Trans People vis-à-vis the Goods & Services Directive

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About the Contributor

Transgender Europe (TGEU) is a European third sector, umbrella organization, which works towards the full equality and inclusion of all trans people in Europe. TGEU was founded in 2005, during the 1st European Transgender Council in Vienna and is today registered as an NGO under German Law. Currently TGEU has 80 member groups from 38 countries mainly from Europe. www.tgeu.org

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Introduction

This report is partially based on earlier joint-submissions on the implementation of Directive on Equal Access to Goods and Services (Dir 2004/113/EC) and Directive on Equal Access to Employment (Dir 2006/54/EC), by TGEU and ILGA-Europe1.

Trans people are protected under the Goods & Services Directive, by the virtue of the 2606th meeting of the European Commission and European Council on Consumer Affairs in 2004 and its reference to the decision of the ECJ in P v S and Cornwall County Council (Case C-13/94.) [1996]. In the judgment, the Court established that the EU equal treatment principle cannot be confined to the fact that a person is of one or another gender, but also applies to discrimination related to gender reassignment of a person. It “must extend to discrimination arising from gender reassignment, which is based, essentially if not exclusively, on the sex of the person concerned, since to dismiss a person on the ground that he or she intends to undergo, or has undergone, gender reassignment is to treat him or her unfavourably by comparison with persons of the sex to which he or she was deemed to belong before that operation.”2

In this paper, however, we move away from the arbitrary ground of gender reassignment. Instead we favour the grounds of gender identity and gender expression as they account for the reasons of discrimination more precisely. Gender reassignment is understood as a process of social adaptation to a gender, different to the one assigned at birth. It may or may not include legal aspects (changing name and or gender marker) and or medical aspects, which are referred to as gender reassignment treatment; in case of invasive genital surgeries as gender reassignment treatment; in case of invasive genital surgeries as gender reassignment treatment.

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surgery. However, for the purpose of detecting discrimination experienced by those intending to, undergoing or having undergone gender reassignment it is more precise to use gender identity and gender expression as grounds as they account for the reasons of discrimination more precisely.

**Gender identity and gender expression** are instead understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of body (which may involve, if freely chosen, modifications of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

This approach is shared with the *European Union Agency for Fundamental Rights*:

> “Whereas transgender people (in this narrow understanding) do find themselves in a specific situation due to the operation of gender reassignment […], there is no reason not to extend the protection from discrimination beyond these persons, to cover „cross dressers, and transvestites, people who live permanently in the gender „opposite” to that on their birth certificate without any medical intervention and all those people who simply wish to present their gender differently”. It has been recommended that protection from discrimination on grounds of „gender identity”, more generally, should encompass not only transsexuals (undergoing, intending to undergo, or having undergone a medical operation resulting in gender reassignment), but also those other categories”

Supported by findings in the LGBT Survey 2012, the Agency recommends explicit inclusion of gender identity in existing and future EU-legal measures:

> EU law should consider explicitly mentioning discrimination on the grounds of gender identity as a form of discrimination in all existing and upcoming EU legislation, such as in Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

**Applicable national legislation**

1. To your knowledge, what particular difficulties, if any, have citizens encountered in the application of the Directive in the Member States?

Trans people continue to face (i) structural, (ii) direct and (iii) indirect discrimination in regard to goods and services. These forms of discrimination are often interlinked.

There are matters which are usually not affected by gender-related differences, but in which trans people are systematically treated less favourably than non-trans (access to medical and social services, employment, social activities, housing, parental responsibilities including adoption/ fostering). Other matters hinge on legally defined sex (marriage, life insurance, state pensions, gender specific offences, military draft, imprisonment). Other areas are where trans people must rely on the goodwill of others to avoid discrimination (inheritance, sport, education, occupational pensions, police searches, gender specific victim support). Instances where access to equal treatment relies on recognition of marital / partnership status (income related benefits, survivor pensions, inheritance tax, next of kin issues incl. parental rights, criminal injuries, workplace injuries)

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3 As defined in the Yogyakarta Principles.
Trans people experience structural discrimination as social and legal realities are constructed around two exclusive notions of gender: male and female. People who are challenging these norms fall between the cracks. Matching ID-documents are a pre-requisite to access goods and services without discrimination. The Goods & Services Directive protects against sex/gender-discrimination in access to remunerated, non-private goods and services. Many goods and services are only accessible if ID-documents are provided, such as opening a bank account, taking a flight, taking a loan, buying insurance etc. Many trans-people experience discrimination when accessing goods and services because their gender identity does not match the name/ gender marker on their ID-documents. A common reaction is to suspect trans people to use falsified documents, which prompt further scrutinizing questions. More often these situations prompt the trans-person to come out as transgender, which leaves them vulnerable to discrimination and often at mercy of their counterparts about accessing the respective service.

**Legal Gender Recognition as a Service Under the Directive**

A trans-specific service offered by the majority of member states are legal gender recognition procedures allowing a trans person to change the name and gender marker on their ID-documents to avoid situations, which repeatedly trigger discrimination and intrusion into private and family life. These legal gender recognition procedures are offered by the states either as administrative or court procedure, often against a fee. For example administrative procedures in **Portugal, UK, Hungary and Malta** require payment of a fee. Court-proceedings in **Germany, Poland, Italy, France** are only available after payment by the applicant. Both forms of proceedings involve further mandatory submission of requirements, such as mental health statements, which often have to be paid for by the applicant as well.

**Absent or Insufficient Legal Gender Recognition Procedures**

**Ireland** does not have a legal framework for legal gender recognition in place. As a consequence trans people cannot access goods & services without having to compromise their privacy or dignity. They are in a structurally disadvantaged position because of the state’s failure to provide for legal gender recognition. The Irish High Court under the European Convention of Human Rights convicted Ireland in 2002\(^6\) and 2007\(^7\) to adopt gender recognition legislation.

Delays in legal gender recognition procedures or parts thereof, as in the case of Darrin, a transgender man who changed his name via deed pool, lead to continuous outing and abuse in public.

> “I have a social security card and it used to have my old name on it. It took about two years to get a new one issued with my new name on it. In that period when I went to the post office to pick up my money [welfare payments] I was asked in front of everyone in the post office, well whose card have you stolen? [The problem was that] when they scanned [my information] my new name, ‘Darrin’, would come up on their computer, but it was a very female name on the card. So I would have to explain in a post office what

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\(^7\) Foy -v- An t-Ard Chláraitheoir & Ors [2007] IEHC 470; accessible at http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/9e891a871513d220802574240003c190f?OpenDocument
my situation is."8

In 2007, the European Court of Human Rights ruled that Lithuania had to close a legislative gap that prevents trans persons to have their gender legally recognized. Eight years later, both states have not managed to fulfil these obligations, despite some first steps taken. Slovenia and Cyprus have general provisions in place allowing for a change of name/ gender, but subsidiary legislation is lacking that would satisfy minimum standards of quick, transparent and accessible procedures. France, convicted 1992 to introduce the possibility to change name and gender for a trans person, has cumbersome court-proceedings, which on average leave the applicant in legal limbo for 5 years.

Excessive Requirements

Where procedures are in place they include “abusive requirements”10 which violate a trans person's fundamental rights. In particular these are requirements, which have to be fulfilled to qualify for legal gender recognition, and contribute to the structural discrimination:

- Sterilisation/ infertility (required in 13 member states)
- Compulsory medical interventions (18 MS)
- Divorce (11 MS)
- Compulsory diagnosis (24 MS)11

On the compulsory diagnosis of ‘Gender Identity Disorder’ (or similar) Amnesty International finds that “the psychiatric assessment is often undertaken on the basis of gender stereotypes.”12 In general they assert that “[t]he extensive length of time required for transgender people to complete the process to obtain documents that reflect their gender identity, and the exclusion from that process of transgender people who are not diagnosed with “transsexualism” violates their rights to private and family life and to recognition before the law.”13

Many member states are currently reviewing their legislation in this regard, aiming at more human rights compatible standards.

Given the complex nature and the direct impact on (trans) citizens’ enjoyment of EU rights and freedoms, the European Commission should instigate best practice exchange and motivate progressive solutions by member states in regard to gender recognition legislation.

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8 Amnesty 2014, p. 62
10 See for instance Chapter IV. Art 20. in the Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity, adopted on 31 March 2010, accessible at: https://wcd.coe.int/ViewDoc.jsp?id=1570957
12 Amnesty International The State decides who I am, 204, p. 39
13 Amnesty International The State decides who I am, 204, p. 39

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Expert-fees

Since all procedures involve some form of diagnostic process or third-party medical expert opinion, these fees are part of the legal gender recognition usually also to be covered by the individual.

A particular example sets the Netherlands where trans-persons applying for legal gender recognition, who do not use medical interventions to transition, from July 1st 2014 will be treated as disadvantaged in comparison to trans people using the gender-team services. From that date on the Dutch gender recognition will be made available through an expert letter. The applicant has to pay a fee for the expert letter and administrative costs for the expert. However, there is a considerable difference between applicants who request the expert letter and who have been diagnosed with Gender Identity Disorder (GID) by an expert of a Dutch specialist gender-team and are still seeing a psychologist at the gender-team will not have to pay the expert letter fee, but only the administrative costs. Anyone else will have to pay the entire fee plus the administrative costs. This concerns for those people who do not want a medical diagnosis from a gender-team, those who have finished their transition process with a psychologist at a gender-team (and have undergone medical gender reassignment), and most likely also those who have a medical diagnosis but not from a Dutch gender-team. It has to be noted that a diagnosis is legally not a condition to receive the expert letter, but in practice the expert letter will be offered at a discount to those people who search medical treatment as soon as they have the diagnosis. The exact costs are at this stage still not set and it is unsure if experts will have the freedom to set their own fee or not.

Coverage of Medical Costs Required in Legal Gender Recognition

Other differences in treatment occur through subsidiary requirements to legal gender recognition in Italy. In order to be able to change the gender marker, medical proof for gender reassignment treatment has to be presented to a judge. This includes the proof for having undergone cross-hormonal treatment, which all transgender applicants have to provide. However, therapies with female hormones for trans women are covered by the public insurance, whereas male-hormones have to be paid for privately by trans men.

Legal gender recognition procedures should be assessed under the Goods & Services Directive as they are established to balance discrimination and disadvantages experienced by transgender persons with the aim to achieve gender equality and diminish discrimination on grounds of gender identity and expression. Even without direct reference to the Directive, achieving the aim of equal access for trans people to Goods & Services without having quick, accessible and transparent gender recognition procedures is not possible.

Set-up and requirements included therein in all countries are not lawful, proportionate and legitimate as they are often not following state-of-the-art medical research and rather follow majority-views on gender, gender identity and expression.

Comparator

On the question of the comparator, in P v S and Cornwall County Council the Court found it was not necessary to compare the applicant with a member of another gender, but choose to compare against herself before and after (the announcement to undergo) gender reassignment. The same logic should also be applied when looking at gender recognition legislation and whether it achieves the aim of eliminating discrimination on the grounds of sex.

Discrimination in Accessing Goods & Services
Discriminatory practices in the area of goods and services are often reoccurring often with a frequency which some trans-people experiencing discrimination as a ‘daily routine’. However, available protection mechanisms are less known as in other areas of life such as employment. Therefore, victims are less likely to report them and seek redress. However, being discriminated on a daily basis while trying to access goods and services can be particularly damaging for one’s well being and mental health.

Findings from the FRA LGBT Survey show that 26% of transgender people have personally felt discriminated against because of their identity at a shop during the last 12 months, in average, across the EU. Findings from the FRA LGBT Survey show that 50% of transgender people have personally felt discriminated against because of their identity at a café, restaurant, bar or nightclub during the last 12 months, in Romania, Malta, Hungary and Cyprus. 100% of respondents to the FRA survey who identify as “cross-dresser” have personally felt discriminated against because of their identity at a sport or fitness club in Estonia. 50% of transgender respondents felt discriminated at a sport or fitness club in Poland, Latvia and Czech Republic.

“I still have a female name and identity number, and I have had problems with my ID. For instance, almost every time I try to collect a parcel from the post office, they question whether the passport is mine.” (20-year old transgender man, Finland)

Joshua is a transgender man from the USA, living in Denmark. Danish authorities do not recognize his male US ID-documents, as he does not meet the Danish legal requirement to be sterilized:

“I try to avoid people in Denmark, being stuck between two identities is a major obstacle for me. You don’t want to go to your kids’ school and out yourself all the time. I am still listed in the school system as their mum. The other kids in the school ask about it because they can see the [female] name [yet I have a male appearance]. It’s very awkward for me and my kids.”

