which may fail to make adequate provisions for individuals who change their legal gender and leave them without their social security entitlements. There were also some negative psychological impacts of particular procedural requirements, such as medical conditions and divorce requirements (see Sections 8.2 and 8.3), as well as the very long nature of LGR in some countries. Taken together, these individual-level impacts suggest that there could be many benefits for trans people through making LGR procedures quicker and more accessible, reducing their costs and removing intrusive requirements.

On the other hand, the statistical data gives a different perspective. It finds no clear relationship between the accessibility of an LGR procedure and the overall socio-economic position of trans people in different areas of life. Specifically, there appears to be no correlation between the design of the legal system and the reported experiences and perceptions of discrimination against trans people in employment, education, healthcare and social services, housing, and using documents of identification.

Considering the results of other chapters, however, the apparent disagreement between these two sources of evidence may make sense, because:

- Many reforms to LGR procedures are likely to be too recent to produce observable effects at the aggregate level. It was only in 2014 that the first EU Member State (Denmark) permitted an individual to legally determine their own gender on the basis of self-determination, and the other five Member States to do this introduced these changes since this time, including as recently as 2017 and 2018<sup>208</sup>. Even in countries with the most accessible legal systems (cluster 5), only around one in five trans individuals have made use of an LGR procedure so far (see Section 7.1). Other groups in the trans population may be legally barred from accessing LGR, or face additional obstacles, because of their gender identity, age, disability status, or other factors.
- Even when legal procedures and rules exist to protect trans people's rights, uneven application of these rules and procedures will not result in universal change at the aggregate level of trans people's experience in employment, education, healthcare and social services, housing and using documents of identification.
- Reported impacts at the individual-level support the idea that a new legal gender (with matching documents) is not always enough in itself to protect trans individuals from discrimination.
- There is considerable variation *within* each cluster. Member States differ substantially in their education, healthcare and social services systems, public and private housing markets, rules and regulations against work-place discrimination, and overall rates of acceptance and discrimination against trans people.

In sum, LGR procedures will not automatically guarantee that trans individuals are treated with dignity and respect if their trans status becomes known. There are additional difficulties for those who do not or cannot 'pass' as the gender on the documents, as well as the additional challenges for non-binary individuals who may have no legal gender available to them. If the benefits of LGR are possible only when trans individuals are seen to be cisgender and their trans history is unknown, this suggests that wider society is not necessarily becoming more aware or accepting of trans identities.

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<sup>208</sup> 2018 for Luxembourg and Portugal. 2017 for Belgium. 2015 for Ireland and Malta.



## PART IV – CONCLUSIONS AND RECOMMENDATIONS

### 10 Conclusions and Recommendations of this study

#### 10.1 Conclusions

This study had two key objectives: 1) providing an overview of the situation of transgender people in the EU and 2) understanding whether there is a positive correlation between inclusive policies allowing for Legal Gender Recognition (LGR) and the well-being of transgender people.

To achieve those two main objectives, the study consulted a total of 1,015 adults who identified as transgender across the 27 EU Member States and the UK, in addition to conducting a literature review, legal research and a quantitative analysis of available data. The results of these activities brought a wealth of insights into the challenges and barriers transgender people face across Europe from coming out, going through LGR and living fully in their own gender in society with respect and dignity.

##### 10.1.1 Coming out – a challenging and ongoing process

Exploring one's gender identity and coming out is a highly personal and individual experience. For trans individuals, it can be long, complex and interactive. The experience of coming out – for example, how close family members and friends react and whether employers and co-workers are supportive – has a crucial impact on the social inclusion of trans individuals. Coming out and, in particular transitioning, is a time where trans people can be particularly vulnerable to discrimination, bullying and harassment. Negative experiences of coming out can lead to trans young people dropping out of school or not pursuing higher education, and trans people being dismissed from work.

Most trans individuals become conscious of their gender identity **before the age of 18**, meaning that they become aware of their gender identity at school. The study has shown that there can be a gap between trans individuals becoming conscious of their gender identity and first telling somebody about it. Many trans individuals will delay coming out to their family as a teenager, due to fears about their reaction and their financial dependence on the family.

The **lack of understanding and stigma** surrounding being trans is an important barrier to coming out and a driver of discrimination. Bullying, harassment and violence based on gender identity in educational settings were widely reported by trans people in this study, including verbal and physical abuse. The largest share of verbal abuse and physical abuse was experienced by participants when they were aged 11 to 18. According to FRA data, between 15% and 37% of trans individuals (depending on their gender identity group) had experienced negative comments/conduct 'always' or 'often'. The FRA results suggest that a substantial proportion of trans individuals with different gender identities may not have come out at school. Many participants in our study chose not to disclose their gender identity to their fellow students and staff, due to fear of bullying and not being supported. Educational settings can be particularly problematic for young trans people. Participants often reported that bullying and violence happened with teachers' knowledge, with a lack of intervention to prevent bullying and protection of these students being commonplace.

Most EU Member States do not require teachers to receive training on how to support trans students. The IGLYO Inclusive Education Index (2018) shows that only three Member States have mandatory teacher training on LGBTQI awareness. Within this training, it is unclear if and to what extent transgender students' needs are considered. Trans individuals commonly **do not receive information at school** on gender identity and what it means to be transgender, looking instead to the internet and other sources. This situation can make it harder for them to feel supported to explore their gender identity and to come out.

**Stereotypical portrayals of trans people**, as well as binary gender stereotypes, remain prevalent in society, including in education. This can lead to stereotypical attitudes and perceptions of gender from a young age. All children should be taught to recognise stereotypes and to understand gender identity. Informing children and young people may lead to more respect for trans people and better equip them to support trans people when coming out in education and in later life. Gender stereotypes can be especially harmful to trans people who may not fit into binary gender norms and can lead to harassment and discrimination, particularly for non-binary, genderqueer, gender-fluid individuals, as well as other trans individuals who are not perceived as cisgender.

Many trans individuals will choose not to be open about their gender identity and/or their transgender history in the workplace. For example, the FRA LGBTI survey suggests that between 19.3% and 50.7% of trans individuals (depending on their identity) stated that they were 'never' open about being transgender with people that they meet at work (EU-28 average, 2019). Our study similarly found that around four in 10 trans people are not open about their gender identity at work. **Fear of discrimination, harassment or prejudice** in the workplace was the most commonly stated reason for those decisions.

Due to **mismatching identification documents**, many people are forced to come out as trans in public places, with potential employers or when in contact with public services. Trans persons often report that this mismatch is highly stressful and can lead to discrimination, harassment or even violence against them. For instance, in this study, trans individuals report being rejected from job interviews, having trouble using employment services and having problems with background checks and references, due to mismatching documents. Generally, participants reported that their experiences in the workplace were strongly influenced by the policies and processes in place to support transgender people, and the attitudes of their employers. It is thus key to support and protect trans individuals as they transition, as well as to challenge the attitudes of those who are discriminatory and to provide for an easier system for document-changing.

Due to the **lack of awareness** amongst the general public on trans identities, trans people – particularly those with non-binary identities – report that they frequently and repeatedly have to act as educators, for individuals ranging from their families and friends to employers, civil officials, healthcare professionals and others.

As a result of these findings, we recommend several key actions aimed at promoting respect for transgender people, education and awareness-raising on trans identities and rights in all levels of education and in wider society under Recommendation 1.

### **10.1.2 LGR – the conditions to access the procedure constitute key barriers for transgender people to live fully in their gender**

Legal gender recognition (LGR) is the procedure through which an individual can change their name and gender marker in official registers and documentation. LGR allows the gender identity of trans individuals to be reflected in their legal and administrative documents and thus respected by the wider public.

Currently, **22<sup>209</sup> EU Member States, and the UK**, have established clear legislation to allow individuals to go through LGR. The remaining **five EU countries<sup>210</sup>** do not have any such legislation, although courts have recognised some LGR applications on a case-by-case basis. The conditions for the procedure vary widely between countries and may encompass medical, judicial, civil and/or administrative requirements. In 2014, Denmark became the first EU Member State to permit an individual to legally determine

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<sup>209</sup> Austria, Belgium, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, UK.

<sup>210</sup> Bulgaria, Cyprus, Lithuania, Latvia, Romania.

their own gender on the basis of self-determination, without medical interventions or divorce. LGR based on self-determination is now permitted in six EU countries<sup>211</sup>.

### Clustering

After analysing the legal requirements for LGR across the 27 EU Member States and the UK, this study grouped countries into 'clusters' according to how easy/difficult it is to access LGR. Legal clusters are ranked from the least accessible procedures (clusters 1 and 2) to most accessible procedures (cluster 5), as signified by the colours used below.

The least accessible systems are based on a more paternalistic or pathologising approach, whereby the state (via courts/other bodies) or medical experts are seen as best placed to assess a person's gender. The most accessible frameworks reflect the self-determination approach.

These clusters rest upon the assumption that national legal standards are being followed in practice. They were also defined in summer 2019 and do not take into account legal developments since this time. Of relevance is that, at the time of this report's publication, the Hungarian government adopted a bill to ban access of trans people to legal gender recognition<sup>212</sup>. The implication of this is that Hungary no longer falls under the study's classification below and may also no longer comply with international human rights standards<sup>213</sup>.

Table 11. Summary of legal clusters

Cluster	LGR Requirements	Countries
1	Cluster 1 comprises of countries which, although having previously recognised legal changes of gender marker, do not lay down LGR procedures, thus leaving decision-making bodies free to impose the requirements arbitrarily.	Bulgaria, Lithuania, Romania, Cyprus, Latvia
2	Cluster 2 gathers countries imposing intrusive medical requirements, such as gender-affirming surgery, sterilisation or gender-affirming hormone therapy.	Slovakia, Poland*, Austria, Spain, Italy*, UK <sup>214</sup> , Czechia, Finland, Estonia*
3	Cluster 3 groups countries imposing requirements for mental health diagnoses or at least medical supervision/opinions on applicants.	Slovenia, Hungary*, Sweden, Netherlands, Germany, Croatia

<sup>211</sup> Belgium, Denmark, Ireland, Luxembourg, Malta and Portugal. Outside of the EU, Norway and Iceland also permit LGR on the same basis.

<sup>212</sup> See for example, Holroyd, M. (2020) 'Hungary passes bill ending legal gender recognition for trans citizens'. Euronews. 20 May 2020. Available at: <https://www.euronews.com/2020/05/20/hungary-passes-bill-ending-legal-gender-recognition-for-trans-citizens>

<sup>213</sup> See Statement of the Standing Committee of the Conference of INGOs of the Council of Europe adopted on 27 April 2020. 'Call on Hungarian Parliament to align legal gender recognition with internationally recognized human rights standards'. Available at: <https://www.coe.int/en/web/ingo/-/call-to-hungary-to-align-legal-gender-recognition-with-internationally-recognized-human-rights-standards>

<sup>214</sup> In the UK, applicants must have, or have had, a documented diagnosis of 'gender dysphoria'. In addition, applicants must undergo, have been prescribed or are undergoing treatment for the purpose of modifying sexual characteristics. There is no requirement for surgery or hormonal treatment per se, however there must be medical treatment involved.

4	Cluster 4 includes countries that do not require any medical intervention or diagnosis but have procedural requirements – for instance, judicial procedures or divorce.	Greece*, France
5	Cluster 5 gathers countries implementing the most accessible LGR procedures, i.e. those where self-determination prevails in procedures.	Belgium, Denmark, Ireland, Luxembourg, Malta, Portugal

Note: Countries are grouped according to the accessibility of LGR. \* denotes EU Member States with a divorce requirement. Clusters 1 and 2 have the least accessible procedures, and the procedures are progressively more accessible as the cluster number increases.

### ***LGR procedures’ design and (lack of) accessibility***

The design and accessibility of the system has an important bearing on how many trans individuals’ access LGR. Whereas only 1 in 50 (2%) trans individuals change their legal gender in countries with unclear LGR procedures (cluster 1), around 1 in 5 trans individuals (21%) make use of LGR procedures in countries with more accessible processes that are based on self-determination (cluster 5).

There are also big differences by gender identity when it comes to the use of, and demand for, LGR. While 57% of trans women and 46% of trans men have changed, or are changing, their legal gender in the EU, only 4% of non-binary people, and 2% or fewer cross-dressers and people who are genderqueer, gender-fluid, agender and polygender make use of LGR procedures. It is unusual for trans women and trans men to show limited interest in LGR procedures. For those who had not gone through, fewer than 5% of trans women and fewer than 10% of trans men stated that the reason they had not gone through LGR was because they did not want to, or because they did not think it was necessary. It was much more common for them to state that they would like to go through LGR in future, or that they had not undergone LGR **because of obstacles in accessing it**, for example not fulfilling the law’s requirements or objecting to its difficulty or expense. This suggests that, were the law’s design and implementations changed, the demand for LGR amongst these groups could be even higher.

Trans individuals with gender identities outside of the binary are less likely to desire a change in their legal gender marker than trans women and trans men, although there is some demand amongst these groups. In particular, 17% of non-binary people and 13% of cross-dressers stated that they would like to go through LGR in the future. Furthermore, the lower level of demand may relate to the legal gender markers available, as most EU Member States only offer binary gender markers as part of the LGR procedure. One-quarter of respondents to this study’s online consultation mentioned the absence of a correct legal gender marker option as a reason for not going through LGR. This reason was most frequently given by people who identified as non-binary, gender queer or gender non-conforming.

Disproportionate requirements also prevent trans people’s access to LGR, as they may not want to undergo invasive treatments or divorce impacting their family life and rights. It creates a situation whereby trans individuals have documents not matching their gender, leading to discrimination in education, employment and access to services.

Some national **medical requirements** (e.g. sterilisation) **violate human rights standards** set by the European Court for Human Rights (ECtHR). Other medical requirements, such as mental health diagnosis, are conflicting with the soft law human rights standards as formulated by human rights advocates and academics in the Yogyakarta Principles and can be burdensome, patronising, disproportionate and humiliating for trans individuals.

Medical requirements also lead to **disparate levels of access**. Some individuals may not be able to fulfil the requirements due to structural problems in the healthcare system, such as a lack of sufficient healthcare professionals and clinics, high waiting lists and inappropriate and obstructive behaviour on the part of medical professionals. Furthermore, some persons may not, for health reasons, be able to undertake some hormonal and/or surgical treatments. In addition, a transgender person may not want to undertake some medical gender-affirming treatments for personal reasons or a desire to retain their reproductive rights.

Medical requirements can also considerably lengthen the transitioning and LGR process. Indeed, access to certain medical treatment may be challenging due to waiting lists. Most respondents to the online consultation with personal experience of an LGR procedure were negative about its speed and disagreed that it was quick. Participants in some countries reported LGR had taken more than a year to complete. It is critical to shorten the waiting time and ensure swift procedures for LGR and name change.

Medical requirements or requirements of physical nature should thus be avoided. At the minimum, the human rights standards set by the ECtHR should be ensured, including the prohibition of sterilisation or treatment which may lead to sterilisation. EU Member States should work towards adopting requirements in line with the Yogyakarta Principles. Even requirements which are still currently in line with the ECtHR jurisprudence can be detrimental. For instance, the requirement for mental diagnosis involves the external assessment of a person's own gender identity, which is reported by trans people as intrusive and degrading.

**Divorce requirements** create a burden and unnecessary strain on the families of transgender persons. Similarly, disproportionate requirements in some Member states, such as a requirement for trans individuals to sue their own parents to obtain LGR, should be removed as they create barriers to access LGR. A number of people reported that the requirement to get divorced had negatively impacted them financially, and more importantly may also lead to loss of custody of children.

