

Current migration situation in the EU: Lesbian, gay, bisexual, transgender and intersex asylum seekers

March 2017

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons may have special reception needs and/or grounds for international protection that are related to distinct vulnerabilities. Member State authorities need to establish whether or not this is the case using adequate, effective and fundamental rights-compliant ways to ensure appropriate reception and protection conditions for LGBTI persons. This report reviews how asylum claims based on sexual orientation and gender identity are assessed and analyses the existence of specific reception measures for LGBTI persons.

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Thematic focus: LGBTI asylum seekers

According to ILGA World's latest report on state-sponsored homophobia,¹ 78 countries in the world still criminalise people based on their sexual orientation and five apply the death penalty to such cases. Confronted with this reality, in September 2016, the United Nations (UN) appointed its first Independent Expert on violence and discrimination based on sexual orientation and gender identity.

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) asylum seekers face multiple forms of discrimination, and asylum authorities and procedures are often not equipped to deal with their particular situation. Under EU law, individuals persecuted based on their sexual orientation and gender identity qualify for refugee status. There is increasing awareness of, and guidance on, the reality that people flee to avoid persecution based on their sexual orientation and/or gender identity and that they can qualify as refugees.

The Qualification Directive (2011/95/EU),² which defines the criteria for international protection, expressly mentions sexual orientation and

gender identity as one of the possible reasons for persecution (Article 10).

Sexual orientation and gender identity are not referred to in the Reception Conditions Directive (2013/33/EU). According to Article 18 (3) of the directive, Member States must take into consideration gender- and age-specific concerns and the situation of vulnerable persons when housing applicants for international protection. Article 21 includes a list of persons who qualify as vulnerable persons under the directive.³ Although LGBTI applicants are not explicitly mentioned, this list is not exhaustive, so it can be argued that LGBTI asylum seekers can also be regarded as vulnerable.⁴

NOTE ON TERMINOLOGY

This report uses the term LGBTI throughout, even though the measure or policy in place may only concern some categories of persons included in this group. Virtually no information could be collected on intersex asylum seekers.

MAIN FINDINGS

- There are no official statistics on the number of asylum claims based on sexual orientation or gender identity.
- Only a few EU Member States have specific national guidelines for interviewing LGBTI persons.
- Civil society representatives note that eligibility interviews are often too short and lack specific attention to persecution based on sexual orientation or gender identity. According to NGOs, asylum officers tend to have stereotypical views on sexual orientation and gender identity. Support from civil society has a significant impact on the appropriate handling of asylum cases and applicants' openness towards asylum authorities.
- In most EU Member States there are no special accommodation facilities for LGBTI persons, but special measures – such as transfers to single rooms – can often be taken in case of abuse or harassment. However, civil society emphasises the need to take preventive measures.
- Training on specific LGBTI vulnerabilities is provided to reception centre staff randomly, usually by relevant NGOs. Information leaflets from NGOs are often available, but usually not in all needed languages.
- Most incidents of violence or harassment motivated by bias against LGBTI asylum seekers are not reported and are not recorded as such.
- There are insufficient guidelines on the provision of specific healthcare (e.g. hormonal treatment) to transgender persons who already started treatment in their countries of origin. The interruption of treatment in such cases can have severe consequences.

Statistics and numbers

None of the Member States covered in this report were able to provide statistics on asylum seekers whose claims are based on sexual orientation or gender identity – except for Slovakia, which provided partial numbers. Data on the grounds on which asylum claims are based are generally not collected. Gathering statistics on claims based on sexual orientation or gender identity can raise data protection issues or violate the confidentiality of information collected during asylum interviews.

Civil society representatives provided estimates based on the number of applicants who contacted them or were assisted by them. These are reproduced in Table 1. The estimates are not comprehensive and often cover only the specific area of the country in which the NGO operates. They show that numbers are significant.

Assessment of LGBTI asylum claims

The first part of this report focuses on asylum procedures. It reviews how claims based on sexual orientation and gender identity are examined and decided, provides a snapshot of available training and guidance for eligibility officers, and touches upon the role of interpreters.

➤ **In *X, Y and Z* and *A, B and C*, the Court of Justice of the European Union (CJEU) defined clear parameters for the collection of evidence and the assessment of asylum claims based on sexual orientation.⁵**

The European Commission in its List of Actions to advance LGBTI equality monitors the adequate transposition of all legal instruments of the Common European Asylum System, including the

Qualification Directive (2011/95/EU). Sexual orientation and gender identity will be mainstreamed in the daily work of the Commission and the European Asylum Support Office (EASO) in the area of asylum by 2019.⁶

Collecting evidence regarding claims based on sexual orientation or gender identity

Under Article 4 of the Qualification Directive (2011/95/EU), applicants have a duty to substantiate their claims for international protection. Member States must assess all relevant elements of the application, taking into account, among others, the situation in the country of origin as well as the applicant's statements and documentation.

