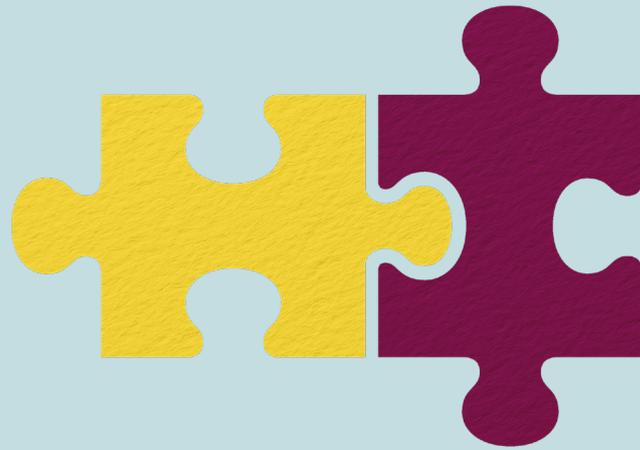


Applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics

Examination procedure



Practical Guide on applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics

Examination procedure

November 2024

On 19 January 2022, the European Asylum Support Office (EASO) became the European Union Agency for Asylum (EUAA). All references to EASO, EASO products and bodies should be understood as references to the EUAA.



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About the guide

Why was this guide created? The mission of the European Union Agency for Asylum (EUAA) is to facilitate and support the activities of EU Member States and Schengen associated countries (EU+ countries) ⁽¹⁾ in the implementation of the Common European Asylum System. According to its overall aim to promote a correct and effective implementation of the Common European Asylum System and to enable convergence, the EUAA develops common operational standards and indicators, guidelines and practical tools. Among other thematic areas, the EUAA is committed in supporting EU+ countries to deal with applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics (SOGIESC).

How to use this guide. This guide is structured in three standalone yet complementary and interlinked parts, which cover different topics relevant to SOGIESC in asylum.

- **[Cross-cutting elements](#)** provides information and guidance that are cross-cutting and relevant to both asylum procedure and reception, including legal framework, safe spaces and inclusive communication, interpretation, information provision, capacity building, cooperation and coordination.
- **[Reception](#)** provides guidance and practical recommendations on the design and management of reception systems and the provision of reception conditions in a manner that takes into account the special reception needs of LGBTIQ applicants on both an individual and a collective basis.
- **Examination procedure** provides practical guidance specifically focused on the key aspects relating to the examination of applications for international protection with SOGIESC-based claims, including the registration, personal interview, evidence and risk assessment as well as the legal analysis.

The guide was developed during the reform process of the Common European Asylum System. The instruments of the new Pact on Migration and Asylum entered into force in June 2024 and will enter into application in June 2026. The guide includes references to both legal frameworks, depending on the relevance.

The guide is complemented by an [information note](#) which provides in-depth information on SOGIESC-related concepts and terms.

Who should use this guide? This guide is primarily intended for staff working directly with international protection applicants in asylum: registration officers, case officers and reception staff. Specific sections are also addressed to managers and policymakers. Furthermore, this guide is useful for any other person or organisation working or involved in the field of asylum.

⁽¹⁾ The 27 EU Member States, complemented by Iceland, Liechtenstein, Norway and Switzerland.

Each part targets slightly different audiences, based on its content and scope.

- **Cross-cutting elements** primarily targets the whole spectrum staff in the national authorities. Specific sections marked 'For managers' and/or 'For policymakers' are explicitly targeting those professionals in asylum. It can also be useful to other stakeholders who are involved in asylum (e.g. civil society organisations).
- **Reception** primarily targets reception staff as well as other stakeholders who are involved in/work directly with applicants in reception (e.g. civil society organisations). Specific sections marked 'For managers' and/or 'For policymakers' are explicitly targeting those professionals in the context of reception.
- **Examination procedure** is primarily intended for registration officers and asylum case officers. Additionally, it is useful for quality officers and legal advisers, as well as policymakers in the national determining authorities and any other person working or involved in the field of international protection in the EU context.

How was this guide developed? This guide was created through a coordinated approach between three EUAA Networks. The development was facilitated and coordinated by the EUAA.

- **Cross-cutting elements** and the **information note**: drafted by experts from asylum and reception authorities, international organisations, civil society organisations and academia, with valuable input from the United Nations High Commissioner for Refugees and ILGA-Europe. Before finalisation, a consultation took place with EU+ countries through the EUAA Vulnerability Experts Network.
- **Reception**: drafted by experts from reception authorities and civil society organisations, with valuable input from the United Nations High Commissioner for Refugees and ILGA-Europe. Before finalisation, a consultation took place with EU+ countries through the EUAA Network of Reception Authorities.
- **Examination procedure**: drafted by experts from across the EU, with valuable input from the European Commission, the United Nations High Commissioner for Refugees, the European Union Agency for Fundamental Rights and the European Council on Refugees and Exiles. Before its finalisation, a consultation took place with all EU+ countries through the EUAA Asylum Processes Network. The EUAA extends its thanks to the members of the working group who prepared the draft of this guide, Sylvie Decodt, Baptiste Martel, Annick Oerlemans and Johanna Sassi.

How does this guide relate to national legislation and practice? This is a soft convergence tool. It is not legally binding and reflects commonly agreed standards as adopted by the EUAA Management Board on 31 October 2024.

How does this guide relate to other EUAA tools? Each of this guide's parts are to be read in conjunction with other available EUAA practical guides and tools.

- **[Cross-cutting elements](#)** should be read in conjunction with the *Guidance on Vulnerability in Asylum and Reception: Operational standards and indicators* ⁽²⁾ and the EUAA Let's Speak Asylum Portal ⁽³⁾.
- **[Reception](#)** should be read in conjunction with the *Guidance on Reception Conditions* ⁽⁴⁾, the *Guidance on Reception Conditions for Unaccompanied Children* ⁽⁵⁾ and the *Guidance on contingency planning in the content of reception* ⁽⁶⁾. All these guides are complemented by the *Guidance on Vulnerability in Asylum and Reception: Operational standards and indicators* ⁽⁷⁾ as well as the *Guidance on Reception: Operational standards and indicators* ⁽⁸⁾.
- **Examination procedure** should be read in conjunction with the *Practical Guide on Personal Interview* ⁽⁹⁾, the *Practical Guide on Evidence and Risk Assessment* ⁽¹⁰⁾, the *Practical Guide on Qualification for International Protection* ⁽¹¹⁾, and the *Practical guide on Subsequent Applications* ⁽¹²⁾.

Disclaimer

This guide was prepared without prejudice to the principle that only the Court of Justice of the European Union can give an authoritative interpretation of EU law.

⁽²⁾ EUAA, [Guidance on Vulnerability in Asylum and Reception: Operational standards and indicators](#), May 2024.

⁽³⁾ EUAA [Let's Speak Asylum](#) portal.

⁽⁴⁾ EASO, [Guidance on Reception Conditions: Operational standards and indicators](#), September 2016.

⁽⁵⁾ EASO, [Guidance on Reception Conditions for Unaccompanied Children: Operational standards and indicators](#), 2018.

⁽⁶⁾ EASO, [Guidance on contingency planning in the context of reception](#), March 2018.

⁽⁷⁾ EUAA, [Guidance on Vulnerability in Asylum and Reception: Operational standards and indicators](#), May 2024.

⁽⁸⁾ EUAA, [Guidance on Reception: Operational standards and indicators](#), May 2024.

⁽⁹⁾ EASO, [Practical Guide on Personal Interview](#), October 2014.

⁽¹⁰⁾ EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024.

⁽¹¹⁾ EASO, [Practical Guide on Qualification for International Protection](#), April 2018.

⁽¹²⁾ EASO, [Practical Guide on Subsequent Applications](#), December 2021.



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Legend

The legend indicates the specific target group for each of the chapters in this part: registration officers and case officers in the context of asylum. Each target group is represented by a distinctive icon for ease of reference to the respective chapter(s).

Icon	Target group	Chapters
	Registration officer	<ol style="list-style-type: none"> 1. Distinctive aspects of SOGIESC-based claims 2. Special procedural guarantees 3. Registration
	Case officer	<ol style="list-style-type: none"> 1. Distinctive aspects of SOGIESC-based claims 2. Special procedural guarantees 4. Personal interview 5. Evidence assessment 6. Risk assessment 7. Legal analysis 8. Subsequent applications



List of abbreviations

Abbreviation	Definition
APD (recast)	asylum procedures directive — Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)
APR	asylum procedures regulation — Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU
Charter	Charter of Fundamental Rights of the European Union
COI	country of origin information
EUAA	European Union Agency for Asylum
EU+ countries	EU Member States and the Schengen associated countries (Iceland, Liechtenstein, Norway and Switzerland)
IPA	internal protection alternative
LGBTIQ	lesbian, gay, bisexual, trans, intersex, queer
Member States	EU Member States
QD (recast)	qualification directive — Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)
QR	qualification regulation — Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council)
Refugee Convention	The 1951 Convention relating to the status of refugees and its 1967 Protocol (referred to in EU asylum legislation and by the CJEU as ‘the Geneva Convention’)
SOGIESC	sexual orientations, gender identities, gender expressions and sex characteristics
UNHCR	United Nations High Commissioner for Refugees





Introduction

Applicants with diverse sexual orientations, gender identities, gender expressions and sex characteristics (SOGIESC) are not a homogeneous group. Although they may share similar risks, their claims for international protection are based on different experiences, narratives and profiles. Applicants may also be in need of international protection due to risks stemming from their imputed SOGIESC. Each case presents specificities and requires an individualised assessment.

