

# Rainbow Europe map and index explanatory document

(Updated for 2015 launch – will be online on [www.rainbow-europe.org/about](http://www.rainbow-europe.org/about))

## Equality and non-discrimination (Overall weight: 25%)

- **Constitution (sexual orientation)** covers constitutional (or similar) anti-discrimination provisions. The provisions should include an anti-discrimination article or Constitutional Court decision which effectively adds sexual orientation to the list of expressly covered grounds. Constitutions that include horizontal anti-discrimination provisions are only included when explicit legal proof for implementation exists. (weight within category: 5%)
- **Employment (sexual orientation)** covers employment anti-discrimination legislation. Only express mention of sexual orientation should be counted. (weight within category: 5%)
- **Goods & services (sexual orientation)** covers goods and services anti-discrimination legislation. Only express mention of sexual orientation only should be counted. (weight within category: 5%)
- **Other spheres of life (sexual orientation)** covers anti-discrimination legislation covering any other spheres of life. Only express mention should be counted. (weight within category: 5%)
- **Equality body mandate (sexual orientation)** covers when a national human rights institution / equality body is explicitly mandated to work on sexual orientation in its law/founding documents, or where the national human rights institution / equality body is systematically working on issues covering sexual orientation. (weight within category: 8%)<sup>1</sup>
- **Equality action plan (sexual orientation)** covers action plans which expressly include sexual orientation, and include specific measures for progress. (weight within category: 12%)
- **Constitution (gender identity)** covers constitutional (or similar) anti-discrimination provisions. The provisions should mention in anti-discrimination article or Constitutional Court decision which effectively adds gender identity to the list of expressly covered grounds. Constitutions that include horizontal anti-discrimination provisions are only included when explicit legal proof for implementation exists. Equivalent ground e.g. sexual identity, gender reassignment, etc accepted too. (weight within category: 5%)
- **Employment (gender identity)** covers employment anti-discrimination legislation. Express mention of gender identity only should be counted. Equivalent ground e.g. sexual identity, gender reassignment, etc accepted too. (weight within category: 5%)

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<sup>1</sup> FOR INTERNAL USE - Examples of systematic work of a national human rights institution / equality body:

- make recommendations on legislation and policies,
- conduct awareness-raising among the general public
- examine individual complaints
- participate in court proceedings
- speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed, in relation to sexual orientation

- **Goods & services (gender identity)** covers goods and services anti-discrimination legislation. Express mention of gender identity only should be counted. Equivalent grounds (. sexual identity, gender reassignment, etc) are accepted too. (weight within category: 5%)
- **Other spheres of life (gender identity)** covers anti-discrimination legislation covering any other spheres of life. Express mention of gender identity only should be counted. Equivalent grounds (sexual identity, gender reassignment, etc) are accepted too. (weight within category: 5%)
- **Equality body mandate (gender identity)** covers when a national human rights institution / equality body is explicitly mandated to work on gender identity in its law/founding documents, or where the national human rights institution / equality body is systematically working on issues covering gender identity. Equivalent grounds (sexual identity, gender reassignment, etc) are accepted too. (weight within category: 8%)<sup>2</sup>
- **Equality action plan (gender identity)** covers action plans which expressly include gender identity, and include specific measures for progress. Equivalent grounds (sexual identity, gender reassignment, etc) accepted too. (weight within category: 12%)
- **Law (gender expression)** covers anti-discrimination legislation which expressly includes gender expression. (weight within category: 10%)
- **Law and public policy (intersex)** covers anti-discrimination legislation and public policies which expressly include sex characteristics or intersex status (weight within category: 10%)

