

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Luxembourg

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Executive summary

Implementation of Employment Directive 2000/78/EC

The Employment Directive was transposed into the “Equal Treatment Law” of 28 November 2006 on equal treatment (the “Law”).¹ The law’s definitions of direct and indirect discrimination includes all the elements in the definitions of the concept given in the Employment Directive, in particular less favourable treatment because of an individual’s sexual orientation as grounds for a finding of direct or indirect discrimination. The Equal treatment law amends the Labour and Criminal Codes, following very closely the provisions of the Employment Directive. By transposing both the Employment Directive and the Racial Equality Directive in the same piece of legislation, the Law broadens the Employment Directive’s material scope of the application, the “Equal Treatment Law”. The law also provides for the establishment of a Centre for Equal Treatment (CET) (*Centre pour l’égalité de traitement*, CET), which began to set up the elements necessary for its operation at the end of 2007. The CET has emphasised that its mission provides it with no binding powers over institutions or private persons that do not wish to collaborate with it; and believes that its investigative powers should be strengthened.

According to the CET, since the Act of 28 November 2006² (transposing directives 2000/43 and 2000/78) came into law, almost no judicial decisions have been made despite the fact that victims can lodge a complaint directly with the Prosecutor or via a voluntary organisation recognised by the Ministry of Justice as holding a legitimate interest in the affair. In 2012 the CET asked the government to study the reasons for this evolution and provide a solution to it.^{3 4}

Freedom of movement

Under the newly adopted law on marriage and adoption of 2014 a marriage registered abroad is now recognised in Luxembourg. The procedure is now the same for homosexual and heterosexual couples: it is enough to present a transcribed marriage certificate to authorities.

The Act of 3 August 2010⁵, approved amendment to a partnership law, which brought changes into the act of free movement and immigration. Since 2011, the partner with whom a EU citizen has a partnership registered in a foreign country is also considered a family member, provided that content and formal conditions laid down in the amended Act of 9 July 2004 are observed.⁶ Directive 2004/38/EC was effectively transposed by the act of 29 August 2008 on free movement

¹ Luxembourg, Equal Treatment Law (*Loi sur égalité de traitement*), 06 December 2006.

² Luxembourg, Equal Treatment Law (*Loi sur égalité de traitement*), 06 December 2006

³ Luxembourg, The Centre for Equal Treatment (*Centre pour l’égalité de traitement*) (2012), 2012 Annual Report on the activities of CET (*Rapport annuel 2012 sur les activités du CET*), available at: <http://cet.lu/2013/03/rapp-ann-2012/>. all hyperlinks were accessed on 10 May 2014.

⁴ Luxembourg, CET confirmed that up until now they have not received any statement on this matter for the government, 25 June 2014.

⁵ Luxembourg, Act of 3 August 2010 on the legal effects of certain partnerships (*Loi du 3 août 2010 portant modification de la loi du 9 juillet 2004 relative aux effet légaux de certains partenariats*), 12 August 2010.

⁶ Luxembourg, Act of 8 December 2011 amending the amended Act of 29 August 2008 on free movement and immigration (*Loi du 8 décembre 2011 modifiant la loi modifiée du 28 août 2008 sur la libre circulation des personnes et l’immigration*), 03 February 2012.

and immigration.⁷ The new immigration law replaces the Temporary Regulation in effect prior to its entry into force.⁸ The new law provides specifics on several immigration issues, especially in determining who can be considered a family member. A EU Member State citizen as well as a third-country national can, under certain conditions, be accompanied or have their family members come to Luxembourg. The new law also provides that the spouse can join the resident in Luxembourg, whether that resident is a EU Member State citizen or a third-country national.

Asylum and subsidiary protection

Consolidated text of 5 May 2006 on free movement of persons – immigration, international protection⁹ enlarges the grounds for application for international protection, by including various social groups. Art. 32 specifies social groups, such as a group that “has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society”. Depending on the conditions prevailing in the country of origin, a particular social group may be a group whose members have a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered criminal in accordance with Luxembourg law 5 May 2006.

The act of 5 May 2006 on the right to asylum and complementary forms of protection, as amended (the ‘Asylum Law’)¹⁰, has been modified and integrated into the immigration law¹¹. It still provides for the granting of refugee status to any third-country national or stateless person. Under the Asylum Law, persecution on the grounds of sexual orientation may in theory lead Luxembourg to grant asylum. Moreover, the Luxembourg legal system appears to accept LGBT persons as family members in the context of asylum and/or subsidiary protection because the Asylum Law defines as a family member the unmarried partner of the beneficiary of international protection when that partner is engaged in a shared community of life (*vie commune*) recognised by the country of origin of one of the partners. However, the law’s modifications still do not incorporate the case of a country not recognising any form of civil union or registered partnership, thus meaning a couple would not be in a position to substantiate any long-standing officially recognised relationship. No relevant changes concerning the LGBT community are to be mentioned.

Family reunification

Following the act of 19 June 2013¹² on the right of asylum and complementary forms of protection consolidated the status of a family member throughout migration laws (such as the law of 2008, for instance). Family reunification will become easier under the new law on marriage and

⁷ Luxembourg, Act on free movement of persons and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l’immigration*), 10 September 2008.

⁸ Luxembourg, Grand Ducal regulation of 28 March 1972 on the conditions of entry and residence of certain categories of aliens subject to international conventions (*Règlement grand ducal du 28 mars 1972 relatif aux conditions d’entrée et de séjour de certaines catégories d’étrangers faisant l’objet de conventions internationales*) as amended and repealed by the act of 29 August 2008 on free movement and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l’immigration*), 10 September 2008.

⁹ Luxembourg, Consolidated text of the Act of 5 May 2006 and complementary forms of protection (*Texte coordonné de la loi du 5 mai 2006 relative au droit d’asile et à des formes complémentaires de protection*), 03 July 2013.

¹⁰ Luxembourg Act of 5 May 2006 on the right of asylum and complementary forms of protection (*Loi du 5 mai relative au droit d’asile et à des formes complémentaires de protection*), Memorial A – N°151, available at: www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf#page=6 – all hyperlinks were accessed on 24 February 2014.

¹¹ Luxembourg Act of 5 May 2006 on the right of asylum and complementary forms of protection (*Loi du 5 mai relative au droit d’asile et à des formes complémentaires de protection*), Memorial A – N°151, available at: www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf#page=6 – all hyperlinks were accessed on 24 February 2014.

¹² Luxembourg, Act of 19 June 2013 on the right of asylum and complementary forms of protection (*Loi du 19 juin 2013 relative au droit d’asile et à des formes complémentaires de protection*), 25 June 2013. .

adoption of 2014¹³. Accordingly, spouses can then be reunited coming from countries where same sex marriages is recognised. The law also accepts marriages between a Luxembourgish and another person from another country.

All in all, regarding the recognition of marriages between same-sex celebrated abroad the act foresees the same rules as for different-sex couples married abroad. The same applies to marriages of either between couples of different sex or of same-sex, all rights and obligations of the marriage, the rules relating to the dissolution of marriage, the provisions of donations or estates.¹⁴ Once the marriage act comes into force in 2015 marriage recognitions registered in other countries will be accepted in Luxembourg. Up until then, a recent case law provides that same sex marriages legally registered outside of Luxembourg would have the same legal effect as a Luxembourg registered partnership.¹⁵

Freedom of assembly

Article 25 of the Luxembourg Constitution guarantees the right to peaceful, unarmed assembly that respects the laws governing the exercise of that right without being subject to prior authorisation. However, the constitutional provision does not apply to outdoor, political, religious or other gatherings. Those gatherings remain entirely subject to the laws and regulations adopted under the police powers of the State. The Luxembourg LGBT community has had no problems obtaining the necessary governmental authorisations for those uses of public space.

In recent years pride parades, which are regularly organised in the country, have been held in various communes of the country and demonstrate public tolerance and support of the event. Since 2010 the even have been organised with the support of Esch-sur-Alzette commune and the City Hall. In particular, the cultural department of the City of Esch-sur-Alzette is responsible for coordinating the festival in the town.¹⁶ Civil support organisation Rosa Luxembourg is actively involved in organising pride parades throughout the country as well. Also, the organisation supports and cooperates organisations across the Luxembourgish border.

Hate speech and criminal law

There are no recent developments regarding the framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. The creation of Art. 454 to 457-4 of the criminal law dates back to the act of 19 July 1997 and was continuously updated, i.e. act of 29 November 2006. The act of 13 February 2011¹⁷ modified Art. 457-3. The change increased penalties to a maximum of 2 years (instead of

¹³ Luxembourg, Draft bill N°6172 on the marriage and adoption reform (Projet de loi N6172 portant réforme du mariage et de l'adoption), available at: www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6172#.

¹⁴ Luxembourg, by 10 July 2014 the text of the marriage act has not been finalised and only draft bill is available: Luxembourg, Draft bill N°6172 on the marriage and adoption reform (Projet de loi N6172 portant réforme du mariage et de l'adoption), available at: www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6172#.

¹⁵ Luxembourg, Administrative Tribunal of the Grand Duchy of Luxembourg (*Tribunal administrative du Grand-Duché de Luxembourg*), Docket No. 19509, 3 October 2005.

¹⁶ Luxembourg, News release of the Esch-sur-Alzette commune Discrimination on grounds of gender identity or sexual orientation (Discrimination pour motif d'identité de genre ou d'orientation sexuelle), available at: www.esch.lu/citoyen/egalitedeschances/Pages/Discriminationpourmotifd'identitedegenreoud'orientationsexuelleActualite.aspx. All hyperlinks were accessed on 25 June 2014.

¹⁷ Luxembourg, Draft bill 6126 modifying art. 457 – 3 of the Criminal Code (Projet du loi N° 6126), available at: www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/088/843/088472.pdf and Act of 13 February 2011 amending Article 457-3 of the Criminal Code (Loi du 13 février 2011 portant modification de l'article 457-3 du Code pénal), 21 February 2011.

previously 6 months). The explanatory memorandum of the act mentions the fact that rules of jurisdiction, i.e. Art. 9 – 2, were already covered by Art. 7-2 of the Criminal instruction code before the adoption of the act of 13 February 2011¹⁸¹⁹.

Luxembourg's Criminal Code provides for imprisonment of eight (8) days to two (2) years and/or a fine of €251 to €25,000 (Art, 454 to 457-1)²⁰, when anyone incites discrimination, hate or violence against a natural or legal person or a group or community of persons through any form of verbal, written or graphic communication or materials that are made available in public places or meetings.. The Law neither specifically includes nor excludes homophobic hate crimes, thus the issue would be left to the court's interpretation. Moreover, civil support organisations emphasise there no cases with regard to hate speech reaching the court. Police explain it by the fact that victims prefer and/or are recommended to file their complaint under a different type of discrimination as to increase chances to win the case.

Transgender issues

Transgender issues are not specifically mentioned under Luxembourg law. If they were interpreted as being included in the Employment Directive's broad definition of sexual orientation as implemented in Luxembourg legislation, they would effectively be dealt with. If not, then only the criminal law provisions would apply, as transgender individuals would be considered as belonging to a particular social group. There are no legal provisions specifically addressing the change of name or sex with the Luxembourg Civil Status and Population Administration (*Etat civil et population du Luxembourg*) following an individual's gender-reassignment surgery. Also, 'forced divorce' for couples when one spouse has undergone gender-reassignment surgery is currently a contested issue.

According to the legal provisions applicable to the rectification of civil status documents articles 99 and 101 of the Civil Code, there are no specific requirements for rectification of the recorded sex or name on official documents that would fit in any of this table's indicated fields. In 2014 the Ministry of Equal Opportunities (*Ministère de l'égalité des chances*) announced preparations for the bill that would simplify the procedures on gender reassignment and name change. Up until now the text has not yet been drafted.²¹ Currently, any specific requirements are left to the case law. CIGALE representatives also emphasise taking into account the specifics of each case and favour an individual approach in every situation.²²

Intersex

Currently, there is no legal provision explicitly referring to intersex people. They could be recognised as a social group; however there has not been a case law for that yet in Luxembourg. Also there is no criminal law provision explicitly addressing discrimination on the grounds of intersex status. Article 454 and following the Penal Code relate to discrimination. Article 454

¹⁸ Luxembourg, Criminal Instruction Code (*Code d'Instruction Criminelle*), available at: www.legilux.public.lu/leg/textescoordonnes/codes/code_instruction_criminelle/cic_L2T6.pdf all hyperlinks were accessed on 10 May 2014.

¹⁹ Luxembourg, Act of 13 February 2011 amending Article 457-3 of the Criminal Code (*Loi du 13 février 2011 portant modification de l'article 457-3 du Code penal*), 21 February 2011.

²⁰ Luxembourg, Criminal Instruction Code (*Code d'Instruction Criminelle*).

²¹ Luxembourg, (2014), Ministry of Equal Opportunities (*Ministère de l'égalité des chances*), Annual report 2013 (*Rapport d'activité 2013*), available at: www.mj.public.lu/chiffres_cles/rapport_activite2013.pdf . All hyperlinks were accessed on 10 July 2014.

²² Luxembourg, CIGALE representative communication, 10 July 2014.

does not mention any “social group” or “intersex”.²³ Information on the situation of intersex people and medical intervention in Luxembourg falls short. There are no studies on the social situation of neither intersex people, nor are there any official statistics or transparency on medical treatments applied and their consequences. Luxembourg has no tradition of informed written consent given before any treatment or surgical intervention. There exists no known information point for parents where they can seek independent advice and exchange with a peer group and knowledgeable counsellors. Centre for pregnancy, childbirth, breastfeeding and parenting Institute to improve conditions around birth *Initiativ Liewensufank (Centre pour grossesse, accouchement, allaitement et parentage Institut pour l'amélioration des conditions autour de la naissance)* would like to become such a focal point and has collected documentation but as yet no support has been granted for this work.²⁴

It might be that the new legislation on patients' rights will bring a general improvement in information for patients and consent.

Miscellaneous

On 18 June 2014 the bill N° 6172 on marriage and adoption was voted in favour by an overwhelming majority of members of the parliament and will come into force in 2015. Under the new marriage law homosexual couples have the right to full adoption.

However, the adoption of the bill had been considered a priority by the new government but involved heated debates. That particularly regarded the right of adoption by homosexual couples.

The adoption of the marriage act was preceded by heated discussions. In spring 2014 the Protection of the Child (*Defence de l'enfant, Schutz fir d'Kand*) petition against the right to adopt for homosexuals was launched in Luxembourg. The petition is available in 7 languages and sought to protect the interests of a child and rejects and condemns homophobic discrimination. The petition sought to abandon parliamentary bills no. 6172, concerning the reform of marriage and adoption, and no. 6568 concerning the reform of rights of filiation, and to change the constitution and call for a general referendum. Also the petition “notes the absence of any meaningful public discussion of the real issues associated with the proposal and seeks to stimulate a public debate in keeping with a democracy.”²⁵

Good practices

While some work environments are adopting practices that include the LGBT community, the extent to which those practices will actually be carried out remains to be seen and any improvements appear to be isolated cases for the time being.

