



Combating hate crime against LGBTIQ* persons

Need for action and solution approaches in Germany as well as insights from other European countries

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The abridged version of Working Paper N° 24¹ presents in condensed form political need for action to combat hate crime and hate speech against LGBTIQ* persons in Germany as well as respective measures from other European countries.

Content

1	Introduction	1
2	Definitions	2
3	Political and legal instruments	4
4	Need for action and solution approaches	7
5	Conclusion	14
6	Looking ahead: projects of the federal government under Olaf Scholz (2021–2025)	16

1 Introduction

Hate crime against LGBTIQ* persons is the most severe form of expression of homophobia and transphobia and not uncommon in Germany, be it in the public or private sphere. For those affected, this represents a considerable burden and stress as well as a restriction of freedom and participation in social life.

The **aim of the Working Paper** and the abridged version presented here is to identify necessary steps for combating hate crime in Germany. To this end, demands from civil society organisations and political parties as well as recommendations for action from experts in Germany were compiled and systematically reviewed.² Measures against hate and violence against LGBTIQ* persons are being discussed and promoted across Europe. Thus, another aim of this Working Paper is to present projects and measures already implemented by the European Union, the Council of Europe and especially the governments of the Member States. Against the backdrop of the identified need and demands in Germany, these measures already taken by other countries could be considered as solution approaches.

Working Paper N° 24 and this abridged version are part of a publication series by the **Observatory for Sociopolitical Developments in Europe** on equality of LGBTIQ* persons in Germany and in Europe.³ The work of the Observatory is intended to contribute to the preparation of a **national action plan regarding the rights of LGBTIQ* persons in Germany**, especially in view of the initiative of the European Union (see the LGBTIQ Equality Strategy 2020–2025 of the European Commission in [Chapter 3](#)) and the existence of already existing action plans in other European countries⁴. The demand for such an action plan in Germany has for several years repeatedly been put forward by political and civil society actors. Its drafting has now been embraced as a project of the new federal government under Chancellor Olaf Scholz in the coalition agreement 2021–2025. In addition to legal provisions, national action plans are considered an important measure for securing the rights and opportunities of LGBTIQ* persons⁵ and LGBTIQ* families⁶.

Below, after an overview of central **definitions** ([Chapter 2](#)), the **political and legal instruments** for the protection of LGBTIQ* persons at German national as well as international level will be briefly described ([Chapter 3](#)). Subsequently, the **need for action** in the area of hate crime and hate speech against LGBTIQ* persons in Germany will be presented and solution approaches from other countries will be cited ([Chapter 4](#)). In a **conclusion**, the need for legal changes will be summarised and the necessity of a national action plan will be examined more closely ([Chapter 5](#)). This abridged version ends with an **outlook** on the plans of the federal government under Chancellor Olaf Scholz ([Chapter 6](#)).

2 Definitions

Term	Definition
Cis	Cis is Latin and means “on this side” and, in the context of the term “cisgender”, refers to persons whose gender orientation corresponds to the gender/sex they were assigned at birth” (own translation). ⁷
Gender expression	Gender expression is understood “as each person’s presentation of the person’s gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references, and [...] may or may not conform to a person’s gender identity”. ⁸ Gender expression is thus part of the definition of gender identity.
Gender identity	Gender identity refers to “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth [...]”. ⁹
Hate Crime	Hate crimes are physical or verbal attacks motivated by prejudice against a characteristic of a person, such as their sexual orientation or gender identity. ¹⁰
Hate Speech	Hate speech is defined as calls and incitement to hatred, discrimination or hostility towards persons, which are also motivated by prejudice against a characteristic of a person, such as sexual orientation or gender identity. ¹¹ Often, this takes place online.
Heteronormativity	Heteronormativity refers to “[...] the norms of heterosexuality and binary sexuality and understands them as a social power relationship [...]. Cisnormativity is part of this heteronormative power relationship and refers to the norm of locating oneself within the gender/sex assigned at birth” (own translation). ¹²
Inter*	Inter* refers to persons with variations in sexual characteristics. Since their body “deviates in some way from social and medical notions of binary sexuality” (own translation) ¹³ , inter* is and has often been pathologised. As a result, inter* persons were and are subjected to medical interventions as infants or children aiming to establish an unambiguous gender. These interventions, often experienced as violent by those affected, constitute human rights violations of the right to self-determination, the right to reproduce and the right to physical integrity. Inter* persons can be cis or trans* and feel belonging to any gender. ¹⁴

<p>LGBTIQ*</p>	<p>LGBTIQ* is an abbreviation for the terms lesbian, gay, bisexual, trans*, inter* and queer and thus an abbreviation for diverse sexual orientations and gender identities. Queer is a collective term for all non-heteronormative and non-cisgender lifestyles and identities and is representative of all of them here. The asterisk * represents the diversity of gender and sexual orientations as well as the processuality and incompleteness of gender orientation and positioning.^{15,16}</p>
<p>Non-binary</p>	<p>Non-binary is “an umbrella term for all genders that are not purely male or purely female. [...] However, only one’s own perception is decisive for the identification as non-binary” (own translation).¹⁷</p>
<p>Sexual characteristics</p>	<p>Sexual characteristics are “each person’s physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty”.¹⁸</p>
<p>Sexual orientation</p>	<p>Sexual orientation refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender”.¹⁹</p>
<p>Trans*</p>	<p>Trans* refers to persons who feel that they do not or do not exclusively correspond to the gender they were assigned at birth. However, only one’s own perception is decisive for the identification as trans* woman or trans* man.²⁰ There are binary and non-binary trans* persons. Some trans* persons decide to take hormones, undergo gender reassignment surgery or change their legal gender by altering their first name or marital/personal status²¹. However, these are “long, time-consuming and cost-intensive processes, under which many trans* persons also suffer.” (own translation)²²</p>

Source: Author’s illustration

3 Political and legal instruments

In Germany, **state action plans** on LGBTIQ* equality exist in all states (*Länder*), with the exception of Bavaria. At federal level, the issue was first addressed in the **National Action Plan against Racism**²³, which was adopted in 2017. The aim of this plan was to focus on homophobia and transphobia in connection with other forms of group-based hostility and hate. Criticism of the National Action Plan against Racism included in particular the fact that few concrete and binding measures with regard to LGBTIQ* persons emerged from the plan. The federal government under Olaf Scholz (2021–2025) has now announced in its coalition agreement of November 2021 that it will **establish a cross-departmental national action plan for acceptance and protection of sexual diversity and gender diversity**²⁴.

