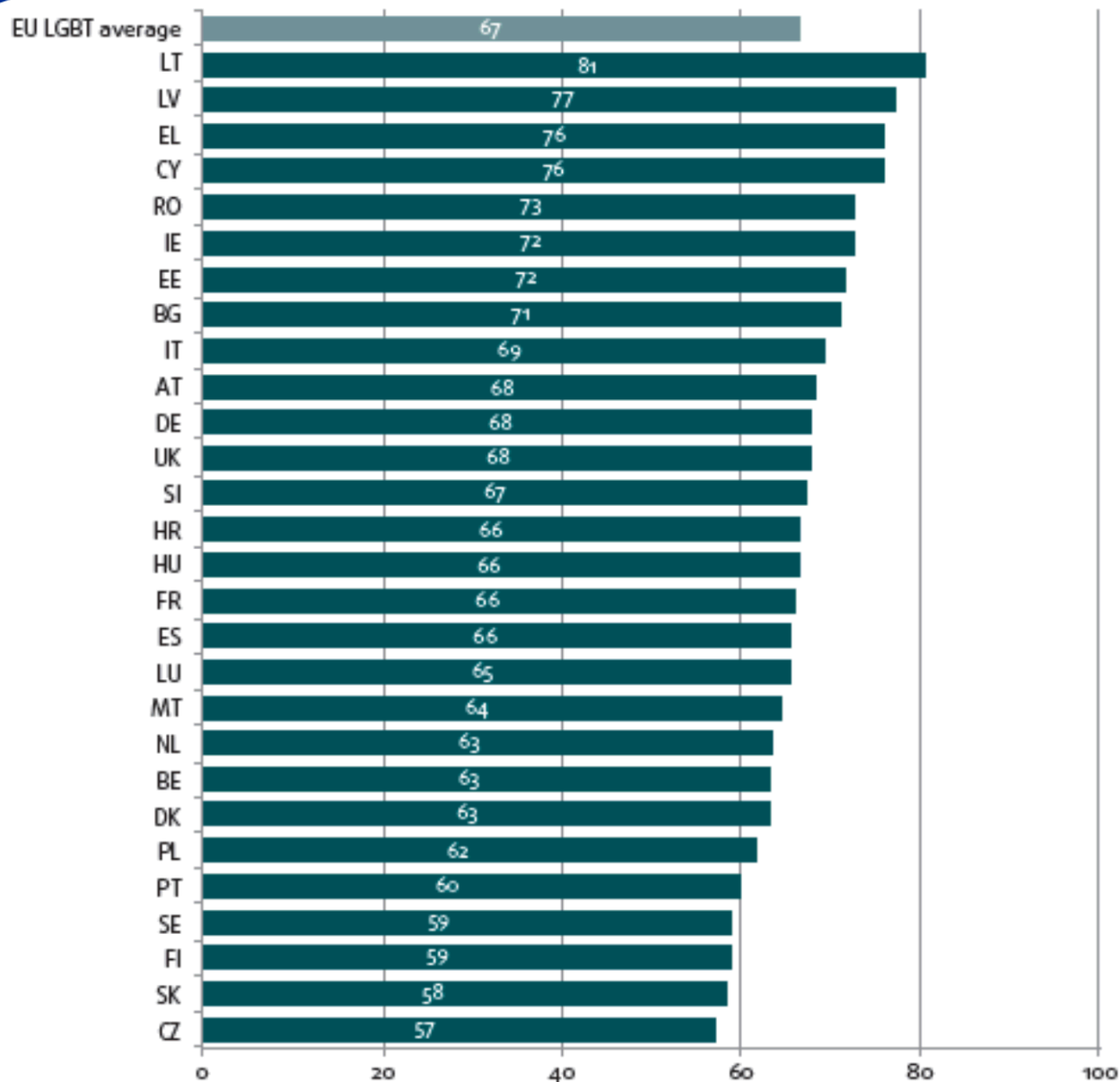


Setting the Scene and Legal and Medical challenges in protecting the fundamental rights of children



*Session 9: Non-Discrimination of Lesbian,
Gay, Bisexual, Transgender and Intersex
(LGBTI) Young People*