Nine countries<sup>215</sup> have a legal void with respect to the marital status of LGR applicants due to the prohibition of same-sex marriage in these countries, leaving some in an unclear situation.

Another type of problematic requirements are **procedural requirements**. Judicial and administrative LGR procedure can contravene human rights standards by being unreasonably lengthy, costly and opaque in their decision-making. This is particularly an issue in countries where the procedure for LGR is not explicitly detailed in the legislation, or where doubts remain. In those cases, the procedure is much longer, as files are evaluated on a case-by-case basis. Judicial procedures are often more burdensome and costly than administrative procedures. Even if they may conform to human rights standards (accessibility, transparency and length), they can still be intrusive and with a varying degree of arbitrariness, due to the margin of discretion of judges. Where the LGR procedure is judicial, participants reported the **arbitrary nature of court decisions** on whether to grant LGR, with some judges requiring more conditions to access than other judges. Physical appearance of the applicant can have a bearing on the outcome of LGR applications, especially for those who do not conform to certain **gender stereotypes**. Participants have reported that gender stereotypes play a significant role in the assessment of gender identity by medical and legal authorities. Trans individuals who more closely match existing binary gender stereotypes seem to have a higher chance of succeeding than those who do not.

In addition, judicial procedures tend to be **lengthy**. The ECtHR has held that rigid judicial LGR procedures that leave transgender individuals in a vulnerable position for a long period of time are against the ECHR. Indeed, the longer that an individual's gender

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<sup>215</sup> Bulgaria, Croatia, Cyprus, Czechia, Latvia, Lithuania, Romania, Slovakia, Slovenia.

expression no longer reflects their gender marker and name, the more vulnerable to discrimination a person is.

LGR procedures may also involve a **time requirement**. An example of this is the so-called 'real-life experience' (RLE), which requires a person to live for a certain period of time in line with their gender identity without official documents to support that identity. This can be a particularly burdensome experience, as individuals must live in their gender without legal recognition to 'prove' that they effectively identify with this. This can be especially difficult for persons with a non-binary gender identity, who must 'act' a gender identity that is not theirs in order to fit the assessment of a binary 'RLE'.

**Self-determination** procedures are based on the principle that the individual is best placed to define their own gender identity. Under this type of LGR procedure, applicants may need to provide a written statement, a declaration or request with a competent authority, such as the municipality civil status officer. The procedure does not require any third-party intervention, compulsory medical intervention or compulsory divorce.

Most respondents from countries with self-determination LGR procedures viewed the procedures in these countries **most favourably** and agreed that the process is quick, accessible and transparent.

LGR procedures based on self-determination are important for allowing transgender people to live with greater dignity and can support them to feel 'seen'. At the individual level, participant testimonies suggest that gaining legal recognition of their gender can also reduce their overall experiences of discrimination and help to safeguard against hostility from others. The eradication of discrimination facilitates greater economic participation of transgender people, which leads to improvements in their socioeconomic position.

As a result of these findings, we are recommending several key actions aimed at ensuring access to clear, transparent, swift and respectful LGR procedures **in law** under Recommendation 2.

### **10.1.3 Going through LGR – laws are not sufficient, respectful procedures in practice are needed**

In addition to legal barriers, transgender people across the EU face barriers in practice that result in having more than three-quarter of trans individuals not having changed their gender in the EU. These include costs, burdensome requirements, difficulties in obtaining the evidence, barriers in accessing medical treatments and delays.

For those who have gone through LGR, several respondents reported experiences where legal or civil professionals showed a lack of regard for them or their case. Many had respectful but **problematic interactions** due to the low level of knowledge of the professionals involved.

The length and degree of arbitrariness of procedures were raised as particular problematic in some countries, in particular those involving court decisions during the LGR procedures. Some respondents reported **inappropriate behaviour**, including excessive or inappropriate questioning. A few respondents even reported experiences of sexual harassment and abuse during their interactions with legal and civil professionals. While many had positive experience with very respectful and friendly court staff and legal professionals, the requirement to go through a court process was reported by several as **stressful** overall, even though the professionals involved were respectful.

Study participants from all legal clusters and regions of Europe drew attention to substantial regional and local differences within a country that can undermine individuals' access to their entitlements under LGR procedures. Too often, individuals' experiences reflect a **failure by civil servants to uphold the law**, and the creation of a potentially discriminatory system.

Once the trans individuals obtain their legal gender recognition, they need to ensure all their documents align with their gender marker. Trans people reported that the processes to change all the **documents** can be **tedious, long and numerous**. They can involve unclear, long and burdensome processes. During this interim period, trans people are at risk of discrimination due to the misalignment of documents.

Respondents from all clusters and regions reported difficulties in changing their gender on important documents, following completion of a legal gender recognition process. Those included changing their highest-level educational qualification, their professional certification, and bank account information, as well as (more rarely) their marriage or partnership documents and national residence cards. This points to a real need to streamline and facilitate processes to change names and gender markers in documents.

After changing their legal gender marker, some trans people reported not being able to attribute their qualifications to their new gender marker, resulting in damage to their job prospects. Relatedly, some trans individuals noted that the length of LGR procedure caused them to **put their life on hold**, and as a result to miss out on promotions or opportunities for career advancement. It also led a number of transgender people to take on precarious employment such as freelance or temporary employment, go into debt, or use up their savings due to costs relating to changing their legal gender marker. There also appear to be limits in the design of national social security systems in some countries, which may fail to make adequate provisions for individuals who change their legal gender and leave them without access to their social security entitlements.

As a result of these findings, we are recommending several key actions aimed at ensuring access to clear, transparent, swift and respectful LGR procedures **in practice** under Recommendation 3.

#### **10.1.4 Beyond LGR – inclusion of trans people requires respect for their rights**

Many transgender people living in the EU today experience widespread levels of direct and indirect discrimination based on their gender identity. This discrimination exists in the labour market, in access to health and social services, in schools and universities (FRA, 2014; FRA, 2019). They may face day-to-day discrimination in the form of transphobia, harassment and abuse. It prevents the full and equal social and economic participation of transgender people and represents considerable obstacles to their enjoyment of their rights.

Many respondents reported having experienced improvements in accessing the labour market as a result of changing their legal gender marker. This mainly related to **not having to disclose their trans identity** to employers during interviews and recruitment, and for those in employment, not having to explain to colleagues, managers and clients why their physical appearance did not match their ID. Trans people reported that the ability to be perceived by others as cis-gender is essential for getting and keeping a job. However, this means that discrimination can remain for anyone who does not conform with the gender norms prevalent in society. It may also be that trans individuals who are not able, or do not want, to be perceived as cisgender may be at greater risk of facing discrimination. Some trans individuals reported not being hired as a result of divulging their trans identity, or being fired for going through LGR. This is confirmed by the results of correlation analysis (see Section 9.5), which reflect that LGR procedures will not automatically guarantee that trans individuals are treated with dignity and respect if their trans status becomes known.

Access to LGR can play a big role in the social inclusion of trans people across the EU, however it must be accompanied with measures to tackle discrimination and improve the wider social acceptance of trans individuals in society.



Many participants in the study had experienced a change in their employment situation since transitioning; one in three affected trans persons described a **negative change** as a result of **revealing their trans status** to their employers and colleagues. Negative impacts included being fired from their job, experiences of discrimination, prejudice or harassment in the workplace; needing to change job; a change in duties, hours, or level of seniority, greater difficulty in finding a job; fewer opportunities for progression and experiences of sexism. Enacting burdensome, abusive and disproportionate requirements to access LGR effectively places transgender people in situation of indirect discrimination in access to employment, education, goods and services.

EU-wide data suggest that the **employment level** among trans people is lower than the average employment rate of the general public: In 2019, almost 51% of trans respondents to the FRA LGBTI survey were in paid work or self-employed, versus 69.3% of the general population in the same situation<sup>216</sup>. Above-average unemployment also appears to affect trans individuals, especially trans women. Participants to this study reported some impact on their pension entitlements due to their reduced opportunities to contribute to a pension, as a result of delays beginning work or time taken out of work, for example to undergo medical procedures or as a result of feared or actual discrimination, and difficulties accessing formal, secure employment of an appropriate level.

An area which requires a framework more respectful to the **right to family life** concerns the impact of LGR for families of trans people. Some reported losing custody of their children due to not being recognised as a parent; some were forced to divorce; a few trans people detailed problems with accessing IVF and gamete preservation due to their trans status. Only five Member States<sup>217</sup> allow transgender individuals to be recognised as '(co)mother', '(co)father', 'parent' or allow a trans person to change the designation of e.g. 'father' to 'mother'. Other countries have officially rejected the recognition of an individual's gender in their parental status, while other Member States have not yet ruled on the topic.

As a result of these findings, we are recommending several key actions aimed at ensuring the respect for the human rights of trans people in all areas of life and tackling discrimination under Recommendation 4.

## 10.2 EU competences in relation to gender identity and LGR

The EU does **not have an explicit competence** to protect the rights of transgender people as it lacks a clear legal basis to protect individuals from discrimination on the grounds of gender identity and/or gender expression as such. Nevertheless, the CJEU<sup>218</sup> has extended the EU framework protecting individuals against discrimination on the **ground of sex** to a **certain category of transgender people**, i.e. people who have undergone, are undergoing or intend to undergo gender-affirming surgery, irrespective of whether or not the person has undertaken LGR. According to the CJEU, the scope of EU legal framework protecting on the ground of sex 'cannot be confined simply to discrimination based on the fact that a person is of one or other sex'.

The EU legal framework has originally been designed around a binary approach of equality between women and men. The legal framework protecting on the ground of sex<sup>219</sup> has been developed with the binary gender norms as a basis and not reflecting

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<sup>216</sup> There are some limits to comparability, due to the age bands in use (15 and over for the trans employment rate, versus 15-64 for the general population average).

<sup>217</sup> Belgium, Italy, Malta, Netherlands, Sweden.

<sup>218</sup> CJEU (1996). *P v S and Cornwall County Council*. Case C-13/94 [1996] ECR I-2143 [para. 20]; CJEU (2006). *Sarah Margaret Richards v Secretary of State for Work and Pensions*. Case C-423/04.

<sup>219</sup> Articles 2 and 3 TEU. Articles 10, 19 and 157 TFEU. Articles 21 and 23 of the Charter. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation

the specific needs of protection of transgender people across the EU and still excludes a wide range of transgender people who do not fall within binary norms. In addition, the EU framework, as defined by the CJEU, **excludes transgender people who cannot or do not want to undergo gender-affirming treatment**. This points to the need for a more inclusive ground of protection. Because being transgender is not solely a matter of sex characteristics but also of gender identity, it is questionable to what extent the ground of sex could and should be used to fully protect the human rights of transgender people. So far, the result has been that:

the EU framework currently has **gaps**, effectively excluding certain transgender people from protection, and

it is **not equipped** to protect transgender people across the EU from the specific challenges they face.

**Member States have the competence** regarding civil status and legal gender recognition. When exercising those competences, Member States **must comply with EU law**, in particular, with the provisions relating to the principle of non-discrimination<sup>220</sup> and with the international human rights instruments to which they are parties, such as the European Convention on Human Rights.

For EU law to apply when exercising a national competence, the internal situation must have a link with EU law. The CJEU<sup>221</sup> has already held that a link between civil status and EU law exists in regard to access to social security, the application of the equal pay provision and the exercise of freedom of movement and residence. In this case, civil status pre-conditions of a transgender person preventing their access to social security, pension or entry in or residence in another Member State was found to amount to discrimination on the ground of sex and thereby not compliant with EU law.

Therefore, national requirements in areas protected under EU non-discrimination law on ground of sex (i.e. employment, social security, access to goods and services) must not discriminate, directly or indirectly, a person who is/has undergone gender-affirming treatment by having an LGR requirement that means a person faces unfavourable treatment when accessing, for example, a pension or unemployment benefit. For instance, the CJEU has found the requirement of a Member State for a person who has changed gender to satisfy the condition of not being married to a person of the gender that he or she has acquired as a result of that change, in order to be able to claim a State retirement pension as from the statutory pensionable age applicable to persons of his or her acquired gender, to be in violation of EU law<sup>222</sup>.

In other words, EU law cannot regulate LGR. However, Member States are bound to ensure that LGR requirements will not directly or indirectly lead to less favourable treatment of transgender people, in particular when having civil status requirements for accessing certain benefits or services.

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of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006. Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ L 6, 10.1.1979. Directive 97/81/EC concerning the Framework Agreement on part-time work, OJ L 14, 20.1.1998. Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373, 21.12.2004.

<sup>220</sup> CJEU (2018). *MB v Secretary of State for Work and Pensions*. Case C-451/16, para 29.

<sup>221</sup> CJEU (2018). *MB v Secretary of State for Work and Pensions*. Case C-451/16, para 29. CJEU (2008). *Tadao Maruko v Versorgungsanstalt der deutschen Bühnen*. Case C-267/06, para 59. CJEU (2018). *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne*. Case C-673/16, para 37. CJEU (2008). *Stefan Grunkin and Dorothee Regina Paul*. Case C-353/06, para. 16. CJEU (2006). *Sarah Margaret Richards v Secretary of State for Work and Pensions*. Case C-423/04, para 21-24.

<sup>222</sup> CJEU (2018). *MB v Secretary of State for Work and Pensions*. Case C-451/16.

Lastly, in order for the EU legislator to be able to enact regulation on the protection of all transgender people against discrimination in the areas of EU competence, the EU Treaties will need to be revised in order to include the protective ground of gender identity under Article 19 TFEU.

### **10.3 Recommendations to advance the inclusion of transgender people across the EU**

The recommendations below have been developed based on the wealth of information gathered through the study and the conclusions drawn above. These recommendations aim to advance the inclusion of transgender people in society and are structured around four themes. The recommendations are aimed at both the Member States and the EU within the scope of its competence.

#### **10.3.1 Recommendation 1 – Promote respect for transgender people, education and awareness-raising on trans identities and rights in all levels of education and in wider society**

**Rationale:** The lack of awareness, understanding and stigma surrounding trans identities, trans people – particularly those with non-binary identities – has shown to be an important barrier to coming out and a driver of discrimination. Awareness-raising and educating on gender identities, including the right to equality for all, through the sharing of trans stories through media or educational tools can have positive impact. Trans individuals should also receive support and protection as they transition, challenging the attitudes of those who are discriminatory.

##### **Key actions at EU level:**

- Within the upcoming European Commission LGBTI+ Equality Strategy, the European Commission should include a separate chapter addressing transgender people, with key actions to tackle stigma, prejudice and discriminatory attitudes towards transgender people, by promoting respect for the variety of gender identities and educating on gender stereotypes and stigma, including:
  - Promoting diversity, equality and non-discrimination of transgender people throughout its youth and education programmes, such as Erasmus+.
  - Encourage and facilitate Member States to exchange best practices in education, particularly dedicated programmes to tackle stigma of trans people and gender stereotypes, including teaching materials, anti-bullying and non-discrimination policies, through the open method of coordination.
  - Facilitate the exchange and dissemination of best practices to support trans individuals at work, working with employers' representatives, equality bodies and trans organisations.
  - Allocate funding to support the development of school material and curricula educating about different gender identities, as well as respect for gender diversity.
  - Funding of awareness-raising campaigns with close cooperation with trans-led organisations.
  - Encouraging the establishment and funding of national helplines for trans people to obtain support and information, in close collaboration with organisations working with, and representing, trans people.
  - In addition to helplines, encouraging the establishment or designation of contact points at all education levels for trans students to seek support and facilitating the training of staff and exchange good practice among such contact points.

