



Submission on the revision of the Victim's Rights Directive

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OII Europe (Organisation Intersex International Europe) is the European intersex umbrella organisation with intersex-led member organisations in 20 European countries. OII Europe advocates for the protection of intersex people's human rights, raises awareness of intersex issues in society, e.g., through campaigns during Intersex Awareness Weeks, and supports the growth of the European intersex community together with its growing number of member organisations and allies through measures like the annual OII Europe Community Event & Conference.

OII Europe is a framework partner to the European Commission and holds expert status with the SOGI Unit of the Council of Europe. Since 2012 OII Europe has been regularly consulted on intersex issues by the Office of the United Nations High Commissioner for Human Rights, the Parliamentary Assembly of the Council of Europe, the Bioethics Committee of the Council of Europe, the European Parliament, the European Commission, the European Union Agency for Fundamental Rights, the European Network of Equality Bodies, the European Commission against Racism and Intolerance and national governments.

The NGO OII Europe was created in 2015, as an extension of a network of the same name set up in 2012, and is based in Berlin.

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

Introduction:

OII Europe highly welcomes the public consultation for the update of the Victims' Rights Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, which aims to ensure that victims of crime across the EU are able to access support services, adequate protection and appropriate information concerning their rights.

We would like to take this opportunity to contribute the following recommendations for the revision of the Victims' Rights Directive to ensure that all victims of crime across the European Union are recognised and treated in a non-discriminatory manner and receive adequate support and protection throughout their interactions with competent authorities and support staff.

The 2021 FRA report on Crime, Safety And Victims' Rights highlights that highly vulnerable parts of the population, including but not limited to, lesbian, gay, bisexual, trans and intersex people, experience higher rates of physical violence and harassment¹. It is therefore of the utmost importance that the revised Directive explicitly and effectively addresses the needs of all victims who are at a heightened risk of experiencing violence and who continue to face significant barriers in reporting crimes and receiving the support they require.

While the directive in its current version does include LGBT persons to a certain extent, it does not yet explicitly recognise - and thereby protect - intersex persons as victims of bias motivated crime, in particular intersexphobic attacks, and as victims with specific needs who require specific protection measures, as suggested in the questionnaire.

This revision of the Victim's Rights Directive is therefore of particular importance, as it holds the potential to significantly improve the situation of victims with specific needs and vulnerabilities, including but not limited to, intersex persons, by addressing its current limitations.

We therefore would like to encourage the European Commission to ensure that the revised directive:

- **explicitly includes intersex persons in the protective framework of the Directive as a**

¹ FRA 2021 report on Crime, Safety and Victims' Rights, p.19 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-crime-safety-victims-rights_en.pdf; EU Gender Action Plan III, 25 November 2020, p.4 affirms that every human being, including LGBTI victims, must be able to exercise their human rights, must be able to participate in decisions concerning them and must be able to seek redress when their rights are violated. https://ec.europa.eu/international-partnerships/system/files/join-2020-17-final_en.pdf

highly vulnerable part of the population by adding the ground “sex characteristics” to the respective recitals and articles (see below)

- recognises intersex victims as **victims with specific needs**, by including, but not limited to, adequate training of professionals working in the area of victim support on how to support intersex victims.
- explicitly recognises intersex victims as victims of **bias-motivated violence**.

The following recommendations address ways on how to achieve this by

- ensuring improved protection of intersex victims of crime,
- increasing the capacity of victim support services to meet needs of intersex persons as a highly vulnerable group of the population,
- ensuring the possibility for victims with intersectional and marginalised identities, such as for example racialized and migrant intersex victims or intersex victims with a disability and for victims in detention, to report a crime,
- fostering cooperation and exchange between victim support organisations and national bodies which is inclusive of intersex victims’ needs
- improving access to legal aid for intersex victims of crime