²³ Luxembourg, Penal code (*Code Pénal*).

²⁴ Luxembourg, information was confirmed by the Centre for pregnancy, childbirth, breastfeeding and parenting Institute for improving conditions around birth (*Centre pour grossesse, accouchement, allaitement et parentage Institut pour l'amélioration des conditions autour de la naissance*, *initiativ Liewensufank*, 21 February 2014).

²⁵ Luxembourg, Official webpage of the petition Protection of the child (*Defence de l'enfant, Schutz fir d'Kand*), available at: www.defensedelenfant.lu/qui-sommes-nous.php?lang=an, all hyperlinks were accessed on 10 May 2014.

A. Implementation of Employment Directive 2000/78/EC

The Employment Directive was transposed into the “Equal Treatment Law” of 28 November 2006 on equal treatment known as “equal treatment law”).²⁶ The Law’s definitions of direct and indirect discrimination include all the elements in the definitions of the concept given in the Employment Directive, in particular less favourable treatment because of an individual’s sexual orientation as grounds for a finding of direct or indirect discrimination. Under the Law, harassment related to an individual’s sexual orientation that has the effect of undermining the dignity of the individual and creates an intimidating, hostile, degrading, humiliating or offensive environment is also considered a form of discrimination. Moreover, any behaviour that consists of ordering or enjoining any other person to discriminate against someone else on the grounds of sexual orientation is itself considered discrimination.

The notions of direct and indirect discrimination, as well as harassment in a broader sense than traditionally used in the sexual harassment context, were not integrated into Luxembourg law prior to the passage of the Law.²⁷

Retaliation for any form of protest against discriminatory treatment on the grounds of sexual orientation, including the bringing of legal action to enforce equal treatment or any testimony on unequal treatment related to sexual orientation, is prohibited. In particular, any firing of personnel in relation to the above is null and void under the Labour Code.

Likewise, any provision in a contract or agreement that contravenes an equal treatment principle as defined in the Law is deemed null and void. This includes provisions in internal company, non-profit association, self-employed individual, and worker or employee organisation regulations.

The Law amends the Labour Code²⁸ by providing it with a new Title V entitled ‘Equal Treatment in Employment and Occupation’ that includes definitions of direct and indirect discrimination based on sexual discrimination, as well as the provisions prohibiting harassment or the ordering of someone to discriminate based on sexual orientation. The provisions apply to all salaried employees as defined in Title II Book I of the Labour Code in all areas of employment set forth in the Employment Directive, and include the defence of rights provisions, with specific provisions applicable to unions. The appropriate Labour and Mine Inspection Authority (*Inspection du Travail et des Mines*) is charged with the application of the Law’s provisions, including those related to the exceptions, dismissals and labour contract terminations.

The Labour Code amendments also contain the exception to the equal treatment principle whereby a difference of treatment based on sexual orientation will not constitute discrimination when, for reasons of the exercise of a professional activity, or related conditions, the characteristic in question is a genuine and determining professional requirement, and to the extent that the objective is legitimate, and the necessity of the requirement proportional to the degree in which a particular characteristic is necessary to the profession.

The Law amends the Criminal Code to include the definition of discrimination on the basis of sexual orientation as a distinction made between natural persons, and any distinction made between legal persons, groups or communities of persons on the basis of sexual orientation. The

²⁶ Luxembourg, Equal Treatment Law (*Loi sur égalité de traitement*), 06 December 2006.

²⁷ Luxembourg, Gouvernement Commission for Foreigners (*Commissariat du Gouvernement aux Etrangers*) (2005), Discrimination at work (*Discrimination à l'emploi*), Luxembourg, Gouvernement Commission for Foreigners, 80, available at: www.olai.public.lu/fr/publications/etude/rapport_discrimination.pdf.

²⁸ Luxembourg, Labour code (*Code du travail*).

Law also includes sanctions of imprisonment of eight (8) days to two (2) years, and a fine of €251 to €25,000, for any discrimination against a natural or legal person, or a group or community of persons, when that discrimination affects a person's access to employment, vocational training, employment conditions, and affiliation with or membership in a worker or employers' organisation.²⁹

There has been little implementation of the Law, thus there is no case law issued from, or any currently before, the Luxembourg courts as a result of the Law at this time.^{30 31}

There are two main gaps in the equal treatment law. First, the Law does not specify the period for which the judicial/administrative procedures for the enforcement of obligations under the Directive 'are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them'. The Employment Directive provides that such a period shall continue 'even after the relationship, in which the discrimination is alleged to have occurred, has ended' (Art. L- 124-11(2)).^{32 33} Second, the law does not include specific measures for engaging in a social dialogue and dialogue with non-governmental organisations.

The complaints procedure includes two possible means of resolving a dispute. The first is through a friendly settlement procedure that includes all means of alternative dispute resolutions, and the second is through litigation.

The means of the alternative dispute resolution include use of the Centre for Equal Treatment (CET) (*Centre pour l'égalité de traitement*, CET), assignment of a public mediator, hiring a lawyer to mediate between the parties and notifying the Labour and Mine Inspection Authority. Alternatively, a party could take legal action.

The use of litigations may take the form of filing a criminal complaint, with or without acting jointly with the public prosecutor, and filing separate, purely civil or administrative actions. The civil and administrative proceedings protect against retaliation by allowing for the annulment of any action that discriminates against a person on the basis of sexual orientation, particularly dismissals. Those provisions also allow for the annulment of discriminatory clauses in labour contracts, collective agreements, internal company regulations, non-profit or for-profit association articles of association, articles for self-employed workers and those for worker and employer organisations.

Remedies available when litigation is used include the ability to request a reinstatement to one's position in the event of a dismissal, and file an action for damages and interest.

When an employment contract has been unfairly terminated, the worker or private employee to whom the appropriate Labour Code provisions apply can request annulment of the dismissal and

²⁹ Luxembourg, Criminal Instruction Code (*Code d'Instruction Criminelle*).

³⁰ Luxembourg; Search in the platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: 'discrimination based on sexual orientation', 'homosexual', 'homosexuality', 'sexual orientation', 'sexuality', 'immigration and homosexuality', 'immigration and sexual orientation', 'asylum and homosexuality', 'asylum and sexual orientation', 'transgender', 'transsexual person' and 'transsexuality', 10 May 2014.

³¹ Luxembourg; information on case laws for the year 2013 was provided upon request by CIGALE; CIGALE has confirmed there were almost no case laws (we found one). Communication by electronic mails with CIGALE, 21 October 2013.

³² Under the Luxembourg Labour Code, the statute of limitations for bringing a court action for unfair employment contract termination is three months, unless the employee has requested a written explanation of the termination from the employer within one month of the duly received termination notice. If the employee requests the explanation within one month, the statute of limitations is one year. Luxembourg, Labour code (*Code du travail*). For all other matters, the common law statute of limitations of 30 years would apply.

³³ Luxembourg, Labour code (*Code du travail*).

an order for the contract's continuation, or if necessary, reinstatement under the applicable Labour Code provisions. This must be done within 15 days of notice of the termination, and by direct petition to the president of the labour tribunal deciding on summary matters provided that the parties are duly convened. The labour tribunal's order is provisionally enforceable and, within 40 days of notice being given by the court clerk, the case may be appealed by direct petition to the magistrate presiding the appeals court chamber sitting on labour law appeal matters. When the parties are duly convened, the matter is decided in emergency proceedings.

In Luxembourg, Employment Directive 2000/78/EC regarding discrimination on the grounds of sexual orientation was transposed into the same domestic law as the Racial Equality Directive 2000/43/EC, thus the Act of 28 November 2006 on equal treatment deals with a range of areas of application, including employment, social welfare benefits, social security, healthcare, education, access to and provision of public goods and services, including those related to housing. However, as authorised under the Employment Directive, the Luxembourg law on equality states that discrimination with respect to all social security payments and benefits provided by public or assimilated entities is not within the Law's scope as regards the elements listed in the definition of discrimination (religion or belief, physical or mental disability, age, sexual orientation, real or assumed belonging or non-belonging (*de l'appartenance ou la non appartenance, vraie ou supposée*) to a particular race or ethnicity, but rather only as regards discrimination based on race or ethnicity. Nonetheless, the transposition of the two directives into a single law has operated to broaden the field of application of the non-discrimination provisions in the Employment Directive.

The Law also provides for the establishment of CET, which began to set up the elements necessary to its operation at the end of 2007. The CET's purpose is to promote, analyse and supervise equal treatment of all persons without discrimination on the basis of race, ethnic origin, sex, religion or beliefs, disability and age. The CET can intervene when discrimination is based on the following six reasons, namely membership or non-membership to a particular race or ethnicity, true or supposed, race or ethnicity, sex (biological sex or gender identity) sexual orientation, religion or belief, disability or age. The CET is empowered to publish reports, opinions, and recommendations and carry out studies regarding discrimination issues, as well as any other form of information and documentation useful to its mission. The CET can also assist persons who consider themselves victims of discrimination as defined in the amended Labour Code, and provide those individuals with counselling and information services on their individual rights, the applicable legislation and case law as well as the means available to enforce their rights. The CET's members can request any information or documentation necessary to accomplish their mission with the exception of that subject to medical or other professional obligations of confidentiality. The CET's members are themselves subject to a confidentiality obligation, but that obligation does not prohibit communication with legal authorities that would allow the CET to assist an individual in building a case for discrimination. When the CET begins to exercise its functions, it will do so without actually intervening in legal proceedings.

Thus, another weakness in the Equal Treatment Law is that it does not provide for the CET to intervene directly in legal proceedings against discriminatory action, or unfair treatment, based on sexual orientation. Throughout its annual reports (2010- 2013), the CET has emphasised that its mission provides it with no binding powers over institutions or private persons that do not wish to collaborate with it; and believes that its investigative powers should be strengthened (36).³⁴ The CET will not request the power to go before the courts, but clearly states that it lacks means

³⁴ Luxembourg, The Centre for Equal Treatment (*Centre pour l'égalité de traitement*) (2014), Activity report 2013 (*Rapport général d'activités 2013*), available at: <http://cet.lu/wp-content/uploads/2014/03/Rapport-annuel-2013-version-finale.pdf> . all hyperlinks were accessed on 10 May 2014.

of persuasion and authority vis-à-vis third parties sufficient to make those third parties feel bound to comply with its demands in a discriminatory situation (p.35).³⁵

In 2013 the CET registered one case of discrimination based on sexual orientation (p.29)³⁶, in 2012 also one case³⁷; in 2011- six³⁸ and in 2009, the CET registered seven cases. Procedural errors or infractions too general under the law with respect to discriminating parties often take priority over arguments based on homophobic behaviour. In future, the LGBT association CIGALE will make an effort to establish more precise statistics allowing it to access more fair and trustworthy numbers. The website search of STATEC's, Luxembourg's Central Service for Statistics and Economic Studies' website revealed no information³⁹ on the CET's effectiveness or discrimination based on sexual orientation. The information on actions adjudicated is presented in the aggregate and classified solely by adjudicating body and type of action (e.g., civil, commercial or criminal). The request to the Labour and Mines Inspection Authority (labour inspectorate) regarding discrimination based on sexual orientation has thus far received no response.⁴⁰ We did not find any case laws on the European Migration Network⁴¹ platform, nor through the search engine available on the platform of the website of the Ministry of Justice website⁴²

The "Equal Treatment Law", recognised non-profit associations, the object of which is to combat discrimination as defined by the Law, that obtained their legal personality at least five (5) years prior to the date of the facts giving rise to the discrimination allegation and have Ministry of Justice accreditation,⁴³ the power to exercise the rights of a victim of discrimination. This includes the exercise of victims' rights with respect to the facts constituting a direct or indirect violation of the collective rights. However, if the violation is committed against persons the rights of who are to be considered individually (e.g., not under a collective bargaining agreement), a non-profit association can only exercise those rights through the main legal channels when the affected persons declare their non-opposition to that exercise of their rights. Until now, no LGBT association has requested the ministerial accreditation allowing it to bring discrimination cases

³⁵ Luxembourg, The Centre for Equal Treatment (*Centre pour l'égalité de traitement*) (2009), Activity report 2009 (*Rapport général d'activités 2009*), available at: <http://cet.lu/wp-content/uploads/2009/12/rapport-activites-2009.pdf> .

³⁶ Luxembourg, The Centre for Equal Treatment (*Centre pour l'égalité de traitement*) (2014), Activity report 2013 (*Rapport général d'activités 2009*), available at: <http://cet.lu/wp-content/uploads/2014/03/Rapport-annuel-2013-version-finale.pdf> . all hyperlinks were accessed on 25 June 2014.

³⁷ Luxembourg, The Centre for Equal Treatment (*Centre pour l'égalité de traitement*) (2013), Activity report 2012 (*Rapport général d'activités 2009*), available at: <http://cet.lu/wp-content/uploads/2013/03/rapport-final-2012-site.pdf> . all hyperlinks were accessed on 25 June 2014.

³⁸ Luxembourg, The Centre for Equal Treatment (*Centre pour l'égalité de traitement*) (2012), Activity report 2011 (*Rapport général d'activités 2009*), available at: <http://cet.lu/wp-content/uploads/2012/03/rapport-final-site.pdf> . all hyperlinks were accessed on 25 June 2014.

³⁹ Luxembourg; Search in the legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: 'discrimination based on sexual orientation', 'homosexual', 'homosexuality', 'sexual orientation', 'sexuality', 'immigration and homosexuality', 'immigration and sexual orientation', 'asylum and homosexuality', 'asylum and sexual orientation', 'transgender', 'transsexual person' and 'transsexuality'.

⁴⁰ Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies' website www.statec.lu , 09 May 2014.

⁴¹ Luxembourg, Search of the European Migration Network, Luxembourg www.emn.lu ,09 May 2014.

⁴² Luxembourg, Search in the legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: 'discrimination based on sexual orientation', 'homosexual', 'homosexuality', 'sexual orientation', 'sexuality', 'immigration and homosexuality', 'immigration and sexual orientation', 'asylum and homosexuality', 'asylum and sexual orientation', 'transgender', 'transsexual person' and 'transsexuality'.

