



EMN Ad-Hoc Query on NL AHQ on national asylum policies regarding LGBT-asylum seekers

Requested by Marlous CNOSEN on 2nd May 2016

Miscellaneous

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Sweden, United Kingdom, Norway (20 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

With the EU working towards a Common European Asylum System and the prevention of second movement, it is necessary to research if national asylum policies matter in the decision-making process of asylum seekers for a specific destination country.

As the host organisation of EMN NL, the Dutch Immigration and Naturalisation Service (IND) kindly requests you to answer this AHQ for their investigations on the role of asylum policies in the destination choice of asylum seekers. This AHQ will provide insight in EU-wide approaches to LGBT-asylum claims and will be used by the IND in their research on the destination choices of LGBT-asylum seekers.

This AHQ aims to provide insight in the current practices of Member States regarding asylum on the ground of sexual orientation. Although EU Member States are guided by common standards regarding the handling of asylum claims of this group, policies on national level may differ. To study the potential influence of national differences in LGBT-asylum policies, the IND asks you to answer the following questions.

Summary

1. Most Member States cannot produce statistical data on the number of asylum claims on the ground of sexual orientation. This accounts for **Bulgaria, Croatia, Cyprus, Czech Republic, Finland, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, and Sweden.**

The reservations that are mentioned for not providing information on claims on the ground of sexual orientation (apart from the absence of statistical data, which is mentioned by all these Member States) are: legal obstacles (e.g. the protection of personal data, national law) (**Croatia, Finland, Luxembourg, Netherlands, Poland, and Sweden**), technical obstacles (**Finland**) or because this information is only obtained for the purpose of the assessment of the individual asylum application (**Czech Republic**).

Belgium does produce statistical data on the number of asylum claims on the ground of sexual orientation. By the use of keywords (“sexual orientation and gender identity”) the protection officer has to indicate the asylum seeker’s reason to lodge his/her asylum application. This registration is compulsory, otherwise it is not possible to continue processing the asylum file.

The provided data by Belgium shows that since 2009 asylum applications linked to gender kept on increasing. In 2013, these applications represented 20% of the total asylum decisions taken by the Commissioner General for Refugees and Stateless Persons.

Norway does not systematically register the sexual orientation in the immigration database. However, caseworkers in the asylum department keep some manual records regarding sexual orientation. Information from these manual records must be treated with appropriate caution

because manual records can contain incorrect information and may be incomplete. The total of first asylum claims on the grounds of sexual orientation rose from 23 in 2012 to 73 in 2013. In 2015 the total of first claims was 68.

The **United Kingdom** is working to capture relevant data on claims where the basis includes sexual orientation. A system has been established for this claim case type. In order to collect this information, all staff are required to enter a special conditions flag (“Asylum Sexual Orientation Claim”) on the case information database (CID) for any case which has sexual orientation as a part of the basis of claim. The UK has the intention to publish this data once the quality and consistency of data capture has been quality checked by Home Office statistics teams.

2. a. Most Member States mention as used practices and tools during the assessment of the asylum claim the credibility assessment of the personal and individual background of the asylum seeker and country of origin information (**Belgium, Bulgaria, Croatia, Finland, Germany, Hungary, Luxembourg, Netherlands**, and the **United Kingdom**). Some Member States also mention using the Geneva Convention (**Poland**), the EU Asylum Procedure Directive (**Latvia, Poland, Slovak Republic**, and the **United Kingdom**), the Qualification Directive (**Poland**), the UNHCR guidelines (**Belgium, Poland**, and **Finland**), the Difference, Shame, Stigma and Harm (DSSH) model (**Cyprus, Finland** and the **United Kingdom**), the guidelines as advised by Chelvan (**Poland** and the **United Kingdom**), and National directives regarding LGBT-asylum applications (**Belgium, Netherland, Norway**, and **Sweden**).

Apart from these directives and guidelines, Member States mention using the following practices and tools during interviews and assessments of sexual orientation cases:

- The preference of the asylum applicant regarding the gender of the responsible officer and interpreter will be taken into consideration (**Germany**)
- Possibilities to request for medical or psychologist expert opinion (**Hungary**)
- Processing of sexual orientation and gender claims by a specialized Gender Unit (**Belgium**) or an LGBT-specialist (**Sweden**)
- Case workers benefitting from a training course on this specific issue (**Belgium, Cyprus, Sweden**, and the **United Kingdom**)
- Specific training regarding asylum claims on sexual orientation/gender grounds for interpreters (**Belgium**)
- If possible, an interview with the partner of the asylum seeker may be conducted (**Czech Republic**)

b. Regarding origin countries, **Belgium** differentiates between origin countries where homosexuals are a vulnerable group, but where not all homosexuals are at risk of persecution only due to the fact that s/he is homosexual and origin countries where the situation is so dangerous for homosexuals that all homosexuals are running an imminent risk to be persecuted (for Belgium nowadays e.g. Cameroun, Iran, Iraq).

Germany includes all country specific policies in the Country of Origin Information guidelines. LGBT-specific information is included for Egypt, Ethiopia, Afghanistan, Albania, Algeria, Armenia, Bangladesh, Bosnia and Herzegovina, Eritrea, Gambia, Georgia, Ghana, Guinea, India, Iraq, Iran, Kosovo, Morocco, Macedonia, Moldavia, Montenegro, Nigeria, Russia, Serbia, Sri Lanka, Sudan, Southern Sudan, Turkey, Tunisia, and Ukraine.

The Netherlands assesses the situation in origin countries via official reports from the government. Also other reports that are considered reliable (e.g. NGO-reports and LGBT-oriented reports) are included in the assessment.

Norway publishes country specific memos on practices for the main countries of origin, including a section on sexual orientation claims (e.g. for Ethiopia, Nigeria, Iran and Pakistan).

Poland grants LGBT-claims from countries of origin where there are laws criminalising same-sex consensual relations between adults subsidiary protection even if the law is no longer enforced.