At international and European level, the following policy and legal instruments are particularly relevant for the prevention of hate crime and hate speech against LGBTIQ* persons:

- Under the motto of a “Union of Equality”, the European Commission in 2020 adopted for the first time a **LGBTIQ Equality Strategy 2020–2025**²⁵. It is built on four main pillars, in which ensuring the safety of LGBTIQ persons and thus protecting them from hate crimes and hate speech is one pillar. The strategy is not legally binding on the European Commission or the Member States. In it, the European Commission sets out measures for its own work (in particular the provision of funding opportunities via EU programmes such as “Citizens, Equality, Rights and Values”) and recommends measures for Member States which implementation it wants to support (for instance an exchange on best practices, the promotion of a safe environment for victims of crime, training as well as capacity building within law enforcement agencies).
- Legally, the LGBTIQ Equality Strategy is based on the fundamental rights of the European Union with regard to equality and non-discrimination, which are primarily laid down in the **Charter of Fundamental Rights of the European Union**²⁶ and based on the **European Convention on Human Rights**²⁷ by the Council of Europe. Also relevant in relation to the human rights of LGBTIQ* persons are the so-called **Yogyakarta Principles**, developed by human rights experts in 2007, which interpret and specify the existing international human rights conventions on sexual orientation and gender identity on the basis of 29 principles. Although they are not legally binding, these principles may be taken into account in the interpretation of binding human rights norms.
- The Council of Europe also advocates for the rights of LGBTIQ* persons in several instances, in particular with **Recommendation CM/Rec(2010)5**²⁸, adopted in 2010, which has created a reference framework for protection against hate crimes against LGBT persons. The Recommendation is the first international agreement between governments to address discrimination against LGBT persons in Europe. Since its adoption, it has served as a reference framework for states and civil society alike. The individual recommendations for Member States cover eleven areas, the first relating to the right to life, security and protection from violence.

With the **Rainbow Index**²⁹, the civil society organisation **European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association** (ILGA-Europe) has built a constantly updatable comparative tool that rates 49 states in terms of their equality laws and policies for LGBTIQ* persons on a scale between zero percent (serious human rights violations, discrimination) and 100 percent (respect for human rights, full equality).

One of the six categories considered in the Rainbow Index explicitly refers to hate crime and hate speech. This includes eight criteria³⁰, as shown in Table 1. Of these eight criteria on hate crime and hate speech, five relate to the inclusivity of laws against hate crime and hate speech in relation to sexual orientation, gender identity and intersexuality (hereafter called gender characteristics). Three further criteria fundamentally map whether national strategies against hate crime and hate speech take into account the characteristics of sexual orientation, gender identity and gender characteristics. It should be noted that in this regard, only long-term measures that take place within a framework of state actors are taken into account.

The score of states for 2020 in the category of hate crime and hate speech is shown in Table 1. Malta achieves by far the highest (and maximum) value of 100 percent. It is followed by Denmark and Luxembourg with 88 and 87 percent, respectively. Germany stands at 22 percent. Five states (Bulgaria, Czech Republic, Italy, Latvia, Poland) are rated with zero percent.

Table 1: Overview Rainbow Index 2021 on Hate Crime and Hate Speech

EU States	Member	Hate crime law (sexual orientation)	Hate speech law (sexual orientation)	Policy tackling hatred (sexual orientation)	Hate crime law (gender identity)	Hate speech law (gender identity)	Policy tackling hatred (gender identity)	Hate crime law (intersex)	Policy tackling hatred (intersex)	Rainbow Index Hate crime and hate speech (total)
Austria		0	0							26 %
Belgium		0	0			0				38 %
Bulgaria										0 %
Croatia		0	0		0	0				51 %
Cyprus		0	0		0	0				51 %
Czech Republic										0 %
Denmark		0	0	0			0			88 %
Estonia			0							13 %
Finland		0	0		0	0				51 %
France		0	0		0	0				51 %
Germany				X			X		X	22 %
Greece		0	0		0	0		0		75 %
Hungary		0	0		0	0				51 %
Ireland			0	0			0			37 %
Italy										0 %
Latvia										0 %
Lithuania		0	0							26 %
Luxembourg		0	0	0	0	0	0			87 %
Malta		0	0	0	0	0	0	0	0	100 %
Netherlands			0							13 %
Poland										0 %
Portugal		0	0		0	0				51 %
Romania		0								13 %
Slovakia		0	0							26 %
Slovenia			0							13 %
Spain		0	0	0	0	0	X	X		55 %
Sweden		0	0		0	0				51 %

Source: <https://rainbow-europe.org/#1/8693/0> (as of: 2 November 2021), X = federal application (Germany)/applications in some regions (Spain), author's illustration

4 Need for action and solution approaches

There is a great need for action and regulation in the area of hate crime and hate speech against LGBTIQ* persons in Germany. The following is an overview of the identified needs for action in Germany and of helpful examples from other countries.