The CJEU clarified that the assessment of claims based on sexual orientation must be consistent with the rights guaranteed by the EU Charter of Fundamental Rights – specifically, the right to human dignity (Article 1) and the right to respect for private and family life (Article 7).⁷ The CJEU underlined that:

- the assessment of the claim for international protection must examine the applicant's individual situation and not be based only on stereotyped notions (such as knowledge of gay organisations or gay bars);
- questions concerning details of an applicant's sexual practices are contrary to the fundamental rights guaranteed by the Charter, particularly the right to respect for private and family life (Article 7);
- tests to demonstrate sexual orientation (such as phallometry⁸ or production of video evidence of sexual acts) infringe on human dignity, the respect of which is guaranteed by Article 1 of the Charter.

Table 1: Number of asylum seekers with claims linked to sexual orientation or gender identity in 2016 – estimates by civil society organisations, 14 EU Member States

EU Member State	Estimated number of asylum seekers with claims linked to sexual orientation or gender identity	Source
Austria	n.a.	
Bulgaria	50-100*	Clients of LGBT Youth Organisation "Deystvie"
Denmark	70 new asylum seekers	Clients of LGBT Asylum NGO
Finland	500**	Clients of NGO HeSeta (operating in the capital area)
France	n.a.	
Germany	56	Clients of NGO Fliederlich (covers only Nürnberg, Bavaria)
Greece	32 (of whom 7 transgender and 23 homosexual)	Clients of Transgender Support Association
Hungary	n.a.	
Italy	80***	Clients of MigraBo LGBTI project
The Netherlands	Some 100-1000 LGBT applicants	Clients of COC Netherlands
Poland	2-3	Clients of The Campaign against Homophobia (<i>Kampania przeciwko Homofobii</i>)
Slovakia	0	NGOs Marginal, Human Rights League, Inicijativa Inakost'
Spain	n.a.	
Sweden	n.a.	

Notes: Estimates are not representative of the situation in the whole Member State, as they often cover only the geographical area in which the organisation is working.

* Figure covers period from January to June 2016

** Figure covers period from autumn 2015 to February 2017

*** Figure covers period from 2012 to February 2017

n.a. = not available

Source: FRA, 2017 (based on data provided by civil society organisations)

Despite the CJEU's clear guidance, civil society representatives in several Member States highlighted shortcomings in the way eligibility interviews are carried out. These are often too short and do not specifically address the applicant's

vulnerability, with some lasting only 25-35 minutes.⁹ Asylum officers typically do not ask questions about sexual orientation at their own initiative unless the asylum seeker raises the issue as a ground for international protection, noted

stakeholders contacted in Denmark,¹⁰ Hungary¹¹ and Italy.¹²

When a person claims persecution based on sexual orientation or gender identity, the type of questions posed to the applicant are similar across Member States, but the focus on stereotypical questions varies. In Sweden, for example, officers ask questions about the applicant's family life experiences but also about their knowledge of LGBTI organisations or meeting places in the country of origin.¹³ In Greece, more focus appears to be given to questions relating to, for example, gay bars in the country of origin. Civil society representatives point out that many applicants had to hide their sexual orientation or gender identity in their country of origin and are thus not in a position to successfully answer these kinds of questions.¹⁴

In a number of Member States – such as Finland, France and Sweden – interviewees noted that questions about a person's sexual life are not allowed as this would infringe the right to respect for private life.¹⁵ However, one French NGO indicated that this approach – designed to guarantee respect of individuals' intimate private life – leads to more abstract questions about sexual orientation being asked, which are poorly understood by applicants for international protection.¹⁶ At the same time, in Finland and Germany, NGOs reported unlawful, intimate questions being asked to test the credibility of asylum seekers' claimed sexual orientation.¹⁷

Asylum officers in several Member States generally – or at least in the presence of supporting organisations – adapt their verbal communication during interviews with transgender persons to avoid making them uncomfortable. However, for registration purposes, they take into account the gender indicated in official documents when available, or biological sex if it is not.¹⁸ Entries regarding gender can later be rectified, but this involves

following certain procedures. In Sweden, transgender applicants must wait for an official recognition of gender dysphoria or a similar diagnosis before they can register with their chosen names and gender identities. In Denmark, legal recognition of another gender falls under the competence of the Danish Civil Registration System, and can take place after a residence permit has been granted. Official recognition of gender dysphoria falls within the competence of the Danish Health Authorities.¹⁹

Assessing claims based on sexual orientation or gender identity

Assessments of international protection claims are based on documentary evidence (where available), the eligibility interview and on information relating to the situation in the country of origin. In simple terms, for claims based on sexual orientation or gender identity, asylum authorities first need to establish the applicant's sexual orientation and gender identity, then determine whether the applicant's acts or behaviour are criminally sanctioned or considered socially reprehensible in the country of origin and, if so, establish whether the applicant personally risks serious harm if returned.²⁰

➤ **In *X, Y and Z*, the CJEU provided useful guidance for assessing asylum claims based on sexual orientation.²¹ The CJEU said that:**

- **homosexual individuals can constitute a particular social group under the refugee definition;**
- **criminalisation of homosexual acts alone does not, in itself, constitute persecution – however, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin must be regarded as**

disproportionate or discriminatory punishment and thus constitutes an act of persecution;

- it is forbidden to expect applicants to conceal their sexual orientation to avoid persecution.