The **United Kingdom** provides officials with country information and guidance (CIG) on handling claims for protection on the basis of a person's sexual orientation and/or gender identity for Afghanistan, Albania, Algeria, Gambia, Ghana, India, Iran, Jamaica, Kenya, Liberia, Malawi, Nigeria, Pakistan, South Africa, Sri Lanka, Turkey, Uganda, Ukraine, Vietnam, and Zimbabwe. The CIG can be published as thematic reports covering LGBT claims or as a section within an 'operational guidance note' (OGNs) which covers a range of asylum claim types from a particular country.

c. Most Member States do not have policy-related differences in the assessment of lesbian, gay, bisexual and transgender cases. **Hungary** and the **Netherlands** mention that it is possible that based on country of origin information, the decisions on asylum claims may differ if the situation in origin countries differs for these sexual/gender orientations.

Sweden does not have policy-related differences in how the cases of LGBT-persons are assessed other than that it is recognized that the groups might have different preconditions and therefore the handling of these cases and the decision-making must take that into consideration.

3. **Germany**, the **Netherlands** and the **United Kingdom** mention that they integrated both rulings in their policy guidelines on LGBTs (**Germany**), revised the Alien Circular and made a public instruction on the credibility assessment (**Netherlands**) and updated/republished the instruction for decision-makers (**United Kingdom**).

Other Member States mention that they take the court rulings into account during the decision-making (**Hungary, Latvia, Poland, Slovak Republic, Sweden**).

Most Member States note that their policies and practices were already consistent with the rulings (**Belgium, Cyprus, Czech Republic, Finland, Malta**). Or that the rulings did not impact their policies (**Bulgaria, Croatia, Latvia, Lithuania, Luxembourg**).

Malta and the **United Kingdom** mention that decision-makers received training to be aware of the sensitivity in assessing whether an applicant's sexual orientation claim is credible or not (**Malta**) and how to handle situations in which asylum seekers provide sexually explicit evidence (**United Kingdom**).

The EU decisions/judgments are not binding for **Norway**. However, the Norwegian practice is in line with the decision of the EJC.

4. In **Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Hungary, Latvia, Lithuania, Luxembourg, Malta, Poland**, and **Slovak Republic**, there have not been other changes in the situation of LGBT-asylum seekers in the last 5 years regarding asylum policies.

In **Croatia**, two laws were implemented that affected LGBT-asylum seekers. The Same Sex Life-Partnership Act concerned the right to family reunification and states that life partnership enjoys the same status as marriage, if the partnership already existed in the country of origin of the asylum seekers. The second law, International and Temporary Protection, explains that depending on the circumstances in the country of origin, a particular social group may also include a group based on the common characteristics of sexual orientation.

Ever since the Fleeing Homophobia report was published in 2011, **Finland** has been following the guidelines collected in it.

Considering the changes in the country conditions of LGBTs in countries like Russia, Uganda and Iraq, the **Netherlands** assumes the fear of persecution of LGBTs from these, and a few other countries, faster.

A decision by the Supreme Court of **Norway** (2012) concluded that refugee status cannot be refused on the grounds that an applicant may

give up his gay identity (upon return) and thereby avoid persecution. The assessment must be based on how the applicant in actual fact will behave upon return.

The Independent Chief Inspector of Immigration of the **United Kingdom** reviewed the area of LGB asylum claims in 2014. Following this review, the Home Office updated its training programme and guidance.

Regarding the reception conditions, the **Netherlands** and **Belgium** take care of spreading information on LGBT-rights. The **Netherlands** also improved its process for reporting incidents in the reception centres.

Belgium does not provide separate reception facilities for LGBTI asylum seekers as this could lead to stigmatisation. However, the special needs of LGBTI asylum seekers are included in the evaluations to identify the special needs for asylum seekers. When these needs for LGBTIs are not met, then the asylum seeker can be assigned or transferred to smaller reception facilities or to centres where they feel safer.

The **Finish** Reception unit works in co-operation with a non-governmental organisation that is working on LGBTI-cases. This had led to the transfer of some LGBTI applicants closer to big cities, where there are LGBTI-organisations and specialized services available.

Norway did not make any drastic changes during the past years, but constant improvements and adjustments. Norway does not have written guidelines regarding the reception conditions of LGBTI asylum seekers and consideration need to be given in each individual case. Sometimes the adjustment can be a simple matter such as who one shares a room with, or access to one's own bath/toilet facilities.

Sweden handles special needs regarding reception and accommodation individually. There is an awareness of the general exposure of this group which is taken into account in these cases. There are four LGBT-certified reception centres in Sweden.

Questions

1. (1). Registration of sexual orientation. In the Netherlands, the ground on which asylum is granted is registered in the personal file of the asylum seeker, but the file is not labeled as such. This means that it is not possible to search for files and provide statistics by grounds on which a Refugee Status is granted. In 2014 the Dutch government examined possibilities to register asylum claims on the ground of sexual orientation in order to evaluate the policy. The report [Fleeing Homophobia](#) (Jansen and Spijkerboer 2011) showed that in 2011 only Belgium and Norway possessed statistics on LGBT-asylum claims. The following questions aim to provide insight in MS practices concerning the registration of sexual orientation in order to evaluate policies:

a.

Is it in your MS possible to produce statistical data on the number of asylum claims made on the ground of sexual orientation? If yes, could explain how your MS registers sexual orientation?

b. *If yes, how many claims (total of first and subsequent claims) on the ground of sexual orientation were received and how many were granted in the period 2010-2015?*

c.

If no, what are the reservations regarding the provision of information on claims on the ground of sexual orientation?

2.

(2). The following questions aim to provide insight in MS practices concerning the assessment of sexual orientation claims:

a. *Which practices and tools are used to assess asylum claims on the ground of sexual orientation? (e.g. during the interview/during the decision-making)*

b. *Does your MS use country specific policies regarding LGBT-claims from nationals from certain countries of origin? If yes, for which countries and in what form?*

c.