Examples in the following sections illustrate the widespread experiences of discrimination in the daily life of trans people.

- Daily Errands

Amnesty International reports about the daily hassle a French trans woman experiences in other areas of her life because of the discrepancy between her appearance and her documents.

“My bank, my phone company, the social security do not use my female name, so many letters I receive refer to me as a male. The postman refuses to deliver my registered letters because he does not believe I am the addressee. I don’t want to go to the post office anymore to collect register mail; my partner does that for me. It is degrading. When I travel I try to have an androgynous look so that my appearance does not raise too many questions but I feel like a usurper. Voting is also degrading as they read out your name loudly and people stare at you.”

- Cafés, nightclubs, restaurants:

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14 Amnesty International The State decides who I am, 204, p. 20
15 Amnesty International The State decides who I am, 204, p. 37
16 Amnesty 2014, p. 54
Access to the cinema: A cinema has denied access to two trans women the free entrance even though it has proclaimed "women's day".

A trans man was first excluded from the Café De Maecht van Ghent in Ghent, Belgium and then became victim of excessive violence by the doorman. The bouncer prevented him from re-entering the café when the trans man was out at the terrace for a smoke, calling him by a female name and telling him to leave: "Jeanette, depart ye". He then pushed the customer down a staircase and, together with two other men, physically attacked him. The attack continued by kicking when the trans man was already lying on the ground; worse could only be prevented from happening by the interference of a waiter and by-passenger. The attack resulted in a collapsed lung and two broken rips. The incident was reported to the police, which are currently investigating the incident.17

A 27-year old trans woman reiterated a similar experience in Ireland, where the bar operators threatened her to not seek redress.

“I left the bar with my friends for a smoke, on the way back in the bouncer let all my friends and blocked my re-entry, when one of my friends asked: ‘Why is she not allowed back in?’ The bouncer replied: ‘She? HA! IT is not allowed back in, and I don’t have to give a reason.’ It took 20 min for me to get the head doorman to come out, I threatened to call the police and write letters to GCN, and other publications, the bar owner and the manager of the bar. I was allowed back in only if I promised not to send letters.” “I was very upset, it is the first time I received any transphobic abuse/ discrimination... I cried many times afterwards. It was a horrific situation. He refused me entry in front of 20 to 30 people, then proceeded to out me publicly, and my bag/coat wallet were all in the bar, so I could go nowhere, because of the rain, and because he outed me I started getting hassle of lads in the smoking area.” 18

A trans woman reported to the Transgender Equality Network Ireland that she was refused several times access to nightclubs in Ireland throughout 2013. The denials of service were accompanied by insults/ verbal abuse and sexually harassment.

A 39-year old trans woman reiterates another transphobic experience in a club in Ireland:

“A group of us were in a club, four trans girls and one cis[gender] guy. We were all called lads by doorman staff on our way into the club. Then, when we were in the club about twenty minutes, a manager and doorman approached our table and told us there had been complaints about us using the ladies, because of this we had to show ID to prove we were female to use the toilets. One of us had ID the rest including me didn't. I asked: ‘What happens if we don't have ID and use the ladies toilets?’ The doorman loomed over me and said: ‘Then we will have a problem.’ I asked him if he wanted me to strip naked as I haven't carried ID when going to a club in over twenty years, I also told them this was discrimination. They allowed us to use the ladies in the end. I have never felt so embarrassed or humiliated in my life as this was done in a small area where there were loads of other people.” 19

In the night of 28 November 2013 at Coyotes bar, Manchester, United Kingdom a trans woman danced at the bar, when a female guest walked up to her asking her whether she was a man and without awaiting further response pulled the victim's wig off. There was no further connection between the victim and the perpetrator and the direct question targeting at a sign of her femininity makes clear she was targeted because of her gender identity. The case was not reported to the police, but reported as hate crime through true vision website. The club-owners however refused to take action. The victim described being very upset and felt humiliated: “I was really upset about it. For

17 http://zizo-online.be/excessief-geweld-door-portier- tegen-transman-gent
18 TENI STAD Report 2014, p. 37, p. 39
19 TENI STAD Report 2014, p. 41
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me that’s the same as someone pulling my pants down in public.” When calling the next day the bar over the incident, she experienced another victimisation by the bar personnel, who refused to acknowledge her claim, as she had not reported it to the police. 20

Trans woman Joanna Cassar experienced her worst attack in a nightclub in Malta in 2010: “I was walking off the dance floor. I was hit on the head with a bottle and kicked in my chest and stomach. They stole my bag.” She did not see the point in filing a police report. “What would I get out of it? I’d end up having to go to court repeatedly…and if I had to file a report each time I’m insulted, I might as well move into the police station,” she said. This was not a one-time-off experience. Another time when queuing in a bathroom and a woman turned to her and told her: “It’s your turn pufta.” “I’ll be in a club and people pass comments or nudge me when I pass by with a drink. They make it obvious and even point to ensure I know they’re talking about me. “When I sense trouble I tell the bouncer or leave the club, even if it means crying myself to sleep. I try to make it look like I don’t care, but I do. Some people hate people like me and I don’t know why,” she said.

While she felt that nothing would come out of it when going to the police, she would be ready to turn to the more immediately available club’s bouncer, even in expectation of personal disadvantages. It is courageous to still go out after previous experiences in her teens. She recalled a time when she was 17 and went to a club, wearing women’s clothes and make-up. When she tried to go to the ladies’ toilet to touch up her make-up, the bouncer head-butted her in the face, breaking her nose and teeth. 21

Bathrooms are often focal points of discrimination for trans-people, as this example from a genderqueer person from Ireland further confirms:

“Not being particularly confident with my appearance I attempted to use the male toilets in a bar and was redirected by a customer. Fearfully I obeyed, and was told I was in the wrong place again when attempting to enter the female toilets. On the second attempt to enter the males, I was aggressively, vocally refused entry by another customer and immediately asked to leave by a bouncer.” 22

• Shops and Malls

Expressions of gender variance often trigger verbal or physical harassment without any other trigger as this example of a queer person from Germany shows. When he asked the waiter in a Falafel shop in Berlin-Neukölln for a napkin, the waiter commented sarcastically on the fact that the person was wearing nail polish, asking whether he was a man or a woman and stating that since he (the waiter) was also a man he wanted to know whether this is “something men should be doing”. The waiter suggested he should perhaps as well cut off his genitals (while making gestures of cutting off his penis) or maybe he should get himself some female breasts (while making gestures as though he had breasts). 23

A 19-year old gay androgynous male recalls the effects transphobic comments by a sales clerk had on him when he tried to try on female shorts:

“I was left shaken and on edge. I was shocked and surprised at how I was treated. I took time in the changing room to think things over and to relax. I felt like a freak for wanting to try on these short shorts. I

20 Source: Social Media posting by the victim
21 ‘I’ve been fighting for a human right for seven years’, Times of Malta, January 20 2013
22 TENI STAD report 2014, p. 41
23 Social media posting by the victim on March 30 2014

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would have suffered worse had I been transgender because I would have become paranoid about my success at passing and posing as my preferred gender. I would have become overly and obsessively self-aware and self-conscious about my appearance. I now fear buying female items of clothing again in apprehension of the same thing happening to me” 24

Repeatedly trans people report problems with accessing gendered bathroom-facilities in shops or malls at the hands of sales-clerks and security people, as in this example from Scotland. They are often not reported to the police.

On August 19 2013, a young trans woman was shopping at the St. James Centre, River Song and used the female bathrooms. Upon leaving she was pulled aside by the security guard and asked whether “she had a sex change”. She denied this, on which responded: “Why have you used the female bathrooms if you haven’t had a sex change?” He asked for her ID, which was showing her male name and gender marker and commented “This is a male, you are a male and always will be a male”. After the incident, the security guard further followed her and her partner through the shopping mall making offensive comments, including “it’s got a penis”. 25

A transgender person from Belgium revealed:

“When I was buying shoes (I have size 46) I asked the saleswoman if they have women’s shoes in my size, she started yelling for the whole store to hear that they didn’t have any female clown shoes and that I should be ashamed to ask a question like that”

Transphobic experiences leave deep marks on the individual. This 34-year old trans woman describes the impact after such an incident leaving her to wonder whether publicly accessible services would still be safe for her to reach out to: “Crying for hours, which my mother had to witness. It's made me nervous elsewhere, I'm wondering whether similar problems will emerge elsewhere, either toilets or changing rooms, melancholy, sadness at the state of my native city, not being able to use these facilities which I often had frequented”. 26

The situation for trans persons in detention and their access to clothing appropriate to their gender is particularly for trans women acute. This example from Nathalie, a prisoner in France, is certainly no individual case, though a drastic one. Nathalie had requested for more than a year permission to use a female name alongside regular women's clothing, specific products, information on medical facilities specializing in the treatment of transsexuals and asked for access to hormone replacement therapy. Her requests were in call cases rejected by the prison authorities. During this time she has been subjected to bullying from her inmates on grounds of her gender identity. After having received the note that her appeal for permission to use the name Nathalie had been rejected she hanged herself on the night of November 15 2013. 27

• Distance-sales (Phone & Internet)

Distance shopping is a preferred way of purchase to avoid hassle in personal interactions in shops. However, more than in classic retail credit cards and official authentication documents are required, which again are often difficult for trans people to obtain. Examples as the ones below depict some typical problems.

24 TENI STAD report 2014, p. 43
26 TENI STAD report, p. 42
It has been reported that eBay had denied name-change of account despite official court-decision of name-change.

In Belgium, a bank customer reported the following case. As a customer of a credit card company claimed about an unjustified booking on her credit card she faced great difficulty in proving her identity to the credit card company’s call-centre worker. Her interlocutor would not believe that she was the lawful owner of the credit card as her voice was that of a man.

- Access to Health-Care

Access to general as well as trans-specific healthcare is often impaired by prejudices of healthcare professionals. A quarter of the respondents in the Transgender EuroStudy\(^28\) reported adverse treatment by healthcare professionals because they were trans. 19% of trans respondents to the FRA survey personally felt discriminated against by healthcare personnel (e.g. a receptionist, nurse or doctor) (9% gay men). \(^29\) This figure raises up to 75% in Lithuania. In Romania and in Portugal, 100% of respondents who identified as “women with a transsexual past” said they had felt discriminated against in the area of health. A fifth reported that being trans affected the way they access non trans-related healthcare: As a result many trans people report avoiding doctors visits as much as possible for fear of inappropriate behaviour.\(^30\)

[... “It’s difficult when you go to the doctor and to the bank. I often take my wife with me to the doctor just in case they call up the wrong name [Joshua’s former female name]… If you don’t have your gender identity legally recognized, you always have to explain: ‘I used to be so and so but now I am so and so’. You have to out yourself all the time and sometimes it makes you feel afraid.”\(^31\) (Joshua, Transgender man, US-citizen living in Denmark)]

In the „Engendered Penalties” study in the UK, 22% of the survey respondents felt that being trans affected the way that they could access routine treatment that is not related to being trans. 29% of the respondents felt that being trans adversely affected the way they were treated by healthcare professionals\(^32\). As a result, their exposure to prevention and early-detection measures is low and they might seek health care only in cases of emergency or when a negative health condition has already progressed. This reduces possibilities of effective intervention and increasing costs both for the individual and the health care system. This also contributes to the fact that trans people’s health is often worse than other groups in LGBT communities. Health and social issues may include isolation, risk of alcohol abuse, self-harm, substance abuse and possible higher rates of HIV infection.

