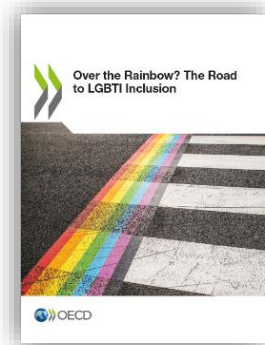


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider society. It lowers investment in human capital due to bullying at school, as well as poorer returns on educational investment in the labour market. It reduces economic output by excluding or under-valuing LGBTI talents in the labour market and impairing their mental and physical health, hence their productivity. The report **Over the Rainbow? The Road to LGBTI Inclusion** provides a comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion.



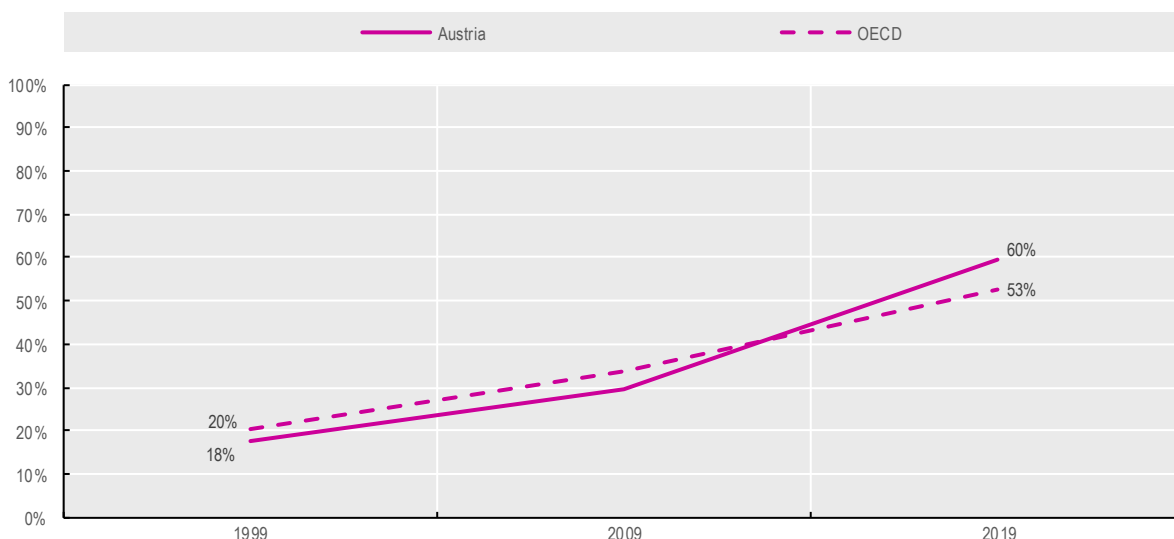
Legal LGBTI inclusivity in Austria

Levels and trends in legal LGBTI inclusivity

Legal LGBTI inclusivity is defined as the share of laws that are in force among those critical to ensure equal treatment of LGBTI people. Austria is one of 17 countries in the OECD that have most legal protections for sexual and gender minorities. These countries are characterised by an above-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity between 1999 and 2019 (Figure 1).

Figure 1: Legal inclusion of LGBTI people in Austria has significantly improved over the past decade

Evolution of legal LGBTI inclusivity between 1999 and 2019 in Austria and OECD-wide



Note: Legal LGBTI inclusivity refers to the percentage of LGBTI-inclusive laws that have been passed, among a basic set of laws defined based on international human rights standards.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

The increase in legal LGBTI inclusivity in Austria has been particularly strong over the past decade (Figure 1). As of 2019, Austria performs better than the OECD average concerning laws seeking to address the unique challenges faced by same-sex couples and intersex individuals (Figure 2). Since January 1, 2019, following a ruling by the *Austrian Constitutional Court*, marriage (formerly restricted to different-sex couples) is open to same-sex partners, while registered partnership (formerly restricted to same-sex couples) is open to different-sex partners. Through this decision, the Court clarified that “the distinction of the law between opposite-sex and same-sex relationships as two different legal institutions violates the principle of equal treatment, which forbids any discrimination of individuals on grounds of personal characteristics, such as their sexual orientation.” On top of being granted full legal recognition of their partnerships, Austrian same-sex couples are also treated on an equal footing relative to different-sex couples concerning access to adoption and assisted reproductive technology.

Austria’s achievements in addressing barriers to the inclusion of intersex individuals more specifically have also been extraordinary. In its decision of 15 June 2018, the *Austrian Constitutional Court* ruled, with immediate effect, that intersex individuals must be granted access to a non-binary gender option in the civil registry and other identity documents. Moreover, the Court clarified that being intersex is not a disorder and that, as a result, medically unnecessary sex-normalising treatment or surgeries on intersex minors should be postponed until the child can provide informed consent.

How could Austria further improve legal LGBTI inclusivity?

The *Federal Equal Treatment Commission* has been supporting victims of discrimination explicitly based on sexual orientation since 2004. However, transgender and intersex individuals are not part of the groups explicitly protected by this institution. Moreover, if Austrian transgender individuals are allowed to change their gender marker in the civil registry, this legal gender recognition is still conditioned on a mental health diagnosis (Figure 2). Yet, the trend OECD-wide is to depathologise this process: in the past ten years, 15 OECD countries have abolished medical requirements initially attached to legal gender recognition. Therefore, further improving legal LGBTI inclusivity in Austria could entail: (i) including gender identity and sex characteristics/intersex status among the grounds explicitly protected by the *Federal Equal Treatment Commission*; and (ii) basing the change of gender marker for transgender people on self-determination.

Policies to foster LGBTI inclusion in Austria, beyond LGBTI-inclusive laws

LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. As of 2018, Austria does not include questions on self-identification as heterosexual, homosexual, or bisexual in nationally representative surveys. It does not collect information on the share of transgender and intersex people among the adult population either.

It would also be important that Austria be or remain active in the following complementary policy areas that are viewed as key by ongoing national actions plans aimed at strengthening LGBTI inclusion:

Policy #1	Policy #2	Policy #3
Enforcing LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people	Fostering a culture of equal treatment in education, employment and healthcare, beyond enforcing laws prohibiting discrimination in these fields, e.g. through a whole-school approach to tackle LGBTI-phobic bullying	Creating and maintaining popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

Figure 2: How Austria compares

Legal LGBTI inclusivity as of 30 June 2019 in Austria and OECD-wide, by component



Note: Figure 2 presents the components that serve to compute the average level of legal LGBTI inclusivity reported in Figure 1 as of 30 June 2019. The component “Protection of LGBTI people’s civil liberties” is missing since it shows no cross-country variation: no legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. Legal LGBTI-inclusivity attached to each component can vary between 0% and 100%. For instance, a level of legal LGBTI inclusivity in Austria equal to 31% regarding the protection of LGBTI people against discrimination means that nearly one third (three) of the nine antidiscrimination provisions critical to protect LGBTI people are in force in Austria as of 2019. “Min.” refers to the score of the bottom-performing OECD country(ies) while “Max.” refers to the score of the top-performing OECD country(ies). These values are specified except when they coincide with the score of Austria.

Source: OECD (2020), Over the Rainbow? The Road to LGBTI Inclusion, Chapter 3. [Download data from [Statlink](#)]

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