



Self-determination models in Europe

Practical experiences



Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0)
This license allows you to distribute, remix, adapt, translate, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.

Self-determination models in Europe Practical experiences

Author	Richard Köhler
Editors	Deekshitha Gansean and Zhan Chiam
Proofreader	Lukas Berredo
Layout	Lukas Berredo and Dragiša Mioč
Cover photo credit	Trasek ry
Date of publication	November 2022

Suggested citation

Richard Köhler (2022) *Self-determination models in Europe: Practical experiences*. TGEU.

Download the report at tgeu.org or contact tgeu@tgeu.org.

Acknowledgements

We would like to thank Dodo Karsay, Christine Marie Jentoft, Jens Theilen, Marjolien van den Brink, Peter Dunne, Cianán B. Russell, and staff of the corresponding public authorities.

TGEU is a member-based organisation working to strengthen the rights and wellbeing of trans people in Europe and Central Asia.



Funded by
the European Union

Views and opinions expressed are however those of TGEU only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor the granting authority can be held responsible for them.

Contents

Abbreviations	04
Introduction	05
Overview self-determination models in Europe	10
Self-determination in practice	15
Non-binary persons	25
Minors	28
Migrants	33

Abbreviations

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FRA	EU Fundamental Rights Agency
IACtHR	Inter-American Court of Human Rights
LGR	Legal Gender Recognition
UNCRC	UN Convention on the Rights of the Child

Introduction

Legal gender recognition procedures reduce systemic marginalisation, discrimination and violence of trans people. States in Europe are required to provide for it¹ and have quick, accessible, transparent procedures in place, that are based on self-determination² and that are free from physical abuse.³

International human rights law guarantees everyone recognition before the law.⁴ As long as “sex and gender continues to be registered” the Yogyakarta Principles +10 interpret this to include a right for everyone to change name, legal sex, or gender; procedures need to be quick, transparent and accessible procedure and based on self-determination; “medical or psychological interventions, a psycho-medical diagnosis, minimum or maximum age, economic status, health, marital or parental status, or any other third party opinion” must not be requested, while migration status, criminal record or other status may not constitute a barrier.⁵

¹ ECtHR [GC] 11 July 2002, *Christine Goodwin v. the United Kingdom* (28957/95), hudoc.echr.coe.int/eng?i=001-60596; 6 April 2017, *A.P., Garçon, Nicot v France* (79885/12, 52471/13 and 52596/13), hudoc.echr.coe.int/eng?i=001-172913; ECtHR 17 January 2019, *X. v. 'the Former Yugoslav Republic of Macedonia'* (29683/16), hudoc.echr.coe.int/eng?i=001-189096; 15 December 2016, *Y.T. v. Bulgaria* (41701/16), hudoc.echr.coe.int/eng?i=001-170256

² Resolution 2048(2015) *Discrimination against Transgender People in Europe* 22 April 2015, assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736; PACE - Resolution 2191 (2017)—Promoting the human rights of and eliminating discrimination against intersex people 12 October 2017 assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24232&lang=en

³ Article 8 ECHR: no requirement of proof of sterilisation or treatment leading to infertility *A.P., Garçon, Nicot v France* in footnote 1; Article 8 ECHR: no forced surgical intervention ECtHR 14 January 2018, *X. v. Romania and Y. v. Romania* (2145/16 and 20607/16), hudoc.echr.coe.int/eng?i=001-180607, paras 165, 168; on Article 11 European Social Charter, right to health Committee of the Social Charter 15 May 2018, Complaint No. 117/2015, TGEU and ILGA-Europe v. the Czech Republic, hudoc.esc.coe.int/eng?i=cc-117-2015-dmerits-en

⁴ Yogyakarta Principles (2007) *Principles on the application of international human rights law in relation to sexual orientation and gender identity*, yogyakartaprinciples.org

⁵ Principle 31; Yogyakarta Principles +10 (2017) *Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* yogyakartaprinciples.org/principles-en/yp10

While in recent years the European Court of Human Rights (ECtHR) has solidified its position that no physical interventions can be required for gender recognition it has not (yet) squashed a mandatory mental health diagnosis⁶ and thus has not yet fully embraced gender self-determination. In contrast, the **Inter-American Court of Human Rights** (IACtHR) has clarified that every person has the right to legal gender recognition based on self-determination. Any medical, psychological, surgical, or other proof that could be pathologizing or unreasonable must not be requested. States are however free to decide the format, e.g. judicial or administrative. The IACtHR also referred to the Yogyakarta Principles +10 in its reasoning.⁷

In Europe, 39 states provide for the recognition of a person's gender identity.⁸ Out of these, 27 require a mental health diagnosis;⁹ 8 demand sterility;¹⁰ 19 require divorce.¹¹ 16 states enable LGR for minors, with ten states having no age limit.

Nine countries¹² in Europe have adopted gender recognition models based on self-determination, where the individual's self-declared gender identity is the only decisive factor. Iceland is the only country in Europe to provide for self-determination also for non-binary people and without requiring a lower age limit.

⁶ A.P., *Garçon, Nicot v France*, footnote 1.

⁷ Corte Interamericana de Derechos Humanos 24 November 2017, *Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples* (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18, and 24, in relation to Article 1, of the American Convention on Human Rights). Advisory Opinion OC-24/17, corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf

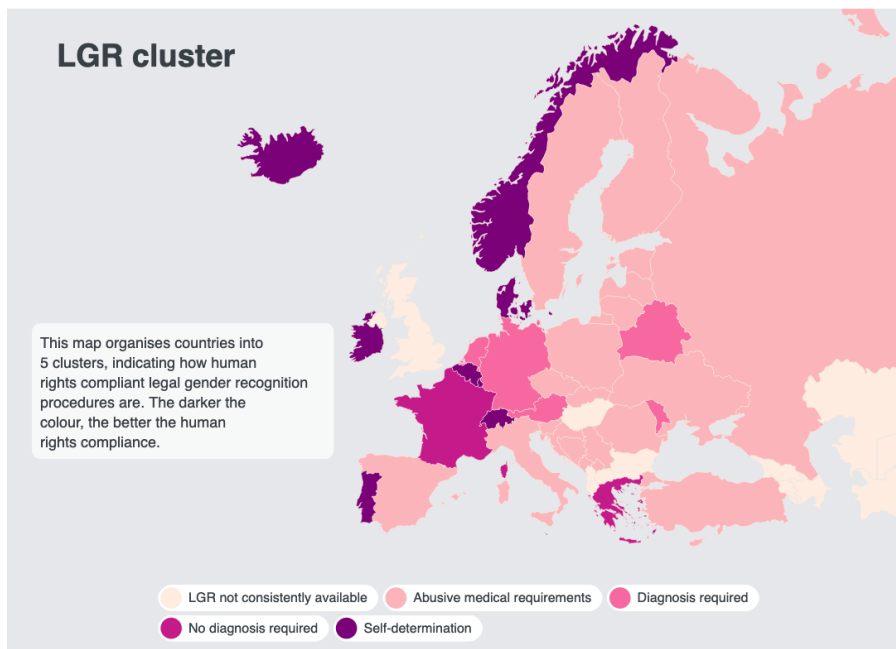
⁸ TGEU Trans Rights Map (2022). transrightsmap.tgeu.org

⁹ Austria, Belarus, Bosnia & Herzegovina, Croatia, Czechia, Estonia, Finland, Germany, Italy, Kosovo, Latvia, Lithuania, Moldova, Montenegro, the Netherlands, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine, and the United Kingdom in *ibid*.