4.1 Expanding the state of research and closing research gaps on hate crime against LGBTIQ* persons

In Germany, official statistics (see Chapter 4.2) do not adequately reflect the extent of violence against LGBTIQ* persons, as many of those affected do not report criminal and/or violent acts to the police for fear of homophobic or transphobic reactions by the police, among other reasons. Estimates of the number of unreported cases in Germany range from 80 to 90 percent.³¹ Accordingly, **studies on such unreported cases** are particularly important for estimating the true extent as well as for researching the phenomena, causes, consequences and the handling of hate crimes by authorities and the judiciary. It is also important to collect data on the reasons for non-reporting of criminal offences. The surveys conducted by the European Fundamental Rights Agency in 2012 and 2019 provide a central data basis for estimating the dark figures for discrimination and acts of hate and violence against LGBTI persons in Europe.³² The survey results for Germany show that 13 percent of LGBTI persons surveyed reported having experienced physical or sexual violence in the last five years because they are LGBTI persons. When asked about harassment within the last year, 36 percent said they had been affected.³³

- In order to open up the dark figures of homophobic and transphobic experiences of violence, some countries such as [Denmark](#)³⁴, [France](#)³⁵ and [Sweden](#)³⁶ include questions on homophobic and transphobic acts in their annual, representative **dark figure surveys on experiences of crime**. In [Germany](#), this has so far only been implemented in rudimentary form in the dark figure survey on security and crime by the Bundeskriminalamt (Federal Criminal Police Office)³⁷. In [Finland](#), there is particularly good data on violence experienced by young LGBTIQ* persons, as questions on gender identity and sexual orientation as well as questions on experiences of violence are asked as part of a national survey among children and youths.³⁸
- There is a need for **research on violence against specific target groups**, for example anti-lesbian violence. In most statistics on violence against LGBTIQ* persons, anti-lesbian violence has so far played a minor role. However, in this case, one could assume that not low prevalence is responsible but rather intersections with gender-based violence against women. A survey among lesbians in [France](#), for example, found that almost 60 percent of respondents had experienced at least one act of hostility in the past two years.³⁹
- Research on hate crime against LGBTIQ* persons should be **intersectional** in order to take into account multiple discriminations (for example persons of colour or persons

with disabilities). Furthermore, experts from the **LGBTIQ* community** are to be involved in research initiatives.

- Further research is also needed on hate speech against LGBTIQ* persons. In [France](#), a dedicated **observatory on online hate**⁴⁰ has been created to study the phenomenon – in collaboration with a wide range of actors. The observatory aims to measure and study the presence of online hate in France in all its forms, including homophobia. The observatory brings together operators and service providers (including Facebook, Google, Microsoft), associations fighting against hate and discrimination, researchers and government agencies as well as the PHAROS platform, where illegal online content, such as hate speech against LGBTIQ* persons, can be reported.⁴¹
- At European level, the European Commission provides **funding** for research on and the fight against hate crime. For example, in [Belgium](#), the EU Rights, Equality and Citizenship programme co-funded the creation of a **data hub to map data sources on discrimination**⁴², including hate crimes. After selecting criteria (including sexual orientation, gender identity, gender expression and gender characteristics) and areas (including the judiciary and police), users are presented with a list of published reports. Data sources can still be submitted. For the creation of the data hub, the **guidelines of the EU Subgroup on Equality Data**⁴³ developed at EU level were taken into account, as well as the **Diagnostic Mapping Tool of the European Fundamental Rights Agency**⁴⁴. The latter tool allows for the identification of data gaps on specific groups or types of discrimination.

4.2 Improving the recording of and publishing on hate crimes against LGBTIQ* persons

The enforcement of legal provisions and the development of targeted policy strategies on hate crime against LGBTIQ* persons are dependent on a comprehensive data base and thus on an accurate, systematic recording of incidents. In the area of official recording and publishing on hate crime, the following aspects emerge as relevant for Germany:

- The official recording of hate crime against LGBTIQ* persons within the framework of **statistics on politically motivated crime**⁴⁵ in Germany shows a range of problems and the statistics do not provide an adequate picture of the situation regarding violence against LGBTIQ* persons: Both the general **definition** of hate crime as well as the **categories** for classifying the motive of the crime are criticised as being ambiguous. For instance, the category “gender/sexual identity” also covers violence against cisgender women and thus distorts the picture regarding homophobic and transphobic hate crime. Furthermore, the statistics on politically motivated crime only include cases of hate crime that were already recorded as such at the **beginning of legal proceedings**, which accordingly leads to the fact that the recognition of a crime as a hate crime must take place immediately at the beginning of the legal proceedings. It can be assumed that some cases of hate crime against LGBTIQ* persons do thus not appear in the statistics. In [Sweden](#), police statistics were quality-controlled in a study⁴⁶ in order to identify need for action.

- In Germany, data on hate crime are found in **different data sets** or data systems. The data on motive, target group, and so forth are recorded in the statistics for politically motivated crime, but the outcomes of trials are only registered in the judicial statistics. These different information cannot yet be merged. In [Sweden](#), in contrast, data on the circumstances of the crime, for instance the motive, and information on the outcome of the respective legal proceedings are merged.⁴⁷
- The **reporting** on hate crime data by the Federal Ministry of the Interior also does not focus on LGBTIQ* persons, and no specific reports on violence against LGBTIQ* persons are issued by the federal government. Data reporting at Länder level is also inadequate, as apart from Berlin, no German state to date (Bremen has decided to do so as of 2022) publishes data from the statistics on politically motivated crime. The civil society and political demands in Germany call for a **regular security report** differentiated according to affected groups, as was also agreed in the coalition agreement of the 19th legislative period. In addition, it is demanded that the police crime statistics (i.e. the statistics on crime in general) should include homophobic and transphobic offences separately. In [France](#), for instance, the Ministry of the Interior publishes an annual statistical report on crimes against LGBT persons.⁴⁸
- According to the demands by civil society and politicians and in order to improve the recording of homophobic and transphobic crimes, more **contact persons for LGBTI persons** in the police force are needed. These should have the appropriate equipment and resources, technical skills, tasks and powers.
- International actors such as the European Fundamental Rights Agency⁴⁹ or the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe⁵⁰ recommend the development of **alternative reporting channels** – for example via civil society organisations or via digital platforms. Many countries have already established such alternative options to filing a report at the police station: In [France](#), victims can anonymously report cases of homophobic and transphobic violence via an app⁵¹. This includes an analysis of data about the time and place of reporting. In a project funded by the European Commission, [Finland](#)⁵² as well as Croatia and Ireland are testing an online tool for reporting hate crime. In [France](#), illegal online content such as hate speech against LGBTIQ* persons can be reported on an online platform⁵³, which is then analysed by police officers. In the [Brussels-Capital Region, Belgium](#)⁵⁴ and in [England](#)⁵⁵, incidents of hate crime can be reported through civil society organisations.

