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# **UNIVERSAL PERIODIC REVIEW - 2023**

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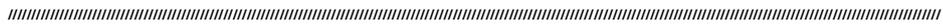
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Report  
**UPR REVIEW SESSION 2023 - ROSA LËTZEBUERG**  
24 September 2022



## 1. Introduction

Rosa Lëtzebuerg was contacted in September 2022 to submit a Stakeholder Report for the upcoming Universal Periodic Review (UPR) involving a review of the human rights in Luxembourg. Specifically, Rosa Lëtzebuerg was tasked to review the adherence of human rights related to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC). Luxembourg currently ranks 5<sup>th</sup> on the ILGA rainbow index 2022 [1]. The following report will present an overview of the SOGIESC related recommendations received by Luxembourg during the previous UPR and their eventual implementation and it will describe in detail the acquired human rights related to SOGIESC as well as our SMART (Specific, Measurable, Achievable, Relevant, and Time-Bound) recommendations related to SOGIESC rights that are still missing within the Luxembourgish legal framework.

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## 2. Previous UPR's recommendations and implementation

Regarding SOGIESC matters, during the previous UPR (third cycle), Luxembourg received the following recommendations [2]:

1. Continue to progress legal protections for lesbian, gay, bisexual, transgender and intersex persons by adopting the draft law of May 2017 on the modification of sex and names, and amendment of the Civil Code → this recommendation has been implemented with the adoption of the law of 10 August 2018 on the modification of the mention of gender and first name(s) in civil status and amending the Civil Code. As per this new law, based on the self-determination principle, it is now possible for Luxembourgish citizens, Luxembourgish residents, refugees, and stateless individuals to change their gender and name, via an administrative procedure and without the need to provide any medical certificate.

2. increasing publicly available information on rights for intersex persons → as further explained below in paragraph 6, Luxembourg is still lacking when it comes to the implementation of intersex people's rights. Notwithstanding this, in 2018 the Ministry for Family Affairs, Integration and the Greater Region launched an awareness campaign to inform the general public about intersex people and the discriminations they face. The campaign was also aimed at parents of intersex children, to educate them [3].





### 3. Sexual Orientation

Luxembourg has implemented Equality and non-discrimination laws based on sexual orientation related to Employment, Goods & Services, Education, Health, has an Equality Body Mandate (CET) and an Equality Action Plan (*Plan d'action national pour la promotion des personnes lesbiennes, gays, bisexuelles, transgenres et intersexes*) [4]. Sexual orientation is also implemented within Hate crime law, Hate speech law and a policy against hatred based on sexual orientation is also in place. Lastly, an asylum law is also in place based on sexual orientation.

There are three main action points regarding sexual orientation:

#### 1. Equality and non-discrimination included in the Constitution

Rosa Lëtzebuerg is aware that a modification of the constitution is foreseen to offer the right to equal treatment to all persons. However, in the current draft amendment the binary gender system is maintained and a generalization of the grounds for discrimination is proposed (sexual orientation, gender identity, gender expression and sexual characteristics are not specifically mentioned) [5].

*Our goal is to include the specific motives for discrimination within this draft for a change of the constitution as soon as possible. We encourage the ministry of Justice and other organizations to sit around the table to draft more inclusive laws that offer protection to all individuals. Upon accomplishing full equality within the constitution, it will further protect the LGBTIQ+ community in a permanent manner. We also urge the police in Luxembourg to include LGBTIQ+ as a part of complaints and incidents within their reports to allow for national statistics (which are completely unavailable at this point in time). With complaints being recorded falsely/incomplete, it hinders the gathering of critical information for awareness campaigns and it leaves the impression that their complaints are not taken seriously.*

#### 2. Ban on Conversion Therapies

A ban on conversion therapies related to sexual orientation and gender identity is currently lacking in Luxembourg [1]. The ban has been requested multiple times by Rosa Lëtzebuerg to the Ministry of Family, but the response has been that "If there is no direct need for a ban or there is no proof of conversion therapies taking place in Luxembourg, it is not a top priority". Rosa Lëtzebuerg has stated that implementing a preventive ban would avoid an influx conversion therapy practitioners from, but not exclusively, German and French speaking countries.

*Therefore, Rosa Lëtzebuerg is recommending a complete ban of conversion therapies by the end of 2023. The Ministry of Family should work in collaboration with the Ministry of Justice to draft a law and implement it with the Luxembourgish police. This law will prevent the physical and psychological consequences of conversion therapies and will provide a safe network for (young) LGBTIQ+ individuals in Luxembourg.*

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### 3. An asylum policy/measures based on sexual orientation

Although asylum is granted if the motive is “based on sexual orientation”, there is a lack of specific policies and other protective measures.

