



Attachment briefing for European Statistics on Population consultation

Prepared by ILGA-Europe, OII Europe, TGEU and IGLYO

Currently European statistics on population (ESOP) do not collect statistics on respondents' sexual orientation, gender identity or sex characteristics. These statistics are essential for the inclusion of data on LGBTI people – one of Europe's minority groups. LGBTI people are a subgroup at risk of inequality and discrimination, and therefore should be included in the update of the ESOP. Indeed, the [EU's LGBTIQ Equality Strategy 2020-2025](#) states that "reliable and comparable equality data will be crucial for assessing the situation of LGBTIQ people and to effectively tackling inequalities". The EU has committed itself to being at the forefront of efforts to better protect LGBTIQ people's rights.

In order to make this commitment a reality, we need quality data which can guide us to where more action needs to be taken and to track progress over time. Although some EU Member States have conducted ad hoc data collection in the form of projects or one-off surveys, this is not comparable to regular collection within standardised surveys, which would allow a more comprehensive picture of LGBTI people and their needs. While in many EU countries, sexual orientation, gender identity and sex characteristics (SOGISC) are protected grounds in non-discrimination laws and policies, currently no EU Member State includes these grounds in their census. This absence of reliable and regular statistical data on SOGISC presents a major obstacle to measuring progress on tackling discrimination and inequality. NGOs cannot fill the gap for European and national level data collection, as we do not have the necessary resources to carry out regular and comprehensive research which are necessary for better mid- and long-term analysis of trends and developments. Furthermore, data collected by governments have institutional backing and systems to ensure both that the collection process is equally as robust as any other government dataset, and that data are handled according to strict privacy measures in line with government standards. Finally, centralised institutional collection of data disaggregated on SOGISC grounds shows political commitment to monitoring equality metrics for LGBTI people; without these data, monitoring is all but impossible. Having access to data disaggregated by sexual orientation, gender identity and sex characteristics for all age groups (including children and young people under 18) would allow for the elaboration of well-informed policy responses to the needs of LGBTI people, and reliable estimates of the LGBTI population in the EU is essential for planning services and allocating resources to support this marginalised group.

Collection of SOGISC population data is also key to measuring and understanding **intersectionality**, which is a key component in all of the EU's equality strategies and action plans, such as the [LGBTIQ Equality Strategy 2020-2025](#), the [EU Anti-Racism Action Plan 2020-2025](#), [EU-Roma Strategic Framework 2020-2030](#), [EU Strategy for the Rights of Persons with Disabilities 2021-2030](#), [EU Gender Equality Strategy 2020-2025](#), [EU Strategy on the Rights of the Child 2021-2024](#). EU statistics on SOGISC are key to understanding how Member States are implementing these strategies and action plans, but also other relevant programmes and initiatives where the principle of non-discrimination should be applied or

where minority groups at risk of exclusion should be targeted for outreach, for example the European Pillar of Social Rights, the European Structural and Investment Funds and the Victim's Rights Directive.

Sexual orientation is a protected ground under the Treaty of the Functioning of the European Union (Article 19 allows for taking action to combat discrimination based on sexual orientation) and under the EU's Charter of Fundamental Rights (Article 21 which prohibits discrimination on the grounds of sexual orientation).

Gender/ gender identity

The understanding of the differentiation between a person's sex (the anatomy of an individual's reproductive system and secondary sex characteristics) from that person's gender – which refers either to social roles based on the sex of the person (gender role) or personal identification of one's gender based on an internal awareness (gender identity) – was used as early as in the 1940s. For the majority of people, their sex assigned at birth and their gender identity are aligned (e.g., a person assigned female at birth based on an assessment of her genitalia identifies herself as a woman). Sometimes gender identity differs from registered sex (e.g., a person registered as female at birth who identifies himself as a man).

For the collection of population statistics, the gendered/social role of a person is not a measurable variable. Gender identity, i.e. the person's self-identification of one's gender, is a variable that can and should be assessed. In this way, we understand the suggested inclusion of the term gender in the European Commission's questionnaire for this consultation, to use gender and gender identity interchangeably.