4.3 Reinforcing legal protection against incitement, hate and violent crimes against LGBTIQ* persons

In the area of laws against incitement, hate and violent crimes, the following aspects are particularly relevant for Germany.

Hate crime

- Hate crime is generally punished more severely, as this is intended to send a signal to perpetrators and society regarding non-acceptance of discriminatory behaviour. The

explicit mentioning of protected characteristics (in this context: sexual orientation, gender identity and gender characteristics) is important, as they can be taken into account at an early stage in criminal law assessment and police investigations and also appear as such in police and judicial statistics.

- In [Europe](#), the majority of states already explicitly consider sexual orientation as an aggravating factor in their hate crime legislation, nine states also explicitly consider gender identity as an aggravating factor. Greece and Malta both consider sexual orientation, gender identity and gender characteristics.⁵⁶ However, a national report for [Malta](#)⁵⁷ found that in practice very few investigations take place on this legal basis. Ten countries do not consider any of the characteristics explicitly, among them Germany.
- The central criminal offences for hate crime proceedings in Germany, namely the **principles of sentencing** (§ 46 (2) sentence 2 of the Criminal Code (*StGB*)) and **incitement of the people** (§ 130 of the Criminal Code), do not explicitly mention homophobic and transphobic motives. Homophobic and transphobic acts are taken into account in sentencing as an aggravating circumstance under other inhuman motives. However, they are not explicitly mentioned in the legal texts – in contrast to racist, xenophobic and anti-Semitic motives. The same applies to the paragraph on incitement of the people. The majority of the analysed demands by civil society and politicians urgently call for LGBTIQ*-hostile motives to be included in the respective wording of the law.

Online hate speech

- With regard to combating online hate speech, the **Network Enforcement Act** (*Netzwerkdurchsetzungsgesetz*) is a key legal act in Germany. However, this law still faces some issues in practice, especially as network operators do not yet comply with many of the strict requirements for forwarding reports.⁵⁸ Among other things, the law obliges operators of social platforms to delete illegal content within a short period of time. It also creates the legal basis for imposing fines in the event of a violation. With this law, Germany went further than other countries when it comes to the obligations of operators. German civil society and politicians call, among other things, for the police and judiciary to be well equipped so that the Network Enforcement Act can actually be implemented and online hate speech against LGBTIQ* persons be effectively combated.
- In the case of hate speech, anti-LGBTIQ* motives are likewise not explicitly named as **aggravating circumstances** in German legislation. 20 countries explicitly name sexual orientation as an aggravating circumstance for hate speech, twelve additionally take gender identity into account. Seven countries do not consider any of the characteristics explicitly, among them Germany.⁵⁹

Equal Treatment Act and Basic Law

- Demands for the legal protection of LGBTIQ* persons often refer to the closing of protection gaps in the **General Equal Treatment Act**. This law implements four of the EU Equal Treatment Directives in Germany. **State action** (thus including discriminatory behaviour by the police) should fall within the scope of the General Equal Treatment

Act. Furthermore, the German Federal Anti-Discrimination Agency and other anti-discrimination associations should be strengthened and provided with a right of action by associations so that they can represent persons in court. In [Belgium](#), for instance, the national equality body⁶⁰ offers counselling in the context of violence or discrimination by the police. This Belgian institution also has the authority (in special cases) to support victims in court.

- To achieve constitutional safeguards against discrimination and hate crime, some demands refer to an extension of **article 3 (3) of the Basic Law**, which prohibits discrimination on the basis of certain characteristics, including gender, but so far does not include gender identity and sexual orientation.

4.4 Expansion and improvement of measures within the police forces, judiciary and victim support services

In order to reduce the number of unreported cases of hate crime against LGBTIQ* persons, measures in the police, judiciary and victim support are central. LGBTIQ* persons affected by hate crimes should have the confidence to turn to the police, justice and victim support services. Police officers and employees of the judiciary must be enabled to recognise cases of hate crime against LGBTIQ* persons and to deal with them competently. Victim support services and civil society organisations can play an important mediating role in this regard.

Police and judiciary

- In Germany, many **state police forces** (the Länder are primarily responsible for the police) now have **LGBTI contact persons** to whom victims and witnesses of homophobic and transphobic hate crime can turn to. International recommendations as well as civil society and political demands from within Germany emphasise the need for more staff with the appropriate resources and responsibilities. With the exception of Berlin, LGBTI contact persons in Germany are employed exclusively on a voluntary basis for this additional activity. In this context, the importance of the Conference of Interior Ministers is emphasised by the demands. In this body, the federal government should thus advocate for more staff and equipment for the required expansions in the police and judiciary. Within the [Dutch police forces](#), there is a nationwide unit called Pink in Blue⁶¹ which supports people seeking to report a crime on the basis of their sexual orientation or gender identity. The effects on the willingness of victims to report are considered positive.
- In Berlin, there is also a **contact person for LGBTI within the public prosecutor's office**. In [Spain](#), there is a prosecutor in each province who specialises in hate crimes and discrimination, including crimes based on motives regarding sexual orientation, gender identity and gender expression.⁶²
- International recommendations as well as civil society and political demands from within Germany emphasise that comprehensive and targeted measures are needed for the **training and further qualification of the police and judiciary**. Successful examples, such as those from Berlin, could be built upon. Training in recognising, registering and handling hate crime – some with a focus on hate crime against LGBTIQ*

persons – is taking place in many countries, including [Denmark](#)⁶³, [England](#)⁶⁴, [France](#)⁶⁵, [Italy](#)⁶⁶, [Malta](#)⁶⁷, [Portugal](#)⁶⁸ and [Slovenia](#)⁶⁹. Civil society organisations are often involved in such trainings. By qualifying individual officials as new trainers, the scope of training is extended gradually. The funding of the training projects is partly supported by the EU, as in [Slovenia](#) and [Italy](#). In Slovenia, this is done via the programme “Rights, Equality and Citizenship”. In addition to LGBTIQ*, other groups affected by hate crime are often taken into consideration in the trainings, such as the Jewish or Muslim communities, migrants and refugees, Roma and people with disabilities. Prevention work for a non-discriminatory treatment of LGBTIQ* persons and especially trans* persons in the police, the judiciary and particularly in the prison system is a concern in some countries. In [France](#), recommendations on how to deal with trans* persons in the police forces have been published.⁷⁰ [Malta](#) is working on measures to protect LGBTI persons in police custody.⁷¹

