

AUSTRIA

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
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Section I – Implementation and dissemination of the Recommendation

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory Adequate Insufficient Absent

Please explain your reply.

E.g. Registered Partnership Act entered into force in 2010 (cf ECHR *Schalk and Kopf v Austria*, judgment 24 June 2010); the EU Equal Treatment Directives are implemented at the level of the federation as well at the level of the provinces (*Länder*). E.g. concerning the Civil Service of Austria, legislative measures have been taken to prohibit any kind of discrimination on the grounds of sexual orientation or gender identity; the Equal Treatment Act (ETA) in its section II (Equal Treatment on the – inter alia - ground of sexual orientation at the workplace) secures that no discrimination on the ground of sexual orientation may take place at the workplace; with respect to goods and services, education, social protection and social benefits (section III of the Equal Treatment Act) the levelling up is under consideration.

Examples from the provinces:

Establishment of Wiener Antidiskriminierungsstelle für gleichgeschlechtliche und transgender Lebensweisen; Gleichbehandlungsbeauftragte der Stadt Wien

Subsidies by the province Vorarlberg granted the ngos „Go West“ and „Transman“ for counselling and supporting LGBT people.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?

a. b. c. d. e.

Please explain and, if appropriate, provide examples of any such measures found:

E.g. every two years all ministers of the Austrian government report to the Chancellor about the status of equalisation in their ministries and the Chancellor has to compile all these reports to one common report. This Equal Treatment Report of the Austrian Government is sent to the National Assembly and is part of discussions and considerations there. The report of the Austrian Government is accessible for free at: <http://www.frauen.bka.gv.at/site/5535/default.aspx> (in German)

Cf example for review by civil society: www.rklambda.at

Are there measures in place to redress any such discrimination?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices:

According to the ETA, victims are granted compensation (minimum amount: € 1.000,-- for harassment; € 500,-- for discrimination)

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?
- a. b. c. d. e.

If appropriate, please provide examples of measures adopted or in preparation.

E.g. the protection was extended so that earnings of the registered mate must by no means be reason for any kind of discrimination
The minimum amount of compensation in the case of harassment has been increased from € 720.- to € 1000.-

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?
- a. b. c. d. e.

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

- a. b. c. d. e.

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices:

Periodic reports by the Ombuds for Equal Treatment at federal as well at provincial level.
E.g. the data bank of the Federal Ombud for Equal Treatment displays the annual figures of cases on discrimination on grounds of sexual orientation and on gender identity. It is planned to interlink these general figure with the type of discrimination, e.g. harassment, access to employment, promotion.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?
- a. b. c. d. e.

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Cf.
<http://www.chancen-gleichheit.at/ChancenGleichheit/Publikationen/default.htm>
<http://www.chancen-gleichheit.at/ChancenGleichheit/Projekte/default.htm>
In the Austrian Civil Service, victims of discrimination can not only take legal advice from the equal treatment officers (trustees on equalisation), but also get assistance from them during the procedure at the Federal Equal Treatment Commission.

Effective legal remedies are provided by general Austrian tort law. Particularly, Sec. 1328a of the Austrian Civil Code (ABGB) entitles victims of discrimination to a claim to damages in case of violation of their private sphere. In addition, the ETA provide for sanctions, such as compensation, in case of discrimination in the working world.

There are also easily accessible conciliatory proceedings. The Ombud for Equal Treatment supports and counsels victims including to facilitate friendly agreements for them. It does not, however, have the competence to go to court. Victims of discrimination are often supported by trade unions or the "Chamber of Work" to actually bring an action for damages.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

Different political opinions at parliamentary level and stereotypes motivated by religion.

7. Has the Recommendation, including its Appendix, been translated in all your national languages?

a. b. c. d. e.

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

Civil society has disseminated the recommendation.

Section II – Implementation of the specific provisions in the Appendix

I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Criminal police and public prosecution service are in general obliged to prosecute ex officio every suspicion of a criminal offence which gets known to them. Such a suspicion may not only be based on pure speculations, but on concrete indications for a criminal offence. For most investigation measures which require an order of the public prosecution service it is provided for that the criminal police can carry out these measures on their own, if there is danger ahead.