**Respondents
'always' or 'often'
hiding or
disguising being
LGBT during
schooling before
the age of 18, by
country (%)**



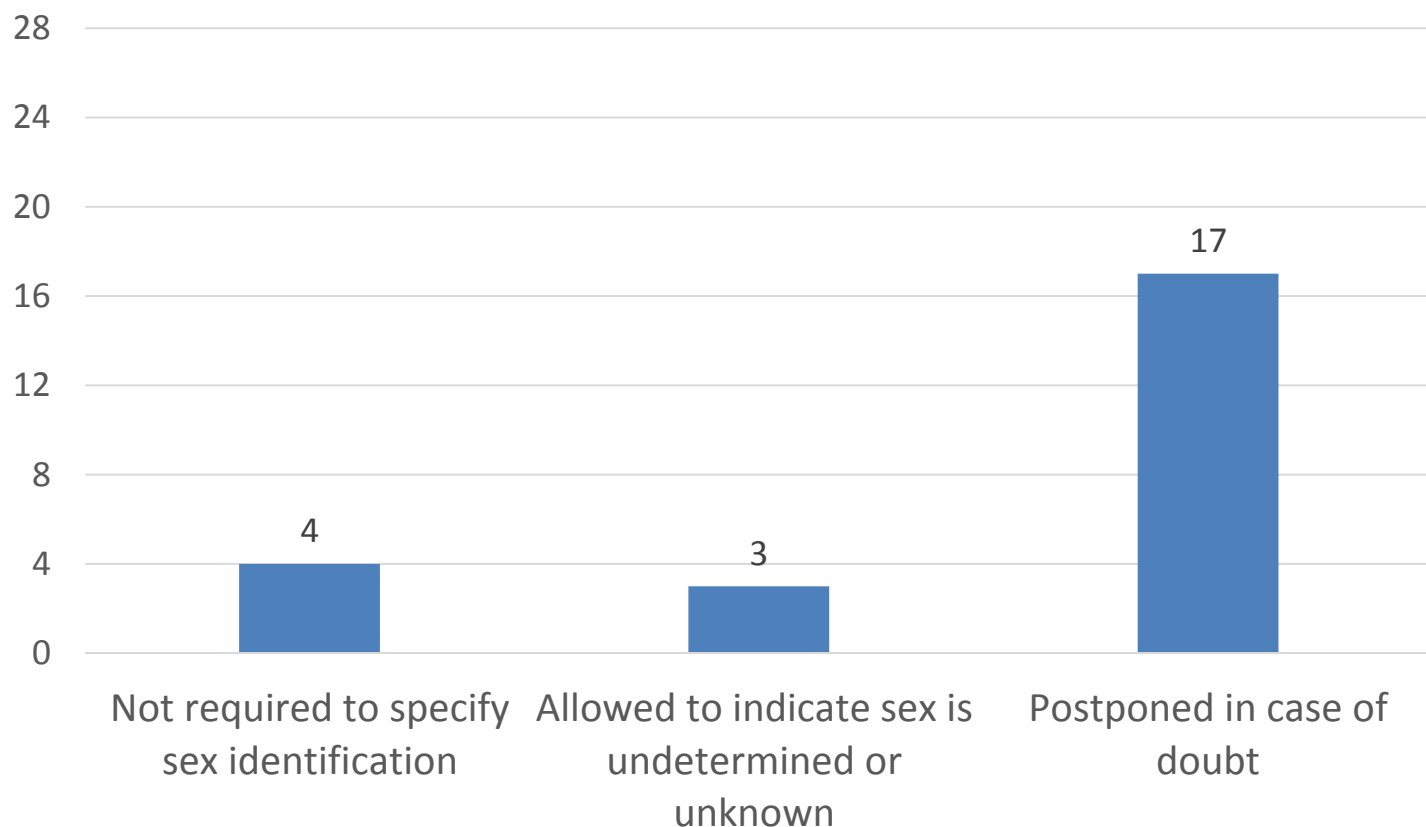
Legal Status and gender/sex/sex characteristics

- Basic aspects of status (legal, social, health) defined by the sex-binary – environment prone to intersex children being discriminated. Sex determination - re. trans, LGB
- **Intersex:** a number of variations in a person's bodily characteristics that do not match strict (medical) definitions of male or female
- Intersex refers to the **sex characteristics** of a person, not to sexual orientation or gender identity

