European Commission

Analysis and comparative review of equality data collection practices in the European Union

Data collection in relation to LGBTI People

Justice and Consumers

EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality
Unit JUST/D1

European Commission
B-1049 Brussels

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2017

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Luxembourg: Publications Office of the European Union, 2017

ISBN 978-92-79-66083-2 doi:10.2838/522787 DS-04-17-181-EN-N

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Contents

Introduction 4
1 The Legal Framework for Collecting Data on LGBTI people 6
1.1 Examples of Member States that have laws obliging or promoting the collection of data relating to sexual orientation, gender identity or sex characteristics. 6
1.2 Examples of Member States that have specific rules/safeguards governing the collection of data relating to sexual orientation, gender identity or sex characteristics. 6
1.3 Examples of Member States where collecting data on sexual orientation, gender identity or sex characteristics is not permitted. 7
2 Mapping Existing Sources of Equality Data relating to LGBTI People 8
2.1 International and European Sources of Data 8
2.2 National Sources of Data 9
2.2.1 Official sources of data collection 9
2.2.2 Non-governmental sources 14
3 Key Issues in Data Collection and LGBTI People 16
3.1 Methods of collecting data on LGBTI people 16
3.2 Challenges encountered in collecting data on LGBTI people 16
3.2.1 Confidentiality and Anonymity 16
3.2.2 Representativeness 17
3.2.3 Categorisation 17
4 Enhancing Data Collection 19
4.1 Methods of building confidence in data collection 19
4.2 Addressing Diversity 19
4.2.1 Transgender People 20
4.2.2 Intersex People 20
5 Key Recommendations 22

Introduction

This report is part of a broader comparative review of equality data collection practices across the 28 EU Member States. National experts from each Member State completed a questionnaire on data collection practices, including specific sections on LGBTI data. This information, together with desk research conducted by the author, formed the basis for the findings in this report.

Lesbian, gay, bisexual, transgender and intersex (LGBTI) people have traditionally not featured in national systems for collecting data on society. This reflects the specific histories of inequality and oppression related to these characteristics. Insofar as data was collected on sexual orientation, the historical experience was that sometimes this took the form of monitoring by law enforcement agencies, in those states where homosexuality was previously criminalized. In other contexts, LGBTI people have often been rendered invisible within national datasets.

Recent decades have witnessed a dramatic evolution in the legal framework applying to LGBTI people. **All Member States** of the EU have some legislation protecting individuals from discrimination on grounds of sexual orientation[1] and a growing number have either opened marriage to same-sex couples or have created an alternative form of legal recognition for such partnerships.[2] According to the EU Agency of Fundamental Rights (FRA), **21 Member States[3]** have extended the prohibition of sexual orientation discrimination to some or all of the areas covered by the Racial Equality Directive (e.g. education, health, social protection), while in **7 Member States[4]** legislation is confined to the scope of the Employment Equality Directive.[5]

Discrimination related to gender identity is often covered by anti-discrimination legislation, but the extent of protection is often incomplete or ambiguous.[6] In **10 Member States**,[7] discrimination on grounds of gender identity is treated as a form of sex discrimination, while in **9 Member States[8]** the law remains unclear.[9] There is a growing number of Member States where categories such as 'gender identity' or 'sexual identity' are being expressly incorporated within anti-discrimination legislation, while in **Malta** 'gender identity' and 'sexual orientation' have been added to the anti-discrimination clause in the constitution.[10] There is an ongoing evolution in the conditions found within national law for the recognition of gender identity, in particular where this differs from that ascribed at birth.[11] The legal protection of intersex people[12] remains limited and opaque, but there are

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1 A table providing an overview of anti-discrimination legislation in the EU Member States, EEA states and candidate countries can be found at pp. 124-134, I Chopin and C Germaine, 'A Comparative Analysis of Non-Discrimination Law in Europe 2015' (Publications Office of the European Union 2016): http://www.equalitylaw.eu/downloads/3824-a-comparative-analysis-of-non-discrimination-law-in-europe-2015-pdf-1-12-mb accessed 28 June 2016.

2 See further, FRA, 'Discrimination on Grounds of Sexual Orientation, Gender Identity and Sex Characteristics in the EU. Comparative Legal Analysis Update 2015' (Publications Office of the EU, 2015).

3 Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland Lithuania, Luxembourg, Malta, the Netherlands, Romania, Portugal, Sweden, Slovakia, Slovenia, Spain and the United Kingdom.

4 Austria, Cyprus, Estonia, Greece, Italy, Latvia and Poland.

5 Ibid 25.

6 Ibid 28-30.

7 Austria, Denmark, Finland, Ireland, Italy, the Netherlands, Poland, Slovakia, Spain and Sweden.

8 Bulgaria, Cyprus, Estonia, Greece, Latvia, Lithuania, Luxembourg, Romania and Slovenia.

9 Ibid 29.

10 Ibid.

11 P Dunne, 'Rethinking Legal Gender Recognition: Recent Reforms in Argentina, Denmark and the Netherlands' (2015) *International Family Law* 41.

12 Intersex' has been defined by the Fundamental Rights Agency as: 'an umbrella term to denote a number of different variations in a person's bodily characteristics that do not match strict medical definitions of male or female. These characteristics may be chromosomal, hormonal and/or anatomical and may be present to differing degrees.' See further: http://fra.europa.eu/sites/default/files/fra-2015-focus-04-intersex.pdf accessed 12 April 2016.

tentative signs that this issue is growing in visibility.[13] Initial laws for the protection of the human rights of intersex people are being developed or have been adopted in Europe.[14]

While LGBTI people are, to a greater or lesser extent, protected by anti-discrimination legislation across the Member States, there is relatively little systematic and recurrent data collection taking place in this field amongst EU Member States. In comparison to some other discrimination grounds, such as sex or age, sexual orientation and gender identity remain invisible in many social surveys. Moreover, any form of data collection pertaining to intersex people, hereafter referred to as the ground of sex characteristics, is still rare.

There are, though, signs of change and a gradual expansion in data collection activity, especially in relation to sexual orientation. Examples of NGOs, equality bodies, and academic or policy researchers undertaking studies of the experience of LGBT people can be found in many Member States. Data is also arising from the registration of complaints of discrimination by equality bodies and there is an emerging trend towards collecting data on incidents of homophobic or transphobic hate crime.