<b>Family (Overall weight: 27%)</b>
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- **Marriage equality** covers when same-sex couples can marry, with the same level of rights as married different-sex couples. (weight within category: 45%\*)
- **Registered partnership (similar rights to marriage)** covers when same-sex couples can enter a registered partnership/civil partnership and obtain the same level of rights as they would if they were married. (weight within category: 33.75%\*)
- **Registered partnership (limited rights)** covers when same-sex couples can enter a registered partnership/civil partnership, but where the level of rights is different to, and is significantly weaker than the rights offered by marriage. (weight within category: 16.88%\*)
- **Cohabitation** covers when same-sex couples are included in legislation or legal measures on cohabitation. (weight within category: 5.63%\*)

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<sup>2</sup> FOR INTERNAL USE - Examples of systematic work of a national human rights institution / equality body:

- make recommendations on legislation and policies,
- conduct awareness-raising among the general public
- examine individual complaints
- participate in court proceedings
- speak out in support of the exercise of rights by LGBT people, for example, when freedom of assembly events are opposed, in relation to gender identity

- **No constitutional limitation on marriage** covers when a constitutional definition (or similar) of marriage as being only a union between a man and a woman does not exist. (weight within category: 7%)
- **Joint adoption** covers when same-sex couples can legally apply for joint adoption. (weight within category: 11%)
- **Second parent adoption** covers when same-sex couples can legally apply for second parent adoption. (weight within category: 11%)
- **Automatic co-parent recognition** covers when children born to same-sex couples are not facing any barriers in order to be recognised legally from birth to their parents. (weight within category: 11%)
- **Medically assisted insemination (couples)** covers when fertility treatment for lesbian same-sex couples is legally possible. (weight within category: 7%)
- **Medically assisted insemination (singles)** covers when fertility treatment for single lesbians is legally possible. (weight within category: 4%)
- **Trans people can marry a person of the other gender** covers when trans people are able to marry according to their gender identity after their legal gender recognition (thus entering different-sex marriage). (weight within category: 4%)

\*Countries that have more than one form of legal recognition of same-sex partners are only awarded points for the highest legal form of recognition.

### **Hate crime and hate speech (Overall weight: 20%)**

- **Hate crime law (sexual orientation)** covers when sexual orientation is expressly included in hate crime legislation as an aggravating factor. (weight within category: 18%)
- **Hate speech law (sexual orientation)** covers when sexual orientation is expressly included in hate speech legislation as an aggravating factor. (weight within category: 18%)
- **Policy tackling hate crime and hate speech (sexual orientation)** covers when sexual orientation is included in a national strategy tackling hatred. This only refers to actions based on a recurrent and continuing framework by state actors (ad hoc measures do not count). (weight within category: 9%)<sup>3</sup>
- **Hate crime law (gender identity)** covers when gender identity is expressly included in hate crime legislation as an aggravating factor. (weight within category: 18%)

<sup>3</sup> FOR INTERNAL USE – Examples of a national strategy tackling hatred:

- Existence of specific measures addressing hatred in a general national LGBT equality action plan
- Existence of a specific sectorial action plan in the area of hate crime/hate speech covering LGBTI
- Existence of generalised training curricula for competent professionals (e.g. police officers, prosecutors, victim support services, judges)
- Existence of specialised dedicated structure(s) within the competent public authorities, with an expertise in the area of LGBTI hate crime/hate speech

- **Hate speech law (gender identity)** covers when sexual orientation is expressly included in hate speech legislation as an aggravating factor. (weight within category: 18%)
- **Policy tackling hate crime and hate speech (gender identity)** covers when gender identity is included in a national strategy tackling hatred. This only refers to actions based on a recurrent and continuing framework by state actors (ad hoc measures do not count). (weight within category: 9%)
- **Hate crime law (intersex)** covers when identity is expressly included in hate crime legislation as an aggravating factor. (weight within category: 10%)