- In Germany, only few Länder have **complaints bodies** for reporting misconduct and discriminatory behaviour by the police, for example homophobic or transphobic behaviour. The German Federal Anti-Discrimination Agency cannot provide further advice in the area of hate crime and state action (including police misconduct). Some demands from civil society and politics focus on the establishment of the position of an independent police commissioner or an independent police complaints body to investigate police misconduct. In some [European countries](#) (for example Belgium, Denmark, France, Hungary, Ireland, Portugal) independent police complaint bodies exist.⁷² These bodies can be contacted by people who feel discriminated while dealing with the police and wish to report it, including LGBTIQ* persons who have experienced homophobic or transphobic behaviour by the police.
- Many countries are making efforts to disseminate **information** on hate crime and measures for those affected. In [Spain](#), a guide for victims of anti-LGBTI violence was published, detailing procedures and contact points when hate crime occurs.⁷³ In [England](#), a poster campaign was launched with the intention of increasing trust in law enforcement agencies.⁷⁴

Victim protection

- In the field of victim protection, there are various support services and contact points in Germany, though not nationwide, and with a high concentration in Berlin. Victim protection is fundamentally organised by the Länder. There is demand for an **expansion** of services and support, also via federal funds. The expertise of existing institutions should be included in further developments. In addition, it is demanded that employees of counselling centres be trained in the area of online hate in order to be able to provide better support. As part of a project in [Malta](#) that was aiming to raise awareness of online hate speech volunteers from civil society organisations were offered training on how to deal with hate speech on the internet.⁷⁵
- Moreover, the protection concepts should be developed **intersectionally** to include LGBTIQ* persons of colour as well as persons with disabilities or illnesses. Other important target groups are young LGBTIQ* persons and LGBTIQ* refugees.

- There is also a demand to expand existing national **violence prevention programmes** (especially within the framework of the Istanbul Convention) for trans* and inter* persons in an inclusive way. In Germany, there are still gaps with regard to protection against violence in women’s shelters for trans* and inter* persons. In the [Netherlands](#), a project focusing on combating violence against women has joined forces with a project promoting the rights of LGBTIQ* persons to work jointly on the protection of LGBTIQ* persons.⁷⁶

4.5 Prevention measures to combat hate crime and hate speech against LGBTIQ* persons

In order to combat hate crime and hate speech against LGBTIQ* persons, there is a particular need for inclusive laws – and the application and enforcement of these laws – as well as preventive measures and strategies in the sense of promoting democracy. This is particularly the case in the digital space, where the enforcement of existing laws remains difficult. A connection between online hate and hate crime has already been proven.

- In the case of online hate speech, **decentralised approaches** should also be pursued to strengthen a positive debate culture, for example through counter-speech groups in the spirit of “digital street work”.
- [Malta](#) has created a dedicated unit within the authorities to raise public awareness and provide counselling to those affected by online hate speech.⁷⁷
- Furthermore, **democracy promotion and human rights education** (both digitally and in the social space on site) are important, as for instance implemented by the project “Living Democracy!” (*Demokratie leben!*) in Germany. Such projects need long-term structural funding. Associations and self-organisation of the LGBTIQ* community should also be strengthened and financially supported in the long term. In the [Netherlands](#), alliances (Gay-Straight-Alliances) between LGBTIQ* organisations and other actors have been created to better protect LGBTIQ* persons, involving actors from politics as well as civil society and the police.⁷⁸ Projects such as film competitions or similar actions in schools (like in [Belgium](#)⁷⁹, for instance) can also contribute to raising awareness. Long-term national programmes and structures are crucial in this context – as opposed to short-term, one-off projects.
- Events by the **police** together with, for example, religious communities to sensitise on the issue of homophobia and transphobia can also be a way to raise awareness. The police in [Denmark](#) undertakes such information and awareness-raising events.⁸⁰
- Work against homo- and transphobia should also take place in regular **educational institutions** and **training centres**. In particular, the curricula of schools should be influenced by the federal government via the Conference of Interior Ministers. The causes of hate crime in society should be combated at an early stage by means of gender-sensitive or gender-reflective pedagogy.

5 Conclusion

The results of the Working Paper on which this abridged version is based on and thus the evaluation of national demands and measures at international and national level show that, on the one hand, legal and in particular criminal law changes are needed in Germany in order to combat hate crime against LGBTIQ* persons more effectively. On the other hand, non-legal measures, for example in the work and training of the police, the judiciary and victim support, must be implemented. These measures touch on federal as well as Länder competences. This underlines the need for a national action plan to coordinate policies and initiatives at different levels of government.

5.1 Need for legal changes

- The majority of the civil society and political demands considered in the Working Paper insistently point to the inclusion of homophobic and transphobic motives (sexual orientation, gender identity, gender characteristics) in the **principles of sentencing** (§ 46, section 2, sentence 2 of the Criminal Code) and in the legal text on **incitement of the people** (§ 130 of the Criminal Code).
- Further demands for the legal protection of LGBTIQ* persons refer to the extension of the **General Equal Treatment Act** to state action and thus also to discriminatory behaviour by the police.
- Furthermore, an amendment to **article 3 (3) of the Basic Law** to include gender identity and sexual orientation is mentioned as a demand for constitutional protection against discrimination and hate crime.