⁴³ Once obtained, this accreditation is valid for all legitimate interventions the association undertakes.

before a court.⁴⁴

Both parties share the burden of proof in civil proceedings, When a person directly or indirectly through a duly competent non-profit association or union establishes facts permitting the presumption of an act of direct or indirect discrimination, thus establishing a prima facie case of discrimination, it is incumbent upon the defending party to prove that there has been no breach of the principle of equal treatment. This shifting of the burden of proof does not apply in criminal cases or those in which it is for the court or competent body to investigate the facts of the case. While this may appear to provide an incentive for a party to choose to file a civil rather than criminal suit, in a criminal suit the public prosecutor has more means at his or her disposal to introduce evidence than would an individual filing a civil suit.

Moreover, the Law's Labour Code amendments provide for legal representation and intervention by union organisations when a harmful action is carried out by a person associated through a collective bargaining contract or agreement concluded under the relevant Labour Code provisions, when the settlement of that litigation would serve the collective interest of its members, unless the person filing the action duly expresses written disagreement. The union organisations may carry out such a representation and intervention without proof of any material or moral interest in the matter. Thus, in the specific context of upholding collective rights under a collective bargaining agreement, the aggrieved employee's consent to the union organisation's action is presumed, but that consent can be withdrawn by the aggrieved employee's expressed written disagreement to the union organisation's action.

At this time, there are no available statistical data on the number of civil society organisations that can actually engage on behalf or in support of complainants. Neither are there any data on how often those organisations actually make use of that possibility. Our website search of STATEC's, Luxembourg's Central Service for Statistics and Economic Studies' website revealed no such statistical data.⁴⁵ However, we are aware of one association, the Association for Support of Immigrant Employees (*Association de Soutien aux Travailleurs Immigrés*, ASTI) that has requested permission from the Ministry of Justice to file an action on behalf of a homosexual employee. To our knowledge, the Ministry has not yet ruled on the request.

Non governmental organisation Rosa Luxembourg (*Rosa Lëtzebuerg*) promotes civil rights and fight against discrimination of homosexual / bisexual citizens and gay / bisexual people; it is involved in the cultural and legal social work, organises cultural and social activities, such as pride parades, Gay mat, etc. It is a member of ILGA Europe. There is another civil society organisation CIGALE, the Centre for Gay and Lesbian Information (*Centre d'information gay et lesbien*) that provides psychological and support services primarily to the LGBT population. CIGALE was originally created to deal with issues associated with "coming out" and functioned under the umbrella of Rosa Luxembourg. Following the formation of a working group to fight discrimination, made up of public actors such as Infant handicap, the OLAI, the Red Cross Refugee Service, and some lawyers, among others, CIGALE has become increasingly active in the promotion and sensitisation aspect of the equal treatment principle as it relates to sexual orientation. It is now supported by the state and has direct coordination with the ministries.⁴⁶

⁴⁴ Luxembourg, legal status of the Centre for Gay and Lesbian Information has not been changed since 2012, CIGALE (2012), General Concept of Action (*Concept d'Action Général 2010 - 2012*), available at: www.cigale.lu/downloads/download-108/par-336/fr/cag-2010-2012.pdf. A CIGALE representative has confirmed information by telephone 05 November 2013.

⁴⁵ Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies' website www.statec.lu.

⁴⁶ Luxembourg, information obtained upon request with an OLAI representative, 25 June 2014).

Throughout its work, CIGALE aims to represent the interests of LGTB at the governmental level as there is still no ministry that includes the interests of homosexuals, transgender and transsex. During informal conversations with Luxembourg Office of Hosting and Integration (*Office luxembourgeois de l'accueil et de l'intégration*, OLAI) and CIGALE, it was confirmed that there is an interest to include LGTB protection under a ministry, though it is not yet known under which one yet.⁴⁷ Organisations involved in work to fight against homosexual discrimination provide psychological help and legal counselling. However, they, cannot assist victims in court, nor can they represent them on their behalf.

There remains very little statistical data regarding this topic for two interconnected reasons. First, sexual orientation remains a taboo subject, thus individuals wishing to file a complaint against perceived discrimination often do not do so on the grounds of sexual orientation because they do not want their sexual orientation to be made public; they deem that type of complaint mechanism as making them too visible. Rather, they prefer to file a complaint on some other grounds that can usually be found in the allegedly discriminatory act.

Additionally, as part of Luxembourg's awareness-raising programme in the fight against discrimination, and in preparation for Luxembourg's transposition into national law of the European Anti-discrimination Directives, Luxembourg's Government Commission for Foreigners published a 2005 report on Discrimination at Work. The report contains a section dedicated exclusively to discrimination based on sexual orientation, but that section contains very little statistical information on the topic. The report contains a section dedicated exclusively to discrimination based on sexual orientation, but that section contains very little statistical information on the topic. The report cites an ESS (European Social Survey) finding that in Luxembourg, 66 inhabitants out of 1552, or 4.3%, stated they were part of a group that suffered from discrimination. Of that group, five (5) individuals stated that the discrimination they perceived was based on sexual orientation. The report concludes that there are few reported cases of discrimination based on sexual discrimination, and attributes that to (1) the low number of 'minority sexual orientation' individuals within the Luxembourg population, and (2) the fact that the practice remains 'taboo', and is thus less openly discussed.⁴⁸

For the reasons cited above, there has been no case brought before a competent tribunal to date. While collecting information for FRA annual reports 2011, 2012 and 2013 we were told that cases brought to the Tribunal on the grounds of sexual orientation are few. We could not find any case law or jurisprudence on the matter while searching the platform of the Ministry of Justice.⁴⁹⁵⁰ Neither are there any case statistics or complaints data. Our website search of and telephone call to STATEC, Luxembourg's Central Service for Statistics and Economic Studies' website revealed no relevant information. The information on actions adjudicated is presented in the aggregate and classified solely by adjudicating body and type of action (e.g., civil, commercial or criminal).⁵¹

⁴⁷ Luxembourg, informal conversation with an OLAI representative, 10 December 2013.

⁴⁸ Luxembourg, Government Commission for Foreigners (*Commissariat du Gouvernement aux Etrangers*) (2005), Discrimination as work (*Discrimination à l'emploi*), (Luxembourg, Government Commission for Foreigners, 80), available at: www.olai.public.lu/fr/publications/etude/rapport_discrimination.pdf. all hyperlinks were accessed on 24 February 2014.

⁴⁹ Luxembourg information on case laws for the year 2013 was provided upon request by CIGALE; CIGALE confirmed there were almost no case laws (we found one). Communication by electronic mails with CIGALE in October 2013.

⁵⁰ Luxembourg; Search in the legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: 'discrimination based on sexual orientation', 'homosexual', 'homosexuality', 'sexual orientation', 'sexuality', 'immigration and homosexuality', 'immigration and sexual orientation', 'asylum and homosexuality', 'asylum and sexual orientation', 'transgender', 'transsexual person' and 'transsexuality'.

⁵¹ Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies' website www.statec.lu.

On 1 June 2009, the law on the hosting and integration of foreigners to the Grand Duchy of Luxembourg entered into force. Among other things, the law promotes the fight against discrimination. It expressly includes preventing and combating the denial of equal treatment to individuals on the basis of sexual orientation in its definition of the fight against discrimination. This indicates a strong policy in Luxembourg to include LGBT individuals, and particularly non-Luxembourg nationals that are members of the LGBT community. This position is consistent with the work carried out by CIGALE and what was then the Government Commission for Foreigners. Under the law, the Government Commission for Foreigners has become the Luxembourg Office of Hosting and Integration (*Office luxembourgeois de l'accueil et de l'intégration*, OLAI), the mission of which includes the fight against all forms of discrimination. While CIGALE is a civil society organisation, the OLAI regulates under the government and provides social assistance for foreigners and seekers of international protection who do not have the right to such assistance.⁵² Its mission is to implement and coordinate the reception and integration policy; facilitate the foreigners' process of integration; fight against discrimination; study migration flows; provide support to applicants for international protection and manage accommodation centres. 53. Being under the Ministry of Family and the Integration, OLAI is responsible for carrying out missions included in the National Action Plan on integration and fight against discrimination (Plan d'action national d'intégration et de lutte contre les discriminations 2010-2014). Since 2002, the OLAI has gathered information and run awareness campaigns included in the missions of the National Action Plan. This program is supported by the European Community PROGRESS programme on fighting discrimination within the meaning of Article 19 of the Treaty of Lisbon, namely discrimination based on religion or belief, disability, age, sexual orientation, race or ethnic origin.⁵⁴ The National Action Plan on integration and fight against discrimination defines a set of broad strategies in four main fields of action that are part of the OLAI's mission (receiving and integrating foreigners, fighting discrimination and following-up on migrants and migration trends); but makes no practical or specific references to discrimination on grounds of sexual orientation, homophobia or gender identity.

Already in 2006, the Employment Directive was also transposed into the Act of 29 November 2006 amending the civil servants' statutes.⁵⁵⁵⁶ ⁵⁷

In 2012 European Court of Justice ruled on a case C64/12. The case concerned a French employee who had been refused special days off after entering a Civil Solidarity Pact with a person of the same sex in 2007. The European Court concluded that the rights of partners who enter a partnership pact are equal to a marriage, and therefore share the same rights to benefits. In Luxembourg, the situation regarding benefits resembled the situation of France before the marriage act of 2014, which will come into force in 2015. For instance, until recently, the

⁵² Luxembourg, Act of 16 December 2008 on the reception and integration of foreigners in the Grand Duchy of Luxembourg (*Loi du 16 décembre 2008 concernant l'accueil et l'intégration des étrangers au Grand-Duché de Luxembourg*), 24 December 2008.

⁵³ Luxembourg, Luxembourg Reception and Integration Agency (*Office luxembourgeois de l'accueil et de l'intégration*), Leaflet 01 (*Depliant 01*), available at: www.olai.public.lu/fr/publications/brochures-depliants/01-depliants-olai/depliant-en-olai.pdf. all hyperlinks were accessed on 10 May 2014.

⁵⁴ Luxembourg, Luxembourg Reception and Integration Agency (*Office luxembourgeois de l'accueil et de l'intégration*), News Release: Fight against discrimination (*Actuel : Lutte contre les discriminations*), available at: www.olai.public.lu/fr/lutte-discrimination/index.html.

⁵⁵ Luxembourg, Act of 29 November 2006 on equal treatment (*loi du 29 novembre 2006 sur l'égalité de traitement*, Mémorial A-207), 06 december 2006.

⁵⁶ Luxembourg, Search in the legislative platform www.legilux.public.lu, where it is possible to filter searches by directives. No new act includes Employment Directive 2000/78/EC, 10 May 2014

⁵⁷ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303. .

collective agreement applicable to the banking granted days of special leave to married employees and not partners.⁵⁸

Also, In 2013, European Court of Justice recalled that the principle of equal treatment in employment and occupation of the Directive also aims sexual orientation during a case C-81/12 when a Romanian football player was refused employment because of one of the owners of the club was homophobic. In Luxembourg, the criminal law (Article 455 of the Penal Code) states that: discrimination against a person, group or community of persons, shall be punished with imprisonment from eight days to two years and a fine of 251 euros to 25,000 euros.⁵⁹

Over there last decade there have been few case laws regarding sexual discrimination. to the CET, since the entry into force of the Act of 28 November 2006, which transposed Directives 2000/43 and 2000/78), almost no judicial decisions have been taken In 2012 the CET asked the government to study the reasons for this evolution and provide a solution to it (p. 46)⁶⁰ but has not received an answer up until now.⁶¹

⁵⁸ Luxembourg, Castegnaro (23 January 2014), Castegnaro Newsflash, available at: www.castegnaro.lu/fr/news/61-newsflash-2014/720-newsflash-230114

⁵⁹ Luxembourg, Penal Code (*Code Pénal*).

⁶⁰ Luxembourg, The Centre for Equal Treatment (Centre pour l'égalité de traitement) (2012), 2012 Annual Report on the activities of CET (*Rapport annuel 2012 sur les activités du CET*), available at: <http://cet.lu/2013/03/rapp-ann-2012/> . all hyperlinks were accessed on 10 May 2014.

⁶¹ Luxembourg, CET confirmed that up until now they have not received any statement on this matter for the government, 25 June 2014.

B. Freedom of movement

Under the newly adopted law on marriage and adoption of 2014 a marriage registered abroad is now recognised in Luxembourg. The procedure is now the same for homosexual and heterosexual couples: it is enough to present a transcribed marriage certificate to authorities.

First steps in the direction of the liberalisation of the movement had already been taken in 2010. The act of 3 August 2010 approved amendment to partnership law (Art. 1, par. 4)⁶², which brought changes into the act of free movement and immigration. Since 2011, the partner with whom an EU citizen had a partnership registered in a foreign country was also considered a family member, provided that content and formal conditions laid down in the amended Act of 9 July 2004 are observed.⁶³ In addition, a new sub-paragraph 3 was inserted in Article 12 (2). According to this provision, the minister in charge of immigration could consider as a family member a partner with whom the Union citizen has a durable relationship, duly attested.⁶⁴ The act also provided that the spouse could join the resident in Luxembourg, whether that resident is a EU Member State citizen or third-country national.

Directive 2004/38/EC was effectively transposed by the act of 29 August 2008 on free movement and immigration.⁶⁵ The immigration law replaced the Temporary Regulation in effect prior to its entry into force.⁶⁶ The Law provided specifics on several immigration issues, especially in determining who can be considered a family member. A EU Member State citizen as well as a third-country national can, under certain conditions, be accompanied or have their family members come to Luxembourg.

The Law also allows Luxembourg residents (EU Member State Citizen or third- country national) to be joined by their partners, whatever their nationality, if they have a registered partnership under the conditions set forth in Luxembourg's registered partnership law (Art 4.).⁶⁷ This is also why there is a pending amendment to the partnership law with following wording: 'Partners having registered their partnership in a foreign country can send a request to the general prosecutor's office for registration of their partnership in the civil status registry, provided that on the date of entering into the partnership abroad, both parties fulfil the conditions in Article 4''. Article 4 requires that 1) they be capable of entering into the partnership according to Articles 1123 and 1124 of the Civil Code (be legally capable of entering into such a contract); 2) that they are not bound by a marriage or other partnership; 3) that they are not related as prohibited by the Civil Code; and 4) that they reside legally in Luxembourg.⁶⁸ Here lawmakers went further in recognising foreign partnerships than required by the European Directives.

⁶² Luxembourg, Act of 3 August 2010 on the legal effects of certain partnerships (*Loi du 3 août 2010 portant modification de la loi du 9 juillet 2004 relative aux effets légaux de certains partenariats*), 12 August 2010.

⁶³ Luxembourg, Act of 8 December 2011 amending the amended Act of 29 August 2008 on free movement and immigration (*Loi du 8 décembre 2011 modifiant la loi modifiée du 28 août 2008 sur la libre circulation des personnes et l'immigration*), 03 February 2012.