Protecting intersex victims

Ensuring the general protection of intersex victims

According to data from the 2019 FRA LGBTI survey², among all LGBTI respondents, intersex (42%) and trans (48%) people experienced the highest rates of harassment for being LGBTI in the year before the survey. The data shows that in the five years before the survey 22% of intersex respondents experienced a **physical and/or sexual attack** for being LGBTI, with intersex persons being the most affected group among LGBTI people. A further 38% of intersex people reported experiencing **violent in-person threats** due to being LGBTI at least once in the year before the survey, and 27% reported experiencing such threats six or more times. The findings get even more worrying when looking at the situation of young people: 14% of the young intersex respondents (aged 15-17) stated they suffered from physical or sexual attacks due to being LGBTI in the 12 months before the survey. A further 79% of respondents reported physical attacks, while 20% reported suffering sexual attacks or a combination of physical and sexual attacks. This means that at least **14% of intersex youth experienced incidents that meet the criteria of a criminal offense and of bias motivation.**

Reports given by member organisations to OII Europe have shown that intersex persons are most often not yet fully included in the transposition of protective measures, as a result of the still prevailing lack of **explicit mention of the protective ground of sex characteristics**. We therefore strongly urge the European Commission to **amend the Directive such that intersex persons are explicitly included in its protective framework:**

- **Recital 9:** Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, [**sex characteristics**], residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal

² European Union Agency for Fundamental Rights (2020). [A long way to go for LGBTI equality](#). All figures quoted from here on are the result of our own research through the Data Explorer, unless otherwise specified.

situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

Violence against intersex persons is gender-based violence

LGBT persons, including intersex persons, are particularly vulnerable to gender-based violence³. The European Parliament, in its Resolution on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU⁴, has highlighted that “LGBTIQ+ persons are also victims of gender-based violence because of their gender, gender identity, gender expression and sex characteristics” and that gender-based violence is driven by a desire to punish those seen as transgressing societal norms of gender hierarchies, gender expression and binary gender systems.

Furthermore, in its LGBTIQ Equality Strategy 2020-2025, the Commission states that **harmful practices** against women and girls, *in all their diversity*, are forms of gender-based violence and identifies **intersex genital mutilation (IGM)** as a harmful practice. At international level IGM is recognized by human rights monitoring bodies, including but not limited to, UN treaty bodies, as a harmful practice and a form of torture⁵. The European Parliament, resolution (referred to above), has also identified intersex genital mutilation as a form of gender-based violence and a form of femicide and has called on Member States to ban female and intersex genital mutilation⁶.

Victims of IGM are no different to victims of other harmful practices, and suffer the same physical, psychological and emotional harm and losses. IGM also shares several commonalities with FGM, including but not limited to, the desire to preserve and assert domination over

³ European Commission [LGBTIQ Equality Strategy 2020-2025](#), see p.5

⁴ European Parliament, [Resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83\(1\) TFEU](#) (2021/2035(INL), Recital H

⁵ The Parliamentary Assembly of the Council of Europe (PACE) in its resolution “[Promoting the human rights of and eliminating discrimination against intersex people](#)” (2017), the European Parliament in its “[Resolution on the Rights of Intersex People](#)” (2019) and the European Commission in its “[LGBTIQ Equality Strategy](#)” (2020) all call on Member States to end pathologisation and harmful medical treatment of intersex people, including surgeries such as IGM and other medical treatments.

⁶ *ibid.*

intersex persons and to exert social control over their sexuality⁷. We therefore urge the Commission to align its perspectives, by making the following amendment and ensuring that intersex victims of IGM are considered as victims of crime deserving of special support and protection, according to the definition as set out in the Directive:

- **Recital 17:** Violence that is directed against a person because of that person's gender, gender identity or gender expression, [*sex characteristics*] or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation, [*intersex genital mutilation*] and so-called 'honour crimes'. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.