The term "**gender identity**" is increasingly enshrined in EU law and policy, reflecting international developments. It builds on the Court of Justice interpreting the EU prohibition of sex discrimination in employment¹ to encompass also those trans people who are intending to, undergoing or having undergone gender reassignment.² Similarly, the Gender Goods & Services Directive³ is to be interpreted in an inclusive manner.⁴ The outdated and ill-defined term gender reassignment has since been replaced in EU policy and law by "gender identity". For example, Member States must already regularly report data on how the rights set out in

¹ Then Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ 1976 L 39/40, subsequently revised by Directive 2002/73/EC amending Council Directive on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ 2002 L 269/15. The Directive has since been replaced by the so-called Recast Directive, Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ 2006 L 204/23. See also Tobler, Agius, *Trans and intersex people. Discrimination on the grounds of sex, gender identity and gender expression*, 2011, fn 63

² CJEU, Case C-13/94 P. v S. and Cornwall County Council [1996] ECR I-2143, para. 19-24; see also CJEU, Case C-117/01 K.B. v National Health Service Pensions Agency and Secretary of State for Health [2004] ECR I-541 and CJEU, Case C-423/04 Sarah Margaret Richards v Secretary of State for Work and Pensions [2006] ECR I-3585.

³ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

⁴ 2606th meeting of the Council of the European Union (EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS), held in Luxembourg on 4 October 2004, Page 7

the EU Victim's Rights Directive have been accessed, including as regards gender identity.⁵ To corroborate these targeted measures, population statistics disaggregated by gender identity are needed to better understand and serve a highly marginalised part of society. Trans and non-binary people, although a minority group, make up still a significant proportion of the population, and therefore should not be excluded from data collection on populations (see research from the Netherlands, for example).⁶ In her State of the Union Address 2020 Commission President von der Leyen envisioned the EU as a Union of equality acknowledging a person's gender identity is an intrinsic part of their identity.⁷

The term “**sex characteristics**” refers to the physical sex characteristics of an individual, including their chromosomes, hormones, gonads, and genitalia. The EU is paying increasing attention to individuals with variations of sex characteristics (also known as intersex individuals) and their life experiences.⁸ For example, the FRA LGBTI II Survey of 2019 disaggregated the experiences of intersex people, finding that intersex respondents were among the most marginalised, including by finding that the largest percentage of intersex respondents had “great difficulty” making ends meet (13%, compared to 5% of all LGBTI respondents).⁹ Furthermore, the European Commission has recently commissioned a study on the lived experiences of intersex people within the EU, with results expected at the end of 2022.

“Sex assigned at birth”, a commonly used phrase in discussions of the rights of trans and intersex people, refers specifically to one's registered sex at birth, which is usually decided by a doctor upon inspection of the infant's genitals.

To anchor the spirit of a Union of Equality that is fully inclusive of the LGBTI spectrum across Member States, population statistics need to follow suit. Having their identity recognised in a census, is not only important for accurate data and identification of possible discrimination, but also an important symbolic sign of non-discrimination of everyone in society. In the European Commission's roundtable on Equality Data in September 2021,¹⁰ Commissioner for Equality Helena Dalli stressed the need to collect equality data in order to help design anti-discrimination measures in the Member States. Emanuele Baldacci, Director of Resources at Eurostat said in relation to this consultation, that there is a need for more granular data to understand different phenomena like discrimination and equality, and that we must go **beyond**

⁵ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, Article 28 (*data and statistics*) with recitals 9, 17, 56

⁶ Kuyper, Lisette & Wijsen, Ciel. (2013). Gender Identities and Gender Dysphoria in the Netherlands. Archives of sexual behavior. 43. 10.1007/s10508-013-0140-y.

⁷ State of the Union Address by President von der Leyen at the European Parliament Plenary, 16 September 2020, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

⁸ For example, see European Parliament resolution “The rights of intersex people” (2019), available from: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0128_EN.html

⁹ FRA LGBTI II Survey 2019 Data Explorer, available from: <http://fra.europa.eu/en/data-and-maps/2020/lgbti-survey-data-explorer/survey/7.%20Socio-demographics/DEXh20/heatMap/06--Intersex-people>

¹⁰ European Commission (2021), Event Report: Roundtable on Equality Data 30 September 2021, available at: https://ec.europa.eu/info/sites/default/files/roundtable-equality-data_post-event-report.pdf

the six EU grounds of discrimination and collect data that could feed into other dimensions of equality and look at the cross-cutting and **intersectional elements**.

In order to ensure inclusion of all LGBTI people in the ESOP, it is therefore essential to expand the scope not only to include sexual orientation (one of the six EU grounds of discrimination), but also gender identity and sex characteristics, which would include trans, non-binary and intersex people. This inclusion is in line with the commitments made in the EU LGBTIQ Equality Strategy and would fully reflect the objectives of the work on EU equality data that has been conducted over the last years. It is time to finally ensure modernisation of European statistics when it comes to this subgroup.

SOGISC data collection

Although no EU Member State collects SOGISC data in their census, a number of Member States have conducted research and data collection projects which are inclusive of SOGISC personal characteristics,¹¹ and therefore already have systems in place to ensure confidentiality, which protect the respondent and also have a knock-on effect of increasing the number of respondents who feel comfortable to declare their SOGISC. The European Union also has experience with this via its two FRA LGBTI surveys (2012 and 2019). The OECD in a recently published report¹² also argues clearly that it is important to collect representative data on SOGISC.