SOGIESC-based asylum claims generally pose a challenge to those tasked with examining them. The core of the claim often touches areas of the applicant's life that are considered very sensitive and intimate in nature. Applicants with SOGIESC-based claims may be in a situation of vulnerability that requires special procedural guarantees to allow for a fair examination of their claims. Aspects such as assumptions, stereotypes, trauma, mistrust and fear can affect the way in which facts are presented by the applicant or received by the registration / case officer. Solid efforts in building an atmosphere of trust throughout the asylum procedure are particularly needed in these cases.

This guide provides practical guidance specifically focused on the key aspects relating to the registration and examination of applications for international protection with SOGIESC-based claims. While it also includes essential points of general guidance applicable to all asylum cases, this guide does not elaborate on those. References to other EUAA publications where more detailed guidance can be found are included throughout the guide as necessary.

The practical guide is structured in eight chapters.

Chapter [1. Distinctive aspects of SOGIESC-based claims](#) explains the importance of establishing an atmosphere of trust during the registration and interview phases of the asylum procedure and provides guidance on how to do so. It also focuses on specific aspects relevant to SOGIESC-based claims that may affect the examination procedure.

Chapter [2. Special procedural guarantees](#) focuses on the identification of special needs in the case of applicants with SOGIESC-based claims. It also provides guidance on the provision of the necessary special procedural guarantees throughout the examination procedure to create the conditions necessary for their effective access and participation to the asylum procedure.

Chapter [3. Registration](#) provides guidance on key points relevant for the registration of SOGIESC-related applications. Specifically, it focuses on how registration officers can identify SOGIESC-based applications, how to register the motive of such applications and how to register the personal data of trans, non-binary or intersex applicants.

Chapter [4. Personal interview](#) provides practical guidance for the case officer on how to approach the personal interview for SOGIESC-related claims, including how to prepare, open and conduct the personal interview, including the aspects or dimensions that could be relevant to explore, and how to close it.



Chapter [5. Evidence assessment](#) provides guidance on the aspects to consider while collecting and assessing relevant evidence in SOGIESC-related claims, including when identifying and formulating the material facts and assessing credibility based on the applicant's statements, documentary evidence and country of origin information (COI), taking into account possible factors of distortion.

Chapter [6. Risk assessment](#) focuses on key elements to be taken into account when assessing the risk upon return in cases with SOGIESC-based claims, including the issue of discretion, actors of persecution and laws criminalising SOGIESC.

Chapter [7. Legal analysis](#) outlines the elements of the legal analysis, focusing on aspects that are specifically relevant for SOGIESC-related claims. The chapter includes elements to consider regarding treatments amounting to persecution, the nexus with one (or more) of the reasons for persecution, possible actors of protection and the application of the internal protection alternative.

Chapter [8. Subsequent applications](#) focuses on elements that may be relevant for the assessment of the admissibility of SOGIESC-based subsequent applications.





1. Distinctive aspects of SOGIESC-based claims



This chapter provides guidance on:

- ways to establish an atmosphere of trust during the registration phase as well as the personal interview phase of the asylum procedure regarding applicants with SOGIESC-based claims; and
- aspects that may affect the examination of SOGIESC-based claims during the registration phase, while conducting the personal interview as well as during the evidence assessment of claims relating to SOGIESC.

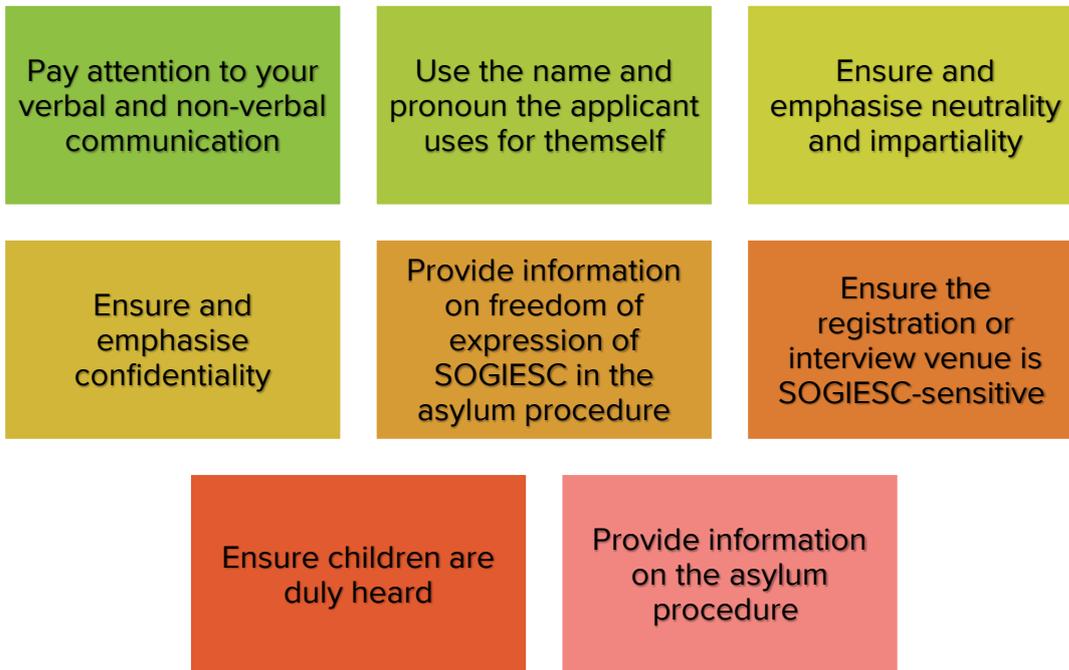
1.1. The importance of trust

Establishing an **atmosphere of trust** is important in all asylum cases to collect all relevant information on the applicant's reasons for applying for international protection. Doing so ensures a **fair examination** of the case through the proper application of all relevant rules based on legislation. Establishing this atmosphere of trust, both in the registration stage and the personal interview, is crucial for applicants with SOGIESC-based claims. This is because it facilitates **self-disclosure**, which is essential for the fair examination of a SOGIESC-based claim. Self-disclosure of SOGIESC is the act of voluntary disclosure of one's SOGIESC to asylum and reception officials.

For an applicant, the **registration officer** is usually one of the first points of contact with the asylum procedure, to whom they present the grounds of their claim. It is for this reason that you need to create a safe and open environment for applicants who are lesbian, gay, bisexual, trans, intersex or queer (LGBTIQ) to submit their claim. This entails rendering any aspect of the physical or social environment more inclusive and respectful and ensuring confidentiality to the applicants.

Similarly, during the **personal interview** the applicant is expected to share information on their SOGIESC, which can be a sensitive topic for anyone, regardless of their background or country of origin. Therefore, you should also create an atmosphere of trust during the personal interview to ensure that the applicant feels safe enough to share information on these topics.

Here are some recommendations that may help with facilitating self-disclosure and creating an open and inclusive environment both in the registration and/or the personal interview phase.

Figure 1. Recommendations to create an open and inclusive environment

- **Pay attention to your verbal and non-verbal communication**

As a starting point, pay attention to your verbal and non-verbal communication, specifically to your tone of voice and your body language. LGBTIQ applicants may observe your behaviour and monitor language closely because they may have needed to do this in the past to protect themselves.

Ensure that both your verbal and non-verbal communication are attentive and express openness, calmness, neutrality and empathy towards the applicant. This can be done, for example, by slowing down the pace of the interview questions, by softening your tone of voice, taking time to listen closely to the applicant and by addressing the applicant directly. Pay attention also to your own attitudes and biases and remember to display a professional attitude without prejudice (refer also to Section [1.4. The impact of stereotypes, assumptions and prejudices](#)). The interpreter's verbal and non-verbal communication is also important in this regard. You should ensure that the interpreter also acts neutrally and professionally (refer also to the [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Chapter 4. Interpretation).

**Related EUAA-IGC publication**

For more information, see EUAA-IGC, [Practical Guide on Interpretation in the Asylum Procedure](#), February 2024.

- **Use the name and pronoun the applicant uses for themselves**

If the language used during the interview differentiates among masculine, feminine and/or neutral form, make sure to take this into account when addressing trans, intersex or non-binary applicants. At the beginning of the interview, politely ask the applicant how they would like to be addressed and use the pronoun and name they indicate when addressing them



throughout the asylum procedure. While the registration of the applicant's personal data depends on the national legal framework and policies, addressing the applicant as they prefer to be addressed is recommended, irrespective of whether their self-identified name and gender can be registered in the database as such (refer also to Section [3.3. Registration of the personal data of trans, non-binary or intersex applicants](#)).

