Call for input

Germany:

In the following, the German government provides answers to the questionnaire.

As some of the aspects covered by the questionnaire lie partly or mostly within the competences of Germany’s sixteen states (“Länder”), below the questionnaire we also provide answers provided by state governments.

1. What are the current efforts by States to increase their knowledge of the LGBT population? Specifically, are questions about sexual orientation and gender identity included in government surveys (e.g. the census, national health surveys, income and living condition surveys, or other surveys funded or mandated by the State), administrative records (e.g. birth certificates/birth registries, identity Cards, school records, professional licenses, social security and public benefit records, and other government documents)?

German civil registers and certificates do not contain any questions or information on sexual orientation or gender identity.

In 2018, a study commissioned by the German Federal Anti-Discrimination Agency (ADS) found that only few state-funded surveys in Germany include questions regarding sexual orientation or gender identity. The study examined twenty different questionnaires which were used in different standardized surveys. Only three of these surveys (“Sozio-ökonomisches Panel”, “IAB-SOEP-Migrationsstichprobe”, “Deutscher Alterssurvey DEAS”) collect data on sexual orientation. Only one survey (“Sozialerhebung des Deutschen Studentenwerks”) offers respondents a possibility to answer their gender with more options that just male/female. Therefore, these surveys so far offer little possibilities to gather specific data on the LGBTI population. The study made recommendations on how to change this. Of course, any gathering of information regarding SOGI should be done in a voluntary and anonymous way, to avoid the collection and storage of sensitive personal data in registers or in personnel files.

2. What kind of data can be collected by government to understand the nature and extent of violence (e.g. through statistics on LGBT-phobic hate crimes and hate speech), discrimination and disparities in health education, labour, civic participation and other important areas?

Since 2001, as part of the police recording of politically motivated crime, offences that are directed against sexual orientation have been recorded separately in the sub-category "sexual orientation" of the category "hate crime". This categorization is done based on equal criteria and definitions throughout Germany. When a crime is categorized, more than one motivations (e.g. "sexual orientation" and "antiziganism") can be registered (multiple answers). This means that Germany has a system for recording hate crimes which allows a multidimensional view of the crime.

The data are published annually on the homepage of the Federal Ministry of the Interior, Building and Community: <https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2018/pmk-2017-hasskriminalitaet-2001-2017.pdf?__blob=publicationFile&v=2>.

The German Federal Anti-Discrimination Agency (ADS) recommends that government should systematically and regularly conduct surveys asking about discrimination based on SOGI (as well as other traits protected by German anti-discrimination legislation), to provide a more systematic overview of discrimination and inequalities in areas such as work, health care or education. In addition, ADS recommends further scientific research on specific issues (e.g. surveys on online hate speech or LGBTI persons’ experiences of discrimination and violence), in order to expand the knowledge on discrimination and develop counter-strategies.

A useful source for additional information is the data collected by organizations which offer counseling in the case of discrimination. A nationwide expansion of the existing infrastructure providing anti-discrimination counseling as well as standardized documentation policies would provide more comprehensive information on the frequency and nature of counseling requests on discrimination based on different characteristics.

3. What safeguards are in place, and what safeguards are needed, to protect the human rights of individuals providing personal data as well as individuals collecting such data? This question includes the following:

- Safeguard to protect the privacy of individuals who provide data about their sexual orientation/gender identity, and the confidentiality of the data provided by these individuals

- Broader statutory rules or administrative policies to insure transparency and accountability of government institutions such as statistical bodies.

According to Paragraph 1 Article 9 of Regulation (EU) 2016/679 (GDPR) processing of special categories of personal data (e.g. personal data concerning a natural person’s sex life or sexual orientation or personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union memberships) shall be prohibited. In order to lawfully process special category data, it is necessary to identify a lawful basis under Article 6 of the GDPR and a separate condition for processing special category data under Paragraph 2 Article 9 of the GDPR. Section 22 of the German Federal Data Protection Act (BDSG) adds further specific conditions and safeguards (see <https://www.gesetze-im-internet.de/englisch_bdsg/>).

The German Federal Anti-Discrimination Agency (ADS) recommends that, on top of legal data protection, government also follows guidelines from civil society, which go beyond legal requirements. These guidelines include the principle of self-identification of the interviewees (e.g. no external assignment to a gender category by interviewers), the voluntary nature of participation, informing respondents about the purpose of the data collection, the guarantee of the anonymity of the interviewees, the participation of respondents in the research process, the consideration of multiple identities, multiple discrimination and intersectionality, as well as the commitment of all those involved in the survey to the principle of no-harm to structurally disadvantaged groups. In order to follow these principles, new structures may be helpful (e.g. “respondent councils” to ensure adequate participation).