¹⁰ Bosnia & Herzegovina, Czechia, Finland, Kosovo, Latvia, Montenegro, Serbia, and Turkey in *ibid*.

¹¹ For more details, see *ibid*.

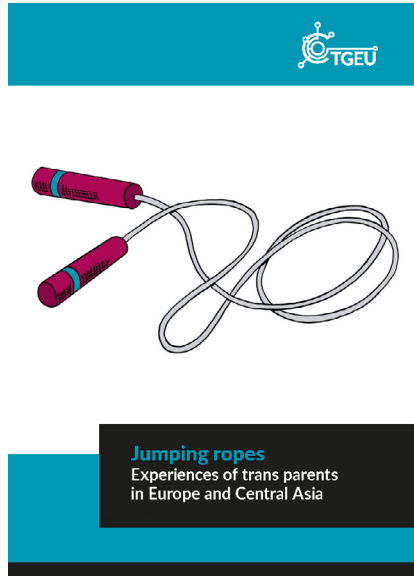
¹² *Ibid*.



The fact that only few trans people make use of gender recognition procedures hints towards problems. “Around three in four trans individuals (78%) living in the EU have not changed their legal gender.”¹³ This is mostly related to gender recognition procedures being arbitrary, inaccessible, featuring abusive requirements, and only offering the choice between ‘male’ and ‘female’ gender markers. Besides non-binary people, minors and migrants (non-citizens) are too often not able to access gender recognition procedures. Also, most self-determination models are still excluding these groups. Future

¹³ European Commission. Directorate General for Justice and Consumers. and ICF. (2020) *Legal gender recognition in the EU: the journeys of trans people towards full equality*. p. 119, data.europa.eu/doi/10.2838/50202

reforms will hopefully make them accessible for anyone who needs them, irrespective of their gender identity, age, or migration status.



In countries without self-determination models, arbitrary, abusive, and cumbersome procedures as well as problems with implementation¹⁴ remain structural barriers. Persons with chronic health issues, disabilities, and mental health issues may face obstacles.¹⁵ In most countries, trans parents are not recognised according to their gender identity in their children's documents, impacting the everyday life of these families.¹⁶ These countries should urgently reform procedures, and introduce self-determination.

¹⁴ Ibid., p. 141 ff.

¹⁵ Ibid., p. 10.

¹⁶ For more information on the specific challenges trans parents face, see Dodo Karsay (2021) *Stuck on the swing: experiences of trans parents with freedom of movement in the EU*. TGEU. tgeu.org/wp-content/uploads/2021/03/tgeu-stuck-on-the-swing.pdf; and Dodo Karsay (2022) *Jumping ropes: Experiences of trans parents in Europe & Central Asia*. TGEU. tgeu.org/wp-content/uploads/2022/03/TGEU-jumping-ropes-2022.pdf; Richard Köhler and Julia Ehrh (2016) *Legal Gender Recognition in Europe*, 2nd ed. TGEU. p. 58 ff. tgeu.org/wp-content/uploads/2017/02/Toolkit16LR.pdf

This publication investigates practical experiences of self-determination models in Europe, looking into frequently asked questions on statistics of usage, problems with implementation, wider negative and positive implications as well as specific aspects relating to non-binary people, minors, and migrants.

This publication does not claim to be comprehensive on the topic of legal gender recognition¹⁷ in Europe. It should be read as complementing TGEU's resources on legal gender recognition and other authoritative publications, such as:

- *Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity (A/73/152)* on legal gender recognition and depathologisation.
- *Council of Europe (2022), Thematic Report on Legal Gender Recognition in Europe. First Thematic Implementation Review Report on Recommendation CM/Rec(2010)5.*
- European Commission Directorate General for Justice and Consumers and ICF (2020), *Legal Gender Recognition in the EU: The Journeys of Trans People towards Full Equality.*
- European Commission Directorate-General for Justice and Consumers, Marjolein van den Brink et al. (2018), *Trans and Intersex Equality Rights in Europe: A Comparative Analysis.*



Photo credit: Samtokin78.

¹⁷ Available at tgeu.org/resources/legal-gender-recognition-resources

Overview self-determination models in Europe

Out of 37 states in the Council of Europe region providing for legal gender recognition, nine states base their gender recognition procedures on the self-declared gender identity of the person.

Self-determination means it is not necessary to involve a third party, such as a judge, psychologist, psychiatrist, medical provider, or parent, nor is it necessary to provide any medical or other proof. The change of name, legal sex or gender is entirely based on the self-declaration of the concerned person. Per definition, self-determination is an administrative procedure – in contrast to a judicial procedure – and thus better suited to enable a fast, accessible and transparent procedure.

The following overview of self-determination models in Europe has been taken from the Council of Europe’s report on Legal Gender Recognition in Europe:¹⁸

Belgium (2018): Legal Gender Recognition Act¹⁹

Abolishment of medical interventions/verifications:

Medical requirements are removed through the 2018 Belgium Gender Recognition Law. LGR is only dependent on a declaration that the applicant is convinced of their gender identity for “a considerable amount of time” (Article 3 para.3) and from the expiration of a waiting period of three to six months (Article 3 para.5).

¹⁸ CDADI Working Group on Sexual Orientation and Gender Identity (GT-ADI-SOGI) and European Governmental LGBTI Focal Points Network (EFPN) (2022) *Thematic Report on Legal Gender Recognition in Europe. First thematic implementation review report on Recommendation CM/Rec(2010)5, Council of Europe*. pp. 23–27. rm.coe.int/thematic-report-on-legal-gender-recognition-in-europe-2022/1680a729b3

¹⁹ See ejustice.just.fgov.be/img_l/pdf/2017/06/25/2017012964_F.pdf

Procedure: The applicant makes a declaration of the conviction that the gender mentioned in the birth certificate does not correspond to the intimately experienced gender identity to the civil status officer of the municipality in which the person is entered in the population registry.

Denmark (2014): Act on the Central Register of Persons, 2014²⁰

Abolishment of medical interventions/verifications: No medical requirement, no requirement impacting transgender persons' family life. Debates are on-going on the exclusion of children and the inclusion of a six-month waiting period before obtaining LGR, which would de facto have the effect of requiring a "real life experience".

Procedure: A transgender person files a written application for a new social security number based on their experience of having a gender identity that does not match the recorded gender details. When a new social security number is assigned, the applicant automatically receives a new health card with those details and can request an amended passport, driver's license and birth certificate.

Iceland (2019): Act on Gender Autonomy, 2019²¹

Protection against medical interventions/verifications: The Act prohibits making an intervention, medication, hormonal treatment or other medical treatment, such as psychiatric or psychological therapy, a requirement for changing the registration of sex (Article 4). The Act also ensures that children under the age of 15 can change their registered sex and name in the National Registry with the consent of their parents. If parents' consent is not available, the decision is put before an expert committee (Article 5).

Procedure: A request for changing one's registration shall be submitted to Registers Iceland. Alongside a change in sex registration, the applicant has the right to a name change.

²⁰ See ft.dk/Rlpdf/samling/20131/lovforslag/L182/20131_L182_som_vedtaget.pdf (in Danish)

²¹ See government.is/library/04-Legislation/Act%20on%20Gender%20Autonomy%20No%2080_2019.pdf

Ireland (2015): Gender Recognition Act, 2015²²

Protection against medical interventions/verifications: The act lists the exhaustive list of requirements of LGR, all relating to simple administrative process without any medical requirements.