- **Ensure and emphasise neutrality and impartiality**

Inform the applicant of your neutrality and impartiality, as well as the impartiality and neutrality of the interpreter. If applicable, let the applicant know that you and/or the interpreter are already familiar with SOGIESC-based applications. If applicable in the national context, briefing the interpreter beforehand on the topics expected to be discussed during the interview is a good practice (consult the [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Chapter 4. Interpretation).

- **Ensure and emphasise confidentiality**

Clearly explain to the applicant that all information and evidence shared is confidential and will not be disclosed to the alleged actors of persecution or serious harm⁽¹³⁾. The applicant should be informed if any information needs to be shared with other authorities or actors and the reasons for that.

Explaining the purpose of gathering information at different stages of the procedure helps the applicant understand what type of information is needed and contributes to building an atmosphere of trust.

When more than one adult is in the same case file, for example in cases of spouses or families, register, interview and inform each adult individually, in a place that ensures privacy and respecting the principle of confidentiality. Ensure that each adult is aware of the opportunity to lodge their own, separate application for international protection⁽¹⁴⁾.

If your national practice permits you to share information related to an applicant with other applicants included in the same file, ask the applicant if they have any objections, ensuring confidentiality while doing so. This is particularly important with SOGIESC-based claims, since they may be very sensitive and applicants may wish to keep details of their case private for personal, privacy and security reasons.

- **Provide information on freedom of expression of SOGIESC in the asylum procedure**

It is good practice to inform the applicant that they can be open and speak freely about their SOGIESC during the asylum procedure. This information can be provided at different stages of the asylum procedure (i.e. registration, at the opening or at any point during the personal interview) depending on the case and the moment in which the applicant refers to their SOGIESC.

⁽¹³⁾ Article 30 [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ L 180/60, 29.6.2013) (APD (recast)); Article 7 [Regulation \(EU\) 2024/1348](#) of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, (OJ L, 22.5.24) (APR).

⁽¹⁴⁾ Article 7(1) APD (recast); recital 21 APR. Please note that the APR includes specific provisions on adults requiring assistance to exercise legal capacity (see Article 31 APR).

- **Ensure the registration or interview venue is SOGIESC-sensitive**

If possible in your national context, consider making the physical space in which the registration/interview takes place as well as other spaces, such as waiting areas, conducive to creating a sensitive atmosphere towards LGBTIQ persons. This could mean displaying information materials (e.g. leaflets or posters) related to rights and services for persons with specific needs, including LGBTIQ rights and support services, if such material is available in the national administration. Remember however, that such material should always be made available in a discrete, culturally sensitive manner. Displaying such material can contribute to making the registration/interview venue a safe space in which the applicant can feel more confident in disclosing their SOGIESC. As in all asylum cases, the registration and interview room setting should allow the applicant to disclose information in full respect of the principle of confidentiality.

Be aware that the venue itself as well as the dress code of registration or case officers can have an impact on the applicant and their self-disclosure. For example, if the venue is a police station and the registration officer is dressed in uniform, this may affect applicants that have had negative experiences with the authorities.

- **Ensure children are duly heard**

Children (persons below the age of 18) have the right to be heard and their best interests are a primary consideration⁽¹⁵⁾. Children applying for international protection with their parent(s) or other adults responsible for them may have an asylum claim of their own on grounds relating to their SOGIESC but may not mention this during the registration process. Therefore, it is a good practice to hear the accompanied children individually already during the registration phase.

Whether accompanied children have the opportunity to lodge an application individually is defined in national legislation⁽¹⁶⁾.

In the case of unaccompanied children, and depending on national legislation and practice, you may need to take specific actions after the lodging of an asylum application to ensure the presence of a representative/guardian during the personal interview.



Related EUAA publications

For more information on the registration of applications by unaccompanied children, see EASO, [Practical Guide on Registration – Lodging of applications for international protection](#), December 2021.

For more information on the best interests of the child during the asylum procedure, see EASO, [Practical Guide on the best interests of the child in asylum procedures](#), February 2019.

⁽¹⁵⁾ Articles 12 and 3 UN General Assembly, [Convention on the Rights of the Child](#), 20 November 1989, United Nations, Treaty Series, Vol. 1577, p.3 and [Protocol Relating to the Status of Refugees](#), 31 January 1967, United Nations, Treaty Series, Vol. 606, p. 267 (Refugee Convention) and recital 33 APD (recast); recital 23 and Article 22 APR.

⁽¹⁶⁾ Article 7 APD (recast); recital 34 and Article 32 APR.



- **Provide information on asylum procedure**

Information provision plays a key role in facilitating self-disclosure. Applicants might not be aware that SOGIESC can be relevant for the assessment of a claim for international protection or may not feel empowered or safe to disclose theirs. Applicants often have little knowledge of the asylum procedure prior to registering their application. They may have pre-existing misconceptions that they should present their SOGIESC in a stereotypical way (refer also to Section [1.4. The impact of stereotypes, assumptions and prejudices](#)). They may have received false or conflicting information on the asylum procedure from third parties. For example, applicants may have received misleading information from smugglers or other third parties that disclosing their SOGIESC could have a negative influence on their asylum procedure.

Providing information on the following topics can encourage the applicant to disclose their SOGIESC: confidentiality in the asylum procedure by all actors involved; the neutrality of the interpreter; the possibility to lodge a separate application from their family members; their right to receive assistance during the procedure due to special procedural needs; adequate support for special reception needs; legal assistance and representation; other support from specialised services (refer also to Section [4.2.1. Providing information](#)). While still at the stage of access to the asylum procedure, it is a good practice to inform the applicant on what type of information is requested, what type of forms and documents are used and any possible restrictions, for example how personal data are registered in the national database for trans applicants (refer also to Section [3.3. Registration of the personal data of trans, non-binary or intersex applicants](#)).

Along with providing information, you need to allow enough space for applicants to ask questions and address any doubts they might have. To know more on information provision to LGBTIQ applicants, consult the [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Chapter 5. Information provision, capacity building and awareness raising.



Related EUAA resources

To know more on information provision to LGBTIQ applicants, consult the EUAA [Let's Speak Asylum](#) portal.

For further guidance on information provision, consult the EUAA, [Practical Guide on Information Provision – Access to the asylum procedure](#), February 2023.

For more guidance on how to use communication techniques to create an inclusive environment, consult the [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Chapter 3. Inclusive communication and creating safe spaces.



1.2. The impact of cultural, social and linguistic background

The applicant's social, cultural and **linguistic background** can affect the examination of SOGIESC cases in various ways.

The applicant may **lack the words** to talk about their SOGIESC. Applicants often come from linguistic contexts that may lack neutral or specific terms to describe SOGIESC-related matters, or they may have internalised the derogatory terms used by others in their culture or society to describe their SOGIESC and use them as well. This may also lead to a lack of specificity in their statements. Applicants may also misuse certain terms or use them with different meanings within the same narrative, which could affect the perceived coherence of their statements. You can find guidance on how to act in this scenario under [Adapt your communication style](#) (Section 2.3.).

Furthermore, the **social and cultural background** may affect how the applicant self-identifies. For example, someone might speak about same-sex attractions or sexual activities but not consider themselves bisexual, homosexual or gay. This may be because of the stigma and shame associated with those labels but also for various other reasons, for example who is considered to be gay in the applicant's country of origin. Refer also to the [Practical Guide on Applicants with Diverse SOGIESC – Information note](#), Chapter 1. SOGIESC terms and concepts.

The marginalisation, discrimination or even criminalisation of LGBTIQ persons in the country of origin often leads to **under-reporting and under-documentation** of abuses towards LGBTIQ persons. Specific COI is therefore often limited or even lacking. In addition, LGBTIQ persons may be reluctant to report incidents to the authorities even if they are not SOGIESC-related, due to fear or other reasons. The authorities may also be unwilling to issue incident reports about what they believe to be private matters and/or social taboo.

Regarding the **registration and personal interview**, it is essential that you allow the applicants to use their own words to identify or describe their SOGIESC and that you use those same words. Ask the applicant about the meaning of the terms they use and the reasons they are using them, especially if the terms seem surprising or unclear to you. Make sure that the interpreter uses the same words as the ones used by the applicant. If necessary, note the words used in the language of the applicant (and not its translation). For further information on interpreting for LGBTIQ persons, see EUAA, [Practical Guide on Interpretation in the Asylum Procedure](#), February 2024, Section 4.3.4. Interpreting for LGBTIQ persons.

When preparing and conducting the personal interview and during the **credibility assessment**, familiarise yourself with the aspects of the applicant's linguistic, social and cultural background that are relevant to SOGIESC matters ⁽¹⁷⁾ based on the information available to you at that stage. For example, explore information on the terms used in the applicant's language to refer to LGBTIQ persons. Collect additional information if necessary,

⁽¹⁷⁾ Article 15(3), point (a) APD (recast); Article 13(7), point (a) APR.





for example through COI, linguistic experts, country experts or the information available in the applicant's file. See also Section [4.1.2. Consulting the country of origin information](#).