It is striking, though, that the most significant contributions to equality data collection remain the EU LGBT survey conducted in 2013 by the EU FRA,[15] which covered **all of the current Member States**, and the periodic Eurobarometer surveys on discrimination carried out by the European Commission. These bring data collection to states with little experience in this regard, as well as ensuring greater visibility for the experience of transgender people. They illustrate the added value that EU initiatives can provide in an area where national action remains hesitant and incremental. The 'List of Actions by the Commission to advance LGBTI Equality' represents a further step in this regard, as it includes several activities aiming at improving data collection both at European and national level, as well as funding and support to key actors that could be used for this purpose.

[13] M Travis, 'Accommodating Intersexuality in European Union Anti-Discrimination Law' (2015) 21 *European Law Review* 180.
[14] FRA (n2) 71.
[15] FRA, 'EU LGBT Survey Main Results' (Publications Office of the EU, 2014).

1 The Legal Framework for Collecting Data on LGBTI people

1.1 Examples of Member States that have laws obliging or promoting the collection of data relating to sexual orientation, gender identity or sex characteristics.

In general, adopted national laws in EU countries do not oblige to collect data relating to sexual orientation, gender identity or sex characteristics. There are **several Member States**, discussed later in this report, where the national census included data collection relating to households involving a same-sex partnership, while there are also national registers that recorded a change in the sex ascribed at birth in many states.

It is difficult to identify instances where national law explicitly promotes data collection relating to LGBTI people. In the **Netherlands**, the Municipal Anti-Discrimination Facilities Act requires municipalities to register discrimination complaints; this task is mainly performed by Anti-Discrimination Bureaus. In the **UK**, there are duties on public authorities to pay due regard to the promotion of equality of opportunity for people with a wide range of protected characteristics, including sexual orientation and gender reassignment.[16] The legal obligations include a duty to collect data in order to monitor progress, although the precise requirements on data collection differ between England, Wales, Scotland and Northern Ireland.

In a similar vein, in **Finland**, there is a duty to take steps to foster equality that applies to public authorities; private sector organisations using public power or performing public administrative tasks; providers of education; and those employers who employ more than 30 employees.[17] From 2017, this requires such organisations to draw up equality plans, which must address a range of discrimination grounds; the law expressly includes sexual orientation. Section 5 of the Non-Discrimination Act states: 'The authorities shall evaluate the realisation of equality in their activities and take necessary measures to promote the realisation of equality'. While this does not create an explicit duty to collect data relating to sexual orientation (nor gender identity or sex characteristics), the process of evaluating the organisation's activities might imply such measures.

In **Spain**, the government has recently created an Observatory against homophobia and transphobia, with a specific mandate to collect data which is fully operational and is already producing valuable information, in particular on hate crimes[18]. However this initiative does not stem from a specific national law promoting data collection.

1.2 Examples of Member States that have specific rules/safeguards governing the collection of data relating to sexual orientation, gender identity or sex characteristics.

In **all Member States**, the collection of LGBTI data must take place in accordance with the EU's Data Protection Directive.[19] Article 8(1) prohibits the processing of personal data in relation to certain special categories, including data concerning 'health or sex life'. This is, however, subject to exceptions. In particular, it does not prevent the gathering of such data, either with the data subject's consent, or if it is rendered anonymous.

It appears that **most Member States** have chosen to follow the literal wording of the Directive by incorporating 'health or sex life' into their national legislation. While these terms do not explicitly address sexual orientation, gender identity or sex characteristics,

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[16] Gender reassignment is mentioned explicitly in legislation applying to Britain: s.149 Equality Act 2010.

[17] S. 6, The Non-Discrimination Act [Yhdenvertaisuuslaki (1325/2014)]. See further, R Hiltunen, 'Country Report Non-Discrimination: Finland' (2015) 54: http://www.equalitylaw.eu/downloads/3732-2015-fi-country-report-ln-final accessed 12 April 2016.

[18] http://www.stoplgbtfobia.org/ accessed 31 August 2016.

[19] Directive 95/46/EC [1995] OJ L281/31.

such data is in many cases likely to be treated as falling within the category of sensitive personal data (where the additional protection of Article 8(1) applies). This view is most clear in relation to sexual orientation, which is proximate to the category of 'sex life'. In some countries, data relating to transgender and intersex people might, depending on the circumstances, fall under either 'health' or 'sex life' (e.g. **Romania, Sweden**).

In **Italy**, a case had been brought concerning a local registry office that sent a file to another local office following the citizen moving residence. The file included information disclosing that the citizen had changed their name and the sex ascribed at birth. The Italian Supreme Court issued a judgment holding that change of sex recorded in personal documents fell within the category of sensitive personal data and this should not have been transmitted to the other office.[20] In **Hungary,** the former Commissioner for Data Protection had held that voluntary and anonymous surveys with questions on sexual orientation and gender identity were permitted. In **Cyprus,** national legislation specifically lists information on sexual orientation in the category of sensitive personal data.

1.3 Examples of Member States where collecting data on sexual orientation, gender identity or sex characteristics is not permitted.

No examples emerged in this research of an absolute prohibition of data collection relating to sexual orientation, gender identity or sex characteristics. As discussed above, the legal framework typically treats such data as sensitive in nature. In **most Member States**, this entails additional requirements before sensitive data can be processed, but this does not exclude entirely such forms of data collection.

[20] Supreme Court, 13 May 2015 no. 9785, http://www.altalex.com/documents/massimario/2015/06/11/comune-cambiamento-sesso-dati-diffusione-responsabilita accessed 29 February 2016.

2 Mapping Existing Sources of Equality Data relating to LGBTI People

2.1 International and European Sources of Data

There are relatively few examples of international data collection on the experience of LGBTI people. The 'Out Now Global LGBT2020 Study' is an online survey that covered 21 countries across several continents during the period 2010-2012.[21] The market research company behind the survey continues to undertake international online research, which includes evidence on experiences of discrimination and perceived ability to be open about LGBT identity in different social settings.

