

An Ministerin Barley  
Bundesministerium der Justiz und für  
Verbraucherschutz

Brussels, 13 Mai 2019

Dear Minister Barley,

As Advocacy Director of ILGA-Europe, the European non-governmental umbrella organisation bringing together nearly 600 organisations from 54 countries in Europe and Central Asia, I am writing to you today, to ask you to not proceed with the draft reform of the German Transsexuellenrechts (Referentenentwurf eines Gesetzes zur Neuregelung der Aenderung der Geschlechtseintrages von BMJV und BMI vom 8. Mai 2019), but to take the reform proposal out of the legislative package it is part of at the moment and instead take the time for proper consultation with relevant associations and people concerned (instead of an unacceptable 48h consultation period) and thus ensure that the proposed legislative reform will be in line with international human rights standards, as agreed in the UN and on European level by both the Council of Europe and the EU.

As a European network, we would like to refer to the detailed statements sent already to you by German associations such as Bundesvereinigung Trans\* e.V., Trans\* Recht e.V., LSVD and OII Germany (all again attached to this communication). In addition, both the ILGA-Europe Rainbow Map (<https://rainbow-europe.org/country-ranking>) and the Transgender Europe Trans Rights map (<https://tgeu.org/trans-rights-map-2018/>) set out clearly the standards that should be part of and reform of legal gender recognition legislation, as well as provide guidance to the best practices in the field

Let me just highlight some of the biggest issues with the current draft briefly.

**The draft reform is denying the right to self-determination of trans people and instead repathologises trans identities:** The draft in its current form is a missed opportunity for ensure that also Germany lives up to international human rights standards and the recommendations received by the UPR in 2018 and respects and legally protects the right of self-determination of trans people. All recent reforms of legal gender recognition legislation across Europe have moved towards a system of self-determination, with Belgium, Denmark, Luxembourg, Norway, Ireland and Malta fully respecting this principle. Also the Bundesverfassungsgericht has on occasions called on Germany to

recognise self-determination and do away with any pathologising diagnosis or obligatory consultation and assessment.

The **obligatory consultation** introduced in the draft reform calls for a certificate confirming the consultation which in reality reintroduces an expertise and assessment and thus signifies a clear denial of self-determination. Furthermore, the foreseen consultation and right to veto of the spouse of the trans person, is a clear human rights violation and breach of the principle of self-determination. Self-determination, contrary to a persistent misconception, does not violate the right to marriage of a spouse of a trans person, as that individual retains the right to enter and exit a marriage contract with the trans person, regardless of legal gender recognition. However, spousal consent or spousal veto does violate the right to recognition before the law as enshrined in the UDHR, giving a third party a voice in what should be the direct relationship between an individual and the State.

ILGA-Europe just today published its annual update of the Rainbow Europe Map, setting out the situation of legal protection of LGBTI people's human rights across Europe. You will see that the categories under Legal Gender Recognition and Bodily integrity clearly outline the principle of self-determination, as well as no diagnosis or psychological opinion requirement, no age restriction and no compulsory divorce required. With the draft reform, Germany would miss all of these criteria and fall way back behind European neighbours in respecting international human rights standards.

**As ILGA-Europe, we strongly call on you to reconsider putting forward the reform in its current form, but instead take more time to properly consult with civil society and affected people and work on a reform legislation that will fully respect trans and intersex people and be in line with the European standards of today, that is in line with your governments and your parties commitment to the protection of the rights of LGBTI people.**

Kind regards,

Katrin Hugendubel

Advocacy Director