

Legal gender recognition for intersex people in Europe

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Introduction

What

This document contains the results of the research that OII Europe (Organisation Intersex International Europe e.V.) conducted in September / October 2020, with the support of ILGA-Europe (the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association), in order to prepare a joint submission to the European Court of Human Rights in the case *Y v France*¹. The case concerns the French authorities' refusal to allow for the current "male" gender marker of the applicant, an intersex person, to be replaced by "neutral" or

¹ Application number 76888/17 available at <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2276888/17%22%5D,%22itemid%22:%5B%22001-204284%22%5D%7D>>

“intersex” on the birth certificate. OII Europe, ILGA-Europe and C.I.A. (Collectif intersexes et allié-e-s) submitted their third party intervention in the case last 27 November 2020².

The research aims at showing a positive trend in Europe towards the recognition of non-binary identities. For an overview of extra-European countries, check out table 1.b in the annex to our submission.

Why

The reasons why we deem this research useful are mainly two.

Firstly, a significant proportion of intersex people identify themselves as non-binary. Among the intersex respondents to the 2020 FRA LGBTI survey, 20% of them defined themselves as non-binary (here used as an umbrella term) and 5% of them as other³.

Secondly, gender binarism and sex binarism are expressions of the same problem: neglecting the reality of sex and gender as spectrums. The fight for legal recognition of non-binary identities is a fight against the same prejudice that suppresses diversity and accepts IGM. It is beneficial not only for non-binary intersex people but also for intersex men and women and ultimately for everyone: it is about the right to be yourself.

Please check out the demands by the global intersex human rights community formulated in the Malta Declaration⁴:

To ensure that sex or gender classifications are amendable through a simple administrative procedure at the request of the individuals concerned. All adults and capable minors should be able to choose between female (F), male (M), non-binary or multiple options. In the future, as with race or religion, sex or gender should not be a category on birth certificates or identification documents for anybody.

How

The research would not have been possible without the great support we received from the European intersex community, for which we are very grateful.

We asked the community (intersex organisations and activists) to provide us with information and sources covering the following points:

- legal provisions about the right of intersex people to choose/change gender marker
- legal provisions about the right of intersex people to have a non-binary gender marker
- the way such provisions are applied in practice
- the practical challenges/obstacles that intersex people seeking legal gender recognition face
- case-law.

² Read our submission at <<https://oiieurope.org/submission-y-against-france/>>

³ See European Union Agency for Fundamental Rights (2020). *A long way to go for LGBTI equality*, p. 62, available at <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality-1_en.pdf> More specifically, intersex respondents' answers read as follows: Non-binary 7%; Genderqueer 3%; Gender-fluid 6%; Agender 2%; Poly-gender 2%; Other, please specify 5%.

⁴ See <<https://oiieurope.org/malta-declaration/>>

To complement the information received, we looked for the answers to the same questions into the following sources:

- ILGA World, *Trans Legal Mapping Report 2019: Recognition before the law*⁵
- ILGA-Europe, *Annual Report of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Europe and Central Asia*⁶
- Pikramenou, Nikoletta. *Intersex Rights. Living Between Sexes*.⁷
- Newspaper and academic articles, referenced in the footnotes where relevant.

We structured the resulting information on the basis of 4 criteria, under which we grouped countries that fulfilled at least one of them:

1. **Model based on self-determination.** These countries - even though most of them still adhere to a binary system - recognise the right to (self-determined) gender identity as a fundamental right, as the right not to be imposed a marker that does not reflect their true gender identity. This is a good entry point to advocate for non-binary markers.
2. **X on passports and/or other identity documents**⁸. Such countries still use a binary registration system (e.g.in birth certificates) but at least acknowledge that somebody may not want to disclose their gender identity (for instance, because they feel uncomfortable with a rigid binary system). However in other cases X is only available under restricting conditions (see criterion 3).
3. **Alternative markers for intersex people.** This is not the best scenario, because such markers should be available to everybody, but at least indicates that the notion of sex as binary has been challenged.
4. **Third/neutral markers for everybody**, including (non-intersex) non-binary people. This is the best scenario. It reveals an understanding of gender as a spectrum.

We decided to also include countries clearly **on their way** towards one or more of the previous options (e.g. positive case-law, draft law under discussion, measures announced by the government).

⁵ ILGA World: Zhan Chiam, Sandra Duffy, Matilda González Gil, Lara Goodwin, and Nigel Timothy Mpemba Patel, *Trans Legal Mapping Report 2019: Recognition before the law* (Geneva: ILGA World, 2020), available at https://ilga.org/downloads/ILGA_World_Trans_Legal_Mapping_Report_2019_EN.pdf

⁶ ILGA-Europe, *Annual Report of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Europe and Central Asia* (Brussels: ILGA-Europe, 2020), available at https://www.ilga-europe.org/sites/default/files/2020/full_annual_review.pdf

⁷ Pikramenou, Nikoletta. *Intersex Rights. Living Between Sexes*. Springer International Publishing, 2019, available at <https://www.springer.com/gp/book/9783030275532>

⁸ The existence of more than two gender markers is already established within the EU legal system since the transposition of the International Civil Aviation Organisation (ICAO) guidelines through regulation 2252/2004 on biometric passports which compels all EU passports to be in line with ICAO regulations: "Sex of the holder, to be specified by use of the single initial commonly used in the language of the State where the document is issued and, if translation into English, French or Spanish is necessary, followed by an oblique and the capital letter F for female, M for male, or X for unspecified". International Civil Aviation Organization, 'Machine Readable Travel Documents. Part 4 — Specifications for Machine Readable Passports (MRPs) and Other TD3 Size MRTDs' (2015) Doc 9303 14. https://www.icao.int/publications/Documents/9303_p4_cons_en.pdf

We thank all the contributors and assure that even though some countries did not make it to the final list (as they are still behind in terms of legal gender recognition) all the information received is stored in our archive. It is very valuable information, since it helps us see the broader picture and monitor improvements. Every intersex organisation or activist is invited to share updates, should the national situation evolve.

Please note that the document is updated until November 2020, with the exception of Switzerland and Belgium, where changes took place that we were informed about after that time. We decided to include them in this document.

Austria

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

The Civil Status Act 2013⁹ only stipulates that a change is possible (Article 41), but does not specify the procedure, whose details are left to the administrative level and vary by province¹⁰. In 2009, the Administrative Supreme Court ruled that severe surgeries are not a condition for the correction of the gender marker¹¹. In 2010, a letter from the Ministry of Interior emphasised the relevance of other criteria (psychological component and external appearance)¹². The change of the gender marker requires one, or in some provincial states two statements from a psychologist, a psychiatrist or a psychotherapist, who confirms the following facts: (1) a permanent feeling of belonging to the other gender, (2) that it is irreversible in all foresight, and (3) that measures have been taken that lead to a convergence to the outer appearance of the other gender¹³.

