

CHECKLIST

LEGAL GENDER RECOGNITION

This checklist aims to assist in assessing the human rights compatibility of legal texts or proposals regulating gender recognition procedures. It lists the minimum standards on commonly known issues in procedures, requirements or effects of gender recognition procedures.

This list does not claim to be complete. Suggestions for amendments can be sent to richard@tgeu.org. It might be necessary to consider additional issues alongside the ones mentioned, depending on the context.

How to use the checklist: go through the three different sections and check whether or not the legal text complies with the criteria given below. If a question cannot be answered positively, review the text and bring it in line. The same should be done if the text does not address the below mentioned criteria or is ill-defined.

NAME OF LAW OR PROPOSAL:

DATE (CHECKLIST MADE:

(COUNTRY:

NAME:

COMMENTS:

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Does the proposed text comply?	
Criteria	
Procedures	
Separate procedures are available for change of name and registered gender.	
The applicant is free in the choice of names, including gender neutral names.	
The institution in charge (e.g. administration or court) is clearly evident in the text of the regulation.	
The procedure is quick and the maximum duration clearly and explicitly regulated.	
The procedure is accessible for anyone, irrespective of their economic or other capacity.	
Access of persons with limited legal capacities (minors, persons under guardianship, prisoners) is regulated explicitly.	
Persons with limited legal capacities are involved according to their personal capacities, and their best interests are a primary consideration in all decisions concerning them.	
Access to the procedure for citizens living abroad is regulated explicitly.	
The recognition of foreign decisions is regulated explicitly.	
Access to the procedure for foreign residents, including refugees, is regulated explicitly.	
Asylum seekers and non-citizen detainees have access to immediate temporary provisions for the duration of their asylum procedure or detention.	
Privacy of the applicant is ensured throughout and after the procedure.	
Professionals who disclose private information about the applicant without explicit permission of the person concerned are held accountable.	
The involvement or interference of spouses, children, work colleagues or other third parties in the procedure is barred.	
Grounds for refusal, such as fraudulent intention, are limited and explicitly listed.	
The option for an applicant to appeal the decision is clearly regulated, as is the body to whom the appeal should be addressed.	
Supervision is provided for the enforcement of the legislation, to ensure that it is correctly implemented. A remedy or review mechanism is in place where practice does not correspond.	

Requirements	
The self-determination of the applicant is the sole basis for the gender recognition.	
A person does not need to state association with a certain gender; or alternatives to “male” and “female” are provided.	
No interference or opinion of a third party, either professional (mental health expert et al.) or private (parents, spouse, children, colleagues et al), is requested.	
A request for proof of surgical procedure, hormonal therapy or any other medical or psychological treatment or status is omitted.	
The procedure has no age limits and is fully accessible for young and elderly applicants.	
The best interest of the child and the right of the child to be involved and be heard according to their evolving capacities prevail, also in cases of discordant or reluctant parents or guardians.	
Diagnostic assessment of a child’s gender identity and other forms of testing the child’s identity are explicitly ruled out.	
The procedure is fully accessible for an applicant who is married or in a registered partnership.	
An existing marriage or registered partnership prevails as is. The applicant and their partner can, if freely chosen, transfer their marriage into a registered partnership and vice versa (where available).	
The procedure is fully accessible for an applicant who is a parent or has custody, guardian or visiting rights of children (independent of their age).	
The procedure is fully accessible to an applicant independent of previous or current convictions.	
The applicant is not requested to have lived for a certain time in their gender identity (so called ‘real-life-experience’) or to have used the requested name.	
No other personal characteristic, such as physical appearance, sexual orientation, sex characteristics or intersex status, disability, health, ethnic background or social status may pose a valid ground for refusal or delay.	

Effects	
Upon the decision being made, the applicant is considered a member of the registered gender for all intents and purposes.	
Upon the decision being made, the applicant enjoys all (gendered) rights and duties at par with others of the same registered gender.	
Equity provisions aiming at protecting the applicant on grounds of their gender identity are explicitly regulated. (Example of a criminal code only considering a 'female' rape victim as valid, must also allow for the possibility of considering a trans man as a valid victim of rape).	
A change of name and gender marker leads to an automatic (ex officio) change in all registries held, without leaving a trace.	
Once a decision is in force, name(s) and gender marker which were in use prior to such a decision may not be made public or searchable, unless there is an overriding interest or the applicant consents.	
A change of name leads to the right to be addressed for all official purposes as belonging to the corresponding gender.	
State and non-state actors are obliged to rectify gendered information, including gendered letter and number combinations on educational certificates, working references etc. without a trace, also retroactively.	
Where necessary, additional documentation (conscription exempt, army leaving certificates etc), are issued to enable equal access to employment.	
Existing rights and acquired privileges relating to a marriage or registered partnership remain unaffected.	
Acquired pension rights and/ or similar recurring benefits remain unaffected.	
Next-of-kin relationships, especially custody and visiting rights to children, stay unaffected (neither as a requirement).	
Upon gender recognition, a parent can get registered in accordance with the recognised gender as "mother", "father" or "parent" in birth certificates and documentation of previously born and future children.	