



**Statement by Oii Europe, TGEU, ILGA-Europe and IGLYO on the
AFNOR ISO work item proposal: Guidelines for the promotion and
implementation of gender equality**

Berlin, 23.07.2021

Definitions

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.¹

Intersex. Intersex individuals are born with a variation of sex characteristics, i.e., 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 acknowledges the fact that physically, sex is a spectrum and that people with variations of sex characteristics other than male or female exist. Around the globe intersex people suffer from multiple violations of their human rights. A human rights violation specific to intersex people are surgical and other medical interventions on their healthy bodies for societal reasons, also known as intersex genital mutilation (IGM). According to the United Nations up to 1.7% of the population, or, globally speaking, as of 2021, 132 million people have been born with intersex traits.²

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.³

Sex characteristics include, for example, genital, hormonal or chromosomal characteristics⁴ of a person's body.

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, crossdresser, trans man, trans woman and several others.⁵

¹ European Commission (2020). Legal gender recognition in the EU: the journeys of trans people towards full equality. Luxembourg: Publications Office of the European Union. Annex 5, pp 230-244. Available from: https://ec.europa.eu/info/sites/info/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf

² United Nations Office of the High Commissioner for Human Rights (2015): Fact Sheet. Intersex. <<https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Intersex.pdf>>

³ European Commission (2020). Legal gender recognition in the EU: the journeys of trans people towards full equality. Luxembourg: Publications Office of the European Union. Annex 5, pp 230-244. Available from: https://ec.europa.eu/info/sites/info/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf

⁴ D Bruyn, P. (2017). Promoting the human rights of and eliminating discrimination against intersex people, Report to the Parliamentary Assembly of the Council of Europe. Available from: <https://pace.coe.int/en/files/24027/html>

⁵ European Commission (2020). Legal gender recognition in the EU: the journeys of trans people towards full equality. Luxembourg: Publications Office of the European Union. Annex 5, pp 230-244. Available from: https://ec.europa.eu/info/sites/info/files/legal_gender_recognition_in_the_eu_the_journeys_of_trans_people_towards_full_equality_sept_en.pdf

Introduction

OII Europe, TGEU, ILGA-Europe and IGLYO are submitting the following statement in order to express deep concerns about the exclusive binary perspective on sex and gender shown in the justification of the work item proposal “Guidelines for the promotion and implementation of gender equality” proposed by the French Association française de normalisation (AFNOR)⁶.

Equality between men and women has clearly not been achieved yet and measures need to be taken to advance the enjoyment of rights for women in all their diversity⁷ internationally and on all levels. Unfortunately, the suggested work item, in its current form and justification, is based on a strictly binary understanding of sex and gender, which will likely result in the exclusion of many trans, intersex, and non-binary people from the standard, and any resulting work, thus hindering efforts to reach full gender equality.

True equality for all cannot be achieved by excluding persons that are among the most vulnerable parts of the sex and gender spectrum: Trans and intersex people, including but not limited to intersex women, trans women, and non-binary people. By not taking into account the existing spectrum and diversity of sex and gender, the work item in its current form fails to promote full gender equality and carries the high risk to further perpetuate and possibly even increase the societal discrimination of intersex, trans and non-binary people globally. Furthermore, it does not reflect existing legal regulations and is not in line with current European Union equality and diversity standards and frameworks, which acknowledge the specific vulnerability of intersex, trans and non-binary persons to discrimination in all areas of life.