⁶⁴ Luxembourg, Act of 8 December 2011 amending the amended Act of 29 August 2008 on free movement and immigration (*Loi du 8 décembre 2011 modifiant la loi modifiée du 28 août 2008 sur la libre circulation des personnes et l'immigration*), 03 February 2012.

⁶⁵ Luxembourg, Act on free movement of persons and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), 10 September 2008.

⁶⁶ Luxembourg, Grand Ducal regulation of 28 March 1972 on the conditions of entry and residence of certain categories of aliens subject to international conventions (*Règlement grand ducal du 28 mars 1972 relatif aux conditions d'entrée et de séjour de certaines catégories d'étrangers faisant l'objet de conventions internationales*) as amended and repealed by the act of 29 August 2008 on free movement and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), 10 September 2008.

⁶⁷ Luxembourg, Act of 9 July 2004 on the legal effects of certain partnerships (*Loi du 9 juillet relative aux effets légaux de certains partenariats*), 06 August 2004.

⁶⁸ Luxembourg, Act of 3 August 2010 on the legal effects of certain partnerships (*Loi du 3 août 2010 portant modification de la loi du 9 juillet 2004 relative aux effets légaux de certains partenariats*), 12 August 2010.

The European Free Movement Directive provides that the host State should consider a registered partner as a family member if that State treats the partnership as an equivalent to marriage. While this condition is fulfilled by Luxembourg immigration law, the Law has no mechanisms to recognise unregistered long-term, stable partnerships, or partnerships not recognised in the country from which the foreign partner comes (*de facto* cohabitants).⁶⁹

The Ministry of Immigration can authorise unregistered partners of EU Member State citizens to remain in Luxembourg if in their countries of origin those partners were dependent on or were a member of EU citizens' households, or if the EU Member State citizens must, for serious health reasons, take care of their partners. The new immigration law, thus does not incorporate the Directive's wording aimed at partners with whom sponsors are in a 'duly attested stable long-term relationship' (Art 12).⁷⁰

There is virtually no quantitative or administrative data available to demonstrate the impact/social reality of relevant legislation for LGBT persons because Luxembourg's Act of 2 August 2002 on the protection of personal data, as amended, specifies that the 'processing of information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs and trade union affiliation, as well as data concerning health and sexual life, including genetic databases, are prohibited'. This was the response from the Ministry of Foreign Affairs and Immigration to the request for statistics. While the MAE stated having received family reunification requests from LGBT partners, the data were too sensitive to be used to generate statistics.⁷¹ However, this argument appears a bit outdated as in its Third Report on Luxembourg ECRI states that Luxembourg's National Data Protection Authority (*Commission Nationale pour la Protection des Données*, CNPD) confirmed to it that the Law authorised the collection of sensitive data. Such data collection simply required obtaining prior authorisation from the CNPD, and demonstrating the legitimacy and necessity thereof. In July of 2007, the data protection law was modified to allow the processing of sensitive data, not including genetic data, with only prior notification to the CNPD. This change in the data protection law was simply a procedural simplification, the *de facto* effect of which is to render sensitive data collection easier, including data on sexual orientation ((Art. 6)⁷² (Art. 6(2)(g) (p. 3)).^{73 74}

Our search of STATEC's site, Luxembourg's Central Service for Statistics and Economic Studies' website revealed no such data.⁷⁵

There is no case law on the rights of LGBT partners in the context of the freedom of movement.⁷⁶

⁶⁹ Luxembourg, (2008), Magpie singing (*la pie qui chante*), available at: <http://rosa-letzebuerg.lu/wpcontent/uploads/2012/08/PieJanFevMar2008.pdf> . all hyperlinks were accessed on 24 February 2014.

⁷⁰ Luxembourg, Act of 29 August 2008 on the free movement of persons and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), 10 September 2010.

⁷¹ Luxembourg, Government Commission for Foreigners (*Commissariat du Gouvernement aux Etrangers*) (2005), Discrimination as work (*Discrimination à l'emploi*), (Luxembourg, Government Commission for Foreigners, 80), available at: www.olai.public.lu/fr/publications/etude/rapport_discrimination.pdf – all hyperlinks were accessed on 24 February 2014 – and MAE response of 11 February 2010.

⁷² Luxembourg, European Network Against Racism (2008) Shadow Report 2007: Racism in the Grand Duchy of Luxembourg, the European Network Against Racism, available at http://cms.horus.be/files/99935/MediaArchive/pdf/luxembourg_en.pdf all hyperlinks were accessed on 12 May 2014.

⁷³ Luxembourg, Act of 2 August 2002 on the protection of individuals with regard to the processing of personal data. (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*), 13 August 2002.

⁷⁴ Luxembourg, conversation of 23 March 2009 with a National Commission for Data Protection jurist.

⁷⁵ Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies' website www.statec.lu

⁷⁶ Luxembourg; Search in the legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: 'discrimination based on sexual orientation', 'homosexual', 'homosexuality', 'sexual orientation', 'sexuality', 'immigration

Civil rights activists note that after the transposition of directives, few to almost none cases have been brought to court. Alongside with that, representatives of support organisations note that discrimination has become more hidden but still existent; people ask for support and speak of discrimination instances.⁷⁷

and homosexuality', 'immigration and sexual orientation', 'asylum and homosexuality', 'asylum and sexual orientation', 'transgender', 'transsexual person' and 'transsexuality'.

⁷⁷ Luxembourg, information was obtained during a conversation with a CIGALE representative, 05 November 2013

C. Asylum and subsidiary protection

The act of 19 June 2013⁷⁸ on free movement of persons – immigration, international protection modified the act of 5 May 2006. The act transposed EU directives, such as directive 2011/51/EU 2003/109/CE, 2011/95/UE and directive 2011/98/UE. The act of 2013 enlarges the grounds for applications for an international protection, by including various social groups. Art 32 specifies social groups, such as a group that “has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society”. Depending on the conditions prevailing in the country of origin, a particular social group may be a group whose members have a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with Luxembourg law.⁷⁹

The act of 5 May 2006 on the right to asylum and complementary forms of protection, as amended (the ‘Asylum Law’) has been modified and integrated into the immigration law.⁸⁰ It still provides for the granting of refugee status to any third-country-national or stateless person. A refugee is defined as any national from a third country who, because he or she rightfully fears persecution based on his or her race, religion, nationality, political opinions or belonging to a particular social group, finds him or herself outside of the country of which he or she is a citizen, and cannot or because of that fear will not request protection from that country; or, any stateless person who, for the above-mentioned reasons finds him or herself outside of the country of his or her habitual residence, and cannot or because of that fear, will not return to that country and who is not otherwise excluded from refugee status. The Asylum Law further provides for the granting of subsidiary protection, and Luxembourg’s recognition of that legal status, provided certain conditions are met, to any third-country-national or stateless person who is unable to obtain refugee status but is subject to serious human rights violations in his home country, or that of habitual residence for stateless persons. The human rights violations must be in the form of a death penalty or execution; torture or degrading or inhumane punishment or treatment; or serious and individual threats to the person or life of a civilian due to indiscriminate violence in the event of a domestic or international armed conflict. Both refugee status and the status conferred by subsidiary protection are also referred to as international protection.⁸¹ In order to be granted refugee status in Luxembourg, one must be in extreme danger and according to the case cited below, must not be able to flee to another region of one’s own country. Thus, the mere fact that one is homosexual and that homosexuality is a criminal offence in one’s own country would not be sufficient to protect one from deportation.

In principle, we see no basis for Luxembourg law to deny asylum and/or subsidiary protection to any LGBT persons persecuted for reasons of sexual orientation. However, we are aware of only one case⁸² on the subject involving a Nigerian homosexual male who was denied international

⁷⁸ Luxembourg, Act of 2013 on the right of asylum and complementary forms of protection (*Loi du 19 juin 2013 relative au droit d’asile et à des formes complémentaires de protection*), 25 June 2013.

⁷⁹ Luxembourg, Consolidated text of the Act of 5 May 2006 and complementary forms of protection (*Texte coordonné de la loi du 5 mai 2006 relative au droit d’asile et à des formes complémentaires de protection*), 03 July 2013.

⁸⁰ Luxembourg Act of 5 May 2006 on the right of asylum and complementary forms of protection (*Loi du 5 mai relative au droit d’asile et à des formes complémentaires de protection*), Memorial A – N°151, available at: www.legilux.public.lu/leg/a/archives/2011/0151/a151.pdf#page=6 – all hyperlinks were accessed on 24 February 2014.

⁸¹ Luxembourg, Act of 5 May 2006 on the right of asylum and complementary forms of protection (*Loi du 5 mai 2006 relative au droit d’asile et à des formes complémentaires de protection*), 09 May 2006. Luxembourg, Act of 29 August 2008 on the free movement of persons and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l’immigration*), 10 September 2010.

⁸² Luxembourg, case law N° 22023, 16 October 2006.

protection in Luxembourg⁸³. In 2006, the man requested international protection in Luxembourg, after having been brutally beaten and imprisoned by his family when he declared his homosexuality. The family had been trying to get him to marry a girl from his rural community. At that time, he was in a relationship with a foreigner and did not wish to marry the girl. The man with whom he had entered into a relationship arranged for the Nigerian man to leave Nigeria and come to Europe. The Nigerian man then requested asylum or subsidiary protection in Luxembourg. The administrative tribunal ruled that he did not prove persecution other than by his own family, and that while Nigerian law forbids and criminally sanctions homosexuality, the petitioner did not prove that he was at risk of any of the qualifying human rights violations by the Nigerian government such that he could be granted asylum or subsidiary protection under Luxembourg law. The decision further states that the individual did not fear persecution in the entire country and could therefore have fled his residence to live free from persecution in another part of the country.⁸⁴ The decision of the administrative tribunal was not appealed.

European Migration Network in Luxembourg⁸⁵ gathers case laws where it is possible to follow the cases on the grounds of sexual orientation. Although such data are not representative, they nonetheless demonstrate the general picture of how the group files an application and whether their applications are accepted or on what grounds they are rejected. In most cases brought against the decision of the Ministry of Family and integration on the account of rejection of international protection in Luxembourg for homosexuals, the reappeal was not changed (in 2010 there were 9 cases, among which only one reappeal was with a positive outcome). This case law in particular emphasises that the recognition of a refugee status is not only dependent on the general situation of the country, but especially on the particular circumstances that the applicant must establish; that, in practice, his/her individual well-founded fear of persecution within the meaning of the Geneva Convention. However, typically, there are not enough facts to prove the grounds for the recognition of a refugee status, or they cannot prove that there is fear of persecution in the country of origin because of the race, religion, nationality, membership in a particular social group or political convictions as provided in Article 1, Section 1, § 2 of the Geneva Convention and Articles 31 and 32 of the Act of May 5, 2006.

There are no statistics, or any case law on the topic at this time. Our website search of STATEC's site, Luxembourg's Central Service for Statistics and Economic Studies' website revealed no such data. The STATEC website only lists requests for asylum by the requesting individual's country of origin;⁸⁶ the Ministry of Foreign Affairs had no statistics either.⁸⁷ Further, we could not identify any case laws.⁸⁸ Research institute CEPS does not provide any data nor the analysis of them; it only works with data available through European Values Study (EVS) which regards attitude (towards LGTB group).

Under the applicable legislation, the Luxembourg legal system appears to accept LGBT persons as family members in the context of asylum and/or subsidiary protection because the Asylum Law

⁸³ Luxembourg, Administrative Tribunal of Grand Duchy of Luxembourg (*Tribunal administrative du Grand-Duché de Luxembourg*), Luxembourg, N° 22023, 16 October 2006.

⁸⁴ Luxembourg, Act of 5 May 2006 on the right of asylum and complementary forms of protection (*Loi du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection*), Mémorial A-N° 78, available at www.legilux.public.lu/leg/a/archives/2006/0078/a078.pdf#page=2. All hyperlinks were accessed on 24 February 2014. Luxembourg, Act of 29 August 2008 on the free movement of persons and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), 10 September 2010.

⁸⁵ Luxembourg, official webpage of the European Migration Network, Focal point Luxembourg www.emn.lu.

⁸⁶ Luxembourg, Administrative Tribunal of the Grand Duchy of Luxembourg (*Tribunal administratif du Grand-Duché de Luxembourg*)/22023.

⁸⁷ Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies' website www.statec.lu.

⁸⁸ Luxembourg, Search in the legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: 'discrimination based on sexual orientation', 'homosexual', 'homosexuality', 'sexual orientation', 'sexuality', 'immigration and homosexuality', 'immigration and sexual orientation', 'asylum and homosexuality', 'asylum and sexual orientation', 'transgender', 'transsexual person' and 'transsexuality'.

defines as a family member the unmarried partner of the beneficiary of international protection when that partner is engaged in a shared community of life (*vie commune*) recognised by the country of origin of one of the partners. The Asylum Law further recognises as family members the children of that couple provided that the children are dependent on one of the partners and unmarried, regardless of whether the children were born out of wedlock or adopted. However, in this context as in the freedom of movement context, the legislation as it is drafted does not allow for the fact that some countries do not recognise any civil union or registered partnership, thus the couple would not be in a position to substantiate any long-standing officially recognised relationship. The LGBT community would like to see the definition of “family member” under the Asylum Law broadened to include individuals that come from countries that do not recognise any civil union or registered partnership. The existing situation often leads to the eventual break-up of the couple because in some cases the non-Luxembourg national will stay in Luxembourg without receiving any official permission. The couple will thus not go out much for fear of being obligated to present their papers, and their life together does not receive the benefits provided to other couples.⁸⁹

According to some sources that provided information, which we cannot independently confirm, there appears to be an unofficial practice in Luxembourg of placing in detention an unmarried male that requests asylum on grounds of persecution in his home country due to his sexual orientation. The same practice would not hold true for a female.⁹⁰

Apparently, the individual would be told to return to his home country, or that the processing of his asylum request would take three (3) months. Should the individual decide to pursue his request for asylum, the Luxembourg government would then take that male into detention for the three-month period.

There are no statistics, and neither is there any case law on the topic. Our search of STATEC’s, Luxembourg’s Central Service for Statistics and Economic Studies’ website revealed no such data. It only lists requests for asylum by the requesting individual’s country of origin.⁹¹ It cannot provide statistics either. In the Ministry of Foreign Affairs’ response to a request for statistics, it asserted that the act of 2 August 2002 on the protection of personal data, as amended, specifies that the ‘processing of information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs and trade union affiliation, as well as data concerning health and sexual life, including genetic databases, are prohibited’. While the Ministry of Foreign Affairs stated having received asylum requests from LGBT individuals based on persecution due to their sexual orientation, the data were too sensitive to be used to generate statistics.⁹² Further, we could not find any case law.⁹³ To our knowledge there is no use of ‘phallometry’ or ‘phallometric testing’ in Luxembourg.