The results can be seen in the health statistics: 12% of the trans respondents in the Swedish study reported bad health (as opposed to 6% of the general population). Trans people also reported worse mental health than gay (7%) or lesbian (20%) respondents. 29.9% of respondents to The Transgender EuroStudy survey had attempted suicide as an adult.\(^33\) This reflects similar findings in other surveys. Half of the transgender respondents in a large-scale study into the health situation for LGBT people in Sweden had at one point or another in their lives considered taking their own life and 21% had actually tried to do this.\(^34\) 34.4% of the respondents in a UK survey responded that they had


\(^{29}\) Results at a Glance, FRA 2013

\(^{30}\) Trans EuroStudy p.59

\(^{31}\) Amnesty International The State decides who I am, 204, p. 37

\(^{32}\) Trans EuroStudy p.46

\(^{33}\) Ibid, p.45

\(^{34}\) Statens Folkhälsoinstitut, Homosexuella, bisexuella och transpersoners hälsosituation, Återrapportering av regeringsuppdrag att undersöka och analysera hälsosituationen bland hbt-personer, Östersund,
attempted suicide at least once as an adult.\textsuperscript{35} It is particularly worrying that despite the high level of impaired mental and emotional well being, a UK study found that 0\% of all respondents would use mental health care services after transitioning.\textsuperscript{36}

The gender marker and its on access to health care with Hélène describing her negative experience at a hospital where she was scheduled for an operation on her vocal chords:

“I was in the waiting room when the nurse called me, referring to me as ‘Mister’… I went back [for a follow-up appointment] and the same person called me, again referring to me as ‘Mister’ in front of all the other patients in the waiting room. I asked her why she referred to me as a male, she said that that was the gender on my documents and she asked why I did not change my legal gender.”\textsuperscript{37}

“Finding a qualified psychologist or psychiatrist is not obvious at all. I managed to find a general practitioner who is willing to follow my transition. So it is impossible for me to officially change my name because I need a letter from a psychiatrist.” (Belgium, transgender (transsexual), lesbian, 33)\textsuperscript{38}

But also in situations requiring emergency-care, trans-people experience hostility: Act-Up reports that on the night of January 9 2013 in Paris, France a trans woman was victim of aggression, kidnapping, gang rape, physical violence, leading to loss of consciousness and an overall very critical state of health. The staff at Lariboisière hospital would refuse for hours to use female pronouns when addressing her because of her ID, which shows a male identifier.\textsuperscript{39}

The situation of trans people with relation to HIV is completely unclear in Europe. Research from the United States, however, indicates that trans people, and especially MTF trans women sex workers, often are disproportionally affected. Thus, transgender women are 49 times more likely for being infected with HIV compared with all adults of reproductive age across the 15 studied countries, making the call for prevention, treatment, and care services an urgent one.\textsuperscript{40}

- Access to Trans-specific health-care

In general, those trans people who seek gender reassignment treatment, experience an increase in quality of life upon transitioning. 70\% of a UK/ Irish survey on trans until health were more satisfied with their lives since transitioning and only 2\% were less satisfied. Those that were less satisfied after transitioning cited poor surgical outcome, loss of family, friends and employment, everyday experiences of transphobia and non-trans-related reasons. Problems faced by trans people in access to trans-related healthcare include a general lack of competence and resources. 80\% of those seeking gender reassignment treatment have been refused coverage under the available health care plan; 50\% of those refused paid for the treatment privately.\textsuperscript{41}

Transgender people are prone to abuse by medical staff and public officials especially during the sensitive period of

\footnotesize{(2005), FHI, p. 21}
\footnotesize{\textsuperscript{35} Supra note 25, p. 78}
\footnotesize{\textsuperscript{36} McNeil J. et al, \textit{Trans Mental Health and Emotional Wellbeing Study 2012}}
\footnotesize{\textsuperscript{37} Amnesty 2014, p. 54}
\footnotesize{\textsuperscript{38} EU LGBGT Survey – European Union lesbian, gay, bisexual and transgender survey \textit{Results at a Glance (2013)}}
\footnotesize{\textsuperscript{39} Source: Act-Up Paris (http://www.actupparis.org/spip.php?article4734)}
\footnotesize{\textsuperscript{40} Griensven J. et al. \textit{HIV surveillance and prevention in transgender women}, in The Lancet Infectious Diseases, Volume 13, Issue 3, Pages 185 - 186, March 2013}
\footnotesize{\textsuperscript{41} Trans EuroStudy 2008}
their transition. This is particularly grave as medical practitioners are often the first ones transgender people come-out to as they seek for help. These situations are practically inviting abuse – be it intended or not.

In the light of absent or defunct public healthcare it is even more important to have access to additional insurance plans. However, many medical insurance companies preclude trans people on basis of their gender identity. The Committee of Ministers emphasizes that limitations of cost coverage must be “lawful, objective and proportionate” 42 20 Member States provide for comprehensive or partial gender reassignment treatment.43 Differences between these states are significant, ranging from member states where quality expertise centers are available and those where some but not all necessary treatment is available. In countries where no facilities are available persons wishing to undergo gender reassignment would then have to go abroad (they are explicitly advised to do so in some member states).44 Treatment protocols differ from country to country and often do not meet international standards as defined in the Standards of Care Version 745.

**Diagnosis**

‘Gender Identity Disorder (GID)’ or an equivalent diagnostic process is mandatory in all European countries to access gender reassignment treatment and legal gender recognition. National treatment protocols feature adapted definitions of “Gender Identity Disorder - GID” of the ICD - International Catalogue of Diseases (WHO)46. Trans identities are affected by a wide range of codes.47 These diagnoses have been criticized by human rights activists as stigmatizing and actively pushing for social exclusion of trans people, while not adding to their physical or mental well-being. **Sweden** and **Finland** removed Dual-role transvestism (F.64-1), Fetishism (F.65.0), Fetishistic transvestism (F65.1) and Multiple disorders of sexual preference (F65.6) from their national catalogues for a lack of therapeutic value.

Coverage of costs for gender reassignment treatment hinges on obtaining a GID diagnosis or equivalent. The ‘mental disorder’ label reinforces psychopathologisation driving stigma, making prejudice and discrimination more likely, and rendering trans people more vulnerable to social and legal marginalisation and exclusion. The mental health diagnosis thus contributes to increased risks of a deteriorating mental and physical well-being. 63% of trans respondents to a German quantitative study felt that the GID diagnosis is a source of significant distress for them.48 In view of the revision process of the ICD-10 (WHO) a group of international transgender health experts has been developing different alternative models, to facilitate access to healthcare coverage without stigmatizing diagnoses.49

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42 Appendix to Recommendation CM/Rec(2010)5, Recommendation 36
43 Austria, Belgium, the Czech Republic, Germany, Denmark, Estonia, Finland, France, Hungary, Greece, Ireland, Italy, Latvia, Malta, the Netherlands, Poland, Portugal, Spain, Sweden and the United Kingdom; according to Council of Europe Commissioner Human Rights LGBT Study 2011, p. 109
44 Ibid.
45 WPATH Standards of Care Version 7 (2012)
46 WHO International Classification of Diseases (ICD) currently undergoing the 11th revision
47 Sweden and Finland removed from their national versions of the ICD-10 Dual-role transvestism (F.64-1), Gender identity disorder of childhood (F.64.2), Fetishism (F.65.0), Fetishistic transvestism (F65.1) and Multiple disorders of sexual preference (F65.6)
48 LesMigras 2012 “…nicht so greifbar und doch real” quantitative und qualitative Studie zu Gewalt und (Mehrfach-) Diskriminierungserfahrungen von lesbischen bisexuellen Frauen und Trans* in Deutschland. www.lesmigras.de/ergebnisse.html
49 It’s time for reform - Trans* Health Issues in the International Classifications of Diseases, GATE, Nov 2011
Prescriptions

Trans people’s experiences of cross-border health care with regard to medical prescriptions and availability of cross-hormonal products for transgender customers reveal a pattern of problems. Information received from TGEU member organisations\(^{50}\) indicates that a number of transgender people were asked by pharmacies why they were prescribed cross-gendered hormones before the dispenser would hand the medicine over to them. It is worrying that trans persons are on such occasions obliged to explain why they need to take specific treatments in link with their gender reassignment treatment, often in range of audibility of other customers. As an example, a pharmacy in German denied a trans woman oestrogen despite a prescription as they "don't support this".\(^{51}\)

In addition, some organisations reported obstacles faced by transgender people when trying to get hold of the necessary medication in another EU member state. One such example was reported with regard to a Danish trans woman living in Germany, (close to the Danish border) and who was told by a German dispenser to see a German doctor and to get a German prescription.

The fact that some dispensers deny products to transgender patients on the basis that they disapprove of gender reassignment treatment is particularly worrying. Concrete as well as perceived experiences of discrimination are a driving factor leading to black-market purchases (via the internet or through cross-border imports). Additionally, self-medication without professional supervision (which in some instances can happen over extended periods of time) may lead to serious health problems.

TGEU consider that it is rather worrying to see gender as a key element of patient identification, necessary for the purchase of prescribed medicine. Such form of identification happens rather frequently whereby the gender mentioned on official documents (including prescriptions) does not match the gender appearance of the patient. Such situations have been reported to cause hostility and/or suspicion of fraud from dispensers. Trans persons may be suspected of unlawfully trying to get hold of medicine that is not intended for their own usage. For example, dispensers may fear fraud for the purposes of financial gain in the case of provision of testosterone (for body building) or oestrogen.

Moreover, trans people can feel harassed by dispensers who address them with pronouns inappropriate to their gender e.g. ‘Sir’ instead of ‘Madame’ or vice versa.

- Travel

Al Jazeera reports about difficulties trans travellers’ experience. "Trans people have been required to undergo pat-down searches by officers of the opposite gender, reveal or remove items such as chest binders and prosthetic penises and defend challenges to their gender identities and their right to opt out of body scans, among other problems."\(^{52}\) While this reports is based on experiences from the US, transgender travellers in Europe face similar

\(^{50}\) TGEU and ILGA-Europe issued a call for cases amongst its members for a Joint-submission to DG Sanco in a Public consultation on measures for improving the recognition of prescriptions issued in another Member State, January 2012 http://www.tgeu.org/sites/default/files/Consultation_on_EU_Cross-Border_Prescriptions_joint_submission_ILGA-Europe_TGEU_Jan_2012.pdf


\(^{52}\) Al Jazeera America “Transgender travellers singled out in TSA screenings, docs show”
difficulties when traveling across-borders, as the next example from Romania shows:

When a trans-man travelled on 31 April 2014 from Romania to Hungary by train to attend the 5th European Transgender Council he found his identity overtly scrutinized. At the Romanian-Hungarian border at 6am, being asked by the Romanian border guard for identification documents, the trans man presented his national ID and a stamped letter from his psychiatrist. He explained that he is on hormone-replacement treatment and that is why his physical appearance was different to the name, gender marker and picture in his ID. He also added that it is very difficult in Romania to get the papers adapted. After a few minutes the border guard was finally assured and left, only to return shortly after this time accompanied by one of his colleagues. The trans man was again asked for his ID, the letter and an additional document. The first border guard questioned the authenticity of the letter as it “could easily be a fake” and that the trans man should have changed the ID to match his appearance even without name and sex marker change. It has to be noted that his traveling companion, a trans man with equally male appearance and without adapted ID documents was not scrutinized in the same way. Later on a group of boarder-guards when passing pointed fingers at the sleeping compartment and laughed.53

A, a 18-year old transgender man told Amnesty International about his experience at the Dublin airport while he was travelling to Spain with his classmates.

“I was with 40 people who, [apart from one of my friends], didn’t know I was transgender. Not even my teachers knew. A security officer pulled me aside and started asking questions. Because by then I had my hair cut short and everything and I was obviously wearing guys’ clothes. So they were all like, ‘Is this a forged passport? Is this who you really are? Why does it say female?’ So I had to explain that I was transgender and that I hadn’t changed my passport yet because that wasn’t possible. And then my teacher came over and he asked me what was the problem and I just had to make up something... I said the security officer made a mistake.”

Andy, another young transgender man had a similar experience at the Dublin airport.

“I was going to Frankfurt recently and in the airport I got pulled aside when I was checking in. They didn’t believe that it was my passport. They just didn’t think it was me... maybe it was because I passed as male or whatever… I also had my female name on the boarding card and Andy on my travel document [the receipt he got from the travel agency had to be presented to get the boarding pass].”54

A trans woman in France was ordered to pay a fine in a TGV-train as, according to the conductor, the "Mr" on her ticket and ID-document did not correspond to her female appearance. She complained to SNCF about the decision and was granted pardon later on.55

• Public transport

Public space and usage of public transport is for many trans persons in Europe a dreadful experience, calling upon public transport operators and public policy makers to ensure that trans people are effectively protected when using

54 Source: email to TGEU from the victim
54 Amnesty 2014, p. 61
these services. Transgender Europe’s Statement on Social Inclusion through Sustainable Transport\(^{56}\) shows how trans passengers often are affected in their safety, security and dignity by staff and fellow passengers. For the statement TGEU issued a call for experiences of trans people with public transport, the majority of cases received were negative. When using buses, coaches, trams, s-bahns, metros/undergrounds and trains, as well as shared experiences on railway platforms, within public transport terminals and at bus stops, security and privacy were the two main concerns. Security, as public transport venues are often the place of attacks, and privacy as personalized tickets, particularly those offering a discount, are repeatedly sources of outing and discrimination for many trans people. Among the negative experiences, many are identical, including verbal and emotional abuse and besides physical assault. This leads to a tremendous sense of fear to the point that one Scotland-based respondent simply mentions: “I now refuse to use public transport.”