In the past 20 years, international, regional and national legal and policy developments have increasingly acknowledged the fact that sex and gender are not binary but a spectrum. As the same time, the ongoing inclusion of gender identity and sex characteristics in regional and national anti-discrimination and equality legislation, regulations and policies, affirms the specific vulnerability of intersex, trans and non-binary people in Europe and the need to take action to protect them from violence and discrimination in all areas of life. The available data on discrimination and violence against intersex, trans and non-binary people in Europe show a clear need for explicit inclusion of these particularly vulnerable groups of the population in all gender equality implementation guidelines.⁸ The increasing prevalence of gender markers beyond the binary options of male & female around the globe (most recently in Argentina⁹) similarly points towards a strong trend to adapt existing legal sex/gender registration to the reality of sex and

6

<[https://share.ansi.org/Shared%20Documents/News%20and%20Publications/Links%20Within%20Stories/ISO%20NWIP%20\(Promotion%20and%20Implementation%20of%20Gender%20Equality\).pdf](https://share.ansi.org/Shared%20Documents/News%20and%20Publications/Links%20Within%20Stories/ISO%20NWIP%20(Promotion%20and%20Implementation%20of%20Gender%20Equality).pdf)>

⁷ The expression “in all their diversity” highlights that the terms “men” and “women” are used to identify groups which are, in themselves, very heterogeneous, including in relation to their sex, gender identity, gender expression or sex characteristics.; see European Commission Gender Equality Strategy 2020-2025, p. 2

<<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0152&from=EN>>

⁸ European Union Agency for Fundamental Rights (2020). *A long way to go for LGBTI equality*, available at <<https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>

⁹ See “Argentina introduces new ID cards for non-binary people”, BBC 21 July 2021. Available from: <https://www.bbc.com/news/world-latin-america-57923856>

gender being not binary but a spectrum.

Guidelines on how to implement gender equality should promote measures that value diversity and work towards reducing inequalities among all sexes/genders. OII Europe, TGEU, ILGA-Europe and IGLYO therefore recommend not to adopt the work item proposal in its current form and strongly encourage ISO and its organizations to work on a new, more inclusive proposal.

1. Intersex, trans and non-binary people are increasingly acknowledged as a specifically vulnerable group within the sex and gender spectrum in Europe

Violence against vulnerable sex and gender minorities is one of the most persistent forms of gender-based discrimination in Europe.

35 Council of Europe member states have therefore included *gender identity* in their equality and anti-discrimination legislation, in their Constitution, the mandate of their equality body or in their Equality Action Plan in order to protect trans people from discrimination and violence (Albania, Andorra, Austria, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Kosovo, Luxembourg, Malta, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom¹⁰).

17 Council of Europe member states have included *sex characteristics* in their equality and anti-discrimination legislation, in their Constitution, the mandate of their equality body or in their Equality Action Plan in order to protect intersex people from discrimination and violence (Albania, Belgium, Bosnia & Herzegovina, Denmark, Finland, Germany, Greece, Iceland, Ireland, Luxembourg, Malta, Montenegro, the Netherlands, Portugal, Serbia, Spain, Sweden¹¹).

The high vulnerability of intersex, trans and non-binary individuals and the need to explicitly protect them against gender-based violence has also been confirmed repeatedly at EU and Council of Europe, as well as international level:

- The EU Fundamental Rights Agency 2019 LGBTI II Survey¹² confirmed that trans and intersex people are among the most vulnerable groups within the LGBTI spectrum in regards to experiencing discrimination and violence in all areas of life.

¹⁰ILGA-Europe Rainbow Index 2021, available from: https://www.ilga-europe.org/sites/default/files/Attachments/Rainbow%20Europe%20Index%202021_0.pdf

¹¹ *ibid.*

¹² European Union Agency for Fundamental Rights (2020). *A long way to go for LGBTI equality*, available at <<https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>