A major advance in equality data collection was the publication of the Fundamental Rights Agency's EU LGBT survey in 2013. This remains the largest body of comparative data in Europe and it provides a key source on LGBT experiences across many dimensions of social life. The survey's methodology was based upon the circulation of a questionnaire mainly via 'LGBT-related online media and social media'.[22] It reflects the experiences of 93,097 individuals who identified as LGBT and voluntarily completed the survey.[23] While it is not possible to say with certainty that this was a representative sample of all LGBT people, the size of the dataset offers weight to the significance of its findings. It revealed the persistence of substantial discrimination across diverse walks of life, as well as strikingly different prevalence rates between **EU Member States**. 47% of respondents said that they had personally felt discriminated against or harassed due to sexual orientation in the past year; in the **Netherlands**, this figure was 30%, while in **Lithuania** it was 61%.[24] In relation to discrimination or harassment because of being perceived as transgender, the figure for the EU was 50%, ranging from 16% in **Slovenia** to 62% in the **UK.**[25] The FRA provided detailed analysis of the data collected relating to gender identity in its 2014 report 'Being Trans in Europe'.[26]

In addition to the LGBT survey, FRA has recently published qualitative research on the attitudes of public officials and professionals towards LGBT people. This was based upon 1,039 semi-structured, face-to-face interviews held in **19 EU Member States**. The interviewees were mainly composed of public officials; school heads and teachers in upper secondary education; police chiefs and police staff; healthcare providers.[27] The report notes that, in some instances, it was difficult to recruit participants for reasons such as discomfort with the topic or fear of disclosure of the views expressed.[28]

Eurobarometer offers information on public attitudes and perception of discrimination through its special surveys. In 2012, this included gender identity for the first time, in addition to sexual orientation.[29] In 2015, there was a dedicated set of questions relating to LGBT people which represents the widest and most exhaustive set of data on social acceptance of LGBT people in the European Union available to date; for example, the survey explored public attitudes to working alongside a LGBT person; attitudes if one's child was in a relationship with a person of the same-sex; or citizens' support for LGBT

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[21] http://www.outnowconsulting.com/media/1332/idaho-discrimination-report-global-v7.pdf accessed 2 March 2016.
[22] FRA (n15) 113.
[23] FRA, 'EU LGBT Survey Technical Report', available at: http://fra.europa.eu/sites/default/files/eu-lgbt-survey-technical-report_en.pdf accessed 29 February 2016.
[24] FRA (n15) 26.
[25] See: http://fra.europa.eu/DVS/DVT/lgbt.php accessed 3 March 2016.
[26] http://fra.europa.eu/sites/default/files/fra-2014-being-trans-eu-comparative-0_en.pdf accessed 12 April 2016.
[27] FRA, 'Professionally Speaking: Challenges to Achieving Equality for LGBT People' (FRA 2015) 93.
[28] Ibid 94.
[29] 'Discrimination in the EU in 2012' Special Eurobarometer 393, p. 58: http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf accessed 2 March 2016.

rights.[30] In the 2015 survey, 2% of respondents identified as belonging to a sexual minority group, which was described in the questionnaire as 'like being gay, lesbian, bisexual, transgender or transsexual'.[31] It should be noted, however, that this Eurobarometer is conducted as a face-to-face interview. This could affect the results if individuals are reluctant to disclose their sexual orientation, gender identity or sex characteristics to the interviewer. 2% of respondents said that they personally felt discrimination or harassment based on sexual orientation in the past 12 months, while the corresponding figure for gender identity was 1%.[32]

The European Social Survey has taken place biannually since 2001. It covers 24 countries (of which 18 are Member States), although not all countries take part in each round of the survey. It is a household survey covering a wide range of topics, but it includes a question that allows respondents to indicate that they belong to a group that experiences discrimination in their country. Amongst possible responses, participants can indicate belonging to a group that faces discrimination on grounds of 'sexuality', or alternatively the participant can identify a category not already listed in the survey.[33] The household information gathered also permits the identification of same-sex partnerships.

The European Values Survey takes place every nine years. The most recently published data covers 2008, when 47 countries participated with around 70,000 interviewees.[34] This contained a question on whether respondents felt that homosexuality could be justified (Q68) and whether you would like to have a homosexual person as a neighbour (Q6L).[35]

2.2 National Sources of Data

2.2.1 Official sources of data collection

A distinction can be drawn between collection of data that specifically relates to experiences of discrimination (or similar), and general collection of data on the characteristics of the population (e.g. national census). The latter may provide insight into the quantitative presence of LGBTI people in society and possibly detail on their social situation if it is possible to cross-tabulate this with other information (e.g. employment or housing situation).

Beginning with examples of data that specifically relates to experiences of discrimination, *national equality bodies* were a common point of reference. Many of these recorded the number of complaints of discrimination that they received disaggregated by discrimination ground. These were typically published in annual reports. According the national reports, data on the number of complaints received relating to sexual orientation and/or gender identity was available in **Austria; Belgium; Bulgaria; Croatia; Czech Republic; Cyprus; Denmark; Estonia; Greece** (Ombudsman); **Netherlands; Hungary; Ireland; Lithuania; Malta; Poland; Romania; Slovenia; Sweden; UK**.

According to the FRA, **Spain** is the only Member State that does not have an equality body with a mandate covering sexual orientation.[36] **All Member States** have equality bodies

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[30] 'Discrimination in the EU in 2015' Special Eurobarometer 437: http://ec.europa.eu/COMMFrontOffice/PublicOpinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2077 accessed 2 March 2016.

[31] Ibid 12.

[32] Ibid T17 and T18.

[33] Question C17. See further: http://www.europeansocialsurvey.org/docs/round7/questionnaire/ESS7_source_main_questionnaire_final_alert_03.pdf accessed 2 March 2016.

[34] See further: http://www.europeanvaluesstudy.eu/page/about-evs.html accessed 11 April 2015.

[35] Available from: http://www.europeanvaluesstudy.eu/page/data-and-documentation-survey-2008.html accessed 11 April 2016.

[36] FRA (n2) 41. Since the report, the Non-Discrimination Ombudsman was established in Finland; its mandate includes sexual orientation: http://www.syrjinta.fi/en/web/EN/frontpage accessed 22 April 2016.

with a mandate covering gender equality issues, which should, in principle, embrace issues pertaining to gender identity.[37] Nevertheless, data on complaints to equality bodies may not disaggregate those relating to gender identity from those relating to gender, given that gender identity often does not exist in law as a separate discrimination ground. This is also an area where practice varies; for example, in **Cyprus** the Equality Authority (which handles employment complaints) disaggregates gender and gender identity complaints in its statistics, while the Anti-Discrimination Authority (which handles complaints of discrimination in areas outside employment) does not. In **Poland**, the National Labour Inspectorate collects data on complaints received of discrimination and these are disaggregated by discrimination ground, including sexual orientation.