Credibility assessment

One of the challenges faced by Member States when reviewing claims based on sexual orientation or gender identity concerns assessing the applicants' credibility. Helpful information includes evidence relating to the applicant's life, including the nature and frequency of social activities attesting to a homosexual social life, as documented, for example, in photographs or through social networks.²²

LGBTI organisations point to caseworkers' lack of understanding and knowledge of the specific situation of LGBTI persons.²³ An applicant's lack of information about LGBTI-related issues in their country of origin does not necessarily preclude a finding that the applicant faced a well-founded risk of persecution. However, according to the Swedish Federation for Lesbian, Gay, Bisexual, Transgender and Queer Rights (RFSL), applicants' stories may be questioned simply because they have insufficient knowledge of home country legislation or because they are not aware of local social meeting places or clubs for LGBTI persons. For example, RFSL indicated that a 16-year-old's application was rejected because he was not able to verbally formulate in sufficient detail his inner thoughts and emotions regarding his sexual orientation.²⁴

Civil society organisations in Hungary report that the authorities expect asylum seekers to provide irrefutable evidence that they belong to the LGBTI community. The authorities typically assign psychiatrists or medical doctors to confirm the asylum seeker's sexual

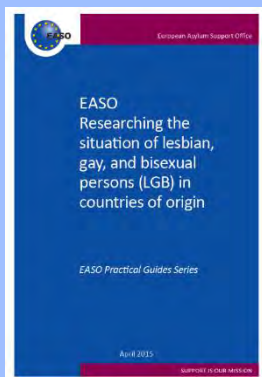
orientation, often through the use of the Rorschach test (also known as the 'inkblot test').²⁵ The Hungarian Helsinki Committee noted that this test, which focuses on the postures the asylum seeker prefers, is outdated but nevertheless relied upon by the authorities as a basis for asylum decisions.²⁶ In Finland, credibility assessments include additional questions based on the Difference, Stigma, Shame, Harm (DSSH) model by S. Chelvan,²⁷ but NGOs claim that case workers lack the skills and knowledge required for assessing asylum claims by LGBTI applicants.²⁸

Country of origin information

Accurate information on the situation of LGBTI persons in the country of origin is essential for decision-making. National asylum authorities use different sources for country of origin information, ranging from materials compiled by UNHCR in *Refworld* to EASO publications, the internet, as well as information gathered by state authorities. LGBTI organisations question their quality, indicating that the sources often lack LGBTI-specific country information or that information is outdated. NGOs are a key resource in this respect, but Member States are often unaware of this or unwilling to rely on them.²⁹

A particular challenge concerns safe-countries-of-origin lists, used by many EU Member States to speed up asylum procedures.³⁰ Such lists are often drawn up without reference to the specific risks of persecution by state bodies or non-state actors on grounds of sexual orientation or gender identity. In principle, Member States acknowledge that an otherwise "safe country" may not be considered safe for a specific group, including LGBTI persons. However, in such cases an applicant's late disclosure of their claim's gender identity or sexual orientation elements may have greater consequences, such as the asylum claim being rejected in an accelerated procedure with reduced safeguards.

Facilitating research on the situation of lesbian, gay, and bisexual persons in countries of origin



In April 2015, the EU's Asylum Support Office (EASO) published a guide for researching the situation of lesbian, gay and bisexual persons in countries of origin. The guide provides a list of sources and web links to useful information on the situation in countries of origin, serving the needs of both experienced and inexperienced country of origin researchers and case workers.

For more information, see EASO, [Researching the situation of lesbian, gay, and bisexual persons \(LGB\) in countries of origin](#), 2015.

Late disclosure of sexual orientation

Asylum applicants may be reluctant to disclose intimate aspects of their life. It is, therefore, not uncommon for information about an applicant's sexual orientation to emerge at a late stage.

Under Article 4 (1) of the Qualification Directive (2011/95/EU), applicants may be required to submit all elements needed to substantiate their application for international protection as soon as possible. The CJEU has held, however, that, given the sensitive nature of questions relating to someone's personal identity and particularly their sexuality, it cannot be concluded that the declared sexual orientation lacks credibility simply because, due to their reticence about revealing intimate aspects of their lives, applicants do not declare their homosexuality at the outset.³¹ Asylum interviews must take into account the personal or general circumstances surrounding an application and, in particular, applicants' vulnerability.³²

FRA data show that EU Member State policies in this aspect vary. In Sweden, for example, the Swedish Migration Agency's guidelines refer to the case law of the CJEU³³ and state that a delay in itself should not negatively affect the asylum procedure, although rejections on this ground do occur.³⁴ Applicants must justify

why the disclosure of their sexual orientation came at a later stage. According to a 2007 ruling of the Supreme Migration Court, this justification must be interpreted restrictively.³⁵ In the Netherlands, the situation improved following the judgment of the CJEU;³⁶ a few years ago, there was no room for late disclosure in the procedure.³⁷ A stricter approach was reported from Denmark, where late disclosures negatively affect credibility assessments.³⁸

➤ **Support from civil society has a significant impact on the appropriate handling of asylum cases, applicants' openness towards asylum authorities, and the justification of late disclosure of sexual orientation/gender identity.**