Procedure: A person (at least 18 years of age) can apply for a Gender Recognition Certificate in order to have their gender identity recognised by the State. Once a Gender Recognition Certificate is issued, the gender of the person named on the certificate becomes for all purposes the recognised gender from that date onwards. The procedure is free (see below). The provisions on LGR for transgender children (currently possible between 16 and 18 years old but following a complex, burdensome and costly procedures) and the lack of non-binary recognition have been called into question. These issues are currently included in the on-going review of the Gender Recognition Act.²³

Luxembourg (2018): Law relating to the modification of the indication of sex and first name (s) in the civil status and amending the Civil Code²⁴

Protection against medical interventions/verifications: The law explicitly prohibits sterilisation and other medical requirements (see Article 2, “The fact of not having undergone medical treatment, a surgical operation or sterilisation cannot justify the refusal to grant the request.” There is no mention of a diagnosis nor waiting period.

Procedure: The requirements stated in the law (non-cumulative requirements) are the following: to present oneself publicly with the proper gender identity, to be known accordingly by one’s family, friends, professionals or associations; to have obtained the change of one’s first name so that it corresponds to the person’s gender identity. Court procedures for those below the age of five follow specific procedural safeguards [...].

.....
²² See irishstatutebook.ie/eli/2015/act/25/enacted/en/html

²³ See gov.ie/en/press-release/43aef0-minister-doherty-publishes-her-report-on-the-review-of-the-gender-re/

²⁴ See legilux.public.lu/eli/etat/leg/loi/2018/08/10/a797/jo

Malta (2015): Gender Identity, Expression and Sex Characteristics Act, 2015²⁵

Protection against medical interventions/verifications: The law established that “the person shall not be required to provide proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity” (Article 3 paragraph 4).

Procedure: The applicant writes a “clear, unequivocal and informed declaration” that their gender identity does not match their assigned sex in the birth record. That is combined with a copy of the original act of birth, details of the sex and first name the applicant wants registered. The law specifically states that “the Notary shall not request any psychiatric, psychological or medical documents for the drawing up of the declaratory public deed”. (Article 5-2)

Norway (2016): Legal Gender Amendment Act, 2016²⁶

Protection against medical interventions/verifications: Persons who are resident in Norway and who feel that they belong to a different gender than they are registered with in the population register, have the right to have their legal gender changed (para. 2). The explanatory addendum to the law clarifies that there are no other requirements and that the process is solely based on self-determination.

Procedure: Applications to change legal gender are processed by the tax office (population register authority). The Tax Office’s decision in a case concerning a change of legal gender can be appealed to the State Administrator in Oslo and Viken (para.5).

.....
²⁵ See legislation.mt/eli/act/2015/11/eng/pdf

²⁶ See lovdata.no/dokument/NL/lov/2016-06-17-46 (in Norwegian)

Portugal (2018): Law on the right to self-determination of gender identity and gender expression and to protection of each person's sex characteristics, 2018²⁷

Protection against medical interventions/verifications: The law “establishes the right to self-determination of gender identity and gender expression and the right to protection of the sex characteristics of each person (Article 1). No one may be required to provide proof that they have undergone medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as well as psychological and/or psychiatric treatments” to exercise that right (Article 9). Young people aged 16-18 will be able to access this procedure with some additional limitations (parental consent and a certificate made by a doctor or psychologist attesting the child's free will and decision-making capacity).

Procedure: “An application [is] filed at any civil registry office, indicating the civil identification number and the first name by which the person intends to be identified, with the possibility of requesting a new birth certificate, in which no mention can be made of changing the registration”. (Article 8).

Switzerland (2021): Law modifying the Civil Code and Ordinance on Civil Status²⁸

Procedure: Article 30bCC of the Civil Code provides that “any person may declare to the civil registrar, orally or in writing, that they want the registration of their sex to be changed”. The Code further states that the said declaration does not affect relationships governed by family law. The Ordinance on Civil Status indicates that the declaration is not subject to any conditions other than those referred to in Art. 30b CC.

.....
²⁷ See pgd.lisboa.pt/leis/lei_mostra_articulado.php?nid=2926&tabela=leis&fi-cha=1&pagina=1&so_miolo= (in Portuguese)

²⁸ See link to the ordinance adopted on 27 October 2021, which entered into force on 1 January 2022: bj.admin.ch/bj/fr/home/aktuell/mm.msg-id-85588.html

Self-determination in practice

In summer 2022, TGEU inquired with authorities in **Belgium, Denmark, Iceland, Ireland, Malta, Luxembourg, Norway, Portugal, and Switzerland**²⁹ on practical experiences with self-determination models. We wanted to know how often the procedure had been used; whether any known cases of fraudulent or criminal intent were known as well as repeated applications, e.g. by people who regretted the gender marker change, and any other negative or positive experiences with the law.

We were pleased to see that most countries collected official statistics, in contrast to first inquiries by TGEU in 2017. As with other policy areas, data collection on legal gender recognition is key to assess its success.

Statistical responses for all countries showed a clear increase in numbers of applicants after self-determination had been introduced. Public authorities' reports suggest that the number of people applying for legal gender recognition under self-determination models are consistently at a much higher level than under previous models requiring sterilisation and other invasive procedures. For example, in **Belgium**, two third (2.209) of all gender marker changes since 1993 (n=3.262) took place in the three years following the abolishment of the sterilisation requirement in 2018.

²⁹ Substantive replies were received from the Equal Opportunities Team of the Flemish Government and the Institute for the Equality of Women and Men in Belgium, the Transport Ministry, Department for Gender Equality in Denmark, Department of Children, Equality, Disability, Integration and Youth, Ireland, the Ministry for Home Affairs, Security, Reforms and Equality in Malta, the Ministry of Justice in Luxembourg and the Commission for Citizenship and Gender Equality (CIG) in Portugal. The Swiss law was still too new to produce significant data. Replies to our questions from the Tax Register Authority in Norway has been obtained through a request under the Public Information Act by FRI - the Norwegian Organization for Sexual and Gender Diversity. Data from the Icelandic personal register are taken from Registers Iceland in correspondence with NGO Trans Iceland.

Self-determination models in Europe in practice

COUNTRY	Belgium	Denmark	Malta	Norway	Ireland	Iceland	Luxembourg	Portugal
DATE OF LAW COMING INTO EFFECT	01.01.2018.	01.09.2014.	14.04.2015.	01.07.2016.	08.09.2015.	01.01.2020.	16.09.2018.	07.07.2018.
AVAILABLE FROM AGE	16	18	0	6	18 (15 with psychiatrisation)	0	0	16
LGR DECISIONS	2209	1550	163	2675	909	473	149	1073
REFUSALS	0	no data	0	no data	no data	no data	0	0
REPEATED APPLICATIONS/ REVOCATION	no data	24	3	2	3	no data	0	0
FRAUDULENT / CRIMINAL INTEND	0	0	0	no data	0	no data	no known reports	no known reports
OTHER REASONS	no known reports	1	3	2	n/a	no data	no known reports	no known reports
SOURCE	Annual Report by the Institute for the Equality of Women and Men in cooperation with the National Registry	Transport Ministry, Department for Gender Equality and LGBT+ Denmark	The Human Rights Directorate at the Ministry for Home Affairs, Security, Reforms and EqualityMalta	Norway Tax Registration Authority in correspondence with FRI – The Norwegian Organization for Sexual and Gender Diversity	Department of Social Protection	Registers Iceland in correspondence with NGO Trans Iceland	Ministry of Justice	Commission for Citizenship and Gender Equality (CIG) with statistics by the Ministry of Justice (Notaries & Registries)
DATA AS OF	31.08.2021	31.08.2022	August 2022	13.10.2022	30.06.2022	August 2022	06.08.2022	31.12.2021
COUNTRY POPULATION	11.6 M	5.7 M	430 K	5.2 M	4.8 M	433 K	645 K	10.2 M

Table 1. Self-determination models in Europe in practice.