##### **Key actions at Member State level:**

- Ensure through the adoption of policies and legislation that there is appropriate and tailored education for students at all education levels (primary, secondary and tertiary) on the meaning of gender identity, including trans identities, as well as the

issue of gender stereotypes and stigma. Educational material and curricula should promote mutual tolerance and respect, regardless of gender identity and expression, in all areas of life. Educational material should be revised to reflect a true representation of the diversity of gender identities and tackle stereotypes.

- Ensure that the training curricula of teachers provide them with tools on how to teach while ensuring respect for all gender identities and reducing gender stereotypes.
- Adopt a requirement to designate or establish safe contact points in education (at all education levels) for trans students to seek support, in particular when transitioning, to receive information about their rights, protection and available support.
- Introduce regular training for public officials on how to promote tolerance and respect for diversity and how to respect and fulfil the rights of transgender persons. Public officials should be trained on applying the provisions of the law and the state's obligations.
- Adopt and implement a national strategy for tackling prejudice, discriminatory and biased attitudes and behaviour towards transgender people, including long-term education and awareness-raising programmes, and action to tackle gender stereotypes and stigma towards trans individuals in the media. The national strategy could include, among others, the above actions. The strategy should be prepared in consultation with organisations working with, and representing, transgender people.
- Adopt measures to ensure that schools and universities are safe for transgender students by:
  - Enacting a legal provision enabling students to use a different name and pronoun corresponding to the students' gender identity, to transition at school, or to disclose their transgender status confidentially to staff.
  - Ensuring safe contact points within school for trans students to seek support and information, with the collaboration of organisations working with trans people.
  - Allowing students to dress in accordance with their gender identity and to access universally accessible facilities (such as toilets).
- Require social partners (such as trade union and employers' organisations), with the support of trans organisations, to take action to promote through training and exchange of best practices:
  - inclusive recruitment procedures
  - training for HR professionals on best practice in supporting trans employees
  - integrating gender identity considerations into equality and diversity trainings at organisational level.

### **10.3.2 Recommendation 2 – Ensure access to clear, transparent, swift and respectful legal gender recognition (LGR) procedures in law**

**Rationale:** When LGR is not accessible, it denies trans individuals' recognition before the law, and the associated protections, with negative consequences for their health and social inclusion. As the CJEU has stated, to tolerate discrimination against transgender people would be tantamount 'to a failure to respect the dignity and freedom to which he or she is entitled'<sup>223</sup>.

As shown, the design and accessibility of the system has an important bearing on how many trans individuals' access LGR. Some of the national LGR requirements established

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<sup>223</sup> CJEU (1996). *P v S and Cornwall County Council*. Case C-13/94 [1996] ECR I-2143 [para. 20].

violate human rights standards set by the ECtHR (e.g. sterilisation) or can be burdensome, patronising, disproportionate and even humiliating for trans individuals. Medical requirements or requirements of physical nature should thus be avoided.

The European Court of Human Rights has held that rigid judicial LGR procedures that leave transgender individuals in a vulnerable position for a long period of time are against the ECHR. It is critical to shorten the waiting time and ensure swift procedures for LGR and name change.

At the minimum, the human rights standards set by the ECtHR should be ensured, including the prohibition of forced sterilisation or treatment which may lead to sterilisation. Member States should work towards adopting self-determination requirements in line with the Yogyakarta Principles.

#### **Key actions at EU level:**

- The European Commission should review the EU acquis and assess how to ensure full protection of transgender people's rights under EU law within its area of competence. To this end, the European Commission should assess the implication in EU law of the ECtHR jurisprudence, together with the protection offered by EU law to individuals who have undergone, are undergoing or intend to undergo gender-affirming surgery. While legal gender recognition remains a competence of the Member States, the latter must, when exercising their competence, have due regard for EU law. The European Commission should therefore ensure that possible difficulties faced by transgender persons (such as holding legal documents not matching their gender identity) do not have a negative impact on the exercise of their right of free movement.
- The European Commission should facilitate the exchange of best practices on LGR legal and procedural requirements, as well as best practices in their practical implementation. The European Commission can support mutual learning among Member States in the process of adopting a new LGR legal framework.
- The European Commission should facilitate the exchange of best practices and conduct research on the legal implications of introducing a third gender or non-binary legal marker, or the removal of the gender marker from identity documents, and convene spaces for mutual learning among Member States in the process of implementing new systems.

#### **Key actions at Member State level:**

- Member States should strive to adopt LGR procedures based on self-determination and meet the human rights principles set out in the Yogyakarta principles, in particular under Principle 3:
  - Take all necessary measures 'to legally recognise each person's self-defined gender identity'.
  - Take all necessary measures to 'ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person's profound self-defined gender identity'.
  - 'Ensure that such procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned'.
  - 'No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity'.
  - 'No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity'.

- 'Ensure that changes to identity documents will be recognised in all contexts where the identification or disaggregation of persons by gender is required by law or policy'.
- Remove requirements to satisfy medical (including psychiatric), civil status, age preconditions or 'real-life experience' (RLE) requirements.
- At the very minimum, all Member States should remove abusive and disproportionate requirements. In particular, Member States from cluster 2 should ensure that the procedures for legally changing a person's gender and name respect the person's physical integrity and their private life, in compliance with the ECHR, the ECtHR jurisprudence and EU law by:
  - Not imposing any requirement to undergo a sterilisation surgery, or treatment or surgery likely to result in sterilisation
  - Being swift and avoiding the rigid application of waiting periods
  - Prohibiting the requirement of divorce or annulment of a marriage of transgender individuals.
- Ensure access to LGR procedures and introduce legislation that clearly lays down the conditions to access LGR. This recommendation is particularly aimed at Member States from cluster 1, which lack national legislation laying down LGR procedures.
- Ensure the option of a neutral gender marker in identity documents for those who may desire them, such as non-binary, genderqueer and gender-fluid people. It can take the form of a third gender marker, such as an 'X' marker, or Member State can offer multiple gender marker options, including a gender-neutral option. Yogyakarta Principle 31 encourages states to 'make available a multiplicity of gender marker options'.
- To ensure swift and transparent LGR, Member States should assess the possibility to have the name and gender change done via one single procedure. Member States should make efforts to remove judicial proceedings as a manner to obtain LGR. For the time period that it is still required, Member States that have a judicial LGR procedure or an administrative LGR procedure involving some type of hearing or assessment by a third party must ensure that the judges or staff receive training to process LGR based on the fulfilment of clear and objective criteria and that gender stereotypes do not play a role in the decision. They must be educated on the gender diversity, which do not fall within existing gender stereotypes.
- Member States should issue new identity documents to match an individual's new legal gender marker, such as birth certificates, rather than amending old documents with a notation on the margin, a footnote, or an annex to these documents as it can result in the trans history of the individual being revealed and their privacy breached.

### **10.3.3 Recommendation 3 – Ensure access to transparent, swift and respectful legal gender recognition (LGR) procedures in practice**

**Rationale:** In addition to legal barriers, transgender people across the EU face practical barriers that result in having many trans individuals opting not to change their gender in the EU. Those include costs, burdensome requirements, difficulties in obtaining the evidence, barriers in access to medical treatments and delays. Several respondents reported experiences where legal or civil professionals showed a lack of regard or respect for them or their case, or a low level of knowledge.

Substantial regional and local differences within a country that can undermine individuals' access to LGR procedures, including reported failure by civil servants to uphold the law.

Once the trans individuals obtain their legal gender recognition, they need to ensure all their documents align with their gender marker. Trans people from all clusters and

regions of Europe reported difficulties in changing their gender on important documents, following completion of a legal gender recognition process. This points to a real need to streamline and facilitate processes to change names and gender markers in documents.

**Key actions at EU level:**

- Facilitate the exchange of best practices on ensuring non-discriminatory access to swift, transparent and respectful LGR procedures in practice and mutual learning among Member States in the process of implementing new systems and streamlined processes for changing identity and other official documents.

**Key actions at Member State level:**

- Ensure that the law's current provisions are respected in practice, and that trans individuals do not face harassment, discrimination or obstruction when trying to access their legal rights to LGR and to have all their documents changed.
- Ensure sufficient civil, legal and other professionals and services are in place to enable trans individuals to fulfil the requirements of LGR without unnecessary delays.
- Take all appropriate measures to ensure the full legal recognition of trans people in all areas of life, including ensuring the change of name and gender marker in a quick, transparent and accessible way in all *official* documents such as birth certificates, identity papers, driving licences, passports, social insurance cards and numbers, and electoral, land and tax registers. To this end, Member States should establish streamlined procedures to change documents. Authorities should adopt internal procedures to ensure that name and gender markers of all official documents and databases used by key state authorities are modified accordingly.
- Ensure that national social security and pension systems have clear and respectful provisions in place enabling those who have gone through LGR to change their legal name and gender in other official records within a reasonable timeframe, without losing access to benefits or services to which they are entitled.
- Adopt measures to ensure that the gender marker and name in *non-official* documents can be changed in a quick, transparent and respectful manner. This includes documents issued by nongovernment and private organisations, particularly educational diplomas, certificates, insurance or banking documents. To this end, governments should encourage schools, universities, training providers and banks to adopt clear policies and procedures for individuals to change their gender/name in documents gained under a birth-assigned gender/name, without exposing these.
- Provide relevant guidelines and training to state officials to ensure adequate and respectful responses to requests for a change in names and gender markers.

**10.3.4 Recommendation 4 – Beyond LGR, ensure trans rights in all areas of life and tackle discrimination**

**Rationale:** The reported improvements for individuals in accessing the labour market as a result of changing their legal gender marker have mostly been the result of not having to disclose their trans identity to employers during interviews and recruitment, and for those in employment, not having to explain to colleagues, managers and clients why their physical appearance did not match their ID. Access to LGR can play a big role in the social inclusion of trans people across the EU, however it must be accompanied with measures to tackle discrimination and improve the wider social acceptance of trans individuals in society.

**Key actions at EU level:**



- In order to ensure the full application of the non-discriminatory EU acquis to transgender people, the European Commission should in the author's opinion adopt a Communication in order to:
  - clarify how the EU framework on non-discrimination on the ground of sex applies to transgender people and protect them from discrimination in employment as well as access to goods and services. The Communication should summarise the CJEU case-law and the application of the EU acquis to anyone who have undergone, are undergoing or intend to undergo gender-affirming surgery. The Commission should invite Member States to extend the application to all transgender people, i.e. persons who have a gender identity that is different to the sex assigned at birth. It should provide specific recommendations as to how to best apply the EU acquis to transgender people, taking into account their specific needs.
  - encourage Member States to implement the recommendations made to them in this study, in particular the recommendations addressed to Member States on improving access to LGR procedures presented under Recommendations 2 and 3.
- The European Commission should propose the introduction of the protection ground of gender identity in the next revision of the TFEU. Following the Treaty's revision, the EU acquis on non-discrimination should be amended to include the ground of gender identity (in particular Directive 2006/54/EC, Directive 2004/113/EC and Directive 79/7/EEC). It should be ensured that equality bodies are competent to handle complaints from all transgender people in accessing their rights and can fully support them.
- The EU should review its current gender mainstreaming policies and actions<sup>224</sup> to better account for the transgender perspective. Gender mainstreaming should consider the impact on all people, in all their diversity, including on transgender people, in all EU policies and processes and ensure these adequately respond to the needs of transgender people. This falls within the wider mandate of the EU to promote the value of pluralism, non-discrimination and equality<sup>225</sup>.

#### **Key actions at Member State level:**

- Adopt national legislation to protect against discrimination in employment, health, social security, access to goods and services, housing and education on the grounds of gender identity and expression. Ensure the implementation of the non-discrimination legal framework in practice.
- Encourage employers to adopt policies and measures to protect transgender people from discrimination at work. This could include, for example, the introduction of universal facilities, ensuring that trans staff members can use paid leave entitlements to access trans-specific healthcare and follow-up, and measures to ensure trans staff members can safely transition at work. Member States should ensure that employers draw with the trans worker and human resources a plan for a supportive transitioning at work. In addition, trans workers transitioning should be allowed to take the necessary leave from work in order to receive gender-affirming treatments they pursue for their transition.

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<sup>224</sup> Those includes the European Pact for Gender Equality 2011-2020 and Gender Equality Strategy 2020-2025. The EU Gender Equality Strategy explains that "the expression 'in all their diversity' is used in this strategy to express that, where women or men are mentioned, these are a heterogeneous categories including in relation to their sex, gender identity, gender expression or sex characteristics. It affirms the commitment to leave no one behind and achieve a gender equal Europe for everyone, regardless of their sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation"

<sup>225</sup> Articles 2 and 3(3) TEU and Articles 8 and 10 TFEU.

- Establish regular monitoring processes at national level to assess whether employers, businesses and other places of work have policies, programmes and procedures to protect trans workers from discrimination.
- Fund training and awareness-raising aimed both at employers and workers on transgender rights, ensuring a workplace free from discrimination, on recruitment and promotion procedures guaranteeing equal rights and providing information on access to legal redress in case of discrimination and sanctions for infringements.
- Ensure access to healthcare to trans people without discrimination, exclusion or denial of care. This means, for instance, that trans individuals, no matter their gender, should have access to gynaecological care and sexual and reproductive health care, including IVF and gamete preservation. Member States should adopt measures to ensure healthcare workers are respectful of all transgender people.
- Guarantee the rights to family life and parenting rights for all transgender people by removing all requirement linked to marital status and parental status and ensuring that transgender people maintain their custody rights on equal basis.
- Ensure equality bodies are competent and have the adequate resources to support transgender individuals in accessing their rights in line with other protected grounds.
- Ensure that representatives of civil society, media, political organisations and religious communities demonstrate respect for all gender identities.
- Ensure that public officials promote respect for transgender persons and take appropriate measures are taken against hate speech and discourses promoting discrimination.

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## ANNEX 2: METHODOLOGICAL ANNEX

### Steering Committee

The study team established a Steering Committee of experts in the field of transgender rights. The experts played an important advisory role throughout the duration of the study, in particular attending meetings and calls on the study's progress, and providing feedback on draft reports and other outputs.

### Literature review

A literature review was carried out at the beginning of the study to understand existing evidence in relation to the research questions and to provide comparative or complimentary evidence for the findings of the qualitative research strand. The methodology for completing the literature review is outlined below:

A **literature review protocol** was developed and tested during the inception phase of this study. The protocol outlined the research questions, the searching strategy e.g. inclusion and exclusion criteria, and process for extracting and analysing literature.

A **data extraction template** was created and tested by the study team, using literature from the annotated bibliography put together during the inception phase. During this piloting, any relevant literature cited in the articles reviewed, or in the bibliographies of articles/reports were noted and were reviewed.

The study team then followed the search strategy and undertook relevance assessments to identify the final sources for extraction. The final sources were then extracted into the data extraction template. The results were synthesised and written up. These results then informed the analysis of the findings and are reflected in the analysis presented in this report.

### Qualitative research

The purpose of the qualitative research was to hear directly from trans people about their experiences and opinions of LGR procedures and coming-out processes, as well as their position in education, employment and later life. The qualitative research for this study consisted of telephone interviews, an online consultation and six focus groups. All fieldwork for the study took place between 9 May 2019 and 20 November 2019.