5.2 Need for a national action plan

For successful political realisation, non-legislative measures must also be taken into account. These affect in particular the competences of the Länder (namely police and judiciary, victim support, education). Therefore, it would be particularly important for the federal government to exert influence, for instance via the **Conference of Interior Ministers**, in order to achieve progress for LGBTIQ* persons throughout Germany. This is also emphasised by demands of BÜNDNIS 90/DIE GRÜNEN (Alliance 90/The Greens) and the Lesben- und Schwulenverband e. V. (LSVD, Lesbian and Gay Federation).⁸¹ The first-time discussion of the topic of hate crime against LGBTIQ* persons at the 215th session of the Conference of Interior Ministers from 1–3 December 2021 is an important step in this regard. The responsibility for **funding measures**, such as nationwide prevention projects like “Living Democracy!”, also lies at the federal level. In addition, the federal government could become more active in **victim support**, as shown by the increasing commitment in the area of violence against women in accordance with the Istanbul Convention in recent years (for example, the establishment of a helpline for women having experienced violence). A similar commitment should also be promoted in the sphere of violence against LGBTIQ* persons.

The National Action Plan against Racism already included homophobia and transphobia as issues in 2017. However, its impact on the situation of LGBTIQ* persons fell short of expectations. Accordingly, a **National Action Plan against Homophobia and Transphobia** that focuses on violence against LGBTIQ* persons is an important and necessary step. This wish is also expressed in many national demands of political parties as well as civil society.⁸²

- As demanded by politicians and civil society, this plan should include a **joint programme by the federal state and the Länder against violence**, so that progress can be made in this area despite the shared responsibilities between the two levels of government.⁸³
- In order to set up the national action plan, an **expert commission** should be appointed by the federal government to develop recommendations for this plan – in addition to a systematic inventory of all manifestations of LGBTI hostility and related hate crime. This is what various civil society organisations have been calling for.⁸⁴ At the 215th Conference of Interior Ministers, the demand for an independent expert commission was endorsed. This commission should present an initial report with concrete recommendations for action at the next conference in autumn 2022.
- Furthermore, international strategies such as the **EU's LGBTIQ Equality Strategy 2020–2025** should also be implemented and supported, as demanded by the Green Party, for instance.⁸⁵

6 Looking ahead: projects of the federal government under Olaf Scholz (2021–2025)

The **coalition agreement 2021–2025** between the Sozialdemokratische Partei Deutschlands (SPD, Social Democratic Party of Germany), the green party BÜNDNIS 90/DIE GRÜNEN and the Freie Demokratische Partei (FDP, Free Democratic Party) of November 2021 states: “In order to counter queer hostility, we are developing a **cross-departmental national action plan for the acceptance and protection of sexual and gender diversity** and are implementing it with financial support. Among other things, we will support the Länder in educational programmes in schools and youth work, promote services for older LGBTI persons and promote diversity management in the workplace, especially in small and medium-sized enterprises and in the public sector” (own translation).⁸⁶

Further measures on hate and violence against LGBTIQ* persons within the coalition agreement are:

- **Legal regulations on hate crime:** Gender-specific and homophobic motives will be explicitly included in the catalogue of sentencing in § 46 (2) of the Criminal Code⁸⁷ (see [Chapters 4.3](#) and [5.1](#)).
- **Recording hate crime:** The registration of politically motivated crime will be improved, for example with regard to misogynist and queer hate crime.⁸⁸ Furthermore, the federal police as well as the police forces of the Länder are to record hate crimes based on gender and against queer persons separately⁸⁹ (see [Chapter 4.2](#)).

In addition, the following measures are planned, which touch upon topics mentioned in the previous chapters:

- **Measures within the police forces:** Proximity to the citizens and a transparent culture of learning from errors shall be strengthened by developing training and education of the police as well as teaching the principles of a free democratic order, in particular with regard to fundamental and human rights⁹⁰ (see [Chapter 4.4](#)).
- **Independent police commissioner:** An independent police commissioner for the federal police forces shall be introduced as a contact point at the German Bundestag. This commissioner is to have the right of access and the right to inspect files⁹¹ (see [Chapter 4.4](#)).
- **Adequate support and shelters for protection against violence:** The need of vulnerable groups such as women with disabilities or refugee women as well as queer persons shall be taken into account⁹² (see [Chapter 4.4](#)).
- **Expansion of protection against discrimination:** Article 3 of the Basic Law is to be supplemented by a ban on discrimination on the grounds of sexual identity^{93,94} (see [Chapter 4.3](#)).
- **Strengthening the Anti-Discrimination Agency:** The independence of the German Federal Anti-Discrimination Agency shall be ensured, it shall be adequately staffed and

budgeted and its competences shall be strengthened. Furthermore, the General Equal Treatment Act shall be evaluated, gaps in protection closed, legal protection improved and the scope of application extended⁹⁵ (see [Chapter 4.3](#)).

- **Studies on group-related discrimination by institutions of the state** shall be promoted⁹⁶ (see [Chapter 4.1](#)).

The following measures are also supported at European political level:

- **EU anti-discrimination law:** In future, EU legal acts that apply against discrimination based on racism must also include discrimination based on homophobia and other forms of discrimination.⁹⁷

As the election programmes for the Bundestag elections and the election tests (*Wahlprüfsteine*) of various LGBTIQ* organisations showed, even before the coalition agreement, there was a high degree of agreement between the three ruling parties, the Sozialdemokratische Partei Deutschlands, BÜNDNIS 90/DIE GRÜNEN and the Freie Demokratische Partei, with regard to the promotion of rights of LGBTIQ* persons. The coalition agreement reflects this. In particular, with the plans to **include “sexual identity” in the equal treatment article of the Basic Law** and the **inclusion of “gender-specific and homophobic motives” in the catalogue of sentencing** in order to achieve harsher penalties for homophobic and transphobic hate crimes, central demands of civil society and political parties were included in the present coalition agreement.