- legal provisions about the right of intersex people to have a non-binary gender marker

In 2018, an intersex individual reached the **Constitutional Court** aiming to change the male gender entry in the central civil status register to “inter,” “other,” “X,” “undefined,” or a similar term, or to strike the gender entry in its entirety. The Court¹⁴ examined the constitutionality of the provision of the Civil Status Act ex officio and based its reasoning on Article 8 of the ECHR stating that the right to respect for the individual’s gender identity includes the **right to a gender description that conforms to their gender identity** or be free to not declare a gender at all: “Article 8 of the ECHR therefore grants individuals with variations in sex characteristics other than male or female the constitutionally guaranteed right to have their gender variation recognised as a separate gender identity in gender-related provisions; in particular, it protects individuals with alternative gender identities against having their gender assigned by others.” In addition, the Court interpreted the law under a non-binary lens elaborating on the fact that “The term used in sect.2 para.2 point 3 of the 2013 Civil Status Act is so general that it can, without any difficulty, be interpreted to include alternative gender identities.” By reading the case, a confusion may be created as to whether the issue at stake is about intersex or trans¹⁵.

⁹ Personenstandsgesetz 2013 - Bundesrecht konsolidiert, Fassung vom 02.11.2020
<<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20008228>>

¹⁰ ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Austria chapter

¹¹ Pikramenou, Intersex Rights, 2019 (see footnote 7), p. 165. Judgment: Rechtssätze und Entscheidungstext für 2008/17/0054 - Verwaltungsgerichtshof (VwGH)
<https://www.ris.bka.gv.at/JudikaturEntscheidung.wxe?Abfrage=Vwgh&Dokumentnummer=JWR_2008170054_20090227X01&ShowPrintPreview=True>

¹² Schreiben des BMI vom 11. Mai 2010, BMI-VA 1300/0139-III/2/2010
<https://www.transx.at/Dokumente/BMI_11052010.pdf>

¹³ ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Austria chapter

¹⁴ VfGH G77/2018 <https://www.vfgh.gv.at/downloads/VfGH_Entscheidung_G_77-2018_unbestimmtes_Geschlecht_anonym.pdf>

¹⁵ Pikramenou, Intersex Rights, 2019 (see footnote 7), p. 165-166

In September 2020, a new government decree¹⁶ established that **six gender marker options** will be available to intersex people, 'female', 'male', 'inter', 'diverse', 'open', as well as the option to delete the entry. Non-binary options however will **only be available to intersex** people, based on a **medical diagnosis**. Intersex activists criticised the decree¹⁷ and, along with other civil society organisations, addressed the Minister of Interior, demanding the introduction of a self-determination model available to all the people.

¹⁶ 2020-09 ErlassGeschlechtseintragNeu <<https://vimoe.at/wp-content/uploads/2020/10/2020-09-ErlassGeschlechtseintragNeu.pdf>>

¹⁷ September 2020: Neuer Erlass zum dritten Geschlechtseintrag – Ein Teilerfolg <<https://vimoe.at/2020/09/10/september-2020-neuer-erlass-zum-dritten-geschlechtseintrag-ein-teilerfolg/>>

Belgium

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- legal provisions about the right of intersex people to choose/change gender marker

Administrative procedure, based on **self-determination**¹⁸. Law reform in 2017¹⁹. Any adult Belgian, emancipated minor, or foreigner resident in Belgium who has the conviction that the sex written on their birth certificate does not correspond to their innately felt gender identity, can make a declaration of such to the civil status officer. Medical requirements were removed. Reflection period of at least 3 months. Stricter controls if the applicant is a minor.

- legal provisions about the right of intersex people to have a non-binary gender marker

If the sex of the child is “ambiguous”, the parent(s) may declare the sex of the child within three months, subject to medical certification (Article 48 Civil Code).

Two resolutions proposals were submitted to the Parliament by PS (French speaking socialist party) and Groen/Ecolo (joint green parties), asking to protect intersex children’s bodily integrity and autonomy²⁰. The second one also suggested “to study the possibility of making the markers optional or invisible in any case where there is no need to use them”²¹. A resolution was finally adopted in January 2021²². Its paragraph 14 reads “[the Federal Government should take the necessary measures to] review the gender/sex registration scheme to align it with the Constitutional Court’s decision of June 19, 2019, and examine all related legislative implications.

About the actual third gender marker, see the following paragraph about relevant case law.

- relevant case law

Soon after the new trans law was published, three major LGBTIQ+ organizations, Çavaria, Genres Pluriels, and RainbowHouse, issued a partial annulment request to the Belgian

¹⁸ See ILGA-Europe, Annual Report 2020 (see footnote 6), Belgium chapter and ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Belgium chapter

¹⁹ Wet tot hervorming van regelingen inzake transgenders wat de vermelding van een aanpassing van de registratie van het geslacht in de akten van de burgerlijke stand en de gevolgen hiervan betreft (25 June 2017)
<http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=2017062503>

²⁰ See the first proposal <<https://www.dekamer.be/FLWB/PDF/55/0043/55K0043001.pdf>> and the second one <<https://www.lachambre.be/FLWB/PDF/55/0974/55K0974001.pdf>>.

²¹ Second proposal <<https://www.lachambre.be/FLWB/PDF/55/0974/55K0974001.pdf>>, para. 1.28.

²² Resolution for recognizing the right to bodily integrity of intersex minors
<<https://www.lachambre.be/flwb/pdf/55/0043/55K0043008.pdf>> Please find OII Europe’s press release at <<https://oii-europe.org/belgian-resolution-on-protecting-intersex-rights/>>

Constitutional Court. In 2019 the Court ruled²³ that applicants should be able to change their gender registration more than once using the same simple administrative procedure, hinting at a recognition of gender fluidity. Second, it ruled that **the government has to find a way to legally recognize gender non-binary persons**, either by adding a third legal gender besides 'male' and 'female,' or by abolishing the system of gender registration altogether.

A proposal addressing the first part of the ruling, and deleting the corresponding paragraphs, has been submitted in parliament early 2020. The second part of the ruling, dealing with how to accommodate gender non-binary persons, is more challenging and might take several rounds of parliamentary debate²⁴. The Constitutional Court ruling as such leaves how to handle the issue up to the government²⁵.

- practical challenges/obstacles that intersex people seeking LGR face

The individual life experiences reported in an anonymous survey amongst trans respondents in Belgium (Motmans et al., 2017) show how a lack of legal provision **impacts on mental well-being and avoidance behaviour**, as well as the preferences of gender non-binary respondents. Indeed, at least one out of four respondents within the trans group do not identify with male or female labels. Despite the trans law of 2017, these gender non-binary respondents are still stuck in a situation in which it is impossible for them to register their gender identity. The gender non-binary respondents also report different motivations such as safety issues and the fear of discrimination for not registering with a third option, should it be available²⁶.

Intersex people seeking LGR are forced to go through a process designed for trans people. Additionally, some intervention or medication based on sex markers are not reimbursed²⁷.