⁸⁹ Luxembourg, CIGALE representative communication, 13 February 2010.

⁹⁰ Luxembourg, CIGALE representative communication, 13 February 2010.

⁹¹ Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies’ website www.statec.lu.

⁹² Luxembourg, Government Commission for Foreigners (*Commissariat du Gouvernement aux Etrangers*) (2005), *Discrimination as work (Discrimination à l’emploi)*, (Luxembourg, Government Commission for Foreigners, 80), available at: www.olai.public.lu/fr/publications/etude/rapport_discrimination.pdf. All hyperlinks were accessed on 24 February 2014.

⁹³ Luxembourg; Search in the legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: ‘discrimination based on sexual orientation’, ‘homosexual’, ‘homosexuality’, ‘sexual orientation’, ‘sexuality’, ‘immigration and homosexuality’, ‘immigration and sexual orientation’, ‘asylum and homosexuality’, ‘asylum and sexual orientation’, ‘transgender’, ‘transsexual person’ and ‘transsexuality’.

D. Family reunification

Following the act of 19 June 2013⁹⁴ on the right of asylum and complementary forms of protection consolidated the status of a family member throughout migration laws (such as the law of 2008, for instance). Family reunification will become easier under the new law on marriage and adoption of 2014⁹⁵ which will come into force in 2015. Accordingly, spouses can then be reunited coming from countries where same sex marriages is recognised. The law also accepts marriages between a Luxembourgish and another person from another country.

All in all, regarding the recognition of marriages between same-sex spouses registered abroad, the act foresees the same rules as for different-sex couples married abroad. The same applies to marriages of either between couples of different sex or of same-sex, all rights and obligations of the marriage, the rules relating to the dissolution of marriage, the provisions of donations or estates.⁹⁶

Directive 2003/86/EC the right to family reunification provides that the host state can authorise the entry and stay of a third-country national who is bound to a sponsor by a registered partnership Art. 4(3).⁹⁷ Luxembourg's immigration law recognises as a family member a spouse or a registered partner.⁹⁸ This means that couples of which one partner is a third- country national, but who have registered their partnership abroad in France, Germany or especially outside of the EU, for example, can now receive a Luxembourg residence permit. Once the marriage act comes into force in 2015 marriage recognitions registered in other countries will be accepted in Luxembourg. Up until then, a recent case law provides that same sex marriages legally registered outside of Luxembourg would have the same legal effect as a Luxembourg registered partnership.⁹⁹

However, there is no legal mechanism for recognition of de facto cohabitants and the new immigration law does not consider as family members partners who are not officially registered. Thus, residence permits for partners coming from third countries are not automatically given. Furthermore, unregistered partners are treated differently depending on whether the partners they wish to join in Luxembourg are EU Member State citizens (even Luxembourgers) or another third-party national.¹⁰⁰

For unregistered partners of third-country national Luxembourg resident sponsors, Article 78 of the immigration law (covering personal reason residence permits, including independent permits for family members falling under family reunification) only partially facilitates the right of entry and stay for unregistered third-country national partners. In contrast, the Family Reunification Directive clearly provides that EU Member States should facilitate the entry and stay of unregistered partners with whom the sponsor has a duly attested stable long-term relationship. While it is true that it is not easy to prove that a relationship is long-term and stable, Article 78 of the new law provides for a situation not contemplated by the Family Reunification Directive, and which will give rise to even more delicate matters in proving the relationship. Article 78 allows

⁹⁴ Luxembourg, Act of 19 June 2013 on the right of asylum and complementary forms of protection (*Loi du 19 juin 2013 relative au droit d'asile et à des formes complémentaires de protection*), 25 June 2013. .

⁹⁵ Luxembourg, Draft bill N°6172 on the marriage and adoption reform (Projet de loi N6172 portant réforme du mariage et de l'adoption), available at: www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6172# .

⁹⁶ Luxembourg, by 10 July 2014 the text of the marriage act has not been finalised and only draft bill is available:

Luxembourg, Draft bill N°6172 on the marriage and adoption reform (Projet de loi N6172 portant réforme du mariage et de l'adoption), available at: www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6172# .

⁹⁷ Directive 2003/86/EC on the right to family reunification, OJ 2003, L 251. .

⁹⁸ Luxembourg, Act of 29 August 2008 on the free movement of persons and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l'immigration*), 10 September 2010.

⁹⁹ Luxembourg, Administrative Tribunal of the Grand Duchy of Luxembourg (*Tribunal administrative du Grand-Duché de Luxembourg*), Docket No. 19509, 3 October 2005.

¹⁰⁰ Luxembourg, CIGALE representative communication, 13 February 2010.

unregistered partners to request personal reason residence permits. In addition to the usual requirements of sufficient financial resources, health insurance coverage and appropriate housing, partners wishing to come to Luxembourg must also prove that the ‘personal or familiar relationships, particularly with respect to their intensity, seniority and stability, are such that refusal of residence on family reunification grounds would violate their right to privacy and family disproportionate to the grounds for denial of such residence’. Thus granting personal residence permit will still remain at the mercy of the current ministry.¹⁰¹

The stability and long-term nature of a relationship are almost impossible to establish for recent couples. Given that in most countries, individuals rarely make their homosexuality public, a couple would often have trouble supporting their assertions regarding the nature of their relationship by testimony from friends or family. Thus, it will not be easier than before to bring a partner (registered or unregistered) to Luxembourg.¹⁰²

There are no statistics, and neither is there any case law on the topic. Administrations assert that the act of 2 August 2002 on the protection of personal data, as amended, specifies that the ‘processing of information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs and trade union affiliation, as well as data concerning health and sexual life, including genetic databases, are prohibited’.¹⁰³ This was the response from the Ministry of Foreign Affairs and Immigration to the request for statistics. While the Ministry of Foreign Affairs stated having received family reunification requests from LGBT partners, the data were too sensitive to be used to generate statistics.¹⁰⁴

Our website search of STATEC’s site, Luxembourg’s Central Service for Statistics and Economic Studies’ website revealed no such data.¹⁰⁵ The Ministry of Foreign Affairs had no statistics either.¹⁰⁶ Further, we could not find any case laws.¹⁰⁷

We did, however, find one 2005 case before the Administrative Tribunal in which the tribunal reversed an Ministry of Foreign Affairs’ denial of a residence permit to a Madagascar citizen who had married a Belgian citizen prior to requesting a residence permit to join that same Belgian citizen living in Luxembourg. The petitioner had requested the residence permit under the status of registered partner to Belgian citizen, but the Ministry of Foreign Affairs had denied the permit on the grounds that he was married, and his marriage prevented him from entering into a partnership. The Administrative Tribunal annulled the Ministry of Foreign Affairs’ denial and remanded the file to the Ministry of Foreign Affairs for issuance of the permit on the grounds that their marriage could not be interpreted as denying them the legal effects of a partnership under

¹⁰¹ Luxembourg, Act of 29 August 2008 on the free movement of persons and immigration (*Loi du 29 août 2008 portant sur la libre circulation des personnes et l’immigration*), 10 September 2010

¹⁰² Luxembourg, Diderrich (2008), Magpie singing (*la pie qui chante*), available at: <http://rosa-letzebuerg.lu/wp-content/uploads/2012/08/PieJanFevMar2008.pdf>. all hyperlinks were accessed on 24 February 2014.

¹⁰³ Luxembourg, Act of 2 August 2002 on the protection of individuals with regard to the processing of personal data. (*Loi du 2 août 2002 relative à la protection des personnes à l’égard du traitement des données à caractère personnel*), 13 August 2002.

¹⁰⁴ Luxembourg, Government Commission for Foreigners (*Commissariat du Gouvernement aux Etrangers*) (2005), Discrimination as work (*Discrimination à l’emploi*), (Luxembourg, Government Commission for Foreigners, 80), available at: www.olai.public.lu/fr/publications/etude/rapport_discrimination.pdf . all hyperlinks were accessed on 24 February 2014; information received upon request from the Ministry of Foreign Affairs.

¹⁰⁵ Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies’ website www.statec.lu.

¹⁰⁶ Luxembourg, Information received upon request from the Ministry of Foreign Affairs, 08 February 2010.

¹⁰⁷ Luxembourg; Search in the legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: ‘discrimination based on sexual orientation’, ‘homosexual’, ‘homosexuality’, ‘sexual orientation’, ‘sexuality’, ‘immigration and homosexuality’, ‘immigration and sexual orientation’, ‘asylum and homosexuality’, ‘asylum and sexual orientation’, ‘transgender’, ‘transsexual person’ and ‘transsexuality’ . .

Luxembourg law. The case is a bit outdated given recent legislation, but indicates the discrimination in recognition of same-sex marriages.¹⁰⁸

¹⁰⁸ Luxembourg, Administrative Tribunal of the Grand Duchy of Luxembourg (*Tribunal administratif du Grand-Duché de Luxembourg*)/22023 (3 May 2007) No. 19509.

E. Freedom of assembly

Article 25 of the Luxembourg Constitution guarantees the right to peaceful, unarmed assembly that respects the laws governing the exercise of that right without being subject to prior authorisation. However, that constitutional provision does not apply to outdoor, political, religious or other gatherings. Those gatherings remain entirely subject to the laws and regulations adopted under the police powers of the State (Art. 25).¹⁰⁹ Nonetheless, as explained in section F below, Luxembourg criminal law provides sanctions for the incitation of discrimination of any form of verbal, written or graphic communication or materials in public. Thus, homophobic demonstrations, assemblies or similar events could lawfully be banned in Luxembourg to the extent that they incite the proscribed discrimination, hate or violence, or otherwise threaten public order.

The Luxembourg LGBT community has opted for street fairs instead of gay-pride marchers or parades. There have been no problems with their receiving the necessary governmental authorisations for those uses of public space. The City of Luxembourg has been quite open in this respect.¹¹⁰ In the recent years pride parades, which are regularly organised in the country, have been held in various communes of the country and demonstrate public tolerance and support of the event. Since 2010 the even have been organised with the support of Esch-sur-Alzette community and the City Hall. In particular, the cultural department of the City of Esch-sur-Alzette is responsible for coordinating the festival at the town.¹¹¹ Civil support organisation Rosa Luxembourg is actively involved in organising pride parades throughout the country as well. Also, the organisation supports and cooperates organisations across the Luxembourgish border. For instance, it is involved in socio-cultural activities with Pink Ladies, a lesbian group, to reach out the concerned group abroad Pink Ladies by Rosa Luxembourg.

However, CIGALE representatives point out at another concern: lack of an infrastructure for LGBT community. They point out that there are not enough shops, bars in the country for the group. They explain this concern through the context and specifics of Luxembourg: on the one hand it is due to a low number of the members; on the other hand representatives of CIGALE add that it is easy and fast to go abroad and find things there.¹¹²

STATEC's website, Luxembourg's Central Service for Statistics and Economic Studies' website revealed no such data.¹¹³ Further, we could not find any case laws.¹¹⁴

¹⁰⁹ Luxembourg, Constitution of the Grand Duchy of Luxembourg (*Constitution du Grand-Duché du Luxembourg*, 01 September 2006,

¹¹⁰ Luxembourg, CIGALE representative communication, 10 July 2014.

¹¹¹ Luxembourg, News release of the Esch-sur-Alzette commune Discrimination on grounds of gender identity or sexual orientation (Discrimination pour motif d'identité de genre ou d'orientation sexuelle), available at: www.esch.lu/citoyen/egalitedeschances/Pages/Discriminationpourmotifd'identitedegenreoud'orientationsexuelleActualite.aspx). All hyperlinks were accessed on 25 June 2014.

¹¹² Luxembourg, CIGALE representative communication, 10 July 2014.

¹¹³ Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies' website www.statec.lu.

¹¹⁴ Luxembourg, Search in legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: 'discrimination based on sexual orientation', 'homosexual', 'homosexuality', 'sexual orientation', 'sexuality', 'immigration and homosexuality', 'immigration and sexual orientation', 'asylum and homosexuality', 'asylum and sexual orientation', 'transgender', 'transsexual person' and 'transsexuality'.

F. Criminal law

There are no recent developments regarding the framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. The creation of Art. 454 to 457-4 of the criminal law dates back to the act of 19 July 1997 and was continuously updated, i.e. act of 29 November 2006¹¹⁵. The act of 13 February 2011¹¹⁶ modified Art. 457-3. The change increased penalties to a maximum of 2 years (instead of previously 6 months). The explanatory memorandum of the act mentions the fact that rules of jurisdiction, i.e. Art. 9 – 2, were already covered by Art. 7-2 of the Criminal instruction code before the adoption of the act of 13 February 2011¹¹⁷¹¹⁸.

Luxembourg's Criminal Code provides for imprisonment of eight (8) days to two (2) years and/or a fine of €251 to €25,000 (Art. 454 to 457-1)¹¹⁹, when anyone incites discrimination, hate or violence against a natural or legal person or a group or community of persons through any form of verbal, written or graphic communication or materials that are made available in public places or meetings. This also includes the incitation of discrimination, hate or violence that relates to the furnishing of a good or service, impedes access to employment and vocational training, or the normal exercise of one's employment based on sexual orientation (Art. 457-3)¹²⁰. Anyone who belongs to an organisation the purpose of which is to commit one of those acts is also subject to that punishment, as is anyone who prints or causes to be printed, circulated in Luxembourg, or put in the mail, any type of image, written or spoken communication or materials with the same effect (Art. 454 to 457-1).¹²¹

The Criminal Code also provides that any defamation of gravesites and corpses because of a supposed or real membership or non-membership of the deceased in a particular ethnicity, nation, race or religion, is punishable by imprisonment of six (6) months to three (3) years and/or a fine of €251 to €37,500.¹²² The gravesite and corpse defamation provision does not specifically include sexual orientation as a basis for these heightened sanctions, so any gravesite or corpse defamation carried out because of the deceased's sexual orientation would fall under the regularly applicable provision. That provision provides for imprisonment of one (1) month to two (2) years and a fine of €251 to €25,000. (Art 451.-1).¹²³ However, if the gravesite defamation is accompanied by defamation of the corpse, the crime would be punishable by imprisonment of three (3) years and a fine of €37,500 EUR, the equivalent of the maximum heightened penalty for the discriminatorily-motivated defamation cited above.¹²⁴ The Criminal Code table of contents lists these crimes under racial discrimination.

¹¹⁵ Luxembourg, Act of 29 November 2006 on equal treatment (*loi du 29 novembre 2006 sur l'égalité de traitement*, Mémorial A-207), 06 december 2006.

¹¹⁶ Luxembourg, Draft bill 6126 modifying art. 457 – 3 of the Criminal Code (Projet du loi N° 6126), available at: www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/088/843/088472.pdf and Act of 13 February 2011 amending Article 457-3 of the Criminal Code (Loi du 13 février 2011 portant modification de l'article 457-3 du Code pénal), 21 February 2011.