Representatives of the LGBTIQ* community, including the Lesben- und Schwulenverband e. V. in Germany, were largely positive about the coalition agreement: it contains central plans with a promising signal effect for a noticeable improvement of the rights of LGBTI persons, they said.⁹⁸

In view of the major pressure regarding hate and violence against LGBTIQ* persons, which was also identified in the context of this Working Paper, the government’s plans are a good sign. Better protection against discrimination and effective measures against hate and incitement should be tackled quickly – and the government’s plans as outlined in the coalition agreement should be developed and implemented in concrete terms. The LGBTIQ* community and experts from relevant associations and other self-advocacy groups should always be involved in this. There is already a wide range of expertise in this regard, which should be utilised.

¹ Molter, Sarah (2022): [Bekämpfung von Hasskriminalität gegen LGBTIQ*-Personen. Handlungserfordernisse und Lösungsansätze in Deutschland sowie Einblicke in andere europäische Staaten](#) [Combating hate crime against LGBTIQ* persons. Need for action and solution approaches in Germany as well as insights from other European countries]. Working Paper N° 24 of the Observatory for Sociopolitical Developments in Europe.

² In this context, demands by civil society organisations (Bundesverband Trans* e. V. (BVT*, Federal Association Trans), Lesben- und Schwulverband e. V. (LSVD, Lesbian and Gay Federation), MANEO – Das schwule Anti-Gewalt-Projekt in Berlin (MANEO – the gay anti-violence project in Berlin), Deutscher Juristinnenbund e. V. (djB, German Women Lawyers' Association), Dachverband Lesben und Alter e. V. (Umbrella Organization Lesbians and Age), Paritätischer Gesamtverband (Der Paritätische, National Association of Welfare Services), Amadeu Antonio Stiftung (Amadeu Antonio Foundation), and Deutsches Institut für Menschenrechte (DIMR, German Institute for Human Rights) were taken into account if these contained demands for combating hate crime against LGBTIQ* persons. Furthermore, demands and requests by political parties were included. These were found among others in those programmes for the Bundestag election 2021 which included the topic of hate crime against LGBTIQ* persons (namely those of BÜNDNIS 90/DIE GRÜNEN (Alliance 90/The Greens), DIE LINKE (the Left), Freie Demokratische Partei (FDP, Free Democratic Party), Sozialdemokratische Partei Deutschlands (SPD, Social Democratic Party of Germany) as well as relevant motions of the parliamentary groups of the 19th legislative period on the topic of hate crime (namely by BÜNDNIS 90/DIE GRÜNEN and the Freie Demokratische Partei). Moreover, statements on these motions by different actors were included. The parliamentary group of the Christlich Demokratische Union Deutschlands (CDU, Christian Democratic Union in Germany) and the Christlich-Soziale Union in Bayern (CSU, Christian Social Union in Bavaria) was taken into account due to individual contents from election test items (*Wahlprüfsteine*), but there were no references to the topic of hate crime against LGBTIQ* persons in the election programmes of these two parties. **An overview of the researched civil society and political demands as well as the exact wording of all demands can be found in the annex of the Working Paper (in German).**

³ Find all publications by the Observatory on equality and the rights of LGBTIQ* persons here: <https://sociopolitical-observatory.eu/en/keytopics/equality>.

⁴ This Working Paper deals with individual national action plans. For an overview of national action plans in the European Union and for the drafting of national action plans for equality for LGBTIQ* people see [endnote 3](#).

⁵ For more detail, see: Wittenius, Marie (2022): [Drafting National LGBTIQ* Equality Action Plans – Framework and demands at European level and in Germany](#). Expertise of the Observatory for Sociopolitical Developments in Europe.

⁶ For more detail, see: Lange, Katrin (2022): [Equality of rainbow families. Need for action and solution approaches in Germany as well as insights from other European countries](#). Abstract of the Working Paper N° 23 of the Observatory for Sociopolitical Developments in Europe.

⁷ Dionisius, Sarah (2020): Zwischen trans* Empowerment und Cisnormativität: leibliches Elternwerden in Grenzbereichen. In: Peukert, Almut /Teschlade, Julia/Wimbauer, Christine, Motakef, Mona/Holzleithner, Elisabeth (eds.): [Elternschaft und Familie jenseits von Heteronormativität und Zweigeschlechtlichkeit](#) [Between trans* empowerment and cisnormativity: becoming a biological parent in borderline contexts]. In: GENDER – Zeitschrift für Geschlecht, Kultur und Gesellschaft. Special edition 5: 77–91, p. 80.

⁸ [The Yogyakarta Principles plus 10](#). Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, as adopted on 10 November 2017, p. 6; Preamble.

⁹ [The Yogyakarta Principles](#). Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity of March 2007, p. 8; Preface.

¹⁰ FRA – European Union Agency for Fundamental Rights (2009): [Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States. Synthesis Report](#), p. 11.

¹¹ Ibid.

¹² Dionisius 2020: 78.

¹³ Queerulant_in (2019): [Vielfalt verstehen. Eine kleine Einführung in queere Begriffe](#). [Understanding Diversity. A short introduction in queer terminology.] Landesfachstelle Hessen „Queere Jugendarbeit“, p. 29.

¹⁴ Ibid.: 29f.

¹⁵ Fütty 2019, p. 17 quoted after Dionisius 2020: 78.

¹⁶ If in the following sections the spelling of LGBTIQ*, trans*, inter* and non-binary differs; this different spelling was adopted from the original source and used depending on the respective context.

¹⁷ Queerulant_in 2019: 37.

¹⁸ Yogyakarta Principles 2017: 6.

¹⁹ Yogyakarta Principles 2007: 8.

²⁰ Queerulant_in 2019: 54f.

²¹ “Personal marital status is the legal position/status of a person within the family law system. This status includes data on birth, marriage, the establishment of a civil partnership and death as well as all related facts under family and naming law” (own translation), <https://www.bmi.bund.de/DE/themen/moderne-verwaltung/verwaltungsrecht/personenstandsrecht/personenstandsrecht-node.html>

²² Ibid., p. 51.

²³ BMI – Bundesministerium des Innern, für Bau und Heimat (2017): [Nationaler Aktionsplan gegen Rassismus. Positionen und Maßnahmen zum Umgang mit Ideologien der Ungleichwertigkeit und den darauf bezogenen Diskriminierungen](#) [National Action Plan against Racism. Positions and measures for dealing with ideologies of inequality and the discrimination related to it]. Berlin.