In its recommendations to the Commission on the proposal for a Directive on combating violence against women and domestic violence, OII Europe has provided a detailed account of why it is paramount **to ensure that specialised support is also available to survivors of female genital mutilation as well as other harmful practices such as IGM⁸**, please see below.

Protecting intersex victims from secondary and repeat victimisation

The explicit **inclusion of “sex characteristics” among the grounds of personal characteristics** which place certain victims at a higher risk, will ensure that during personal assessments, law enforcement authorities are better able to determine whether intersex victims who are at risk of intersexphobic/bias-motivated attacks based on their sex characteristics - are in need of special protection measures. We wish to underline, however, the importance of intersex victims being able to choose whether they wish to disclose this information or not. The explicit

⁷ To read more about commonalities between IGM and FGM, see: Dan Christian Ghattas, Protecting Intersex people in Europe. A toolkit for law and policy makers. With digital Appendix and Checklist (ILGA-Europe and OII Europe, 2019), p. 12, available at <https://oiieurope.org/library-en/toolkit-cat/legal-toolkit/>

⁸ OII Europe's Feedback to the proposal for a directive on combating violence against women and domestic violence (May 2022). [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12682-Com\[...\]iolence-protecting-victims-and-punishing-offenders/F3261259_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12682-Com[...]iolence-protecting-victims-and-punishing-offenders/F3261259_en)

inclusion of “sex characteristics” would also provide **clarity to Member States in terms of the transposition and implementation of protective measures** to be inclusive of intersex victims:

- **Recital 56:** Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, *[sex characteristics]*, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.

Ensuring the respect of intersex victims' privacy

We welcome the initiative put forward by the Commission aiming to ensure that more specific requirements on how privacy measures can be strengthened are provided to Member States, thereby guaranteeing that victims' privacy rights are not infringed upon. The Directive sets clear standards to not only **prevent secondary and repeat victimisation**, intimidation and retaliation (recital 54) but also to dually ensure that the **personal characteristics** of victims are taken into consideration when assessing the level of protection required by victims during criminal proceedings. However, permitting posing questions and making enquiries about victims' personal characteristics and private life during such proceedings is incompatible with the protection of victims' dignity and private life and is contrary to the Charter of Fundamental Rights of the European Union. We therefore recommend that the following amendments be made to:

- **Article 23(3.c):** The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings: measures to avoid unnecessary questioning concerning the victim's private life *[including personal characteristics such as sexual orientation, gender identity and gender expression, and sex characteristics]* not related to the criminal offence;

We also recommend that these provisions are further strengthened by taking special precautions to ensure that trans and intersex victim's **medical history is kept private**. Requiring

the provision of medical records or certificates is stigmatising and increases the risk of (re)traumatisation for intersex victims, exposes victims to discrimination and infringes upon the victim's dignity and their right to privacy and family life, as laid down in Article 7 of the EU Charter of Fundamental Rights.

Criminal procedures

In addition, we recommend that special care is taken to ensure that during criminal proceedings, victims are allowed to choose an interviewer of the sex *or gender* with whom they feel the most comfortable and safe:

- **Article 23(d):** all interviews with victims of sexual violence, gender-based violence, or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the ~~same~~ sex *[or gender]* as *[chosen by]* the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

Intersex victim's ability to access support services

Intersex victims need to be explicitly included into support measures

LGBTI persons are a particularly vulnerable group, and are at a higher risk of experiencing violence, as the 2019 FRA LGBTI Survey⁹ shows. In particular, intersex people, together with trans people, have been identified by the survey as being **the most vulnerable group in the LGBTI spectrum** in regards to experiencing violence. The EU Strategy on Victims' Rights (2020-2025)¹⁰ therefore, identifies LGBTI+ victims, including trans and intersex victims, as victims with special needs that need specific attention and therefore require support services that are alert to these needs.