¹¹⁷ Luxembourg, Criminal Instruction Code (*Code d'Instruction Criminelle*), available at: www.legilux.public.lu/leg/textescoordonnes/codes/code_instruction_criminelle/cic_L2T6.pdf all hyperlinks were accessed on 10 May 2014.

¹¹⁸ Luxembourg, Act of 13 February 2011 amending Article 457-3 of the Criminal Code (*Loi du 13 février 2011 portant modification de l'article 457-3 du Code penal*), 21 February 2011.

¹¹⁹ Luxembourg, Criminal Instruction Code (*Code d'Instruction Criminelle*).

¹²⁰ Luxembourg, Criminal Instruction Code (*Code d'Instruction Criminelle*).

¹²¹ Luxembourg, Criminal Instruction Code (*Code d'Instruction Criminelle*).

¹²² Luxembourg, Criminal Instruction Code (*Code d'Instruction Criminelle*).

¹²³) Luxembourg, Penal Code (*Code Pénal*).

¹²⁴ Luxembourg, Penal Code Grand Duchy of Luxembourg (*Code Pénal Grand-Duché de Luxembourg*), Arts. 453-455, 457-1 and 457-2.

Article 260-1 of the Penal Code includes general provision on torture: the code states that “anyone who commits acts of torture for any reason based on discrimination of any kind shall be punished by imprisonment of 5 to 10 years (Art. 260-1).¹²⁵

The civil and criminal law provisions relating to harassment are discussed above.

There are no statistics, and neither is there any case law on the topic at this time. It appears, however, that because the homosexual community decreasingly frequents public areas such as parks, there are fewer homophobic-motivated beatings, for example. Contrary to earlier practices among the LGBT populations, the “younger generation” engages in activities in places other than public areas. Our website search of STATEC’s site, Luxembourg’s Central Service for Statistics and Economic Studies’ website revealed no such data. The information on actions adjudicated is presented in the aggregate and classified solely by adjudicating body and type of action (e.g., civil, commercial or criminal).¹²⁶ Further, we could not find any case law.¹²⁷

Luxembourg law neither includes nor excludes homophobic hate crimes, thus the issue would be left to the court’s interpretation. Luxembourg has no legal provisions specifically making homophobic discrimination an aggravating factor in the punishment of a crime, as in the neighbouring countries of France and Germany. However, as mentioned above, the Criminal Code now provides sanctions for inciting discrimination, hate or violent crimes based on sexual orientation discrimination. There is currently no jurisprudence on the issue.

We are unaware of any legal instruments or laws that could be interpreted as ‘institutionalising’ homophobia.

According to the CET, since the entry into force of the Act of 28 November 2006 (transposing Directives 2000/43 and 2000/78), almost no judicial decisions have been taken despite the fact that victims can lodge a complaint directly with the Prosecutor or via a voluntary organisation which is recognised by the Ministry of Justice as holding a legitimate interest in the affair. In 2012 the CET asked the government to study the reasons for this evolution and provide a solution to it (p. 46).¹²⁸ ¹²⁹ In 2013 there was one case law with regard to incitement of hate crime and hate speech: the convicted distributed flyers to farmers which contained xenophobic and homophobic statements¹³⁰.

CIGALE representatives point out that incidents of hate crime on the grounds of homosexuality are very few, but may take place. However, they do not reach the court, either because these cases do not have enough of evidence for a positive decision, or perhaps, under the advice of their lawyers, victims file their complaints under other “more winnable” forms of crime.¹³¹

¹²⁵ Luxembourg, Penal Code Grand Duchy of Luxembourg (*Code pénal Grand-Duché de Luxembourg*).

¹²⁶ Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies’ website www.statec.lu.

¹²⁷ Luxembourg; Search in the legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: ‘discrimination based on sexual orientation’, ‘homosexual’, ‘homosexuality’, ‘sexual orientation’, ‘sexuality’, ‘immigration and homosexuality’, ‘immigration and sexual orientation’, ‘asylum and homosexuality’, ‘asylum and sexual orientation’, ‘transgender’, ‘transsexual person’ and ‘transsexuality’.

¹²⁸ Luxembourg, The Centre for Equal Treatment (Centre pour l’égalité de traitement) (2012), 2012 Annual Report on the activities of CET (*Rapport annuel 2012 sur les activités du CET*), available at: <http://cet.lu/2013/03/rapp-ann-2012/>. all hyperlinks were accessed on 10 May 2014.

¹²⁹ Luxembourg, CET confirmed that up until now they have not received any statement on this matter for the government, 25 June 2014.

¹³⁰ Luxembourg information on case laws for the year 2013 was provided upon request by CIGALE; CIGALE has confirmed there were almost no case laws (we found one). Communication by electronic mails with CIGALE in October 2013.

¹³¹ Luxembourg, information was obtained during a conversation with a CIGALE representative, 05 November 2013.

G. Transgender issues

Transgender issues are not specifically addressed under Luxembourg law. If they were interpreted to be included in the Employment Directive's broad definition of sexual orientation as implemented in Luxembourg legislation, they would effectively be dealt with. If not, then only the criminal law provisions would apply as transgender individuals would be considered as belonging to a particular social group.

There are no statistics, to provide guidance on the issue at this time. Our website search of STATEC's site, Luxembourg's Central Service for Statistics and Economic Studies' website revealed no such data.¹³²

According to the information gathered in an informal context, Luxembourg has no doctors specialised or experienced in any form of gender-reassignment surgery¹³³. Thus, a Luxembourg national would be forced to seek that surgery outside of Luxembourg. First, however, the individual would be required to undergo psychiatric evaluation and treatment in order to request that the surgery be paid for by the Luxembourg healthcare system. Once an affirmative response is received, the individual would usually go to Belgium or Germany, and to a lesser extent France. However, in Germany individuals would need to undergo a second psychiatric examination and need to receive a confirmation from a specialist in that country.¹³⁴ Also, prior to a surgery patients are suggested to live the life of the opposite sex. Some patients feel that adds a lot of additional stress abandon the treatment altogether with the surgery.¹³⁵ Following the surgery, the individual would undergo psychological treatment with the foreign medical team as a member of the newly assigned sex.

According to the legal provisions applicable to the rectification of civil status documents articles 99 and 101 of the Civil Code, there are no specific requirements for rectification of the recorded sex or name on official documents that would fit in any of this table's indicated fields. In 2014 the Ministry of Equal Opportunities (*Ministère de l'égalité des chances*) announced preparations for the bill that would simplify the procedures on gender reassignment and name change. Up until now the text has not yet been drafted.¹³⁶ Currently, any specific requirements are left to the case law. However, available case law on the topic is still scarce. As mentioned in the report, the court of the first instance has, in one case, granted the right to change sex without requiring prior divorce. CIGALE representatives also emphasise taking into account the specifics of each case and favour an individual approach in every situation.¹³⁷ In practice, the individuals concerned have addressed their name change request to the competent ministry, which has referred them to an attorney to commence divorce proceedings and then be able to request a name change.

One extremely important issue in this context is 'forced divorce' of individuals having undergone gender-reassignment surgery prior to being able to change their identity documents to reflect the name of the newly assigned gender. Given that currently civil marriage is reserved exclusively for heterosexual couples, transsexual individuals who have not divorced prior to filing their request to change identity documents are refused the name change on their identity documents. In some cases, couples in which one spouse undergoes gender-reassignment surgery wish remain

¹³² Luxembourg, Search of website of the Luxembourg National Institute of Statistics and Economic Studies' website www.statec.lu.

¹³³ Luxembourg, information was obtained during a conversation with a CIGALE representative, 10 July 2013.

¹³⁴ Luxembourg, information was obtained during a conversation with a CIGALE representative, 10 July 2013.

¹³⁵ Luxembourg, information was obtained during a conversation with a CIGALE representative, 10 July 2013.

¹³⁶ Luxembourg, (2014), Ministry of Equal Opportunities (*Ministère de l'égalité des chances*), Annual report 2013 (*Rapport d'activité 2013*), available at: www.mj.public.lu/chiffres_cles/rapport_activite2013.pdf. All hyperlinks were accessed on 10 July 2014.

¹³⁷ Luxembourg, CIGALE representative communication, 10 July 2014.

together for financial or social security reasons.¹³⁸

According to our unofficial sources, in 2009 the Ministry of Justice was charged with clarifying and facilitating the request procedures for such individuals. However, we know of no official steps taken to date. According to the court of first instance (*Tribunal d'arrondissement de Luxembourg*), a transsexual woman was granted the right to change her sex to female while remaining married to her wife (civil judgement nr. 184/09 of 30 September 2009). While obtaining information for FRA annual report 2010 we learned that this decision has been taken; however the legal text does not mention anything about the subject.

Also, our unofficial sources are aware of a case under appeal in which a couple, one spouse of whom underwent gender-reassignment surgery, contested the 'forced divorce'. The court appears to have found in favour of the couple, but we cannot have access to the case law until the deadline for filing an appeal has passed. No new cases could be identified since then¹³⁹. The lack of any precedent seems to come from the fact that the group of transgender people is not numerous. However, another explanation may come from the fact that this group feels very vulnerable in the society. People fear speaking what they experience and suffer from psychological traumas. Non-governmental organisation Intersex & Transgender Luxembourg (ITGL) fights against misconceptions, prejudice and transphobia. However, according to ITGL, Luxembourg still needs work to do to harmonise the relationship with this group.¹⁴⁰

We could not find any statistics on for the transgender group at this time. Our website search of STATEC's site, Luxembourg's Central Service for Statistics and Economic Studies' website revealed no such data.¹⁴¹ Again, as has been stressed above in the subsection, transgender group is not numerous and is not very open in the country. National law on data protection protects such groups from officialising the data and making them public.

¹³⁸ Luxembourg, CIGALE representative communication, 13 February 2010.

¹³⁹ Luxembourg, Search in legislative platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: 'discrimination based on sexual orientation', 'homosexual', 'homosexuality', 'sexual orientation', 'sexuality', 'immigration and homosexuality', 'immigration and sexual orientation', 'asylum and homosexuality', 'asylum and sexual orientation', 'transgender', 'transsexual person' and 'transsexuality', 10 May 2014.

¹⁴⁰ Luxembourg, CIGALE representative communication, 10 July 2014.

¹⁴¹ Luxembourg, Administrative Tribunal of the Grand Duchy of Luxembourg (*Tribunal administratif du Grand-Duché de Luxembourg*)/22023.

H. Miscellaneous

On 18 June 2014 the bill N° 6172 on marriage and adoption¹⁴² was voted in favour by an overwhelming majority of members of the parliament and will come into force in 2015.

The adoption of the bill had been considered a priority by the new government but involved heated debates. That particularly regarded the right of adoption by homosexual couples. In spring 2014, as a reaction to a new wave of discussions around the bill, a petition against the right to adopt for homosexuals was launched in Luxembourg. It is called Protection of the child (*Defence de l'enfant, Schutz fir d'Kand*). The petition is available in 7 languages and seeks to protect the interest of a child and wishes to prohibit the right to adoption for homosexuals, however the petition rejects and condemns homophobic discrimination. The petition seeks to abandon parliamentary bills no. 6172 concerning the reform of marriage and adoption and no. 6568 concerning the reform of rights of filiation, and to change the constitution and call for a general referendum. Also the petition “notes the absence of any meaningful public discussion of the real issues associated with the proposal and seeks to stimulate a public debate in keeping with a democracy”.¹⁴³

Another double issue of concern in the fight against discrimination is firstly the lack of jurists specialising in the topic and, secondly, the little financial resources certain victims have access to. This is also the case for the majority of NGOs whose assistance is requested in these situations.

According to several sources, there is no administrative data available on the sexual orientation because the act of 2 August 2002 on personal data protection supposedly did not allow for the collection of data other than that related to nationality. However, in its Third Report on Luxembourg ECRI (p.23)¹⁴⁴ states that Luxembourg's National Data Protection Authority (*Commission Nationale pour la Protection des Données, CNPD*) confirmed to it that the law authorised the collection of sensitive data. Such data collection simply required obtaining prior authorisation from the CNPD, and demonstrating the legitimacy and necessity thereof. In July of 2007, the data protection law was modified to allow the processing of sensitive data, not including genetic data, with only prior notification to the CNPD. This change in the data protection law was simply a procedural simplification, the de facto effect of which is to render sensitive data collection easier, including data collection easier collection of sexual orientation data (*vie sexuelle*).¹⁴⁵

There is a case law with a German woman who wanted to give her baby to a female homosexual couple in Luxembourg due to the fact that her husband was in prison (detained) for violent behaviour. The judge argued that Luxembourg had no legal text allowing a homosexual couple to raise a child and that it would be more appropriate to find a heterosexual couple. He referred to an opinion by a psychologist of the Youth Protection Service (*Service de la protection de la jeunesse*) who was not convinced that the homosexual couple had the capacity to raise the child.

In conclusion, the judge refused the young mother's demand. While looking for information for FRA annual report, we found this case law. Moreover, as we have been explained, the case laws

¹⁴² Luxembourg, Draft bill N°6172 on the marriage and adoption reform (Projet de loi N6172 portant réforme du mariage et de l'adoption), available at: www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6172# . all hyperlinks were accessed on 10 July 2014.

¹⁴³ Luxembourg, Official webpage of the petition Protection of the child (*Defence de l'enfant, Schutz fir d'Kand*), available at: www.defensedelenfant.lu/qui-sommes-nous.php?lang=an , all hyperlinks were accessed on 10 May 2014.

¹⁴⁴ European Commission against Racism and Intolerance (2005), Third report on Luxembourg, (Strassbourg , Council of Europe, 41). available at: http://hudoc.ecri.coe.int/XML/Ecri/ENGLISH/Cycle_03/03_CbC_eng/LUX-CbC-III-2006-20-ENG.pdf . all hyperlinks were accessed on 24 February 2014.

¹⁴⁵ Luxembourg, Government Commission for Foreigners (*Commissariat du Gouvernement aux Etrangers*) (2005), Discrimination as work (*Discrimination à l'emploi*), (Luxembourg, Government Commission for Foreigners, 80), available at: www.olai.public.lu/fr/publications/etude/rapport_discrimination.pdf . all hyperlinks were accessed on 24 June 2014.

on this topic are numerous, and even if anonymous, as it is still possible to identify people. Therefore some case laws are not shared with the public. As we have been explained, the case laws on this topic are numerous, and even if anonymous, it is still possible to identify people. Therefore some case laws are not shared with the public.