Regret and Repeat Applications

One recurring argument against removing external vetting in gender recognition is the fear that a person might later regret their decision. Reasons for no longer wanting to live according to one's gender identity have been associated with environmental factors, such as loneliness, transphobia, pressure from family members or peers, difficulty in finding a partner or a job. Some found it is 'too hard' to be trans, even though their gender identity had not changed.

Some countries have introduced so-called 'waiting periods' for the first application and most self-determination models have higher barriers for any second application, that is if a person wants to revert to a previously held gender marker. To prevent 'rash decisions', **Belgium** and **Denmark** introduced waiting periods of 3-6 months and 6 months respectively. In **Belgium**, a repeat application is only possible in exceptional circumstances and after a decision from the family court (Article 10, Trans Law). The Belgian **Constitutional Court** declared this condition and the requirement of a constant gender identity as unconstitutional as they are discriminatory towards gender-fluid persons, and not necessary for fraud and crime prevention.³⁰ Belgian respondents did not have information on repeat applications.³¹

In comparison, **Denmark's** 6-months waiting period presents the highest hurdle to self-determination in Europe. There are no explicit provisions for repeat applications in Danish law. Despite this extra provision to prevent later regret, out of the countries surveyed, **Denmark** is the only country with a two-digit number on repeat applications. The original gender marker had been reinstalled, "in 24 cases (concerning 22 different persons), mainly as a result of the

.....
³⁰ Belgian Constitutional Court [Grand Chamber] 19 June 2019, 99/2019, const-court.be/en/judgments?year=2019

³¹ Institute for the Equality of Women and Men, Government of Flanders/Agency for Home Affairs / Team Equal Opportunities and Richard Köhler, *Experiences with Self-determination law in Belgium* [email exchange], August 2022.

persons concerned having regretted the legal gender change”.³² This corresponds to 1,2% of all applications made.

In contrast, 450 persons or 25% of all applicants in **Denmark** (n=2000) were kept in limbo at a time due to said reflection period.³³ The Danish government has followed the advice of the interministerial LGBTI working group³⁴ and proposes to remove the waiting period altogether.³⁵ One amongst the many reasons for this proposed change is that the European Court of Human Rights would find that the strict age limit in the current law violates the European Convention on Human Rights.

Reverting to a previously held gender marker requires a person in **Malta** to apply to the court, if the person was of legal age at the time of the first gender marker change.³⁶ Three persons had done so in the period 2015-2017.³⁷

In **Portugal**³⁸ and **Luxembourg**³⁹ a person needs to file a request with

³² Danish Ministry of the Environment and Food, *Gennemgang af lovgivning på LGBTI-området Rapport fra den tværministerielle arbejdsgruppe for LGBTI* [Review of legislation in the LGBTI area Report from the interministerial working group for LGBTI], August 2020, p. 126, [bm.dk/media/15701/gennemgang_af_lovgivning_paa_lgbti-området_august_2020.pdf](https://www.bm.dk/media/15701/gennemgang_af_lovgivning_paa_lgbti-området_august_2020.pdf)

³³ Danish Central Persons Register, *Opgørelse vedrørende sager om juridisk kønsskifte* [Statement regarding legal gender recognition cases], Document nr. 558571, October 2022, [cpr.dk/media/638006406095519396/opgørelse_-_juridisk_kønsskifte_2022.pdf](https://www.cpr.dk/media/638006406095519396/opgørelse_-_juridisk_kønsskifte_2022.pdf)

³⁴ Danish Ministry of the Environment and Food, footnote 34, p. 126 ff.

³⁵ Danish Ministry of the Environment and Food, *Frihed Til Forskellighed – Styrkede Rettigheder Og Muligheder For Lgbti-Personer 2* [Freedom Of Difference – Strengthening Rights and Opportunities for Lgbti Persons 2], August 2020, p. 9, [mfvm.dk/fileadmin/user_upload/MFVM/Ligestilling/lgbt_publication_skaermlaesbar.pdf](https://www.mfv.dk/fileadmin/user_upload/MFVM/Ligestilling/lgbt_publication_skaermlaesbar.pdf).

³⁶ Malta, Law No XI of 2015, *Gender Identity, Gender Expression and Sex Characteristics Act (2015)*, 14 April 2014 legislation.mt/eli/cap/540 Article 8.(2).

³⁷ Human Rights Directorate and Richard Köhler, *statistics on self-determination law from Malta* [email exchange], August–September 2022.

³⁸ *Lei 38/2018, 2018-08-07, Direito à autodeterminação da identidade de género e expressão de género e à proteção das características sexuais de cada pessoa* dre.pt/web/guest/pesquisa/-/search/115933863/details/maximized Article 6.(3).

³⁹ *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. 2018* data.legilux.public.lu/eli/etat/leg/loi/2018/08/10/a797/jo Article 16.

a court for a second application. Both **Portugal**⁴⁰ and **Luxembourg**⁴¹ reported no repeat applications.

When a person applies for a change of name and gender marker in **Norway**, they must do so in writing. They will then receive a letter from authorities to which they must reply in writing.⁴² Norwegian legislators considered this as affirmation of intent and sufficient to prevent hasty decisions. A second application would follow the same pathway. However, change of name and gender marker can only be done once every 10 years.⁴³

According to civil society, two applicants in Norway retracted their applications with one person not wanting to come out after all (while still being trans); and another person found ‘not passing’ in their gender identity as too hard and troublesome.⁴⁴ The authorities have no record of repeated applications or withdrawals.⁴⁵

In **Iceland**, to change one’s name or gender marker again one must submit a written application⁴⁶ in an administrative procedure.

Article 15 of the **Irish** Gender Recognition Act foresees that after receiving the gender recognition certificate in Ireland, a person can withdraw by applying to the relevant minister, who then waits for 90-days. If the application is not revoked the gender recognition certificate is withdrawn. In the period 2015-2020, 3 adult persons have made use of the option to revoke the gender recognition

⁴⁰ Commission for Citizenship and Gender Equality (CIG) and Richard Köhler, *statistics on self-determination law from Portugal* [email exchange], August–October 2022.

⁴¹ Ministry of Justice and Richard Köhler, *Daten zu Selbstbestimmung in der Praxis in LUX* [email exchange], August 2022.

⁴² See ‘11 Notes on the individual provisions; on §2’ in *Lov om endring av juridisk kjønn—Lovdata* (Law on change of legal gender), 17 June 2016 lovdata.no/dokument/NL/lov/2016-06-17-46

⁴³ Norwegian Department of Health and Care Services, *Law on change of legal gender*, Article 10.

⁴⁴ The Norwegian Organization for Sexual and Gender Diversity (FRI) and TGEU. [email exchange], October 2022.

⁴⁵ Information Administration, Norwegian Register Tax Agency and FRI - The Norwegian Organization for Sexual and Gender Diversity, [email exchange], October 2022.