²³ Extrait de l'arrêt n° 99/2019 du 19 juin 2019
<http://www.ejustice.just.fgov.be/mopdf/2020/01/21_1.pdf#Page10> p. 2348

²⁴ 09/11/2020: announcement of the opening of the debate in the federal parliament following the Judgement of the Belgian Constitutional Court, as reported by Vereniging voor Intersekse Personen VZW.

²⁵ Meier, P., & Motmans, J. (2020). Trans Laws and Constitutional Rulings in Belgium: The Ambiguous Relations between Sex and Gender. *Politics and Governance*, 8(3), 242-252 available at <<https://www.cogitatiopress.com/politicsandgovernance/article/view/2851/2851>> p. 245

²⁶ *Ibid.* p. 249

²⁷ As reported by Vereniging voor Intersekse Personen VZW.

Denmark

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

Civil Registration Number

The Civil Registration System Act²⁸ entered into force in 2014. A simple administrative procedure allows you to change your gender, based on **self-determination** (no medical diagnosis required). § 3, 6: A written application to the Civil Registration Office is required, followed by a reflection period of 6 months, after which you have to reaffirm your wish to change your legal gender. If approved, the 4 last digits in your Civil Registration Number will be changed to the opposite odd/even number²⁹. This option is open to people aged 18 or older.

§ 3, 5 : If there is an error in the data registered in your Civil Registration Number, e.g. in regards to the sex you were assigned at birth, you can raise a claim to the Ministry of Social Affairs and Interior Affairs and ask for a new Civil Registration Number. Intersex people reported to Intersex Denmark that some of them went successfully through this procedure with doctors supporting their claim.

Passport

According to the Passport Order³⁰, the passport form must contain information about the passport holder's gender, determined on the basis of the person's Civil Registration Number. For persons with even end numbers, they enter F, and for persons with odd end numbers, they enter M (§4,4).

A person aged 18 or older can submit a written declaration asking for using an **X in the gender entry on their passport**³¹, based on an experience of belonging to the other sex, or on proving that they have already been assigned a new Civil Registration Number pursuant to § 3, 6 of the Civil Registration System Act.

- legal provisions about the right of intersex people to have a non-binary gender marker

²⁸ Bekendtgørelse af lov om Det Centrale Personregister
<<https://www.retsinformation.dk/eli/lta/2020/1297>>

²⁹ In Denmark all people are registered with a Civil Registration Number right after birth, which consists of 10 digits. The six first digits are your birth date and year, followed by a 4 digit number, which is even if you are registered as female, and odd if you are registered as male. This 10 digit number is used at any and all interaction with the government offices and in the private sector. Reported by Intersex Danmark.

³⁰ Bekendtgørelse om pas m.v. <<https://www.retsinformation.dk/eli/lta/2013/1337>>

³¹ BEK nr 953 af 28/08/2014 Justitsministeriet <<https://www.retsinformation.dk/eli/lta/2014/953>> amended §4,5 of the Passport Order

In August 2020, the Government presented a **reform packet**³². The vote is expected next February. It states that “It must be possible to obtain an **X in the passport for intersex people and persons who do not identify as male or female**, as well as for persons under 18 years of age”³³. However, the Civil Registration System will stay binary.

Other proposals included in the reform refer to the Civil Registration System: abolition of the reflection period for adults; procedure available for children (parental consent needed for children younger than 15).

- practical challenges/obstacles that intersex people seeking LGR face

Intersex people (like all people) are forced into a binary system. They cannot apply for a non-binary gender in the Civil Registration System.

In addition, when changing their Civil Registration Number, they have **issues** such as: they can lose access to (some of) their medical history linked to their previous Number, including medical prescriptions; some banks need to create new relationships and in the meantime their customers cannot access payments nor withdraw cash³⁴.

³² Frihed til forskellighed – styrkede rettigheder og muligheder for LGBTI-personer
<https://mfvm.dk/fileadmin/user_upload/MFVM/Ligestilling/lgbt_publication_skaermlaesbar.pdf>

³³ As reported by Intersex Danmark.

³⁴ As reported by Intersex Danmark.

France

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

Civil Code³⁵. The procedure is **only partly based on self-determination** and involves the **Court**. An adult or emancipated minor can submit an application. The main facts, which may be proved by any means, may include: that they appear publicly to belong to the affirmed gender; that they are known in that gender to family, friends, and colleagues; that they have changed their forename to one of the affirmed gender (Article 61-5). Not having undergone medical treatment, surgery, or sterilisation cannot be bars to the change. The Court confirms that the applicant satisfies the conditions in 61-5 and orders the modification of the information in the civil status acts (Article 61-6).

- case-law

In 2017 the **Court de Cassation**³⁶ stated that the French law does not allow for a **gender marker other than male or female**. The Court ruled that “the acknowledgment by the judge of a neutral sex would have a profound impact on French legal rules, that were built upon the duality of sexes and it therefore would require many coordination changes of statutory provisions”. In addition, it found that this is not contrary to Article 8 of the ECHR since “the duality of the sex markers in civil status pursues a legitimate aim because it is needed for the social and legal organization of which it constitutes a founding element”. With this decision, the Court preferred to sacrifice the interests and rights of the minority for the sake of the majority which is founded on the sex dichotomy³⁷.

³⁵ Code Civil, Section 2 bis

https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000033437635/#LEGISCTA000033437635> See ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), France chapter

³⁶ Arrêt n° 531 du 4 mai 2017 (16-17.189) - Cour de cassation - Première chambre civile - ECLI:FR:CCASS:2017:C100531

https://www.courdecassation.fr/jurisprudence_2/premiere_chambre_civile_568/531_4_36665.html>

³⁷ Pikramenou, Intersex Rights, 2019 (see footnote 7), p. 205

Germany

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

The 40-year-old Transsexuellengesetz (TSG) pathologises trans people by requiring a **psychiatric diagnosis** and fails to provide legal gender recognition on the basis of self-determination. Decision is taken by a judge. The act is also inept with regard to acknowledging the third option gender marker (“divers”), introduced in 2018 (see following paragraph). A draft law for amending the TSG was presented in 2019³⁸. It failed to adopt the self-determination model. It was criticised by many NGOs, including OII Deutschland³⁹. It was never adopted as law. Discussion is ongoing in the Government to repeal the TSG and move towards self-determination⁴⁰.

- legal provisions about the right of intersex people to have a non-binary gender marker

In 2013 the Civil Status Act (PStG)⁴¹ was amended in order to make it possible to leave the **sex/gender entry blank**, in the case a newborn child could not be assigned to a male or female sex classification. This option was also used by intersex adults upon medical diagnosis. Afterwards, in 2017 the German Constitutional Court pronounced a landmark judgment which found the birth registration legal system to violate the Constitution⁴². It stipulated that enforcing gender binary resulted in infringement of the right to personal development and guarantees of equality based on sex. The German Government was offered two remedial possibilities: (a) to introduce a positive third gender option or (b) to remove the requirement to register legal gender altogether.