*Even if asylum is granted also on the basis of sexual orientation discrimination, it would be important to ensure that asylum seekers fleeing this type of persecution will not face the same issues in Luxembourg, hence it would be ideal to provide specific training/awareness campaigns to people working with refugees in the various Luxembourgish shelters, so to create an inclusive and welcoming environment. There is very little feedback from refugees at this point to be able to give a clear recommendation for improvement.*

### 4. Gender Identity

In Luxembourg, gender identity is included in various anti-discrimination laws related to Employment, Goods & Services, Education, Health, is protected by an Equality Body Mandate and included in the Equality Action Plan. Furthermore, Hate crime law and Hate speech law protect individuals if based on gender identity. Gender legal recognition is also supported by legal measures, administrative procedures, the ability to change one’s name without age limit, the right for self-determination, the absence of Gender Identity Disorder diagnosis/psychological opinion and the absence of compulsory medical/surgical intervention, sterilization or divorce. Lastly, asylum laws and policies are in place.

There are four main topics related to gender identity that need special attention:

#### 1. Equality and non-discrimination included in the Constitution

As described in 3.1.

#### 2. Ban on Conversion Therapies

As described in 3.2.

#### 3. Non-binarity not included in the legal gender recognition laws

Rosa Lëtzebuerg asbl has long called for breaking down the binary gender system. This applies to every person who cannot identify with the binary gender system, as well as to persons with variations in gender characteristics. The basis for changing the gender entry in civil status should continue to be the law of 10 August 2018, which allows the change of gender and first name in civil status to apply on the basis of a self-determination model [6].

*Rosa Lëtzebuerg calls on Parliament to take into account the diversity of gender identities when working on the intended constitutional reform, in order to prevent the forthcoming constitutional reform from becoming obsolete even before it enters into force (i.e. only including a third gender option). Since 2021, there has been no update on the project by the ministry of Justice, so transparency on the project status is asked to know when the law will be voted.*

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#### 4. Depathologization of Trans people

The diagnosis of "gender identity disorders", which consisted of the three main categories of transsexualism, transvestitism maintaining both gender roles and childhood gender identity disorder, has been replaced by the technical term gender incongruence. The diagnosis is not anymore classified as a mental disorder by the World Health Organisation but is listed as a "condition of sexual health". Nevertheless, the National Health Fund (CNS) requires in its statutes (Annexe C) " a detailed medical report by a doctor specializing in psychiatry" [7].

*Rosa Lëtzebuerg in conjunction with Intersex & Transgender Luxembourg asbl (ITGL) is asking the Ministry of Health to remove this obligation from the statutes as quickly as possible (with the input of experts) so Trans people no longer need to go through the long and (unnecessary) emotionally taxing process. This depathologization of Trans individuals is one of the remaining hurdles and has become obsolete.*

#### 5. Gender Expression

Gender expression is up till now not included or specifically mentioned in any law texts related to equality and non-discrimination.

*As described in 3.1.*

#### 6. Sexual Characteristics

The removal of any discrimination based on sexual characteristics is part of the Equality Action Plan (described in paragraphs 3 and 4). Apart from it being written down in the plan, the Ministry of Family has yet to give an update on the progress they have made regarding this subject since the creation of the action plan in 2018 (that is running until the end of 2022).

*As consequence, Rosa Lëtzebuerg is asking clarity from the Ministry of Family on their intents to add anti-discrimination laws based on sexual characteristics within laws and the constitution (on topics such as Employment, Goods & Services, Education and Health) as well as adding it to the Equality Body Mandate of the CET. If insufficient progress has been made, we urge the ministry of Family to invest more resources into this part of their action plan. Having a broad antidiscrimination law (within the constitution) is a huge step forward for people who have been discriminated based on their sexual characteristics. The importance of the involvement of the Luxembourgish police is also described in paragraph 3.1.*

Lastly, it should be mentioned that Luxembourg has a very poor pro-Inter policy; Inter people are currently not supported or covered by hate crime law or policies against hatred, they are not included in asylum laws and policies, are still subjective to medical interventions (before a consent can be given) and have no access to justice if fallen victims to such practices. This makes the Inter community (regardless of its size) very vulnerable and completely left out.

*In the interest of the Inter community, Rosa Lëtzebuerg has demanded the ministry of Health and Justice, in collaboration with ITGL, to completely abolish practices on Inter people, to allow those who have suffered to finally get recognition for their problems and in general to offer better care and support for the community. At least*

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*the medical practices should be stopped as soon as possible to avoid further harming of individuals. At a later stage, efforts should be made to further support the Inter community.*



## 7. References

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