⁴⁶ Act on Gender Autonomy No 80 /2019 as amended by Act No. 159/2019, No. 152/2020 and No. 154/2020, Article 7, althingi.is/lagas/nuna/2019080.html

certificate.⁴⁷ This is the equivalent of 0,33% of all applicants (n=909).

The law in **Switzerland** does not have any provisions for repeat applications. Anyone wishing to change their gender marker again is repeating the standard procedure.

Fraud & criminal intent

In all surveyed countries, no known case of fraudulent or criminal intent has been reported. Countries with self-determination models often also have high standards protecting women's rights and gender equality. The absence of abuse shows that self-determination is not a threat to women's quotas and rather supports gender equality measures.

Other reasons

Shortly after the introduction of the law, in 2015, an artist in **Denmark** changed the gendered personal registry number from 'male' to 'female' and went to the women's changing room in a public pool to make a point on how easy it is to change the number.⁴⁸ The Board of Equal Treatment in Denmark later found that denying them access to the women's facilities constituted discrimination.⁴⁹

Not related to malicious intent, in the early days of the law in **Norway**, two applications were made out of 'curiosity'.⁵⁰

In **Ireland**, only one refused application has been documented. A non-binary applicant was rejected due to their non-binary gender identity.⁵¹

⁴⁷ Department of Social Protection, *Gender Recognition Act 2015. Annual Report for 2021*. 30 June 2022, p. 7, assets.gov.ie/229878/0f6af431-22d8-498f-9598-64d4b469a63f.pdf

⁴⁸ Jørn Sørensen, *Ibi-Pippi er kvinde men blev smidt ud fra kvindernes omklædning* [Ibi-Pippi is a woman but was thrown out of the women's dressing room], DR, 5 June 2015, dr.dk/nyheder/regionale/midtvest/ibi-pippi-er-kvinde-men-blev-smidt-ud-fra-kvindernes-omklaedning

⁴⁹ Board of Equal Treatment of Denmark, KEN no. 9383 of 02/03/2016, *Ligebehandlingsnævnets afgørelse om køn adgangsbegrænsning ej medhold* [The Equality Board's decision on gender access restrictions - not upheld]

⁵⁰ FRI and Richard Köhler, *statistics on self-determination in Norway* [email exchange], 2017.

⁵¹ Source: email correspondence of TGEU - Transgender Equality Network Ireland (TENI) in 2017.

Negative effects

We asked whether any problems have been occurring because of the self-determination law, in particular in relation to the provision of single sex services, such as shelters, women support centres, changing facilities, hospitals, prison facilities, as well as equality data collection.

The Ministry of Justice in **Luxembourg** and the Portuguese Commission for Citizenship and Gender Equality (CIG) had no information of any problems that occurred because of the self-determination law. Also, no negative effects have been reported for **Norway or Iceland**.⁵²

In **Malta**, the prison administration had concerns about the placement of a trans woman in a female prison. These concerns could be resolved by an intervention of the Human Rights Directorate.⁵³

Concerns related to safety in prisons were also brought up in the consultation to a self-determination bill the government of **Scotland** has proposed. In October 2022, the Equalities, Human Rights and Civil Justice Committee of the Scottish Parliament published its detailed Stage 1 report on the Gender Recognition Act reform bill for **Scotland**. On the topic of placement of trans women in (female) prisons the **Scottish** Committee was satisfied that the current assessment process by the **Scottish** Prison Service (SPS) was sound. The SPS follows a risk assessment protocol “to ensure individuals are placed in the most appropriate estate, whether that is for their own safety or the safety of others, regardless of whether or not they have a [Gender Recognition Certificate].”⁵⁴

⁵² See Nikolaj Rodkjær Kristensen and Bastian Vedsted Eggert, *Norge og Island har lave aldersgrænser for juridisk kønsskifte. Her er deres erfaringer* [Norway and Iceland have low age limits for legal gender recognition. Here are their experiences], Tjekdet, 25 August 2022, tjekdet.dk/indsigt/norge-og-island-har-lave-aldersgraenser-juridisk-koensskifte-her-er-deres-erfaringer

⁵³ Human Rights Directorate and Richard Köhler, *statistics on self-determination law from Malta* [email exchange], footnote 38.

⁵⁴ Equalities, Human Rights and Civil Justice Committee, Stage 1 Report on the Gender Recognition Reform (Scotland) Bill | Scottish Parliament, 6 October 2022, p. 495, digitalpublications.parliament.scot/Committees/Report/EHRCJ/2022/10/6/d81c72da-4070-4355-aacb-cc58d9c1bc08#Introduction

Respondents from **Belgium** cited as negative effects that certain health care reimbursements became impossible. For example, trans men were not entitled to ‘female’ contraceptives if they had obtained a male gender marker. This was recently rectified, but the challenge remains to identify potential “side effects” and provide an equitable solution at all policy levels, given the country’s complex multi-level government structure.

In the **Scottish** consultation concerns were also raised that gender self-determination would jeopardise the rights and well-being of women as well as the provision of single-sex services, the Committee observed: “when asked about evidence of abuse and concern no witness was able to provide concrete examples.”⁵⁵ After scrutinising the question, the committee concluded that the bill “will not change or remove women’s rights, make changes to how toilets and changing rooms operate, redefine what a man or a woman is, nor change or expand trans people’s rights.”⁵⁶

No surveyed country reported problems with the collection of (gender) equality data because of the self-determination law.

Positive effects

We also asked which positive effects could be observed because of introducing a self-determination model.

Authorities in **Malta** noted the overall increase in the number of persons seeking legal gender recognition as positive.⁵⁷ Before the GIGESC Act was introduced in 2015, all applicants (21) under the previous scheme were trans women. At the time this required sterilisation. Since the self-determination model did away with sterilisation requirements most applicants were trans men accessing legal gender recognition. The law also enabled the introduction of several policies and operating procedures in the field of education and detention services. It further led to the setting up of trans

.....
⁵⁵ Ibid., p. 472.

⁵⁶ Ibid.

⁵⁷ Human Rights Directorate and Richard Köhler, *statistics on self-determination law from Malta* [email exchange], footnote 38.

specific health services in 2018, which adopted a model of care based on informed consent.⁵⁸ Since then, the Gender Wellbeing Clinic's⁵⁹ services have been accessed by over 250 trans persons to date.⁶⁰

A positive side effect of the law in **Portugal** is its increased reach of people all over the country. Although most applicants come from the main urban areas (Lisbon and Porto), applications were also received from smaller municipalities across the country.⁶¹

The Institute for Equality of Women and Men in **Belgium** reported a similar positive effect. The pressure to undergo unwanted medical treatment to meet the requirements of the previous law (2007-2017) for a change of gender marker no longer exists. This and the possibility for minors (15+) to use the procedure resulted in a new group of trans people who seek changing their gender marker: (very) young trans men (16-25 years old). The current regulation makes it possible for this group to adapt the gender marker, albeit including more hurdles.⁶² The Institute also mentions as less tangible, but no less important, the psychological and sociological effect of the new law: "there is a growing awareness among the population that gender identity is a personal matter and should be respected as such. The country is doing it, so the people should also be doing it. There has been a similar effect of the law on gay marriage, or even the prohibition of smoking in public places: common beliefs followed the law, they did not always precede it."⁶³

⁵⁸ Government of Malta, *Transform: Raising Standards of Health Care Service Provision for LGBTIQ People*, deputyprimeminister.gov.mt/en/cmo/transgender-health/pages/home.aspx (Accessed 12 October 2022).