The Government opted for the first one and subsequently proposed the adoption of a new law in 2018⁴³. Pursuant to the regulation currently in force, people with variations of sex characteristics may (they are not required to do so) apply for a “**diverse**” **gender marker**. However, they can only obtain such recognition if they produce **medical certifications**. This requisite excludes from the beneficiaries many potential applicants, as queers, agender, non-binary people etc., equally affected by the rigid binary⁴⁴.

³⁸ LSVD Newsletter

<http://www.sendcockpit.com/appl/ce/software/code/ext/ns.php?&uid=c4178f0755195112885987433224dd40>

³⁹ Statement on the draft law of the Federal Ministry of Justice and Consumer Protection and the Federal Ministry of the Interior https://oiigermany.org/wp-content/uploads/2019/05/Statement_OII_Germany_lawdraft_5-2019.pdf

⁴⁰ Der selbstbestimmte Geschlechtseintrag wird im Innenausschuss debattiert! Der BVT* ist als Sachverständiger geladen – Bundesverband Trans* <https://www.bundesverband-trans.de/anhoerung-innenausschuss2020/>

⁴¹ Civil Status Act (Personenstandsgesetz, PStG), 19 February 2007, Section 22(3).

⁴² Federal Constitutional Court of Germany, 1 BvR 2019/16, 10 October 2017.

⁴³ Gesetz zur Änderung der in das Geburtenregister einzutragenden Angaben, 18 December 2018.

⁴⁴ Dunne, P. *Acknowledging or erasing intersex experiences? Gender ‘diversity’ in German law, in Northern Ireland Legal Quarterly* 70(1), 2019, pp. 163-169.

People with a blank or diverse gender marker are assigned an X marker on **passports**⁴⁵.

- the way such provisions are applied in practice (implementation, judicial interpretation etc.)

Since its introduction in 2018, the use of the “divers” gender option has proved to be very difficult for both intersex and trans people. Although the law only aimed to provide this option for intersex people and with a medical certificate or a sworn statement (in exceptional cases), its wording left room for binary and nonbinary trans people as well. The **Ministry** of the Interior released a written **clarification** in April 2019, restricting the scope to **intersex people only**. Although the law is binding, registry offices have mostly followed the Ministry’s non-binding guidance and made it very difficult for trans people to use the “divers” option. Due to this legal uncertainty, the law has become more inaccessible for intersex people, too⁴⁶.

- relevant case-law

Several **courts allowed non-binary** (non-intersex) people to use the “divers” or the blank option. Nevertheless, in april 2020 the Federal Court (BGH) found that the latter is only available to persons with a medically certified variation of sex development. The case was brought before the **Constitutional Court** in June 2020. It contains the claim that the right to privacy includes a **self-determined gender entry for all people**, regardless of any external examination, may it be psychological or physical. The case is still **pending**⁴⁷.

⁴⁵ See Intersexualität: Warum schon heute ein X im Reisepasse stehen kann - DER SPIEGEL <<https://www.spiegel.de/consent-a-?targetUrl=https%3A%2F%2Fwww.spiegel.de%2Fpanorama%2Fgesellschaft%2Fintersexualitaet-warum-schon-heute-ein-x-im-reisepasse-stehen-kann-a-1178271.html&ref=https%3A%2F%2Fwww.google.com%2F>> and Das noch nicht definierte Geschlecht: Eine (stille) Revolution – nicht nur im Personenstandswesen! | rehm. Beste Antwort <<https://www.rehm-verlag.de/verwaltung/aktuelle-beitraege-zum-pass-ausweis-und-melderecht/das-noch-nicht-definierte-geschlecht-eine-stille-revolution-nicht-nur-im-personenstandswesen/>>

⁴⁶ ILGA-Europe, Annual Report 2020 (see footnote 6), Germany chapter

⁴⁷ Dritte option <<http://dritte-option.de/>>

Greece

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

Legal Recognition of Gender Identity Law 4491/2017⁴⁸. The procedure is **only partly based on self determination**: the person makes a personal statement to the **Court**, which then decides on the change of their gender marker. Additionally, the applicant must be **unmarried**. Minors aged 17 can access the procedure with parental consent, while those aged 15 to 17 also need the agreement of an interdisciplinary committee including psychiatrists, endocrinologist, surgeon, psychologist, social worker, paediatrician (Articles 3-4)⁴⁹. Medical/surgical treatments are not required. According to the Greek jurisprudence, intersex people can follow the same procedure as trans under this law⁵⁰.

- case-law

In 2018, the County Court of Marousi (Ειρηνοδικείο Αμαρουσίου) approved a non-binary person's request to have their male birth name changed to a gender-neutral one by adding a female name next to it. The applicant also aimed for the change of their gender on identification documents from male to **"blank"** ("-") since they identified as **non-binary**. The Court rejected their request based on Law 4491/2017 which "did not include the case of the registration of a third gender for those who wish, i.e. non-binary individuals who do not identify themselves with the gender binary. (...) the freedom of self-determination and self-development does not necessarily imply the positive obligation of the legislator for legal recognition (of gender)". The applicant had also referred to U.S. case law on non-binary individuals, but the Court stressed the fact that in two of the cited cases the applicants were allowed to identify as intersex (first case) and non-binary (second case) for medical purposes. Even though the final decision is regrettable, it opens the way for intersex individuals to be recognised as "third/non-binary gender" in Greece in the future (unfortunately still based on a medicalised perspective)⁵¹.

⁴⁸ ΝΟΜΟΣ 4491/2017 - ΦΕΚ Α 152/13.10.2017

<<https://www.kodiko.gr/nomothesia/document/304143/nomos-4491-2017>>

⁴⁹ See ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Greece chapter

⁵⁰ Pikramenou, Intersex Rights, 2019 (see footnote 7), p. 181

⁵¹ *Ibid.*, p. 179-180

Iceland

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

On 18 June 2019, the Parliament passed the Gender Autonomy Act⁵². The Act replaces the previous requirements of mandatory diagnosis and medical interventions for legal gender recognition, and introduces the **self-determination** model. The law falls short of ensuring the rights of trans youth. Legal gender recognition will be available to minors only with parental consent or if unavailable, with the agreement of an expert panel. The draft initially placed no limit on the number of times a person can change their legal gender. The adopted version, however, limits it to one, except in special circumstances⁵³.

- legal provisions about the right of intersex people to have a non-binary gender marker

The law also **allows anyone to register a neutral gender marker - which on passports becomes X** - (Article 6) and thus positions Iceland at the forefront regarding LGR. However, offices registering gender have a period of 18 months after the entry into force of the Act (July 2019) to adapt registration forms and certificates in accordance with the instructions in Article 6.