- The European Commission, in its LGBTIQ Equality Strategy 2020-2025 and in its EU Strategy on the Rights of the Child 2021-2024 has affirmed the high vulnerability of intersex, trans and non-binary persons and the need to protect them against violence and discrimination in all areas¹³.
- The European Commission Gender Equality Strategy 2020-2025 affirms that policy objectives and key actions to guarantee gender equality must include women and men, girls and boys, in all their diversity. The Strategy clarifies that the expression ‘in all their diversity’ is used to “express that, where women or men are mentioned, these are a heterogeneous category 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”¹⁴. As a result, the EC Gender Equality Strategy 2020-2025 actively frames “gender equality” as relevant to and inclusive of trans, intersex, and non-binary people.
- In 2017, the Parliamentary Assembly of the Council of Europe called upon States to take into consideration the situation of intersex people with regard to civil status, and ensure that wherever gender classifications are in use by public authorities, a range of options are available for all people, including those intersex people who do not identify as either male or female¹⁵.
- In 2019, the European Parliament passed a resolution on “The rights of intersex people”¹⁶, which lays out the need for a clear EU commitment to protect the fundamental rights of intersex people, including protecting them against all forms of violence and discrimination.
- The UN Committee on the Elimination of Discrimination against Women (CEDAW) has repeatedly expressed strong concern about violence against intersex persons, taking place globally, including in EU Member States¹⁷.
- The EU non-discrimination Goods and Services Directive (2004/113/EC) and the Gender Recast Directive (2006/54/EC) cover trans people in line with the jurisprudence of the European Court of Justice.
- Since 2010, the ECtHR has affirmed that trans people fall within the scope of equality and non-discrimination protection under Article 14 ECHR.
- As early as 2010 the Council of Ministers (of the Council of Europe) published a Recommendation (CM/Rec (2010)5) on measures to combat discrimination on grounds

¹³ European Commission LGBTIQ Equality Strategy 2020-2025

<https://ec.europa.eu/info/sites/info/files/lgbtiq_strategy_2020-2025_en.pdf>

¹⁴ European Commission Gender Equality Strategy 2020-2025, p. 2 <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0152&from=EN>>

¹⁵ Parliamentary Assembly (PACE) Resolution 2191 (2017) on Promoting the human rights of and eliminating discrimination against intersex people, available at <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24232&lang=en>>

¹⁶ European Parliament resolution of 14 February 2019 on the rights of intersex people, available at <https://www.europarl.europa.eu/doceo/document/TA-8-2019-0128_EN.pdf>

¹⁷ See the CEDAW recommendations issued to EU Member States (among all the many other countries): CEDAW/C/BGR/CO/8, CEDAW/C/AUT/CO/9, CEDAW/C/LUX/CO/6-7, CEDAW/C/ITA/CO/7, CEDAW/C/DEU/CO/7-8, CEDAW/C/IRL/CO/6-7, CEDAW/C/NLD/CO/6, CEDAW/C/EST/CO/5-6, CEDAW/C/FRA/CO/7-8, CEDAW/C/SVK/CO/5-6. For other intersex specific recommendations of all UN Treaty Bodies, see OII Europe (2021, February). Intersex Resources, available at <https://oiieurope.org/wp-content/uploads/2018/05/International-intersex-human-rights-movement-Links-to-human-rights-documents-addressing-intersex-and-important-events_February-2021-1.pdf>.

of sexual orientation or gender identity, recommending an extensive set of anti-discrimination measures for the rights of trans people to CoE member states¹⁸

- In 2015 the Parliamentary Assembly of the Council of Europe (PACE), passed a resolution "Discrimination against transgender people in Europe, calling upon member states to end discrimination against trans people and fully recognize them in their identities based on the principle of self-determination¹⁹
- the UN Independent Expert on Sexual Orientation and gender Identity published several reports calling for effective anti-discrimination measures on behalf of trans people, the full recognition of trans people identities and recognition of diverse gender identities outside of the gender binary based on human rights principles²⁰

2. More genders than male and female are legally recognized across the world

An increasing number of countries across the world acknowledge that more than the two binary sexes and genders "female" and "male" exists and take legal action to adapt their sex/gender registration accordingly.

In Europe, *Austria*, *Germany* and *Iceland* have already introduced non-binary markers, while *Belgium* and the *Netherlands* can rely on favorable case-law. *Ireland*, *Luxembourg*, *Switzerland* and *UK (Scotland)* have taken steps to recognize non-binary identities. *Germany* has four legal gender markers ("divers", "female", "male", "open"), *Austria* has 5 legal options ("divers", "inter", "open", "female" and "male") and additionally the option to remove the gender marker from all legal documents.²¹ *Denmark*, *Malta* and soon the *Netherlands* allow the "X" on IDs/passports.

