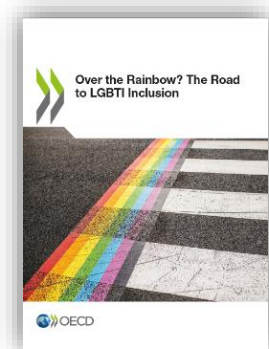


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider society. It lowers investment in human capital due to bullying at school, as well as poorer returns on educational investment in the labour market. It reduces economic output by excluding or under-valuing LGBTI talents in the labour market and impairing their mental and physical health, hence their productivity. The report **Over the Rainbow? The Road to LGBTI Inclusion** provides a comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion.



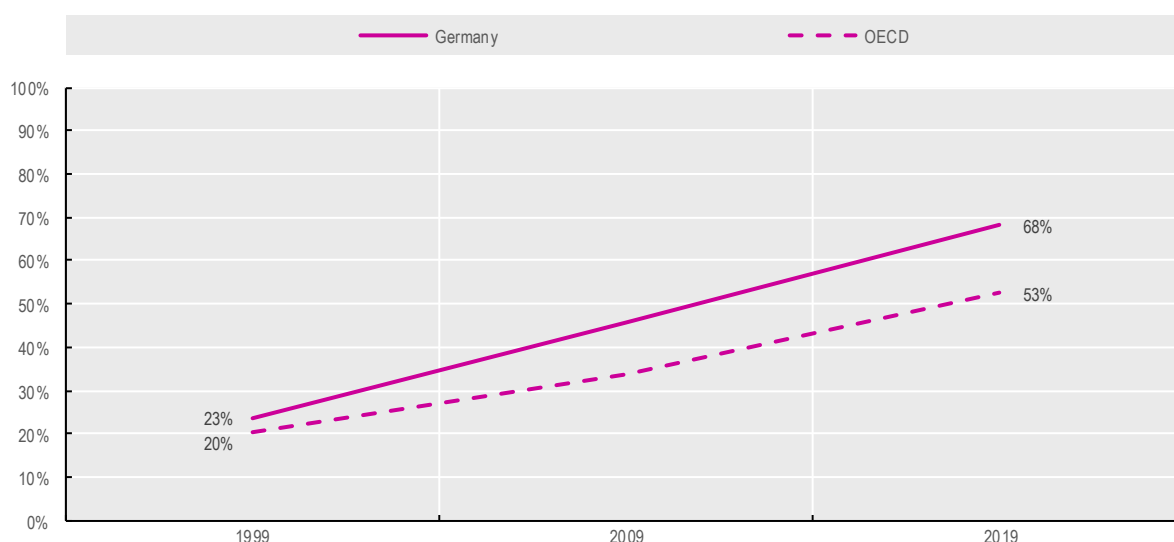
Legal LGBTI inclusivity in Germany

Levels and trends in legal LGBTI inclusivity

Legal LGBTI inclusivity is defined as the share of laws that are in force among those critical to ensure equal treatment of LGBTI people. Germany is one of 17 countries in the OECD that have most legal protections for sexual and gender minorities. These countries are characterised by an above-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity between 1999 and 2019 (Figure 1).

Figure 1: Legal inclusion of LGBTI people in Germany has consistently been above the OECD average and this relative advantage has kept growing over the past two decades

Evolution of legal LGBTI inclusivity between 1999 and 2019 in Germany and OECD-wide



Note: Legal LGBTI inclusivity refers to the percentage of LGBTI-inclusive laws that have been passed, among a basic set of laws defined based on international human rights standards.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

Legal LGBTI inclusivity in Germany has increased nearly threefold over the past two decades (Figure 1). As of 2019, Germany performs better than the OECD average concerning laws protecting LGBTI individuals against discrimination (Figure 2). In 2006, the *General Act on Equal Treatment* came into force to prohibit discrimination on a wide set of grounds, including sexual orientation, gender identity, and sex characteristics/intersex status. Discrimination on these grounds is banned in a broad range of fields (employment, education, the provision of and access to goods and services including housing, etc.), and the *Federal Anti-Discrimination Agency* has been in charge of enforcing this provision ever since.

The progress made by Germany in addressing the unique challenges faced by same-sex couples, transgender, and intersex individuals has also been significant (Figure 2). Since 2017, German same-sex couples are treated on an equal footing relative to different-sex couples concerning access to civil marriage and adoption, although they are not fully entitled to the same rights regarding access to assisted reproductive technology. Moreover, following a ruling by the *German Constitutional Court* in 2011, the change of gender marker in the civil registry is no longer conditioned on medical requirements. Finally, since the *Act amending the information to be entered in the civil registry* that came into force in 2019, German intersex individuals are granted access to a non-binary gender option. On top of recognising intersex individuals who do not self-identify as either female or male, this provision also alleviates the pressure to assign an intersex baby into one of these two categories and, hence, contributes to reduce the perceived need for unconsented medically unnecessary sex-normalising interventions on intersex minors.

How could Germany further improve legal LGBTI inclusivity?

Germany does not explicitly protect LGBTI individuals against violence, while hate crime and hate speech at least explicitly based on sexual orientation is criminalised in a majority of OECD countries. Moreover, contrary to the male partner of a woman who procreates through medically assisted insemination or *in vitro* fertilisation, the same-sex partner of a parent who gives birth through these techniques is not automatically recognised as the second legal parent. Therefore, further improving legal LGBTI inclusivity in Germany could entail: (i) explicitly criminalising hate crime and hate speech based on sexual orientation, gender identity and intersex status; and (ii) granting automatic co-parent recognition to the same-sex partners of parents who procreate through assisted reproductive technology.