Are there policy-related differences in how the cases of lesbian, gay, bisexual and transgender asylum seekers are assessed? Have these differences resulted in different decisions being taken?

3.

(3).

In November 2013, the Court of Justice of the European Union (ECLI:EU:C:2013:720)



ruled that sexual orientation is a valid ground for fear of persecution in asylum procedures. In December 2014, the Court

(ECLI:EU:C:2014:2406) ruled that verification of sexual orientation must not infringe the fundamental rights of the asylum seeker.

What impact did the rulings have on your national policy, if any?



4. (4). Have there been other changes in the situation for LGBT-asylum seekers in the last 5 years regarding the asylum policy (e.g. admission conditions) and regarding reception conditions in your MS?


Responses



	Country	Wider Dissemination	Response
	Austria	No	
	Belgium	Yes	<p>1. a) The Office of the Commissioner General for Refugees and Stateless Persons (CGRS) is the central asylum instance in Belgium and is in charge of the examination of the asylum application and of granting the international protection. When an protection officer (staff member of CGRS in charge of processing of the asylum applications), submits his decision's proposal (to grant international protection or not) to the Commissioner General, the protection officer has to indicate, in the CGRS electronic database, the reason(s) given by the asylum seeker to lodge his/her asylum application. This is done by the use of "keywords". Each keyword matches one of the possible grounds for asylum in Belgium. The list of keywords is integrated in the electronic database. The protection officer only has to "click" on the keyword or the set of keywords that are suitable (here, "sexual orientation and gender identity"). This step is compulsory, otherwise they will not be able to continue processing the file. In other words, the protection officer cannot move on to the next step in the process if he has not ticked the box(es) indicating the grounds the asylum applicant has invoked. In this way it is easy to find all asylum applications based on a fear related to fear linked to one specific ground, such as sexual orientation and gender identity. b) See table in annex. In Belgium, these past years, asylum applications linked to gender kept on increasing. In 2013, they represented 20% of the total asylum decisions taken by the CGRS. Sexual orientation (mainly homosexuality) is the most frequently reason invoked in the gender related cases. c) /</p> <p>2. a) The CGRS applies the United Nations High Commissioner for Refugees guidelines. The Belgian jurisprudence stipulates that "this sensitive assessment is carried (...) by taking into</p>


		<p>account the personal and individual background of each of the asylum seekers” (decision CCE n° 103722 of the 29 may 2013). The coherence of the story, the personal trajectory of each asylum applicant is a fundamental element of this assessment. Some parts of the individual story can be compared with factual, objective and observed elements in the country of origin of the asylum applicant (Country of Origin Information). The protection officers of the CGRS have at their disposal a specific internal directive. An appendix of this directive concerns the way to assess the credibility of the sexual orientation of the asylum applicant that invokes this motif. The directive presents the theoretical aspects necessary to better understand this issue as well as practical and concrete instructions for the hearing of the asylum applicant and the decision making. The appendix for the credibility assessment helps the protection officers to explore four variables that can help them to form their opinion on whether the asylum applicant is really homo(bi)-sexual or not. These variables include, among others, the way the asylum seeker has become aware of his homosexuality, his/her personal life course –regarding this sexual orientation- since childhood, any homosexual experiences s/he has had, etc. Since 2005, asylum applications linked to gender are processed by a specialized Gender Unit of the Office of the Commissioner General for Refugees and Stateless. It is a support service, whose goal is to ensure a harmonisation and an improvement of the CGRS’ practices regarding the processing of asylum applications linked to gender. Also, the CGRS protection officers benefit from a training course on this specific issue. During the training the instructions concerning each phase of the asylum procedure are explained, concepts are clarified. The notions of sexual orientation and gender identity are explained. Protection officers are learned to create a climate of trust during the hearing auditions, to dispose of gender stereotypes and clichés and to use objective criteria’s to assess the credibility of the sexual orientation. Awareness and information is also obtained via the organisation of meetings between the protection officers and representatives of the organisations fighting for the rights of LGBT, LGBT activists known for their fight for LGBT rights in their country of origin and homosexual people who are recognised as refugee. A number of protection officers also followed the European training unit (EASO) "Interviewing vulnerable persons" part of which is devoted to the hearing of asylum seekers invoking sexual orientation. A specific training is also organised by the CGRS for the interpreters. b) The CGRS divided the countries of origin into two main categories: - In the big majority of the countries of origin, homosexuals are a vulnerable group and therefore these asylum applications should be treated with the utmost caution. However, we</p>
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			<p>cannot consider that ALL homosexuals are at risk of persecution only due to the fact that s/he is homosexual. There are a number of homosexuals – whose homosexuality is known- who live normally in their country. To be recognized as a refugee, the asylum seeker from one of these countries has not only to convince the CGRS of his homo(bi)-sexuality but s/he also has to prove what underpins his/her personal and individual fear, which facts and which elements of his/her personal profile can explain that s/he is in danger or at risk to be persecuted. - In a few countries (for example, nowadays, Cameroun, Iran, Iraq,...) the situation is so dangerous for homosexuals that the CGRS considers ALL homosexuals whose sexual orientation is known as running an imminent risk to be persecuted. The people from these few countries will be recognized as refugees when the CGRS is convinced that they are really homosexuals. c) No</p> <p>3. Already in 2013- beginning of 2014, all the current practices in Belgium were consistent with these two decisions. Therefore, these two decisions did not require any political changes in Belgium.</p> <p>4. Regarding asylum policy: No, except for what has been explained above. Regarding reception conditions: No. (Note: Upon arrival in a Belgian reception facility the in-house rules are explained, including the prohibition of any type of (incitement to) racism and discrimination and sexual and gender based violence, and information on the relevant Belgian laws is provided. Where discrimination or violence towards LGBTI asylum seekers occurs, the victim is informed of his/her right to file a complaint with the police. In addition, a disciplinary transfer to another centre of the perpetrator will be requested. Whenever the facts are very serious, the perpetrator can be temporarily removed from all reception facilities (exclusion). Fedasil (the Federal Agency for the Reception of Asylum Seekers) does not provide separate reception facilities for LGBTI asylum seekers, as this could lead to stigmatisation. Based on the Reception Law there are regular evaluations to identify the special needs of asylum seekers. The special needs of LGBTs will be included in these evaluations. If the special needs are not met, measures can be taken. LGBTI asylum seekers can be assigned or transferred to smaller reception facilities, or to centres where they feel safer, because there are fewer countrymen/-women and they can be referred for support to specialised organisations advocating the rights of LGBT).</p>
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	Bulgaria	Yes	<p>1. Statistical data could not be provided because applications for international protection are not registered on the base of their grounds.</p> <p>2. An interview and, if needed, additional interviews are carried out, in order to assess the application for international for protection. The foreigner has to present evidence supporting his/her claim. Each application is duly assessed on its own merits taking into consideration the situation in the country of origin with regard to the LGBT.</p> <p>3. No special impact in accordance with the mentioned rulings.</p> <p>4. No, there have not been any changes in the last 5 years.</p>
	Croatia	Yes	<p>1. a. No, because we do not register asylum claims according to the grounds for international protection. We only take applicant's statement during the procedure of approval of international protection and that statement is confidential according to the Croatian Personal Data Protection Act (Official Gazette no. 103/03, 118/06, 41/08, 130/11 and 106/12). Also, on the ground of the applicant's statement we make decision about application for international protection. b. N/A c. We are not allowed to provide that kind of information because they are confidential according to the Croatian Personal Data Protection Act. Also, we are not obliged to classify applicants according to their application's reasons according to the EU Regulation 862/2007 on statistics on Migration and International Protection. Furthermore, applicant's reasons for international protection can be intertwined with the other Refugee Convention's grounds for international protection</p> <p>2. a. Firstly, applicant submits application for an international protection in a written form. Official conducts the procedure and asks the questions which are standardized for all applicants at this level of procedure. After that, decision maker has an interview with the applicant and conduct the procedure according to his/her special needs/situation which is based on the first interview. If the reasons are based on sexual orientation, decision maker has to determine the credibility of the applicant's statement. Also, decision maker has to check the situation in the applicant's country of origin. If decision maker determines the credibility of the applicant's statement and the situation in the country of origin is not safe for that applicant, he/she will get the international protection –</p>