Internationally, non-binary markers are available in (some provinces/states of) *Argentina*, *Canada*, *USA* and *Australia*, and Supreme Court decisions supporting the need of them were issued in *India*, *Pakistan*, and *Nepal*. Alternative markers for intersex people are used in *Chile* ("indeterminate" sex on birth certificate) and *New Zealand* (favourable case-law). Countries allowing "X" on IDs/passports include: *Canada*, *Costa Rica* (elimination of markers from IDs), the *US* (in some states), *Australia*, *New Zealand*, *Bangladesh*, *India* ("T" and "E" markers), *Nepal* ("O"

¹⁸ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, available at <https://www.coe.int/en/web/sogj/rec-2010-5>

¹⁹ PACE (Parliamentary Assembly of the Council of Europe): Resolution 2048 (2015) "Discrimination against transgender people in Europe", available at <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736>

²⁰ Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity: "Report on Legal Recognition of Gender Identity and Depathologization", 2018, available at <https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/LegalRecognition.aspx> and "Report on Gender Theory", 2021, available at <https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/ReportGenderTheory.aspx>

²¹ See OII Europe comparative research at <https://oiiurope.org/wp-content/uploads/2021/03/LGR-for-intersex-comparative-research_03-2021.pdf>. See also the submission by OII Europe, IGA-Europe and C.I.A. to the European Court of Human Rights as third-party intervention in the case *Y v. France* <<https://oiiurope.org/wp-content/uploads/2020/12/Y-v-France-Final-OII-Europe-ILGA-Europe-C.I.A.-Submission-and-Appendix.pdf>> Annex, table 1.a

marker) *Pakistan*²², and most recently *Argentina*²³.

Furthermore, the existence of more than two genders is established through the International Civil Aviation Organisation (ICAO) guidelines. According to these guidelines, countries must include gender markers on passports, which may be expressed as F, M or X.²⁴ This means X is an officially-established gender marker, recognized by all 192 ICAO Member States for the purpose of letting foreign citizens enter their country.²⁵

3. Data on discrimination and violence against intersex, trans and non-binary people

The 2019 LGBTI II Survey carried out by the Fundamental Rights Agency of the European Union²⁶, showed that intersex and trans people are a highly vulnerable group of the population as a result of societal prejudice.

In regards to intersex people, it revealed that 32% of intersex respondents felt discriminated against when at work and 27% when looking for a job. Half of intersex respondents stated that their household's total income makes it difficult to make ends meet.²⁷ 54% intersex respondents aged 15-17 and 44% aged 18-24 felt discriminated against in educational institutions.

Additionally, 22% of intersex respondents experienced violence in the form of physical and/or sexual attack in the 12 months before the survey, 38% of intersex people at least once experienced violence in the form of violent in-person threats and 27% even six or more times. Across the EU, intersex respondents indicated the highest rate (41%) for often or always avoiding certain locations.²⁸

Young intersex people experienced higher rates of discrimination and harassment. Among intersex youth, in the 12 months before the survey 14% (aged 15-17) and 17% (aged 18-24) suffered violence in the form of physical or sexual attacks. Asked about the last physical or sexual attack, 79% of them reported physical attack and 20% a sexual attack or a combination of both. 39% of these attacks happened at school. 56% reported severe psychological problems

²² Ibidem, table 1.b

²³ See "Argentina introduces new ID cards for non-binary people", BBC 21 July 2021. Available from: <https://www.bbc.com/news/world-latin-america-57923856>

²⁴ International Civil Aviation Organization, 'Machine Readable Travel Documents. Part 4 — Specifications for Machine Readable Passports (MRPs) and Other TD3 Size MRTDs' (2015) Doc 9303 14.