By expanding the definitions of "vulnerable victims" to explicitly include intersex victims, through adding the ground of sex characteristics, intersex victims will be able to access the support they require. In addition to being victims of gender-based violence, being intersex, like being an LGBT person, increases the vulnerability of the person in a way specific to intersex people (or LGBT people respectively). It is therefore key that support measures and services

⁹ See 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>>. Pages 39 and 42 of the report outline rates of hate-motivated physical/sexual attacks and harassment among the groups of respondents.

¹⁰ European Commission, Strategy on Victim's Rights 2020-2025, p. 15 <https://eur-lex.europa.eu/legalcontent/EN/TXT/PDF/?uri=CELEX:52020DC0258&from=EN>

take this added vulnerability explicitly into account. The explicit inclusion of LGBTI victims would also provide clarity to Member States in terms of the transposition and implementation of such support measures:

- **Recital 38:** “Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, **[LGBTI victims]** or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The types of support that such specialist support services should offer could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims.”
- **Article 9(3.b):** Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide: targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence, **[LGBTI victims]** and victims of violence in close relationships, including trauma support and counselling.
- **Article 22(3):** “In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based

violence, **[LGBTI victims]**, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.”

In addition, we recommend that the Directive is further revised to improve the expansion of support services to better respond to victims specific needs and facilitate their recovery from crime - including but not limited to **medical support**¹¹ - but that caution should be taken to ensure that such forms of support are **fundamental rights based and expert-sensitive**, so as to eliminate the risk of intersex and trans victims experiencing (re)traumatisation when coming into contact with medical practitioners.

Strengthening the role of support organisations

We applaud the European Commission for including a question about strengthening the cooperation and coordination between Member States’ authorities and organisations involved in individual assessments of victims’ needs, including specialised NGOs working on victims’ support, in the questionnaire to this public consultation. Victim’s support organisations contribute significantly to making the fundamental rights of persons living in the EU a reality. However, data from the 2021 FRA report on hate crime reporting¹² as well as reports given to OII Europe show that victim’s support organisations often lack knowledge about the specific needs of intersex victims. In contrast, intersex organisations have specific and unique expertise on how to best support intersex persons. Therefore, facilitating the cooperation between victim’s support services and organisations which work with specific communities is key.

The 2015 FRA report “Victims of crime in the EU: The extent and nature of support for victims”¹³, shows that including persons who are part of communities; and who are best placed to understand the specific needs of victim’s support frameworks, is key to ensuring that the specific needs of vulnerable minorities are met. Therefore, cooperation between authorities, victims support organisations and organisations working with specific constituencies should be strengthened so as to best respond to the specific needs of vulnerable minorities, including but

¹¹ As mentioned in recital 38 on Specialist support and legal protection for vulnerable victims, and Article 20.d on the Right to protection of victims during criminal investigations

¹² The [FRA 2020 report on hate crime reporting](#) emphasises the need to strengthen cooperation between police and CSOs who have a “better understanding of the situation, data availability and insight into trends” as well as “improved and coordinated responses and tailored victim support, including on practical aspects such as shelter needs, transport, intercultural mediation”. See p.51.

¹³ FRA report Victims of crime in the EU: the extent and nature of support for victims, p.13 + p.68, https://fra.europa.eu/sites/default/files/fra-2015-victims-crime-eu-support_en_0.pdf

not limited to, intersex persons. Such cooperation can facilitate referrals and help prevent secondary victimisation.

In addition, organisations working with specific constituencies and peer-counsellors play an important role in the case of bias-motivated crimes, and are also key players in policies aimed at **increasing confidence** in law enforcement authorities and curbing underreporting. Therefore we highly encourage the European Commission to include civil society organisations who work with vulnerable minorities in the scope of measures to strengthen support services. We also welcome the Directive's focus on improving funding/financial support to victim's support organisations (Article 25.4 on the Training of practitioners). We would like to encourage the European Commission to include organisations working with specific vulnerable communities in the scope of supported organisations, in order to ensure that these organisations can provide their specific expertise in a sustainable manner. Intersex organisations in Europe, for example, are still heavily underfunded and under-resourced, while, at the same time, being the organisations best equipped to inform about and support intersex victims.