The picture is less comprehensive in relation to recording the number of cases of discrimination brought to *tribunals and courts*.:

- No data is available on the number of discrimination cases brought to court in **Bulgaria; Cyprus; Estonia; France; Germany; Hungary; Latvia; Luxembourg; Romania; Slovakia; Slovenia; Sweden**.
- Data is collected on the number of discrimination cases brought to court, but this is not disaggregated by discrimination ground in the **Czech Republic** and in **Malta** (in respect of the Industrial Tribunal). In **Poland**, data on the number of discrimination cases brought under the Labour Code was gathered, but not disaggregated by discrimination ground; data was also gathered on other types of discrimination cases in the courts, but there were doubts over the accuracy of the figures.
- Data on the number of discrimination cases relating to sexual orientation is collected in the **UK**, but only in respect of claims brought to the Employment Tribunal in Britain and the Industrial Tribunal in Northern Ireland. Sex discrimination cases are not disaggregated to identify those relating to gender identity.

National equality bodies have, in some cases, commissioned research on the experience of LGBT people, including the following examples:

- **Czech Republic:** the Office of the Ombudsman has conducted empirical research on barriers to using protections from discrimination (including LGBT people).
- **Germany:** the Anti-Discrimination Agency conducted in 2015 the largest ever survey on experience of discrimination, which was open to all persons aged over 14. The initial results were published in 2016.
- **Hungary:** the Equal Treatment Authority has conducted research on legal awareness concerning equal treatment including LGBT people.
- **Luxembourg**: the Centre for Equal Treatment conducts a survey on experiences of discrimination that includes sexual orientation.
- **Malta:** the National Commission for the Promotion of Equality has conducted a study of LGBT experiences of discrimination.
- **UK:** the British Equality and Human Rights Commission publishes regular research reports. These have included research on issues such as homophobic hate crime; the experience of LGB staff and students in higher education; health and social care for older LGB people. The Northern Ireland Equality Commission has published Equality Awareness Surveys; this provides data on public attitudes towards LGBT people and perceived levels of discrimination.

[37] Ibid.

Case Study: Research by UNIA and the Institute for the Equality of Women and Men, ***Belgium***

UNIA, the Interfederal Centre for Equal Opportunities has a project called 'Diversity Barometer'. This conducts research on experiences of discrimination, public attitudes and rates of participation in three spheres: work, housing, and education. Reports are published biannually on one of these themes. The research adopts a variety of methods addressing a range of discrimination grounds. For example, the 2012 report on work included the results of a quantitative survey of stereotypes and prejudices relating to sexual orientation amongst those working in the federal public service. This was complemented by qualitative focus groups.

The Institute for the Equality of Women and Men published a major research report on 'Being Transgender in Belgium' in 2009. The research methods used in this report included an online, anonymous survey that was completed by 310 participants. Those who indicated that they were happy to be contacted were invited to take part in follow-up 'groupes de résonance'. 81 persons took part in two group meetings that allowed for feedback on the initial results of the survey and identification of the key issues to be explored in more depth.

While official research mainly stemmed from equality bodies, it should be noted that there were some examples of this being conducted via other branches of government / public agencies. In some states, there are national surveys focusing on discrimination that can include LGBT people. These include the **Italian** statistical agency, ISTAT, which conducted a survey in 2011 into the experience of people of sexual orientation discrimination. In the **UK**, the Office for National Statistics gathers data on 'sexual identity' within the Integrated Household Survey. Other examples include:

- **Estonia:** the Ministry of Social Affairs conducted a qualitative study on the experiences of LGBT people of discrimination.
- **Finland:** a biannual Youth Barometer contains data on experiences of discrimination according to sexual orientation or 'sexual identity'.
- **France:** the National Institute for Demographic Studies gathers data on violence linked to, inter alia, sexual orientation and gender identity (the 'VIRAGE' survey). It has also recently conducted a survey on LGBT people's experiences, but this is yet to be published. Public health data collection includes questions on sexual behaviour, which may provide data relating to sexual orientation.
- **Ireland:** the Health Service Executive has conducted studies on health provision and the needs of LGBT people. The Central Statistics Office conducts the Quarterly National Household Survey. This includes special modules on equality that were held in 2004, 2010, and 2014. These gather data on experiences of discrimination, including on grounds of sexual orientation.
- **Netherlands:** the National Institute for Social Research published a report in 2012 on the experience of transgender people.
- **Spain:** the Centre for Sociological Research has conducted research on public perception of groups facing a prejudicial situation in society, including LGBT people. It has also collected data on discrimination experienced by individuals, including on grounds of sexual orientation.
- **Sweden:** the Public Health Agency includes a question on sexual orientation in its public health survey. This data had informed the development of a government strategy on equal rights irrespective of sexual orientation, gender identity or expression.

Case Study: Research Commissioned by Government

In **Britain**, the Government Equalities Office is responsible for equality strategy and legislation across government, and it takes the lead on issues relating to sexual orientation and transgender equality.[38] It commissioned a study on tackling homophobic, biphobic and transphobic bullying in schools. This deployed a variety of research methods including an online questionnaire, in-depth interviews with teachers, and case studies in four schools. During the latter, the researchers observed anti-bullying initiatives; held interviews with groups of staff and students; held interviews with students who had sought help due to bullying relating to sexual orientation.

There is evidence that a growing number of Member States record incidences of *hate crime* where this is related to sexual orientation and, less frequently, where this is related to gender identity. The FRA has already identified that this is happening in **Finland, the Netherlands, Sweden,** and the **UK**.[39] Other examples are the following:

- **Belgium**: in 2013, a Circular was issued from the Minister of Justice, the Minister of the Interior, and the College of Public Prosecutors to the Court of Appeal on investigation and prosecution policy regarding discrimination and hate crimes. This provides standards for police and public prosecutors on recording racist, xenophobic, sexist or homophobic offences.
- **Croatia**: the Government Office for Human Rights and Rights of National Minorities is keeping a Hate Crimes Protocol, a record system in which hate motivated crimes are being recorded, including on the ground of sexual orientation. This provides data on the number of hate crime offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of cases prosecuted.
- **Estonia:** the Ministry of Justice is developing a statistical system to record hate crimes according to, inter alia, sexual orientation or gender identity.
- **Germany:** Article 130 of the German Criminal Code governs the collection of data related to "politically motivated crime", a database that is run by the police. This includes data on crimes motivated by transphobia or homophobia.
- **Ireland:** hate motivated incidents are recorded by the police including transphobia and homophobia.
- **Lithuania:** crimes due to intolerance related to sexual orientation should be recorded since 2006, but the European Commission on Racism and Intolerance (ECRI) has expressed doubts over whether this is happening systematically.
- **Netherlands:** cases of discrimination and those with a discriminatory aspect are recorded by the public prosecution service, including by reference to sexual orientation.
- **Slovenia:** data held by the police provide some evidence of criminal offences related to the LGBT status of the victim.
- **Spain:** an annual report on hate crime is published, which includes statistics on hate crimes linked to sexual orientation and gender identity.