Participants were eligible to take part in the qualitative research if they met the following criteria:

- Currently identify as transgender or as having a transgender history
- Aged 18 years old or older
- Resided in a Member State of the European Union at the time of the study

The process for conducting the qualitative research is summarised below:

First, an **ethical protocol** was developed. This underpinned all the qualitative research activities and formed the basis of researcher training (see Annex 3). Then, a **network of national voluntary and support organisations** was established by the study team, comprised of those working in the field of transgender rights and LGBTI equality more generally. A total of 30 voluntary and support organisations become partners in the study covering 23 Member States. The partners took one or more of the following roles depending on their Member State:

- Dissemination role – sharing the call for participation for the study with their network
- Quality Assurance role – checking translated research tools such as interview topic guide and online consultation questionnaire
- Focus group role – organising and recruiting participants for a focus group in their Member State, and acting as co-facilitators

Based on the study objectives, relevant **research tools** were created and translated into the study languages and validated with voluntary and support organisations. These included interview topic guides, the questionnaire for the online consultation and others. A **communications strategy** was created to promote the study to potential participants. The study team created recruitment material such as flyers and social media posts, which voluntary and support organisations then used to direct participants to the study. Next, voluntary organisations and the study team directed participants to the study team’s dedicated participant email address or to the study’s webpage to sign up for any of the consultation methods.

In total, **73 interviews** were carried out by telephone and lasted between 45 minutes and 1 hour. The interviews were then transcribed and thematically coded using NVivo.

The **online consultation** questions were created based on the results of the literature review. The online consultation was created using Voxco and the link was distributed using the communication strategy outlined above. The online consultation was launched on 18 July 2019 and 31 July 2019 (for the English-language and multi-language versions respectively), and it remained open until 26 September 2019. The responses underwent quality assurance and 12 responses were excluded due to respondents having taken part in a telephone interview (their interview results were analysed separately, in more detail). In total, 865 validated online consultation responses were included in the analysis and reporting stage.

Six **focus groups** were held, one in each of the following countries: Ireland, Greece, Italy, Lithuania, Poland and Portugal. In total, 77 people took part in these focus groups. A pilot focus group was held in Ireland, which provided important lessons for the facilitation and organisation of the remaining five focus groups.

The consultation activities with trans individuals were undertaken in several languages to increase the reach of the research and to ensure good representation of the different approaches to LGR observed across the EU. Specifically, the online consultation questionnaire was available in eight languages (Czech, English, French, German, Italian, Polish, Romanian, Spanish), telephone interviews were available in 10 languages (Bulgarian, Czech, English, French, German, Hungarian, Italian, Polish, Romanian, Spanish) and the six focus groups used the national language of the Member State in which they took place<sup>226</sup>.

The team set minimum targets related to the number of participants overall, per research method, European region and legal cluster. The minimum targets for participation were all met. In total, the team consulted 1,015 transgender adults living across the EU.

The Table below shows the total number of participants who took part in the study broken down by country, following the exclusions made after the validation of the online consultation. Note that countries with a low number of participants (fewer than 10) are included in the Table in this way, to protect the anonymity of participants. There were no participants living in Bulgaria or Slovakia.

There was uneven participation across countries, for example low or no participation from some countries and high participation from Germany and Poland.

*Table 12. Participants’ country of residence*

Member State	Number of participants	Member State	Number of participants
Austria	17	Italy	24

<sup>226</sup> In Ireland, the focus group took place in English.

Belgium	45	Latvia	Fewer than 10 participants
Bulgaria	No participants	Lithuania	14
Croatia	Fewer than 10 participants	Luxembourg	Fewer than 10 participants
Cyprus	Fewer than 10 participants	Malta	10
Czechia	Fewer than 10 participants	Netherlands	77
Denmark	14	Poland	166
Estonia	16	Portugal	14
Finland	Fewer than 10 participants	Romania	22
France	91	Slovakia	No participants
Germany	244	Slovenia	Fewer than 10 participants
Greece	11	Spain	85
Hungary	37	Sweden	19
Ireland	30	United Kingdom	59

Given the difficulties of assessing the representativeness of the data from this study, the results are generally reported qualitatively. Where sociodemographic data on the situation of the wider trans population are included, FRA survey data were used, where available. Where the results of this study are reported quantitatively, the source and base number is noted in the footnote underneath the relevant Figures.

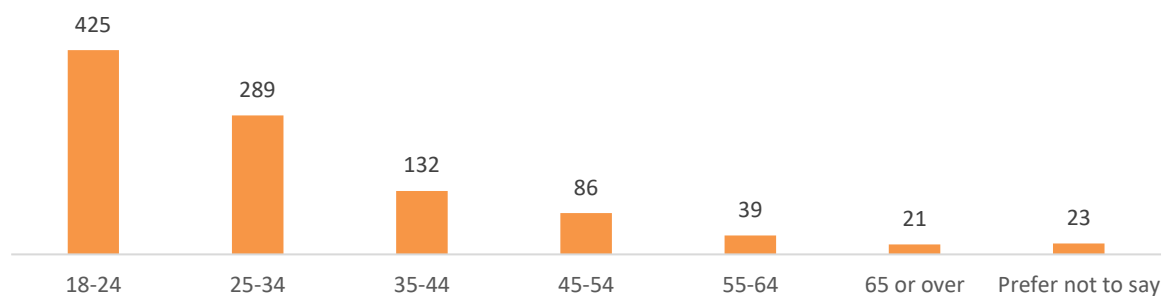
*Table 13. Legal cluster of participants' country of residence<sup>227</sup>*

Cluster	Number of participants
Cluster 1	38
Cluster 2	612
Cluster 3	148
Cluster 4	102
Cluster 5	115

Regarding age distribution, participants tended to be younger, with more than two-thirds aged 34 years or younger. Despite concerted efforts to consult with a range of age groups, only around 14% of participants were aged 45 or over.

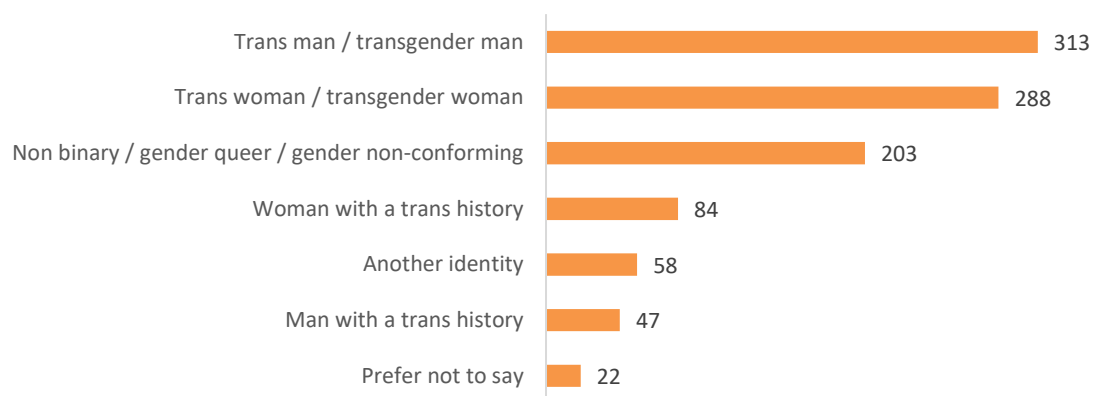
<sup>227</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. Base: All participants (n= 1,015).

Figure 60. Number of participants, by age range<sup>228</sup>



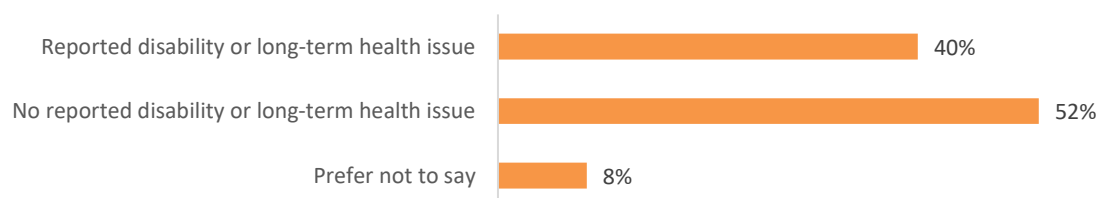
It was important to consult participants with a wide range of gender identities. While the majority of participants had a binary gender identity (trans man or trans women), one in five participants had a non-binary gender identity. 6% described their gender identity in another way, which included people with a non-binary identity who identified more closely with either a masculine or feminine identity, people with a trans history who did not identify with the trans label, and those who identified simply as 'trans'.

Figure 61. Number of study participants, by gender identity<sup>229</sup>



Around four in 10 participants reported a disability or long-term health condition, as shown in Figure **Error! Bookmark not defined.**. This included both mental and physical health issues or disabilities.

Figure 62. Proportion of study participants who reported a disability or long-term health condition (%)<sup>230</sup>



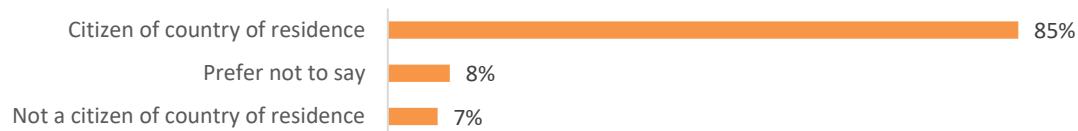
<sup>228</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. Base: All participants (n= 1,015).

<sup>229</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. Base: All participants (n= 1,015).

<sup>230</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. Base: All participants (n= 1,015).

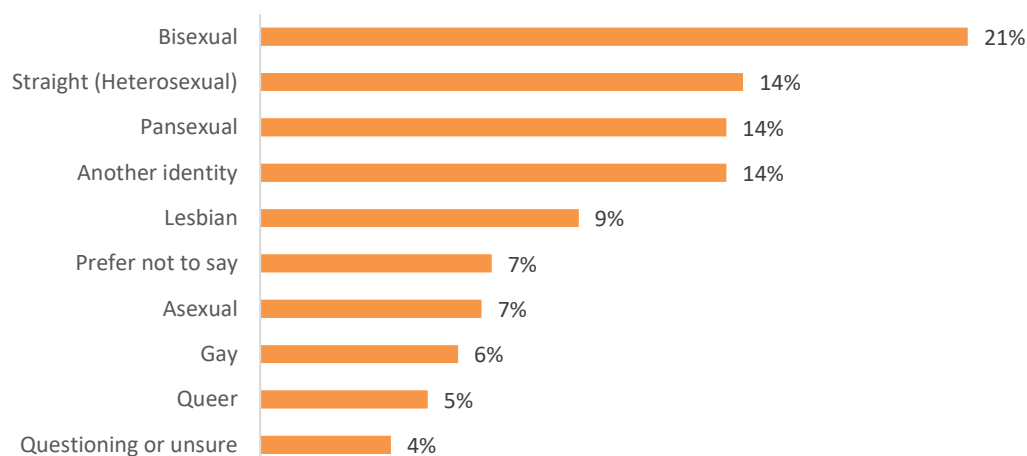
Most participants (85%) were citizens of their country of residence. Fewer than one in ten were not citizens of their country of residence. This included participants in a wide range of situations, including those with citizenship in another EU country, those with citizenship of a country outside the EU but with habitual residence in their country of residence, those with temporary permits to reside, and those going through an asylum process.

Figure 63. Citizenship of participants (%)<sup>231</sup>



Participants had a diverse range of sexual orientations. As shown in Figure 64, more than one in five participants were bisexual. Similar proportions (around 14%) of participants described themselves as straight, pansexual or described their sexual orientation in another way. This included respondents who described themselves as having another sexual orientation that those listed, such as identifying as “fluid” or “exploring” or who identified with more than one sexual orientation. For example, some people identified as both pansexual and bisexual.

Figure 64. Participants’ sexual orientations (%)<sup>232</sup>



In gathering information on ethnicity, the study prioritised self-identification. As such, participants provided a wide variety of responses. People understood their ethnicity in terms of national identity, skin colour and culture. There is some ambiguity around the proportion of participants who belong to an ethnic minority group. For example, one participant shared that they “officially” would be considered an ethnic minority due to their heritage, but they do not personally identify in this way. Despite this ambiguity, there was limited diversity in terms of ethnicity among participants. Around 85% of participants identified as not belonging to an ethnic minority, up to 7%<sup>233</sup> of participants

<sup>231</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. Base: All participants (n= 1,015).

<sup>232</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. Multiple answers possible. Base: All participants (n= 1,015).

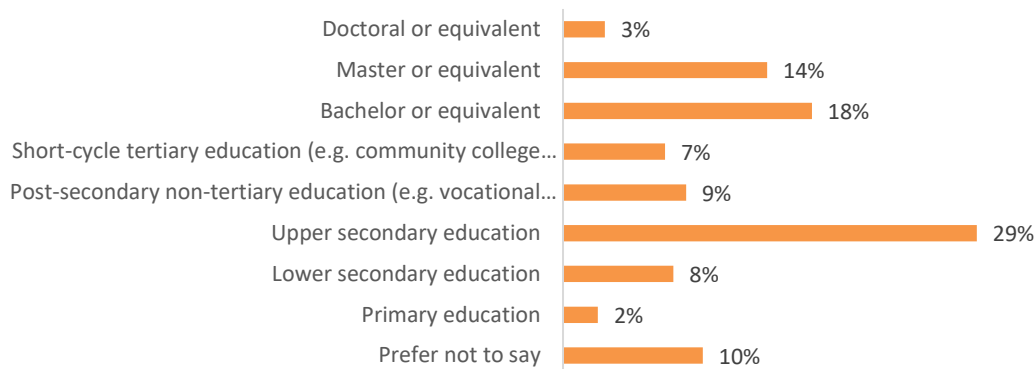
<sup>233</sup> 6% of participants clearly identified as belonging to an ethnic minority. It was not clear from the responses of a further 1% of participants whether they considered themselves to belong to an ethnic minority.



belonged to an ethnic minority and a further 8% of participants stated they preferred not to say.

As shown in Figure 65 below, around 40% of study participants had completed some form of tertiary education.

Figure 65. Highest level of educational attainment among study participants<sup>234</sup>



Within this study, 51% of participants reported that they were in employment (including 9% who were self-employed), 14% of all respondents were unemployed (half of whom reported unemployment lasting more than 12 months), 38% were in education, 7% were unable to work due to sickness or disability and 3% were retired.<sup>235</sup>

## Quantitative research

The purpose of the quantitative research strand was to collate existing EU-wide statistical data on the socioeconomic and sociodemographic position of trans individuals living in the EU. The process for this was as follows:

- On 18 September 2019, UK Data Service granted ICF access to the 2012 European Union Lesbian, Gay, Bisexual and Transgender Survey. Data was downloaded, cleaned and processed for the quantitative analysis.
- On 21 February 2020, the Fundamental Rights Agency granted ICF access to the 2019 European Union Lesbian, Gay, Bisexual and Transgender Survey data. Data was downloaded, cleaned and processed for the quantitative analysis.
- **Correlation analysis** was used to evaluate whether there is an observable link between the five legal clusters identified through the legal analysis and the socio-economic situation of trans people. Measured by ten selected indicators from the FRA LGBTI and Eurobarometer surveys, the study team employed a country-cluster correlation analysis. The focus was on ten indicators of experience and perceptions of discrimination against trans people in employment, education, healthcare and social services, housing, and using document of identification. The choice of indicators was based on two main considerations: 1) the indicators' importance for understanding the socio-economic position of trans people in the EU, and 2) the comparability of survey questions across the 2012 and 2019 waves of the FRA LGBTI survey and the 2012, 2015 and 2019 Eurobarometer surveys on discrimination.
- **Convergence analysis** was used to assess: whether there has been improvement in trans people's average socio-economic position at the EU and Member State levels

<sup>234</sup> Source: Participants in this study, including interview and focus group participants and respondents to the online consultation. Base: All participants (n= 1,015).