On 20 October 2013, 31-year old transgender woman, was walking towards the bus stop at South Coast Road, Peacehaven, Sussex, United Kingdom when the perpetrator asked her for a cigarette. When she ignored him, he grabbed the front of her coat and threatened to assault her. The police treat the assault as a hate crime as the perpetrator became more violent when he realised that the victim was transgender. According to the police, the assault was very upsetting to the victim.\(^{57}\)

Another negative experience from a transport terminal in the UK: A trans women was discovered at a bus station by another woman who then engaged in yelling abuse, spitting, punching, kicking and trying to scratch the trans woman’s face.\(^{58}\)

Respondents to a survey from the Scottish Transgender Alliance, which included a question was related to transphobic harassment in public places:

“I once had to be given sanctuary in a train station attendant's office after a crowd of drunken yobs chased me there and started pounding on the windows chanting “we want Nadia, give us Nadia” (that year's Big Brother trans contestant). I now refuse to use public transport”\(^{59}\)

“People on public transport talk openly of the violence they wish to visit on you and everyone laughs, people howl abuse on the street and people laugh…”

At 1am on the rail-platform in Berlin City, a trans man with his female partner was approached by drunken men who asked the couple "are you lesbians?" When the female partner said "yes" the drunken man starts beating the trans man in the face. When the female partner interferes, the aggressor hits her in the face as well, and then follows her down the platform with his fists in her face. The couple finally ‘rescue’ themselves by entering into an arriving train. However, the train driver stops the train on the platform (with the aggressors inside) and waits until security forces arrive. The couple are both in shock and then scared as the (private) security forces seem to side with the aggressors. As a result of the attack both victims are heavily traumatized; the female partner suffered from a brain concussion, a broken nose and several bruises to her face. She was on sick leave for 6 weeks and psycho-pharmaceuticals for

\(^{56}\) TGEU Statement on Social Inclusion through Sustainable Transport\(\text{http://www.tgeu.org/sites/default/files/SOCIAL_INCLUSION THROUGH SUSTAINABLE TRANSPORT.doc}\) The statement also presents best practices and 10 concrete recommendations aiming to inspire dialogue and yield sustainable improvements.

\(^{57}\) http://www.sussexexpress.co.uk

\(^{58}\) GIRES Survey on transphobic crime and bullying published in the UK in 2012 having been collected via: http://tcrime.net/

several months.60

Also, in other European cities, such as Amsterdam or Rotterdam trans people report that „harassment by other passengers is frequent“61.

Or this attack in public transport in Berlin Germany. Two men ridiculed a 21-year old trans man because of his transgender identity at the S-bahn station “Frankfurter Allee” in Berlin on October 13 2013. They started to kick and beat him, when he confronted them on this. When two witnesses interfered, one of the perpetrators punched the victim on the nose. Both perpetrators initially fled the scene, but returned later where they could be arrested by the called federal police (Bundespolizei). Police arrested the perpetrators but released them later. The perpetrators had already earlier sentenced for assault, aggravated assault and robbery. The state security took over investigations of the case. The victim suffered from a fracture of the nose and sought medical treatment in a hospital. 62

It is obvious from these examples that public transport ‘imprisons’ passengers and can lead to dangerous consequences, which public transport have to react upon to ensure the safe usage of their services.

I think it would already be a signal when discrimination against "minorities" would be [officially] penalized with a more severe punishment. (respondent to TGEU from Germany)

Many respondents reported discrimination by transport operators including their staff.

Alleged Identity Fraud

Another problem occurs when transgender holders of a ‘smart’ card are subjected to being “rudely accused [by inspectors] for not being the rightful holders of their cards solely on the basis that their expressed gender did not conform with the gender registered in the memory of the card” (case from Finland). Being subject to the goodwill of transport operators is a commonly reported problem in other countries. A similar problem was described in Hungary with those carrying photo-based travel. The holder was accused by the driver of “wearing a mask…” and in another case study the pass holder was threatened by an inspector with a penalty fee. The experience of this 20-year old transgender man, Finland, is exemplary for the many accounts throughout Europe:

“Also, the travel card has my identity number on it and when I try to get on a bus, the driver often claims it is not my card as it says female.” 63

Difference in Age for Accessing Discounted Tickets

There are also issues around accessing discounts for pensioners, when retirement-ages are different for men and women. For instance, in Austria, female pensioners can access the sale of discounted tickets for senior citizens earlier than men due to an earlier retirement age for women in Austria. This is particularly a problem in countries where women and men start claiming their pensions at different age and where transgender persons may not

60 TGEU Statement on Social Inclusion through Sustainable Transport
61 TGEU Statement on Social Inclusion through Sustainable Transport
63 Amnesty International The State decides who I am, 204, p. 20
lawfully be able to access all the rights related to their gender. Trans women might not be eligible to the same
retirement age as other women and only able to retire at the legal of men. Thus they are less favourably treated as
other women and are not able to access a reduced pensioner’s card for women. This might be the case in Austria at
the moment.

These incidents and examples of structural discrimination clearly show that public transport operators and policy
makers should take action to a) train personal and b) remove gender markers as prerequisites on personalized and
discount tickets, to enable trans people’s equal access to public transport.

• Sports and Fitness Clubs

Trans people may face problems in a number of areas in the field of sport, in particular when they
want to access single-sex services and facilities. Some trans women still have to change at the men’s
locker room even when they have had their name changed.

In Germany, a trans woman received the written reply from the fitness company that she could not become
a member as she had not undergone gender reassignment surgery and therefore could not possibly be
allowed to use the female changing rooms. This would create discomfort for and pose a threat to other
female customers.

More generally, discrimination on the ground of sex, gender identity and gender expression in the
world of sport remains a serious problem. It has been brought to public attention when Caster
Semenya had to undergo gender verification tests after winning the 800 m gold at the world
championships in August 2009. It’s worth wondering if gender should be the only criteria when
building categories for sports competitions.

A trans woman from France indicated that she is effectively precluded from participating in competitive
sports as a result of the fact that she cannot change her gender marker on her passport. The reason for this is
that in France she can only change her gender marker on her passport following a divorce from her partner
— something she does not intend to do.

• Housing

In a US-wide study on discrimination experiences of transgender persons, about a fifth (19%) reported having been
refused a home or apartment and 11% reported being evicted because of their gender identity/expression.64

The Greek Transgender Association reports that tenant associations organize and lobby against transgender tenants,
simply for the reason that they are transgender. As a result many landlords dismiss trans people, who face difficulty
to get another apartment.

Implementation of the Goods & Services Directive in Member States

Mapping the exact application of ECJ case law and transposition of the Goods & Services Directive with regard to
gender reassignment is rather complicated.

64 Grant j. et al, Injustice At Every Turn: A Report Of The National Transgender Discrimination Survey, 2011
To illustrate why an explicit reference to gender identity is necessary to be included in the substantive legal text of Directive 2004/113/EC it is helpful to look at the implementation process of the Gender ReCast Directive (2006/54/EC) and its then introduced reference to gender reassignment (Recital 3). The European Network of Legal Experts in the Field of Gender Equality assessed in 2009 how member states had gone about the changes and clarifications the Gender ReCast Directive brought, including a special question on gender reassignment. It found that many member states had not undergone a thorough implementation process, basing their lack of transposition on the premise that all of the provisions were already included in national law. As a consequence protection on ground of gender reassignment was ‘overlooked’.

The FRA (2010)\(^{65}\) and EQUINET (2010)\(^{66}\) conducted studies about the coverage and meaning of gender reassignment in domestic legislation. Both of these studies shed some light on the differences of understanding of gender reassignment across the European Union, and the diversity between the extensive coverage provided in a handful of countries, the lack of clarity on the extent of coverage in some others or even no coverage whatsoever.

In addition to the above mentioned studies, in 2011 a questionnaire was circulated by ILGA-Europe with the support of Equinet among National Equality Bodies (NEBs) asking them whether: (i) there is express or implicit protection against gender identity and gender expression discrimination in national legislation, (ii) the NEB is provided with the remit to investigate cases of discrimination on the ground of gender. The results\(^{67}\) show that there are great variations across the European Union and EEA countries when it comes to coverage of trans people under domestic law, with several states not meeting the standards that were set by ECJ case-law. Indeed, based on the information that was collected, it appears that Bulgaria, Italy, Liechtenstein, Lithuania, Malta, Poland, Portugal and Romania fall short of meeting the established principle including gender reassignment within the meaning of sex. The situation in Cyprus, Iceland, Latvia, and Luxembourg is unclear and coverage is entirely dependent on the respective NEB’s willingness. Austria, Belgium, Denmark, Estonia, Finland, France, Greece, Ireland, the Netherlands, Northern Ireland, Norway and Slovenia seem to meet the requirement even though they do not include an express reference in the law. In the Czech Republic and Slovakia the ground of sex is expressly extended to cover sexual identification (and gender identification in the latter) while Germany, Great Britain, Hungary, Spain, and Sweden have an autonomous ground that is equivalent to gender reassignment or gender identity and gender expression. Belgium reviewed has undergone a review of existing legislation and introduced an autonomous ground of gender identity and gender expression in domestic law, while Finland is still undergoing a review aiming at introducing the same level of protection, thus joining the growing number of countries that are opting for a separate ground of anti-discrimination.

While the above assessment may seem to indicate that there is a five-tier distinction\(^{68}\), a more nuanced review is necessary. EQUINET acknowledges this in its publication by stating that, “[T]here is some variation in the scope of protection afforded to transgender people depending on which Member State they happen to live in: for example, in

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\(^{67}\) For details of the report and the detailed answers by the National Equality Bodies see 2011 joint submission by TGEU and ILGA-Europe: http://www.tgeu.org/sites/default/files/Report_on_gender_discrimination_in_employment_and_access_to_goods_and_services_June2011.pdf

\(^{68}\) (i) No coverage (ii) unclear (iii) according to ECJ case law (iv) according to ECJ case law with an express clarification of sex including trans people (v) autonomous ground
Austria, discrimination arising from gender reassignment covers discrimination on grounds of gender reassignment and gender identity; in Cyprus discrimination on grounds of „sexual identification“ is deemed to fall within sex discrimination.\(^{69}\)

According to the Commissioner for Human Rights of the Council of Europe;

> “the absence of explicit recognition of gender identity in non-discrimination legislation also has an impact on its inclusion in the work of equality bodies and National Human Rights Structures (NHRSS). […] In addition, these organisations often lack the knowledge and competence to deal with gender identity discrimination, and would therefore require training before embarking on this work […] The need for national non-discrimination legislation in all Council of Europe member states, which includes gender identity as a ground for discrimination in the labour market is thus evident. It is particularly important that changes to non-discrimination laws are also accompanied by awareness-raising campaigns for employers and employees so that the size and the seriousness of the problem are understood. Employers should be better aware of the situation of transgender people to guarantee a safe work environment for all”.\(^{70}\)

Indeed, gender reassignment is not in itself a ground of anti-discrimination but a process that many trans people undergo. In some countries, the term is restrictively reserved for transsexuals, while in others it is applied more broadly to cover all trans people irrespective of whether they intend to undergo any form of physiological gender reassignment or not. A precise assessment on the scope that the term is provided in domestic settings remains difficult. This is due to the fact that in several states few cases were considered by courts and equality bodies and hence to date a legal interpretation of the term is still academic. Additionally, beyond the phrasing of the law, it is important to review trans people’s access to justice through the domestic NEB structure and the judicial system.

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**Access to Justice on Basis of Gender-Based Discrimination**

The effectiveness of the European legal framework very much depends on the capacity of victims to access justice. This can be done through Ombudsmen or national equality bodies and not necessarily through the court. However, alternative dispute settlement mechanisms are not necessarily more accessible and visible.