The Transgender Support Association in Greece emphasises that, at initial registration, asylum seekers rarely reveal their sexual orientation and instead state that their claim for international protection is based on their political beliefs. Applicants reveal the real reasons only after being empowered to do so by the association. In one case, asylum officers involved in second-instance asylum assessment procedures understood the situation after the

association filed a submission explaining why the applicant had not revealed the real ground for seeking international protection.³⁹ Similarly, in France, organisations that support LGBTI applicants report that they often need to explain the reasons behind late disclosure, generally explaining “interiorised” (hidden) homosexuality and noting that it is difficult for applicants to understand that it is in their interest to mention their sexual orientation.⁴⁰

Guidance and training

Guidance

In recent years, significant efforts were made to develop guidance on processing asylum claims based on sexual orientation and gender identity. In 2002, the UN High Commissioner for Refugees (UNHCR) published *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity* to provide legal interpretative guidance for governments, legal practitioners, decision-makers and the judiciary.⁴¹

EU Member States covered by this report use internal guidelines or guidance developed by the UNHCR and EASO, but only some refer to the UNHCR guidelines specifically relating to interviewing LGBTI applicants. Member States have developed comprehensive guidelines for interviewing LGBTI persons, including, for example, France⁴² and the Netherlands.⁴³ In France, the Office for the Protection of Refugees and Stateless Persons (OFPRA) developed these in cooperation with specialised associations (such as ARDHIS, ADHEOS, *Coordination lesbienne de France*, and others). Guidance on claims based on sexual orientation and gender identity can also be included in generic case-handling manuals, as is the case in Sweden,⁴⁴ where specific guidelines only serve as a complementary tool.⁴⁵ In the absence of formal guidance, Member States may rely on informal tools, such as in Finland, where a senior adviser specialised in vulnerable groups has

prepared a compilation of relevant materials for staff.⁴⁶

Training

According to Article 4 (3) of the Asylum Procedures Directive (2013/32/EU), Member States must ensure that the authorities responsible for an appropriate examination of applications are properly trained. The EU’s Asylum Support Office (EASO), with input from FRA, also developed a training module for handling claims based on sexual orientation and gender identity.⁴⁷

According to NGOs in the Member States covered in this report, asylum officers tend to have stereotypical and Eurocentric views – for example, in France.⁴⁸ They tend to have the same image of the social lives of lesbian and gay persons, whether they are from Kenya or Russia, the city or the countryside.⁴⁹ NGOs say that asylum interviewers lack culturally sensitive knowledge of LGBTI issues⁵⁰ and criticise asylum decisions for ignoring the complexity of sexual orientation.⁵¹ According to NGOs in Austria, individual asylum case officers’ attitudes significantly influence the course of interviews and, therefore, the fairness of the procedure.⁵²

➤ **LGBTI-specific training for asylum officers varies across EU Member States. In general, where officers are trained, the training is usually not regular and does not cover a sufficient number of officers. Officers who participate in such training events often already acknowledge the importance of paying specific attention to LGBTI applicants.⁵³**

As an illustration, in Denmark, no training specifically about interviewing LGBTI applicants is provided. The Danish Immigration Service does not have any

specific screening or organisational measures in relation to claims based on sexual orientation or gender identity.⁵⁴

Some Member States rely on EASO. In Greece, two asylum officers have been certified as trainers in LGBTI cases, and Finland is planning to run the EASO Gender, Gender Identity and Sexual Orientation training later in 2017. Specialised NGOs also provide training – for example, in Finland, where they trained asylum officers in 2012, although this cooperation has not been renewed since.⁵⁵ In Spain, training is provided under the framework of the LGBTI Programme for the Autonomous Community of Madrid.⁵⁶

Monitoring the situation of LGBTI persons

FRA regularly monitors the situation of LGBTI persons, including asylum seekers. In December 2015, FRA published a comparative legal analysis that outlines trends and developments at national and EU level, focusing on access to and legal recognition of gender; non-discrimination in employment; freedom of expression and assembly; as well as freedom of movement, family reunification, and asylum, including international protection for LGBTI persons and their family members.

Previous reports in this area were published in [November 2010](#) and [June 2008](#), respectively.

For more information, see FRA (2015), [Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU](#), Publications Office.

Sweden appears to approach the matter more systematically. Since 2013, there are so-called LGBT (HBTQ) experts within the Swedish Migration Agency, who are supposed to participate in decision-making processes regarding LGBTI persons. They were trained partly by the Swedish Federation for Lesbian, Gay,

Bisexual, Transgender and Queer Rights (RFSL) and partly by other actors, and had the opportunity to attend the agency's internal training on norm criticism. However, the last training took place in 2014 and no future training sessions are planned.⁵⁷ According to the RFSL, the LGBT experts are not present in every Migration Agency unit and, consequently, asylum seekers may be interviewed without their presence. The case officers often do not know how to handle these interviews and LGBTI asylum seekers have reported being insulted during their asylum interviews.⁵⁸

Interpreters

Interpreters play a key role in the asylum procedure – in most cases, no individual eligibility interviews can be carried out without them. In many instances, interpreters are not employed by the asylum agency but contracted externally. This creates additional challenges when it comes to ensuring that they are adequately trained.