Keep in mind that your understanding of the applicant's background may be limited and that local or personal practices might differ. Before reaching a conclusion, ascertain as much as possible that potential credibility issues were covered during the personal interview and that the applicant had the opportunity to explain or clarify. Make sure that such credibility issues were not merely a result of cultural, linguistic or social differences.

1.3. The impact of stigma, shame, mistrust and fear

The applicant might come from a society where people with diverse SOGIESC are generally, or even only, spoken about in a negative and derogatory way, and/or from societies in which same-sex relationships or non-conforming gender identities are discriminated against or even criminalised. In addition to the hostile societal climate, the applicant might also have personal experiences of disapproval or discrimination within their family, friends or community or even experiences of physical violence or abuse. This could also apply to the transit and/or host country. The stigmatisation and different experiences of harm might have resulted in feelings of **shame, guilt**, or even **internalised homo/bi/trans/intersexphobia**.

Furthermore, due to past or present experiences of marginalisation, discrimination, violence or criminalisation by society or the authorities, LGBTIQ applicants might also feel **mistrust** towards authorities, interpreters and/or other people in the country of asylum. Stigma, shame, fear and a lack of trust might cause the applicant to (try to) avoid disclosure of their SOGIESC. Even if the applicant has revealed their SOGIESC, they might still struggle to disclose information and details related to their SOGIESC, their experiences, or other aspects of their claim.

You can minimise the risk of these aspects negatively affecting the **interview** by informing and reassuring the applicant, even more than once, about the confidentiality of the asylum procedure (see Section [1.1. The importance of trust](#)). You could also remind the applicant that they can speak freely without fear of being judged. Act with empathy toward the applicant and explain that you are aware of the sensitive nature of the subject and that it is understandable that they might feel insecure or uncomfortable discussing it. In any case, pay attention to your attitude and remain neutral while also ensuring the same applies to the interpreter (see Section [1.1. The importance of trust](#)). The terms you use and the way you formulate and structure your questions during the personal interview can also play a role in mitigating this risk (see Section [4.3. Conducting the interview](#)). Be aware that accuracy in interpretation is therefore very important. If needed, make sure the interpreter is also aware of the importance of accuracy. For further guidance on interpretation in SOGIESC-based applications, consult the [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Chapter 4. Interpretation.



Related EUAA-IGC publication

For guidance on interpretation in asylum interviews, consult the EUAA-IGC, [Practical Guide on Interpretation in the Asylum Procedure](#), February 2024.

With regard to the **credibility assessment**, it is important to note that stigma and shame might influence the applicant's experience of their SOGIESC and the level of detail, specificity and coherence that you can reasonably expect from their statements. When considering what level of detail and specificity you could expect in order to accept the relevant facts in question as credible, you might have to take into consideration various elements. These could include, for example, whether the applicant had a hard time accepting their SOGIESC and whether and how frequently and openly they have spoken about it with others. Other aspects that may impact the examination and personal circumstances such as their level of education and overall eloquence must also be taken into account.

1.4. The impact of stereotypes, assumptions and prejudices

Stereotypes, assumptions and prejudices can play a role during the registration, the personal interview and the evidence assessment stages. They may affect the registration officer and/or the case officer. **Stereotypes regarding people with diverse SOGIESC** are widespread and may be related to different aspects.

There are stereotypes relating to attributes or characteristics regarding behaviour, demeanour or appearance. An example is the stereotype that gay men should display features or demeanours generally considered to be feminine or that lesbian women should display features or demeanours generally considered to be masculine.

Assumptions and stereotypes can also be related to someone's wishes, feelings, emotions, inner processes or experiences. Some examples are given below.

- The assumption that trans persons want to have gender affirmative surgery and treatment. In reality, not all trans people do. Moreover, someone might want certain treatments but not others.
- The assumption that LGBTIQ persons have gone through a process of internal struggle regarding their sexual orientation. In reality, this may or may not be the case.
- The assumption that LGBTIQ persons have gone through a process of self-reflection. The extent to which the applicant is able to express self-reflection is strongly dependent on individual circumstances.
- The assumption that an LGBTIQ person would be involved in LGBTIQ activities/events/organisations. This may or may not be the case.



Assumptions may also relate to sexual, romantic and/or marital relationships of LGBTIQ persons. Some LGBTIQ persons might already have experienced romantic or sexual relationships whereas others might not. Some might actively pursue romantic or sexual relationships while others might not⁽¹⁸⁾. Some LGBTIQ persons might also be or have been at some point in their life in an opposite sex relationship or marriage (see Section [4.3.2. Dimensions potentially relevant to explore](#)).

Assumptions may also relate to the sexual orientation of trans persons. Gender identity and expression is different and separate from sexual orientation. Trans persons can have different sexual orientations similarly to cisgender persons (i.e. a person whose gender identity corresponds to their assigned sex at birth). For example, a trans woman may be attracted to cis women or cis men or to another trans person.

Throughout the **registration and personal interview**, it is important to avoid expressing verbally or non-verbally any judgement on the physical appearance, demeanour and attitude of the applicant, including their clothing, hairstyle, makeup or manner, which may be based on assumptions or stereotypes. You should strive to avoid any negative attitudes towards any person or group and maintain respectful, open-minded and professional behaviour⁽¹⁹⁾. You should be aware of your own possible prejudices and keep in mind that the applicant themselves might have their own prejudices or assumptions about the role of asylum authorities. They may also feel somehow obliged to display certain stereotypical behaviours or characteristics during the interview in order to convince you of their SOGIESC.

During the **credibility assessment**, you should not draw conclusions from your perception of the applicant's physical appearance, demeanour or attitude. When examining the credibility of the applicant's statements, refrain from assuming that LGBTIQ applicants would always avoid certain risks. For example, if an applicant who claims to be gay says that he had an encounter with another man in a central hotel in his town, where they risked being seen, you should not assume that this is not credible just because it was potentially risky. LGBTIQ persons also take risks just as all people do.

The credibility assessment should not be based on the satisfaction and confirmation (or lack thereof) of prejudice, stereotypes or assumptions regarding people with diverse SOGIESC. To avoid this, be aware of your own assumptions and stereotypes and base your assessment on the credibility indicators instead of on whether or not the applicant fits into stereotypical notions. See Section [5.2. Assessing credibility](#) and the [Practical Guide on Applicants with Diverse SOGIESC – Information Note](#), Section 2.1. Norms and biases.

⁽¹⁸⁾ See Section [4.3.2.c\) Relationships, attractions, interactions or others](#).

⁽¹⁹⁾ The CJEU held that stereotyped notions associated with homosexuals does not allow authorities to take account of the individual situation and personal circumstances of the applicant concerned. See CJEU, judgment of 2 December 2014, [A., B., C. v Staatssecretaris van Veiligheid en Justitie](#), joined cases C-148/13 to C-150/13 ECLI:EU:C:2014:2406, paragraphs 61-63. Summary available in the [EUAA Case Law Database](#).



Key points to remember

- Establishing an atmosphere of trust is crucial for applicants with SOGIESC-based claims as it facilitates self-disclosure.
- Below are recommendations that may help with facilitating self-disclosure and creating an open and inclusive environment.
 - Pay attention to your verbal and non-verbal communication.
 - Use the name and pronoun the applicant uses for themselves.
 - Ensure and emphasise neutrality and impartiality.
 - Ensure and emphasise confidentiality.
 - Provide information on freedom of expression of SOGIESC in the asylum procedure.
 - Make the registration or interview venue SOGIESC-sensitive.
 - Ensure children are duly heard.
 - Provide information on the asylum procedure.
- Aspects that may affect the examination of SOGIESC-based claims include:
 - cultural, social and linguistic background;
 - stigma, shame, mistrust and fear;
 - stereotypes, assumptions and prejudices of the case officer;
- Being aware of the impact of these aspects in the examination procedure is important so as to minimise their impact on the interview, the evidence assessment and the overall outcome of the procedure.



2. Special procedural guarantees



Some applicants for international protection, including LGBTIQ applicants, present specific individual circumstances that may put them in a position of particular vulnerability. They may need special assistance and services to meaningfully participate in the asylum procedure and enjoy the rights to which they are entitled ⁽²⁰⁾.

This chapter focuses on:

- the identification of special needs in cases of applicants with SOGIESC-based claims;
- the provision of the necessary special procedural guarantees throughout the examination procedure, from the registration until the personal interview and the assessment of the claim to create the conditions necessary for their effective access and participation in the asylum procedure.

2.1. SOGIESC and special needs

Some applicants for international protection may have personal circumstances that place them in a particularly **vulnerable situation** when it comes to effectively accessing the asylum procedure and substantiating their claim.