Turning to *general records of population information*, these do not often provide visibility on the situation of LGBTI people. It is common, however, to find datasets on the number of persons entering a legally-recognised same-sex partnership (whether marriage or another status) and records of the number of individuals granted permission to change the record of their sex ascribed at birth.

[38] The Government Equalities Office is distinct from the British equality body, the Equality and Human Rights Commission.

[39] FRA (n2) 65.

- Statistics on the number of legally-recognised same-sex partnerships:
  - **Austria:** data is collected and published by Statistics Austria on number of registered partnerships;
  - **Belgium:** published by Statistics Belgium;
  - **Croatia:** held by Ministry of Public Administration; available via freedom of information request;
  - **Czech Republic:** there is no central register, but the NGO 'PROUD' gathers the data from different regions and publishes these regularly online;
  - **Denmark:** published by Statistics Denmark;
  - **Finland:** collected by Statistics Finland;
  - **France:** annual publication by the National Institute for Statistics and Economic Studies;
  - **Estonia:** available from the Population Register;
  - **Germany:** data held by registry offices;
  - **Hungary:** published annually by the Central Statistical Office in its report 'Népmozgalom';
  - **Ireland:** data collected by the Department of Social Protection;
  - **Malta:** Public Registry; overall data could be compiled in response to parliamentary questions;
  - **Netherlands:** collected by municipalities in the Basic Registration Population dataset;
  - **Slovenia:** available from Register of Births, Marriages and Deaths;
  - **Sweden**: gathered by Statistics Sweden;
  - **UK:** available from the Office for National Statistics.

In some states, information on same-sex partners living together was also collected within the national census (**Belgium, Croatia, Ireland, Italy**).

- Statistics on the number of persons permitted to change the record of their sex ascribed at birth:
  - **Belgium:** gathered in the Crossroads Bank for Social Security;[40]
  - **Czech Republic:** no central register, but the data could be obtained via Ministry of Health;
  - **Cyprus:** kept by Department of Population Archives, but not publically available;
  - **Estonia**: available from the Population Register;
  - **Finland:** administrative statistics are held by Helsinki University Hospital, which is the national healthcare facility providing specialist support for transgender people;
  - **France:** estimates are available from the National Institute for Statistics and Economic Studies;
  - **Germany:** data can be gathered from annual reports of district courts;
  - **Hungary:** data held by Office of Immigration and Nationality and accessible by Freedom of Information request;
  - **Ireland**: data collected by the Department of Social Protection;
  - **Lithuania:** data available only on numbers applying to court for change of personal documents;
  - **Malta:** Public Registry; overall data could be compiled in response to parliamentary questions;
  - **Netherlands:** collected by Statistics Netherlands;
  - **Spain:** data collected in the civil register;
  - **Slovenia:** data held in the Register of Births, Marriages and Deaths;
  - **Sweden:** held by the Council for certain legal, social and medical issues;

[40] This is the e-government site dealing with the Belgian social sector: <https://www.ksz-bcss.fgov.be/en/international/page/content/websites/international/aboutcbss.html> accessed 11 April 2016.

- **UK:** data on the number of gender recognition certificates granted is published quarterly by the Ministry of Justice.

2.2.2 Non-governmental sources

In **many Member States,** LGBT data collection is often initiated by *NGOs*, sometimes in conjunction with university researchers. There were many examples of national NGOs that have undertaken studies of the experiences of LGBT people. Some examples (the list is non-exhaustive) include the following:

- **Croatia**: interviews and surveys have been conducted by several LGBT NGOs (Zagreb Pride, LORI) on experiences of discrimination, including hate crime.
- **Cyprus:** qualitative research with teachers on sexual orientation discrimination in education (Family Planning Association); qualitative research on experiences of LGBT people (Accept LGBT Cyprus, Family Planning Association).
- **France:** SOS Homophobie publishes an annual report with data on experiences of violence and discrimination.
- **Finland:** data has been gathered by SETA, including a project with the Society for Youth Research to conduct an online survey of young LGBTI people.
- **Ireland:** examples of NGO-led research include studies on LGBT mental health (GLEN and BeLongTo); experience in the workplace (GLEN); survey of the LGBT community (National LGBT Federation). GLEN publishes an annual Workplace Equality Index. This is based on data gathered by questionnaire from businesses about their policies for inclusion of LGBT employees.
- **Lithuania:** research on LGBT people and monitoring of complaints of discrimination received (Lithuanian Gay League).
- **Malta:** the Malta Gay Rights Movement conducted research on the experiences of LGBT people via a survey in 2002 and repeated in 2008. Other research included a qualitative research study on experiences of transgender people in the labour market and attitudes of employers towards transgender job-seekers.
- **Romania:** online survey on LGBTI experiences in, *inter alia*, health and education (Accept Romania).
- **Slovakia:** there is a website for reporting incidents of homophobia (NGO Iniciatíva Inakost), while several projects on same-sex couples are forthcoming. Research on transgender people's experience of healthcare has been undertaken (TransFusion).
- **Spain:** study on hate crimes linked to sexual orientation and gender identity (FELGTB).
- **UK:** a range of LGBTI NGOs conduct research including Stonewall, which has published reports based on empirical research on topics such as mental health, homophobic hate crime, education. Stonewall also publish an annual Workplace Equality Index based on data gathered from employers and their employees.