Policies to foster LGBTI inclusion in Germany, beyond LGBTI-inclusive laws

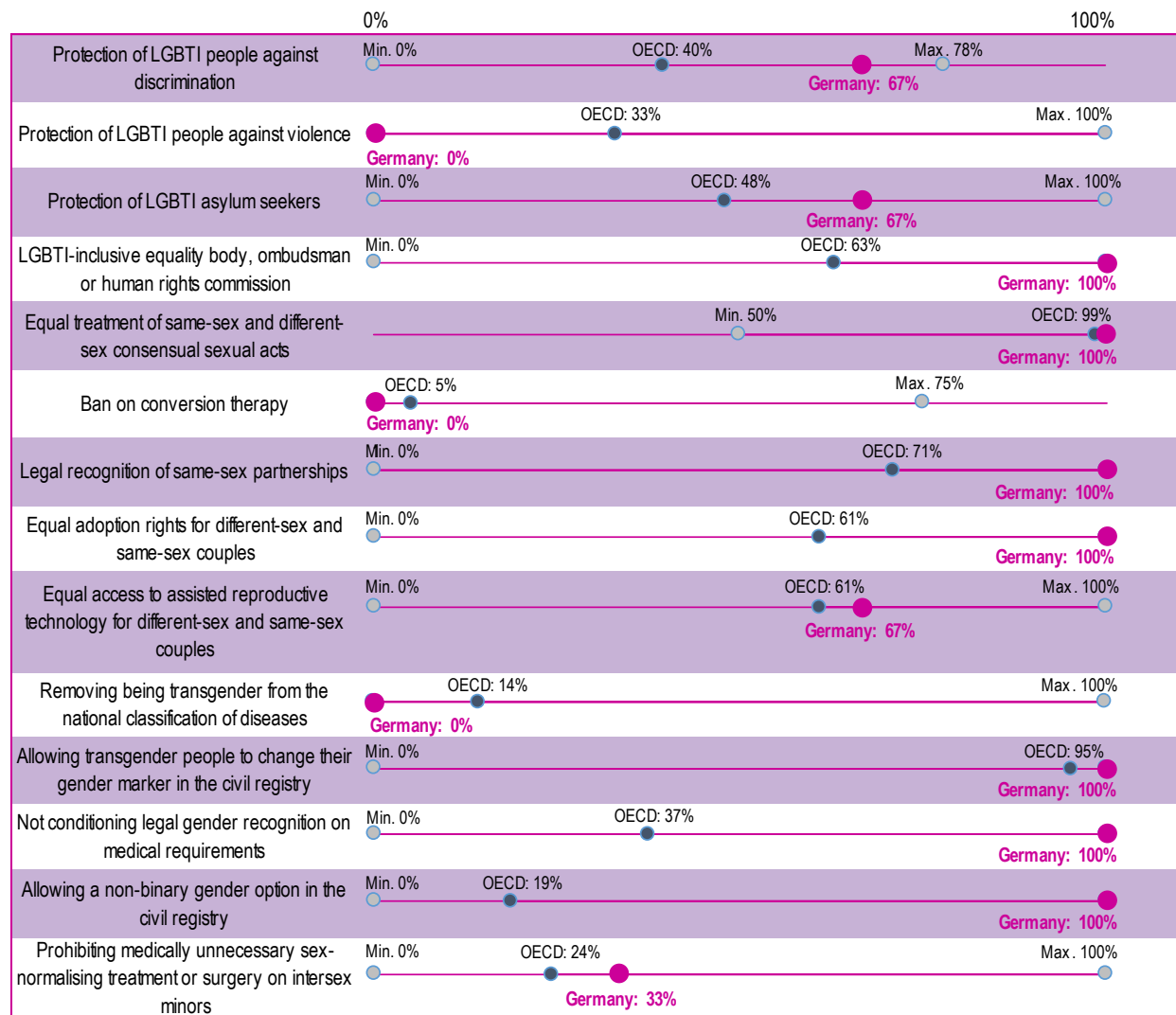
LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. As of 2018, Germany is one of 15 OECD countries that include or have included a question on self-identification as heterosexual, homosexual, or bisexual in at least one nationally representative survey. But it does not yet collect information on the share of transgender and intersex people among the adult population.

It would also be important that Germany be or remain active in the following complementary policy areas that are viewed as key by ongoing national actions plans aimed at strengthening LGBTI inclusion:

Policy #1	Policy #2	Policy #3
Enforcing LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people	Fostering a culture of equal treatment in education, employment and healthcare, beyond enforcing laws prohibiting discrimination in these fields, e.g. through a whole-school approach to tackle LGBTI-phobic bullying	Creating and maintaining popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

Figure 2: How Germany compares

Legal LGBTI inclusivity as of 30 June 2019 in Germany and OECD-wide, by component



Note: Figure 2 presents the components that serve to compute the average level of legal LGBTI inclusivity reported in Figure 1 as of 30 June 2019. The component "Protection of LGBTI people's civil liberties" is missing since it shows no cross-country variation: no legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. Legal LGBTI-inclusivity attached to each component can vary between 0% and 100%. For instance, a level of legal LGBTI inclusivity in Germany equal to 67% regarding the protection of LGBTI people against discrimination means that two thirds (six) of the nine antidiscrimination provisions critical to protect LGBTI people are in force in Germany as of 2019. "Min." refers to the score of the bottom-performing OECD country(ies) while "Max." refers to the score of the top-performing OECD country(ies). These values are specified except when they coincide with the score of Germany.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

Contact:

Marie-Anne Valfort, +33 (0)1 45 24 98 65, Marie-Anne.VALFORT@oecd.org

Directorate for Employment, Labour and Social Affairs/Social Policy Division ([@OECD_Social](#))