<sup>235</sup> Base number of 927 respondents. Some respondents selected more than one response for their employment situation and 4% selected "other". 88 respondents chose not to provide a response.

(measured as discrimination levels in different areas); and the degree to which Member States have converged towards the EU average. Further information on this can be found in Annex 6.

### **Legal analysis**

The purpose of the legal task was to map the practices and procedures for LGR across the 28 EU Member States (EU-28), as of 2019. The Senior Researchers and Steering Committee played an important role in guiding this process.

The process for this task was as follows. The study team mapped human rights standards, at EU and international level, in relation to LGR. The legal processes and procedures relating to LGR for each Member State were then identified. Countries were grouped according to similar approaches to LGR which included factors such as medical requirements, civil status such as divorce requirements, age barriers and court approval, among others.

This resulted in the creation of legal 'clusters' of similar approaches across countries. Legal clusters were ranked from the least accessible procedures (clusters 1 and 2) to most accessible procedures (cluster 5).

The legal mapping and analysis were used to inform the finalisation of the qualitative research tools. Legal cluster information is given at relevant points in the report, such as when quotes are used and in the quantitative analysis of Chapter 10.

### **ANNEX 3: ETHICAL PROTOCOL OF THIS STUDY**

This study – in particular the consultation activities with trans individuals – raised several ethical risks in relation to access and recruitment, the sensitive framing of questions and the safety and well-being of participants, among others. To mitigate and overcome these risks, the research team developed a detailed ethical protocol, informed by a range of best practice guidance (e.g. Adams et al., 2017; Aparicio-García et al., 2018; Orr and Bennett, 2009; Vincent, 2018).

This ethical protocol outlined the purpose of the research, how participants would be engaged in the research and informed of their rights, steps to ensure the safety of participants and researchers, procedures linked to privacy and anonymity, and guidance on data protection and storage. This Annex summarises the main components of this protocol, in particular its six guiding principles.

The ethical principles that underpinned all the consultation activities of this study were:

1. **Use sensitive and affirming language and techniques.** This research touched on a range of sensitive topics (e.g. coming out, transitioning). The team aimed to ensure that transgender participants not only felt comfortable and supported, but that the experience of engaging in the research was an empowering one that allowed individuals to contribute to policy change.

Examples of actions we took to support this principle:

- Transgender individuals and relevant NGOs took a role in the design and use of research tools and questions, and in the approach to the analysis of the results. The study's advisory experts were a vital sounding board on language choice and deployment. Trans individuals also 'piloted' the interview, online consultation and focus groups to ensure that gender-sensitive and affirming language was used at all times, and to guide the researchers' handling of sensitive issues.
- All members of the qualitative research team received ethics training. The training was developed by Lucy Arora and Joz Motmans and built on feedback from transgender piloters, the other Senior Researchers and available best practice literature. The purpose of the ethics training was to ensure that the qualitative researchers understood their role in empowering study participants and to avoid inadvertently causing them harm. The training ensured a high degree of awareness of a range of issues relevant to transgender people across Europe, as well as procedures for consent, data protection and privacy. It also ensured that the team was adept in using sensitive interviewing and facilitation techniques, and that all language used was appropriate and affirming.

2. **Ensure transparency with trans participants and voluntary organisations supporting the study.** All participants took part having given their informed and explicit consent. It was important to ensure that participants and supporting organisations understood the purpose of the research, as well as the modes by which they could contact the research team and access their personal data/results.

Examples of actions we took to support this principle:

- A call to participate in the study was disseminated via partner organisations, snowballing techniques and by advertising the study on a European Commission webpage. Once engaged, all participants were clearly informed of their rights in a 'Data Protection Note'. This was written in clear and accessible language and included information on the purpose of the research, the voluntary nature of participation and the right to withdraw at any time, data storage and applicable legislation, among other things. The note also included key contact points in the case of questions and complaints (both internal and external to ICF). The Data Protection Note was piloted with transgender individuals prior to the 'rollout' of

the full consultation to ensure that the language was accessible and suitably sensitive.

- After receiving the Data Protection Note, participants in all research activities certified that they consented to taking part in the study and that they understood the terms of their participation.
- All pilot participants received a personalised follow-up email to advise them of the changes made to the research based on their feedback. All participants were signposted to the next steps of the research and were advised that full results would be published on the European Commission website by summer 2020. The release of the results will also be advertised on a public landing page on the European Commission website. Finally, all partner organisations have been asked to play a role in the dissemination of research results to their networks following their publication. The team operated a specific and dedicated mailbox for participants to ask any questions or raise any concerns. The mailbox was operated by ethically trained staff members who worked according to an agreed communication protocol.

### **3. Enable trans individuals and relevant NGOs to take a role in the development and dissemination of the research.**

Examples of actions we took to support this principle:

- Partner organisations were central to disseminating the research. All disseminated the call for participants among their networks to ensure that the study reached the broadest possible cross-section of the transgender population.
- Partner organisations were compensated for undertaking tasks that impacted the development of the research. Some undertook reviews of tools to guarantee the quality and sensitiveness of the translated text. Some directly assisted the facilitation of focus groups by providing space at their premises, advising on appropriate facilitation methods and nominating co-facilitators.
- As noted under Principle 1, transgender individuals and relevant NGOs were consulted on the design and use of research tools and questions, and in the approach to the analysis of the results. The study's advisory experts were a vital soundboard on a range of issues central to the development and dissemination of the research.

### **4. Ensure that the research is as accessible and respectful as possible and avoids harm to participants.**

Examples of actions we took to support this principle:

- Participants were offered different methods by which to participate in the study to ensure it was as accessible as possible. In addition to offering three options for research participation (both offline and online, in group and individually), participants were able to participate in up to 10 languages.
- The study team worked with partner organisations to determine the best location and timing of face-to-face events to boost accessibility. To encourage greater diversity, partner organisations were asked to recruit from across a set of groups within the trans population and aim for a mix of ages and places of residence (urban/rural). Where events took place in the evening, they did not finish late at night (e.g. not after 21.00).

### **5. Recognise the heterogeneity of the transgender population and take an intersectional perspective.** Researchers aimed to recognise the diversity of

groups who may identify as transgender, as well as the ways in which sociodemographic characteristics other than gender identity can affect individual experiences (age, ethnicity, migration status, sexual orientation, disability status and others).

Examples of actions we took to support this principle:

- During recruitment, the research team worked with a diverse network of partners, who were themselves encouraged to recruit from a diverse range of backgrounds<sup>236</sup>.
- Specific actions were taken to boost research accessibility for some groups. For example, building on the lessons of a pilot focus group, all subsequent focus groups occurred in physical venues with step-free access.
- During consultation activities, the research monitored diversity among participants by collecting data on a range of sociodemographic characteristics. This allowed for targeted recruitment activities to boost the participation of under-represented groups (for example, trans people over 55 and trans people belonging to an ethnic minority).
- Targeted questions were built into the research to explore intersectional issues, for example considering how residence status for non-citizens can affect access to legal procedures; how racism can affect experiences of LGR; and how certain disabilities and health conditions can reduce access to LGR.

**6. Encourage all members of the research team (cisgender and transgender) to engage in reflexivity over their role and impact.**

Researchers were encouraged to think about how their identity/experiences might both limit and enrich their outlook, and how comfortable they were sharing their own stories if asked.

Examples of actions we took to support this principle:

- The importance of reflexivity was emphasised during ethics training attended by all researchers. This was explored through an interactive 'privilege check' exercise, for example.
- Steps were taken to safeguard the well-being of the researchers, by conducting debriefing sessions and providing access to anonymous counselling, where desirable.

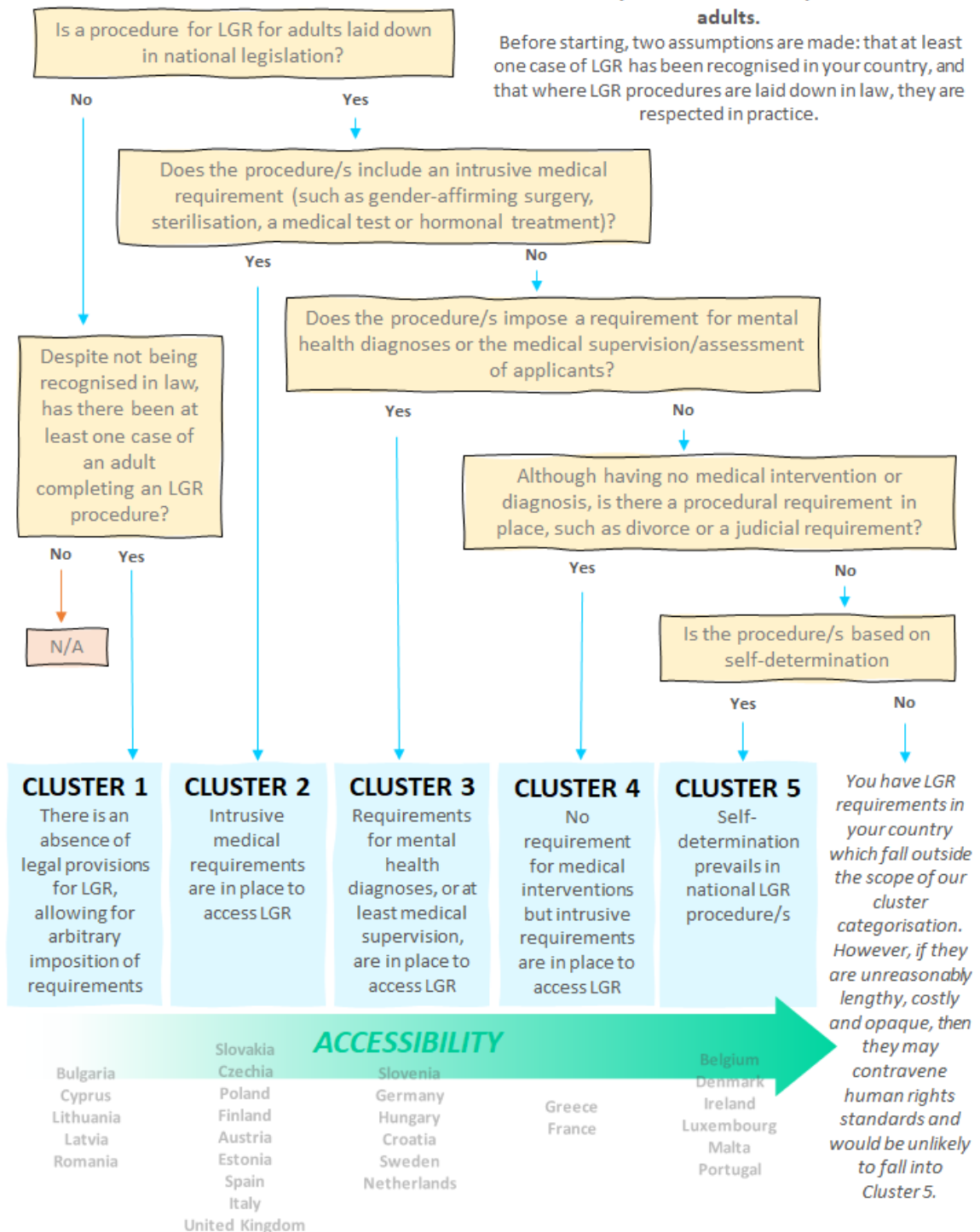
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<sup>236</sup> As primary recruitment criteria, the team sought to recruit transgender individuals with a range of gender identities and age ranges, as well as countries of residence. These link to the eligibility criteria of the study (see Section 1.4 for more on how participants were screened). As secondary recruitment criteria, recruiters were encouraged to seek diversity in other sociodemographic characteristics.

## ANNEX 4: TOOL TO CLASSIFY THE ACCESSIBILITY OF NATIONAL LEGAL GENDER RECOGNITION (LGR) PROCEDURES FOR ADULTS (18 AND OVER)

### Legal Gender Recognition (LGR) Accessibility Clustering Tool

START



## **ANNEX 5: HUMAN RIGHTS STANDARDS**

### **1 Review of LGR human rights standards**

#### **1.1 Analysis of human rights standards on LGR procedures**

Legal gender recognition (LGR) is the process(es) by which individuals request the changing of the first name and/or gender marker in their administrative records in order that official registers and documents - including identity documents, birth or civil status certificates - match their gender (usually as female or male, with few countries allowing for a non-binary marker).

As of 2019, each of the 28 EU Member States had established legal procedures to allow for the LGR of transgender individuals or had permitted individuals to be recognised as their gender. However, the requirements set out in national laws vary widely across the EU. Legal practices for recognition of gender tend to be a combination of complex legal and medical requirements, with the border between the two often blurred (Hammarberg, 2019).

In order to understand the differences between Member States and to classify countries according to similar characteristics in their LGR procedures, those requirements must first be located in the context of the wider human rights framework applicable to LGR before examining the human rights standards specific to LGR.

##### **1.1.1 International human rights context**

The rights related to LGR derive from a wider human rights context, which gave the legal grounds to develop LGR-specific human rights standards. The wider human rights context encompasses the following binding standards:

- Right to dignity;
- Right to non-discrimination;
- Right to be free from torture or cruel, inhuman or degrading treatment;
- Right to recognition;
- Right to privacy and family life;
- Right to enjoyment of the highest attainable standard of physical and mental health;
- Right of the child to preserve their identity.

Together, they cover various facets related to LGR procedures, forming a strong human rights framework of binding and non-binding standards. They provide the foundation for established legally binding LGR standards under international law, as well as standards being developed under international law, which remain soft law (for now). These human rights are further detailed below.

- **Right to human dignity**

Article 1 of the Universal Declaration of Human Rights (UDHR) provides that every human being is 'equal in dignity'.

The principle of equality of dignity comprises 'the value or worth of each individual as a human being'. The standard derives from the idea of the right to a 'dignified existence' (Grant, 2007).

The right to dignity in the context of LGR for transgender individuals has been particularly at stake in relation to the right to determine their gender identity and to bodily and mental integrity. This is reflected under the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender



identity<sup>237</sup>. The Yogyakarta Principles were developed by an international panel of experts in international human rights law in relation to sexual orientation and gender identity. They set out to compile binding and non-binding international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics.

Accordingly, each person's self-defined gender identity is 'one of the most basic aspects of self-determination, dignity and freedom'. Dignity is fundamentally linked to body integrity and autonomy<sup>238</sup> yet some national LGR legal requirements include invasive conditions, such as sterilisation and/or surgery.

The European Court of Human Rights (ECtHR) has applied the right to human dignity in relation to the right of transgender people to physical and moral security, as well as the importance of prior consent to sterilisation<sup>239</sup>.

- **Right to equality and non-discrimination**

The right to equality and non-discrimination is enshrined in all of the major international human rights instruments<sup>240</sup>. It is recognised on the ground of sex, however, human rights instruments do not expressly recognise the right on the grounds of gender identity or gender expression. UN bodies have confirmed the application of the right to equality and non-discrimination to transgender people (European network of legal experts in gender equality and non-discrimination, 2018).

The Human Rights Committee has applied the right to non-discrimination in affirming that differential treatment of married and unmarried persons who request LGR constitutes discrimination on the ground of marital and transgender status, under Article 26 of the International Covenant on Civil and Political Rights (ICCPR)<sup>241</sup>.

