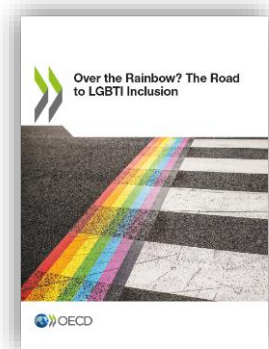


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider 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.



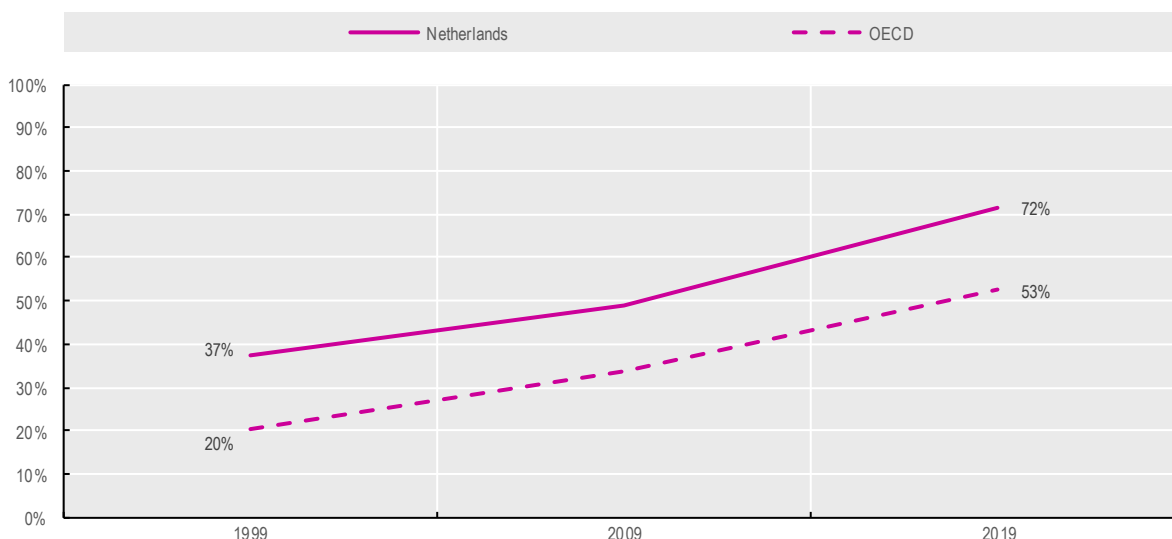
Legal LGBTI inclusivity in the Netherlands

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. The Netherlands 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 the Netherlands has consistently been above the OECD average

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



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 the Netherlands has doubled over the past two decades (Figure 1). As of 2019, the Netherlands performs better than the OECD average concerning laws protecting LGBTI individuals against discrimination (Figure 2). Discrimination explicitly based on sexual orientation is prohibited by the *Penal Code* since 1992. Moreover, in 2019, the *Equal Treatment Act* was amended to prohibit discrimination on a set of new grounds, namely gender identity, gender expression 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 *Equal Treatment Commission* has been in charge of enforcing this provision ever since.

The Netherlands' achievements in addressing the unique challenges faced by same-sex couples have also been extraordinary (Figure 2). In 2001, the Netherlands became the first country worldwide to legalise same-sex marriage. On top of being granted full legal recognition of their partnerships, Dutch same-sex couples are also treated on an equal footing relative to different-sex couples concerning access to adoption and assisted reproductive technology. Moreover, significant strides have been made towards protecting transgender and intersex individuals more specifically. The Netherlands is one of 15 OECD countries that have abolished medical requirements initially attached to legal gender recognition: since 2019, the change of gender marker in the civil registry is based on self-determination. Moreover, a "sex cannot be determined" option is available in the civil registry for intersex babies, which alleviates the pressure to categorise them as either female or male and, hence, contributes to reduce the perceived need for unconsented medically unnecessary sex-normalising interventions on them.

How could the Netherlands further improve legal LGBTI inclusivity?

Hate speech explicitly based on sexual orientation is criminalised since 1992. However, contrary to the situation in a majority of OECD countries, this is not the case of hate *crime* explicitly targeted at lesbians, gay men or bisexual individuals. Moreover, physical and verbal violence motivated by bias against a person's gender identity or sex characteristics is not considered as an aggravating circumstance (Figure 2). Therefore, further improving legal LGBTI inclusivity in the Netherlands could entail explicitly criminalising: (i) hate crime based on sexual orientation; and (ii) both hate crime and hate speech based on gender identity and sex characteristics.