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. b. c. d. e.

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?
a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?
a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

For many years training programmes for prison staff dealing with typical problems in that area as a standard feature. The objective of these measures is to raise the staff's awareness of socially sensitive situations. In addition when allocating the cells, i.e. accommodating the prisoners within the prison, a high level of attention is paid to ensuring that multi-occupancy cells only contain inmates who are compatible with each other so that no sexual orientation- or gender identity-related conflicts may arise. Special training programs for judges and public prosecutors are under consideration. The law enforcement authorities have to pass human rights training.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?
a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Video surveillance has been established in Austrian prisons which on the one hand shall satisfy requirements of the right to privacy as well as data protection rights and on the other hand shall inter alia protect inmates from assaults etc by fellow prisoners as well as by prison staff.

All "official tasks" are to be carried out "in compliance with the applicable laws and regulations in a loyal, diligent, committed and impartial manner". Therefore any conduct of civil servants which is not subject to criminal prosecution may, if necessary, be investigated under disciplinary law (Sects. 43 and 43a of the Public Services Code of 1979)

14. Have appropriate measures been taken to combat all forms of "hate speech" against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?
a. b. c. d. e.

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As of January 1, 2012 the scope of the Austrian Penal Code's main offence against hate speech, "Incitement" according to Sec 283, has been expanded beyond the "traditionally" protected groups (determined by race, religion or ethnic origin) and now covers also the incitement to violence or hatred against groups of persons or individual persons because of their sexual orientation or because of their gender.

II. Freedom of association

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. b. c. d. e.

Federal Constitutional Law keeps both the legislative and the executive branch from making any distinctions that cannot be justified by factual reasons. Moreover, a strict principle of legality is applicable in Austria which stipulates that the entire public administration must be based on law. The administrative branch is furthermore bound by a prohibition of arbitrariness and the principle of proportionality. The Austrian legal system provides also for well-developed individual legal protection.

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Cf question 9.

All "official tasks" are to be carried out "in compliance with the applicable laws and regulations in a loyal, diligent, committed and impartial manner". Therefore any conduct of civil servants which is not subject to criminal prosecution may, if necessary, be investigated under disciplinary law (Sects. 43 and 43a of the Public Services Code of 1979)

17. Have measures been taken to ensure that non-governmental organisations defending the of human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

A well-established system of review of legislative proposals is working for decades; relevant ngos are invited on a regular basis to take part in that process.

E.g. <http://www.hosiwien.at/?s=begutachtung>

III. Freedom of expression and peaceful assembly

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. b. c. d. e.

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. b. c. d. e.

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

19. Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Cf. question 15

IV. Right to respect for private and family life

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Since 2002, all provisions of the Austrian Penal Code are gender neutral and do not refer to the sexual orientation of the victim or the perpetrator.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. b. c. d. e.

Please provide examples of exceptions to this principle, if any:

The Austrian data protection regime is very strict. According to Sec. 4.2 of the Data Protection Act data on sex life are sensitive data which ensures an increased level of protection.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. b. c. d. e.

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Section 15 of the Austrian Civil Status Act (*Personenstandsgesetz*)

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

- a. b. c. d. e.

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

- a. b. c. d. e.

Please provide examples:

Cf the Austrian Registered Partnership Act (cf ECHR *Schalk and Kopf v Austria*); with regard to joint adoption by a same-sex couple and adoption by a same-sex partner cf the pending case *X ua v Austria* (the judgment will be issued on 19 February 2013)

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Austrian Law allows joint custody only parents, not persons of the same sex. According to other forms of parental responsibility the sexual orientation is no criteria.
Ad joint adoption by a same-sex couple and adoption by a same-sex partner cf the pending case *X ua v Austria* (the judgment will be issued on 19 February 2013)
The principle of the best interests of the child has been included explicitly in Art. 1 of the Federal Constitutional Law on the Rights of Children and other relevant legislation.

V. Employment

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

- a. b. c. d. e.

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

- a. b. c. d. e.