Registration of 'sex' at birth

- In most EU Member States birth registration legislation requires individuals to be registered as 'male' or 'female'
- Legal requirements - social expectations - perceived medical needs – leading to 'sex normalising' interventions
- 18 EU Member States allow delay in registering a new-born child: imposition of preponderant sex/intervention

Requirements concerning birth certificates (No. of EU MS applying the requirement)



Based on FRA Comparative Legal Analysis Update 2015

Intersex and non-discrimination law

- Practices such as issuing birth certificates and medical treatment re. the EU Charter of FR Arts 1, 3, 7, 9, 21, 24
- In some EUMS 'intersex' addressed in practice under 'gender' or 'gender identity' or under 'other grounds'
- Discrimination of intersex persons can be addressed in the EU framework as a form of **'sex' discrimination under the EU Charter of Fundamental Rights (Art. 21)**
- Independent coverage of 'intersex' as a specific ground (**'sex characteristics'**) absent from EUMS legislation except for **Malta**

Registration of 'sex' at birth

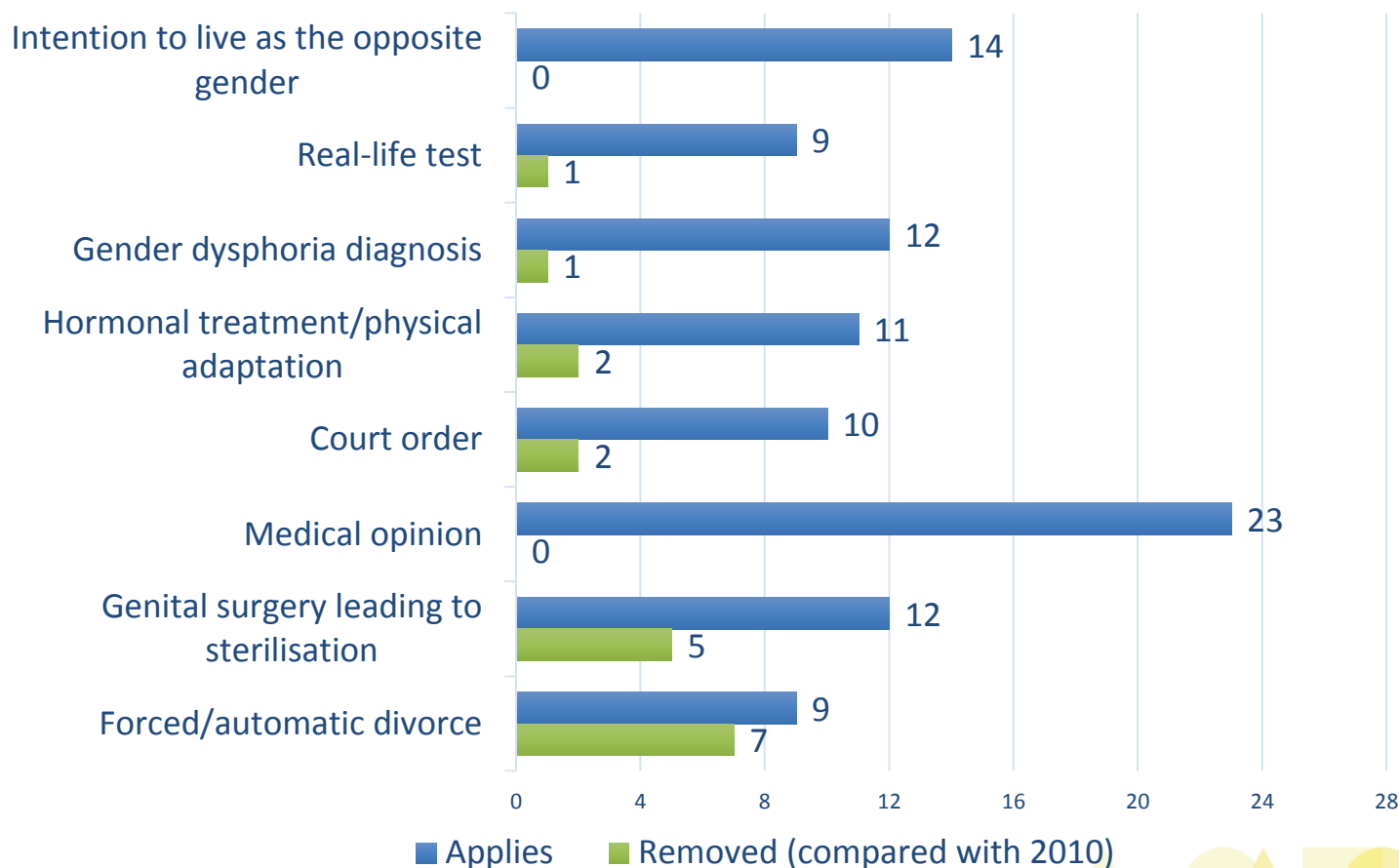
FRA Opinions:

- Alternatives to gender (sex) markers in identity documents should be considered to protect intersex children
- The possibility of including a gender-neutral marker could also be considered. This is particularly important for birth registration/certificates in situations where the new-born child's sex is unclear

Gender Identity Recognition

- Trend towards standardising and simplifying legal gender recognition procedures in EUMS (at least 5 EUMS since the FRA 2010 report)
- 3 EUMS require only self-determination for legalisation
- Access to legal gender recognition for children remains difficult (age of majority for self-determination)
- Increasing EUMS allowing to adequate name to gender
- Difficulties to change the recorded sex in official docs. and educational diplomas
- CoE Commissioner – specific obstacles – legal recognition of trans and intersex children's sex or gender remains a huge hurdle in most countries.

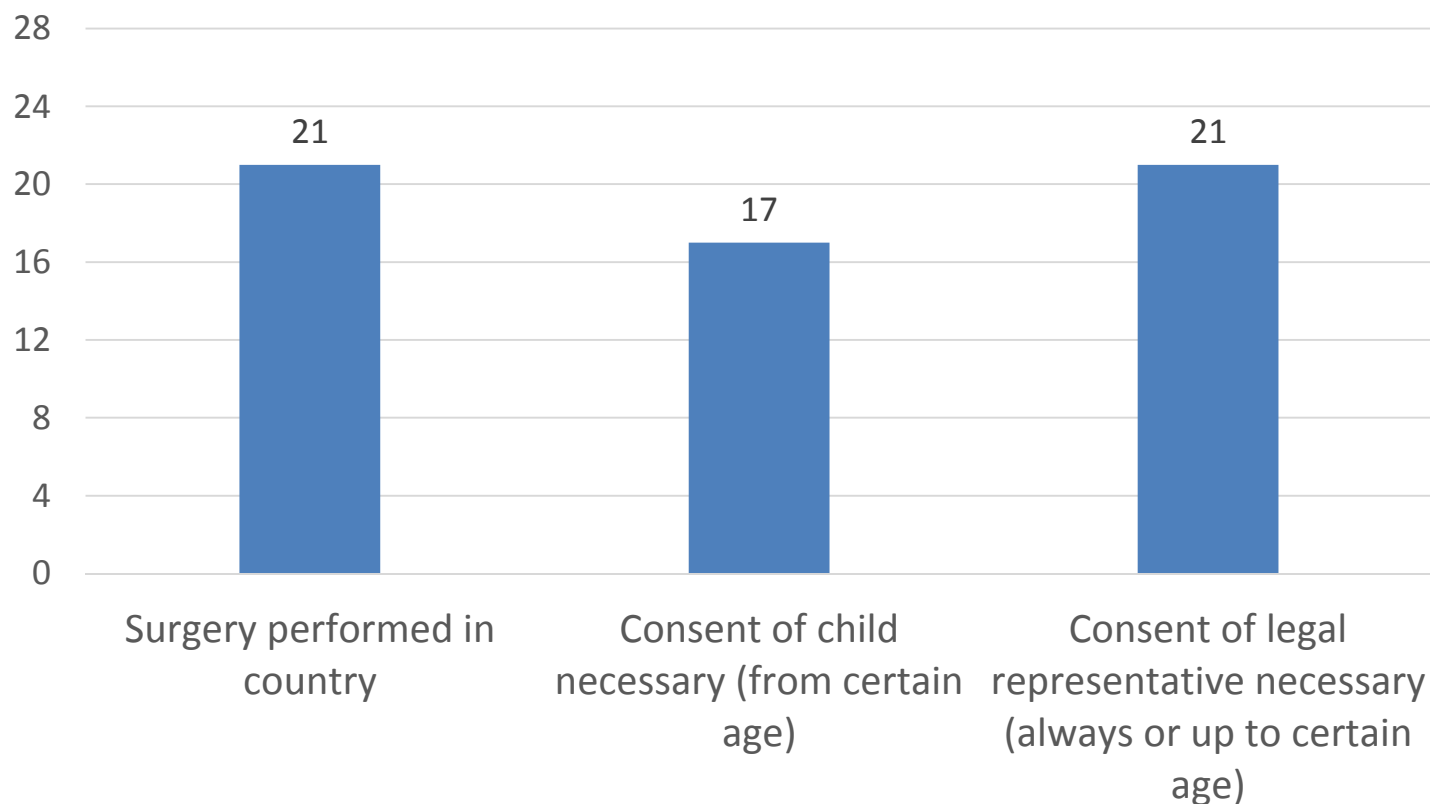
Requirements for rectifying a recorded sex or name in official documents (number of EU MS applying the requirement)