			<p>asylum. So, the main reason for granting the asylum on the ground of sexual orientation is credibility of statement which is in line with the country of origin situation. b. No c. There are no policy-related differences in how cases of lesbian, gay, bisexual and transgender asylum seekers are assessed.</p> <p>3. The above mentioned rulings have not especially impacted on the Croatian national policy.</p> <p>4. In the last five years in Croatia two new legislations have been issued with the significant impact on the situation for LGBT-asylum seekers. The first law is the Same Sex Life-Partnership Act NN 92/14, in which Article 76 on International protection paragraph 1 states that in order to achieve the protection of asylum seekers, asylee, aliens under subsidiary protection and aliens under temporary protection, especially the possibility of exercising the right to family reunification, life partnership enjoys the same status as marriage, if the partnership already existed in the country of origin of asylum seekers, asylee, aliens under subsidiary protection and aliens under temporary protection. Furthermore, in paragraph 2 if in the country of origin there are no regulations governing the conditions of occurrence and duration of life of the partnership, as required to ensure the protection referred to in paragraph 1 of this Article the provisions of a special law regulating the questions of international protection shall be applied. And in paragraph 3 in order to achieve effective protection of the possibilities referred to in paragraph 1 of this Article, the competent authorities shall collect the necessary information and evidence that in making the assessment referred to in paragraph 1 shall act in accordance with Article 73, paragraph 2 of this Act. The second law is on the International and Temporary Protection, 2015, which in reasons for persecution Article 22 paragraph 5 depending on the circumstances in the country of origin, explains that a particular social group may also include a group based on the common characteristics of sexual orientation. Sexual orientation cannot be deemed to include acts considered to be criminal pursuant to the legislation of the Republic of Croatia. Aspects related to gender, including gender identity, shall be given due consideration for the purpose of determining membership of a specific social group or identifying the characteristics of such a group.</p>
	Cyprus	Yes	<p>1. a) No c) The Asylum Service of Cyprus does not register statistical information regarding asylum claims in general.</p>



			<p>2. a) Case workers dealing with LGBT claims are using the DSSH model (Difference, Shame, Stigma, Harm) as it is presented in CREDO Vol. 2 (2015). Case workers have been thoroughly trained on this specific model. b) No c) No</p> <p>3. These rulings did not have any impact on Cyprus national policy because cases concerning LGBT applicants are examined on the basis of fear of persecution ‘as a member of a social particular group’. Furthermore, CY national policy on examining LGBT cases does not include performing medical examination on testing sexual orientation, since this involves aspects of violating fundamental rights under the European Convention of Human rights such as article 3 (Prohibition of Torture) and article 14 (Prohibition of Discrimination).</p> <p>4. No</p>
	Czech Republic	Yes	<p>1. a. No, it is not. b. N/A c. Information regarding sexual orientation is obtained only for the purpose of assessment of the individual asylum application.</p> <p>2. a. No special practices or tools are used. In order to assess asylum claims the interview with the asylum seeker is conducted. If possible, the interview with the partner of the asylum seeker may be conducted as well. b. No, it does not. c. No, there are not.</p> <p>3. There has been no impact on the national policy as the Czech policy was in line with the ruling before.</p> <p>4. No, there have not been any changes in the last 5 years.</p>
	Finland	Yes	<p>1. a) No, unfortunately we don’t have data on the grounds of the applications. b) - c) There are no technical possibilities for it at the moment. Also, it is not possible to collect sensitive data, such as sexual orientation, on the register due to legal obstacles.</p> <p>2. a) All cases are assessed individually. At the interview the applicant should tell about the realization of his/her sexual orientation and how it has affected the applicant’s life and family ties. There are no national guidelines but, we use the UNHCR guidelines and the DSSH- model. The</p>