⁵² 80/2019: Lög um kynrænt sjálfbræði | Lög <<https://www.althingi.is/lagas/nuna/2019080.html>>

⁵³ ILGA-Europe, Annual Report 2020 (see footnote 6), Iceland chapter

Ireland

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

Administrative procedure based on **self-determination**. Gender Recognition Act 2015 (25/2015)⁵⁴. Applicants must be 18 years old. Applicants between 16 and 18 years of age must provide consent from parents/guardians, along with references from the applicant's primary physician and a psychiatrist unrelated to the applicant's case. (Part II, Section 12, 1-4). No mandatory hormonal/surgical interventions. Gender is self-declared but only binary choices allowed⁵⁵.

A child's sex can be classified by a medical professional as "**indeterminate**" on the birth notification form. It remains so until it can be "medically determined". In that case, the correction can be addressed, at any age, directly through the civil registration system, with supporting medical evidence. Section 63 of the Civil Registration Act applies, instead of the Gender Recognition Act⁵⁶. This interpretation neglects the reality of intersex people who identify with a gender other than the one "medically determined".

- legal provisions about the right of intersex people to have a non-binary gender marker

In November 2017 the Government established a group of experts to carry out a **review** of the operation of the Gender Recognition Act 2015. In June 2018 the group submitted a report to the Minister for Employment Affairs and Social Protection, with recommendations including the following:

- Legal gender recognition should be made available to people who are non-binary.
- As part of cross Government departmental review of proposed legislative amendments an impact assessment may be considered.
- In the immediate term, Government Departments and other public bodies should take any positive steps they can take to improve the position of people who are non-binary.
- All measures taken to improve access to gender recognition, both with regard to age and gender identity (either binary or non-binary), should also provide access for intersex individuals/people with VSCs.⁵⁷

In November 2019, the **Minister** published the **Report** on the Review of the Gender Recognition Act. The document accepted recommendations to make LGR available to 16 and

⁵⁴ Gender Recognition Act 2015 <<http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/print>>

⁵⁵ ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Ireland chapter

⁵⁶ See Section 63 of the Civil Registration Act 2004 <<http://www.irishstatutebook.ie/eli/2004/act/3/section/63/enacted/en/html#sec63>> as interpreted by Gender Recognition Act 2015: Report to the Oireachtas under Section 7 of the Act <<https://www.gov.ie/pdf/?file=https://assets.gov.ie/69547/dd757168e2e44d3faa7196b4b17fc4d8.pdf#page=1>>

⁵⁷ Review of the Gender Recognition Act 2015 - Report to the Minister for Employment Affairs and Social Protection <<https://www.gov.ie/en/press-release/6b7814-review-of-the-gender-recognition-act-2015-report-to-the-minister-for/#>> p. 97-99, para. 6.7-8

17-year-olds on the basis of self-declaration with parental consent. It did not set immediate action for ensuring LGR to **non-binary** people. However, an interdepartmental group of officials has been established to progress this issue and conduct an **impact assessment** on the legislative and policy consequences. The group aims to complete its work by the end of 2020. In the meantime, Government Departments and other public bodies will take positive steps to improve the position of non-binary people. This could include measures such as: promoting the use and acceptance of correct pronouns; improving the design of official forms and documentation to permit the use of a third gender option, or no gender at all, where it is possible to do so⁵⁸.

⁵⁸ See two footnotes above, p. 10 and Press release: Minister Doherty Publishes her Report on the Review of the Gender Recognition Act <<https://www.gov.ie/en/press-release/43aef0-minister-doherty-publishes-her-report-on-the-review-of-the-gender-re/>>

Luxembourg

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

Law of 10 August 2018 on the modification of the mention of sex and forename(s) in the civil status register and amending the Civil Code⁵⁹. Under the law, anyone wanting to change their gender marker on civil documents does no longer have to present any evidence of medical, hormonal or surgical treatment, or a psychiatric diagnosis. Minors, citizens of Luxembourg living abroad, and citizens from other countries living in Luxembourg (for more than one year) are also able to access the process⁶⁰.

The latter is no longer a judicial procedure, but an **administrative** one. The applicant must prove by any means some of the following non-cumulative facts: 1) that the person publicly presents as the claimed sex; 2) that they are known as that sex by family/friends/professional connections; 3) that they have changed their first name to conform to their sex (Article 1(2))⁶¹.

- legal provisions about the right of intersex people to have a non-binary gender marker

In July 2019 the Ministry of Family and Integration published the first national LGBTI Action Plan, with the involvement of 10 government ministries and in collaboration with human rights organisations. Under the thematic area “To ensure equality of rights to intersex people”, objective 2 reads: “To respect the right to privacy and self-determination of intersex persons with regard to civil status and legal recognition”. Action 14 is “To **analyse whether going beyond the binary** civil status system is the most favourable option according to the needs of intersex people and what repercussions this would have”. An almost identical action is set forth under the thematic area referred to trans persons (objective 1, action 2)⁶². An inter-ministerial LGBTI committee, chaired by the Ministry of Family, was set up to monitor the plan’s implementation.

⁵⁹ Loi du 10 août 2018 relative à la modification de la mention du sexe et du ou des prénoms à l'état civil et portant modification du Code civil <<http://legilux.public.lu/eli/etat/leg/loi/2018/08/10/a797/jo>>

⁶⁰ [ILGA Annual Review 2019](#) Luxembourg chapter

⁶¹ See ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Luxembourg chapter

⁶² Plan d'action national de la promotion des droits des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes <<https://mfamigr.gouvernement.lu/dam-assets/publications/plan-strategie/lgbti/Plan-d-action-LGBTI.pdf>> p. 42 and 49

Malta

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

Administrative procedure based on **self-determination**⁶³. Gender Identity, Gender Expression, and Sex Characteristics (GIGIESC) Act 2015⁶⁴. No proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment is required (Section 3(4)). In the case of a minor, the application must be filed by a parent or guardian. The court will take into account the best interests of the child as per the CRC, and the age and maturity of the minor (Section 7). As a result of the process, the applicant's act of birth is amended (Section 4(6)). Following that, the person shall require the authorised officers to amend the identity card and other identification documents to reflect the changed gender (Section 10(2)).

- legal provisions about the right of intersex people to have a non-binary gender marker

In September 2017, Malta allowed citizens to use the gender marker **X on their passports and other identification documents**. An applicant can self-declare and change their marker following an oath witnessed by a notary⁶⁵. According to Silvan Agius, human rights policy coordinator at the Ministry for Social Dialogue, the Maltese laws regulating identification documents were not specifying that sex has to be limited to male or female and therefore the government was able to reform its policy⁶⁶.

Despite being a step forward, this move has not led to the introduction of a positive third gender, but only allowed **not to disclose** one's gender identity in some official documents⁶⁷. It seems that **birth certificates**, which are the basis for any subsequent amendments of civil status acts and identification documents, continue to follow the **binary system**. Since the GIGIESC Act does not specify that gender identities are just male and female, one could argue that the Government could adopt a new policy allowing the third gender in birth certificates. Nevertheless, Section 9(2) states that a gender marker other than male or female, or the absence thereof, recognised by a competent foreign court or responsible authority acting in accordance with the law of that country is recognised in Malta. This may be interpreted as excluding such an option internally, given that this Section is the only place where "a gender marker other than male or female" is mentioned in the Act.