I. Intersex

Currently, there is no legal provision explicitly referring to intersex people. They could be recognised as a social group; however there has not been a case law for that yet in Luxembourg. Also there is no criminal law provision explicitly addressing discrimination on the grounds of intersex status. Article 454 and following the Penal Code relates to discrimination. Article 454 does not mention any “social group” or “intersex”.¹⁴⁶

Draft bill N°6568¹⁴⁷ on filiation will allow dropping indication of sex of a child in childbirth certificates. In 2014 General Prosecutor of the Grand Duchy of Luxembourg gave a legal opinion on the draft bill and has stressed that intersex children were pushed to fit into a particular gender category, which forced them to undergo genital surgeries and hormonal treatment all their lives.

Until the adoption of the bill, however, the case of children remaining without a gender marker/identification on their birth certificates has not been foreseen by the law Article 55 (L. 16 May 1975) of the Civil Code¹⁴⁸ states that “declarations of birth shall be made within five days of the delivery to the registry of civil status of the location.” Article 57 of the Civil Code states that the sex of the child has to be indicated on the birth certificate. Also, surgical and medical interventions are not performed in Luxembourg. Usually, individuals travel to Germany or Belgium to be operated one.

Information on the situation of intersex people and medical intervention in Luxembourg falls short. There are no studies on the social situation of intersex people, nor is there any official statistics or transparency on medical treatments applied and their consequences(p.43).¹⁴⁹ During a conversation with Initiativ Liewensufank it has been confirmed that they don’t know of any specific medical protocol¹⁵⁰. Also, surgeries are not performed in Luxembourg for that patient would go to Germany or to Belgium. The tarification of the National Health Fund (*Caisse nationale de santé*), which fixes reimbursement for medical interventions, has some interventions that might be performed on intersex persons (e.g. surgery in Germany). National Health Fund covers reassignment surgeries which are carried abroad, which includes the analysis of the hospital where the surgery is to take place, patient's social security and a report by a specialist in plastic surgery practicing sex reassignment surgery.¹⁵¹

The OLAI includes the mission of fight against discrimination. The ministry of Equal Opportunities (MEGA) promotes gender quality. However, promoting and supporting the interests of the social group, such as intersex individuals, currently does not fall within the mission objectives of either of the governmental bodies. Further, there is no policy to integrate intersex children at school. The Ministry of Education is also concerned.¹⁵²

¹⁴⁶ Luxembourg, Penal code (*Code Pénal*).

¹⁴⁷ Luxembourg, Draft bill N°6568 on filiation (projet du loi N° 6568 sure filiation), available at: www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/181/244/128403.pdf all hyperlinks were accessed on 10 July 2014.

¹⁴⁸ Luxembourg, Civil code (*Code civil*).

¹⁴⁹ Luxembourg, information was confirmed by Intersex and Transgender Luxembourg (electronic mail on 09 February 2014) and Initiativ Liewensufank a.s.b.l.(*Centre pour grossesse, accouchement, allaitement et parentage Institut pour l'amélioration des conditions autour de la naissance*) upon request telephone call on 21 February 2014.

¹⁵⁰ Luxembourg, information was confirmed by Intersex and Transgender Luxembourg (electronic mail on 09 February 2014) and Initiativ Liewensufank a.s.b.l.(*Centre pour grossesse, accouchement, allaitement et parentage Institut pour l'amélioration des conditions autour de la naissance*) upon request telephone call on 21 February 2014.

¹⁵¹ Luxembourg, Information received upon request from the National Health Fund (Caisse Nationale de la Sainte), 26 June 2014.

¹⁵² Luxembourg (2013), Alternative Luxembourg NGOs 3rd and 4th Government Report on the Rights of the Child (*Rapport Alternatif des ONG luxembourgeoises au 3e et 4e rapport gouvernemental sur les Droits de l'Enfant*), available at: www.ances.lu/attachments/article/162/RADELUX_new%2005-02-2013%20DINA4.pdf.

In 2013 the 3rd and 4th government report on the Rights of the Child (*Rapport Alternatif des ONG luxembourgeoises*, RADELUX¹⁵³ issued an alternative report to ministries suggesting a number of recommendations regarding children in Luxembourg. In particular, the committee suggests that the legislation creates a new category in the birth register which allows the sex of the child not to be mentioned. Also, the committee insists on ensuring the privacy of individuals undergoing gender rectification by issuing birth certificates which would not mention this change (p.19).¹⁵⁴ RADELUX published its opinion on the draft bill, which calls for a recognition of transgender children.¹⁵⁵ The suggestions proposed by RADELUX also target changing the constitution. Draft bill N°6030 includes changes on granting legal recognition for inter- or transsexual individuals and that could guarantee equality of all individuals, regardless of biological sex, gender identity and gender expression.¹⁵⁶

Luxembourg has no tradition of informed written consent given before any treatment or surgical interventions. Minors can in general be included (optional)¹⁵⁷ if they are capable of discernment in a decision-making, but nothing is foreseen to listen to them and offer them independent information and different options.

In case of intersex children the consent is given by parents at the very young age (infancy) of the child when the first intervention might take place. However, such a decision does not follow the interests of a child, as by choosing medical intervention of a child at early stage, it could be assumed that the parents might feel pushed into a certain direction as to make the infant fit into one of the two categories available under registration.¹⁵⁸

There exists no known information point for parents where they would be addressed for independent advice and exchange with a peer group and knowledgeable counsellors. Initiativ Liewensufank would like to become such a focal point and has collected documentation but no support has been granted to them for this work.

It might be that the new legislation on patients' rights will bring a general improvement on

¹⁵³ Luxembourg (2013), Alternative Luxembourg NGOs 3rd and 4th Government Report on the Rights of the Child (*Rapport Alternatif des ONG luxembourgeoises au 3e et 4e rapport gouvernemental sur les Droits de l'Enfant*), available at: www.ances.lu/attachments/article/162/RADELUX_new%2005-02-2013%20DINA4.pdf. all hyperlinks were accessed on 24 February 2014.

¹⁵⁴ Luxembourg (2013), Alternative Luxembourg NGOs 3rd and 4th Government Report on the Rights of the Child (*Rapport Alternatif des ONG luxembourgeoises au 3e et 4e rapport gouvernemental sur les Droits de l'Enfant*), available at: www.ances.lu/attachments/article/162/RADELUX_new%2005-02-2013%20DINA4.pdf. all hyperlinks were accessed on 24 February 2014.

¹⁵⁵ Luxembourg (2013), Opinion on the proposal for revision amending and reordering of the Constitution No. 6030 (*Avis sur la proposition de révision portant modification et nouvel ordonnancement de la Constitution n°6030*), available at: www.sara.lu/wp-content/uploads/2013/05/Avis_Radelux.pdf.pdf. all hyperlinks were accessed on 24 February 2014.

¹⁵⁶ Luxembourg, House of Deputies (*Chambre des Députés*) (2011), Draft Bill N°6330 regarding the identification of persons physical, national register of natural persons, the identity card, the municipal registers of individuals, tabled in the House of Representatives on 15/09/2011 (*Projet de loi n° 6330 relative à l'identification des personnes physiques, au registre national des personnes physiques, à la carte d'identité, aux registres communaux des personnes physiques, déposé à la Chambre des députés le 15/09/2011*), available at: www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6330 all hyperlinks were accessed on 24 February 2014.

¹⁵⁷ Luxembourg, information was confirmed by the Centre for pregnancy, childbirth, breastfeeding and parenting Institute for improving conditions around birth (*Centre pour grossesse, accouchement, allaitement et parentage Institut pour l'amélioration des conditions autour de la naissance*, initiativ Liewensufank, 21 February 2014.

¹⁵⁸ Luxembourg, Information was confirmed by Intersex and Transgender Luxembourg; and by the Centre for pregnancy, childbirth, breastfeeding and parenting Institute for improving conditions around birth (*Centre pour grossesse, accouchement, allaitement et parentage Institut pour l'amélioration des conditions autour de la naissance*, initiativ Liewensufank, 21 February 2014.

information for patients and consent. ¹⁵⁹

¹⁵⁹ Luxembourg, information was confirmed by the Centre for pregnancy, childbirth, breastfeeding and parenting Institute for improving conditions around birth (*Centre pour grossesse, accouchement, allaitement et parentage Institut pour l'amélioration des conditions autour de la naissance*, initiative Liewensufank, 21 February 2014).

J. Good practices

According to the OLAI, good practices include employment of transsexuals in public service and assimilated sectors; the positive reactions of co-workers when a colleague decides to come out in the workplace; and employers' inviting all employees and their partners, as opposed to the employees and their spouses, to the year-end meal or similar meal.¹⁶⁰ These practices all represent a marked change from traditional patterns of behaviour. Formerly, transsexuals would not have been readily employed in the public service sector. Moreover, an employee would never have dared to come out in the workplace. Finally, when employers traditionally invited all employees and their spouses only to the year-end meal, the employee involved in a same-sex relationship would have to participate in the meal alone.

While good practices may appear on paper to develop tolerance in Luxembourg, the reality is not necessarily the case. However, at the end of the day, it appears to be the professional capabilities of an individual that govern his or her employment situation. Generally, unofficial sources note that there have been appreciably positive changes in employers' perception of the LGBT employees' needs. It would also seem that there is a slight increase in awareness in the work world, especially regarding transsexuals. However, LGBT associations like CIGALE remain cautious about pronouncing any widespread improvement, and judge those to be isolated cases.¹⁶¹

The law of 2008 on the hosting and integration of foreigners in Luxembourg provides for the creation of the Luxembourg Office of Hosting and Integration, (*Office luxembourgeois de l'accueil et de l'intégration*, OLAI) (formerly known as the Government Commission for Foreigners) the mission of which includes the fight against all forms of discrimination. The OLAI will work in conjunction with local governments and civil society organisations of social assistance for foreigners and seekers of international protection who do not have the right to such assistance. Those seekers could include individuals who have been persecuted in their countries of origin based on their sexual orientation or identity.¹⁶²

Rosa Lëtzeburg organises a number of events to promote gender tolerance. For the last couple of years it organised Gay Mat in different cities around the country. In 2013, for instance, it organised focused on the topic of transsexuality in Luxembourg. It organised round table discussions, showed films and colourful campaigns. Municipalities of the city of Luxembourg and Esch-sur-Alzette demonstrate their support and promotion of fight against homophobia in organising these events.

There is Multi-annual National Action Plan on Integration and Against Discrimination 2010 – 2014. The action plan is developed and realised by Luxembourg Office of Acceptance and Integration (*Office Luxembourgeois de l'Accueil et de l'Intégration*, OLAI), which is under Ministry of Integration and Family. Their main objective is to develop tools for an inclusive multicultural society. Fighting discrimination, OLAI functions within the meaning of Article 19 of the Treaty of Lisbon namely discrimination based on religion or belief, disability, age, sexual orientation or race or ethnic origin. The national action plan on discrimination does not specify objectives for intersex.¹⁶³

¹⁶⁰ Luxembourg, Government Commission for Foreigners (Commissariat du Gouvernement aux Etrangers) (2005), *Discrimination à l'emploi*, (Luxembourg, Government Commission for Foreigners, 80), available at: www.olai.public.lu/fr/publications/etude/rapport_discrimination.pdf.

¹⁶¹ Luxembourg, CIGALE Communication, 13 February 2010.

¹⁶² Luxembourg, Act of 16 December 2008 on the reception and integration of foreigners in the Grand Duchy of Luxembourg (*Loi du 16 décembre 2008 concernant l'accueil et l'intégration des étrangers au Grand-Duché de Luxembourg*), 24 December 2008.

¹⁶³ Luxembourg, Ministry of Family and Integration (*Ministère de la Famille et de l'Intégration*) (2010), Multi-annual National Action Plan on Integration and Against Discrimination 2010 – 2014, available at:

Annex 1 – Case law

Chapter A, the interpretation and/or implementation of Employment Equality Directive 2000/78/EC,
case 1

There is no case law. We searched for case laws on the platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: ‘discrimination based on sexual orientation’, ‘homosexual’, ‘homosexuality’, ‘sexual orientation’, ‘sexuality’, ‘immigration and homosexuality’, ‘immigration and sexual orientation’, ‘asylum and homosexuality’, ‘asylum and sexual orientation’, ‘transgender’, ‘transsexual person’ and ‘transsexuality’. Also, CIGALE representatives confirmed that there were no case laws.¹⁶⁴

Case title	NONE AVAILABLE
Decision	
Reference details (type and title of	
Key facts of the	
Main reasoning /argument	
Key issues (concepts	
Results (sanctions) and	

¹⁶⁴ Luxembourg, Communication by electronic mails with CIGALE, 21 October 2013.

Chapter B, Freedom of movement, case law relevant to Directive 2004/38/EC, case 1

Case title	<p>Appeal by Mr. ... against a decision of the Ministry of Foreign Affairs and Immigration regarding a residence permit application</p> <p>03.10.2005</p>
Decision date	Tribunal administrative du Grand-Duché de Luxembourg [Administrative Tribunal of the Grand Duchy of Luxembourg], Docket No. 19509
Reference details (type and title of court/body; in original language and English [official	Petitioner, a native of Madagascar appealed Ministry of Foreign Affairs' denial of his Luxembourg residence permit application. The Ministry of Foreign Affairs denied his application on the grounds that he did not fulfil the partnership law requirement that he not be married in order to enter into a partnership. Petitioner
Key facts of the case (max. 500 chars)	Petitioner argued that the Ministry of Foreign Affairs should have recognised the legal effects of their marriage in Belgium and granted them partnership status so that the petitioner could receive his permit.
Main reasoning/argumentation (max. 500 chars)	Legal effects of marriage outside of Luxembourg sufficient to allow same individuals to receive partnership status, and benefit from legal effects therefrom.
Key issues (concepts, interpretations) clarified by the case (max. 500	
Results (sanctions) and key consequences or implications of the case	The Administrative Tribunal annulled the Ministry of Foreign Affairs' denial decision and remanded the file to the Ministry of Foreign Affairs for issue of a residence permit.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, case 1

Case title	Appeal by Mr. X against two Foreign Affairs and Immigration Minister decisions on refugee claim (Recours formé par Monsieur ..., ... contre deux décisions du ministre des Affaires étrangères et de l'immigration en matière de réfugié)
Decision date	03.05.2007
Reference details (type and title of court/body; in original language)	Grand Duchy of Luxembourg Administrative Tribunal, docket number 22023 (Tribunal administrative du Grand-Duché de Luxembourg, Numéro 22023 de rôle)
Key facts of the case (max. 500 chars)	In 2006, a Nigerian homosexual male requested international protection in Luxembourg, after having been brutally beaten and imprisoned by his family when he declared his homosexuality. The family had been trying to get him to marry a girl from his rural community. At that time, he was in a relationship with a foreigner and did not wish to marry the girl. The man with whom he had entered into a relationship arranged for the Nigerian man to leave Nigeria and come to Europe. The Nigerian man then requested asylum or subsidiary protection in Luxembourg.
Main reasoning/argumentation (max. 500 chars)	The Nigerian was denied international protection in Luxembourg. The administrative tribunal ruled that he did not prove persecution other than that by his own family, and that while Nigerian law forbids and criminally sanctions homosexuality, the petitioner did not prove that he was at risk of any of the qualifying human rights violations by the Nigerian government such that he could be granted asylum or subsidiary protection under Luxembourg law. The decision further states that the individual did not fear persecution in the entire country and could therefore flee his residence to live free from persecution in another part of his home country.

