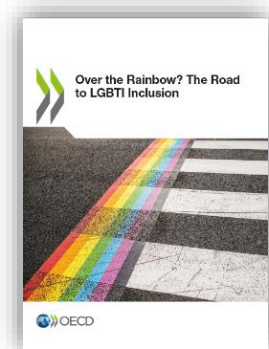


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider 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.



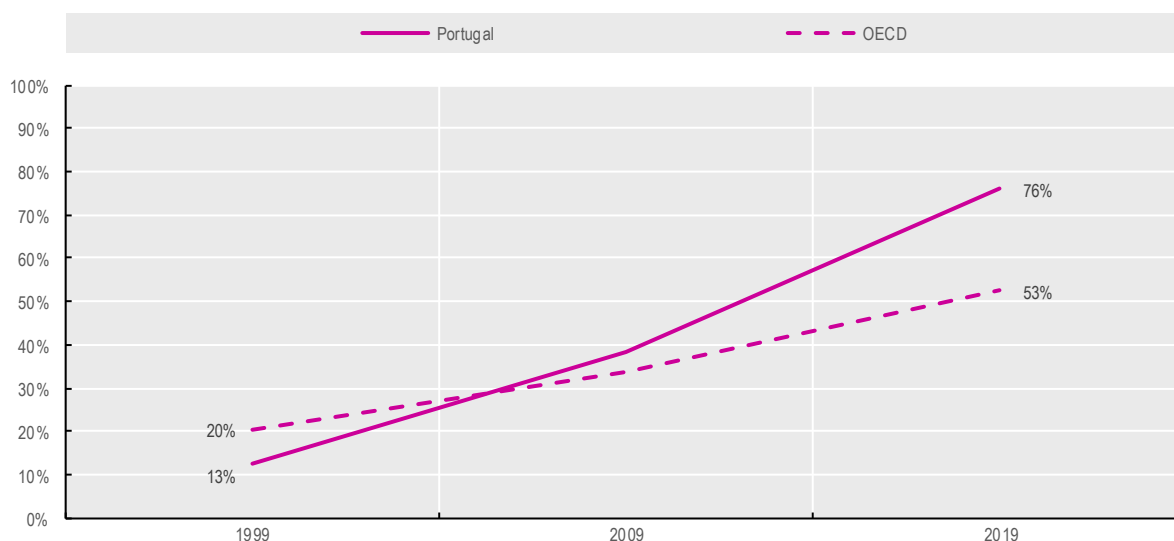
## Legal LGBTI inclusivity in Portugal

### 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. Portugal 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: The strides made by Portugal over the past two decades have been spectacular

Evolution of legal LGBTI inclusivity between 1999 and 2019 in Portugal 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](#)]



Legal LGBTI inclusivity in Portugal has increased nearly sixfold over the past two decades (Figure 1). As of 2019, Portugal performs better than the OECD average concerning laws protecting LGBTI individuals against discrimination and violence (Figure 2). Discrimination explicitly based on sexual orientation has been prohibited by the *Portuguese Constitution* since 2004. Moreover, discrimination explicitly based on gender identity and sex characteristics/intersex status is outlawed since 2018. The *Commission for Citizenship and Gender Equality* has been in charge of enforcing these provisions ever since. Additionally, the *Penal Code* explicitly considers hate crime and hate speech motivated by bias against a person's sexual orientation or gender identity as an aggravating circumstance.

Portugal's achievements in addressing the unique challenges faced by same-sex couples have also been extraordinary (Figure 2). Portugal legalised same-sex marriage in 2010. On top of being granted full legal recognition of their partnerships, Portuguese same-sex couples are also treated on an equal footing relative to different-sex couples concerning access to adoption and assisted reproductive technology. Additionally, significant strides have been made towards protecting transgender and intersex individuals more specifically (Figure 2). Since 2018, Portugal is one of 15 OECD countries that have abolished medical requirements initially attached to legal gender recognition: the change of gender marker in the civil registry is not conditioned on sterilisation, sex-reassignment treatment or surgery, or a psychiatric diagnosis. Moreover, since 2018, Portugal is the only OECD country where unconsented medically unnecessary sex-normalising treatments or surgeries on intersex minors are banned nationwide.

### **How could Portugal further improve legal LGBTI inclusivity?**

Portugal is not one of the three OECD countries that ban conversion therapies on minors, i.e. practices that aim to change an individual's sexual orientation from homosexual to heterosexual based on the false assumption that LGBT people are suffering from a pathological condition which could be cured. Moreover, Portugal is not one of the eight OECD countries that allow for a non-binary gender option in the civil registry to ensure recognition of transgender and/or intersex individuals who do not self-identify as either female or male (Figure 2). Therefore, further improving legal LGBTI inclusivity in Portugal could entail: (i) banning conversion therapies directed at minors; and (ii) granting transgender and intersex individuals access to a non-binary gender option in the civil registry.