⁵⁹ See deputyprimeminister.gov.mt/en/cmo/transgender-health/pages/welcome/the-gender-wellbeing-clinic.aspx

⁶⁰ Human Rights Directorate and Richard Köhler, *statistics on self-determination law from Malta* [email exchange], footnote 38.

⁶¹ Commission for Citizenship and Gender Equality (CIG) and Richard Köhler, *statistics on self-determination law from Portugal* [email exchange], footnote 41.

⁶² See chapter on Minors and Article 11, 25 Juin 2017. *Loi réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets* [25 June 2017 - Reforming Transgender Regime Act regarding the mention of a change in sex registration in civil status records and its effects]

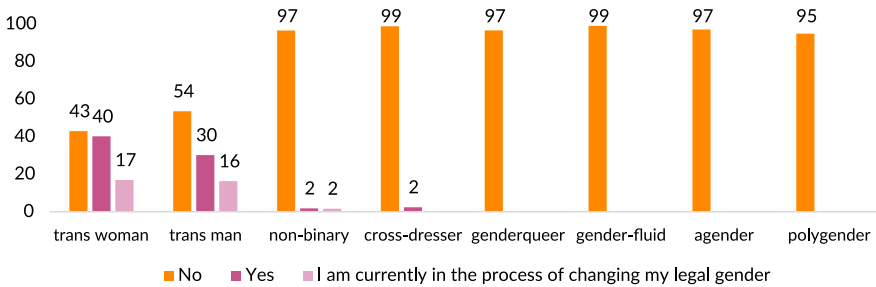
⁶³ Hildegard Van Hove, Belgian Institute for the equality of women and men, and Richard Köhler [email exchange], 01 August 2022

The Ministry of Justice in **Luxembourg** reported positive feedback from applicants on the simplicity and pace of the process.⁶⁴

Non-binary persons

Non-binary people are the largest and the fastest growing sub-group in the trans population.⁶⁵ Lack of available gender marker options leads to persons without a binary gender identity, such as those who identify as non-binary, genderqueer, gender-fluid, agender and polygender, to not access gender recognition. More than 95% of these groups do not use LGR procedures.⁶⁶

Figure 1. Trans individuals who have changed their legal gender, by identity group (%), EU-28 average.⁶⁷



Out of the surveyed countries with self-determination, only **Iceland** enables full recognition of a non-binary identity. This extends to recognising non-binary parents on a child’s documentation. Article 5 of the Children’s Law specifies that a person who raises a child and has a neutral gender registration is considered the child’s parent.⁶⁸

Malta and **Denmark** provide for “X” marker options in passports but not the centrally held registries.

⁶⁴ Ministry of Justice and Richard Köhler, *Daten zu Selbstbestimmung in der Praxis in LUX* [email exchange], footnote 42.

⁶⁵ Paulie Amanita Calderon-Cifuentes (2021) *Trans Discrimination in Europe. A TGEU analysis of the FRA LGBTI Survey 2019*. TGEU. p. 21, tgeu.org/wp-content/uploads/2021/12/TGEU-trans-discrimination-report-2021.pdf

⁶⁶ European Commission. Directorate General for Justice and Consumers. and ICF. footnote 13, p. 119.

⁶⁷ *Ibid.*, p. 114.

⁶⁸ See 76/2003: Barnalög [Children’s Law] althingi.is/lagas/152b/2003076.html, Article 5.



Photo credit: TNN Annual Report 2017.

Following from the Gender Autonomy Act in 2019, **Iceland** allows for first names to be gender neutral. For persons who have changed their gender marker to “X” it is also possible to obtain gender-neutral family names. Instead of the traditional ending saying “daughter of” or “son of”, “child of” is used. These options are available for minors and adults.⁶⁹

In 2004, the **Belgian** Constitutional Court held that the “fundamental sex/binary order” is not fundamental to the Belgian constitutional order.⁷⁰ In 2019, the Constitutional Court annulled the Belgian Gender Recognition Act from 2017 for its failure to recognise gender identities beyond ‘male’ and ‘female’. Not only did it constitute discrimination towards non-binary persons, but it found the enshrined principle of irreversibility to be discriminatory towards gender-fluid persons.⁷¹ In consequence, the gender recognition law is currently re-drafted to enable for non-binary recognition.

While non-binary people have been traditionally less associated with

⁶⁹ For more information see Larissa Kyzer, *Icelandic Names Will No Longer Be Gendered*, Iceland Review, 22 June 2019, icelandreview.com/news/icelandic-names-will-no-longer-be-gendered

⁷⁰ *Grondwettelijk Hof* [Constitutional Court] (Belgium) 20 October 2004, 159/2004

⁷¹ Case ‘99/2019’, footnote 30.

gender recognition – possibly so because gender neutral or a ‘third gender marker option’ are often missing - there is some interest in accessing legal gender recognition. The EU Fundamental Rights Agency found that 17% of non-binary people and 13% of cross-dressers would like to go through LGR in the future.⁷² This requires for most existing self-determination models to adjust and provide solutions beyond the gender binary.

The authors of the study *Legal gender recognition in the EU* hence recommend that the “European Commission should facilitate the exchange of best practices for member states and conduct research on the legal implications of introducing a third gender or non-binary legal marker, or the removal of the gender marker from identity documents, and convene spaces for mutual learning among Member States in the process of implementing new systems.”⁷³



Photo credit: Samtokin78.

⁷² European Commission. Directorate General for Justice and Consumers. and ICF, footnote 13.

⁷³ *Ibid.*, p. 16.

Minors



Photo credit: private (Bt.dk; Helge Sune Nymand).

The Council of Europe Parliamentary Assembly requires legal gender recognition to be made available without age-discrimination⁷⁴ and “that the best interests of the child are a primary consideration in all decisions concerning children.”⁷⁵

The UN Convention of the Child (UN CRC) sets out that the best interest of the child needs to be the primary consideration in all actions affecting children. The ‘best interest of the child’ principle is not an empty phrase and may not be used a paternalistic way to withhold rights from children, such as recognition of their gender identity. Instead, it requires States to take concrete measures, such as ensuring active participation of the child, and securing the right to be heard in all judicial or administrative matters that concern the child, according to their evolving capacities.

Children (anyone below the age of maturity, usually 18 years of age) seeking legal gender recognition need to overcome the additional burden that they often do not have legal standing to start such a

⁷⁴ Art. 6.2.1 PACE Trans Resolution 2048(2015).

⁷⁵ Art. 6.2.5. PACE Trans Resolution 2048(2015).

process. For this, most often consent of both or at least one parent is required. This places a fundamental right of a particularly vulnerable group of minors often in direct conflict with parental rights, where parents are not supportive of their child's gender identity. Parents are protected from state interference in the upbringing of their children. However, this protection is meant to ensure that parents support their child's development in the best interest of the child. It does not entail a right to suppress a child's gender identity or to block gender recognition, if these are in the best interest of the child. Parents should assist the child to assert and access their rights. Their role and responsibility should diminish diametrically to the evolving capacities of the child. To fulfil the principle of the best interest of the child the FRA recommends EU member States to "respect children's right to be informed, express their views on their own, and be heard [...] with the appropriate procedural safeguards in place" in every judicial proceeding, including civil or administrative law proceedings that affect a child's lives.

These principles are hence also applicable to gender recognition procedures for minors.