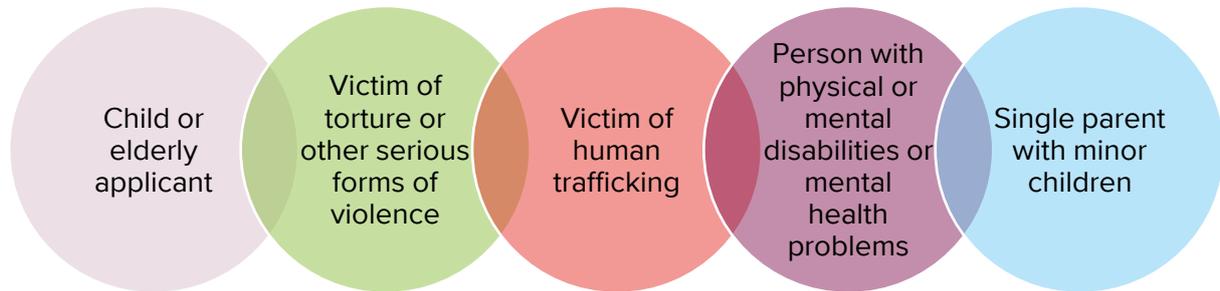
LGBTIQ persons generally face a range of social, economic and legal challenges that can make them more vulnerable than the general population. Many (perceived) LGBTIQ applicants have faced discrimination, stigma and verbal or physical abuse in their countries of origin or during their journey, from state authorities, their families and/or society at large. Furthermore, they may have been exposed to hate crimes and violence or subjected to (extrajudicial) punishments such as imprisonment or severe corporal punishments. They may also have faced discrimination or threats even after their arrival to the host country. These experiences might have resulted in trauma, shame, internalised homo/bi/trans/intersexphobia, mistrust toward state authorities, feelings of isolation, as well as difficulties in feeling safe and accepted, in self-acceptance and self-awareness, and in disclosing their SOGIESC.

Individuals with relevant personal circumstances or who have experienced such treatment or events may require **special procedural guarantees**. This will allow them to effectively engage in the asylum process and to present the elements needed to substantiate their application for international protection ⁽²¹⁾.

LGBTIQ applicants might also have other **intersecting specific needs** in addition to those related to their SOGIESC. Those intersecting needs should be addressed in order to provide the applicant with adequate assistance and special procedural guarantees, if necessary.

⁽²⁰⁾ Articles 2(d), 24(1) and 24(3) APD (recast); recital 17, Articles 3(14) and 21 APR.

⁽²¹⁾ Recital 29 APD (recast); recital 20 APR.

Figure 2. Situations determining possible intersecting specific needs

Some characteristics determining the possible existence of different intersecting specific needs that may need to be considered are shown in the figure above. For example, LGBTIQ applicants may also be unaccompanied children or have experiences of violence or human trafficking. This may put them in a particularly vulnerable position, and, thus, they may be in need of special procedural guarantees to present their claim.

The profiles shown in the figure are not exhaustive and each case needs to be assessed individually to identify all possible specific needs. Bear in mind that being an LGBTIQ applicant in itself does not automatically imply that the applicant is in a particularly vulnerable position. Therefore, not all LGBTIQ applicants are necessarily in need of special procedural guarantees.

Intersectionality, intersectional identities and the challenges they pose for LGBTIQ persons are discussed more in detail in the [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Chapter 2. Intersectionality in asylum.

2.2. Identification of special needs

Applicants in need of special procedural guarantees should **be identified as soon as possible**, in order to ensure the prompt provision of adequate support ⁽²²⁾.

Depending on the applicant's profile and personal circumstances, the need for special procedural guarantees may originate from their SOGIESC (see Section [2.1. SOGIESC and special needs](#)). Societal discrimination, stigma, trauma and internalised homo/bi/trans/intersexphobia, difficulties in self-awareness or self-acceptance of one's SOGIESC as well as in disclosing it, can significantly affect the applicant's ability to present their claim. They can also affect their ability to cooperate with the registering or determining authority regarding their application for international protection if the necessary special procedural guarantees are not put in place (see [2.3. Provision of special procedural guarantees](#)).

It is important to bear in mind that LGBTIQ applicants may also have other, intersecting specific needs which should be addressed to provide the applicant with adequate assistance

⁽²²⁾ Articles 24(1) and 24(3) APD (recast); recitals 17, 18, 20 and Article 20 APR.



and special procedural guarantees, if necessary (see more in Section [2.1. SOGIESC and special needs](#)). Intersecting specific needs may emerge at any stage of the procedure. This is why you should proactively observe and examine the applicant's statements, documents, behaviours and displayed or expressed emotions throughout the steps of the asylum procedure for which you are responsible (registration, personal interview, etc.) and be attentive to grasp any sign of potential intersecting specific needs.

If you identify special needs during the registration, it is important that you **record** them in the registration form or in relevant databases or platforms, as applicable in your national context, and take them into account immediately. It is crucial that this information is shared with the determining authority responsible for examining the claim with the informed consent of the applicant so that those needs can be taken into consideration in the examination of the application.

As a part of the identification process, it is also essential that during the **personal interview** you actively consider the applicant's statements and other evidence they might provide. Observe their behaviour throughout the personal interview to pick up on possible indicators of specific needs. Taking into consideration any special needs of the applicant as an LGBTIQ person as well as identifying any other intersecting specific needs will help you to appropriately prepare, conduct and close the interview in a way that will best enable the applicant to disclose their protection grounds.

Identifying specific needs and providing special procedural guarantees is an **ongoing process** throughout the personal interview, from the preparation to the closing. It even extends beyond the interview, for instance through referral to external stakeholders such as those responsible for the reception of the applicant or social workers. In case information needs to be shared with external stakeholders, the informed consent of the applicant is needed in respect of the principle of confidentiality.

Remember that being an LGBTIQ applicant does not necessarily mean having special needs. Whether the applicant with diverse SOGIESC has other intersecting specific needs depends on their individual circumstances.



Related EUAA tool

For more information on identifying specific needs and on how to address them at any stage of the asylum procedure, consult the EUAA's [Tool for the Identification of Persons with Special Needs](#).



Related EUAA publication

For more information on the case officer's duty to investigate, see EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 1.1.1.(b) Fulfil the case officer's duty to investigate.

2.3. Provision of special procedural guarantees

After identifying any special needs, make sure that you provide the applicant with adequate support as needed at each stage of the procedure and refer the applicant for further assessment or support ⁽²³⁾. Several actions should be considered at each stage.

Figure 3. Provision of special procedural guarantees

- Consider the sex of the persons involved in the process
- Allocate a case officer that has undergone the appropriate training
- Adapt your communication style
- Communicate with relevant stakeholders and inform the applicant about further support/assistance
- Consider arranging for and/or allowing the presence of an (additional) support person
- Ensure that the provision of information is tailored to the applicant's personal circumstances
- Extend the interview, if necessary
- Provide for procedural adjustments
- Avoid, to the extent possible, conducting remote interviews

Consider the sex of the persons involved in the process

Inform the applicant that they have the **right to ask for an interpreter, a registration officer or case officer of a given sex** in the registration interview, as well as for their subsequent personal interview. These requests should be considered favourably if they are based on any difficulties the applicant may have presenting the grounds of their application in a comprehensive manner ⁽²⁴⁾.

⁽²³⁾ Article 24(3) APD (recast); recital 20, Articles 20 and 21 APR.

⁽²⁴⁾ Article 15(3), points (b) and (c) APD (recast); Article 13(9) APR.



Inform the applicant that their request might not be met in some cases due to practical constraints (e.g. limited availability of case officers or interpreters of the requested sex).

If necessary and practically feasible (e.g. depending on availability), it should be possible to change the interviewing case officer or interpreter. If you notice this has not been done prior to the interview, flag it to the competent colleagues or units in your national administration.

Allocate a case officer that has undergone the appropriate training

All case officers need to be competent to take account of the applicant's sexual orientation and gender identity with regard to their asylum application ⁽²⁵⁾. It is a good practice that the personal interview is conducted by a case officer who has been **trained** or who has a **specific professional background or experience on SOGIESC issues** and their relevance in the asylum procedure. In your national system, there may be case officers specialised in dealing with SOGIESC-related cases. Reflect on your own competence and capability to conduct the interview and, if necessary, arrange for the interview to be transferred to another case officer. Reading this guide is already a good start to expanding your competences in the future. It is also good practice to work with interpreters who are trained on SOGIESC matters or have substantial professional experience dealing with SOGIESC-based claims. For further guidance on interpretation in SOGIESC-based claims consult the [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Chapter 4. Interpretation.

Adapt your communication style

Adapt your language and communication style to express empathy and build trust with the applicant. For more information, see Section [1.1. The importance of trust](#).

Where possible, **use the terminology that the applicant uses**, asking them to **explain the meaning** that the terms have for them. However, if the applicant uses **derogatory terms** to describe themselves, do not correct them but try to avoid repeating those terms. Explain to the applicant that you would avoid using the term they mentioned because in your language it carries a negative connotation. Ask the applicant to explain what they mean by this term and if there is any other term they could use. If the applicant does not know any other non-derogatory term, or if there is no other term that they would use for themselves, do not impose any terms on them. It is always best to allow the applicant to self-identify. Under no circumstances should you introduce terms that would result in labelling the applicant's identity or experience with words different from the ones they used. You could instead refer to the explanation the applicant gave of the term. For example, if they use a derogatory term for 'gay' and explain it as 'I used this term because I am a man and I like men', you can formulate your questions saying 'You told me that you are a man who likes men'. As a last resort, if they cannot explain the term or you cannot use such an explanation, you can use the derogatory term making clear that you are using it because the applicant did. You can also write an explanatory note where you record this information.