			<p>decision depends on the applicant's story and the legal situation at the country of origin. b) No, all cases are assessed individually regardless of the country of origin. c) There have been very few LGBTI-cases in Finland, most of them homosexuals from certain African countries, so such differences cannot be found.</p> <p>3. Ever since the Fleeing Homophobia report was published in 2011, we have been following the "guidelines" collected in it. EUCJ cases haven't required any major changes in our national policy, as they pretty much just reinforce those basic humanitarian principles.</p> <p>4. Referring to the answer to question 3 on Fleeing Homophobia. The Reception unit is working in co-operation with Huset ry, which is a non-governmental organization working on LGBTI-issues. They are raising awareness on the issue and work for equality and against discrimination. Some LGBTI applicants have been transferred closer to big cities, where there are LGBTI-organisations and specialized services available.</p>
	France	Yes	<p>1. a) NO b) c) Sexual orientation is among the personal data that it is not permissible to record in a database.</p> <p>2. a) There are no specialized asylum case officers on claims on the ground of sexual orientation and gender identity, however all asylum case officers are supported on this issue through : Guidelines for the interviews with LGBTI asylum seekers containing explanations on the specificities of this asylum claim and presenting the main subjects to be treated during the interviews with examples of questions for each one ; Training through workshops on specific cases ; COI taking particularly into account the social perception of LGBT persons and the possible legal provisions that explicitly or indirectly criminalise the behaviour of LGBT persons ; case law from National and European courts. b) The main difference lies in the treatment as a social group (Geneva Convention) or not (Subsidiary Protection) regarding the social perception of LGBTI persons in each country of origin. We are currently reviewing the list of countries of origin on this matter. A large number of countries are treated on the Geneva Convention basis and we are working on the cases of countries still treated on a Subsidiary Protection basis. DRC for instance is treated under the Geneva Convention since a few months. c) No.</p>


			<p>3. The way of questioning the relevant applicants has been revisited and guidelines have been issued to the case officers. It has been the opportunity to reinforce the rule that certain types of evidence (e.g. snapshots/video tapes of the applicant engaging in explicit acts) are not admissible because they do infringe human dignity.</p> <p>4. Since 2013 in the process of preparing the asylum reform law in order to better take into account the vulnerabilities, five thematic groups have been installed within the OFPRA, including one dedicated to the issues of sexual orientation and gender identity. The groups aim at defining principles and guidelines, monitoring the situation in countries of origin and trends in the flow of applications and at supporting/providing advice to case officers dealing with claims relevant to their field of competence, as well as providing training to the translators on this specific matter.</p>
	Germany	Yes	<p>1. No statistical data on LGBT cases.</p> <p>2. a. Generally, every case is assessed on its individual merits taking full account of conditions in the country concerned as they impact on the individual. The guidelines for asylum decision makers give guidance on how to examine the account brought forward and they also give guidance under which circumstances a particular social group can be assumed. The guidelines clarify that the penalization of homosexuality and other forms of sexual orientation or sexual identity and the personal circumstances of an applicant are to be taken into account. The applicant's risk of being criminalized, human rights violations by non-state actors, problems to open up about her/his homosexuality towards her/his social environment and the applicant's experiences with state authorities are to be considered additionally. If other persecution is pending, country specific information is used to verify if persons with a specific sexual orientation or sexual identity have to fear this form of persecution in said country and if this form of persecution reaches the threshold of a serious violation of fundamental rights (or accumulation of various measures) According to national practice, the applicant's preference regarding the gender of the responsible officer and interpreter to be involved in the process is taken into consideration.</p> <p>b. All country specific policies are included in the COI guidelines. LGBT-specific information is included in the COI guidelines for Egypt, Ethiopia, Afghanistan, Albania, Algeria, Armenia, Bangladesh, Bosnia and Herzegovina, Eritrea, Gambia, Georgia, Ghana, Guinea, India, Iraq, Iran,</p>


			<p>Kosovo, Morocco, Macedonia, Moldavia, Montenegro, Nigeria, Russia, Serbia, Sri Lanka, Sudan, Southern Sudan, Turkey, Tunisia, Ukraine. c. No findings</p> <p>3. Both rulings were integrated into the policy guidelines on LGBT. ECLI:EU:C:2013:720: The particular social group can be assumed specifically if the country of origin has particular penalties for persons with a specific sexual orientation or identity. ECLI:EU:C:2014:2406: Hesitation to talk about the sexual orientation or sexual identity in the first instance or even in the first hearing cannot be held against the applicant. Decision makers have to make sure that stereotypes should not inflict the assessment.</p> <p>4. There were no other changes specifically to the situation of LGBT-asylum seekers in the last 5 years. Reception conditions are in the responsibility of the Laender in Germany. The Federal Office has not observed any changes in reception conditions for LGBT-asylum seekers.</p>
	Hungary	Yes	<p>1. a. Hungary does not collect statistical data on asylum claims made on the grounds of sexual orientation, but in general, statistical data are not collected on asylum claims based on their grounds. b. N/A. c. Data on grounds of/according to the asylum claim is not available in our statistical system.</p> <p>2. a. It is possible to request medical or psychologist expert opinion. b. Hungary does not have country specific policies regarding sexual orientation in form of guidance, however refugee status is consequently provided for asylum seekers arriving from certain countries if it is acknowledged that they are LGBT asylum seekers. c. No – see answer b. It is possible that based on the COI information, in case of certain countries of origin, a transgender person would not be granted refugee status but a bi-sexual would be granted.</p> <p>3. The court rulings were taken into account and respected during the decision making process.</p> <p>4. No.</p>