In **many Member States**, *universities and research institutes* gather data on the experience of LGBTI people. Some examples (the list is non-exhaustive) include:

- **Austria:** a study of LGBT people in Vienna and a survey of experiences of discrimination of students (the Institute of Higher Studies).
- **Belgium**: the Policy Research Centre on Equal Opportunities has collected data on LGBT people in Flanders, including online surveys and qualitative research on experiences of discrimination and violence.
- **Czech Republic:** research conducted by Dr. Olga Pechová, Univerzita Palackého v Olomouci, included a survey of 496 LGB people on discrimination because of sexual orientation and was published in the journal E-psychologie in 2009;
- **Denmark**: researchers from the Center for Alternativ Samfundsanalyse undertook a major study of the experience of LGBT people involving an online survey with almost 1000 LGBT respondents, plus a survey of heterosexual people to compare responses.

- **France**: research has been conducted on differences in the level of pay based on sexual orientation.[41]
- **Germany**: qualitative interviews have been conducted in various studies of transgender people.[42]
- **Hungary**: joint research between the Hungary Academy of Sciences and several NGOs aiming to provide a comprehensive picture of the Hungarian LGBT population.
- **Ireland**: research at Trinity College Dublin has included surveys and interviews of LGBT people regarding their mental health, including a specific study of the mental health needs of older LGBT people.
- **Italy:** an LGBT Observatory has been established by the University of Naples Federico II.
- **Slovenia**: the University of Ljubljana conducted research on LGBT people in conjunction with the NGO Legebitra.
- **UK:** the University of Surrey is conducting research via focus groups with older LGBT people exploring their housing preferences, while the University of Nottingham has completed a research project involving a survey and interviews with older LGBT people around end-of-life experiences and care needs.

Uncovering discrimination in the recruitment process?

One strand of academic research has been the use of *correspondence tests*. These typically entail the submission of job applications of similar content/quality, but where one of the candidates may be perceived as belonging to the LGBTI community. For example, some studies have undertaken this research by means of identifying in the application form that one applicant has volunteered for an LGBTI student society or NGO. The research allows for comparisons of the relative rates of invitation to interview. There are examples of this research in the **Austria, Canada, Germany, Greece, Sweden, UK,** and the **USA**. It should be noted, however, that there is debate around whether this methodology is more difficult to implement in the context of sexual orientation, gender identity or sex characteristics. For example, if the mechanism of identifying a job applicant as associated with the LGBTI community is artificially conspicuous, then this could undermine the validity of the test.

There are some examples of initiatives by *businesses* to conduct research on LGBT people and/or discrimination on grounds of sexual orientation/gender identity, including the following:

- **Czech Republic**: survey amongst employers on LGBT diversity by Business for Society.
- **Italy:** 'Parks – Liberi e Uguali' is a non-profit association of employers that publishes an annual LGBT Diversity Index. This is informed by a questionnaire on company policies and initiatives for LGBT employees.

In some cases, research is taking place via international funding. For example, in **Slovenia**, funding from the EEA and Norway is supporting a project to develop a model for collecting data on discrimination faced by LGBT people.

[41] T Laurent and F Mihoubi, 'Sexual Orientation and Wage Discrimination in France: the Hidden Side of the Rainbow' (2011) MPRA Paper n°33723.

[42] E.g. C Balzer, 'Gender – Outlaw – Triptychon. Eine ethnologische Studie zu Selbstbildern und Formen der Selbstorganisation in den Transgender-Subkulturen Rio de Janeiros, New Yorks und Berlins' (2008): http://www.diss.fu-berlin.de/diss/receive/FUDISS_thesis_000000005722 accessed 31 August 2016; Çınar and Strähle, Weiche Männer, harte Frauen, Jungs. Aushandlungen von Männlichkeit am Arbeitsplatz (2010).

3 Key Issues in Data Collection and LGBTI People

3.1 Methods of collecting data on LGBTI people

Data collected in EU countries is most commonly gathered via surveys and interviews and these are based upon self-identification of participants with regard to their LGBTI identities. Given the reluctance of individuals to disclose their sexual orientation, gender identity or sex characteristics (discussed below), online surveys offer the possibility for anonymous participation and for the individual to complete the questionnaire in a private setting. This was also cited as a key factor shaping the methodology of the EU LGBT survey.[43] In the research conducted by ISTAT, the Italian statistics agency, a combination of approaches were adopted. Face-to-face interviews were deployed for questions about attitudes towards LGBTI people and assessment of the prevalence of discrimination. In contrast, data on participants' sexual orientation or gender identity was gathered by a self-completed questionnaire. This was placed in a sealed envelope by the participant before being returned to the interviewer.

Qualitative interviews on experiences of discrimination are frequently used as a research method in existing studies. These are sometimes complemented by additional research methods. For example, in **Slovakia,** TransFusion interviewed 30 transgender people and analysed hundreds of counselling sessions by healthcare providers in a study of transgender people's experience of the healthcare system.

In a **significant number of Member States**, equality bodies maintain statistics on the number of complaints received according to discrimination ground. It was not entirely clear how these complaints are categorized, but it seemed likely that it was according to the grounds identified by the complainant. Likewise, data on hate crimes posed the question of how the statistics are gathered: are they based on the perception of the victim or the assessment of the body recording the incident (e.g. law enforcement agencies)? In **the Netherlands** the police can use their own judgement when categorising discriminatory incidents. The methods of categorizing and recording hate crimes may warrant further research to clarify current practices. In particular, gaps may emerge between police statistics and those gathered by NGOs. The former may be affected by under-reporting where individuals are reluctant to approach law enforcement bodies.

3.2 Challenges encountered in collecting data on LGBTI people

3.2.1 Confidentiality and Anonymity

Due to the history of discrimination experienced by LGBTI people, most may have felt the need at some point in their lives to conceal their LGBTI identity. The EU LGBT survey illustrated that this remains a common facet of life for LGBT people: for example, 56% of respondents said that they were never or rarely open about being LGBT at work.[44] There are sharp national differences in whether people are open to others about being LGBT. Overall, 72% of respondents in Romania said they were never open about being LGBT, while, in the Netherlands, this was only 16%.[45] Given that many people do not disclose their LGBTI identity, or only disclose this to a limited group of people, gathering data on LGBTI experiences remains challenging. It is difficult for researchers to reach those who have not disclosed their identities, either totally or partially, and individuals are likely to be reluctant to take part in data collection processes if these risk disclosing their identities without their consent. Even if we consider only those people who are always open about being LGBT (22% in the EU LGBT survey[46]), they may still wish to be confident concerning

[43] FRA (n23) 8.
[44] FRA (n15) 30.
[45] Ibid 81.
[46] Ibid.

how data is collected and used in relation to sexual orientation, gender identity or sex characteristics.