²⁴ SPD/BÜNDNIS 90/DIE GRÜNEN/FDP (2021): [Mehr Fortschritt wagen. Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit](#) [Daring to make progress. Coalition for freedom, justice and sustainability]. Coalition agreement 2021–2025, p. 119.

²⁵ EU COM – European Commission (2020): Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. [A Union of Equality: LGBTIQ Equality Strategy 2020–2025](#) (COM(2020) 698 final).

²⁶ “Charter of Fundamental Rights of the European Union” – GFR – of 7 December 2000, ABL.EU of 30 March 2010, C 83/389: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>.

²⁷ The European Convention on Human Rights as amended by Protocols Nos. 11, 14 and 15, together with the Additional Protocol and Protocols Nos. 1, 4, 6, 7, 12, 13 and 16: https://www.echr.coe.int/Documents/Convention_ENG.pdf.

²⁸ Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states to combat discrimination on grounds of sexual orientation and gender identity: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a.

²⁹ <https://rainbow-europe.org/>

³⁰ Comprehensive criteria including definitions: <https://rainbow-europe.org/about>.

³¹ <https://www.bundestag.de/dokumente/textarchiv/2021/kw23-pa-inneres-lsbti-844444> (in German)

³² FRA – European Union Agency for Fundamental Rights (2020): [EU-LGBTI II. A long way to go for LGBTI equality](#).

³³ Ibid., pp. 40; 44

³⁴ Justitsministeriets Forskningskontor (2020): [Udsathed for vold og andre former for kriminalitet. Offerundersøgelserne 2005–2019](#) [Occurrence of violence and other forms of crime. Victim surveys 2005–2019].

³⁵ <https://www.interieur.gouv.fr/Interstats/L-enquete-Cadre-de-vie-et-securite-CVS> (in French)

³⁶ Brå – Brottsförebyggande rådet (2018): [Självrapporterad utsatthet för hatbrott. Analys utifrån Nationella trygghetsundersökningen 2006–2017](#) [Self-reported exposure to hate crimes. Analysis based on the National Security Survey 2006–2017].

³⁷ https://www.bka.de/DE/UnsereAufgaben/Forschung/ForschungsprojekteUndErgebnisse/Dunkelfeldforschung/SKiD/skid_node.html;jsessionid=FF5F19F8A3FDDA305883DD0DDD94BF64.live2291 (in German)

³⁸ <https://thl.fi/en/web/thlfi-en/research-and-development/research-and-projects/school-health-promotion-study>, report from 2019: <https://thl.fi/en/web/thlfi-en/statistics-and-data/statistics-by-topic/social-services-children-adolescents-and-families/well-being-of-children-and-young-people-school-health-promotion-study>

³⁹ SOS homophobie (2015): [Enquête sur la visibilité des lesbiennes et la lesbophobie](#) [Survey on visibility of lesbians and lesbophobia].

⁴⁰ <https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Observatoire-de-la-haine-en-ligne-analyser-pour-mieux-lutter> (in French)

⁴¹ Ibid.

⁴² <https://www.unia.be/en/publications-statistics>

⁴³ EU High Level Group on Non-discrimination, Equality and Diversity (2021): [Guidelines on improving the collection and use of equality data](#). Publications Office of the European Union.

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⁴⁵ <https://www.bmi.bund.de/DE/themen/sicherheit/kriminalitaetsbeakaempfung-und-gefahrenabwehr/politisch-motivierte-kriminalitaet/politisch-motivierte-kriminalitaet-node.html> (in German)

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- ⁵⁰ OSCE ODIHR – Organization for Security and Co-operation in Europe. Office for Democratic Institutions and Human Rights (2018): *Information against hate crimes toolkit (INFAHCT) programme description*.
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- ⁵² Ministry of the Interior: <https://oikeusministerio.fi/en/project?tunnus=OM043:00/2019>; project website including resources/materials: <https://yhdenvertaisuus.fi/tiedolla-vihaa-vastaan> (in Finnish); Collection of examples of good practice by the European Fundamental Rights Agency: <https://fra.europa.eu/en/promising-practices/facts-against-hate-0>
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- ⁶¹ <https://www.politie.nl/onderwerpen/roze-in-blauw.html?fbclid=IwAR05gCeEsf5PKU-oEeEt8rxjX2H9OeWnjuVPmToJfFa1FN1U4WDvtqdWn4> (in Dutch)
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⁸¹ BÜNDNIS 90/DIE GRÜNEN (2020): [Antrag der Bundestagsfraktion BÜNDNIS 90/DIE GRÜNEN: Unabhängigkeit der Antidiskriminierungsstelle des Bundes stärken \(BT-Drucksache 19/24431\)](#) [Motion by the Bündnis 90/Die Grünen parliamentary group: Strengthening the independence of the German Federal Anti-Discrimination Agency], 18 November 2020.

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⁸² See, among others: DIE LINKE (2021): [Zeit zu handeln! Für soziale Sicherheit, Frieden und Klimagerechtigkeit!](#) [Time to act: For social security, freedom and climate justice!]. Programme for the Bundestag election 2021.

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⁸⁶ SPD/BÜNDNIS 90/DIE GRÜNEN/FDP 2021: 119.

⁸⁷ Ibid.: 119.

⁸⁸ Ibid.: 107.

⁸⁹ Ibid.: 119.

⁹⁰ Ibid.: 104.

⁹¹ Ibid.

⁹² Ibid.: 115.

⁹³ “Gender identity” was not included. Trans and inter persons are not included under the term “sexual identity”.

⁹⁴ Ibid.: 121.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.: 120.

⁹⁸ <https://www.lsvd.de/de/ct/6305-Vielversprechender-Koalitionsvertrag-Queerpolitischer-Aufbruch-kommt> (in German)

All online sources indicated in this abridged version are currently accessible [as of: 10 February 2022].

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The publication does not reflect the view of the German federal government. The responsibility for the content remains with the author Sarah Molter.

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