### **Policies to foster LGBTI inclusion in Portugal, beyond LGBTI-inclusive laws**

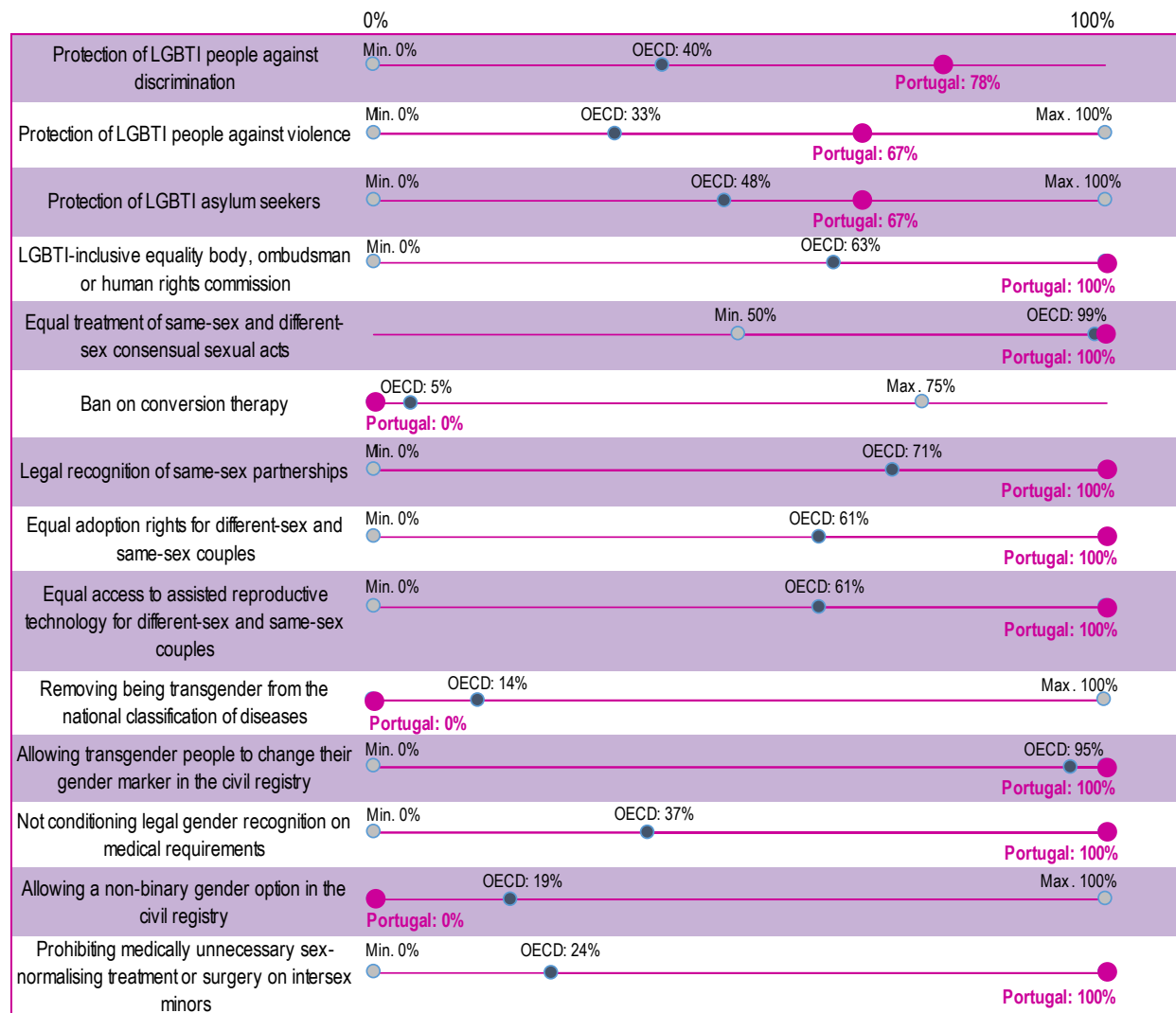
LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. As of 2018, Portugal 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 Portugal 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:

<b>Policy #1</b>	<b>Policy #2</b>	<b>Policy #3</b>
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 Portugal compares**

Legal LGBTI inclusivity as of 30 June 2019 in Portugal 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 Portugal equal to 78% regarding the protection of LGBTI people against discrimination means that seven of the nine antidiscrimination provisions critical to protect LGBTI people are in force in Portugal 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 Portugal. Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

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