Policies to foster LGBTI inclusion in the Netherlands, beyond LGBTI-inclusive laws

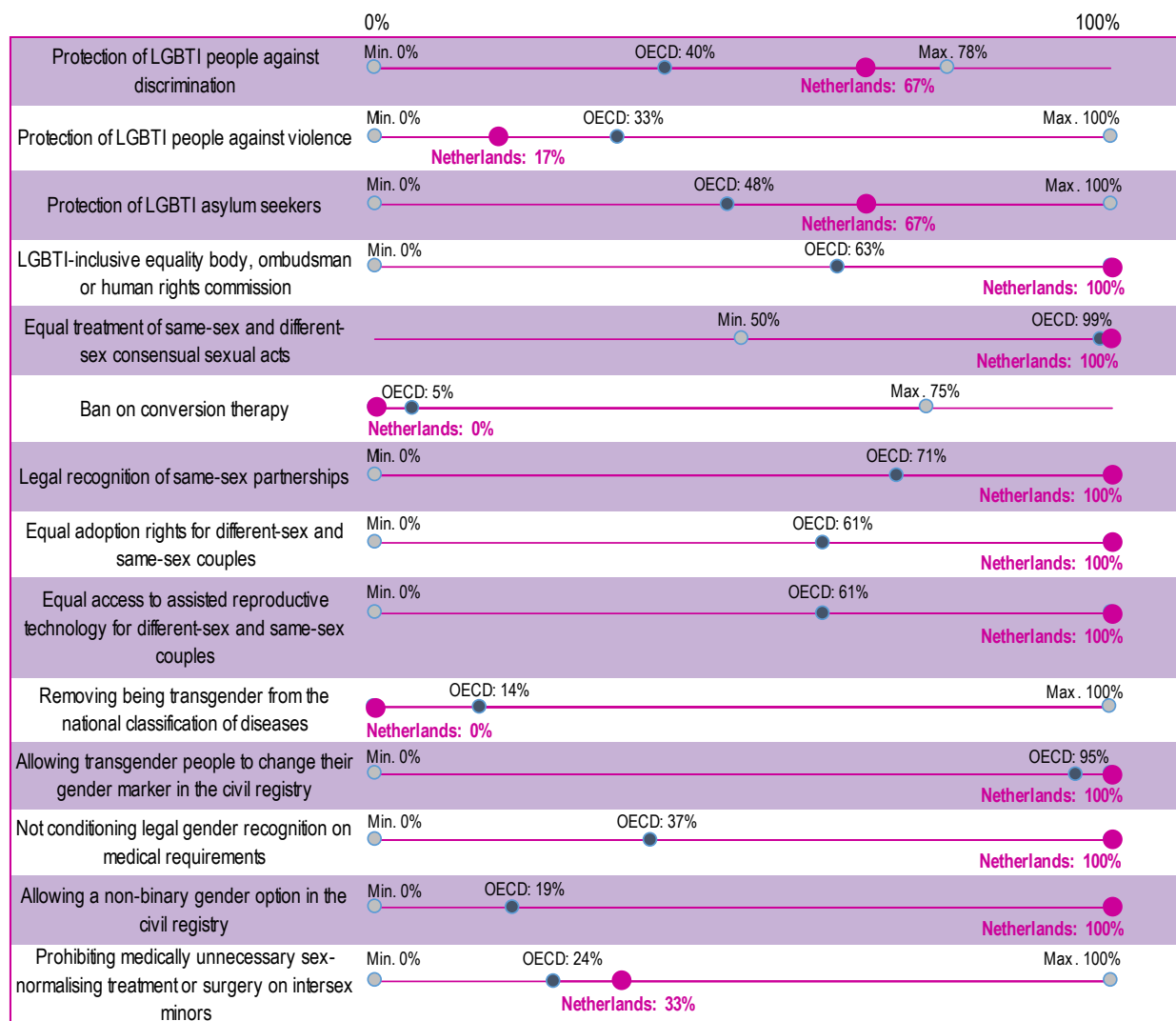
LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. As of 2018, the Netherlands does not include questions on self-identification as heterosexual, homosexual, or bisexual in nationally representative surveys. It does not collect information on the share of transgender and intersex people among the adult population either.

It would also be important that the Netherlands 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 the Netherlands compares

Legal LGBTI inclusivity as of 30 June 2019 in the Netherlands 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 the Netherlands 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 the Netherlands 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 the Netherlands.

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

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