The length of proceedings and the costs of legal representation are major issues to explain the reluctance of many victims to seek redress when discrimination occurs.

From a general point of view, judges often lack awareness on discrimination cases, and for instance, the practical implementation of the requirement of the reversed burden of proof seems problematic in many cases\(^{71}\). But also Equality Bodies might be unfit to interpret the legal framework correctly, as the example from Lithuania shows. In 2010, the then Lithuanian Equal Opportunities Ombudsman publicly stated\(^{72}\) that the [Gender ReCast] Directive

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\(^{70}\) Issue paper, « Human rights and gender identity », Commissioner for Human Rights, Council of Europe

\(^{71}\) « Comparative study on access to justice in gender equality and anti-discrimination law », Milieu, February 2011

\(^{72}\) Source: report by Vytautas Valentinavicius published on gayline.lt
“regarding trans people is only a guidance for Member States”. Ignoring the ECJ-case law clearly establishing trans discrimination to fall under sex/gender-discrimination, she claimed “In Europe the issue is still pending, there is on-going discussion as to whether the issue of trans people can be attributed to the issues of gender equality”. While she admitted that there are “homosexual rights”, the fact that explicit protection of trans people in EU-law is lacking, made it easy for her to single out “transsexuality as a disease”.

The main obstacle to the effectiveness of anti-discrimination legislation at national level is probably the fact that sanctions are not considered to be dissuasive enough. In the case where equality bodies are not able to take legal actions on behalf of the claimant, effective remedies remain out of reach and discrimination-victims do not report to equality body. As a consequence clarification of existing legal protection through a court-case becomes even more unlikely.

TGEU encourage its members to take cases to equality bodies and to use litigation strategies at domestic level to ensure the recognition of gender identity as a ground of discrimination.

2. Are there any best practices in the fields covered by the Directive, which you would like to share?

The Best Practice Catalogue ‘Human Rights and Gender Identity’ contains numerous examples on available practical experience with improving access to goods and services for trans people.

EQUINET work to increase national equality bodies’ coverage of gender identity:

In 2009, EQUINET conducted a survey to assess its members’ work on trans issues and to raise awareness on how equality bodies can address discrimination against trans people. The findings have shown that while some equality bodies were already undertaking various activities (such as research, cooperation with trans organisations, or providing training on trans issues) there was still a lot of room for improvement.

EQUINET thus followed this survey with a review of what equality bodies could do to enhance trans people’s equality. In 2010, EQUINET published Making Equality Legislation work for Trans People73, which provides various recommendations to its members and to the European institutions.

The ten recommendations for member equality bodies revolve around firstly making trans issues a concern and taking the time to understand them; secondly the internalisation of the knowledge into the equality body’s work and make trans issues visible; and thirdly the development of an outwardly approach through strategic casework, engagement with other stakeholders and direct communication with trans people.

EQUINET also provides three recommendations to the European Union: (i) “Name trans people in the equal treatment Directives,” (ii) “Proactively advance the situation of trans people through implementation of the new strategy for equality between women and men,” and (iii) “Support advocacy initiatives by trans people at Member State level.”74

Following the launch of this publication, EQUINET organised a roundtable at the European Parliament which brought together representatives of the European Commission, European Parliament, EU Agency for Fundamental Rights, European Institute for Gender Equality (EIGE), member equality bodies, civil society, and other

73 EQUINET (2010), Making equality legislation work for trans people, Brussels: EQUINET
74 Ibid, p 11-12

Trans People and the Goods & Services Directive

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stakeholders to discuss the implementation of the document particularly with regard to ways of making equality legislation work for trans people. Subsequently, EQUINET also provided training sessions to its members on ways of implementing existing gender equality legislation taking into account gender identity dimensions.

Several equality bodies, for instance in Belgium, Denmark, Germany, Finland, France, Ireland, Italy, the Netherlands, Sweden, the United Kingdom have taken specific measure to promote equality of trans people. These were foremost creating research about the situation of trans people and/or including gender identity in other research. Some organized conferences on specific aspects trans—people face. An approach TGEU would like to highlight is the cooperation and partnership with trans organisations. Where rights holders are involved in direct communication, they can represent their views and demands much more effectively to decision makers. For example the Danish Institute for Human Rights had a trans organization in its committee. The Finnish ombudsman, after years of dialogue with trans and LGBTI organisations, gave advice to the government, which was instrumental in supporting legislative changes, which would result in extensive protections on grounds of gender identity and expression. In addition, equality body took steps to protect trans people from discriminatory practices, for example through the publication of guidelines that clarify how the Act on Equality of Men and Women is applicable to trans and intersex people.75

The United Kingdom’s Equality and Human Rights Commission (EHRC) is very proactive in relation to the rights of trans people. One of the highlights of the work of the EHRC is the publication of various guidelines76 that aim to guide public officials and service providers to provide inclusive and respectful services to trans people no matter the field that they operate in. The UK Home Office published 2011 its first Transgender Action Plan77, which in a comprehensive manner lays out its planned actions on discrimination against trans people. It includes inter alia promoting the rights of transgender people by supporting businesses and public bodies such as schools and health services so they have the right information to support transgender people

75 www.tasa-arvo.fi/en/discrimination/gender_minorities
‘No Human Being fits into a Box!’ Trans-inclusive campaign on gender equality by the German Federal Anti-Discrimination Body

National equality bodies that do not yet have a clear legal remit to cover the ground of gender identity are encouraged to be proactive. They should base their actions on the principle that discrimination against trans people is gender-based. They should also consider conducting research and awareness raising.

The Gender law in Belgium protects since April 2014 also discrimination related to gender identity and expression in the areas of employment, goods and services, health, social services and participation in the public sphere.

The Special Eurobarometer on Discrimination 2012\(^78\) introduced gender identity as a new category in the monitoring of attitudes towards certain minority-groups. Fact-based research helps to monitor and explain discrimination related to gender identity.

The National Health Service (NHS) has made its trans people’s health support visible both through its work and on its website, where a dedicated webpage\(^79\) was set up. The NHS also developed various guidelines and leaflets that aim to provide support to trans people and their families, and improve the knowledge of healthcare practitioners.

Facebook has introduced for its customers using the English interface a choice of more than 50 genders to choose from in their profiles. Beyond the improvements this brings to its gender-variant and transgender clients, it has sparked a wide public debate that two genders are not enough.

\(^{78}\) http://ec.europa.eu/public_opinion/archives/eb_special_399_380_en.htm

\(^{79}\) www.nhs.uk/Livewell/Transhealth/Pages/Transhealthhome.aspx
3. To your knowledge, has implementation of the Directive had any specific impact in particular areas of goods or services in your Member State? What areas, if any, were affected? What has the impact been?

N. A.

4. Have citizens/consumers had any specific reaction to the implementation of the principle of equal treatment between men and women in access to goods and services?

Discrimination of trans customers is still widespread and one of the main concerns is the lack of rights awareness as shown under Question 1. However, positive action, e.g. by national equality bodies to increase legal literacy and the level of protection has been noted. It is still rare that transgender victims of discrimination or harassment pursue their rights under the Directive and take action.

More research is needed to establish how the principle's implementation can stop discriminatory treatment and harassment of trans people in access to goods and services.

5. Would you consider it desirable for the principle of equal access to goods and services for men and women to cover education and the content of media and advertising? For what reasons?

A. Education:

TGEU strongly believes that the principle of equal access to goods and services for men and women should also be extended to cover education and the content of media and advertising.

Negative attitudes and conduct towards transgender persons and gender diversity is widespread in educational facilities. Thus, only 10% of transgender respondents to the FRA study had never observed anything in this regard. For the majority (69%) negative comments and conduct occurred regularly in their school life. This stigmatisation impacts transgender students and staff in their personal development, self-esteem, and well being and thus also school/professional performance, forcing many to quit school early.\(^80\) The Equality and Human Rights Commission Trans Research Review\(^81\) published in Autumn 2009 reported that:

- A higher percentage of trans people experience bullying at school (75%) than lesbian, gay and bisexual

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\(^80\) AS/Ega (2014) 14, 3 April 2014 Committee on Equality and Non-Discrimination Parliamentary Assembly of the Council of Europe, Memorandum Discrimination against transgender people in Europe

\(^81\) See Provision of goods, facilities and services to trans people: Guidance to public authorities in meeting your equality duties and human rights obligations http://www.equalityhumanrights.com/uploaded_files/PSD/psd_trans_guidance.pdf pg.40-41
64% of trans men (born female) and 44% of trans women (born male) had experienced bullying at school from fellow pupils as well as staff.

There may be links between homophobic and transphobic bullying in schools since often the bullying is sparked by expressing behaviours that are seen as breaking gender norms rather than sexual orientation. As such, addressing homophobic bullying in schools may also help challenge transphobic bullying.

Research conducted by the Equality Challenge Unit (ECU)\(^82\) in 2009 suggests that trans students encountered higher levels of negative treatment than LGB students, and disturbingly high levels of threatening behaviour, physical abuse and sexual abuse – particularly from other students. In particular the ECU survey reported that of the trans student respondents:

- 22.6% have been bullied or discriminated against since starting university.
- 17.2% have been made to feel uncomfortable in class by lecturers and other students in group work.

The ECU also suggested that such accounts perhaps contribute to explaining why 28.5% of trans students have taken time out of their course which is higher than the national average, and suggest a need for the sector to provide more formal support for LGBT students, and training for higher education institution staff about the need to be sensitive to the types of issue that may affect LGBT students’ academic performance.\(^’\)

Unfortunately, sometimes school staff engages in discriminatory behaviour as shown by the case of a young transgender woman in Athens: the Greek school administration neither stopped the physical and verbal attacks against her from the Head teacher, nor reacted to an attempt by other students to douse her in a flammable liquid and burn her. Even if the Greek Ombudsman stood up for her, the transgender girl had to leave school.\(^83\)

But also administrative barriers relating to how name and gender is recorded in official school records and access to gendered facilities can substantially impact transgender persons’ school performance and well-being. In the Provision of goods, facilities and services to trans people: Guidance to public authorities in meeting your equality duties and human rights obligations, the UK Equality and Human Rights Commission (EHRC) details how trans people can be discriminated in the provision of education:\(^84\)

“Trans people will have accessed education services at some point in their lives. Many will have been aware as children and young people in school education that their gender identity differed in some way from their birth sex, although few will have felt able to explain this to others until older. In addition, some trans people may decide to return to further or higher education at the time of beginning gender reassignment in order to retrain for a fresh start in a different career.

Trans people may face problems in a number of areas of education service provision. Particular issues include:

- Single-sex services and facilities, especially those which require people to share living, changing or sleeping spaces, for example:
  - boarding school dormitory facilities

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\(^82\) Equality Challenge Unit 2009 ‘The experience of lesbian, gay, bisexual and trans staff and students in higher education’ http://www.ecu.ac.uk/publications/files/lgbt-staff-and-students-in-he-report.pdf/at_download/file

\(^83\) http://www.ilga-europe.org/home/guide_europe/country_by_country/greece/scalable_transphobic_behavior_against_trans_schoolgirl_teacher_who_supported_her

- single-sex student halls of residence
- physical education changing and showering facilities, and
- toilets within schools, colleges and universities.

• School uniforms which are specific for boys and girls, for example:
  - girls must wear skirts

• Records which may hold personal information regarding a trans person’s previous name and gender, for example:
  - learner records
  - student union societies, and
  - alumni organisations.

• Documents which specify the recipient’s name and require to be reissued if the recipient undergoes gender reassignment, for example:
  - student matriculation cards, and
  - education qualification certificates and examination results transcripts.”