Regarding the legal obligations surrounding collecting sensitive data for statistical purposes, advice is given in the European Commission's 2017 report Data collection in relation to LGBTI people.¹³ In addition, at the September 2021 Roundtable on Equality Data organised by the European Commission, Michal Czerniawski, Policy Officer at the European Data Protection Board, confirmed that there is no legal obstacle to collecting sensitive data for statistical purposes: "Data protection rules do not stand in the way of statistical research and the collection of equality data. On the contrary, the rules allow for the correct processing of data while ensuring the respect of fundamental rights [...] [F]or equality research, bodies don't need personal data but can process data in its aggregated form or anonymised form without knowing whose data they are processing. In this case, GDPR does not apply as the data being processed is not personal data".

Best practice examples

When designing the inclusion of questions related to sexual orientation, gender identity and sex characteristics in the ESOP, we can look at a number of best practice examples from countries already carrying out this data collection in their census. These best practices are designed to be used collectively; particularly with questions designed to identify trans and

¹¹ European Commission (2017), "Analysis and Comparative Review of Equality Data Collection Practices in the European Union: Data Collection in Relation to LGBTI People", available from: <https://ec.europa.eu/newsroom/just/redirection/document/45605>

¹² OECD (2020), "How could OECD countries better include LGBTI people, beyond passing LGBTI-inclusive laws?", available from: <https://www.oecd-ilibrary.org/sites/00785b38-en/index.html?itemId=/content/component/00785b38-en>

¹³ European Commission (2017), "Analysis and Comparative Review of Equality Data Collection Practices in the European Union: Data Collection in Relation to LGBTI People", available from: <https://ec.europa.eu/newsroom/just/redirection/document/45605>

intersex people, it is vital to ask specific, targeted questions that do not result in the erasure of specific experiences or marginalisations.

Sexual orientation

In the OECD, the first country to include sexual orientation in their census was the UK in March 2021. You can find [here](#) the question and explanatory note for sexual orientation. In January 2021, Australia released a [Standard for the collection and dissemination of data relating to sex, gender, variations of sex characteristics and sexual orientation](#). This Standard provides important guidance on definitions and data collection methods of SOGISC.

Gender/gender identity

Data collection specifically seeking to address the **protected ground of gender identity** must be able to detect if individuals identify as trans. A question formulated to query the gender identity of a person only, however, will not collect this information. For example, a trans woman (who identifies her gender/gender identity as a woman) and a cis woman (who identifies her gender/gender identity as a woman) would answer a question such as “What is your gender identity?” in exactly the same way - by selecting “woman” from the options. In order to collect data on trans respondents, the Australian 2021 Standard¹⁴ uses the term “gender” in an inclusive way to cover gender identity, as it “refers to current gender, which may be different to sex recorded at birth and may be different to what is indicated on legal documents”.

We recommend instead using a 3-question process to ask:

1. About the individual’s sex registered at birth,
2. About their current gender/gender identity, including with one or more options to capture non-binary identities (see the Australian Standard above for best practice)¹⁵,
3. About if they currently identify or have ever identified as trans, using the most inclusive language possible. See the UK model below for best practice on this question.¹⁶

This allows for data on trans persons to be disaggregated, where a question only on gender identity does not.

In the OECD, the UK was also the first country to include gender identity in their census in March 2021. You can find [here](#) the question and explanatory note related to gender identity. This census collects data on “sex assigned at birth” and compares it with a specific question

¹⁴ Australian Bureau of Statistics (2021), “Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables”, available from: <https://www.abs.gov.au/statistics/standards/standard-sex-gender-variations-sex-characteristics-and-sexual-orientation-variables/latest-release>

¹⁵ The question asks to select one of the following options to answer the question “How[do/does] [you/Person's name/they] describe [your/their] gender?": “Man or male”/ “Woman or female” / “Non-binary” / “[I/They] use a different term (please specify)”/ “Prefer not to answer”

¹⁶ UK Office for National Statistics (2021), “Census 2021; Question 27: ‘Is the gender you identify with the same as your sex registered at birth?’”, available from: <https://census.gov.uk/help/how-to-answer-questions/paper-questions-help/is-the-gender-you-identify-with-the-same-as-your-sex-registered-at-birth>

'Is the gender you identify with the same as your sex registered at birth?'¹⁷ to determine whether a respondent is trans or not. The census was guided by an [ethical framework](#).