According to sources from various EU Member States, interpreters often lack proper training and there are no specific guidelines for them.⁵⁹ Civil society becomes instrumental in providing the necessary expertise and assisting the state authorities.

In Finland, for example, challenges relating to interpretation include a lack of awareness of, and attention paid to, issues relating to the stigma of being LGBTI – e.g. when another asylum seeker is from the same area or culture in the country of origin as the LGBTI applicant, or when the interpreter works at the reception centre at which the applicant resides.⁶⁰ In addition to insufficient training on LGBTI issues for interpreters, discriminatory attitudes displayed by interpreters are also an obstacle.⁶¹

In Sweden, LGBT NGOs reported cases of interpreters refusing to translate asylum applicants' stories when they realised that they are LGBTI, or not knowing the correct

words to use when translating.⁶² Occasionally, translators and interpreters who are trained in issues relating to sexual and reproductive health and rights are available for different languages – for example, in the Region Västra Götaland.

Underlining the importance of a respectful interview environment and providing linguistic support

The code of conduct of the Dutch Immigration and Naturalisation Service outlines the requirements regarding translators and interpreters. These explicitly require appropriate behaviour, integrity and the respectful treatment of asylum seekers, irrespective of their sexual orientation. However, several NGOs pointed out that, in some cases, asylum seekers nonetheless did not feel that it was safe to openly address all issues.

In response to the lack of financing for the training of interpreters, COC Netherlands, an NGO, is developing a glossary of LGBTI-related terms in English, Farsi, Russian, Arabic and Luganda, which will explain relevant words. The glossary will be published in 2017.

Sources: Netherlands, Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst) (2015), [Gedragcode Tolken](#), The Hague; Movisie (a consultancy centre); Transvisie (a patient organisation); and COC Netherlands.

However, it remains unclear how often an interpreter with special training is available, especially if the asylum applicant in question has not clearly stated beforehand that such an interpreter is needed during the asylum interview.⁶³

The EASO training tools and guidelines for interviewing and assessing applications submitted on grounds of sexual orientation may also be available to interpreters – as reported from Bulgaria, where no specialised training is available for translators and interpreters.⁶⁴

According to the Slovak Ministry of Interior, interpreters have not been provided with any specific training on the issue because cases involving LGBTI asylum seekers are rare.

Information collected in some EU Member States indicates that LGBTI asylum seekers have the right to choose or request the gender of the interviewer and/or interpreter.⁶⁵ This is in accordance with Article 15 (3) (c) of the Asylum Procedures Directive, which provides that Member States shall, wherever possible, provide an interpreter of the same sex if the applicant so requests. As a general matter – and not specifically relating to asylum interviews – the police in Hungary stresses that, in cases involving sensitive issues, including a person's sexual orientation, applicants are transferred to a special hearing location that is closed to the public and where only the case officer and the interpreter are present.⁶⁶

Reception conditions

Article 18 (3) of the Reception Conditions Directive (2013/33/EU) obliges Member States to consider gender- and age-specific concerns and the situation of vulnerable persons in relation to applicants within the premises for housing of asylum applicants and in accommodation centres. Article 21 includes a list of persons who qualify as vulnerable persons under the directive. Although LGBTI applicants are not explicitly mentioned, this list is not exhaustive, so it can be argued that LGBTI asylum seekers can also be regarded as vulnerable.

Many Member States officially implement zero-tolerance policies in reception centres towards discriminatory behaviour communicated or actively engaged in by staff and subcontractors. In some, this flows from national anti-discrimination legislation. For example, in Sweden, all national authorities and private

contractors are bound by the provisions of the Swedish Discrimination Act.⁶⁷

Providing special accommodation for LGBTI persons is a complicated exercise. Information on sexual orientation is usually not available to reception staff and applicants may not disclose that they are LGBTI for fear of stigmatisation.

Highlighting good practices

In May 2014, ILGA Europe issued a compilation of good practices in relation to LGBTI asylum applicants, including conditions in reception facilities. Good practices were found in Austria, Belgium, the Netherlands, Norway, and the United Kingdom.

For more information, see ILGA, [Good practices related to LGBTI asylum applicants in Europe, 2014](#).

Measures to ensure safe accommodation

- In most EU Member States, there is no special accommodation for LGBTI persons, but in many Member States special measures can be taken in case of abuse or harassment. These include transfers to single rooms, to another area of the centre or to special or private accommodation.

In Finland and Sweden, LGBTI persons can be qualified as a group with special needs, which makes them eligible for a more systemic accommodation policy. In Sweden, since June 2016, the Swedish Migration Agency has opened “special security accommodation” for “asylum seekers with special social needs” in three major cities – Gothenburg, Stockholm and Malmö. LGBTI persons with special individual needs, among other groups, can be eligible for this accommodation, in particular if they have been subjected to abuse in their previous accommodation.⁶⁸ The Swedish Federation for Lesbian, Gay, Bisexual,

Transgender and Queer Rights (RFSL) points out that such special reception conditions should be offered to prevent abuse and harassment, and not only as a consequence of such. However, the demand for such accommodation amongst eligible LGBTI groups is already greater than the supply.