4. What are the risks associated with the collection and management of data on sexual orientation and gender identity and initiatives to overcome those?

According to the German Federal Anti-Discrimination Agency (ADS), risks arise in particular in cases in which data protection regulations and civil society principles for the collection of anti-discrimination and equality data are ignored. On the one hand, this can lead to the loss of confidence of the respondents in the data-collecting bodies. On the other hand, there is a danger that human dignity and personal rights (right to informational self-determination) of those affected is violated. In addition, there is a general risk that data collected for anti-discrimination purposes may be misused for the opposite purpose (e.g. reproduction of stereotypes, stigmatization, discrimination and persecution of minorities).

5. Are there circumstances where data collection is ill-advised, such as in countries that criminalize same-sex behavior or where particular government agencies have demonstrated a cause for concern regarding their treatment of issues related to sexual orientation and gender identity?

In countries which criminalize people passed on SOGI, the risks of data collection are higher and typically outweigh the benefits. The same can be true in countries with high levels of discrimination, including by state actors.

To evaluate the benefits and risks of data collection in a particular country, government should closely cooperate with civil society actors from the LGBTI community.

6. When States engage in data gathering activity, to what extent is civil society able to meaningfully participate in the design and implementation of these programs? This question includes the following:

a. Do states have policies that guide the progress of civil society participation national statistical programs and other State efforts to increase knowledge about LGBT population?

b. Does civil society have the capacity, in terms of expertise and technical knowledge, to meaningfully participate in State efforts to gather data?

c. What constitutes meaningful participation in this area?

We are not aware of any directives governing the participation of civil society organizations in the field of official or government-funded data collection in a binding way.

There are civil society organizations in Germany that have the necessary knowledge and are intensively involved in the topic of anti-discrimination and gender equality. Participation of these organizations in relevant topics is helpful, not only to build trust in data collection within the respective community, but also to take into account existing knowledge of them as experts in their own cause, and thus come to valid and reliable measuring instruments. The ADS has already cooperated with various civil society organizations in the context of scientific investigations (e.g. the study „Diskriminierungserfahrungen in Deutschland“ - "Discrimination Experiences in Germany").

Meaningful participation requires an early and serious participation of stakeholders through advocacy and self-organization, at all relevant stages of the research process, especially in developing questions and categories for collecting protected features in data collections. This also means that the often volunteer representatives of these organizations must be provided with the necessary time and financial resources in order to participate meaningfully.

7. Does the lack of a global classification scheme carry risks that data will not be useful for international comparisons or will not accurately reflect the identities and lived realities of local populations?

A coordinated international approach in terms of definitions, classification systems and categories would be beneficial, in order to improve the comparability of the results. At the same time, it is important to take into account country-specific features, such as different and differently connotated terminology for certain categories. In addition, depending on the survey situation and the interest in the research, different measuring instruments may be useful (in the case of sexual orientation, for example, the question of behavior, identity or attribution). However, as in other cases, coordination could be via existing structures – e.g. EUROSTAT or the European Union Agency for Fundamental Rights (FRA) for the EU level.

German states:

In the following, the German government forwards specific answers to the questionnaire provided by some of Germany’s sixteen states (“Länder”):

Brandenburg:

In Brandenburg, as part of the "Criminal Investigation Service in Cases of Politically Motivated Crime (KPMD-PMK)" with the main topic "hate crime" subtopic "sexual orientation" the said cases are recorded in a statistic.

There was recently a parliamentary inquiry on the topic. The answer can be found under the following link: <https://s3.kleine-anfragen.de/ka-prod/bb/6/10544.pdf>

North Rhine-Westphalia:

The state government agreed at an early stage to supplement the data of police crime statistics with insights into the experiences of victims, including their feelings of security and fear of crime. The Ministry of the Interior, the Ministry of Home Affairs, Municipalities, Construction and Equality and the State Criminal Police Office of North Rhine-Westphalia plan to carry out a victimization survey in 2019/2020. The study is supposed to present the phenomenon of violence against women and girls as well as boys and men in North Rhine-Westphalia in a scientifically founded and comprehensive manner. The survey will include experiences with hate crime based on SOGI. The goal is to improve preventive measures and psychosocial support services.