With reference to Article 25(4), we therefore encourage the Directive to include a **budget** specifically aimed at **hiring experts** victim's support organisations and from organisations supporting and working with specifically vulnerable constituencies, as well as a budget aimed at **supporting the work of organisations** who provide essential services to vulnerable minorities, e.g. sex and gender minorities, including but not limited to intersex persons, who may choose not to go to formal institutions/report crimes to law enforcement out of fear of harassment or interphobic discrimination.

Ensuring safe access to shelters for LGBTI+ victims

We welcome the proposed update of the Directive's to include the provision of minimum standards related to **physical protection measures**, including the provision of specialised shelters to victims. Support from victim support services should be made available to all victims, thereby guaranteeing that they are safe and are assisted in returning to independent living after having been exposed to violence or affected by crime.

We therefore recommend that in the revised Directive, provisions are made to ensure that -

where LGBTI victims are concerned - such **shelters are LGBTI-friendly¹⁴ and can accommodate the specific needs of, in particular but not limited to, trans and intersex persons** and that careful consideration is taken to guarantee the right of intersex, trans and non-binary people (whether documented or undocumented) to access safe and non-discriminatory spaces, **based on a model of self-determination.**

Training

The LGBTIQ Equality Strategy 2020-2025¹⁵ of the European Commission emphasised that the **under-reporting of crimes to the police** or other organisations **remains a serious problem** (see section below on Improving intersex victims' reporting). The inclusion of initiatives aimed at improving the training of police, lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services, as set out in recital 61 on training and recital 63 on measures to curb underreporting, is therefore key to create a safe space for vulnerable victims and victims with specific needs and hence to encourage them to report crimes and combat underreporting.

However, it is of the utmost importance that additional training measures for the personnel operating victim support help-lines, personnel from restorative justice authorities and other competent authorities are established to ensure that knowledge gaps¹⁶ are filled, prejudices are tackled and that the basis for an inclusive and sensitive approach towards victims of marginalised groups, including but not limited to LGBTI victims, can be provided. Staff operating such help-lines need to be sensitised to the specific **needs and vulnerabilities of victims from marginalised groups, such intersex victims**, so that they do not face stigmatisation, discrimination or (re)traumatisation.

In its LGBTI Equality Strategy 2020-2025¹⁷ the European Commission emphasises that strategies set out protect the rights of LGBTI persons aim to ensure that “women and men, in

¹⁴ The EU Strategy on Victim's Rights 2020-2025 mentions the need to set up integrated and targeted specialist support services for the most vulnerable victims, including LGTBI+ safe-houses, p.15 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0258&from=EN>

¹⁵ European Commission [LGBTIQ Equality Strategy 2020-2025](#), see p.13

¹⁶ In 2020, an academic study investigated the level of knowledge about intersex in the population of the Netherlands and Flanders: it concluded that “More than half (52%) of the respondents did not know what the term intersex meant, only 15% did”. See van Ditzhuijzen, J., & Motmans, J. (2020). *Kennis En Opvattingen over Intersekse : Een Nulmeting in Nederland En Vlaanderen*. Rutgers & UZ Gent, p. 10.

¹⁷ European Commission, LGBTIQ Equality Strategy 2020-2025, p. 21 and p.24 https://ec.europa.eu/info/sites/default/files/lgbtiq_strategy_2020-2025_en.pdf

all their diversity, are equal, and [that] they are free to pursue their life regardless of their sexual orientation, gender identity/expression or sex characteristics”. Therefore, “Specialist training” on how competent authorities should interact with victims should align itself with these goals and should thus explicitly include **training which is LGBTI-, and in particular trans- and intersex-sensitive:**

- **Recital 61:** Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive [*and inclusive of women and men in all their diversity*]. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap.

