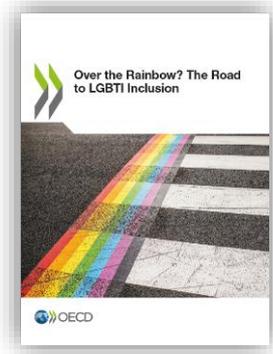


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider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



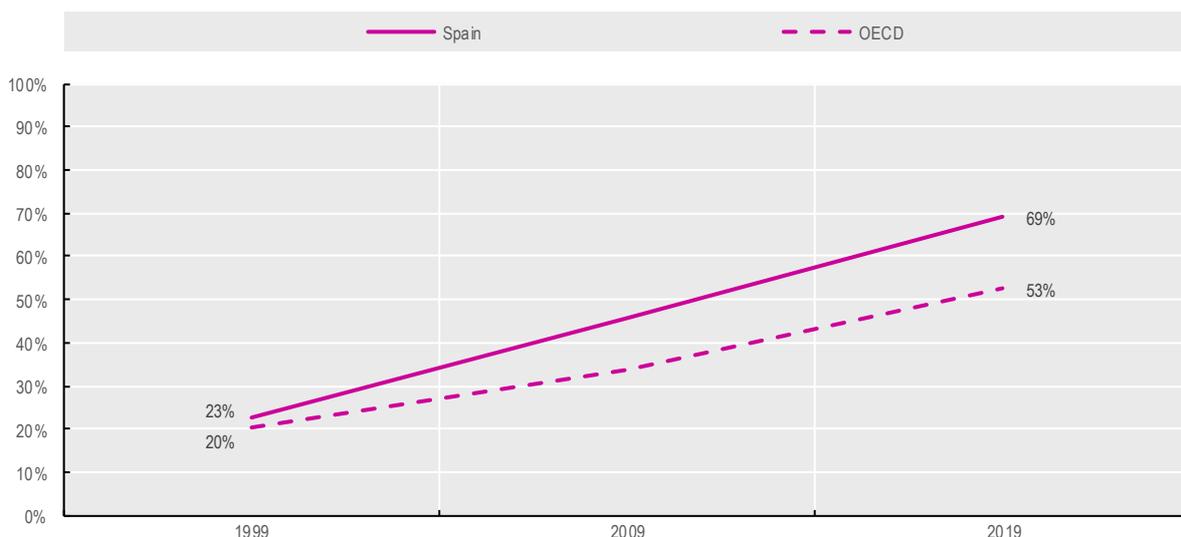
## Legal LGBTI inclusivity in Spain

### 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. Spain 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 Spain 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 Spain 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 Spain has increased threefold over the past two decades (Figure 1). As of 2019, Spain performs better than the OECD average concerning laws protecting LGBTI individuals against discrimination and violence (Figure 2). Discrimination explicitly based on sexual orientation is prohibited by the *Penal Code* since 1996. Moreover, several autonomous regions, including the four most populous, outlaw discrimination explicitly based on 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. Additionally, Spain considers hate crime and hate speech motivated by bias against a person’s sexual orientation or gender identity as an aggravating circumstance, noting that incitement to hatred because of being L, G, B, T or I is also criminalised in the four most populous autonomous regions.

Spain’s achievements in addressing the unique challenges faced by lesbians, gay men and bisexual individuals have also been extraordinary (Figure 2). In 2005, Spain became the third country worldwide to legalise same-sex marriage. On top of being granted full legal recognition of their partnerships, Spanish same-sex couples are also treated on an equal footing relative to different-sex couples concerning access to adoption and assisted reproductive technology. Finally, Spain is one of three OECD countries that ban conversion therapy on minors in some of their jurisdictions.

Significant strides have also been made towards protecting intersex individuals more specifically: several autonomous regions prohibit unconsented medically unnecessary interventions on intersex minors.

### ***How could Spain further improve legal LGBTI inclusivity?***

Spanish LGBTI people are granted substantial legal protection against discrimination and violence. However, contrary to the situation in a majority of OECD countries, no national equality body, ombudsman or human rights commission is in charge of enforcing these protections. Moreover, although several autonomous regions have adopted laws “guaranteeing the rights of LGBTI people” in which the health care system is forbidden from referring to being transgender as a pathology, the change of gender marker in the civil registry is still conditioned on medical requirements. Yet, the trend OECD-wide is to de-pathologise this process (Figure 2). Therefore, further improving legal LGBTI inclusivity in Spain could entail: (i) creating a national human rights institution in charge of enforcing legal protections of LGBTI individuals; and (ii) basing legal gender recognition on self-determination.