- practical challenges/obstacles that intersex people seeking LGR face

⁶³ See ILGA-Europe, Annual Report 2020 (see footnote 6), Malta chapter and ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Malta chapter

⁶⁴ Gender Identity, Gender Expression, and Sex Characteristics Act 2015
<<https://legislation.mt/eli/cap/540/eng/pdf>>

⁶⁵ ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Malta chapter

⁶⁶ Pikramenou, Intersex Rights, 2019 (see footnote 7), p. 186

⁶⁷ Miriam Dalli, "Male, Female or X: the new gender options on identification documents"
<https://www.maltatoday.com.mt/news/national/49185/male_female_or_x_the_new_gender_options_on_identification_documents#.YFNvEa-g_IV>

Some non-binary people have first changed their gender marker in a binary way, which allowed them to change their name, and then applied for the X. Local lawyers have explicitly discouraged non-binary people from going through the court route to fight this, as it would likely be unsuccessful and also take about 2 years⁶⁸.

⁶⁸ As reported by intersex experts.

Netherlands

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

In 2013, the Law for changing the registered sex on the birth certificate (Wet wijziging van de vermelding van het geslacht in de akte van geboorte) allowed transgender people to legally change their gender on their birth certificates and other official documents without undergoing sterilisation and sex-reassignment surgery⁶⁹.

It is an **administrative procedure** requiring that the applicant (aged 16 or older) gets a statement from an expert to the effect that the applicant has the conviction of belonging to the gender other than mentioned in their birth certificate and, in the opinion of the expert, has proven that they understand the scope and meaning of this statement and of the change in birth certificate⁷⁰.

The Government proposed a draft law to bring legal gender recognition (LGR) more in line with the principle of self-determination. Applicants will no longer need an expert declaration from a doctor or psychiatrist. A four-week reflection will allow individuals to change their mind. Young people under 16 will be able to change their gender marker by going to court and if needed, will also be able to change it back without a court date. A public consultation was launched on 10 December 2019 on the draft law. A final proposal is expected in 2020⁷¹.

- legal provisions about the right of intersex people to have a non-binary gender marker

Article 19(d) of the Civil Code provides the option of a provisional birth certificate which after 3 months must be replaced by a final document indicating the child's sex. If after 3 months it is still impossible to determine the child's sex based on a medical certificate, or no certificate is submitted, there is the option to state that impossibility on the final certificate: "**sex cannot be determined**". Any person having such an entry on their certificate gets an **X on passports and identity cards**⁷².

Intersex people can follow the same procedure used by trans applicants under Article 28, if they want to change their sex into male or female. If they wish to have their gender identity recognised as neutral (but were not registered on their birth certificate with the entry "sex cannot be determined"), despite the lack of explicit rules they can try to follow the (Court) procedure under Article 24, designed for correcting **errors in certificates**. For successful cases, see the paragraph about relevant case law.

⁶⁹ Pikramenou, Intersex Rights, 2019 (see footnote 7), p. 197

⁷⁰ Civil Code, Book 1, Articles 28, 28a and 28b. See <<https://wetten.overheid.nl/BWBR0002656/2020-01-01>> See also ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Netherlands chapter

⁷¹ ILGA-Europe, Annual Report 2020 (see footnote 6), Netherlands chapter. NNID reported that they are still waiting for the final draft.

⁷² As reported by NNID.

Regarding (non intersex) non-binary persons, the Dutch government announced that **ID cards will be gender-free** within five years⁷³.

- relevant case-law

On 28 May 2018, the District **Court** of Limburg ruled in favour of a Dutch citizen (self identified as **intersex**) who wished to be recognised as a “**third gender**” despite the fact that current Dutch legal frameworks do not provide for the possibility to be registered as such⁷⁴. The Court stated that self-identification prevails over bodily appearance or medical status and suggested the Dutch legislature initiate legislation to ensure that gender-neutral self-identification is provided for under Dutch law⁷⁵. In its decision, the Court ordered that a new certificate be issued with the words “**sex cannot be determined**”⁷⁶.

On 29 July 2019, the District Court of the Northern Netherlands ordered that a new certificate be issued with the words “**sex cannot be determined**”. That was the first positive ruling for a (non intersex) non binary person⁷⁷.

⁷³ Netherlands Sees No Role for Gender Marker on ID Documents

<<https://www.hrw.org/news/2020/07/08/netherlands-sees-no-role-gender-marker-id-documents#>>

⁷⁴ Pikramenou, *Intersex Rights*, 2019 (see footnote 7), p. 198

⁷⁵ *Ibid.*, p. 199

⁷⁶ Rechtbank Limburg, 28-05-2018 / C/03/232248 / FA RK 17-687

<<https://linkeddata.overheid.nl/front/portal/document-viewer?ext-id=ECLI:NL:RBLIM:2018:4931>>

⁷⁷ ECLI:NL:RBNNE:2019:3437, Rechtbank Noord-Nederland, 126841 FA RK 19/966

<<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBNNE:2019:3437>>

Norway

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

Administrative procedure based on **self-determination**. Law Amending the Legal Status (June 2016)⁷⁸. Adults and children older than 16 can apply to the tax office. Children aged 6 to 16 can have their gender legally recognised with the permission of one or both parents. Children under 6 may only amend their legal gender if they have a “congenital somatic sex development uncertainty”, which must be documented by a healthcare professional. Both the health care professionals and the parents must ensure that the child is allowed to express their views to the extent that they are able to do so based on age and maturity⁷⁹.

⁷⁸ Lov om endring av juridisk kjønn <<https://lovdata.no/dokument/NL/lov/2016-06-17-46?q=lov%20om%20endring%20av%20juridisk>>. See ILGA-Europe, Annual Report 2020 (see footnote 6), Norway chapter and ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Norway chapter.

⁷⁹ Excerpt from: Prop 74 L (2015-2016) <<https://tgeu.org/wp-content/uploads/2016/07/Prop74LEng.pdf>>

Portugal

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

In July 2018 a new law introduced a LGR system based on **self-determination**⁸⁰. Trans persons can apply (administrative procedure) to change their gender marker in the civil status register. They do no longer need to be diagnosed with gender identity disorder (Articles 6-10). A new birth certificate can be requested as well, with no mention of the change - i.e. of the fact that the new gender marker results from a change (Article 8).

Children aged 16-18 need to obtain a document certifying that they are able to provide consent from a doctor or a psychologist of their choice. The latter attests exclusively the child's decision-making ability and informed will, without any reference to gender identity disorder diagnoses (Article 7(2)).

⁸⁰ Lei 38/2018, 2018-08-07 <<https://dre.pt/web/guest/pesquisa/-/search/115933863/details/maximized>>. See ILGA-Europe, Annual Report 2020 (see footnote 6), Portugal chapter and ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Portugal chapter.