As suggested in the questionnaire, we recommend that “soft skills” should equally include compulsory training on LGBTI issues, to ensure the capacity of staff working with or coming into contact with LGBTI victims - particularly trans and intersex victims - are sensitive to the specific challenges of this group of the population. Such challenges may include, but are not limited to, the victim having documents that do not match their gender identity or gender expression. Member States should ensure that support staff and law enforcement authorities are able to take the appropriate steps to keep LGBTI victims safe and guarantee that all victims are protected and will receive adequate and non-discriminatory support when seeking to report crimes.

Increasing intersex victims' access to justice

All victims have the right to access justice and information concerning their rights as enshrined in Article 47 of the Charter. However, with the existence of persons with variations of sex characteristics being still not common knowledge with professionals and the general public, including police, lawyers, prosecutors and judges and practitioners who provide victim support or restorative justice services, intersex victims are still at high risk of meeting with confusion and ignorance when attempting to access information about their rights or seeking justice while they are already in a vulnerable state. Ensuring that all victims, including but not limited to intersex victims, are able to access information regarding their rights is key to guarantee that they are consequently able to access justice and remedy.

Improving intersex victims' reporting

In its LGBTIQ Equality Strategy, the European Commission emphasises that **everyone has the right to safety**, be it at home, in public or online, while equally recognising that “LGBTIQ people suffer disproportionately from hate crime, hate speech and violence”. However, according to FRA 2019 LGBTI survey¹⁸, only one-fifth of trans people and one-fourth of intersex people who experienced an incident of harassment or physical or sexual attack within the 12 months prior to the survey reported the last hate-motivated physical or sexual attack to any authority, and one-third of those who didn't report to the police did so **out of fear of an intersexphobic, homophobic or transphobic response**¹⁹. In addition, the prevailing lack of **explicit mention of the protective ground of sex characteristics** (see section “Protecting intersex victims”) still causes a significant barrier for intersex people wishing to report **bias-motivated hate crimes**.

For victims with intersectional identities, for example intersex migrants (documented and undocumented), the risk of underreporting further increases. According to data from the Second European Union Minorities and Discrimination survey²⁰, around some 90 % of incidents of harassment motivated by hatred experienced by migrants and minorities in the EU, were not

¹⁸ 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>. All figures quoted from here are the result of our own research through the Data Explorer, see pages 39 and 42.

¹⁹ The European Commission highlights in the [LGBTIQ Equality Strategy 2020-2025](#), that under-reporting of hate crimes to the police remains a serious problem, stemming from a lack of trust in law enforcement, fear of LGBTIQ-phobic reactions or victim-blaming, p.13.

²⁰ FRA 2017 EU-MIDIS II Second European Union Minorities and Discrimination Survey, p.62 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-eu-midis-ii-main-results_en.pdf

brought to the attention of the police or other authorities and services. For intersex and trans migrants, who face additional and intersectional forms of discrimination, additional barriers exist when it comes to reporting crimes. TGEU's member organisations e.g., in the Netherlands, Sweden, Italy have reported trans migrants being deported after coming in contact with authorities regarding a crime committed against them. Furthermore, supplementary support is often needed, especially for trans and intersex migrants **without local language knowledge**²¹.

We therefore recommend that the Commission carefully monitors the transposition of Article 1 with **respect to the victims' residence status which should not have an influence on their ability to report a crime**, so as to ensure that trans and intersex migrants in the EU who are in a situation of vulnerability and who may have difficulty in accessing justice, are not deported when they report a crime²².

Lastly, we recommend that victims using services that are part of the **one-stop-shop approach** network - as suggested in the questionnaire - be allowed to choose whether they wish to interact with police (to report crimes or other) or not, and that such networks remain accessible and open to those victims who may seek medical, legal or psychological support without having reported a crime.