All surveyed countries with self-determination offered a pathway for children with the exceptions of **Denmark** (age 18) and **Ireland** (age 15 with pathologisation).

Gender recognition laws in **Luxembourg**, **Iceland** and **Malta** have no age restrictions, making procedures available for children of all ages. In **Norway**, gender recognition becomes available for children from age 5 and 6 respectively. In **Belgium** and **Portugal** self-determination procedures are accessible from age 16.

The general administrative procedure in **Luxembourg** is available for children from age 5,⁷⁶ requiring parental consent.⁷⁷ From age 12, the child has to personally confirm the requested change when filing

.....
⁷⁶ *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. 2018* [Law of 10 August 2018 relating to the modification of the mention of sex and first name(s) in civil status and amending the Civil Code. 2018] data.legilux.public.lu/eli/etat/leg/loi/2018/08/10/a797/jo Article 5.(1).

⁷⁷ Article 3.(2), see footnote 76.

the application with the Ministry of Justice. Should one parent not consent, the “most diligent parent” files an application with the competent district court, which must rule in the interest of the child.⁷⁸ The court may “investigate” the matter, but may not require any proofs of medical treatment, surgical intervention or sterility.⁷⁹ Before age 5, the parents file an application with the district court.⁸⁰ There are no provisions regulating the situation where (partial) parental consent is lacking. This means legal uncertainty for a child whose parents are not supportive of their gender identity and who might not be able to have their gender identity recognised, even if it would be in the best interest of the child.

In **Malta**, the parent/tutor of a child files an application to the family court to change the gender marker and name of the child to reflect their gender identity.⁸¹ In accessing the application the best interest of the child has to take paramount consideration and the court has to “give due weight to the views of the minor having regard to the minor’s age and maturity.”⁸² For children whose gender has not been declared at birth, the parent/ tutor shall file an application with the Civil Court if the minor wishes to change their name and gender marker. The evolving capacities and the best interest of the child need to be considered.⁸³ In practice, parental cooperation is required until age 15; from age 16 the minor can use the standard track, making a declaration before a notary. Also, the court may ask for an assessment confirming the minor’s ability to provide consent.⁸⁴ The procedure for minors below age 16 differs from the purely administrative procedure available for adults.

.....
⁷⁸ Article 3.(3), see footnote 76.

⁷⁹ Ibid.

⁸⁰ Article 3.(4), see footnote 76.

⁸¹ Art. 7.(1) GIGESC Act (2015).

⁸² Art. 7.(2).b GIGESC Act (2015).

⁸³ Art. 7.(4) GIGESC Act (2015).

⁸⁴ Human Rights Directorate (2020) *Legal Gender Recognition and Bodily Integrity*. humanrights.gov.mt/en/Pages/LGBTIQ%20Equality/Legal%20Provisions/Legal-Gender-Recognition-and-Bodily-Integrity.aspx

Research comparing the **Maltese** and the **German** court procedures suggests that the **Maltese** one was more aligned with requirements of the UN CRC: The **Maltese** process was easier, simpler, explicitly named the best interest of the child as paramount and required the minor to be heard. In contrast the **German** process required a mental health diagnosis and does not have explicit safeguards for minors.⁸⁵

In **Iceland**, everyone from age 15 has the right to change how their gender and name is registered by submitting a request to the Registers Iceland.⁸⁶ Below that age, a child can use the same procedure with parental assistance. If the child lacks support from one or both parents, the child can instead apply to an expert committee.⁸⁷ Here, decision making needs to account for the best interests of the child, the development of their gender identity and must be in conformity with the child's will.⁸⁸

Minors aged 6-16 years in **Norway** can use the standard administrative procedure for adults, if both parents agree. From age 16, parental consent is explicitly not required. The Norwegian law is the only one that names the court (County Governor of Oslo and Akershus) in case of conflicting views of the parents where the application has to be filed and details key factors in the judicial assessment of whether legal gender recognition is in the best interest of the child: "Significant factors in this review may be the child's age and maturity, what gender expression the child has practised, in what way and for how long and how consistently the child has expressed their gender identity, the reasons why one parent does not consent to amending the legal

⁸⁵ S. Schmidt (2019) *Intersekse en Trans*Kindern hebben recht op (ni)X. Een onderzoek naar de juridische erkenning van genderidentiteit van intersekse en trans*kinderen in Nederland, gezien vanuit een internationaal kinderrechtelijk perspectief*. [Intersex and Trans*children have a right to (ni)X. An investigation into the legal recognition of gender identity of intersex and trans* children in the Netherlands, viewed from an international children's law perspective.], Leiden University, p. 53, universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-privaatrecht/jeugdrecht/1229176-samantha-smidt-mascriptie-publicatie.pdf

⁸⁶ Article 4.(1), see footnote 47.

⁸⁷ Article 5.(3), see footnote 47.

⁸⁸ Article 5.(4), see footnote 47.

gender, the relationships between the child and the two parents and which of these must be presumed to know the child best.”⁸⁹ This list does not explicitly mention the requirement to hear the minor (according to their evolving capacities. This is only foreseen in the procedure for intersex children before the age of 6. In the case of a child being younger than 6 years, participation of the child is required, provided they can express their views.⁹⁰

In **Belgium**, a child psychiatrist must confirm that a minor applicant aged 16-17 is sufficiently capable of discerning a “lasting conviction” about their gender identity.⁹¹ Parental consent to the process is assumed. In its absence, the minor can apply to the family court.⁹²

Portuguese nationals aged 16-18 can apply for gender recognition to the civil registry through their parents. The minor needs to be heard in person. Their express, free, and informed consent needs to be corroborated by a certificate of a physician or psychologist confirming the minor’s decision-making capacity and informed will. It is explicitly prohibited to assess or ‘attest’ the child’s gender identity.⁹³

The **Danish** government found that young trans persons who are excluded from LGR are not receiving the support needed and announced lowering the age limit. It also identified that the strict age limit – LGR in Denmark is only available from age 18 – could breach rights guaranteed by the European Convention on Human Rights.

.....
⁸⁹ Notes on the individual provisions Prop. 74 L (2015–2016) *Lov om endring av juridisk* [‘Prop 74 L (2015-2016) Proposition to the Storting (proposal for a legislative decision) The Legal Gender Amendment Act’] 2016. §4 tgeu.org/wp-content/uploads/2016/07/Prop74LEng.pdf

⁹⁰ Article 4, see footnote 90.

⁹¹ Reforming Gender Recognition Act, Article 11.

⁹² 5 Juin 2017. - *Loi réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d'une modification de l'enregistrement du sexe dans les actes de l'état civil et ses effets* [‘25 June 2017. - Reforming Transgender Regime Act regarding the mention of a change in sex registration in civil status records and its effects’], File number: 2017-06-25/03, 10 July 2017.