### **Policies to foster LGBTI inclusion in Spain, beyond LGBTI-inclusive laws**

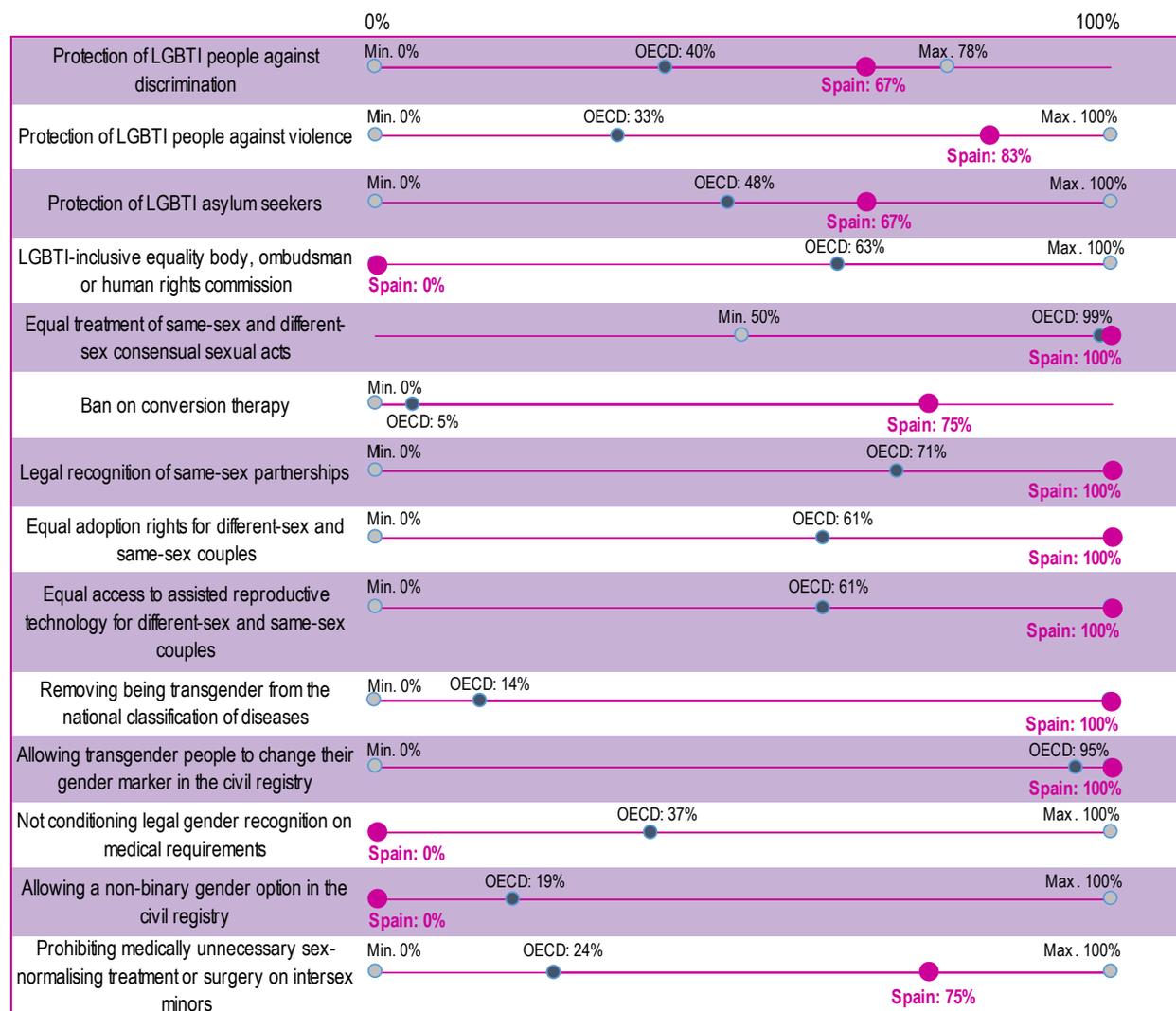
LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. As of 2018, Spain 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 Spain 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:

<b>Policy #1</b>	<b>Policy #2</b>	<b>Policy #3</b>
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 Spain compares**

Legal LGBTI inclusivity as of 30 June 2019 in Spain 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 Spain 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 Spain 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 Spain.

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

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