The same issue was raised in Finland, where professional support is often not available outside the Helsinki area.⁶⁹ In Germany, according to LGBTI NGOs, only seven federal states provide specific LGBTI accommodation away from reception centres.⁷⁰

In Denmark⁷¹ and France,⁷² case-by-case measures are taken to adapt conditions to the particular needs of LGBTI persons. In Denmark, there are no specific LGBTI accommodation facilities. However, both the Danish Red Cross and the Asylum Centre in the Vesthimmerland Municipality have tried to accommodate individuals’ needs by relocating individuals to other centres with available LGBTI networks or to centres housing particularly vulnerable persons; relocating applicants to another part of the centre; or providing single rooms to applicants.⁷³ According to LGBT Asylum, transgender persons (trans women) are usually placed at centres with extra security and attention to their particularly vulnerable situation, but, in general, it is easier for women to change accommodation facilities than for men, especially gay men. Gay men who are not transgender are reportedly moved to more secure centres only if they experienced discrimination, harassment or are otherwise particularly psychosocially vulnerable. The Danish Refugee Council reported that, in one case, a gay couple was accommodated in a tent-camp with heterosexual male applicants, while heterosexual couples were accommodated privately with other couples.

In France, LGBTI applicants are generally kept apart from other applicants in

reception centres for asylum applicants (CADA), often alone in individual rooms;⁷⁴ if special protection is necessary, they can be geographically distanced from the CADA and accommodated in apartments in town or in shared housing.⁷⁵ The administration takes such decisions on a case-by-case basis, usually in the event of a complaint or if the personnel are aware of discriminatory or aggressive behaviour from other asylum seekers.⁷⁶

In other EU Member States covered in this report, no particular policy emerged from the interviews. LGBTI persons are usually accommodated according to the gender indicated in official documents, which exposes transgender persons to a risk of harassment. Here again support from NGOs often permits finding solutions for individual cases. For example, in Austria, a project by the *Diakonie Flüchtlingsdienst* ("Lares Wien") provides accommodation in Vienna to LGBTI applicants who were or would be in danger or exposed to violence in regular accommodation facilities.⁷⁷

In several EU Member States, LGBT organisations cooperate with the authorities. LGBT organisations have access to the reception facilities but are not as such involved in early reception and rely on applicants contacting the organisation. For example, the Swedish Federation for Lesbian, Gay, Bisexual, Transgender and Queer Rights (RFSL) visits reception facilities. It provides information sessions for the staff and the resident asylum applicants and distributes its leaflets.⁷⁸ The NGO has a section called RFSL Newcomers, which reaches out to refugees, asylum seekers and other newly arrived persons. Visits are not initiated by the staff of the accommodation centres.⁷⁹

In Denmark, LGBT Asylum has sent informational material in English to all centres. It finances the transport of applicants who are accommodated far from the capital to social activities, to ensure access to social networks and

support.⁸⁰ The Danish Red Cross staff and volunteers provide applicants with information on LGBT Asylum during initial reception.⁸¹ In Greece, the Reception and Identification Service contacted the Transgender Support Association and asked for informational leaflets.

FRA's research did not identify any guidelines on how to accommodate transgender persons.

Training of reception staff

In general, training on specific LGBTI vulnerabilities for reception staff is provided randomly; relevant NGOs often offer such training. Informational leaflets are often available in reception centres, mostly provided by NGOs, but they are usually not available in different languages.

In Sweden, for example, despite a declared interest to increase the Migration Agency's personnel's knowledge, no major steps have been taken in this direction.⁸² According to the Swedish Migration Agency, all employees attend introductory training where "a half day" addresses general knowledge about LGBTI issues.⁸³ In Denmark, there is no specific training, but the staff at the reception facilities and medical clinics is generally well informed and trained in handling the different groups of applicants with specific issues/vulnerabilities, and shows widespread understanding of LGBT issues.⁸⁴

No specific training or information sessions on dealing with LGBTI persons for reception staff emerged in France or Greece. In Hungary, police staff working with refugees and asylum seekers in transit zones and in detention centres occasionally attend human rights training and educational events on how to treat vulnerable groups, organised by civil society organisations.⁸⁵ Most staff members and asylum case officers working for the Immigration and Asylum Office received training on how to identify

and treat vulnerable groups, including LGBTI persons. However, after new refugee camps were opened in Hungary in the summer, and following significant staff changes, new staff did not receive such training.⁸⁶

LGBTI asylum seekers and the risk of hate crime

Most incidents of bias-motivated violence or harassment against LGBTI asylum seekers are not reported anywhere or recorded, as various research relating to hate crime – including FRA’s – has highlighted.

Highlighting the lack of data on hate crime

FRA’s November 2016 focus section explored the issue of hate crime. It noted that asylum seekers and migrants face various forms of violence, harassment, threats and xenophobic speech across the EU, both perpetrated and condoned by state authorities, private companies, individuals and vigilante groups. The report found that, of the 14 EU Member States covered in the report, only Finland, Germany, Greece and the Netherlands monitor and collect data on incidents of hate crime targeting asylum seekers and their accommodation centres.