	Latvia	Yes	<p>1. a. No b. N/A c. The ground on which asylum is granted (for example, religion, nationality, political affiliation or sexual orientation) is registered in the file of asylum seeker, but the file is not labelled as such. Theoretically if the Latvian Migration Service considered possibility to create a system of “labelling” of the asylum files, we would probably consider it against all possible grounds for granting international protection, not only sexual orientation. In general we receive very few asylum applications which are based on sexual orientation. Most of our asylum claims are based on political activities, religion or nationality grounds or indiscriminate violence in situation of armed conflict.</p> <p>2. a.b.c. Asylum procedure in general as well as interviewing and decision making process will follow the same lines as for the other groups of asylum applicants and according to the standards set in the Asylum Procedure Directive.</p> <p>3. We are aware of the ruling of the Court of Justice. However the number of cases based on sexual orientation is so small that we cannot talk about its significant impact on our national policies.</p> <p>4. For the last 10 years flow of LGBT asylum seekers to Latvia is constantly very low. Those are individual cases which did not provoke substantial changes in asylum and reception policy or practice.</p>
	Lithuania	Yes	<p>1. a) No. b) N/A. c) No reservations exist.</p> <p>2. a) Regular practice is used during assessment of asylum claims. b) No. c) No.</p> <p>3. No impact was observed.</p> <p>4. No.</p>
	Luxembourg	Yes	<p>1. 1.a. No. In Luxembourg, the ground on which international protection is granted is registered in the personal file of the international protection applicant, but the file is not labelled as such. 1.b. N/A. 1.c. There are data protection concerns in filing this kind of information. In regards to</p>

			<p>international protection the only information which is registered is nationality, nor religion or sexual orientation.</p> <p>2. 2.a. Luxembourg treats every international protection application on a case by case basis analysing the facts described by the applicant as well as the evidence provided and taking into consideration the general situation of the country of origin in regards to the LGBT (See Administrative Court n° 37383C of 22 March 2016) and the seriousness of the threats to the life and physical integrity of the applicant in regards to his/her sexual orientation (See First instance Administrative Court, 3rd Chamber, n°35610 of 21 January 2015). 2. b. See answer to Q.2a. 2. c. No.</p> <p>3. 3. None. Luxembourg analyses every claim on a case by case basis. The applicant must prove his/her sexual orientation as well as the seriousness of the threats to his /her life and to his/her physical integrity.</p> <p>4. No.</p>
	Malta	Yes	<p>1. Refer to the attached</p> <p>2. Refer to the attached</p> <p>3. Refer to the attached</p> <p>4. Refer to the attached</p>
	Netherlands	Yes	<p>1. a. No b. N/A C. The Dutch Immigration and Naturalisation Service (IND) does not register the asylum ground. The IND reports the sexual orientation in the file of an asylum seeker when sexual orientation is brought forward as a ground for asylum. This report is made for the purpose of decision-making of that individual case. The file of asylum seekers who bring sexual orientation forward is not labelled as such. This means that it is not possible to search for files of asylum claims received on the ground of sexual orientation. In 2014 the Minister for Immigration requested investigation on the possibilities to register sexual orientation as an asylum ground for</p>

			<p>the possibility to evaluate the policy. The main obstacle for not being able to register the asylum ground is the Personal Data Protection Act.</p> <p>2. a. The decision-maker of the IND uses the IND Instruction ‘Hear and decide in cases where LGBT-orientation is brought forward as an asylum ground’ to assess the asylum claim. An asylum seeker who claims to be LGBT, should substantiate sexual orientation. The IND decision-maker asks the asylum seeker to assert about his/her sexual orientation and the situation of LGBTs in its country of origin. The IND decision-maker investigates the credibility of the sexual orientation. In the decision-making it is taken into account that it is not possible to provide definitive proof of LGBT-orientation, neither that only the statement of being LGBT is sufficient. The credibility assessment is somewhere between these two extremes. The investigation on the sexual orientation of an asylum seeker consists of questions. The IND does not use medical tests to determine sexual orientation; does not use documentary prove; does not ask explicit questions on sexual activities; and is not bases on LGBT-stereotypes. When the LGBT-orientation is assumed credible, the IND decision-maker investigates the situation regarding LGBTs in the country of origin. This investigation is based on public information (e.g. country specific official reports), reports from various sources and information from the IND TOELT (Country and Language Research and Expertise Team). b. The situation in countries of origin is investigated via official reports from the government on the situation in countries of origin. Not for all countries official reports are written, these are mainly countries with a sizable amount of asylum claims. Also other reports that are considered reliable are included in the investigation. These can be NGO-reports or LGBT-oriented reports. c. The Dutch policy does not differentiate between lesbian, gay, bisexual and transgender applicants. The decision-maker bases its decision on the situation in the country of origin. If that situation differs for lesbian, gay, bisexual and transgender asylum seekers, then the decision may also differ for persons with these sexual orientations.</p> <p>3. The Dutch Alien Circular was revised to fit these rulings and a public instruction on the credibility assessment was made. After the revision, the Circular was adapted to fit the discretion ruling. These adaptations make sure that LGBT-asylum seekers are not send back to their countries if they have to be discreet.</p>
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	Poland	Yes	<p>1. a) There is no possibility in PL to produce statistical data on the number of asylum claims made on the ground of sexual orientation. b) Although we cannot provide official statistical data, we are well-oriented in the number of claims made on the ground of sexual orientation as there are only few (5-8) such cases a year in PL, about two-thirds of them were granted international protection. c) The registration of claims on the ground of sexual orientation is not conducted because of domestic law - Personal Data Protection Act.</p> <p>2. a) Polish authorities use the following practices and tools to assess asylum claims on the ground of sexual orientation: - Geneva Convention under which LGBT persons may be recognised as a "particular social group", - The Procedures Directive, - The Qualification Directive, - UNHCR's Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity, -</p>