Key issues (concepts, interpretations)	Application/interpretation of the concept of persecution defined as a death penalty or execution; torture or degrading or inhumane punishment or treatment; or, serious and individual threats to the person or life of a civilian due to indiscriminate violence in the event of a domestic or international armed conflict.
Results (sanctions) and	The Nigerian man was denied international protection in Luxembourg.

Chapter C, Asylum and subsidiary protection, case law relevant to art 10/1/d of Council Directive 2004/83/EC, Case 2

Case title	Appeal by Mr. X against a decision taken by the Minister of Labour, Employment and Immigration regarding international protection (“Recours formé par Monsieur ..., contre une décision du ministre du Travail, de l’Emploi et de l’immigration en matière de protection internationale)
Decision date	20.10.2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Grand Duchy of Luxembourg Administrative Tribunal, docket number 26957 (Tribunal administratif du Grand-Duché de Luxembourg, Numéro 26957 de rôle)

<p>Key facts of the case (max. 500 chars)</p>	<p>In 2009, an Iranian national, Mr. X, requested international protection in Luxembourg. He claimed that he was homosexual and that the Iranian authorities were aware of this fact.</p> <p>After the father of a friend had reported him to the authorities, he had been detained and beaten by the police. The police had also searched his place and had found some texts of which he was the author and that could reveal the fact that he was homosexual.</p>
<p>Main reasoning/argumentation (max. 500 chars)</p>	<p>The fact that Iranian law criminally sanctions homosexuality with death penalty, analysed together with the described incidents with the authorities, led the administrative tribunal to conclude that Mr. X had indeed a well-founded fear of persecution (since he belonged to a particular social group).</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Application/interpretation of the concept of persecution.</p>
<p>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The administrative tribunal recognised Mr. X's refugee status.</p>

Chapter C, Asylum and subsidiary protection, case law relevant to art 2/h of Council Directive 2004/83/EC, case 3

Case title	30447
Decision date	13 June 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Tribunal administratif du Grand-Duché de Luxembourg 3 ^e chambre (Administrative Tribunal of the Grand Duchy of Luxembourg, 3rd Chamber)
Key facts of the case (max. 500 chars)	Homosexuality in Serbia. Physical aggression by family members due to relation with his friends, injuries, etc.
Main reasoning/argumentation (max. 500 chars)	For International protection, a general situation of a country has to be considered and also an individual case. Homosexuality without persecution is not a reason to be considered under convention of Geneva.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	1. Fast track procedure in the case of a safe country. 2. Subsidiary protection in the case of homosexuality in a safe country
Results (sanctions) and key consequences or implications of the case	Rejection of the fact that the AIP questioned the fast track procedure. Rejection of the AIP in terms of a subsidiary protection.

Chapter D, Family reunification, case law relevant to art 4/3 of the Council Directive 2003/86/EC, case 1

There has been little implementation of the Law, thus there is no case law issued from, or any currently before, the Luxembourg courts as a result of the Law at this time. Luxembourg; We searched for case laws on the platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: ‘discrimination based on sexual orientation’, ‘homosexual’, ‘homosexuality’, ‘sexual orientation’, ‘sexuality’, ‘immigration and homosexuality’, ‘immigration and sexual orientation’, ‘asylum and homosexuality’, ‘asylum and sexual orientation’, ‘transgender’, ‘transsexual person’ and ‘transsexuality’. Also, CIGALE representatives confirmed that there were almost no case laws.¹⁶⁵

Case title	NONE AVAILABLE
Decision	
Reference details (type and title of)	
Key facts of the	
Main reasoning /argument	
Key issues (concepts)	
Results (sanctions) and	

¹⁶⁵ Luxembourg, Communication by electronic mails with CIGALE, 21 October 2013.

Chapter E, Freedom of assembly, case 1

There has been little implementation of the Law, thus there is no case law issued from, or any currently before, the Luxembourg courts as a result of the Law at this time. Luxembourg; We searched for case laws on the platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: ‘discrimination based on sexual orientation’, ‘homosexual’, ‘homosexuality’, ‘sexual orientation’, ‘sexuality’, ‘immigration and homosexuality’, ‘immigration and sexual orientation’, ‘asylum and homosexuality’, ‘asylum and sexual orientation’, ‘transgender’, ‘transsexual person’ and ‘transsexuality’. Also, CIGALE representatives confirmed that there were almost no case laws.¹⁶⁶

Case title	NONE AVAILABLE
Decision	
Reference details (type and title of)	
Key facts of the	
Main reasoning /argument	
Key issues (concepts)	
Results (sanctions) and	

¹⁶⁶ Luxembourg, Communication by electronic mails with CIGALE, 21 October 2013.

Chapter F, Hate speech, case 1

Case title	Not. 21127/12/CD case 818/2013
Decision date	26 June 2013
Reference details (type and title of court/body; in original language and English [official	Cour d'appel, 10ème Chambre, Appeal court, 10 th Chamber
Key facts of the case (max. 500 chars)	The convicted, Mr. P. Peters appealed against a decision taken in March 2013. Since summer 2012, he distributed flyers to farmers telling them that he would help them with their tax declaration; the flyer contained xenophobic and homophobic declarations. Previously, the director refused to publish his offer of help in the organisation's review as it contained incentives to hatred as well as xeno- and homophobic declarations. He had been excluded as a member of the "Bauernzentrale" (the farmers' organisation). Aggravated circumstances appear as he repeats his xeno- and homophobic incentives to hatred: "étrangers dehors" (foreigners out!!) and <i>homosexual and lesbian families destroy our traditional family</i> .
Main reasoning/argumentation (max. 500 chars)	Given the incentives to hatred, the convicted and appealing Mr. P. appears for the 4 th time in front of a Criminal Court. Repetition and no Reue . The prosecutor asked for 30 months of imprisonment without probation.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The penalty of the Tribunal d'arrondissement (criminal Court) of 30 month prison with probation has not been re-pronounced, but 160 hours of work of community work were pronounced.

Case title	NONE AVAILABLE
Decision	
Reference details (type and title of)	
Key facts of the	
Main reasoning /argument	
Key issues (concepts)	
Results (sanctions) and	

Chapter F, Hate crimes, case 1

There has been little implementation of the Law, thus there is no case law issued from, or any currently before, the Luxembourg courts as a result of the Law at this time. Luxembourg; We searched for case laws on the platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: ‘discrimination based on sexual orientation’, ‘homosexual’, ‘homosexuality’, ‘sexual orientation’, ‘sexuality’, ‘immigration and homosexuality’, ‘immigration and sexual orientation’, ‘asylum and homosexuality’, ‘asylum and sexual orientation’, ‘transgender’, ‘transsexual person’ and ‘transsexuality’. Also, CIGALE representatives confirmed that there were almost no case laws.¹⁶⁷

Case title	NONE AVAILABLE
Decision	
Reference details (type and title of)	
Key facts of the	
Main reasoning /argument	
Key issues (concepts)	
Results (sanctions) and	

¹⁶⁷ Luxembourg, Communication by electronic mails with CIGALE, 21 October 2013.

Chapter G, Applicability of legislation on trans gender issues, case 1

There has been little implementation of the Law, thus there is no case law issued from, or any currently before, the Luxembourg courts as a result of the Law at this time. Luxembourg; We searched for case laws on the platform www.justice.public.lu/fr/jurisprudence/index.html using the key words: ‘discrimination based on sexual orientation’, ‘homosexual’, ‘homosexuality’, ‘sexual orientation’, ‘sexuality’, ‘immigration and homosexuality’, ‘immigration and sexual orientation’, ‘asylum and homosexuality’, ‘asylum and sexual orientation’, ‘transgender’, ‘transsexual person’ and ‘transsexuality’. Also, CIGALE representatives confirmed that there were almost no case laws.¹⁶⁸

Case title	NONE AVAILABLE
Decision	
Reference details (type and title of)	
Key facts of the	
Main reasoning /argument	
Key issues (concepts)	
Results (sanctions) and	

¹⁶⁸ Luxembourg, Communication by electronic mails with CIGALE, 21 October 2013.

Annex 2 – Statistics

There is virtually no quantitative or administrative data available to demonstrate the impact/social reality of relevant legislation for LGBT persons because Luxembourg’s Act of 2 August 2002 on the protection of personal data, as amended, specifies that the ‘processing of information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs and trade union affiliation, as well as data concerning health and sexual life, including genetic databases, are prohibited’.

Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

NONE AVAILABLE	2	2	2	2	2	2	2	2
Total complaints of discrimination on the ground of sexual orientation (equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								
Total finding of Discrimination confirmed (by equality body, tribunals, courts etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)								

Chapter B, Freedom of movement of LGBT partners

NONE AVAILABLE	2	2	2	2	2	2	2	2
Number of LGBT partners of EU citizens residing in your country falling under Directive 2004/38/EC (i.e., LGBT partners having exercised their freedom of movement as granted to family members of EU citizens, whether under Directive 2004/38/EC or under								
Number of LGBT partners who claimed their right to residence but were denied this right								

Chapter C, Asylum and subsidiary protection, protection due to persecution on the grounds of sexual orientation

NONE AVAILABLE	2	2	2	2	2	2	2	2
Number of LGBT individuals benefiting from asylum/ subsidiary protection due to persecution on the ground of sexual orientation.								
Number of LGBT individuals who were denied the right to asylum or to subsidiary protection despite having invoked the fear of persecution on grounds of sexual orientation								

Chapter C, Asylum and subsidiary protection, protection of LGBT partners

NONE AVAILABLE	2	2	2	2	2	2	2	2
Number of LGBT partners of persons enjoying refugee/ subsidiary protection status residing in your country falling under Art 2/h Directive 2004/83/EC								
Number of LGBT partners of persons enjoying refugee/subsidiary protection status who were denied the possibility to stay with their partner								

Chapter D, LGBT partners benefiting family reunification

NONE AVAILABLE	2	2	2	2	2	2	2	2
Number of LGBT partners of third country nationals residing in your country benefiting from family reunification.								
Number of LGBT partners of third country nationals residing in your country who were denied the right to benefit from family reunification								

Chapter E, LGBT people enjoyment of freedom of assembly

NONE AVAILABLE	2	2	2	2	2	2	2	2
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc.								

Number of demonstrations against tolerance of LGBT									
--	--	--	--	--	--	--	--	--	--

Chapter F, Homophobic hate speech

NONE AVAILABLE	2	2	2	2	2	2	2	2	2
Number of criminal court cases regarding homophobic hate speech initiated (number of prosecutions)									
Number of convictions regarding homophobic hate speech (please indicate range of sanctions ordered)									
Range of sanctions issued for homophobic hate speech									
Number of non-criminal court cases initiated for homophobic									
Number of non-criminal court cases initiated for homophobic statements which were successfully completed (leading to a decision in favour of the plaintiff, even if no sanctions other than									

Chapter F, Homophobic motivation of crimes as aggravating factor

NONE AVAILABLE	2	2	2	2	2	2	2	2	2
Number of criminal court decisions in which homophobic motivation was used as an aggravating factor in sentencing									

Chapter G, Transgender issues

NONE AVAILABLE	2	2	2	2	2	2	2	2	2
Number of name changes effected due to change of gender									
Number of persons who changed their gender/sex in your country under the applicable legislation									

Chapter I, Statistics relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation [presentation according to the templates above]

Table 1: Requirements for rectification of the recorded sex or name on official documents

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/automatic divorce	Unchangeable	Notes
LU										<p>According to the legal provisions applicable to the rectification of civil status documents (articles 99 and 101 of the Civil Code¹⁶⁹), there are no specific requirements for rectification of the recorded sex or name on official documents that would fit in any of this table's indicated fields.</p> <p>Any specific requirements are, therefore, left to the case-law.</p> <p>In 2012 Equality body (Cetre d'égalité de traitement) pointed out that it was the first time that Luxembourg Courts had to decide whether forced divorce should be a requirement for a legal recognition for the rectification of the recorded sex or name or not. ¹⁷⁰</p> <p>Additionally, the marriage act of 2014 will make the condition to divorce obsolete by early 2015.(p.28) ¹⁷¹</p>

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ¹⁷²	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.

¹⁶⁹ Luxembourg, Civil code (*Code civil*).

¹⁷⁰ Luxembourg, such case laws are not open for the public as to protect anonymity of the persons.

¹⁷¹ Luxembourg (2012), Pressedossier European LGBT Survey, available at: <http://cet.lu/wp-content/uploads/2012/04/Pressedossier-LGBT-Survey-FRA.pdf>, all hyperlinks were accessed on 16 July 2014.

¹⁷² Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ¹⁷²	All areas of RED*		
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU			✓	✓	All areas of RED ; Art. 2. (1) of the Equality treatment act of 28 November 2006 www.legilux.public.lu/leg/a/archives/2006/0207/a207.pdf
LV		✓		✓	

security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED ¹⁷²	All areas of RED*		
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	9	7	11	20	

Note: ✓ = Applies; ? = doubt; x = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of “sex” discrimination	Autonomous ground	Dubious/unclear	Comments
LU			✓	The same is valid for 2014

Table 4: Criminal law provisions on ‘incitement to hatred’ and ‘aggravating circumstances’ covering explicitly sexual orientation

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category ‘group of people’, but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category ‘comparable group’. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category ‘groups of society’. Penal Code was amended to include hate motivated crimes against ‘certain groups of society’. Case law has shown this includes the LGBT community.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The Discrimination Instruction by the Public Prosecution Service recommends a 50%-100% higher sentence for common crimes with discriminatory aspects. ¹⁷³
PL			General provisions could extend to LGBT people
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article 369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

¹⁷³ Netherlands, Public Prosecution Service (*Openbaar Ministerie*) (2007, 2011), Discrimination Instruction [*Aanwijzing Discriminatie*], available at: http://www.om.nl/algemene_onderdelen/uitgebreid_zoeken/@155214/aanwijzing/

Table 5 - Definition of ‘family member’ for the purposes of free movement, asylum and family reunification

Country Codes	Free movement ¹⁷⁴		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners. The act of 19 June 2013 did not have any effect

¹⁷⁴ In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a ‘durable relationship’ may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.