For more information, see FRA (2016), [Current migration situation in the EU: hate crime](#)

In Germany, for example, LGBTI persons – regardless of their origin or status – are affected by hate crime to a much greater extent than assumed. As an illustration, in 2015, the LGBTI NGO MANEO registered 541 homophobic or transphobic attacks,⁸⁷ and the Federal Ministry of the Interior registered 222 politically motivated hate crimes against persons due to their sexual orientation in 2015.⁸⁸ In Spain, according to the official data, LGBTI persons are particularly vulnerable to hate crime, regardless of whether or not they are seeking international protection.⁸⁹

Data collected for this report show that none of the 14 countries covered monitor or collect data on hate crime against LGBTI asylum seekers and refugees in a comprehensive manner. In Finland, for example, such incidents are registered at reception centres, and, according to the Finnish Immigration Service, the data suggest that LGBTI asylum seekers are not particularly vulnerable to hate crime.⁹⁰ However, civil society representatives in most of the countries covered report that LGBTI persons experience abusive language, threats, harassment and violence in accommodation centres, from other asylum seekers, reception staff, security and social services staff.⁹¹ In Denmark, for example, sources report that physical and verbal violence, as well as sexual harassment, lead to exclusion and stigmatisation and, as a result, most applicants hide their LGBTI identity.⁹² In Finland, individuals face bullying and threatening behaviour from the other inhabitants at reception centres⁹³ and in public places.⁹⁴ According to an LGBTI rights organisation in the Helsinki area, the majority of LGBTI asylum seekers report being scared, discriminated against and threatened at reception centres.⁹⁵ Cases of physical violence have also been reported.⁹⁶

In Sweden, the Migration Agency has established separate accommodation facilities for asylum applicants who have been harassed or subjected to violence. During 2016, there were multiple media reports of abuse and harassment against women, LGBTI persons and other minorities in various reception facilities.⁹⁷ There is also case law concerning crimes against LGBTI persons at reception facilities. For example, on 27 July 2015, a man was sentenced to five months in prison for assault and battery (*misshandel*), harassment and molestation (*ofredande*) and unlawful threats (*olaga hot*) against two other men living in the same accommodation. The perpetrator reportedly said that Sweden

protects LGBTI persons although they should be “slaughtered” because they “did not respect Islam”. The perpetrator molested one of the men in an elevator and punched and kicked another man in the head.⁹⁸

In the Netherlands, the civil society organisation COC regularly receives reports of hate crime, discrimination and violence of which the Central Agency for the Reception of Asylum Seekers (*Centraal Orgaan Opvang Asielzoekers*, COA) – the body responsible for the reception and accompaniment of asylum seekers – was not aware.⁹⁹ This was especially the case in the large-scale emergency shelters used following the increase in arrivals in 2016, at which privacy and safety issues were a problem in general and minority and vulnerable groups could not receive special protection due to capacity problems.¹⁰⁰

Greek civil society emphasises that trans refugees are particularly vulnerable to violence in detention centres because they are being held together with persons of the same biological sex.¹⁰¹

Transgender-related healthcare

In most EU Member States, asylum seekers have access to necessary healthcare, including emergency care and essential treatment of illnesses

➤ However, hormonal treatment for transgender persons is very difficult to access. In most EU Member States, there are no uniform guidelines regarding the provision of such treatment to persons who already started treatment in their country of origin. The interruption of hormonal treatment in such cases can have severe consequences.

The Swedish National Board of Health and Welfare has developed national recommendations for good healthcare for adults with gender dysphoria. According to these recommendations, hormone treatment is generally lifelong and,

consequently, persons who have started such treatment in their country of origin should be referred to a specialist team to re-commence their treatment as soon as possible.¹⁰² However, as long as applicants are still in the asylum procedure, they are provided only with healthcare and dental care that “cannot wait”. The interpretation of this is left to each healthcare provider.¹⁰³ As a result, the provision of transgender-related healthcare to asylum applicants depends on case-by-case assessments of urgency. Similarly, in Denmark, already initiated treatment can be continued depending on the circumstances of the case; however, cases were reported where the treatment was not initiated soon enough, with severe physical and mental consequences.¹⁰⁴

In France, asylum applicants generally have access to healthcare.¹⁰⁵ Before registering a request, foreigners have access to medical state aid (*Aide médicale d’État*) on the condition of having lived in France for at least three months. After submission of their application, they have access to the more protective system of universal medical coverage (*Couverture médicale universelle*). According to LGBTI organisations and reception centres, the system works quite well, particularly when treatment is recommended by a doctor.¹⁰⁶ However, in practice, the procedure for obtaining universal health coverage can be difficult. The asylum seeker has to first meet a doctor (general practitioner), who must recognise a ‘long-term condition’ (*affection de longue durée*) – some refuse, or require certificates from a psychiatrist. Then, to determine the scope of the coverage (including hormonal treatment), they must meet an accredited doctor – these are not evenly available across the country, which can be a practical obstacle depending on the applicant’s geographical location and ability to travel.¹⁰⁷

In Finland¹⁰⁸ and the Netherlands,¹⁰⁹ if transgender-related healthcare – such as hormonal treatment – was initiated before arriving, such treatment is normally continued during the asylum process. Hormonal treatment is also accessible in Spain,¹¹⁰ and in theory is accessible in Austria under the condition of proving prior treatment comparable to the Austrian procedure – but is difficult to

achieve in practice.¹¹¹ In Denmark, treatment cannot be postponed if there is a risk that doing so will result in permanent injury, or a worsening or chronic condition.¹¹²

Hormonal treatment is not accessible for asylum seekers in Greece, Hungary and Poland.