			<p>UNHCR's Guidelines on Gender-Related Persecution Within the Context of Article 1A of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees, - The guidelines for interviewing people declaring to be LGBT persons devised by Chelvan. b) There are no specific policies regarding LGBT -claims from nationals from certain countries of origin. Each case is considered individually in conjunction with COI. However, LGBT-claims from the countries from origin where there are laws criminalising same-sex consensual relations between adults, if the credibility of applicants is not particularly objectionable, are granted at least subsidiary protection, even if the law is no longer enforced. c) There are no policy-related differences in how the cases of lesbian, gay, bisexual and transgender asylum seekers are assessed.</p> <p>3. Both these rulings are taken into account in recognising claims on the ground of sexual orientation.</p> <p>4. n/a</p>
	Slovak Republic	Yes	<p>1. a. Slovak Republic does not record statistical data on the number of asylum applications made on the grounds of sexual orientation. Sexual orientation is mentioned in the asylum record. b. N/A c. The information system MIGRA does not provide any statistical output about the sexual orientation of asylum seekers.</p> <p>2. a. Migration Office of the Ministry of Interior of the Slovak Republic utilizes practices and tools in line with respective directives of the EU and the Act on Asylum, i.e. questionnaire, interview and medical checks with regards to the symptoms of persecution or serious injustice. b. No c. No</p> <p>3. Migration Office of the Ministry of Interior of the Slovak Republic respects this CJEU's ruling.</p> <p>4. No.</p>
	Sweden	Yes	<p>1. 1a. The Swedish Migration Agency does not register sexual orientation. 1b. NA 1c. The reservations are due to national law.</p>

			<p>2. 2a. In all cases where the asylum seeking person is, or claims to be, a LGBT-person there is a LGBT-specialist involved in the handling of the case and in the decision-making process. The case officers are also educated in for example questions relating to vulnerable persons and normativity. There is also a legal positioning document (SR 38/2015) relating to asylum claims on the ground of sexual orientation. 2b. No 2c. Each case is duly assessed on its own individual merits, there are no policy-related differences in how the cases of LGBT-persons are assessed other than that it is recognized that (and how) the mentioned groups might have different preconditions and therefore the handling of these cases and the decision-making must take that into proper consideration.</p> <p>3. The Swedish Migration Agency's standards and policies are aimed to be in accordance with the mentioned rulings.</p> <p>4. Due to the high influx of asylum seekers during the last years the reception conditions have changed radically for all asylum seekers in the reception system but not specifically for the LGBT asylum seekers. LGBT-persons are not treated differently just because they belong to this group - every person's different needs, when it comes to reception and accommodation, are always handled individually. There is an awareness of the general exposure of this group which is taken into account in these cases. There is today four LGBT-certified reception centers in Sweden.</p>
	United Kingdom	Yes	<p>1. In the UK, information on the detail of the basis of an asylum claim is not routinely recorded on Home Office databases in a way that can be easily aggregated. Therefore, historically the UK has not produced figures on the number of asylum claims presented which are based on sexual identity. Isolating specific categories of claim can also be difficult because, in many cases, the reasons for claiming asylum can be wide-ranging and cover a number of different categories. However in regard to collecting data on claims where the basis includes sexual orientation, the UK is working to capture relevant data. A system has been established for this claim case type which will improve the accuracy and quality of management information held and which will help to inform policy and process development. In order to collect this information all staff are required to enter a special conditions flag of 'Asylum Sexual Orientation Claim' on the case information database (CID) for any case which has sexual orientation as a part of the basis of claim. The UK</p>