In addition, the ECtHR has expressly extended the protection to be free from discrimination (Article 14 ECHR) to the grounds of gender identity and sexual orientation, grounds which were not specifically stated in the Convention<sup>242</sup>.

- **Right to be free from torture or cruel, inhuman or degrading treatment**

Human rights law clearly protects all individuals - including transgender individuals - from being subjected to torture or to cruel, inhuman or degrading treatment or punishment<sup>243</sup>.

Under the Convention against Torture and Inhuman, Cruel or Degrading Treatment or Punishment (Article 16), Member States must prevent any acts of cruel, inhuman or degrading treatment in their jurisdiction 'when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity'.

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<sup>237</sup> Principles 3 and 23 of the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, international panel of experts in international human rights law and on sexual orientation and gender identity, 2006 and 2017. <http://yogyakartaprinciples.org/>

<sup>238</sup> Yogyakarta Principle 23.

<sup>239</sup> ECtHR, *YY v. Turkey*, Application No: 14793/08.

<sup>240</sup> Articles 1, 2 and 7 of the UDHR; Articles 2, 3 and 27 of the ICCPR and Articles 2 and 3 of the International Covenant on Economic, Social and Cultural Rights (ESCR), among others.

<sup>241</sup> Human Rights Committee, *G v Australia* Communication No. 2172/2012 (CCPR/C/119/D/2172/2012) (UN HRC, 15 June 2017). Available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR\\_C\\_119\\_D\\_2172\\_2012\\_25976\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR_C_119_D_2172_2012_25976_E.pdf)

<sup>242</sup> ECtHR, *Identoba and Others v. Georgia* [2015] 39 BHRC 510.

<sup>243</sup> Article 5 of the UDHR; Article 7 of the ICCPR; Article 16 of the UN Convention against Torture and Inhuman, Cruel or Degrading Treatment or Punishment.

Forced sterilisation, forced hormone treatment and forced gender-affirming surgery (also known as gender reassignment surgery) may violate the right of transgender people to be free from inhuman, cruel or degrading treatment<sup>244</sup>.

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has affirmed that psychiatric evaluations and forced procedures such as sterilisation and hormone therapy 'can lead to severe and life-long physical and mental pain and suffering and can amount to torture and ill-treatment'. They added that abusive requirements to access LGR, such as forced or involuntary surgery, sterilisation or other coercive medical procedures, are rooted in discrimination, violate the right to physical integrity and amount to ill-treatment or torture (Human Rights Council, 2016).

- **Right to recognition**

Both the UDHR and the ICCPR provide that 'everyone has the right to recognition everywhere as a person before the law'<sup>245</sup>.

The provision originally aimed to ensure that everyone was guaranteed enjoyment of their fundamental civil rights, such as the right to marry, enter contracts, etc. This right is linked to the right to dignity and the recognition of each human being before the law, as a prerequisite (Brett, 2012).

In several instances, the Human Rights Committee found that the state's failure to issue birth certificates or to keep civil registries amounted to a violation of Article 16 ICCPR<sup>246</sup>.

Recognition of the gender of an individual in legal documents could fall within the scope of this protection, although this standard has not yet appeared in jurisprudence.

- **Right to private and family life**

The right to privacy and family life is a foundational basis for the development of the right to LGR at European and international level. The right to privacy and family life is guaranteed under both the UDHR and the ICCPR<sup>247</sup>.

The Human Rights Committee has established that the protection of a person's identity - including their gender identity - falls within the notion of 'privacy' under Article 17 ICCPR. The fact that a legal document records a gender different from that of the transgender person constitutes an invasion of privacy, as the legal document thus reveals private information about the person's background. According to the Committee, as a result, State Parties must provide individuals with a birth certificate consistent with their sex<sup>248</sup>. Article 17 does not guarantee an absolute right to LGR and State Parties can impose proportionate requirements to access LGR. They are, however, prohibited from (a) absolutely withholding gender recognition; or (b) withholding LGR because transgender people refuse to comply with disproportionate requirements.

Article 8 of the ECHR also guarantees the right to respect for private and family life. The provision gave rise to substantial case-law supporting the development of rights for transgender individuals.

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<sup>244</sup> Yogyakarta Principle 18 on the Protection from Medical Abuses; United Nations High Commissioner for Refugees, Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. Available at: <https://www.unhcr.org/509136ca9.pdf>

<sup>245</sup> Article 6 UDHR and Article 16 ICCPR.

<sup>246</sup> See, for example: Concluding Observations on Albania, CCPR/CO/82/ALB (HRC, 2004), para. 17, Concluding Observations on Bosnia and Herzegovina, CCPR/C/BIH/CO/1 (HRC, 2006), para. 2, Concluding Observations on the Democratic Republic of Congo, CCPR/C/COD/CO/3 (HRC, 2006), para 25.

<sup>247</sup> Article 12 UDHR and Articles 17 and 23 ICCPR.

<sup>248</sup> Human Rights Committee, *G v Australia*, Communication No. 2172/2012 (CCPR/C/119/D/2172/2012) (UN HRC, 15 June 2017), para 7.2.

The ECtHR has concluded that gender identification and the right to sexual self-determination falls within the protection offered by Article 8 of the ECHR, thus Member States must take positive steps to guarantee this right. The ECtHR has also held that refusal to amend the civil status register of a transgender person is not compatible with the respect due to their private life<sup>249</sup>.

- **Right to the enjoyment of the highest attainable standard of physical and mental health**

The right to the highest standard of health can also form a basis for LGR standards for transgender people. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees that right. The UN Committee on Economic, Social and Cultural Rights confirmed that the right encompasses 'the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation'<sup>250</sup>.

- **Right of the child to preserve their identity**

The Convention on the Rights of the Child (Article 8) guarantees the right of the child to preserve their identity without unlawful interference.

The UN Committee on the Rights of the Child has highlighted that the identity of the child includes characteristics such as sexual orientation. The Committee has affirmed that 'the right of the child to preserve his or her identity is guaranteed by the Convention (Article 8) and must be respected and taken into consideration in the assessment of the child's best interests'<sup>251</sup>. This does not exclude the characteristic of gender identity, nor does it expressly mention it. The principles arguably apply to the right of children to express their gender, but this standard remains under development.

### **1.1.2 EU legal framework**

The rights of transgender people and LGR in the EU stem from the non-discrimination framework.

The principle of non-discrimination is a foundational standard of the EU and is safeguarded through several EU instruments. Protection from discrimination is enshrined across primary EU legislation<sup>252</sup> on several grounds, including 'sex', 'sexual orientation' and 'birth' (among others). A profound respect for 'human dignity, freedom, democracy' and 'respect for human rights'<sup>253</sup> is equally affirmed in the Treaty on European Union (TEU). Several Directives also provide protection from discrimination based on 'sexual orientation' and 'sex'<sup>254</sup>. This protection on the ground of sex applies in employment, education and access to goods and services, being limited in the case of employment to the ground of sexual orientation (see Table 14).

EU non-discrimination law does not strictly forbid discrimination on the grounds of gender identity or gender expression. However, in 1996, the Court of Justice of the

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<sup>249</sup> ECtHR, *Christine Goodwin v. U.K.*, judgment of 11 July 2002.

<sup>250</sup> UN Committee on Economic, Social and Cultural Rights (11 August 2000). General Comment 14: the right to the highest attainable standards of health, para 8.

<sup>251</sup> UN Committee on the Rights of the Child (29 May 2013). General comment No. 14: the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, para. 55.

<sup>252</sup> Article 19. European Union (2012). *Consolidated version of the Treaty on the Functioning of the European Union*, OJ C 326 26.10.2012, pp. 47–390; Article 21. European Union (2012). *Charter of Fundamental Rights of the European Union*, 2012/C 326/02.

<sup>253</sup> Article 2. European Union (1992). *Treaty on European Union (Consolidated Version)*, *Treaty of Maastricht*, OJ C 325/5 24.12.2002.

<sup>254</sup> This includes Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000.

European Union (CJEU) ruled<sup>255</sup> that discrimination arising from gender reassignment must be considered discrimination based on sex. EU legislation that protects against discrimination based on sex therefore prevents discrimination against transgender people that have undergone, are undergoing or intend to undergo gender-affirming surgery, irrespective of whether or not the person has undertaken LGR.

The CJEU confirmed the protection from discrimination applicable to transgender people. It ruled that direct sex discrimination consisted of someone being treated unfavourably based on their sex, and that a person who has undergone gender-affirming surgery – but who has not legally had their gender reassigned – may still claim discrimination on that ground. This means that somebody who has lived according to their gender identity, having undergone gender-affirming surgery but not LGR, must be recognised as a transgender person. Consequently, discrimination on the grounds of sex can be claimed in cases where the transgender person has not availed of LGR<sup>256</sup>.

In a recent ruling<sup>257</sup>, the CJEU affirmed that Member States must recognise preferred legal gender in a manner that complies with EU equality law when applying EU law. In the specific case, even though the UK's precondition for LGR that a marriage be annulled did not violate the ECHR, EU law prohibits such an annulment requirement for the purposes of obtaining EU benefits. Thus, the applicant could not be required to annul her marriage before obtaining the earlier pension in accordance with her (female) gender identity.

The main EU legislative and policy instruments relevant to non-discrimination on the grounds of sexual orientation, gender identity and gender expression are outlined below.

Table 14. EU legislative and policy instruments

Instrument	Relevance
<i>Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security</i>	<i>Protects against both direct and indirect discrimination in the context of statutory social security schemes.</i>  Applicable in the context of gender reassignment.
<i>Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (2000)</i>	<i>Protects against discrimination at work on the grounds of religion or belief, disability, age or sexual orientation.</i>  Applicable in the case of sexual orientation but does not apply to gender identity specifically.
<i>Directive 2004/113/EC equal treatment in the provision of goods and services (2004)</i>	<i>Prohibits direct and indirect discrimination, harassment and sexual harassment based on sex.</i>  Applicable in the case of gender reassignment.

<sup>255</sup> CJEU (1996). *P v S and Cornwall County Council*. Case C-13/94 [1996] ECR I-2143 [para. 20]; CJEU (2006). *Sarah Margaret Richards v Secretary of State for Work and Pensions*. Case C-423/04.

<sup>256</sup> It found that Directive 79/7/EEC applied to discrimination on the basis of gender reassignment. UK Human Rights blog. Available at: <https://ukhumanrightsblog.com/2018/07/03/how-much-of-a-groundbreaking-decision-is-the-cjeus-judgment-for-transgender-rights-thibault-lechevallier/>

<sup>257</sup> CJEU (2018). *MB v Secretary of State for Work and Pensions*. Case C-451/16.

Instrument	Relevance
<p><i>Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (2006)</i></p>	<p><i>Ensures that the principle of equal opportunities and equal treatment of men and women is implemented in employment and occupation, distinctly prohibiting discrimination with regard to pay, working conditions and access to employment and promotion.</i></p> <p>Applicable in the case of gender reassignment.</p>
<p><i>Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2012)</i></p>	<p><i>Protects the rights of victims of crime and ensures their support, protection and access to relevant information.</i></p> <p>Applicable in the case of gender identity/ gender expression.</p>
<p><i>European Parliament Resolution on the EU Roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity (2014)</i></p>	<p><i>Calls on the Commission to ensure non-discrimination in employment, education, health and access to goods and services on the basis of sexual orientation and gender identity. Also calls for specific action for transgender and intersex persons, ensuring that issues are mainstreamed.</i></p>
<p><i>List of Actions by the Commission to advance LGBTI equality (2015)</i></p>	<p><i>A list of actions presented by the Commission to advance LGBTI equality in the context of legal protection; monitoring and enforcement of LGBTI rights under EU law; fostering non-discrimination; supporting key actors; improving data collection; and ensuring external action in Enlargement, Neighbourhood and Third Countries.</i></p>
<p><i>European Council Conclusions on LGBTI equality (2016)</i></p>	<p><i>Required the Commission to report annually on its List of Actions to advance LGBTI equality (2015).</i></p>
<p><i>European Pillar of Social Rights (2017)</i></p>	<p><i>Promotes new rights for EU citizens in three areas: equal opportunities and access to the labour market; fair working conditions; social protection and inclusion. States that all persons have the right to equal treatment and opportunities in employment, education, social protection and access to goods and services, regardless of 'gender, racial or ethnic origin' religion or belief ... sexual orientation' (Principle 3).</i></p>
<p><i>Rights, Equality and Citizenship Programme (2014-2020)</i></p>	<p><i>Programme combating discrimination, intolerance, groups at risks (among others) within the context of developing 'equality and rights of persons'. A range of actions are funded, including peer review sessions, training activities, analytical activities and support to main actors.</i></p>

## 1.2 Human rights standards specific to LGR procedures

LGR-specific human rights standards have developed in recent years based on the human rights framework described above. Courts and relevant international bodies have further clarified and interpreted the wider human rights framework to identify LGR-specific requirements.

A key soft law instrument in setting these standards is the **Yogyakarta Principles (2007)** and the **Yogyakarta Principles plus 10** (additional principles adopted 10 years later, in 2017). The Yogyakarta Principles were developed by an international panel of experts in international human rights law and on sexual orientation and gender identity. They constitute a set of 'international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity to bring greater clarity and coherence to States' human rights obligations'.

The Yogyakarta Principles are not in themselves legally binding as they have not been signed or ratified by States. They aim to reflect the latest state of international human rights standards in relation to sexual orientation and gender identity. While some of those standards have been recognised through legally binding instruments or the case-law of international courts, a number of norms are still under development at international level and are not legally binding unless adopted at national level.

### 1. Right to LGR

The general right to LGR of transgender individuals derives from the right to private and family life. It has been recognised by the ECtHR in interpreting Article 8 of the ECHR, and by the Human Rights Committee in interpreting Article 17 of the ICCPR.

The Human Rights Committee held that the refusal to change an applicant's sex on her birth certificate unless she divorces, constitutes arbitrary or unlawful interference with the right to privacy and family under Article 17 of the ICCPR<sup>258</sup>. The Committee noted that States must recognise 'the right of transgender persons to a change of gender by permitting the issuance of new birth certificates'. Failure to do so is a violation of the right to private and family life, as well as the right to recognition before the law<sup>259</sup>.

The ECtHR has ruled that Council of Europe Member States must provide for the possibility of LGR. In implementing this obligation, States must carefully assess procedures to ensure that they are compatible with human rights<sup>260</sup>. The existing ECtHR case-law<sup>261</sup>, aside from the prohibition of the sterilisation requirement, grants wide discretion to the State Parties in terms of the rules they may apply for LGR.

The ECtHR has held that the refusal to amend the civil status register of a transgender person is not compatible with the respect due to their private life. More specifically, a State's failure to alter the birth certificate of a person who has undergone gender-affirming surgery and to recognise their new gender constitutes a disproportionate interference with Article 8 of the ECHR. Hence, 'official documents revealing a discrepancy between the legal sex and the apparent sex of a transgender person constitute a violation of Article 8'<sup>262</sup>. In *Goodwin*, the ECtHR found a clear violation of Article 8, on the ground that State Parties must provide for full LGR<sup>263</sup>.

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<sup>258</sup> Human Rights Committee, *G v Australia* Communication No. 2172/2012 (CCPR/C/119/D/2172/2012) (UN HRC, 15 June 2017). Available at: [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR\\_C\\_119\\_D\\_2172\\_2012\\_25976\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR_C_119_D_2172_2012_25976_E.pdf)

<sup>259</sup> Human Rights Committee (30 July 2008). Concluding observations of the Human Rights Committee on Ireland (CCPR/C/IRL/CO/3), para 8.