Trans People’s experiences and evidence of discrimination in Primary and Secondary Education

The question of ensuring a safe learning environment for transgender persons at a young age is an urgent one as the following examples from Spain and Malta show:

A catholic school in Spain, financed through public money, refuses to respect the gender identity of a 5-year old pupil as being 5 years old is “too late to change the gender”, as everybody is used to see her as a boy. Spanish education law recognizes the obligation of schools to attend to ‘diversity’ of the students. In 2013 the local Government made an order to schools to follow an interpretation that would interpret the term 'diversity' to include gender identity and expression. The order made it mandatory for schools to recognize the gender identity of any student who - or whose parents- asked for it. Despite these orders, the respective school does not recognize the child’s gender identity. The public prosecutor on gender determined that no discrimination occurred in this case, so the school will remain discriminating transgender children.85

In the Maltese case of a four-year old male-to-female transgender girl problems started when her parents asked the state school to register her and treat her as a girl, which eventually ended up before the Education Division within the Ministry of Education. The Division refused. A meeting organised with this Division and with the Commissioner for Children (office to monitor implementation of the CRC) did not yield real outcomes as the authorities fear to set a precedent. Child protection services had been asked to intervene, and they initially found no child protection issue and confirmed that the child was fine with no instability or issues at home. The Government filed a court case, on a legal basis, which is questioned by Maltese Human Rights experts, asking the Court to decide how the Education Ministry should treat the child. The Court appointed an expert panel, which panel conducted extensive interviews, research and looked at the family’s history. The panel report recommended that the child is too young for such decisions to be taken now, that at this stage a gender neutral approach would be best, but tending to lean on the boy approach, and not the girl. The panel recommended regular monitoring and an updated assessment in some years. The Court now needs to decide on the basis of the report. The child has not been to school throughout these processes.

A second identical case of a six-year old is still at the level of the Education Division, which has requested a series of psychological and psychiatric assessments. Initially the parents agreed and they do have certificates confirming that the child is trans, but they are now refusing to pass the girl through more assessment, interviews, etc. The child

85 Email by a Spanish trans rights activists on 25 Jan 2014
attends school as a boy, which has a severe impact on her emotional state since outside school she behaves and is treated as a girl.\textsuperscript{86}

Accounts that have been submitted by trans people as part of the Hungarian study: "LGBT Survey 2010" carried out by Hattér Társaság a Melegekért (Hungarian LGBT organisation):

\begin{itemize}
  \item "At proms girls traditionally have to wear skirts, which of course I refused to do. Since I had no other way to avoid this situation, I went to the doctor and asked for a sick leave. When I returned, my form master was furious: she knew very well why I was not there. She threatened to kick me out of school, even though I had a sick note."
  \item "I will never forget that my chemistry teacher and a few students were making fun of transsexual people, arguing that only those people have an operation who are so rich they don't know on what to spend their money on"
  \item "I nearly starved to death in the dormitory as I was too afraid to go to the canteen because they always made fun of me. It was also in the dormitory that roommates could not handle me being different and had me kicked out of school. After that I had to travel hours every morning to get to school"
  \item "Bullying was a part of everyday routine in primary school, in high school only extreme right wing students harassed me. I have never been lucky with biology teachers, especially in high school. It got to the point that I requested to do the qualifying exam so that I don't have to go to classes. Finally after hours long discussion between the teacher, my then girlfriend and me we decided not to take the exam"
  \item "The kids (my own class), started talking about me behind my back, and after that they opposed me in every situation where they could, they hated me massively"
  \item "My classmates figured it [being trans] out from someone else and also because of my appearance (I look very boyish even in girls clothes, I look like a girlish boy) and they have been gossiping and making comments. Very often in public spaces as well, such as parks, canteen or in front of the teacher. This was all related to politics - I am not part of it, but many of my classmates, especially boys, are open followers of extreme right wing political views, they go to these events, speeches; and they did not like my "silence" they felt like our differences, our opposition should be made even bigger"
  \item "I was the dog on whom everyone used to release their tension without the risk of being punished."
\end{itemize}

But also single-sex educational facilities can pose a problem for transgender students. When in co-education trans and gender variant children can easier blur in expressing a gender differing from official records, this becomes impossible in an all-boy or all-girl school. A transgender woman from Malta recalled how her world turned dark when she moved from a mixed primary school to a boys-only secondary school. She was teased, called names, pushed around, had balls and chairs hurled at her. As she entered her teens, things did not improve. She recalled a time when she was 17 and went to a club, wearing women’s clothes and make-up. When she tried to go to the ladies’ toilet to touch up her make-up, the bouncer head-butted her in the face, breaking her nose and teeth.\textsuperscript{87}

**Trans People’s Experiences and Evidence of Discrimination in Higher Education**

The following example of a trans-male student at a Berlin-based University exemplifies how transphobic ridicule spiral into sexual harassment if not impeded.

Summer-Semester 2010 in an ‘intercultural philosophy’ seminar:

\begin{quote}
“Upon coming-out as a transgender person at the seminar and asking for being addressed with a male pronoun, I experienced tremendous problems in getting heard by the professor. My wish for being
\end{quote}

\begin{flushright}
\textsuperscript{86} Source: Email of the legal advisor in both cases to TGEU in an Email in May 2014  
\textsuperscript{87} ‘I’ve been fighting for a human right for seven years’, Times of Malta, January 20 2013
\end{flushright}
addressed with a male pronoun was completely ignored by the professor. All I had to say about gender (I have finished my 2nd major in “gender studies”) was invalidated. Obviously, the idea that I might be a guy was out of the thinkable. In later sessions, after multiple explanations and with support of other students from the seminar, the professor continued with his expressions and comments. The professor did not even apologize even after I expressed my strong discomfort with the situation. Other students joined in and expressed their discontent with the situation. The professor continued, pointed at me and stated, “This woman wants to be a man!” and laughed.

Then, I kept on being reduced to being trans and was asked to speak as a representative (for trans people) and was pressed to change the subject of my paper to something related to trans, even though the topic of the seminar was intercultural philosophy and transgender was not planned to be covered – however, this did not change the expressions or usage of the wrong pronoun by the professor.”

The testimony above clearly illustrates that student victims of harassment are likely to get discouraged and to feel unable to achieve a complete course. In this case, harassment even led to discrimination (lower marks) and it had a very negative impact on the general learning environment. As a result, the student felt being ignored, not understood, both as a person and a professional. He was very sad and angry, but he felt that it was going to negatively reflect on his marks if he insisted further on clarifying the issue. It provoked insecurity about whether he should complete his studies at all, and significantly reduced his motivation to commit to his studies. Additionally, other students in the seminar expressed that they felt uncomfortable and that the professor’s behaviour negatively affected the working atmosphere. The situation further escalated towards the end of the semester:

“I went to his office to discuss the topic for the exam. He referred to me with the female pronoun, so once again I said I preferred the masculine one. He told me I was the first trans person he had ever met and that he had a lot of questions. At some point he asked me if I had male or female genitals and he tried to grab in between my legs. I told him he was not allowed to do that. He came towards me and then he started touching me. I was against the wall. I screamed and then ran away.”

The student was deeply traumatized from the assault and as a result could go to the university only accompanied. He was not able to continue his studies for the rest of the semester and had to postpone an exam as a consequence.

He turned to the university’s gender equality body, which was very understanding and helpful. However, the faculty was very reluctant to take on the case. When it eventually dealt with the case, it ignored the student’s gender identity referring to him as female, and thus also completely dismissed the motive of the assault. The student was told the fact that he had not pressed criminal charges against the professor made his account of the incident “implausible”. Discrimination-protection with clear reference to gender identity would have helped to establish a clear case and to speed up its handling by the university officials.

**Linkage of Legal Gender Recognition and Education**

In addition, when having their name changed, trans people who are still studying, have to cope with a strong reluctance from various stakeholders (staff, students, administrative authorities) who do not immediately accept the name change and its implications. They might face difficulties in having the name changed in all the records (students associations, matriculation or qualification certificates for instance) or in getting a new uniform (when it is specific for male or female students). Additionally, since gender recognition legislation is only accessible at the earliest at the age of 18, those students below this age often have no legal power to authorise a change of name and

88 Amnesty International *The State decides who I am*, 204, p. 14
gender with regard to their school documentation. Only four member states (Bulgaria, Germany, France, Hungary)\(^8^9\) allow for a transgender minor to official change their name and gender marker. In the remaining MS it is often impossible for a transgender student to have school records reflect their true gender identity. Having documents that reflect a transgender person’s gender identity can help teachers, peers and their parents to understand the seriousness of the situation and adapt their behaviour. Dan, a young transgender man from Ireland, told Amnesty International that school authorities understood his situation when he presented a certificate from his psychologist explaining that he was transgender, but there was a mixed response from them. For instance, they allowed him to wear a tracksuit bottom (as opposed to the usual boy’s trousers) and registered him with his male name but they did not allow him to use the male toilets. When he came out to his classmates, the religion teacher changed his name to Daniel on the registry roll but when the year head found out, it was changed back to his legal female one.\(^9^0\) Andy, an 18-year-old transgender man living in Ireland, said:

“For me [legal gender recognition] is something to back me up… and make sure that teachers and the headmaster accept my gender and allow me to use the [male] bathroom.”\(^9^1\)

TGEU receives many accounts where the non-recognition of a transgender person’s gender identity, transphobic attitudes in the school and lack of legal protection fuel into each other with a severe impact for the individual concerned, as the following case from Greece illustrates.

Anna, a 26 year old transgender woman interviewed by Amnesty International, experienced discrimination and violence in an evening school for secondary education in Athens, Greece. School authorities refused her permission to express her gender identity. She told Amnesty International: “I went to the headmaster’s office in order to enrol and he asked me if I was there to enrol my brother. I answered no and I told him my name was Anna. His colleague interrupted us and told him my name was P. [Anna’s legal male name]. The headmaster told me that he had been informed about my situation and that he wouldn’t accept any gay or trans in his school. He said I had to cut my hair, stop wearing make-up, wear men’s clothes and generally act as a male. He tried to alter my identity and suppress my rights... I was frightened and I accepted those conditions for a month... the worst month of my life. Other pupils made fun of me but when I told the headmaster they were behaving like that because I was a trans person he replied that I was not trans because I hadn’t changed my gender. He said I was a gay man who wanted to show off in female clothes.” Anna was eventually allowed to wear clothes that expressed her gender identity. Nevertheless, other pupils continued to harass and threatened her with violence and she felt school authorities did not take effective action to put an end to the situation. In June 2012, Anna was victim of a serious attack when a pupil and his friend poured gasoline on her and attempted to set her on fire just outside the school premises. Anna’s lawyer also informed amnesty International that while a police car arrived at the scene of the incident, the attack was not subsequently investigated. Despite the intervention of the Greek Ombudsperson, Anna continued to face hostile and transphobic behaviour by the school administration after she registered to the upper secondary school in September 2013. Anna also reported being subjected to verbal abuse and harassment by other pupils because of her gender identity. In January 2014 Anna told Amnesty International that she felt forced to leave school because of the harassment she had experienced.\(^9^2\)

Rectification of Educational Documents
Recognition by educational institutions for transgender persons who have changed their name and gender marker officially is throughout the Union problematic. Citing administrative rules to prevent fraud,

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\(^{89}\) TGEU, Trans Rights Europe Map 2014  
\(^{90}\) Amnesty 2014, p. 67  
\(^{91}\) The State decides who I am, 2014, Amnesty International p. 28  
\(^{92}\) Amnesty International The State decides who I am, 204, p. 13
educational institutions often refuse to re-issue certificates. As a result, when applying for a job trans people need to come-out and explain each time the difference in names on their diplomas and ID-documents. TransInterQueer, a Berlin-based trans, intersex and queer organisation reported the following case:

“The secretariat of my secondary school was very un-friendly in their general attitude when I requested to have a new university- entrance diploma. They first sent me an “official” copy of the diploma including a reference to the court order by which my name was changed. A rectified diploma would have significantly lowered my chances in an application process for a job and the reference to a court decision would certainly not have been very helpful either. They finally just gave me a new diploma without any references after I cited the German Transsexual law and it’s privacy protection clause.”

A Dutch Trans man had to take a case to the equality body in the Netherlands in order to change the old female name of his diploma to the name that he acquired after undergoing gender reassignment. While he did win the case, and the Dutch Minister immediately vowed to change the policy for all educational institutions in the country. Transgender Europe has good reason to believe that such discrimination is still commonplace in the rest of Europe. In fact, Háttér Társaság a Melegekért (Hungarian LGBT organisation) gave the following account of discrimination:

"When I was applying for my new diploma they wanted to put in the documents that I request this because of a change of gender and name. I said I'd rather not have it at all then. At the end we managed to settle the issue, so they only put there 'change of name'"

The possibility of change of the name on the diploma is particularly important as trans people already strongly suffer from discrimination in accessing employment and their situation should not be worsened by the non-recognition of their diploma. The case presented below combines problems linked to the name’s change and cross-border issues. This situation is not a single case as more students are studying abroad, including trans people.

