

Trans EU employment rights & legal gender recognition

[publication](#), [socio-economic rights](#), [advocacy resources](#), [legal gender recognition](#)

The Trans Crossroads – Trans People’s EU Employment Rights and National Gender Recognition Laws is a toolkit and call for action.

Trans people’s difficulty in accessing employment and occupation, as well as problems with keeping a job, is acute across Europe. Only 51% of trans people are in paid employment in comparison with 68% in the general population, found the Fundamental Rights Agency.

This publication builds on TGEU’s previous work on anti-discrimination and legal gender recognition in Europe.

It provides an **overview of current EU employment equality legislation** tackling discrimination against trans persons and gives an **analysis** of how current national legislation regulating the change of names and gender markers on official documents of trans people impacts their enjoyment of employment and citizenship rights.

This document also provides a **checklist** to assess whether member states have adequately implemented EU law as it applies to trans people, and outlines current good practices across the Union.

The end of this document also contains **six sets of recommendations** setting out concrete action items for the EU, governments, companies/employers, trade unions, equality bodies, and trans rights organisations.



[download the toolkit](#)

Checklist making the gender recast directive work for trans people

The Checklist spells out government obligations for a proper implementation of EU Employment law for trans

people (Gender Recast Directive 2006/114/EC). It also provides a set of current good practices already implemented to serve as a stimulus to go beyond these minimum standards.

5. CHECKLIST: MAKING THE GENDER RECAST DIRECTIVE WORK FOR TRANS PEOPLE

The first part of this checklist aims to spell out the minimum criteria that EU member states & EEA countries had to comply with by the implementation date of the Gender Recast Directive (15 August 2008). The second part of the checklist provides a set of current good practices already implemented by some member states, and should serve as a stimulus to exceed the minimum standards required by the Gender Recast Directive. The last section of the checklist enumerates the steps necessary for member states to offer legal gender recognition, a demonstrated prerequisite to ensuring equality for trans persons in employment and occupation.

TGEU strongly recommends that member states and the Commission use this comprehensive checklist to evaluate compliance with the Gender Recast Directive on national level.

5.1 Minimum criteria²³

Trans people are included in the interpretation of employment non-discrimination legislation based on the grounds of sex:	<input type="checkbox"/>
- Implicitly through interpretation by domestic judges/other administrative institutions; or	<input type="checkbox"/>
- Explicitly through an express reference to 'gender reassignment' in legislation.	<input type="checkbox"/>
Trans people benefit from the full extent of protections established in the Directive, i.e.:	<input type="checkbox"/>
- The full material scope, namely: conditions for access to employment, self-employment and occupation, including promotion and dismissals; membership and involvement in an organisation of workers or employers or other professional organisations; and working conditions, including pay; and	<input type="checkbox"/>
- Against all forms of discrimination, namely: direct or indirect discrimination, harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct; instruction to discriminate against persons on grounds of sex including gender reassignment; any less favourable treatment related to pregnancy or maternity leave, and pay discrimination.	<input type="checkbox"/>
Trans individuals are included in sick and invalidity schemes and employers make such schemes available.	<input type="checkbox"/>
Where the retirement age for men and women varies, the retirement age for trans individuals is based on their gender identity and not on their birth sex.	<input type="checkbox"/>
Trans individuals and their spouses/partners can avail themselves of occupational social security schemes and pensions schemes; and such schemes cover industrial accidents and professional diseases, and unemployment benefits.	<input type="checkbox"/>
Gender mainstreaming is used as a tool to ensure full gender equality in practice, and such measures are extended to trans people.	<input type="checkbox"/>
Trans people are included within the remit of the national [gender] equality body.	<input type="checkbox"/>
No laws, regulations and/or administrative provisions exist that are contrary to the principle of equal treatment of trans people as stipulated in the Directive.	<input type="checkbox"/>
5.2 Good practices	
Equality legislation implementing the Directive into national law and/or consolidated national anti-discrimination legislation includes an express reference to:	<input type="checkbox"/>
- The right to self-determined gender identity;	<input type="checkbox"/>
- The right to gender expression; and	<input type="checkbox"/>
- Intersectional or multiple discrimination.	<input type="checkbox"/>