The State Government of North Rhine-Westphalia supports the State Coordination Office Anti-Violence-Work for LGBTI (“Landeskoordinierungsstelle Anti-Gewalt-Arbeit für Lesben, Schwule und Trans\* in NRW”), which implements anti-discrimination legislation. In doing so, the Office cooperates with 17 counseling centers in North Rhine-Westphalia and two organizations offering phone numbers for LGBTI victims of violence. The Office documents violence against LGBTI throughout the state, provides training for victims' advocates in the police and accompanies LGBTI refugees who have been victims of violence.

North Rhine-Westphalia encourages all victims and potential victims of anti LGBTI violence to file criminal charges. Therefore, the Ministry of Children, Family, Refugees and Integration (MKFFI) of the state of North Rhine-Westphalia supports the statewide media campaign "Ich zeige das an!" (“I report this!”. The State Police supports this initiative.

The state finaced an extensive evaluation of the study „Out im Office?! Sexuelle Identität und Geschlechtsidentität, (Anti-)Diskriminierung und Diversity am Arbeitsplatz“ ("Out in the Office?! SOGI, (anti) discrimination and diversity in the workplace"), which has recently been published. The authors of the evaluation are Prof. Dr. med. Dominic Frohn and Florian Meinhold from the Institut für Diversity- & Antidiskriminierungsforschung in Cologne. 691 LGBTI employees were interviewed about their work situation and how to deal with SOGI in the workplace. The study also provides information on the extent and forms of discrimination, including direct employment-relevant, bi- and trans-specific discrimination experiences.

Lower Saxony:

The state Ministry of the Interior underlines its cooperation in the nationwide criminal database “Kriminalpolizeilicher  Meldedienst - Politisch motivierte Kriminalität (KPMD-PMK)”, which allows for a differentiated, multi-dimensional recording of offenders’ and victims’ characteristics, giving a comprehensive overview of politically motivated criminal acts. The reporting is done using a catalogue of possible criteria to qualify hate crimes, including the qualifier of crimes based on sexual orientation.

The state Ministry of Education supports schools with advice and additional support measures to deal with cases of discrimination and violence of LGBTI persons, and to help prevent such incidents. There is no systematic collection of data of such incidents.

Rhineland-Palatinate:

According to the guidelines for recording politically motivated crimes, homophobic crimes are reported as politically motivated (right-wing) crime under the generic term "hate crime" and the associated subtopic "sexual orientation".

If, "(...) in the light of the circumstances of the crime and / or the perpetrator's attitudes” a crime is directed against a person because of their sexual orientation", this crime is registered as a politically motivated crime, even if in the individual case there is no evidence of political motivation.

However, the statistical data may not be comprehensive, as the particular classification as a politically motivated hate crime depends on particular circumstances (e.g. a statement of the perpetrator indicating a political motivation).

In general, the SOGI of crime victims is generally not obvious, so such criteria could only be collected if it was actively and explicitly collected from all crime victims, which for different reasons seems not viable.

Schleswig-Holstein:

The state government has recently commissioned a study on the life situation and discrimination experiences of LGBTI.

Hesse:

There is no explicit survey on hate crimes directed against LGBTI persons. Police crime statistics are mostly based offender data. The sexual orientation of victims is not a detection criterion, as in any case stigmatization processes should be avoided. Also, considering the very personal nature of the topic, victims may chose not to inform police about their SOGI, keeping a potential link with the perpetrator’s motivation unclear.

As far as a homophobic background is known as a motive, the crime is recorded as hate crime with the subcategory "sexual orientation" or "sexual identity". Crime is considered a politically motivated if the facts of the offense and / or the attitude of the offender give indications that the sexual orientation and / or gender identity of the victim contributed to the motivation.

 "What kind of data can the government use to understand the nature and extent of violence (for example, statistics on LGBT hostile hate crime and hate speech), discrimination and disparities in health education, work, civic participation and other important areas?"

The state Anti-discrimination Office has the following recommendations to share:

When government collects data on SOGI; there is a risk of stigmatization / restigmatization of LGBTI persons. Therefore, the collection of the following types of data could be recommended, as it has less risks of leading to stigmatization tan the collection of personal data (in any case, it is important to have an active participation of the target group in the drafting of such data-collection):

- Evaluation of reports of specialized advice centers (qualitatively) and state-funded counseling centers (eg school psychologists, school social workers)

- Evaluation of consulting statistics of specialized advice centers

- Research mandates on mental health at LGBTI

- Research assignments on the sensitivity and qualification of employees of the regulatory consultancy

- Evaluation of case law in relevant areas (eg anti-discrimination legislation, labor law)

- Evaluation of statistics from regulatory advice centers (eg educational counseling centers) on relevant causes of needs.