“A Romanian trans man residing in Germany holds a Romanian University entry exam certificate (Abitur), and has changed his name into a male name in Germany. He also plans to change his legal gender according to the German transsexual law (Transsexuellengesetz – TSG), which is available to residents, if their home country has no equivalent gender recognition legislation. It is expected that Romanian authorities will recognise the decision according to German law and issue a new Romanian birth certificate to him, however, there is no regulation that would ensure that his academic certificates are changed as well. Contradictory names on certificates and identification documents may pose a serious threat to his future educational career and employability especially in view of possible scepticism towards foreign academic certificates. He presented his situation to the Office for the Recognition of Foreign Qualifications at the Regional Commission in Stuttgart and was told that despite the prohibition of disclosure (Offenbarungsverbot) in the German transsexual law there was no possibility to change his school leaving certificate or issue an equivalent with his male name, that would be recognized in Germany."

B. Media:

TGEU strongly believes that media and advertisement should fall under the principle of equal treatment of women and men.

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94 Köhler R., Daily Routine, p. 15
Transgender persons are faced with little understanding, let alone acceptance. A study in Germany found that 45% agreed to the statement that they have no or little understanding of those who intend to or have changed their gender.\(^5\) This has been confirmed in the to date largest survey in Europe asking about the public perception of transgender people, the EU Eurobarometer 2012\(^6\) revealed that only 8% would know a trans person personally, while 13% had no opinion on the prevalence of trans discrimination (compared with 8% for sexual orientation). On the other hand, stereotypes are the breeding ground for hate and violence. Exploitation, ridicule, misrepresentation, stereotyping, chivvying individuals, dehumanizing and depriving them of their privacy and dignity is unfortunately still the dominating hurtful experience of trans people with media and advertisement.

UK-watch dog NGO Trans Media Watch (TMW) found in its research *How Trans people experience the Media*:

- 78% felt that the media portrayals they saw were either inaccurate or highly inaccurate.
- 70% felt representations of transgender people in the media are negative or very negative, with just under 5% considering them positive.
- 67% […] said that seeing negative items about trans people in the media made them feel angry. 51% said that it made them unhappy, 35% that it made them feel excluded and 20% that it made them feel frightened. 60% reported that it made them feel bad about society. Only 2% said they were not bothered by it.

One respondent commented on negative representation of trans people in the media:

> "Negative experiences can be so very damaging[…] What troubles me is how common it is to see almost throwaway references to trans people that are so cruel and damaging no one would consider saying it about anyone else or group... And what is even scarier is how commonplace and accepted it is. There are weeks when I will see several examples, especially in sitcoms or discussion programmes or films that will simply reference how freaky, disgusting or hilarious trans people can be. Sitcoms especially seem to have picked this group recently... and more and more I see cheap bad jokes made at the expense of trans people."

TMW believes that the cumulative contribution of the broadcast media to general feelings of exclusion and unhappiness amongst trans people and to the endemic climate of public hostility towards them remains very significant.

**Effects of the Media**

Research suggests a direct link between inappropriate media representation of trans persons and physical and verbal attacks against transgender persons.\(^7\) Thus, Trans Media Watch found that:

- 21% of respondents had experienced verbal abuse that they believed was associated with representations of

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\(^6\) European Commission Special Eurobarometer 393 *Discrimination in the EU in 2012*, 2012

\(^7\) Trans Media Watch (UK), How Transgender People Experience the Media (April 2010)
transgender people in the media on at least one occasion.

- 8% reported that they had received physical abuse that they believed was connected to an item or items in the media.

The effects of the media on trans people’s lives cannot be underestimated as the following testimonies\(^98\) show:

"My mother's perceptions of trans people derived almost exclusively from what she'd seen portrayed on television - she referenced various programmes in an attempt to paint trans people as pathetic, unconvincing and inherently narcissistic. She rejected all suggestion that transsexual people could ever be in any way 'normal'. She has now refused contact for several years."

Another respondent reports:

"An article by Julie Bindel about how damaging gender reassignment surgery was led my family to say that I was mentally ill and ruining my life and needed help[...]. I lost my family - parents and siblings - because of the way this is portrayed by the media."

Mentioned Julie Bindel was also the source of an outcry when in January 2013 the Observer's Julie Burchill attacked and insulted transgender people in her column in defence of another transphobic piece by Bindel. Even though Burchill called trans people "bed-wetters in bad wigs," "dicks in chicks' clothing," etc. the British Press Complaints’ ruling\(^99\) on the Column could not find the published piece in contradiction to the Ethic Code of the Media:

„The clause does not cover references to groups or categories of people. The language used in the article did not refer to any identifiable individual, but to transgender people generally. While the Commission acknowledged the depth of the complainants’ concerns about the terminology used, in the absence of reference to a particular individual, there was no breach of Clause 12 [(Discrimination)].

The reasoning reveals the struggles and limitations of a self-controlling media-body and shows that superior standards inclusive of gender identity and expression are needed to protect those who are most vulnerable.\(^100\)

The combination of transgender and children is a particular well-sought topic by the media, as it fuels an underlying fear that trans people are imposters with paedophile intents. “Trans children attract an indirect form of hostility in the press,” finds Trans Media Watch, “with articles often suggesting parents or teachers who aim to provide sympathetic [sic] environments for them are sexualising them or have a sexual interest in them.”\(^101\)

This can have tragic consequences as the case of primary school teacher Lucy Meadows shows.

Lucy Meadows was a primary school teacher at St Mary Magdalene’s C of E Primary School, in Accrington (UK) whose male-to-female transition just months before her suicide, triggered national-level media reactions of "ridicule and humiliation" and "character assassination". The media accused her of not being appropriate for the job, suggesting that her transgender identity made her unfit to teach primary

\(^{98}\) ibid. P. 9
\(^{99}\) http://challengingjourneys.wordpress.com/2013/03/20/press-complaints-commission-ruling-on-julie-burchill-article/
\(^{100}\) The column had triggered some 800 complaints to the Press Complaints Commission (PCC). An internal investigation of the Observer had found a breach of the paper’s own publishing standards.
\(^{101}\) Trans Media Watch, “Hate Speech against Transgender and Intersex People in the UK Media” (collection of reports between 2009 – 2013)
pupils. Meadows complained to the Press Complaints Commission on 3 January about "harassment from the press" and particularly a column written by Richard Littlejohn in the Daily Mail on 20 December 2012. In a piece Headlined "He's not only in the wrong body … he's in the wrong job", Littlejohn asked whether anyone had thought of the "devastating effect" on Meadows's pupils of her change of gender. Lucy Meadows took her life in March 2013. While her death was classified as suicide, the investigating coroner and close friends of the victim cited the on-going media-slander as a decisive factor.102

"Deer spears sex-swap Kate"; "Sex swap scientist in fight for life"; and "Sex-swap scientist gored by stag." were the headlines about Kate Stone who nearly died from a stag attack. The media reporting had a distressing impact on her live.

"I have no regrets about the accident. I have never for one moment thought, 'Why me?' But some of the reporting was horrendous. The media doorstepped my family, my friends and colleagues. On radio, one 'expert' was asked, 'Was Kate gored by a stag because she was transgender?'

The media tried to find out when I'd had my sex change. They tried to find out my previous name. All of which was upsetting and irrelevant to what had happened.

A month before the accident I had been in a newspaper boardroom in a business meeting with senior management who were interested in utilising what my company does to bring paper to life. Transgender was never mentioned. Yet a month later their printing presses were rolling out all these deeply intrusive details about me."

Kate Stone complained against six newspapers, which ended in a Press Complaints Commission negotiation that will have a future impact, and the papers admitting they were wrong. The Daily Mail, the Daily Telegraph, the Sun, the Scottish Sun, the Daily Record and the Daily Mirror – have agreed that the "sex swap" headlines and the reference to Stone's transgender status were inappropriate. They acknowledged that such references constituted a direct breach of the discrimination clause in the PCC editors' code. The code states that details of an individual's transgender status "must be avoided unless genuinely relevant to the story". All such references were subsequently withdrawn from the newspapers' online stories.103

Trans Media Watch see a further trend in this: “The implication of articles like Mr Littlejohn's is that trans people, by their very existence, place children at risk. This, in turn, perpetuates the assumption that transness is linked with paedophilia, placing trans people at risk. It also increases prejudice against trans children and intersex children, who may not have the option of concealing their difference.”104

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102 Different articles see for instance http://www.lancashiretelegraph.co.uk/news/10448625.print/
http://www.theguardian.com/uk/2013/may/28/lucy-meadows-coroner-press-shame

103 The Observer, Scientist Kate Stone hails landmark press negotiation over transgender reporting, 11 May 2014

104 Trans Media Watch, “Hate Speech against Transgender and Intersex People in the UK Media” (collection of reports between 2009 – 2013)
Article on 18 May 2014 The Mail on Sunday
Social media, such as facebook, twitter, online forums but also comments fields of online press-articles offer individuals an anonymous platform for propagating hate against trans and gender variant persons, often involving blunt incitement for violence against them, and reaching millions. Recent winner of the Eurovision song contest Conchita Wurst has been subjected to a ‘shitstorm’ of hate in the internet, often with thousands of other users ‘liking’ the made statements. German facebook-comments like “This Wurst filth-perverse husoo belongs into the gas chamber “, “Fuck this nasty Tranny, buddy. Directly burn [her] down.” or “Please, somebody shot her.” satisfy for criminal charges, but neither the owner of the facebook-page nor facebook take action to remove them or to press criminal charges.105

Reportedly, a 17-year old contestant in a Miss England competition received death threats over the Internet and as a consequence withdrew from the pageant. In covering this story Beauty queen contestant who used to be a BOY receives death threats from Internet trolls after entering Miss England competition the Mail Online intertwines unnecessary information from the individual’s private life, such as medical status, birth-gender and previous

105 taz.de „Die gehört in die Gaskammer“ Hass auf Conchita Wurst bei Facebook 14 May 2014 http://www.taz.de/1138480/
name.\textsuperscript{106} The fact that media reports about transgender individuals often contain a sensationalist level of detail using inaccurate and offensive language (“sex swap”) perpetuates the impression that it is acceptable to ask transgender individuals intrusive questions.

Unchallenged hatred online and in the press has also a chilling effect on the likelihood to report cases of harassment or discrimination, out of fear for unwanted media-attention. Article 10 of the Goods & Services Directive establishes the responsibility of Member states to prevent victimization. However, the fear of unwanted press-coverage rather equals “adverse treatment or adverse consequence as a reaction” when a trans-person goes public with a complaint or to legal proceedings aimed at enforcing compliance with the principle of equal treatment.

The Memorandum of Understanding\textsuperscript{107} prepared by Trans Media Watch with several major media organisations that share the basic principle that trans people are to be treated with accuracy, dignity and respect is most remarkable. The document focuses on: (i) eliminating transphobia in the media; (ii) ending misinformation about trans issues in the media; (iii) increasing positive, well-informed representations of trans people in the media; and (iv) ensuring that trans people working in or with the media are treated with the same respect as cisgender (non-trans) people. The memorandum of understanding has been well received as a very useful resource and has already been endorsed by Channel 4 and Women in Journalism.

Advertisement

What are seen as “mild mannered jokes” about transgender persons in advertisements are often deeply transphobic and impacts trans and gender variant people greatly due to the ubiquity of such ads. The UK-Irish betting company Paddy Power had to finally “voluntarily” retract a TV- and virtual “Ladies Day” spot, in which the audience is asked to “spot the stallions from the mares”, which was widely regarded as offensive and transphobic. The Code of the Advertising Standards Authority for Ireland refers not explicitly to transgender people. The ASAI found that “Since a large volume of complaints had indicated that the advertisement was offensive to transendered people, the Committee considered that the presentation in the advertisement had not respected the dignity of these persons.”

The “large volume of complaints” relates to a massive mobilization at the hand of the Transgender Equality Network Ireland and other Irish LGBT organisations. The Irish trans community is rather destitute and cannot be expected to mass-mobilize each time a transphobic add is shown. An explicit legal framework banning discrimination in advertisement related to gender identity and expression is necessary.

Special provisions

6. In your opinion, has implementation of the Directive in your Member State had any impact in terms of protection against harassment and sexual harassment in access to goods and services? Do you have any statistics?

7. Do you have any information on specific problems encountered by pregnant and breastfeeding women as regards access to goods and services?