As mentioned above, anonymous online surveys can offer one means of overcoming reluctance to disclose sexual orientation, gender identity or sex characteristics. There are, though, potential limitations to such surveys. The EU LGBT survey acknowledged that not all persons have equal access to the internet, so older or rural LGBT people could be under-represented.[47] One study of LGBT people in **Denmark** tried to compensate for such risks by accompanying the online survey with focus groups for those over 60.[48] In that study, one element was an online survey of LGBT people promoted via networks, homepages and Facebook groups. The researchers noticed that the results of this survey appeared to reflect those who were already more open about their sexuality and their prior interest in these websites/social networks. This reveals that the means of distributing an online survey will affect the composition of those who take part; reaching LGBTI people who are less open about their sexual orientation, gender identity or sex characteristics is more difficult.

Another challenge is the protection of anonymity in **small Member States**. In **Slovenia**, for example, the low number of same-sex partnerships means that these are included within the general category of married by the Statistical Office in order to preserve anonymity (when gathering data for EU-SILC[49]). When combined with other data, such as age and place of residence, the identity of the individuals could have been disclosed.

3.2.2 Representativeness

Linked to the disclosure issue, researchers are constrained by the lack of a settled view on the exact size or demographic composition of the LGBTI population. The FRA acknowledged that this hinders a truly random survey designed to be representative of a cross-section of LGBTI people.[50] The size of the EU LGBT survey strengthens its representativeness, but this is a challenge for smaller data collection projects at national level. In some of the smaller states, reluctance to disclose sexual orientation or gender identity means that the numbers who participate in data collection exercises, such as surveys, remain low (e.g. **Lithuania, Luxembourg**). This can also be a difficulty in terms of forming a reliable picture of the experience of LGBTI people (e.g. **Estonia**).

3.2.3 Categorisation

> *'LGBT people of different generations and of different philosophies have their own preferences for the words to describe themselves. People are more likely to respond positively if the question uses language with which they are comfortable, and more likely to refuse to answer if the language is found to be offensive*.'[51]

Designing any data collection systems for LGBTI people needs to pay attention to the choice of categories adopted. This is an area where prior consultation with the intended respondents (e.g. the workforce, students) and LGBTI civil society organisations will be an important means of understanding the most appropriate categories.

It is important to ensure that results can be disaggregated within LGBTI respondents as experiences of discrimination vary; the experience of a gay man may not be the same as that of a lesbian woman. Likewise, the situation of those at equality intersections, such as older LGBTI people or LGBTI people from minority ethnic communities, needs to be captured. Given the paucity of existing data collection on LGBTI people, few examples of

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[47] FRA (n23) 8.
[48] http://casa-analyse.dk/files/rapporter-social-arbejdsmarked/2009/equal_and_unequal.pdf accessed 1 March 2016.
[49] EU statistics on income and living conditions.
[50] FRA (n23) 7.
[51] Trades Union Congress, 'Monitoring LGBT Workers: a TUC Guide for Trade Unions' (TUC 2005) 8.

engagement with intersectionality can be found, although some are beginning to emerge. In **Denmark,** for example, a survey of LGBT persons with an ethnic minority background is currently being conducted.

Sexual orientation may be fluid for some people; research suggests that this is particularly true for young adults.[52] Others may be questioning their sexual orientation, gender identity or sex characteristics, therefore, it can be helpful to have alternative categories. For example, in **Sweden**, the Public Health Survey offers participants the categories of 'do not know' and 'other' on sexual orientation. This may also accommodate those from cultural minorities where different concepts and labels for sexual orientation exist.[53] Depending on the nature of the survey, it may be appropriate to provide space for those who 'prefer not to say'. Yet multiple options to opt-out of proving an answer may have the effect of decreasing response rates.

In relation to transgender and intersex identities, terminology tends to provoke even greater debate. The EU LGBT survey allowed respondents to self-identify within the transgender category. The most common identifications were transgender, transsexual and queer, but it is notable that, amongst those who were assigned the male gender at birth, the highest number of responses was 'other'.[54] This indicates that data collection needs to be alert to the diversity of identities and the lively conversation within LGBTI communities on how language is used to place contours on sexual orientation and gender identity.

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[52] F Pega, A Gray, J Veale, D Binson, and R Sell, 'Toward Global Comparability of Sexual Orientation Data in Official Statistics: A Conceptual Framework of Sexual Orientation for Health Data Collection in New Zealand's Official Statistics System' (2013) *Journal of Environmental and Public Health*: http://dx.doi.org/10.1155/2013/473451 accessed 2 March 2016.

[53] Ibid 4.

[54] FRA (n15) 122.

4 Enhancing Data Collection

4.1 Methods of building confidence in data collection

The **overall** picture in the national reports indicated that data collection in relation to LGBTI people was a topic that has yet to receive much attention in policy debate. Given concerns about privacy and confidentiality, it is necessary to discuss the rationale for data collection and how this will be designed. This is also a debate within civil society in some countries. In **France** some LGBT associations are opposed to data collection because they prefer to protect the individual freedom to choose whether or not to disclose sexual orientation. In **Hungary** views differed, but one of the main NGOs (Háttér Support Society) supported surveys only if voluntary and anonymous. Significantly, the 2015 Eurobarometer asked respondents for their attitudes towards disclosing, on an anonymous basis, data pertaining to sexual orientation if it could help to combat discrimination. 63% were 'totally' or 'somewhat' in favour of gathering data on sexual orientation, while 42% were 'totally' or 'somewhat' opposed.[55] 83% of those who self-identified as members of a sexual minority were favourable to disclosing sexual orientation data.[56] It should be noted, however, that this figure is based upon a small sample as only 2% of respondents self-identified as belonging to a sexual minority.

One organisation that is promoting better data collection is the Council of Europe's Commission on Racism and Intolerance. In its recommendations to states, it has specifically urged some states to improve data collection on the situation of LGBT people (e.g. **Austria, Belgium, Slovakia**). In some instances, there have been recommendations by national equality bodies to governments on how to enhance LGBT data collection (**Sweden, UK**). Yet progress has been, at times, slow. In Italy, there had been a commitment to take steps to improve LGBT data collection within a national strategy on sexual orientation and gender identity, yet to be implemented.