<sup>260</sup> ECtHR, *Rees v. the United Kingdom*; ECtHR, *Goodwin & I v. UK*.

<sup>261</sup> Particularly in relation to the recent cases in *AP, SV v Italy* and *X v Macedonia*.

<sup>262</sup> ECtHR, *B. v. France* no. 13343/87 25 March 1992 ECHR:1992:0325.

<sup>263</sup> ECtHR, *Christine Goodwin v. U.K.*, judgment of 11 July 2002.



Similarly, the inability to obtain a change of forename was found to amount to a failure by the State to comply with its positive obligation to secure the respect of the right to private life<sup>264</sup>.

The right to legal recognition, established by the above developments although not legally binding, is clearly defined by Yogyakarta Principle No 31 (see Table 15 below).

Table 15. Yogyakarta Principle No 31

### Right to legal recognition

Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain **identity documents**, including birth certificates, regardless of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right **to change gendered information** in such documents where gendered information is included in them.

Source: Yogyakarta Principles (2007).

## 2. Right to LGR based on self-determined or self-defined gender identity

LGR procedures based on self-determination allow individuals to declare their gender without a requirement to satisfy medical, civil status, age preconditions or 'real-life experience' (RLE) requirements (European network of legal experts in gender equality and non-discrimination, 2018).

The standard of the right to self-define one's own legal gender in relation to LGR is still under development in the international and European legal framework. To date, it has been recognised only in soft law form. More specifically, self-defined gender recognition is advocated under the Yogyakarta Principles, the UN General Assembly Report on protection against violence and discrimination based on gender identity<sup>265</sup>, and the Parliamentary Assembly of the Council of Europe (PACE) Resolution<sup>266</sup>.

The ECtHR has held that the notion of personal autonomy is a key principle underlying Article 8 of the ECHR and includes a right to self-determination applicable to sexual orientation and gender identity<sup>267</sup>. It has described gender identity as 'one of the most intimate areas of a person's private life', a free-standing right and as 'one of the most basic essentials of self-determination'<sup>268</sup>. Despite highlighting the right to determine one's own gender identity, the ECtHR has not (yet) held that LGR should be essentially based on self-determination. While the ECtHR has prohibited sterilisation as an LGR requirement (*AP, Garçon and Nicot*<sup>269</sup>), it has left a margin of appreciation to State Parties to adopt some restrictive requirements, such as mental health diagnoses, or even divorce in cases where the marriage can be converted to a registered partnership (*Hamalainen v Finland*<sup>270</sup>).

In its Resolution, PACE called on Member States to develop LGR procedures that are based on self-determination.

<sup>264</sup> ECtHR *S.V. v. Italy* no. 55216/08 11 October 2018.

<sup>265</sup> UN General Assembly Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity (12 July 2018). A/73/152. Available at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/73/152](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/152)

<sup>266</sup> Council of Europe Parliamentary Assembly (2015). Resolution 2048. Discrimination against transgender people in Europe. Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736>

<sup>267</sup> ECtHR, *AP, Schlumpf v. Switzerland*, no. 29002/06.

<sup>268</sup> ECtHR, *AP, Garçon and Nicot v. France*, no. 79885/12.

<sup>269</sup> ECtHR, *AP, Garçon and Nicot v. France*, no. 79885/12.

<sup>270</sup> ECtHR, *Hämäläinen v. Finland* No. 37359/09 (2014).



Under Yogyakarta Principle No 3, the right to legal recognition, a person's 'self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom'.

LGR procedures based on self-determination are a precondition to ensure the right of transgender people to have their own gender identity legally recognised in practice. This would ensure an accessible procedure that minimises unnecessary interference in the right to private and family life of transgender people (European network of legal experts in gender equality and non-discrimination, 2018).

### **3. LGR procedures with no required waiting period**

The conditions and legal requirements surrounding LGR procedures may constitute important barriers to accessing those procedures. The international standards provide some key guidance on best practices here.

Legally established waiting periods for LGR and long informal waiting periods to access prerequired medical intervention are reported in many countries. Some Member States require the observation of a waiting period before obtaining LGR (e.g. six months in Denmark). In the UK, applicants must live in their 'acquired gender' for two years before applying for a Gender Recognition Certificate.

Other countries require medical assessment, treatment or surgeries as preconditions, considerably lengthening the time period to access LGR (European network of legal experts in gender equality and non-discrimination, 2018). In many countries, long waiting lists accompany such specialised medical treatments, impacting access to LGR procedures.

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) Committee has repeatedly called for States to ensure 'expeditious, transparent and accessible' LGR procedures<sup>271</sup>.

The ECtHR has ruled that 'mechanically applied waiting periods' may violate Article 8 of the ECHR<sup>272</sup>. This means that time requirements should not be applied rigidly and must take into account qualitative elements, such as the individual's medical needs, while ensuring that such waiting periods do not impair the freedom to determine one's gender identity. While this case concerned the waiting period to be reimbursed for the gender-affirming surgery, this ruling could – arguably – apply to waiting periods for LGR procedures as well.

The ECtHR found a violation of the right to private life (Article 8 ECHR) and the positive obligation of the State to ensure this right in a case on the applicant's inability to obtain a change of forename over a period of two and a half years, on the grounds that the gender transition process had not been completed<sup>273</sup>.

The non-legally binding Yogyakarta Principle No 31 stipulates that LGR procedures, including changing names, must be a quick, transparent, and accessible mechanism.

### **4. No gender-affirming surgery as requirement for LGR**

A key standard clearly emerging from international instruments and case-law is the absence of a requirement to undergo gender-affirming surgery (also known as gender reassignment surgery) to qualify for LGR. Requiring gender-affirming surgery is considered a very intrusive stipulation. Such surgeries can be invasive and entail health risks<sup>274</sup>. In addition, not all transgender people wish to undergo them.

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<sup>271</sup> CEDAW. *CO: Belgium (2014)*, CEDAW/C/BEL/CO/7, §. 44; *Kyrgyzstan (2015)*, CEDAW/C/KGZ/CO/4, §. 34. 21 CEDAW, *CO: Finland (2014)*, CEDAW/C/FIN/CO/7, §. 29; *Georgia (2014)*, CEDAW/C/GEO/CO/4-5, §. 35.

<sup>272</sup> ECtHR, *Schlumpf v. Switzerland*, 08 January 2009, application no. 29002/06.

<sup>273</sup> ECtHR, *S.V. v. Italy* (no. 55216/08), 11 October 2018.

<sup>274</sup> ECtHR, *A.P., Schlumpf v. Switzerland*, nos. 29002/06.

The right to not be forced to undergo gender-affirming surgery as a requirement for LGR is based on the well-established right to be free from inhuman, cruel or degrading treatment (Article 7 ICCPR; Article 16 UN Convention against Torture and Inhuman, Cruel or Degrading Treatment or Punishment). The notion of bodily integrity is more often relied upon as the basis against forced surgery<sup>275</sup>. The UN Committee against Torture has expressed concerns on the use of gender-affirming surgery as a requirement for LGR, considering it abusive and a failure to respect the autonomy and physical integrity of transgender people<sup>276</sup>. Its concluding observations are not legally binding but, rather, serve as authoritative guidance in the interpretation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Similarly, in its concluding observations, the Human Rights Committee held that surgery requirements in order to change sex on birth, death and marriage certificates should be removed<sup>277</sup>.

The UN Human Rights Committee, notably in *G v Australia*, held that the notion of 'privacy' under Article 17 of the ICCPR includes the protection of personal identity, including gender identity<sup>278</sup>. The views of the Committee represent 'an authoritative determination' with the interpretation of the ICCPR. According to General Comment No 33, the Committee's views 'exhibit some important characteristics of a judicial decision', with which State Parties have the obligation to comply in good faith<sup>279</sup>. It could thus be argued that it represents a binding standard.

Requiring transgender people to undergo unwanted medical treatments to obtain LGR violates their right to the highest attainable standard of health<sup>280</sup>. The UN CESCR held that everyone has the right to control their own health and body, including sexual and reproductive freedom, and the right to be free from interference and non-consensual medical treatment<sup>281</sup>.

In *AP, Garçon and Nicot v. France*, the ECtHR considered whether the obligation to establish the irreversible nature of the change in their appearance was compatible with the ECHR. It held that making LGR conditional on undergoing an sterilisation surgery or treatment – or surgery or treatment very likely to result in sterilisation - to which they did not wish to submit amounted to a violation of right to physical integrity, which forms part of the right to private life under Article 8 ECHR<sup>282</sup>. The Court considered that no genuine consent to medical treatment exists when not agreeing to said medical treatment 'deprives the person concerned of the full exercise of his or her right to gender identity and personal development, which is a fundamental aspect of the right to respect for private life'<sup>283</sup>. In this case, the ECtHR argumentation leans towards viewing gender-affirming surgery as a precondition as a violation of the ECHR. However, it only

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<sup>275</sup> In the context of the ECtHR judgments (*YY* and *AP*), the ECtHR has relied on the notion of bodily integrity protected by Article 8 ECHR rather than Article 3 ECHR.

<sup>276</sup> Committee against Torture (2016). Concluding observations on the fifth periodic report of China with respect to Hong Kong, China, CAT/C/CHN-HKG/CO/5.

<sup>277</sup> Human Rights Committee (2017). Concluding Observations on the Sixth Periodic Report of Australia, CCPR/C/AUS/CO/6, [25]-[28].

<sup>278</sup> Human Rights Committee (2012). *G. vs Australia*. Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2172/2012 CCPR/C/119/D/2172/2012.

<sup>279</sup> Human Rights Committee (2009). General Comment No 33 The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, CCPR/C/GC/33.

<sup>280</sup> UN Covenant on Economic, Social and Cultural Rights (CESCR), Article 12; CESCR, CO Lithuania (2014). E/C.12/LTU/CO/2, §. 8.

<sup>281</sup> UN Committee on Economic, Social and Cultural Rights (11 August 2000). General Comment 14: the right to the highest attainable standards of health, para 8.

<sup>282</sup> ECtHR, *AP, Garçon and Nicot v. France*, para 126-128.

<sup>283</sup> ECtHR, *AP, Garçon and Nicot v. France*, 6 April 2017, para 130.

concluded that such a violation exists in relation to surgeries ‘very likely to result in sterilisation’.

Non-binding Yogyakarta Principle No 3 clearly establishes that no one shall be forced to undergo medical procedures, including gender-affirming surgery, as a requirement for LGR.

This is reinforced by Yogyakarta Principle No 18, which states that no person may be forced to undergo any form of medical procedure based on sexual orientation or gender identity.

### **5. No sterilisation requirement for LGR**

In line with required gender-affirming surgery, sterilisation requirements for LGR constitute an intrusive and abusive precondition. International standards clearly establish that sterilisation should not be required as a condition for LGR.

The sterilisation requirement arguably violates the right to private life, which includes physical integrity. The right is protected under Article 17 ICCPR and Article 8 ECHR. As mentioned above, it also violates the right to be free from inhuman, cruel or degrading treatment, protected under the ICCPR (Article 7) and the UN Convention against Torture and Inhuman, Cruel or Degrading Treatment or Punishment (Article 16). The UN Committee against Torture has similarly held that sterilisation as a requirement for LGR does not respect the autonomy and physical integrity of transgender people<sup>284</sup>. However, its concluding observations are not legally binding. No views from the UN Human Rights Committee have been identified specifically addressing sterilisation in this context.

The UN High Commissioner for Human Rights, the UN independent expert on protection against violence and discrimination based on sexual orientation and gender identity, and the World Health Organization (WHO) have all held that ‘sterilisation requirements run counter to respect for bodily integrity, self-determination and human dignity’ and are in violation of international human rights law<sup>285</sup>.

The ECtHR confirmed in *YY v. Turkey* that the requirement of sterilisation cannot be a precondition to LGR and constitutes a violation of Article 8 ECHR<sup>286</sup>. The ECtHR also confirmed that sterilisation, like medical treatments and operations, against an individual’s physical integrity violates Article 3 ECHR on the prohibition of torture<sup>287</sup>.

In *AP, Garçon and Nicot v. France*, the ECtHR clearly held that sterilisation as a precondition to LGR violates the ECHR right to private life, including the right to physical integrity. The Court held that consent given for medical treatment in these circumstances was invalid, as it forced transgender people to choose between their right to bodily integrity and their right to gender identity recognition. The ECtHR observed that ‘sterilisation concerns an essential human bodily function, it has implications for multiple aspects of individuals’ integrity, including their physical and mental well-being and their emotional, spiritual and family life’. Imposing sterilisation without consent is incompatible with one of the core principles of the Convention, that of human freedom and dignity<sup>288</sup>. Sterilisation without consent prevents the exercise of the right to family

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<sup>284</sup> Committee against Torture (2016). Concluding observations on the fifth periodic report of China with respect to Hong Kong, China, CAT/C/CHN-HKG/CO/5.

<sup>285</sup> UN General Assembly Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity (12 July 2018). A/73/152. Available at: [https://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/73/152](https://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/152)

<sup>286</sup> ECtHR, *YY v. Turkey* (Application no. 14793/08), 10 March 2015.

<sup>287</sup> ECtHR, *AP, Garçon and Nicot v. France* (Application no. 9885/12, 52471/13 and 52596/13), 6 April 2017.

<sup>288</sup> ECtHR, *AP, Garçon and Nicot v. France* (Application no. 9885/12, 52471/13 and 52596/13), 6 April 2017, para 131.

life. Research shows that a majority of transgender people who initiated transition retain the desire to be able to have children after transition (Bizic et al., 2018).

PACE has called on Member States to abolish sterilisation and other compulsory medical treatment as necessary requirements to recognise a person's gender identity<sup>289</sup>.

Non-binding Yogyakarta Principle No 3 establishes that no one shall be forced to undergo sterilisation as a requirement for LGR.

### **6. No hormone therapy requirement for LGR**

Another type of medical requirement as a precondition to LGR is hormone therapy. Requiring transgender people to undergo unwanted medical treatments, such as hormone therapy, arguably violates their right to the highest attainable standard of health, protected under international human rights law (Article 12 ICESCR) and the right to bodily integrity (Article 7 ICCPR).

In the long-term, hormone therapy may lead to irreversible changes in an individual's metabolism. However, unlike sterilisation, the ECtHR has never ruled that the hormone therapy requirement violates the Convention. It has found, however, that requiring treatment very likely to result in sterilisation violates Article 8 ECHR. It remains to be seen whether hormonal therapy qualify as such treatment<sup>290</sup>. Hormone treatments are usually not a definitive cause of infertility, as they can be reversed. However, there is a lack of knowledge of the long-term effect of cross-sex hormone therapy and its impact on sterility, including the reversible nature of sterilisation (Bizic et al., 2018).

It is only recognised by the soft law standard of Yogyakarta Principle No 3, which states that hormone therapy is a requirement that no one should be forced to undergo in order to apply for LGR.

### **7. No compulsory medical intervention/testing requirement for LGR**

Certain Member States require LGR applicants to undergo other types of medical interventions, or to be confined to a medical facility.

Such requirements violate the right to the highest attainable standard of health and the right to be free from inhuman, cruel or degrading treatment.

Despite assessing forced sterilisation as a violation of the right to private and family life, the ECtHR has found that the requirements to demonstrate the existence of a gender identity disorder and to undergo a medical examination are not contrary to the Convention. According to the Court, these latter requirements should be left to the discretion of Member States, in view of their perceived necessity<sup>291</sup>. Therefore, Member States with unwanted medical intervention requirements for LGR do not violate the ECHR or international human rights in their current binding form.