Sex characteristics

The Australian standard also includes the ground of sex characteristics and as such explicitly includes intersex persons/persons with variations of sex characteristics as a highly vulnerable group of the population. Although this standard considers that setting an age restriction on some grounds may be appropriate, data collection of European surveys (i.e., the EU LGBTI Survey II) clearly demonstrates the importance of access to data for children and young people.

We recommend to include a question on variations of sex characteristics as suggested in the Australian guidelines: 'Were you born with a variation of sex characteristics (sometimes called 'intersex' or 'DSD')?' with the options to answer yes/no/don't know/prefer not to answer."

Additional Comments to the Responses to European Statistics on Population consultation questionnaire

On 5. Statistics at local/municipality level

Currently, National Statistical Institutes (NSIs) provide essential population and housing data at local /municipality (LAU) level every 10 years as part of the census. The questionnaire asks if it should become annual. We suggest every 4-5 years, as it would help to monitor developments and trends better if the frequency would be higher than once every decade, but is a more reasonable amount of time between each data set regarding cost and time.

On 13. Voluntary statistics on marriages, divorces, legally induced abortions, infant mortality and loss of citizenship)

The development of pre-natal screening in recent years allows for more intricate surveillance of a foetus. Many European countries now offer screening in the first trimester of pregnancy.¹⁸ Screening includes identifying so-called disabilities (e.g. so-called Down syndrome), as well as intersex variations. Parents of intersex children/children with a variation of sex characteristics across the EU have reported to OII Europe in recent years that they were strongly recommended and even, in some cases, coerced to abort a healthy foetus who was detected during pre-natal screening to have a variation of sex characteristics. If the proposal to add "sex characteristics" was followed, important data on legally induced abortion on the grounds of sex characteristics would become available.

If the proposal to add "gender identity" was followed, information on births, legally induced abortions and infant mortality can provide important information on pregnancy and sexual health and reproductive rights needs. Trans people have been historically subjected to forced

¹⁷ Ibid.

¹⁸ European Commission, Guide on Prenatal Screening and Diagnosis, available from: https://eu-rd-platform.jrc.ec.europa.eu/eurocat/eurocat-data/prenatal-screening-and-diagnosis/guide_en

sterilisation and other means of suppressing procreation. Sexual health and reproductive services should therefore be particularly aware of trans people's needs.

On 15. Statistics on equality and non-discrimination characteristics

(Additional grounds)

We support the introduction of **gender** into the collected grounds. When collecting "gender" data, it is paramount to ensure accurate data-sets, and that information is collected on grounds of self-determined gender (identity) and not legally registered gender (see section above on Best practice examples: Gender/gender identity). One reason is that a census asks the individual and provides thus an important complementing set of data to official registries. As for any other ground surveyed in a census the source of information needs to be self-report and self-determination.

In contrast, collection only on grounds of "sex" might lead to confusion, provide inaccurate results and signal denial to trans, non-binary and intersex persons. Moreover, in languages with no differentiation between "sex" and "gender", "sex" might be interpreted to refer to either biological sex or legally registered sex, which would not provide accurate data for trans, non-binary and intersex respondents. Having to report their "sex" would further signal to trans and non-binary persons that their (gender) identity is not recognised, denying their existence. It might even be a traumatic experience. This is likely to lead to higher drop-out rates in the census and less open answers.

We strongly support the introduction of "sex characteristics" into the collected grounds (see section above on Best practice examples: Sex characteristics). In most EU countries intersex persons, i.e. persons with a variation of sex characteristics, are assigned male or female at birth, but are discriminated against structurally and in every-day-life, and subjected to human rights violations on the grounds of having a variation of sex characteristics. Those specific violations are specific to intersex persons and can hence only be identified through the ground of "sex characteristics".

We are available to advise and further discuss best options for including LGBTI people in the most complete way possible in the European Statistics on Population. Please refer to the below contact details of our organisations for follow-up on this:

The International Lesbian, Gay, Bisexual, Trans, Queer and Intersex Youth & Student Organisation (IGLYO)

<https://iglyo.com> | Contact: Rubén Ávila Rodríguez (they/them), Policy and Research Manager, ruben@iglyo.com

Transgender Europe (TGEU)

<http://tgeu.org> | Contact: Richard Köhler (he/him), Advocacy Director, richard@tgeu.org

Organisation Intersex International Europe (OI Europe)

<https://oiieurope.org/> | Contact: Dan Christian Ghattas (he/him), Executive Director,
dan@oiieurope.org

The European Region of the International Lesbian, Gay, Bisexual, Trans, and Intersex Association (ILGA-Europe) www.ilga-europe.org | Contact: Belinda Dear (she/her),
Advocacy Officer, belinda@ilga-europe.org