During the interview, address the applicant using the **pronoun** they use for themselves. Address the applicant using the **name or alias** of their choice, even if it does not match the applicant's

⁽²⁵⁾ Article 15(3), point (a) APD (recast); Article 13(7), point (a) APR.



identity documents or the name that is officially registered (refer also to Section [1.1. The importance of trust](#)).

Inclusive communication and language are discussed more in detail in the [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Chapter 3. Inclusive communication and creating safe spaces.

Communicate with relevant stakeholders and inform the applicant about further support/assistance

Pay attention to all specific needs the applicant may have. It is important that these needs and other relevant observations you have made in the registration stage or during the personal interview are both **recorded and communicated to relevant stakeholders** who may be able to provide specific assistance and services. In doing so, keep in mind the principle of confidentiality. Depending on your national practices and your own responsibilities within your authority, deliver the necessary information to the relevant external stakeholders. This could include those responsible for the reception of the applicant and social workers. Sharing information to external stakeholders must only be done with the applicant's informed consent.

Inform the applicant of their right to legal assistance and representation at all stages of the procedure ⁽²⁶⁾. See also [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Section 5.1.2. Procedural information and legal aid.

Depending on your national practices and your responsibilities within your authority, offer the applicant information about appropriate accommodation, e.g. a reception centre offering specific accommodation or separate premises for LGBTIQ applicants (consult the [Practical Guide on Applicants with Diverse SOGIESC – Reception](#), Chapter 1. The reception conditions directive (recast) and SOGIESC, table Housing – SOGIESC-specific considerations). You can also provide information on any national or local LGBTIQ rights organisations or support groups that work with LGBTIQ persons, especially those in the immigration/asylum context. Providing this information through leaflets or business cards is a good practice, as long as it is done in a discreet manner that does not reveal the applicant's SOGIESC to others, which could potentially expose them to violence or discrimination. If available and necessary in the applicant's case, for example in the case of trauma, provide information on specialised psychologists or psychotherapists working with applicants or specifically with LGBTIQ applicants.

Consider arranging for and/or allowing the presence of a support person

Be aware that LGBTIQ applicants may face additional challenges in disclosing their claim(s) during the personal interview and may have other intersecting needs (see Section [2.1. SOGIESC and special needs](#)). They may therefore benefit from the presence of a support person such as a social worker.

If your national context allows for the presence of **support persons** during the interview, meet with the applicant on a bilateral basis before the interview to confirm they consent to the

⁽²⁶⁾ Article 22 APD (recast); recital 16 and Article 15 APR.





presence of the support person in the interview. Inform the applicant that the principle of confidentiality binds all persons present. To enable them to provide their informed consent, ensure the applicant is aware of the role of the support person during the personal interview as well as that the personal interview may go into detail and touch upon sensitive topics related to their case, which the applicant might not have shared and/or may not want to share with the support person.

Ensure that the provision of information is tailored to the applicant's personal circumstances

When providing information, **consider the applicant's personal circumstances**. This includes their levels of education and literacy and any potential **specific needs** that might affect their understanding, for instance age, traumatic experiences and problems with physical and/or mental health.

For more detailed guidance on how to establish trust and on information provision, see Section [1.1. The importance of trust](#) and Section [4.2. Opening the interview](#).

Extend the interview, if necessary

Interviews on SOGIESC cases may require **more time** than other type of claims. If this is the case, allow for a longer duration of the interview or for a second interview, depending on what is feasible for you in the national authority. Arranging for the availability of the same interpreter, if possible, would allow the interview to continue without requiring extra time or effort to establish rapport with the applicant and an atmosphere of trust.

Provide for procedural adjustments

Depending on the individual circumstances of the applicant and the needs for special procedural guarantees arising from any situations of vulnerability, procedural adjustments may be needed. The examination of their application may be prioritised ⁽²⁷⁾ or, on the contrary, they may be afforded more time. If the applicant is in need of special procedural guarantees, they should be exempted from accelerated and/or border procedures in case adequate support cannot be provided ⁽²⁸⁾.

For example, an application by an LGBTIQ unaccompanied child may be prioritised, if it is in their best interest. On the contrary, in SOGIESC-based claims where the applicant also has (other) intersecting needs, for example an LGBTIQ applicant with past experiences of trafficking, more time or support may be required to enable the applicant to effectively participate in the asylum procedure. If the support they need in terms of special procedural guarantees cannot be provided, the applicant should be exempted from accelerated and/or border procedures.

Depending on national practices, you will need to take the necessary steps to ensure the **prioritisation of the application** already during the registration process. Ensure at this stage

⁽²⁷⁾ Article 31(7), point (b) APD (recast); Article 34(5), point (b) APR.

⁽²⁸⁾ Recital 30 and Article 24(3) APD (recast); recital 20 and Article 21 APR.

that applications based on SOGIESC are correctly channelled into the right procedure. Consider, however, that the prioritisation of an application is not always the best option. The applicant may need time to prepare for the personal interview and to receive support, for example medical or psychological assistance ⁽²⁹⁾.

Avoid conducting remote interviews to the extent possible

Remote interviews may **present challenges**. In SOGIESC cases, for example, a long interview may be needed or you may find it challenging to build rapport with the applicant. Therefore, a videoconference setting may not be appropriate ⁽³⁰⁾. In other cases, a remote personal interview can be beneficial for applicants with specific needs, as it might be easier for them to present sensitive information or they might face difficulties in travelling. A case-by-case assessment is recommended in such cases. Asking for the applicant's consent to conduct the personal interview remotely is considered a good practice, if possible in the national context.



Related EUAA publication

For more information on conducting remote personal interviews see EASO, [Practical Recommendations on Conducting the Personal Interview Remotely](#), May 2020.

⁽²⁹⁾ Recital 29 APD (recast); recital 20 APR.

⁽³⁰⁾ Recital 15 APR.



Key points to remember

- Some LGBTIQ applicants may have experienced violence, discrimination, threats, hate crimes and punishment, which may have resulted in trauma and/or feelings of shame, mistrust and isolation. This, in turn, can mean LGBTIQ applicants require special procedural guarantees to be able to effectively engage in the asylum process and present the elements needed to substantiate their claim.
- Some LGBTIQ applicants may also have other intersecting specific needs such as:
 - being a child or an elderly person;
 - being a victim of torture or other serious forms of violence;
 - being a victim of human trafficking;
 - having physical or mental disabilities or mental health problems;
 - being a single parent with minor children.
- Not all LGBTIQ applicants necessarily require special procedural guarantees. This depends on the individual circumstances in the case at hand.
- It is important that applicants in need of special procedural guarantees and/or with specific reception needs are identified as early as possible. The registration process is particularly important to ensure the early identification of those needs.
- You should collect information on the applicant's potential special needs as early as possible in the procedure. They should be immediately taken into account during the registration process and throughout the examination process.
- Identifying special needs and providing special procedural guarantees is an ongoing process throughout the personal interview, from preparation to the closing of the interview, and even beyond, for instance through referral.
- The provision of special procedural guarantees for applicants with SOGIESC-based claims, based on their individual circumstances, can include the following.
 - Consider the sex of the persons involved in the process.
 - Allocate a case officer that has undergone the appropriate training.
 - Adapt your communication style.
 - Communicate with relevant stakeholders and inform the applicant about further support/assistance.
 - Consider arranging and/or allowing for the presence of a support person.
 - Ensure that the provision of information is tailored to the applicant's personal circumstances.
 - Extend the interview, if necessary.
 - Provide for procedural adjustments.
 - Avoid conducting remote interviews to the extent possible.

3. Registration

This chapter focuses on the registration of SOGIESC-related applications for international protection and includes information on how the registration officer can:

- identify SOGIESC-based applications on the basis of the evidence or material provided by the applicant or other parties;
- record the grounds of the claim, where this is in line with national practice;
- appropriately process the registration of trans, non-binary or intersex applicants.

In this chapter, ‘registration’ and ‘registration process’ refer to both the registration of the making and the lodging of the application. Depending on national practice, these steps may occur at the same time and be integrated into one step.



Related EUAA publication

For comprehensive guidance on the registration process in asylum procedures, see EASO, [Practical Guide on Registration – Lodging of applications for international protection](#), December 2021.

3.1. Early identification of SOGIESC claims

Applicants are, in principle, expected to submit all the reasons they are applying for international protection. However, remember that applicants might not be aware that actual or perceived SOGIESC is a ground for international protection, may not feel empowered or safe to disclose theirs, or may need more time or privacy to do so. Applicants with SOGIESC-based claims often have experiences of discrimination, hate and violence in their countries of origin, transit or even in the asylum country. In some cases, the authorities in the country of origin are the actor perpetrating such violence or discrimination. The **applicant’s capacity to present their claim** as well as self-awareness of their SOGIESC may be significantly affected by these negative experiences as well as by any trauma they may have experienced, shame or internalised homo/bi/trans/intersexphobia.