Medical interventions on Intersex

- Medical treatments to align new-borns' physical appearance with one sex without prior and informed consent - consequences these may have on persons' mental and physical health
- **No official data available on number/frequency of medical treatments/ surgeries** performed on intersex children
- Sex 'normalising' surgeries seem to take place in at least **21** EU Member States. Big differences between EUMS in terms of **consent** by patient or parents/legal representatives

Requirements re. medical interventions on children (No of EUMS applying the requirement)



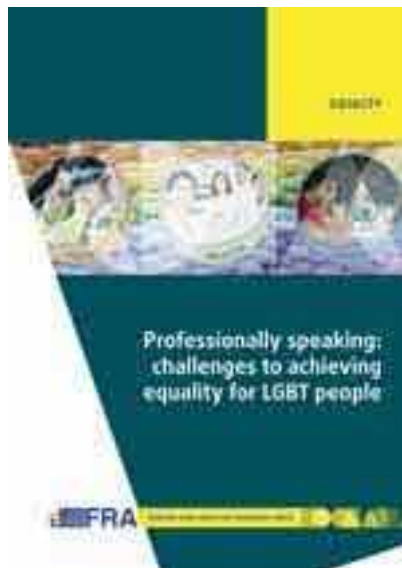
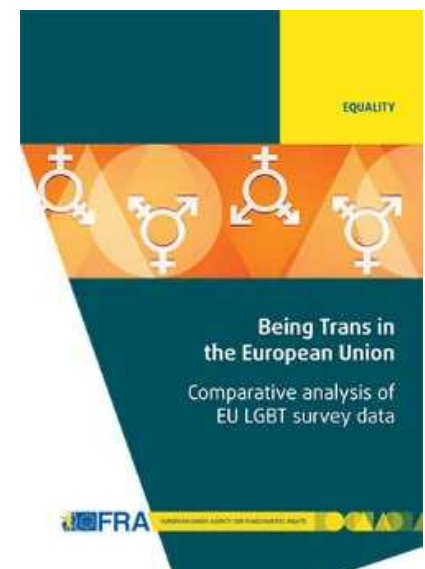
Medical interventions on Intersex

- Little information on official **medical protocols** concerning the treatment of intersex people
- Little case law on medical treatments
- Key issues:
 - minimum age from which the child is involved in the decision
 - whether the intervention is postponed or consent sought from parents
 - what happens in cases of disagreement

Medical interventions

- FRA Opinion: EU Member States should **avoid “sex-normalising” medical treatments** on **intersex children** without their free and informed consent.
- This can contribute to prevent violations of the FR of Intersex people (such as Articles 3 and 24 of the EU Charter on Fundamental Rights) - especially through practices with irreversible consequences.
- **Growing awareness that trans children should stop being treated as if suffering a pathology** and that legal gender recognition should not require diagnosis of a disorder
- Wanted SRS remains unavailable/problematic in some EUMS

FRA Publications



Thank you for your attention

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