If so, are there measures in place concerning in particular:

i) Access to employment

- a. b. c. d. e.

ii) Promotion, dismissals, pay and other working conditions

- a. b. c. d. e.

iii) Prevention and punishment of harassment

- a. b. c. d. e.

iv) Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Cf. www.chancen-gleichheit.at/ChancenGleichheit/Publikationen/default.htm

Sec. 13 of the Federal Act on Equal Treatment states that nobody shall directly or indirectly be discriminated against due to her or his sexual orientation. This specifically includes the establishment of employment or an apprenticeship, pay, social benefits, inhouse training, promotion, general working conditions and termination of employment. § 16 leg.cit. stipulates that every harassment by the employer or one of its representatives, any failure to protect employees from any harassment by third parties and any harassment by third parties in connection with employment constitutes an illegal discrimination. Sects. 17 to 19a contain sanctions which vary depending on the character of the discrimination. Anti-discrimination is also an integral part of curricula to ensure further awareness-raising and educate employees accordingly.

According to Sec. 4 of the Data Protection Act, data on sex life are sensitive data which ensures an increased level of protection.

VI. Education

27. Are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

- a. b. c. d. e.

If so, are there measures in place concerning in particular:

i) Anti-discrimination training or support and teaching aids

- a. b. c. d. e.

ii) Information, protection and support for pupils and students

- a. b. c. d. e.

iii) Objective information on sexual orientation and gender identity in school curricula ?

- a. b. c. d. e.

iv) School equality and safety policies and action plans

- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

E.g. gender-sensitive education is a principle of teaching („**Geschlechtssensible Pädagogik in der Schule**“). It aims at widening the room for manoeuvre of girls and boys also in their future life. In a lively process of learning, the differences between people shall – in due consideration of the sex ration of society - - be taken into account.

VII. Health

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

According to Art 4 para 1 of the agreement between the Federation and the Länder relating to the securing of the rights of patients (“Patientencharta”), the Federation and the Länder undertake to secure in due time the necessary and adequate services in the field of public health for all patients without discrimination on any ground of age, sex, social origin, fortune, religion, kind and cause of the affection and the like. This comprises also the prohibition on any ground of discrimination on grounds of sexual orientation or gender identity.

29. Has homosexuality been removed from the national classification of diseases?
- a. b. c. d. e.
30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?
- a. b. c. d. e.

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

VIII. Housing

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

E.g. the City of Vienna owns approximately 220 000 flats, the access to these flats is regulated in special guidelines (the “Vormerk- und Vergaberichtlinien der Stadt Wien”) without any discrimination

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

E.g. the City of Vienna provides without any discrimination young people (younger than 30 years) with flats who otherwise may have problems renting a flat.

IX. Sports

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

X. Right to seek asylum

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Austrian Constitutional Court, decision of 5 March 2012, U1776/11

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?
- a. b. c. d. e.

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Austrian Constitutional Court, decision of 5 March 2012, U1776/11

XI. National Human Rights Structures

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?
- a. b. c. d. e.

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

- a. b. c. d. e.

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

The Ombud for Equal Treatment supports and counsels victims of discrimination, intervenes with employers and other persons or institutions responsible for discrimination, facilitates friendly settlements and brings a case to the Equal Treatment Commission. If discrimination on multiple grounds takes place, the amount of compensation should be higher (Sec. 12 para. 13 and Sec. 26 para. 13 ETA).

The Ombud for Equal Treatment also supports and counsels persons feeling discriminated against on grounds of sexual orientation beyond the workplace.

The Equal Treatment Commission (GBK) and the Federal Equal Treatment Commission (B-GBK):
Senate I

Equal treatment between women and men in employment, occupation and multiple discrimination
Senate II

Equal treatment on grounds of ethnic origin, religion or belief, age or sexual orientation in employment and occupation

Area of Authority of the GBK:

Expert opinions on whether the Equal Treatment Act has been violated or not in individual cases
In case of a violation, a proposal is presented to the employer/ person how to eliminate discrimination

Expert opinions on general questions related to discrimination

Expert opinions are published (anonymized)

XII. Discrimination on multiple grounds

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?

- a. b. c. d. e.

Section III - Follow-up

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix ?

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.