Indications of the applicant’s possible SOGIESC in the registration phase could also come from other evidence provided by them or by other authorities or services. This could include medical or psychological/psychosocial reports or information provided by reception authorities, legal advisors or civil society organisations that have already been in contact with the applicant. These reports could include information such as the biological/medical aspects of the transition of a trans person, the applicant’s intersex status or violence experienced by the applicant, which could be related to the applicant’s SOGIESC (for instance, in the case of a victim of homo/bi/trans/intersexphobic violence or ‘corrective’ rape).



There are certain types of evidence that should not be collected or accepted and thus cannot be required from the applicant. For more information on the relevance of different types of documentary evidence and on prohibited evidence see Chapter [5. Evidence assessment](#) and specifically Section [5.1.1.b\) Collecting documentary and other types of evidence](#).

3.2. Registration of the grounds of the claim

While all EU Member States and the Schengen associated countries (EU+ countries) register the personal data of applicants during the registration, the **ground(s) of the applicant's claim** are not often recorded at this stage.

The registration of the SOGIESC-related ground(s) at an early stage enables the asylum authority to appropriately prepare for the personal interview. This includes taking into account the potential specific needs the applicant may have, ensuring the necessary procedural guarantees, including the use of interview techniques that help the applicant disclose their claim or the allocation of the case to a specifically trained or specialised case officer ⁽³¹⁾. It is recommended to follow this course of action if it is consistent with your national legislation and guidelines.

Record the applicant's protection ground(s) and fear(s) **accurately**, including their SOGIESC-related elements, reflecting the applicant's words precisely. For example, if a woman applicant says that she slept with a woman, this should not be recorded as the applicant being a lesbian. The applicant should also be granted an opportunity to comment on and clarify any mistranslations, misunderstandings or errors they may identify in the registration record. This is particularly important to avoid any misconceptions and/or inconsistencies between the applicant's statements in their registration and in the personal interview, which could negatively affect their credibility assessment. Be aware that SOGIESC-related claims may not only come from an applicant's own SOGIESC but also from their imputed SOGIESC as attributed by their society or family, for example.

3.3. Registration of the personal data of trans, non-binary or intersex applicants

National legal frameworks, guidelines and practices may vary on **how to register** the personal data of **trans, non-binary or intersex applicants**, particularly when the applicant's gender identity is inconsistent with the personal data (name, sex/gender) recorded in their official identity documents.

When registering the personal data of these applicants, first familiarise yourself with your national practices and guidelines.

⁽³¹⁾ Article 15(3), point (a) APD (recast); Article 13(7), point (a) and Article 13(8), point (a) APR.



If in line with your national regulations and practices, record the applicant's personal data (name, sex/gender) as presented by the applicant.

In the event that the national legal framework does not enable registering the applicant's personal data as presented by them, it is recommended to:

- record the personal data (name, sex/gender) presented by the applicant as alias details in the database, for example by inserting them in the comments section of the respective entry, if possible in your national authority;
- explain to the applicant why the personal data as presented by them cannot currently be registered as primary and official;
- provide the applicant with further information on legal gender recognition in your country.

Make sure to approach the applicant in a sensitive manner. In the registration interview, remember to **respect the applicant's gender identity** by using the pronouns and the name they use to refer to themselves irrespective of whether their self-identified name and gender can be registered in the database as such. Aim to build an atmosphere of trust and openness, create positive rapport and express empathy toward the applicant. Explain to the applicant the different steps in the registration process and make sure the applicant understands on what basis the personal data is registered. For more detailed guidance on how to build trust and to provide information is SOGIESC cases, see Section [1.1. The importance of trust](#).





Key points to remember

- It can happen that applicants do not feel comfortable enough to disclose their SOGIESC at first. During registration you may identify indicators that the applicant has a SOGIESC-based claim, including from some of the evidence available to you or submitted by the applicant.
- If, in your national context, you record the grounds of the claim at registration stage, record the applicant's claim in an accurate manner.
- During the registration interview, address the applicant with the pronoun they use for themselves.
- Familiarise yourself with the national guidance on how to record the applicant's name, sex or gender when their gender identity is inconsistent with the personal data recorded in their official identity documents. If in line with your national practice, record the applicant's personal data (name, sex/gender) as presented by them. In any case, explain to the applicant how their personal data will be recorded.

4. Personal interview

This chapter focuses on the personal interview with applicants with SOGIESC-based claims. It includes information on:

- how to efficiently prepare for the personal interview with an applicant with a SOGIESC-based claim;
- the information provision during the opening phase of the personal interview;
- key considerations on how to approach and conduct the personal interview;
- the different dimensions and themes that can be relevant to explore for SOGIESC-based claims;
- how to close the personal interview.

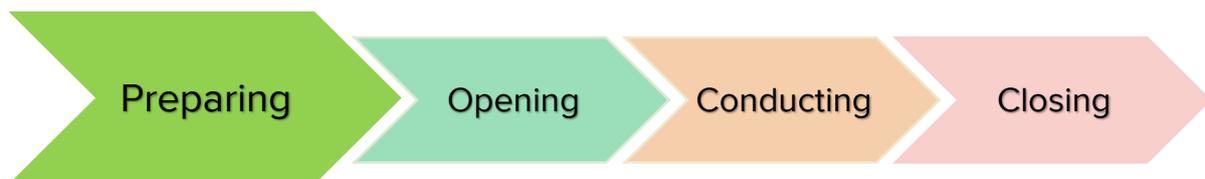


Related EUAA publication

For more general information on the personal interview and its different stages, see EASO, [Practical Guide: Personal interview](#), December 2014.

4.1. Preparing the interview

Figure 5. Stages of the personal interview: preparing the interview



Adequate preparation enables you as case officer to familiarise yourself with the case, identify some material facts and key elements of the applicant's profile, plan the interview accordingly and conduct the relevant COI research in advance. Careful preparation is also essential to ensure identification of specific needs and the provision of possible special procedural guarantees.

4.1.1. Familiarisation with the case file

Before the personal interview, it is important that you familiarise yourself with all the relevant materials and information already available in the applicant's case file ⁽³²⁾.

⁽³²⁾ Article 15(3), point (a) APD (recast); Article 13(7), point (a) APR.



Registration form and transcripts or records of any previous interview(s)

Pay attention to the applicant's previous statements, in particular regarding their family circumstances, relationship(s) and their initial reason(s) for leaving their country of origin or of habitual residence.

Actively look for any indications of the applicant's SOGIESC. Grounds related to SOGIESC could appear as 'hidden topics', meaning they can emerge as themes below the surface of the applicant's narrative. They may manifest as gaps in the narrative or the applicant might have attempted to disclose their SOGIESC indirectly.

Written reports by third parties

Reports by third parties that could be submitted in SOGIESC-based cases can include, for example, medical reports and other written reports from social workers, psychologists, civil society organisations or other support groups, legal advisors or support persons.

Medical reports could include, for example, information on previous violence experienced by the applicant because of their SOGIESC, the applicant's intersex status, medical procedures or treatments undergone by an intersex applicant or biological/medical aspects of the transition in the case of a trans person. Such reports can be accepted if presented by the applicant but are not required. Remember, however, that a medical report should not be required and can never serve as evidence of the applicant's sexual orientation per se⁽³³⁾. Psychological reports that claim to determine the applicant's sexual orientation cannot be requested or used to assess the credibility of the claim⁽³⁴⁾. For further details on admissible documentary evidence in SOGIESC cases, see Section [5.1.1.b\) Collecting documentary and other types of evidence](#).

Other documentary evidence (if available)

Additional documentary evidence could include, for example, audio(visual) material related to the applicant's family life, relationship(s), engagement with LGBTIQ support groups or LGBTIQ activism. Remember, however, that some types of evidence may be in breach of the applicant's fundamental rights and cannot be accepted as evidence in view of establishing the applicant's sexual orientation (for example photographs or videos showing sexual activities or intimate acts⁽³⁵⁾). For more information on this point, see Section [5.1.1.b\) Collecting documentary and other types of evidence](#).

⁽³³⁾ The CJEU, 2014, [A, B, C](#), *op. cit.*, fn. 19, ruled that the acceptance by determining authorities of possible 'tests' submitted by the applicants to demonstrate their homosexuality would be in violation of Article 7 of the European Union, [Charter of Fundamental Rights of the European Union](#), 26 October 2012, 2012/C 326/02 (the Charter) and should therefore be precluded; UNHCR states that medical testing of an applicant's sexual orientation should not be used as it is an infringement of basic human rights, see UNHCR, [Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A\(2\) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees](#), 23 October 2012, HCR/GIP/12/01.

⁽³⁴⁾ CJEU, [F v Bevándorlási és Menekültügyi Hivatal \(formerly Bevándorlási és Állampolgársági Hivatal\)](#), C-473/16, EU:C:2018:36, paragraphs 71-72. The CJEU precluded the use of a psychological report to assess the credibility of an applicant's stated sexual orientation.

⁽³⁵⁾ CJEU, 2014, [A, B, C](#), *op. cit.*, fn. 19. Summary available in the [EUAA Case Law Database](#).

Information from other relevant sources

Depending on your national practices, consult the relevant national databases or systems and open source information, including social media, if relevant to the assessment of the application. For more information on the use of this evidence when assessing credibility, see Section [5.2.2.b\) Social-media content](#).