Spain

Last update: 11/20

- legal provisions about the right of intersex people to choose/change gender marker

Administrative procedure. Civil Registry Law 1957⁸¹ (Articles 92-93). A new Civil Registry Law will come into force in 2021, with no significant changes to the matter under consideration. Law 3/2007, of the 15th of March, regulating the rectification of mentions in the registry of the sex of persons⁸². conditions required include: **gender dysphoria diagnosis** and **two years of medical treatment** to alter physical characteristics to match gender identity (Article 4). In July 2019 the Constitutional Court declared the Act unconstitutional insofar as it excluded the legitimacy of minors, who now cannot be barred from accessing gender marker change⁸³.

Spain is also currently debating a bill which would remove pathologisation requirements and introduce self-determination⁸⁴. Only **10 out of 17 regions** have complementary laws based on a **self-determination** model⁸⁵.

⁸¹ Documento consolidado BOE-A-1957-7537 <<https://www.boe.es/buscar/act.php?id=BOE-A-1957-7537>>

⁸² Ley 3/2007, de 15 de marzo, reguladora de la rectificación registral de la mención relativa al sexo de las personas <<https://www.boe.es/buscar/pdf/2007/BOE-A-2007-5585-consolidado.pdf>>

⁸³ Documento BOE-A-2019-11911 <https://www.boe.es/diario_boe/txt.php?id=BOE-A-2019-11911>

⁸⁴ ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Spain chapter

⁸⁵ ILGA-Europe Rainbow Map <<https://www.rainbow-europe.org/#8661/0/0>> mentions 9 regions: Aragon, Balearic Islands, Catalonia, Extremadura, Madrid, Navarra, Andalusia, Murcia and the Valencian Community. In June 2019 the Basque Country joined the list as the tenth region: LEY 9/2019, de 27 de junio, de modificación de la Ley 14/2012, de 28 de junio, de no discriminación por motivos de identidad de género y de reconocimiento de los derechos de las personas transexuales. - Gobierno Vasco <<https://www.euskadi.eus/gobierno-vasco/-/eli/es-pv/l/2019/06/27/9/dof/spa/html/>>

Switzerland

Last update: 02/21

- legal provisions about the right of intersex people to choose/change gender marker

Art. 43 of the Swiss Civil Code⁸⁶ states that the register authorities must of their own accord rectify mistakes resulting from an obvious oversight or error: this can apply to changing an intersex child's gender marker on the basis of a corrected birth notification, which in turn must be made by the medical personnel, as long as there is a «temporal connection» between the original birth notification and the subsequent one with the correction⁸⁷.

In all other cases, Art. 42(1) of the same code applies: it provides for rectification of disputed information concerning personal status by **court order**, but does not make any specific mention of gender marker change. The Swiss courts affirm the right to judicial change of civil status for transgender persons in Federal High Court decision: BGE 119 II 264. A report by a psychologist or psychiatrist and gender-normative expression are often expected by the Court⁸⁸.

On 18 December 2020, the Parliament adopted a **law** (new Art. 30b Swiss Civil Code) allowing for LGR based on **self-determination** in a quick and low cost administrative procedure⁸⁹. In the future, a simple declaration at the civil registry office will be sufficient for trans and intersex people to change their gender marker. If the newly passed law is not challenged with a referendum in the upcoming months, the Swiss Federal Council will announce a date for the law to come into force⁹⁰. Minors under 16 years of age and persons under general guardianship will still need the consent of their legal representative.

On the basis of two requests (*postulats*)⁹¹ accepted by the Federal Council, the *Commission nationale d'éthique dans le domaine de la médecine humaine (CNE)* - National Advisory Commission on Biomedical Ethics - was mandated by the Federal Office of Justice to write a report on the ethical and legal implications of the "question of abandoning all mention of

⁸⁶ CC 210 Swiss Civil Code of 10 December 1907
<https://www.fedlex.admin.ch/eli/cc/24/233_245_233/en>

⁸⁷ Eidgenössisches Amt für das Zivilstandswesen (EAZW) (2014): Amtliche Mitteilungen EAZW. Intersexualität: Eintragung und Änderung des Geschlechts und der Vornamen im Personenstandsregister. Intersexualität, Nr. 140.15 vom 1. Februar 2014.

⁸⁸ ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Switzerland chapter

⁸⁹ Code civil suisse (Changement de sexe à l'état civil)
<<https://www.fedlex.admin.ch/eli/fga/2020/2689/fr>>

⁹⁰ See <<https://www.tgns.ch/fr/2020/12/autodetermination-mais-pas-pour-tout-le-monde/>> and <<https://tgeu.org/swiss-parliament-passes-lgr-based-on-self-determination/>>

⁹¹ 17.4121 | Inscription d'un troisième sexe à l'état civil | Objet | Le Parlement suisse <<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20174121>> and 17.4185 | Introduction d'un troisième genre. Conséquences pour l'ordre juridique et pour Infostar | Objet | Le Parlement suisse <<https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20174185>>. Sources reported to us by Transgender Network Switzerland.

gender or introducing **new gender categories** in civil status”⁹². The report was approved on 5 October 2020 and stated that «the current legal regulation fails to reflect the diversity of gender identities and disregards fundamental interests of people with non-binary gender identities, transgender and intersex people»⁹³.

⁹² National Advisory Commission on Biomedical Ethics] National Advisory Commission on Biomedical Ethics NCE <<https://www.nek-cne.admin.ch/en/homepage-nek-cne/>>. Source reported to us by Transgender Network Switzerland.

⁹³ *Ibid.* See the text in English at <https://www.nek-cne.admin.ch/inhalte/Themen/Stellungnahmen/en/NEK-stellungnahme_Officially_recorded_gender_Final.pdf>

Table

Countries	Model based on self-determination	X on passports and/or other identity documents	Alternative markers for intersex people	Third/ neutral markers for everybody, including non-binary people
Austria ⁹⁴		✓	✓	
Belgium	✓ However with a reflection period ⁹⁵			→ Constitutional Court judgement ⁹⁶
Denmark	✓ However with a reflection period ⁹⁷	✓ ⁹⁸		
France	≈ Court procedure, facts to be proven ⁹⁹			

⁹⁴ Austrian Constitutional Court, *Verfassungsgerichtshof*, 15 June 2018, G 77/2018-9, VfGH G 77/2018 <https://www.vfgh.gv.at/downloads/VfGH_Entscheidung_G_77-2018_unbestimmtes_Geschlecht_anonym.pdf>

⁹⁵ See ILGA-Europe, Annual Report 2020 (see footnote 6), Belgium chapter and ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Belgium chapter.

⁹⁶ Cour constitutionnelle, Arrêt n° 99/2019 du 19 juin 2019, Moniteur belge 21.01.2020 p. 2348. <http://www.ejustice.just.fgov.be/mopdf/2020/01/21_1.pdf#Page10>.

⁹⁷ Bekendtgørelse af lov om Det Centrale Personregister, LBK nr 1297 af 03/09/2020. <<https://www.retsinformation.dk/eli/ta/2020/1297>>.