\textsuperscript{107} http://www.transmediawatch.org/Documents/Memorandum%20of%20Understanding.pdf
As more countries are revising or adopting their gender recognition legislation without the necessity to prove sterility, issues of accessing pregnancy-related health care for legal males arise. For example, the computer system of a Swedish delivery room was unable to check-in a pregnant transgender man, because of the male gender marker. As a result, he did not receive the epidural he asked for and the attention of the medical staff was not entirely focused on the medical care, but rather on the technical problems.

8. Article 4(5) provides for an exception where a difference in treatment can be justified by a legitimate aim and the means of achieving it is appropriate and necessary. To your knowledge, what types of goods and services has this exception been used for? Do you know the reasons for which it was decided to except those sectors?

Specific services offered by member states in the area of legal gender recognition entail ‘abusive requirements’ (Council of Europe Committee of Ministers’ LGBT Recommendation 2010), such as forced sterilization and divorce requirement, which the European Court for Human Rights has accepted so far as falling within the states’ ‘margin of appreciation’.

Legislators insist on a trans person to not be longer able to procreate according to their biological function to prevent that the notions of biological and legal sex fall apart. Also, since rights and duties are connected with the (gendered) civil status as well as family associations, the legislator aims at establishing a consistent civil status.

Annulment or divorce of an existing marriage as a pre-condition to gender recognition is considered lawful in countries where marriages between two persons of the same legal gender are not permitted. This argument however ignores the fact that if the existing marriage has been lawful and does not cease to be valid upon the decision of one partner to obtain legal gender recognition.

Implementation in the financial sector
Trans people who do not intend to undergo gender reassignment, or are in the process of undergoing gender reassignment experience several difficulties in access to financial services, irrespective of the service that they require. As a result, they will always need to come out to the people/companies from whom they are accessing the service as their accounts or bankcards will state a different gendered name that does not match their own gender.

An 18-year old transgender man, told Amnesty International that he did not want to open a bank account because he would need to produce his passport, which reflects the female sex he was assigned at birth and cannot be easily changed because of the existing legislation.

Problems linked to the name change are frequent: “I swear to you that I am the owner of this bank account!”

Until end of 2013 Dutch law required that persons undergo „complete gender reassignment“ prior to their change of gender on their birth certificate. As a result, many trans people did not have access to identification documents in accordance with their gender role. This was particularly true for those trans people who were undergoing gender reassignment, or who did not need or could not access gender reassignment for health, religious, age or other reasons.

As a result of the above, complaints were received from the Dutch trans community claiming that they cannot

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108 Necessity to be sterile: Roetzheim v. Germany (Application no. 40016/98) [Commission decision of inadmissibility 23rd October 1997] and Nunez c. France (Application no. 18367/06) [27 April 2008]; Necessity to divorce: Parry v. United Kingdom (Application no. 42971/05) [Decided on 28 November 2006]

109 Amnesty 2014, p. 61

110 Information provided by Transgender Netwerk Netherlands (TNN)
convince their bank or their insurance company to address them in their preferred gender role. To put things in perspective, while banks and insurance companies have to screen their clients’ information at least once a year, and compare their files with the birth registry of the Netherlands, these companies claim that it is an extra burden for them to change the gender data of their clients so as to align it with the sex recorded on the birth registry. Banks and insurance companies hence state that they need to maintain the old gender marker on their records.

Respect of confidentiality is a key issue for trans persons. They are forced to come out on their change of gender at anytime in their daily life (including as employees, as consumers, and as citizens) often against their wish. Many have experienced and/or anticipate that as soon as they are coming out, they face strange reactions, intimate questions, and often harassment or discrimination, which can hinder their access to some goods or services. As a result, many avoid accessing certain services. Also, some take measures to conceal their gender identity, while insurance companies refuse to pay in the event of damage if information about previous gender reassignment treatment has not been provided, even if unrelated to the case.

A trans-man applied for a life insurance that should be paid out at his niece’s 18th birthday. He was requested information about his health status. As he did not want to reveal his transgender identity to the bank consultant, who was also his interlocutor in all other financial matter with his bank, he concealed his transgender related health status (hormonal treatment, mastectomy, gender identity disorder diagnosis in order to have the mastectomy’s costs covered and official change of name). After having signed the application he learnt that this stated “false” information and that the insurance company had the right to decline to pay in case of incident, even if unrelated to his trans identity. Finally, he cancelled the insurance and did not pursue another financial product as he was ashamed on how to explain his motive to the bank clerk.111

9. What impact for citizens/consumers has Article 5 of the Directive had in practical terms, particularly as regards implementation of unisex premiums and actuarial factors?

Do you have any data on any economic impact the Test-Achats judgment (Case C-236/09)? Has there been any change in the market? If so, how has it changed?

Problematic areas for trans people in insurance remain, particularly health related insurance, private health insurance, life insurance, loan insurance and occupational disability insurance. Insurances might either completely refuse transgender costumers or request additional premiums or introduce prior exclusions. In this sense the Test-Achats judgment has been disappointing as trans people are still treated worse because of their gender identity, even though it is argued for the reasons of calculable risks.

In the provision of financial services many problems are caused by a lack of awareness on gender identity and gender expression on the part of insurance companies. For example, trans identities are often seen as risk factors (on similar lines as an HIV+ status) in the provision of life insurance schemes etc. Cases of refusal of insurance policies have also been recorded. Perceptions that transgender people are ‘higher risks’ are entirely based on stereotypes of insurance companies and are not grounded in reality.

Insurance companies often refuse transgender customers, demand increased insurance premiums or exclude certain

111 Information provided by TransInterQueer (Germany)
services, e.g. related to mental health issues and hence to all gender confirming treatment as this is based on a mental health diagnosis. In the eyes of the insurance companies, the refusal is not related to the person being transgender, but, as a Belgian insurer put it, they would principally not insure a “house already on fire”.

**In Hungary** (and possibly elsewhere), several insurance companies openly declare in the terms and conditions that apply to private health insurance that they do not cover any medical costs related to gender reassignment. For example, Aviva and Generali have such provisions. Some other companies, such as QBE, used to have such an explicit exemption in their terms and conditions, but they removed them. Nevertheless, based on information provided over the phone they still maintain the policy that such costs are not covered.

The **German** Envivas Health Insurance Group Cologne refused the request of a trans man for private health care insurance because of the “incalculable risk of costs” associated with being transgender. In it’s reasoning the company „explains“ the health-care needs of trans persons, which are ultimately based on stereotypes and not supported by facts, in a way, which amounts to harassment:

> The complex treatment process, from the initial contact with a psychiatrist, through the period of establishing a diagnosis, to the last completed gender alteration, leads to the uninsurability of the disease, due to the multitude of treatments. Even with a successful surgery, many unpredictable factors remain. Along with the aforementioned hormonal treatment, the question always remains as to whether the transsexual can find a way to a happier, more productive life, or whether psychological problems may develop. While the ensuing costs of hormonal treatment can be estimated, psychotherapeutic treatment is incalculable. Accordingly, there can be no insurability, even after a successful surgical operation.

Ultimately, the company offered the trans man a dental insurance.

Moreover, nearly all insurance companies declare in the terms and conditions that apply to private health insurance that they do not cover any medical costs related to psychiatric or mental illnesses, which might be used to refuse coverage for treatments related to gender reassignment.

The **Belgian** Equality Institute reports about two similar cases of a self-employed trans woman, who is looking for a health and occupational disability insurance. However, the insurance companies are only willing to enter into policy with exclusion of pre-existing condition. In one of these cases, the insurance company was after some protest willing to enter into a contract, but only with exclusion for an occupational disability based on “mental illness”, referencing DSM IV and V, which lists transgender identities. In another case, a self-employed trans woman would receive insurance coverage. However, the insurance company is not willing to cover occupational disability after gender reassignment treatment, since gender dysphoria is not an “illness”.

Exemplary for the numerous complaints TGEU receives from trans people throughout the Union about insurance companies refusing to cover costs for gender reassignment treatment is this case from Belgium. A young transgender man who is insured (since early childhood) is refused cost coverage on the grounds that gender reassignment is not medically necessary treatment. Another adverse treatment is the case of another transgender

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112 Information provided by Háttér Társaság a Melegekért (Hungary)
113 See http://www.biztositasifeltetek.hu/Aviva/aviva_0017.pdf (Document is in Hungarian. Search for „nemi jelleg”)
114 See https://www.generali.hu/Szolgaltatasok/Elet_es_nyugdij/~media/szolgaltatasok/elet_es_nyugdij/klasszikus/atalan s_szerzodeses_feltetek_easzf10%20pdf.ashx (Document is in Hungarian. Search for „nemi jelleg”)
115 The Diagnostic and Statistical Manual of Mental Disorders – DSM is issued by the American Psychiatrist Association – APA http://www.dsm5.org
man, who though insured, intends to undergo gender reassignment treatment. The health insurance company refuses to cover all costs related to ‘transsexuality’.

The Dutch Equal Treatment Commission dealt with two cases of refusal of reimbursement of costs by insurance companies to transsexual women covering the costs of the operation for the placement of artificial breast implants. One of the insurance companies proposed to the trans woman to pay for the costs of the implants herself on the basis that:

“Secondary sex characteristics in transsexualism must comply with the rules for treatments of a plastic-surgical nature. These rules provide that the costs of placing artificial breast implants may only be reimbursed if the breast was removed. All other reasons for placing artificial breast implants are excluded. Please refer to [...] the policy conditions.”

10. Do you have data regarding any economic impact that the implementation of unisex premiums has had on this sector of pensions or regarding differences in legislation in this area (continuation of different premiums under certain schemes whereas unisex premiums are compulsory under others, etc.)?

Measures to protect against discrimination

11. To your knowledge, as regards defence of rights, has association/organisation encountered any specific difficulty in relation to the legitimate interest to be shown by associations wishing to be a party to legal proceedings (Article 8(3))? If so, what were the difficulties?

N.A.

12. Has your organisation participated in any information campaigns? If so, what means have you used to disseminate information on equal access to goods and services for men and women?

TGEU has been promoting the right to equal access to goods and services for trans people to its members and allies at numerous public occasions as well as online. For instance, at the 5th European Transgender Council a specific workshop dealt with the protection of trans people under EU law, besides employment, victims’ rights and asylum law, featuring a section on the Goods & Services Directive. An overview of the relevant legislation can be found here: www.tgeu.org/eu-law.

116 www.tgeu.org/Council2014
Recommendations

TGEU recommends to the European Commission to:

1. proceed to the review of the implementation of the gender Goods and Services directive with a particular focus on discrimination based on gender identity and gender expression;

2. Explicit the protection on grounds of ‘gender identity and expression’ in the articles of the Gender Goods & Services Directive (2004/113/EC);

3. Include education, media and advertisement into the scope of the directive;

4. Call on Bulgaria, Italy, Liechtenstein, Malta, Poland, Portugal and Romania to amend the restrictive understanding of their national law implementing the directive so as to ensure a minimal protection against discrimination on the ground of gender identity and gender expression;

5. Ask for clarifications to Cyprus, Iceland, Latvia and Luxembourg where the coverage of gender identity and gender expression by national legislation remains unclear;

6. Launch an infringement procedure against those Member States that do not undertake the necessary changes;

7. Undertake a legal analysis of requirements for gender recognition legislation (i.e. change of name and legal gender) and their requirements in Member States towards their compatibility with the directive;

8. Liaise with the Member States to ensure that national equality bodies investigate cases of discrimination on the ground of gender identity and gender expression;

9. Ensure that national authorities and equality bodies give publicity to the coverage of gender identity and gender expression in their anti-discrimination policy and lead by example by giving positive visibility to gender identity discrimination in Communications by the Union;

10. Promote good practices put in place in some of the Member States in the field of gender-based discrimination;

11. Organise „train the trainers” programmes on legal issues designed for Member States;

12. Encourage Member States to organize trainings on discrimination issues for the judges and all the legal officers and national equality bodies’ officers (with a particular focus on the situation of transgender people);

13. Liaise with DG SANCO to develop measures targeted at improving the access of trans-people towards general health-care provision such as educational programs combating prejudice among medical practitioners and offering guidance on development and implementation of trans-friendly treatment guidelines to all Member States;

14. Mainstream equality of trans people in EU gender equality work including promotion of equality of trans people in access to goods and services, particularly access to health care addressing national authorities;