Experience from the EU LGBT survey indicates that a significant number of LGBT people are willing to participate in online data collection exercises, but literature also suggests that support needs to be constructed amongst individuals, especially where data collection takes place at the level of an organisation. For example, in the **UK,** Stonewall recommends that employers consult with LGB employees to explain the purposes of collecting data on the sexual orientation and to explain arrangements to ensure the confidentiality of the data gathered. Dialogue is particularly important if there is any element of compulsion as regards providing the data. It may, for example, be a legal obligation to complete the national census, although it is not necessarily mandatory to answer all questions therein. Within the workplace, employers may be able to use technologies to identify whether certain employees have failed to complete a survey or may ask employees to enter data about family relationships into digital employee record systems. If employees are not consulted in advance about such developments, then they risk being unsuccessful due to a lack of confidence amongst the respondents.

4.2 Addressing Diversity

Evidence suggests that where data collection activities have been undertaken, these have more frequently concentrated on the situation of lesbian, gay and bisexual people. It is, therefore, worthwhile drawing attention to specific issues arising in relation to data collection for transgender and intersex people.

[55] Eurobarometer (n30) 96.
[56] Ibid 97.

4.2.1 Transgender People

As mentioned above, identifying the appropriate categories to use when collecting data on transgender people needs to be handled with sensitivity and flexibility. Gender identity is an umbrella concept that covers a diversity of scenarios. The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity offer the following definition:

> 'each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms'.[57]

Research for the **British** Equality and Human Rights Commission identified some common shortcomings when gathering data on gender identity:

- conflating transgender status with sexual orientation (e.g. placing transgender as an alternative category to gay, lesbian, bisexual, heterosexual). Gender identity is distinct from sexual orientation; transgender people have a variety of sexual orientations as with cisgender[58] people.
- asking a question that only covers some transgender people. The researchers provided the example of a trade union survey that asked: 'Do you live and work full-time in the gender role opposite to that assigned at birth?'. This question excludes the experience of those with non-binary gender identities and those who cross-dress.
- asking people to disclose their birth sex. If this is not an optional question, then it compels some individuals to disclose their gender identity, which should be a voluntary choice. Research does, though, identify the benefits of a non-mandatory question on birth sex. In studies where individuals were first asked about their gender identity and then asked about their birth sex, discordance between the two allowed for a higher number of transgender people to be identified in data collection.[59]

4.2.2 Intersex People

The FRA has identified the lack of data as one of the key challenges in analyzing the fundamental rights situation of intersex people.[60] This picture is confirmed by this study as examples of data were sparse. There were a few examples of initial steps to improve the body of knowledge on intersex people, but these remain very limited:

- **Belgium:** two research projects on intersex people in Belgium are ongoing and due to be published in 2016 and 2017.
- **Hungary:** in 2012, the Háttér Support Society conducted qualitative research on the experience of intersex people, including interviews with their families and doctors. Data on the number of intersex medical interventions was obtained via a freedom of information request.
- **Netherlands:** the Netherlands Institute of Social Research has conducted an exploratory study of intersex people that included data from interviews with intersex people and professionals working in this field.
- **Slovenia:** an unpublished pilot study on the experiences of intersex people has been conducted by the NGO Transkacija.

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[57] http://www.yogyakartaprinciples.org/principles_en.htm accessed 2 March 2016.

[58] Cisgender refers to people 'whose sense of personal identity and gender corresponds with their birth sex': http://www.oxforddictionaries.com/definition/english/cisgender accessed 3 March 2016.

[59] M Deutsch, J Keatley, J Sevelius, and S Shade, 'Collection of Gender Identity Data Using Electronic Medical Records: Survey of Current End-User Practices' (2014) 25 *Journal of the Association of Nurses in AIDS Care* 657.

[60] FRA (n2) 10.

- **Spain:** information on the experiences of intersex people is emerging through the activities of an NGO dedicated to this issue (GRAPSIA).

5 Key Recommendations

During the past decade there has been a significant expansion in the number of initiatives to gather data on the experience of LGBTI people in society. This has, though, mainly taken the form of ad hoc research projects, typically organised by NGOs, equality bodies and academic institutions. This research has illuminated some of the difficulties encountered by LGBTI people in areas of life such as employment, education, and healthcare. While it serves a valuable purpose, there are several reasons to believe that it is not an adequate substitute for regular collection of data within standardised surveys, such as the national census or periodic social surveys.

First, the absence of LGBTI identities in most of the recurrent national surveys by official statistical agencies means that the social situation of LGBTI people often remains invisible. Policy-makers lack a comprehensive picture of LGBTI people and their needs. This may lead to marginalisation or misunderstanding in policy formulation.

Second, the ad hoc nature of most of the current research in the EU means that it is difficult to track changes over time. Unless surveys are recurrent, then it is hard to evaluate the effectiveness of policy interventions. For example, if we seek to assess whether discrimination is reducing, then comparable social research into this phenomenon needs to take place at regular intervals in order to track any changes in its prevalence. Moreover, if we wish to compare the outcomes achieved in different Member States, then we need to have similar approaches to data collection across jurisdictions.

Third, the current approach means that data collection often remains dependent on the resources and capacity of NGOs working with LGBTI people. This makes it difficult to ensure a regular flow of data collection because funding often has to be sought for each individual project. It is also clear that the distinct experience of transgender people is less visible within much of the existing research. Very limited information is available on the situation of intersex people, where there is a pressing need for research to enhance our understanding of their experience and needs.

Reflecting on the information arising from the national reports, the following recommendations could be considered by the Member States:

- ensuring that data collection on LGBTI people is supported through national research programmes, in particular, research on the experiences of transgender and intersex people;
- integrating questions on sexual orientation, gender identity and sex characteristics within national social research surveys, including the national census;
- identifying and disseminating good practice recommendations for public and private organisations on how to collect data relating to sexual orientation, gender identity and sex characteristics;
- encouraging key actors, such as employers and schools, to collect data on homophobia and transphobic discrimination and harassment;
- establishing effective procedures for the collection of data on homophobic or transphobic hate crimes;
- improving the collection of data on the number of complaints of discrimination based on sexual orientation, gender identity and sex characteristics brought before equality bodies, and any judicial or administrative bodies responsible for adjudication on complaints.

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DS-04-17-181-EN-N

Publications Office

PDF ISBN: 978-92-79-66083-2 doi:10.2838/522787