#### Legal gender recognition & bodily integrity (Overall weight: 15%)

- **Existence of legal measures** covers legislation for legal gender recognition. This can include court decisions, as long as there is a procedure that provides consistent results. (weight within category: 10%)
- **Existence of administrative procedures** covers procedures for legal gender recognition which are not written in law. This includes change of gender on official documents to reflect the preferred gender. Administrative procedures are only taken into account when consistent implementation with no obstacle has been documented. (weight within category: 8%)
- **Name change** covers existence of legislation which makes name change possible without any obstacles. This includes deed poll. (weight within category: 8%)
- **No 'Gender Identity Disorder' diagnosis/psychological opinion required** covers when a GID diagnosis is not a requirement for legal gender recognition. (weight within category: 14%)
- **No compulsory medical intervention required** covers when medical interventions are not a requirement for legal gender recognition. This only refers to non-surgical medical interventions. (weight within category: 11%)
- **No compulsory surgical intervention required** covers when any kind of surgical interventions are not a requirement for legal gender recognition. (weight within category: 11%)
- **No compulsory sterilisation required** covers when sterilisation or proof of infertility is not a requirement for legal gender recognition. (weight within category: 14%)
- **No compulsory divorce required** covers when divorce or single status is not a requirement for legal gender recognition. (weight within category: 10%)
- **Prohibition of medical intervention without informed consent (intersex)** covers when medical practitioners or other professionals are prohibited by law from conducting any kind of surgical or medical intervention on an intersex minor when the intervention has no medical necessity and can be avoided or postponed until the person can provide informed consent. (weight within category: 14%)

#### Freedom of assembly, association & expression (Overall weight: 8%)

- **Public event held, no state obstruction (last 3 years)** covers when laws, policies and practices allow for full exercise of the right to free assembly, so LGBTI public events are held without obstruction and are sufficiently protected by public authorities (e.g. police). (weight within category: 35%)
- **Associations operate, no state obstruction (last 3 years)** covers when there are no legal and administrative restrictions on the functioning of LGBTI organisations or publications (e.g. ‘foreign agent’ laws) and when LGBTI human rights defenders are not intimidated and criminalised for their work. (weight within category: 30%).
- **No laws limiting expression (national/local)** covers when there is no legislation limiting freedom of expression on LGBTI issues (e.g. anti-propaganda laws, censorship laws etc) either at national or local level. (weight within category: 35%)

### Asylum (Overall weight: 5%)

- **Law (sexual orientation)** covers when sexual orientation is expressly included in asylum law as a qualification criteria. (weight within category: 25%)
- **Policy/other positive measures (sexual orientation)** covers when sexual orientation is expressly included in policy/instructions/other positive measures. This only refers to actions based on a recurrent and continuing framework by state actors (ad hoc measures do not count). (weight within category: 25%)<sup>4</sup>
- **Law (gender identity)** covers when gender identity is expressly included in asylum law as a qualification criteria. (weight within category: 25%)
- **Policy/other positive measures (gender identity)** covers when gender identity is expressly included in policy/instructions/other positive measures. This only refers to actions based on a recurrent and continuing framework by state actors (ad hoc measures do not count). (weight within category: 25%)<sup>5</sup>

<sup>4</sup> FOR INTERNAL USE Examples of a policy/instruction/other positive measure:

- Existence of specific measures in a general national LGBTI equality action plan
- Existence of a sectorial action plan in the area of asylum
- Existence of generalised training curricula for competent professionals (e.g. asylum authority staff, interviewers, case adjudicators)
- Existence of specialised dedicated structure(s) within the asylum authorities, with an expertise in the area of LGBTI asylum.
- Existence of specialised dedicated structure(s) within the reception system, with an expertise in the area of LGBTI asylum

<sup>5</sup> FOR INTERNAL USE - Examples of a policy/instruction/other positive measure:

- Existence of specific measures in a general national LGBTI equality action plan
- Existence of a sectorial action plan in the area of asylum
- Existence of generalised training curricula for competent professionals (e.g. asylum authority staff, interviewers, case adjudicators)
- Existence of specialised dedicated structure(s) within the asylum authorities, with an expertise in the area of LGBTI asylum
- Existence of specialised dedicated structure(s) within the reception system, with an expertise in the area of LGBTI asylum