Improved data collection

We welcome the Commission's proposal to systematically collect adequate data on victims' ability to access their rights. Anti-LGBTI hate crimes and violence are still common occurrences in the EU that remain invisible in official statistics²³, and Member States still fail to record these bias-motivated hate crimes properly and systematically.

Yet, further efforts need to be made to **systematically record, collect and publish annual data** on anti-LGBTI hate crime, thereby enabling Member States to develop effective, evidence-

²¹ See UNCHR report, *Protecting persons with diverse sexual orientations and gender identities: a global report on UNHCR's efforts to protect lesbian, gay, bisexual, transgender, and intersex asylum-seekers and refugees*, (December 2015). <https://www.refworld.org/docid/566140454.html>

²² See for instance Oxford University COMPAS (the Centre on Migration, Policy, and Society) project on '[Safe reporting of crime for victims and witnesses with irregular status in the US and Europe](#)', published in 2019 or the results of the project by PICUM on '[Insecure justice? – residence permits for victims of crime in Europe](#)'.

²³ See EU Strategy on Victim's Rights 2020-2025, p.12, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0258&from=EN>

based legal and policy responses to this phenomenon, as mentioned in the FRA 2018 *Hate crime recording and data collection practice across the EU* report²⁴.

As long as the grounds of sex characteristics, gender identity and gender-expression are not included in documentation and monitoring measures and processes, meaningful, systematic and disaggregated data on bias motivated violence, e.g. intersexphobic or transphobic attacks, cannot be collected. In order to record data that adequately reflects the bias-motive of crimes, committed against intersex persons, data collection efforts should explicitly include the motive of intersexphobia, hence expanding the relevant grounds of protection to include sex characteristics. Already in the 2021 European Commission Roundtable on equality data, the Director of Resources at Eurostat highlighted that data collection efforts should **go beyond the six EU grounds of discrimination**²⁵, which - in the case of intersex-phobic crimes - should be ensured through adding “sex characteristics” to the scope of grounds laid out in Recital 9 (see Section “Protecting intersex victims”).

The Directive, in its current version, does not include bias-motive as one of the essential components of effective policy making. In the LGBTIQ Equality Strategy 2020-2025²⁶, the Commission commits to “support training to help law enforcement personnel identify and record LGBTIQ-phobic bias and increase crime reporting” and that it supports the collection of “detailed intersectional data”. Furthermore, disaggregated data collection is essential in order to understand and document the actual dimension of the phenomenon, to give it visibility and send a clear message to potential perpetrators that such crimes are not tolerated. Therefore, we recommend that the following amendment be made to:

- **Recital 64:** Systematic and adequate statistical data collection is recognised as an essential component of effective policy making in the field of rights set out in this Directive. In order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant statistical data related to the application of national procedures on victims of crime, including at least the number and type [*and bias-motive*] of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims. Relevant statistical data

²⁴ European Union Agency for Fundamental Rights (2018). *Hate crime recording and data collection practice across the EU*, available at: <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-hate-crime-recording_en.pdf>, p. 23

²⁵ https://roundtable-equality-data-2021.eu/media/j50bwrjv/roundtable-equality-data_event-report.pdf , p. 5

²⁶ European Commission, *LGBTIQ Equality Strategy 2020-2025*, p. 15 and p.22
https://ec.europa.eu/info/sites/default/files/lgbtiq_strategy_2020-2025_en.pdf

can include data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by healthcare and social welfare services and by public and non-governmental victim support or restorative justice services and other organisations working with victims of crime. Judicial data can include information about reported crime, the number of cases that are investigated and persons prosecuted and sentenced. Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as the number of referrals by police to victim support services, the number of victims that request, receive or do not receive support or restorative justice.

Furthermore, provisions must be made to ensure that sufficient human and financial resources are allocated to the implementation of these data collection efforts, and that Member States have a system in place for the collection, development, production and dissemination of such data, so that data collection efforts are sustainable.