Equality legislation makes an express reference to the periods of gender reassignment and:	<input type="checkbox"/>
- Prohibits discrimination and dismissal relating to an absence from work due to gender reassignment;	<input type="checkbox"/>
- Prohibits discrimination against someone based on the fact that this person intends to undergo, is undergoing, or has undergone the process (or part of the process) of gender reassignment; and	<input type="checkbox"/>
- Covers absences from work in order to undergo and recover from gender reassignment within the scope of sick leave.	<input type="checkbox"/>
The collection of information about an applicant's gender identity, gender expression and/or gender reassignment during the selection process, whether during the application or interview stage is prohibited (unless such information is solely used for employment equality monitoring purposes and follows strict rules against data disclosure and discrimination).	<input type="checkbox"/>
The unconsented disclosure of personal details related to the person's gender identity, gender expression or gender reassignment, as well as the disclosure of the gender history or former name to employers, fellow employees and/or clients is prohibited.	<input type="checkbox"/>
The national [gender] equality body has a wide mandate ensuring that:	<input type="checkbox"/>
- Discrimination does not occur in any area of life in society;	<input type="checkbox"/>
- Equal rights and opportunities for trans people are actively promoted; and	<input type="checkbox"/>
- It is able to provide advice and other support so as to help enable anyone who was subjected to discrimination to claim their rights.	<input type="checkbox"/>
Dialogue between trans organisations and other entities, such as public bodies, trade unions, and any other organisations focusing on combating discrimination on the basis of gender identity and gender expression is encouraged.	<input type="checkbox"/>
The right to gender identity and gender expression are included in public awareness raising campaigns explaining the provisions of the law.	<input type="checkbox"/>
Specific attention is paid to ensure that trans people are reached through targeted awareness raising campaigns.	<input type="checkbox"/>
Any policies and practices that may directly or indirectly discriminate against or disadvantage trans people are considered contrary to equality legislation and public policy.	<input type="checkbox"/>
Proactive statutory duties to ensure trans equality mainstreaming across the government are introduced.	<input type="checkbox"/>
Public authorities make active, targeted, and systematic efforts to promote equality irrespective of gender identity and/or gender expression.	<input type="checkbox"/>
An equality policy framework covering the right of gender identity and gender expression is adopted and it contains measurable targets on employment inclusion of trans people.	<input type="checkbox"/>
5.3 Legal gender recognition	
Legal gender recognition procedures, based on the right to self-determination, are quick, transparent and accessible and meet the criteria established in TGEU's Legal Gender Recognition in Europe (2013) Checklist Gender Recognition Legislation.²⁴	<input type="checkbox"/>
Changes to employment and educational related documents reflecting a change of name and gendered information are possible without legal gender recognition.	<input type="checkbox"/>
Change of name and gendered information on documents issued by public or private institutions/organisations extends also retroactively to:	<input type="checkbox"/>
- Birth certificates;	<input type="checkbox"/>
- Identification documents (including ID Cards, Driver's Licences and Passport);	<input type="checkbox"/>
- Social security numbers (in countries where they are gendered);	<input type="checkbox"/>
- Educational certificates;	<input type="checkbox"/>
- Employment certificates/documentation; and	<input type="checkbox"/>
- Other documentation that may be relevant for the purposes of employment and occupation.	<input type="checkbox"/>

[download the checklist](#)

Recommendation sheets for trans employment rights:

- [10 things the EU can do](#)
- [10 things governments can do](#)
- [10 things companies & employers can do](#)
- [10 things trade unions can do](#)

- [10 things equality bodies can do](#)
- [10 things trans civil society can do](#)

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