⁹⁸ BEK nr 953 af 28/08/2014 Justitsministeriet amended §4,5 of the Passport Order. <<https://www.retsinformation.dk/eli/ta/2014/953>>

⁹⁹ Code Civil, Section 2 bis. See ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), France chapter.

Germany	→ Discussion in the Government ¹⁰⁰	✓ ¹⁰¹	✓ ¹⁰²	→ Favourable case-law, Constitutional Court case pending ¹⁰³
Greece	≈ Court procedure, unmarried ¹⁰⁴			
Iceland ¹⁰⁵	✓	✓		✓
Ireland	✓ ¹⁰⁶			→ Group appointed by the Minister to

¹⁰⁰ Bundesverband Trans*, 2020, Der selbstbestimmte Geschlechtseintrag wird im Innenausschuss debattiert! Der BVT* ist als Sachverständiger geladen. <<https://www.bundesverband-trans.de/anhoerung-innenausschuss2020/>>.

¹⁰¹ See circular of the German Ministry of the Interior (2018): Sachstand WD 7 - 3000 - 098/18. Personenstandsrechtliche Regelungen bei intersexuellen Menschen in verschiedenen Rechtsordnungen, <<https://www.bundestag.de/resource/blob/565996/b7bb6839c108409ae5a29a4cde23837a/wd-7-098-18-pdf-data.pdf>> p. 7.

¹⁰² Gesetz zur Änderung der in das Geburtenregister einzutragenden Angaben, 18 December 2018.

¹⁰³ Dritte Option, Verfassungsbeschwerde gegen den BGH-Beschluss vom 22.4.2020 zum §45 b PStG, <http://dritte-option.de/>

¹⁰⁴ ΝΟΜΟΣ 4491/2017 - ΦΕΚ Α 152/13.10.2017 <https://www.kodiko.gr/nomologia/document_navigation/304143/nomos-4491-2017>. See also ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Greece chapter.

¹⁰⁵ 80/2019: Lög um kynrænt sjálfraeð <<https://www.althingi.is/lagas/nuna/2019080.html>>.

¹⁰⁶ Irish Statute Book, Gender Recognition Act 2015 <<http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/print>>

				conduct an impact assessment ¹⁰⁷
Luxembourg	≈ Facts to be proven ¹⁰⁸			→ Inter-ministerial LGBTI committee to analyse whether to go beyond the binary system ¹⁰⁹
Malta	✓ ¹¹⁰	✓ ¹¹¹		

¹⁰⁷ Review of the Gender Recognition Act 2015 - Report to the Minister for Employment Affairs and Social Protection, p. 97-99, para. 6.7-8. <<https://www.gov.ie/en/press-release/6b7814-review-of-the-gender-recognition-act-2015-report-to-the-minister-for/#>>.

¹⁰⁸ Loi du 10 août 2018 relative à la modification de la mention du sexe et du ou des prénoms à l'état civil et portant modification du Code civil <<http://legilux.public.lu/eli/etat/leg/loi/2018/08/10/a797/jo>>.

¹⁰⁹ Plan d'action national de la promotion des droits des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes, p. 42 and 49. <<https://mfamigr.gouvernement.lu/dam-assets/publications/plan-strategie/lgbti/Plan-d-action-LGBTI.pdf>>.

¹¹⁰ Gender Identity, Gender Expression, and Sex Characteristics Act 2015 <<https://legislation.mt/eli/cap/540/eng/pdf>>.

¹¹¹ ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Malta chapter.

Netherlands	→ Government draft law ¹¹²	→ X for intersex already implemented; for binary people: favourable case law; for everybody: Government's announcement ¹¹³	→ ¹¹⁴ .	→ Favourable case-law ¹¹⁵
Norway	✓ ¹¹⁶			
Portugal	✓ ¹¹⁷			
Spain	✓ Only in 10 Regions - however, Spain is also currently debating a Bill which would remove pathologisation			

¹¹² ILGA-Europe, Annual Report 2020 (see footnote 6), Netherlands chapter. NNID reported that they are still waiting for the final draft.

¹¹³ Human Rights Watch, Netherlands Sees No Role for Gender Marker on ID Documents, 8 July 2020 <<https://www.hrw.org/news/2020/07/08/netherlands-sees-no-role-gender-marker-id-documents>>.

¹¹⁴ Undetermined gender, see C / 03/232248 / FA RK 17-687 (Limburg District Court in Roermond

¹¹⁵ ECLI:NL:RBNNE:2019:3437, Rechtbank Noord-Nederland, 126841 FA RK 19/966.

<<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBNNE:2019:3437>>.

¹¹⁶ Lov om endring av juridisk kjønn <<https://lovdata.no/dokument/NL/lov/2016-06-17-46?q=lov%20om%20endring%20av%20juridisk>> See also ILGA Annual Review 2017, Norway chapter and ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Norway chapter. Excerpt from: Prop 74 L (2015-2016) <<https://tgeu.org/wp-content/uploads/2016/07/Prop74LEng.pdf>>.

¹¹⁷ Lei 38/2018, 2018-08-07 <<https://dre.pt/web/guest/pesquisa/-/search/115933863/details/maximized>>. See also ILGA-Europe, Annual Report 2020 (see footnote 6), Portugal chapter and ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Portugal chapter.

	requirements and introduce self-determination ¹¹⁸			
Switzerland	→ 119			→ National Advisory Commission on Biomedical Ethics released a report ¹²⁰
United-Kingdom (Scotland)				→ The Scottish Government considered an incremental approach towards full LGR for non-binary identities, with intermediate steps such as X on identity documents ¹²¹

¹¹⁸ ILGA World, Trans Legal Mapping Report 2019 (see footnote 5), Spain chapter.

¹¹⁹ Code civil suisse (Changement de sexe à l'état civil) <<https://www.fedlex.admin.ch/eli/fga/2020/2689/fr>>. See <<https://www.tqns.ch/fr/2020/12/autodetermination-mais-pas-pour-tout-le-monde/>> and <<https://tgeu.org/swiss-parliament-passes-lgr-based-on-self-determination/>>

¹²⁰ National Advisory Commission on Biomedical Ethics] National Advisory Commission on Biomedical Ethics NCE <<https://www.nek-cne.admin.ch/en/homepage-nek-cne/>>. Source reported to us by Transgender Network Switzerland. See the text in English at <https://www.nek-cne.admin.ch/inhalte/Themen/Stellungnahmen/en/NEK-stellungnahme_Officially_recorded_gender_Final.pdf>

¹²¹ Scottish Government, Review of the Gender Recognition Act 2004, November 2017, part 7. <https://consult.gov.scot/family-law/review-of-the-gender-recognition-act-2004/user_uploads/sct1017251758-1_gender_p4--3-.pdf>. However, no measures on LGR for non-binary people were included in the following proposed reform: ILGA-Europe, Annual Report 2020 (see footnote 6), United Kingdom chapter.