Only the soft law Yogyakarta Principle No 18 affirms that no-one should 'be forced to undergo any form of medical treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity'. Principle No 31 also affirms that medical or psychological interventions shall not be a prerequisite to a person's changing their name, legal sex or gender.

### **8. No mental health check as a prerequisite for LGR**

Historically, transgender people have been pathologised by both psycho-medical classification and the legal requirements to access LGR (Castro-Peraza et al., 2019). As shown in the previous sections of Annex 5, human rights standards have begun to move away from this medicalised approach to LGR and towards greater dignity, albeit without

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<sup>289</sup> PACE (2015). Resolution 2048 (2015). Text adopted by the Assembly on 22 April 2015.

<sup>290</sup> ECtHR, *AP, Garçon and Nicot v. France* (Application no. 9885/12), 6 April 2017, para 131-135.

<sup>291</sup> ECtHR, *AP, Garçon and Nicot v. France*, para 126-128.

yet recognising the right to access LGR without medical requirement and solely based on self-determination.

The soft law Yogyakarta Principle No 31 affirms that no eligibility criteria, such as psychological interventions or a psycho-medical diagnosis, shall be a prerequisite to changing one's name, legal sex or gender.

On the other hand, the ECtHR has not prohibited mental health check requirements, instead leaving it to Member States to assess the necessity for such a requirement<sup>292</sup>. Member States thus retain broad discretion in deciding on the application of diagnostic requirements. The ECtHR has recommended that requirements to demonstrate that applicants suffer from gender dysphoria should no longer form part of the LGR procedures. This may influence future ECtHR rulings once a majority of Council of Europe Member States no longer impose such a condition<sup>293</sup>.

### **9. No requirement to divorce for LGR**

Another frequent precondition to LGR is for married transgender people to divorce. It can also be the case that although divorce is not a formal requirement, the lack of recognition of same-sex marriage or partnership means that the marriage becomes illegal or enters into a legal void, and thus divorce is *de facto* required.

This requirement is not only intrusive for transgender people but also deeply impacts the family and any children within the marriage.

Human rights standards clearly establish that divorce requirements violate human rights law, in particular the right to private and family life and the right to marry and found a family (Article 12 ECHR; Article 23 ICCPR).

In *G v Australia*, the UN Human Rights Committee condemned the divorce requirement in Australia as incompatible with the ICCPR<sup>294</sup>. The Committee found the divorce requirement to be an unnecessary and disproportionate interference with the right to privacy and family within the meaning of Article 17 of the ICCPR. As discussed above, the views of the Committee as a result of the procedure allowing individual claims can be considered binding.

In *Hämäläinen v. Finland*, the ECtHR stated, however, that 'it is not disproportionate to require the conversion of the marriage of a transgender woman into a registered partnership as a precondition to having her acquired female gender legally recognised'<sup>295</sup>.

The CJEU has held that EU law prohibits the requirement of annulment of a marriage of transgender individuals for the purposes of obtaining EU benefits<sup>296</sup>.

PACE has called on Member States 'to remove any restrictions on the right of transgender people to remain in an existing marriage upon recognition of their gender; ensure that spouses or children do not lose certain rights'<sup>297</sup>.

Lastly, Yogyakarta Principle No 3 states that 'no status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity'.

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<sup>292</sup> ECtHR, *AP, Garçon and Nicot v. France*, para 112812839-140.

<sup>293</sup> ECtHR, *AP, Garçon and Nicot v. France*, para 138.

<sup>294</sup> Human Rights Committee (2012). *G. vs Australia*. Views adopted by the Committee under Article 5(4) of the Optional Protocol, concerning communication No. 2172/2012 CCPR/C/119/D/2172/2012.

<sup>295</sup> ECtHR, *Hämäläinen v. Finland* No. 37359/09 (2014); See also *Parry v. the United Kingdom* No. 42971/05 and *R. and F. v. the United Kingdom* No. 35748/05.

<sup>296</sup> CJEU (2018). *MB v Secretary of State for Work and Pensions*. Case C-451/16.

<sup>297</sup> PACE (2015). Resolution 2048. Discrimination against transgender people in Europe.

### 10. Absence of unnecessary age barrier for accessing LGR

LGR procedures are generally accessible to adults. However, children may have already expressed a strong gender identity and may wish to have their gender recognised. The UN Convention on the Rights of the Child guarantees the right of the child to preserve their identity, which the UN Committee on the Rights of the Child has confirmed includes characteristics such as sexual orientation<sup>298</sup>. However, it has not confirmed that it applies to gender identity.

Some countries allow for children to apply for LGR under certain conditions, such as where the child's legal representative (e.g. parents) apply for their child's LGR. When setting up requirements for children's LGR procedures, Member States must account for the Convention on the Rights of the Child obligation that all public actions, including those of courts and authorities, must have the best interests of the child as their primary consideration<sup>299</sup>.

PACE has gone a step further and called on Member States to make LGR procedures 'available for all people who seek to use them, irrespective of age'<sup>300</sup>.

### 11. Right to accessible LGR procedures

One final human rights standard specific to LGR procedures that emerges from the mapping carried out for our study is the right to transparent and accessible LGR procedures. This is recognised in the soft law Yogyakarta Principle No 31, which provides that LGR procedures must be a quick, transparent, and accessible mechanism.

Certain Member States require applicants to file an LGR application through judicial proceedings (see Section 6.2.2), in which case the judge assesses the application and approves the LGR. Such procedures may not only be lengthy but also costly, thus being both burdensome and less than accessible.

The ECtHR has held that rigid judicial LGR procedures that leave transgender individuals in a vulnerable position for a long period of time are against the spirit of the ECHR. In particular, the waiting period to obtain a change of name because the gender-affirming surgery had not been completed due to waiting lists, was found to violate the right to private life<sup>301</sup>.

In its Resolution, PACE highlights the need for LGR to consist of quick, transparent and accessible procedures<sup>302</sup>.

Table 16 provides a summary of what right is legally binding on EU Member States and the rights arising from soft law, which can be considered a benchmark to assess the level of protection of transgender people's rights.

Table 16. Summary overview: soft law vs binding rights

Right	Binding	Soft law
<b>Right to LGR</b>	Yes: ECtHR	Yes: Yogyakarta Principles, Human Rights Committee
<b>Right to LGR based on self-determined gender identity</b>	No	Yes: Yogyakarta Principles, PACE Resolution

<sup>298</sup> UN Committee on the Rights of the Child (2013). General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration.

<sup>299</sup> Article 3 of the UN Convention on the Rights of the Child.

<sup>300</sup> PACE (2015). Resolution 2048. Text adopted by the Assembly on 22 April 2015.

<sup>301</sup> ECtHR, *S.V. v. Italy* No. 55216/08, para 72.

<sup>302</sup> PACE (2015). Resolution 2048. Text adopted by the Assembly on 22 April 2015.

<b>LGR procedures with no required waiting period</b>	No	Yes: Yogyakarta Principles, CEDAW Committee
<b>No gender affirming surgery as requirement for LGR</b>	Yes: ECtHR (if very likely to result in sterilisation), ICCPR	Yes: Yogyakarta Principles, CESCRC Committee, UN Committee against Torture
<b>No sterilisation requirement for LGR</b>	Yes: ECtHR	Yes: Yogyakarta Principles, CESCRC Committee, PACE Resolution, UN Committee against Torture
<b>No hormone therapy requirement for LGR</b>	Yes: ECtHR (if very likely to result in sterilisation)	Yes: Yogyakarta Principles
<b>No compulsory medical intervention/testing requirement for LGR</b>	No	Yes: Yogyakarta Principles
<b>No mental health check as a prerequisite for LGR</b>	No	Yes: Yogyakarta Principles
<b>No requirement to divorce for LGR</b>	Yes: ICCPR, CJEU, ECtHR (allowed to convert marriage into registered partnership),	Yes: Yogyakarta Principles, PACE Resolution
<b>Absence of unnecessary age barrier for accessing LGR</b>	No	Yes: PACE Resolution
<b>Right to accessible LGR procedures</b>	Partially: ECtHR (rigid judicial LGR procedure may violate the right to private life)	Yes: Yogyakarta Principles, PACE Resolution



## ANNEX 6: CONVERGENCE ANALYSIS RESULTS

The report uses statistical analysis to consider the degree to which the overall position of trans people appears to have improved in society between 2012 and 2019. It also explores the extent to which EU Member States and the UK are converging – i.e. becoming more similar in their situation.

### 1 Convergence analysis across Member States

This section uses ‘convergence analysis’ to assess:

- whether there has been improvement in trans people’s average socio-economic position at the EU and Member State levels (measured as discrimination levels in different areas)
- the degree to which Member States have converged towards the EU average.

This analysis is undertaken using ten selected indicators from the FRA LGBTI and Eurobarometer surveys. The analysis focuses on ten indicators of experience and perceptions of discrimination against trans people in employment, education, healthcare and social services, housing, and using document of identification. The selection of indicators was based on two main considerations: 1) the indicators’ importance for understanding the socio-economic position of trans people in the EU, and 2) the comparability of survey questions across the 2012 and 2019 waves of the FRA LGBTI survey and the 2012 and 2019 Eurobarometer surveys on discrimination.

To measure convergence we take the coefficient of variation – a widely used measure of convergence – for each of the ten indicators. The coefficient of variation is the ratio of the standard deviation of the indicator (how far from each other the values are spread) and the average value of the indicator. The lower the ratio, the more convergence there is. We calculate the coefficient of variation for each indicator for each year for which data is available – 2012, 2015 (only for Eurobarometer data) and 2019 – and check whether the coefficient has increased or decreased. If it has decreased, there is convergence among the Member States. For indicators based on the FRA survey data there are two available years, 2012 and 2019. For indicators based on Eurobarometer survey data there are three available years, 2012, 2015 and 2019. The Table below shows how the direction of change of the indicator and the convergence measure have been judged.

Table 17. Convergence analysis approach

Direction of change in discrimination measure	Result of convergence measure		
	Convergence	No change	Divergence
Increase in EU average but not in all countries	Weak upward convergence	Weak even progress	Weak divergence (increase)
Increase in all countries	Upward convergence	Even progress	Divergence (increase)
No change in EU average but change in some countries	Weak convergence	Static / no convergence	Weak divergence
No change in all countries	-		-

Decrease in EU average but not in all countries	Weak downward convergence	Weak decrease even	Weak divergence (decrease)
Decrease in all countries	Downward convergence	Even decrease	Divergence (decrease)

Table 18 below shows the findings of the convergence analysis for the ten indicators of discrimination in employment, education, healthcare and social services, housing, and using document of identification. The second column of the table shows whether there has been a decrease or increase of discrimination against trans people in the EU as a whole and in the Member States; the countries listed in parenthesis are the exclusions to the trend in the indicator. The third column shows whether there has been convergence or divergence among the Member States. The fourth column provides a brief interpretation of the result.

Interpreting these results is challenging. A reported increase in experiences of discrimination in a particular area may be a cause for concern because the actual prevalence of discrimination has increased, but it could also reflect an awareness in trans people’s awareness of discrimination and willingness to call it out.

Table 18. Convergence analysis findings

Indicator	Description of change (2012 – 2019)	Result of convergence measure	Interpretation
<i>Experience of discrimination by trans individuals</i>			
Discrimination while looking for employment	Decrease in EU average, with some exceptions (BG, PT, SI)	Weak convergence	Reported discrimination going down, but no overall pattern
Discrimination at work	Decrease in EU average with some exceptions (BE, CY, CZ, DE, EL, HU, IT, MT, PT, SI)	Weak convergence	Reported discrimination going down, but no overall pattern
Discrimination in school/university	Decrease in EU average with some exceptions (BG, EE, EL, LV, MT, PT, SK, SI, ES)	Weak divergence	Reported discrimination going down, but many countries lag behind
Discrimination in healthcare and social services	Increase in EU average with some exceptions (HR, CY, FI, EL, IE,	Weak convergence	Reported discrimination going up, but many countries report progress in reducing it

	LV, LI, MT, RO, UK)		
Difficulty in gaining access to healthcare	Decrease in EU average with some exceptions (AT, CY, CZ, DE, IE, LU, NL, RO, SI, SK, ES, SE)	Weak divergence	Reported discrimination going down, but many countries lag behind
Having gone or considered going abroad for medical treatment to alter physical appearance, including buying hormones over the internet from other countries	Increase in EU average with some exceptions (CY, FI, DE, HU, IT, SI)	Weak convergence	Reported discrimination going up, but some countries report progress
Discrimination when looking for housing	Decrease in EU average with some exceptions (BG, CY, EE, PT, SI)	Weak convergence	Reported discrimination going down, but some countries lag behind
Discrimination when showing ID or any official document identifying sex	Decrease in EU average with some exceptions (BG, HR, EE, LU, SK, SI)	Weak convergence	Reported discrimination going down, but some countries lag behind
	<i>Perceptions of discrimination amongst general public</i>		
Discrimination on the basis of being transgender is widespread in my country	Increase in EU average with some exceptions (DE, EL, CY, LU, MT, SI, SK, FI)	Weak convergence	Reported discrimination going up, but many countries report progress
Transgender people are at a disadvantage when looking for a job in my country	Increase in EU average with some exceptions (CY, ES, HU, LU, MT, SK)	Weak convergence	Reported discrimination going up, but some countries report progress

In six of the eight indicators on experience of discrimination there has been a decrease in the EU average between 2012 and 2019, but not in all Member States. However, in two indicators – discrimination in healthcare and social services and going abroad for medical treatment to alter physical appearance – there has been an increase in the EU

average, but not in all Member States. The countries which do not follow the general trend for each indicator are noted in parentheses the Table above.

Contrary to the indicators on *experience* of discrimination, there has been an increase in the EU average and in most Member States in the indicators on *perceptions* of discrimination. Again, the countries that do not follow the general trend are noted in parentheses in the Table. It should be noted that an increase in the perception of discrimination may also mean that there is increased awareness of discrimination against trans people.

The results of the convergence analysis show that there has been weak convergence in all indicators, except discrimination in school/university and difficulty in gaining access to healthcare. Member States are converging on most of these indicators regardless whether this is in the positive or negative direction. In other words, Member State circumstances are becoming more similar in these areas, but this is not always in the direction of less discrimination.

## **2 Conclusions from the convergence analysis**

In earlier chapters of this report, the testimonies of trans participants gave a concerning picture of problematic, often discriminatory experiences, that they face in education, at work and in other areas of life. This chapter uses statistical data and overall discrimination rates to consider changes and the degree to which patterns can be observed across Member States and the EU as a whole.

When assessing changes to the social situation of trans people over time, it is important to understand that large-scale data on experienced discrimination is only available for two points in time (2012 and 2019), making it hard to draw conclusions about trends. Similarly, data on public perceptions of discrimination is only available for three points (2012, 2015, 2019).

Based on the data available, there has been an increase in the amount of perceived discrimination faced by trans people, which may reflect a rise in public understanding of the situation and challenges facing trans people.

Whilst, at EU level, less discrimination is being reported by trans individuals themselves, this is not a consistent pattern across Member States or across all areas of life. Indeed, reported experiences of discrimination in healthcare and social services have actually increased on average for the EU. Some countries have seen increases in reported discrimination across three or more areas of life (Bulgaria, Cyprus, Estonia, Portugal, Slovakia, Slovenia).

The LGR situation of countries also does not appear to be decisive in shaping the overall experiences of discrimination. The correlation and relationship between the social and legal situation of trans people is considered in more detail in Chapter 9 of this report