⁹³ *Direito à autodeterminação da identidade de género e expressão de género e à proteção das características sexuais de cada pessoa* [Right to self-determination of gender identity and gender expression and protection of each person’s sexual characteristics] 30 April 2018, Article 7.(2). parlamento.pt/ActividadeParlamentar/Paginas/DetalleDiplomaAprovado.aspx?BID=20780

Therefore, the government says: “[Lowering the age limit] sends a clear signal from society about acceptance of a group of people who may already have a hard time and does not change anything for everyone else.”⁹⁴

Similarly on track for reform, **Ireland** currently offers minors aged 16-17 years a route to change gender markers only through pathologisation. In conformity with section 7 of the Irish Gender Recognition Act a review was conducted in 2018 and the review group recommended “introducing an arrangement for self-declaration, with parental consent”⁹⁵ for children aged 16-17 years and to conduct research into options for children below the 16. By the end of 2021, the government had adopted the recommendation to introduce self-declaration for 16-17 years and the drafting of a legislation is in the process.⁹⁶ Further, research into international good practice on legal gender recognition for children under 16 has been commissioned.⁹⁷

Migrants

Residence status has been identified as a common barrier to legal gender recognition procedures in Europe for asylum seekers and refugees, as well as other migrants, who cannot obtain LGR in their country of origin.⁹⁸ In an EU-wide research, 2% of the persons who have not obtained LGR identified their migration status as a reason.⁹⁹

⁹⁴ *Frihed Til Forskellighed – Styrkede Rettigheder Og Muligheder For LGBTI-Personer 2* [Freedom Of Difference – Strengthening Rights and Opportunities for LGBTI Persons 2], s.l., Danish government, Miljø- og Fødevareministeriet, August 2020, p. 9, mfvm.dk/fileadmin/user_upload/MFVM/Ligestilling/lgbt_publication_skaermlaesbar.pdf

⁹⁵ Department of Social Protection, *Gender Recognition Act 2015. Annual Report for 2021*, footnote 50, p. 8.

⁹⁶ *Ibid.*, p. 9.

⁹⁷ *Ibid.*

⁹⁸ European Commission. Directorate General for Justice and Consumers. and ICF., *Legal gender recognition in the EU: the journeys of trans people towards full equality*, footnote 13.

⁹⁹ *Ibid.*

Making procedures accessible for asylum seekers and refugees is important since they are most often barred from obtaining gender recognition in their country of origin. The country of residence can only apply changes to documents it has control over, such as residence certificates or local ID cards. Birth certificates are the competence of the country of nationality and can as a rule not be changed through the legal gender recognition procedure in the country of residence. This can lead to inconsistent sets of documents, which can lead to further complications in the new country, for example if the person wants to marry.

A trans refugee in Malta underlined the importance of a simple and accessible process for refugees: “Refugees that come here and declare that they are trans and want to be recognised as the gender they want... They are obliged to register ... with the gender they feel comfortable with. And that’s what other countries should do, basically.”¹⁰⁰

The European Court of Human Rights found in 2020 in the case *Rana v Hungary* that the right to legal gender recognition also expands to recognised refugees.

The Case: *Rana v. Hungary* (no. 40888/17)

The applicant is a trans man and Iranian national. He was born in 1987 and assigned female at birth. He was granted asylum in Hungary due to his gender identity. At the time, practice had established a gender recognition procedure for Hungarian citizens, albeit without a clear legal framework.

Before the ECtHR, he complained that he was not able to adapt the name and gender marker to be in line with his gender identity, compromising his right to private and family life under Article 8 ECHR. The Hungarian authorities had refused his claim, citing their lack of competence, since he did not have a record in the Hungarian family registry (due to his foreign birth certificate). The Constitutional Court stated that the right to change of name following gender reassignment treatment was a fundamental right and that the

.....
¹⁰⁰ *Ibid.*, p. 127.

State had to adopt regulations facilitating this by adapting relevant procedures. Nevertheless, it rejected the constitutional complaint as the lower instances had judged correctly, given the lacking legal framework.

The European Court of Human Rights assessed that domestic proceedings had been over-formalistic by focusing “*purely on formal considerations, without examining his situation and therefore without conducting any balancing exercise of the competing interests.*”¹⁰¹ In particular, the Court remarked that the authorities had ignored the fact that the applicant had been granted international protection precisely because of his well-wounded fear of persecution on grounds of his gender identity in his country of origin; therefore he could not be expected to pursue legal gender recognition under his law of origin. The Court reiterated that Convention rights need to be practical and effective and not theoretical and illusory, for all persons living on the territory of the Convention. The additional burden on the Hungarian authorities to provide for gender recognition for those without a Hungarian birth certificate could be considered marginal.¹⁰²

Based on this, the Court found a violation of Article 8 ECHR. Moreover, it awarded the applicant 6.500€ compensation for “*non-pecuniary damage which cannot be compensated for solely by the finding of a violation.*”¹⁰³

All surveyed countries make legal gender recognition procedures accessible for non-citizens as well, provided they are ordinary residents. While this may include recognised refugees, it does not automatically apply to a person who is still in the process of applying for asylum (asylum seeker), leaving them in a dangerous limbo.

The following provides an overview on the how self-determination models in Europe account for migrants.

.....
¹⁰¹ ECtHR, 16 July 2020, Rana v. Hungary (40888/17), hudoc.echr.coe.int/eng/?i=001-203563, para. 40.

¹⁰² *Ibid.*, para. 41.

¹⁰³ *Ibid.*, para. 46.

Overview on self-determination procedures accessible for migrants

COUNTRY	BELGIUM	DENMARK	ICELAND	IRELAND	MALTA	NORWAY	SWITZERLAND
WHO CAN ACCESS IT?	Recognised refugee; under subsidiary protection	Anyone with a social security number	“every person”; asylum seeker	Ordinary resident	Recognised refugees	Residents, including recognised refugees	Residents, including recognised refugees
COMMENT	2017; Art. 3 of Loi réformant des régimes relatifs aux personnes transgenres en ce qui concerne la mention d’un changement de l’enregistrement du sexe dans les actes de l’état civil et ses effets, 2017. ¹⁰⁴	Conditions for LGR are being above the age of 18; nationality or migration status is not mentioned. ¹⁰⁵	Gender Autonomy Law (2019) Art 10b: “A person seeking international protection in Iceland may request that registration certificates, cf. Article 34 of the Foreign Nationals Act No 80/2016, include the person’s gender registration in accordance with the person’s gender identity, even if this does not correspond to the person’s identity documents from the home state.” ¹⁰⁶	Gender Recognition Act, Art. 9(1)(b): An “ordinary resident” born abroad has to provide the birth certificate or make a statutory declaration on why it is not possible for them to provide it and produce other evidence of birth. ¹⁰⁷	The Commissioner for Refugees shall record the self-declared name and gender in asylum application form and protection certificate within fifteen days. ¹⁰⁸	Legal Gender Amendment Act, Art. 2; at least 6 months of being a resident.	“Anyone” can access Article 30b of the Civil Code; nationality is not a condition. ¹⁰⁹

Table 2. Overview on self-determination procedures accessible for migrants.

¹⁰⁴ Reforming Gender Recognition Act Article 3.

¹⁰⁵ LOV nr 752 af 25/06/2014, *Indenrigs- og Boligministeriet* [ACT no. 752 of 25/06/2014] 25 June 2014, retsinformation.dk/eli/lta/2014/752

¹⁰⁶ See footnote 47

¹⁰⁷ Gender Recognition Act 2015 – No. 25 of 2015 – Houses of the Oireachtas 17 December 2014 oireachtas.ie/en/bills/bill/2014/116, Article 9(1)(b).

¹⁰⁸ GIGESC Act (2015), Art. 4(8).

¹⁰⁹ *Schweizerisches Zivilgesetzbuch (Änderung des Geschlechts im Personenstandsregister) Änderung vom 18. Dezember 2020* [Swiss Civil Code (change of gender in civil status register) Amendment of December 18, 2020], 18. December 2020 fedlex.admin.ch/eli/oc/2021/668/de