			<p>has an intention to publish this data once the quality and consistency of data capture has been quality checked by Home Office statistics teams. No definitive strategy regarding publication methodology has yet been determined and no definite plans or timetable regarding publishing exist. 1b. If yes, how many claims (total of first and subsequent claims) on the ground of sexual orientation were received and how many were granted in the period 2010-2015? On the basis of the answer above, we have no data that we can share with you. 1c. If no, what are the reservations regarding the provision of information on claims on the ground of sexual orientation? A nil response is offered on the basis of the answers above.</p> <p>2. Before 2010, Home Office asylum policy relating to claims from LGB applicants primarily considered whether an individual could avoid persecution in their home country by concealing or by being “discreet” about their sexual identity. This was known as the ‘discretion’ or ‘reasonable tolerability’ test. Since 2010, the UK policy on handling LGB asylum claims has been in line with a UK Supreme Court judgment in the case of HJ (Iran) and HT (Cameroon) v. Secretary of State for the Home Department. The foundation of this judgment is that LGB individuals cannot be expected to conceal their sexuality or change their behaviour upon return to their country of origin in order to avoid persecution. As such the UK no longer applies a discretion test to any such claims. As with all asylum claims, those brought on the basis or part basis of sexual identity issues must establish that they face persecution in their country of origin to qualify for protection. This is not a requirement for a claimant to prove that they are LGB to level of beyond reasonable doubt. In order to qualify for asylum in the UK the claimant must have a well-founded fear of persecution on the basis of their sexual orientation - the required threshold of which is to a “reasonable degree of likelihood”. If an individual is claiming to be at risk on the grounds of sexual orientation, it follows that they will need to establish to a reasonable degree of likelihood that they are, or are perceived to be, of the sexual orientation in question. One of the considerations in a sexuality based asylum claim is an assessment of the credibility of the claimant to be LGB and then, assessment of the likelihood of the claimant facing persecution on the grounds of their sexuality. This first of these is based on an exploration of the claimant’s own self-realisation and experience of their sexual identity - in both their own country and in the United Kingdom. The substantive asylum interview which decision makers will have with a claimant is a key part of the UK asylum process, as it is the main opportunity for the claimant to provide relevant evidence about why they need international protection and for decision makers to</p>
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			<p>consider that evidence. Usually the interview may be the primary, or even the only, source of evidence, especially if the case is one of non-state persecution. In the absence of external or objective evidence, the interview is particularly important in ensuring that sufficient evidence is gathered to inform a decision. Claimants are expected to disclose all relevant information at this stage and decision makers are required to fully investigate the key issues by adopting a focused, professional and sensitive approach to questioning, particularly as some evidence may relate to instances of persecution or serious harm, including sexual violence. Decision makers are trained to encourage the claimant to put forward sufficient evidence to establish their case and to encourage full disclosure of all relevant facts, allowing caseworkers to investigate and consider the evidence and enabling them to identify and protect those in need of protection. Consideration of the claim will focus upon whether the account itself is credible which will include considering whether the material facts relating to the person's account of their actual or perceived sexual orientation and of their experiences is reasonably detailed and internally consistent as well as being externally credible and consistent with generally known facts concerning country of origin information. Consideration will also be given to what motivated the individual into realising their sexual orientation, which they may not previously or openly have been able to acknowledge in their country of origin. Case workers should take into account all mitigating reasons why a person may be inconsistent or unable to provide details of material facts such as age; gender; mental or emotional trauma; fear and/or mistrust of authorities; education, feelings of shame; painful memories, particularly those of a sexual nature, and cultural implications. The rationale for this approach is to ensure that asylum claims are properly considered, that decisions are sound and that, when protection is granted, it is granted to those who genuinely need it. In 2015, LGB training needs were reviewed and the LGB element within the existing Foundation Training Programme provided to all decision makers was updated. The content now addresses issues around stereotyping and appropriate and sensitive questioning techniques to ensure that no sexually explicit questions or questions that could be construed as humiliating are asked. The content is aligned and compliant with EU legislative frameworks and includes explicit references to the Difference, Stigma, Shame and Harm model (DSSH) for considering LGBT based asylum claims as designed by the UK human rights lawyer, S. Chelvan. 2b. Does your MS use country specific policies regarding LGBT-claims from nationals from certain countries of origin? If yes, for which countries and in what form? Yes. We provide officials with country information and</p>
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			<p>guidance (CIG) on handling claims for protection on the basis of a person's sexual orientation and / or gender identity for the following countries: Afghanistan, Albania, Algeria, Gambia, Ghana, India, Iran, Jamaica, Kenya, Liberia, Malawi, Nigeria, Pakistan, South Africa, Sri Lanka, Turkey, Uganda, Ukraine, Vietnam and Zimbabwe. The CIG is published in 2 forms: i) thematic reports covering LGBT claims only, or ii) as a section within an 'operational guidance note' (OGNs) which covers a range of asylum claim types from a particular country. NB OGNs are being phased out, to be replaced with shorter thematic products. All the CIG is published on the gov.uk website: https://www.gov.uk/government/collections/country-information-and-guidance 2c. Are there policy-related differences in how the cases of lesbian, gay, bisexual and transgender asylum seekers are assessed? Have these differences resulted in different decisions being taken? We recognise that bisexuals can be as equally subject to homophobia and persecution, as lesbians and gay men. Our policies governing the consideration of sexual identity claims, applies equally to lesbian, gay and bisexual applicants seeking protection. All such claim bases may establish a valid asylum claim, if they establish a causal link between their well-founded fear and a Convention reason of race, religion, nationality, political opinion or the membership of a particular social group. Also, all such claims are equally considered in accordance with our international obligations under the 1951 Refugee Convention and the European Convention on Human Rights. As noted above, the claim consideration is primarily in assessing the credibility of the claimant to be LGB. In regard to transgender asylum claims the basis for considering and deciding claims is the same. We do not however stipulate that a transgender claimant needs to be on a transitioning programme of either hormone or gender reassignment surgery, or to be otherwise under any medical supervision. We recognise transgender claimants (in its widest ranging definition) as being members of a particular social group for Convention purposes and like LGB claims, subject to establishing a causal link between their well-founded fear and a Convention reason they will be able to establish a claim for protection.</p> <p>3. Following the CJEU December 2014 judgment (in the cases of C-148/13, C-149/13 and C-150/13), the Sexual orientation in the asylum claim (February 2015) instruction for decision makers was updated and republished to reflect the position that: • In assessing the evidence put forward by a claimant, questions which are based solely on stereotypical behaviour are prohibited, as they do take account of the individual situation and personal circumstances of the claimant for asylum concerned. This was in fact already the requirement of the UK government. • Adverse</p>
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			<p>credibility findings cannot be made merely because a claimant did not raise issues of sexual orientation on the first occasion in which they claimed asylum. • Detailed questioning in regard to sexual practices are prohibited as any such questions are contrary to the fundamental rights guaranteed by the EU Charter of Fundamental Rights and in particular, to the right to respect for private and family life. • Sexually explicit evidence, even if provided voluntarily by the claimant, must not in any circumstances be accepted , as such evidence does not have probative value and would in effect, incite other claimants to offer the same and would lead, de facto, to requiring claimants to provide such evidence; In addition to updating guidance instructions to reflect this ruling, caseworkers were re trained to handle situations in which a claimant might attempt to present such material during their interview. The CJEU ruling also made it clear that Member States do not have to accept someone is LGB simply because they say so. It held that such declarations merely constituted the starting point in the process and were subject to proper assessment of the facts and circumstances. This has always been the position of the UK.</p> <p>4. In addition to European legislation, the updates and revisions to our practices in handling LGB asylum claims over the last five years, including those to our training programmes and guidance instructions, have been primarily driven by a review of this area by the Independent Chief Inspector of Immigration, in October 2014. Following this review, the Home Office (as has been noted above), updated its training programme and guidance to ensure: that stereotyping and stereotypical expectations of LGB activity and lifestyle did not appear in interview questions; that caseworkers did not ask sexually explicit questions; that a consistent approach towards the handling of explicit material presented to support an asylum claim was established, including equipping decision makers with the interviewing skills to cope professionally when sexually explicit responses are received and to ensure that all asylum claims made on grounds of sexual orientation are accurately recorded as such. Additionally, this review afforded the opportunity to provide further detail to decision makers regarding the Difference, Stigma, Shame and Harm model (DSSH) for considering LGBT based asylum claims.</p>
	Norway	No	