²⁵ Lean Holzer for ILGA-Europe, 2018, Non-binary registration models in Europe, Report on third gender marker or no gender marker options, p.20. https://www.ilga-europe.org/sites/default/files/non-binary_gender_registration_models_in_europe_0.pdf

²⁶ European Union Agency for Fundamental Rights (2020). *A long way to go for LGBTI equality*, available at <<https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>>

²⁷ Ibidem. See also OII Europe infographic based on the FRA LGBTI Survey Data Explorer, available at <<https://oii.europa.org/recent-survey-shows-high-rate-of-discrimination-of-intersex-people-in-europe/>> and <<https://oii.europa.org/housing-and-economic-difficulties/>>

²⁸ Ibidem. See also OII Europe infographic based on the FRA LGBTI Survey Data Explorer, available at <<https://oii.europa.org/physical-violence-and-harassment/>>

as a result and 9% were hospitalized, making intersex children together with trans children the most vulnerable respondents of the survey. 62% of intersex children were discriminated against by a school/university person²⁹.

With regards to trans and non-binary people, 35% reported that they had experienced discrimination at the workplace due to their gender identity in the previous year³⁰. In addition, 48% of trans people in the survey reported that they had experienced harassment in the 12 months before the survey. Trans and non-binary people also face a serious amount of violence: 17% reported experiencing physical or sexual violence in the past five years³¹.

Young trans people experienced higher rates of discrimination and harassment. Among trans youth, in the 12 months before the survey 53% (aged 15-17) and 51% (aged 18-24) experienced harassment for any reason. Asked about the hate-motivated harassment, only 7% reported them. Besides, 59% respondents (aged 15-17) and 38% (aged 18-24) reported feeling discriminated against by school/university personnel³².

Disaggregated data on the discrimination experienced by non-binary people in Europe are difficult to come by, since non-binary people are usually subsumed under the trans umbrella in large surveys. However, since the majority of trans people in Europe identify in the non-binary spectrum³³, it can be estimated that the numbers correspond with each other.

Organisations

OII Europe (Organisation Intersex International e.V., <http://oiieurope.org> and <http://intervisibility.eu>) is the European intersex umbrella organisation with intersex-led member organisations in 20 Council of Europe member states. OII Europe advocates for the protection of intersex people's human rights, raises awareness on intersex issues with policy makers, professionals and the general public, and supports the growth of the European intersex community together with its membership and allies. www.oiieurope.org

Transgender Europe (TGEU) is a member-based organisation created in 2005 that represents the trans community in Europe and Central Asia with 169 member organisations in 47 different countries. TGEU envisions Europe, Central Asia and the rest of the world free from discrimination, where each person can live according to their gender identity and gender

²⁹ Ibidem. See also OII Europe infographic based on the FRA LGBTI Survey Data Explorer, available at <https://oiieurope.org/intersex-youth/>

³⁰ European Union Agency for Fundamental Rights (2020). A long way to go for LGBTI equality, available at <https://fra.europa.eu/en/publication/2020/eu-lgbti-survey-results>

³¹ Ibid.

³² Ibid.

³³ FRA 2014: Being Trans in the EU - Comparative analysis of the EU LGBT survey data, p.16, avail. at <https://fra.europa.eu/en/publication/2014/being-trans-eu-comparative-analysis-eu-lgbt-survey-data>

expression without interference and where trans people are respected and valued.

<https://tgeu.org/>

ILGA-Europe are an independent, international non-governmental umbrella organisation bringing together nearly 700 organisations from 54 countries in Europe and Central Asia. We are part of the wider international ILGA organisation, but ILGA-Europe were established as a separate region of ILGA and an independent legal entity in 1996. ILGA itself was created in 1978.

www.ilga-europe.org

IGLYO – The International Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Organisation is a member-based youth and student network, with over 110 members in 41 Council of Europe countries. IGLYO strives to ensure the voices and experiences of LGBTQI young people are present and heard by decision-makers at European and international levels. The organisation advocates for the protection and promotion of LGBTQI youth rights at the European Union and the Council of Europe. www.iglyo.com