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- ¹ ILGA Europe, [State Sponsored Homophobia Report](#), 2016.
- ² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; it repeals Council Directive 2004/83/EC of 29 April 2004.
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- ⁴ See FRA (2015), [Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU: Comparative legal analysis \(Update 2015\)](#), Publications Office, p.98.
- ⁵ CJEU, Joined cases C 148-150/13, *A, B and C v. Staatssecretaris van Veiligheid en Justitie*, 2 December 2014; and CJEU, Joined cases C 199-201/12, *X, Y and Z v. Minister voor Immigratie en Asiel*, 7 November 2013.
- ⁶ European Commission, [List of actions by the Commission to advance LGBTI equality](#), 7 December 2015.
- ⁷ CJEU, Joined cases C 148-150/13, *A, B and C v. Staatssecretaris van Veiligheid en Justitie*, 2 December 2014, para 53.
- ⁸ In 2009, the German Administrative Court in Schleswig Holstein ordered the stay of an Iranian gay man's transfer to the Czech Republic under the Dublin II Regulation because of the possible use of 'phalloscopy' in the Czech Republic. See Germany, *Verwaltungsgericht Schleswig-Holstein*, judgment of 7 September 2009.
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- ¹⁰ Denmark, information provided the Danish Refugee Council (*Dansk Flygtningehjælp*) and LGBT Asylum.
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- ¹⁹ Denmark, information provided by the Danish Immigration Service (*Udlændingestyrelsen*).
- ²⁰ France, interview with the ADHEOS.
- ²¹ CJEU, Joined cases C 199-201/12, *X, Y and Z v. Minister voor Immigratie en Asiel*, 7 November 2013.
- ²² Austria, Queer Base and TransX; France, interview with the ADHEOS.
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- ²⁴ Sweden, Thorén, M. (2016), [Not likely that he is gay](#) (*Inte sannolikt att han är homosexuell*); QX (a major LGBT news site), 20 December 2016.
- ²⁵ [The Inkblot Test](#).
- ²⁶ Hungary, UNHCR.
- ²⁷ Finland, information obtained from the Finnish Immigration Service (*Maahanmuuttovirasto/Migrationsverket*).
- ²⁸ Finland, Seta, [Submission to the Committee on the Elimination of Racial Discrimination for the List of Themes in relation to the twenty third periodic report of Finland](#) and interview with HeSeta.

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- 29 France, interview with the ADHEOS; Germany, Fliederlich – Gaylesbian Centre Nürnberg (*Fliederlich e.V. – Schwulesbisches Zentrum Nürnberg*); Sweden, Swedish Federation for Lesbian, Gay, Bisexual, Transgender and Queer Rights (*Riksförbundet för homosexuella, bisexuella, transpersoners och queeras rättigheter*, RFSL).
- 30 This was also confirmed by Transgender Europe in [‘Safe Country’ List and ‘Fast Track’ Asylum Procedures must not endanger trans refugees](#).
- 31 CJEU, Joined cases C 148-150/13, *A, B and C v. Staatssecretaris van Veiligheid en Justitie*, 2 December 2014, para. 69.
- 32 *Ibid*, para. 70.
- 33 *Ibid*.
- 34 Sweden, Swedish Federation for Lesbian, Gay, Bisexual, Transgender and Queer Rights (*Riksförbundet för homosexuella, bisexuella, transpersoners och queeras rättigheter*, RFSL).
- 35 Sweden, [Supreme Migration Court](#) (*Migrationsöverdomstolen*), Case 2007:13, 28 March 2007.
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- 86 Hungary, Immigration and Asylum Office.
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- ⁸⁹ According to this report, in 2015, the total number of victims of these criminal offences was 1,328 (505 based on racism and xenophobia; 308 based on ideology; 226 based on disability; 169 based on sexual orientation and sexual identity; 70 based on religious belief or practice; 24 based on discrimination based on sex or gender; 17 based on aporophobia; and 9 based on antisemitism). See Spain, Ministry of the Interior (*Ministerio del Interior*) (2015), Report on incidents of hate crimes in Spain (*Informe 2015 sobre Incidentes relacionados con los Delitos de Odio en España*), [Press release](#), September 2016.
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Further information:

After one year of regular reporting, the EU Agency for Fundamental Rights changed the format and Member State coverage of its regular overviews of migration-related fundamental rights concerns. Current reports cover up to 14 EU Member States and are shorter, including main findings for the Member States covered together with a thematic focus section. References to EU Member States are included when specific findings support a better understanding of the challenges which affect several Member States or the EU as a whole.

For the March 2017 *Monthly data collection on the migration situation in the EU – Highlights*, see: <http://fra.europa.eu/en/theme/asylum-migration-borders/overviews/march-2017>.

For all previous monthly and weekly reports in 2015 and 2016, see: <http://fra.europa.eu/en/theme/asylum-migration-borders/overviews>

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Printed by the Publications Office in Luxembourg