Once you have familiarised yourself with the case file, and based on the information available at this point, **attempt to identify the relevant material facts** of the application and related topics or dimensions that might be relevant to explore during the interview. For more guidance on identifying and formulating material facts, see Section [5.1.2. Identifying and formulating material facts](#).

4.1.2. Consulting the country of origin information

Before the personal interview, **consult the COI** on the treatment of (perceived) LGBTIQ persons in the relevant country and, if possible and available, on more specific subject matters potentially relevant to the case at hand (e.g. the treatment of trans people in the country of origin).

It may happen that, even after thorough research, you find little to no relevant COI. Remember that the **lack or scarcity of COI** does not indicate that SOGIESC applicants would not be at risk in the country of origin in question. This could be explained by the societal attitudes toward (perceived) LGBTIQ persons in the country in question, underreporting of SOGIESC-related human rights violations or the limited capacities of human rights actors to monitor and document these violations ⁽³⁶⁾.

In addition, be aware that available COI may be **limited in scope**. Sometimes it generalises the situation of LGBTIQ persons in a certain country, without providing specific examples or information on specific parts of the country outside the capital city. While COI sources may use a broad definition of LGBTIQ, the reported information may not refer to all persons covered by the umbrella term, but rather cover only some groups, most commonly gay men ⁽³⁷⁾. The available COI is often not detailed enough to consider different individual circumstances and intersecting specific needs (e.g. sex, gender, disability, socioeconomic status, religion, geography, social network or familial attitudes) and their impact on the situation of LGBTIQ persons. When analysing COI in preparation for the interview, it is thus essential to take into account the applicant's individual circumstances and intersecting needs that may have had an impact on their life as a (perceived) LGBTIQ person in their country of origin and possibly on the risk upon return.

Below is a non-exhaustive list of COI sources that could be useful to consult in addition to relevant COI reports available at national level.

⁽³⁶⁾ EUAA, [COI Research Guide on LGBTIQ](#), February 2023, p.18.

⁽³⁷⁾ EUAA, [COI Research Guide on LGBTIQ](#), February 2023, p.18.



Useful COI sources

- EUAA COI reports include information also on LGBTIQ persons rights ⁽³⁸⁾.
- The International Lesbian, Gay, Bisexual, Trans and Intersex Association's (ILGA) annual State-Sponsored Homophobia report ⁽³⁹⁾ provides a global overview of SOGIESC-related legislation and is a useful starting point. It is also recommended to research the criminal code of the country in question directly. See also the [ILGA's world map on sexual orientation laws](#).
- Different human rights organisations and government departments, such as Freedom House, the United States Department of State, Human Rights Watch and Amnesty International publish annual reports and articles, which usually include information on the rights of LGBTIQ persons.
- National civil society organisations (if they exist) can have also recently published articles or reports. Note that in some countries these organisations might be disguised as more general health or social welfare organisations.
- You can also look for information on the situation of LGBTIQ rights and related human rights violations in the country of origin through search engines using simple keywords such as 'homosexuality in [country]' or 'gay/lesbian/trans/LGBT(I)(Q) rights in [country]'.



Related EUAA publication

For more information and practical tips on researching COI on diverse SOGIESC, consult the EUAA, [COI Research Guide on LGBTIQ](#), 2023.

4.2. Opening the interview

Figure 6. Stages of the personal interview: opening the interview



A good opening of the personal interview is particularly important and can positively influence both the quantity and the quality of the information obtained. For specific guidance on how to establish an atmosphere of trust, see Section [1.1. The importance of trust](#).

⁽³⁸⁾ All EUAA COI reports are available in the [EUAA COI portal](#).

⁽³⁹⁾ ILGA world, [State-Sponsored Homophobia – Global legislation overview update](#), updated edition, 2020.

4.2.1. Providing information

During the opening of the interview, it is important that you provide **information** on what **international protection** means, including the reasons that can constitute grounds for asylum, unless this information has been provided to the applicant at earlier stages ⁽⁴⁰⁾. In the latter scenario, verify the applicant's understanding during the opening phases of the interview. Explain the aim of the interview. Make it clear for the applicant that you need to gather as much information as possible on the **reasons** why they are applying for international protection. When there are indications that their reasons for applying relate to their (imputed) SOGIESC, inform them that a well-founded fear of persecution based on SOGIESC can constitute a ground for asylum.

Inform the applicant of their **rights and responsibilities** and explain the **structure of the interview** and what the applicant can expect ⁽⁴¹⁾. Inform the applicant also of the **confidentiality** of the information shared, and of the means and purpose of **reporting and recording** the interview, as relevant.

Give instructions that are **clear, concise, and easy to understand**. Ensure the applicant understands the information you provide.

The applicant may not have prior experience of a personal interview. Applicants with SOGIESC-based claims may feel a particular degree of stress given the sensitivity and intimate character of some aspects they will need to disclose and elaborate on during the interview. Sharing the above information can help to relieve any stress they may feel and make them better prepared to participate in the interview.



Related EUAA publication

For more general information on the opening of the interview, consult the EASO, [Practical Guide: Personal interview](#), December 2014.

⁽⁴⁰⁾ EUAA, [Practical Guide on Information Provision](#), February 2023, pp.57-58.

⁽⁴¹⁾ Article 12(1), point (a) APD (recast); Article 8(2) APR.



4.3. Conducting the interview

Figure 7. Stages of the personal interview: conducting the interview



As with other claims, the use of a **structured interview** and of the **funnel approach** is appropriate ⁽⁴²⁾. It allows for a **free narrative** on the part of the applicant in the initial stages of the interview followed by an exploration by the case officer of each identified (or potential) material fact in the **probing phase**. **Open questions** are generally preferred to closed questions, while the use of open questions with a progressively narrower scope can help you obtain more details if not provided spontaneously by the applicant. You can use closed questions to test your own understanding of the applicant's account or to receive specific information.



Related EUAA publication

To know more about interviewing techniques, consult the EASO, [Practical Guide: Personal interview](#), December 2014.

4.3.1. A flexible approach

A challenging characteristic of claims based on SOGIESC is the **intrinsically intimate dimension** of the core of the claim. Consequently, the applicant might have difficulties or be reticent to fully disclose and share their experiences. Some aspects of their story may be of a sensitive nature or the applicant may have never before talked about their SOGIESC with someone. They might have faced negative consequences after a disclosure. You, on the other hand, might find it difficult to ask questions about these aspects, which you can perceive as touching a particularly intimate area of life or that can appear impalpable.

Always remember to **be flexible**. Applicants with SOGIESC-based claims can find themselves in various situations and may have very different narratives. Pay attention to the specificities of each applicant and case and adapt your interview accordingly. You should consider the personal situation of the applicant, including their age, socioeconomic status, level of education and the effects of possible traumas.

Keep in mind that some applicants may experience **difficulties in elaborating** on their SOGIESC and in developing and verbalising a reflection about who they are and what

⁽⁴²⁾ EASO, [Practical Guide: Personal interview](#), December 2014.



happened to them. For some applicants it may also be challenging to deliver chronological accounts of what happened.

You should **adapt your questions to the narratives and the experiences the applicant puts forward**. Some applicants may have had partners, while others may have never been in a relationship. Some may be single, others may be in a heterosexual marriage, others in a gay partnership. Some may have only recently begun questioning their gender identity or sexual orientation, whereas others may have been aware of them for a long time. Some may have disclosed their SOGIESC to others in the past, while some may have not (yet) done so. Some applicants may not immediately reveal that their SOGIESC is at the core of their asylum claim and may need time – and efforts on your part to establish a conducive atmosphere – to feel they trust you and the system enough to do so.

Some applicants fear persecution because of their SOGIESC, while others may be at risk because of the SOGIESC imputed to them by others. Some applicants may have experienced serious negative consequences because of their actual or perceived SOGIESC, while others may have faced milder or no consequences. These and many other differences may affect the applicant's claim and the way they talk about it.

When the interview touches upon **feelings and emotions**, consider that, no matter their background, not all persons are equally able to self-reflect and talk about them. You should also avoid prejudices about the emotions an applicant should feel in a given situation.

While some applicants may say they felt pride or relief over some of their experiences, be aware that they may also use words linked to the spheres of shame, stigma, difference, or other expressions to explain what they felt or experienced (refer also to Section [1.4 The impact of stereotypes, assumptions and prejudices](#)).

In SOGIESC cases, the **applicant's age** can affect their degree of self-awareness and their ability to express thoughts and feelings about their own SOGIESC. The way in which gender and sexuality are – or are not – discussed and conceptualised in a specific culture is likely to influence how a child understands their own sexuality or gender identity. Furthermore, do not make any assumptions regarding the age at which someone should or should not have had romantic or sexual relationships, have become aware of their SOGIESC or have disclosed it. Although adolescence is the time of life that is (in many cultures) usually considered associated with the discovery and awakening of sexuality and identity, processes and developments related to this can take place earlier on as well as much later in life. Consider the above when defining your questioning lines during the **interview** and you will need to use child-sensitive language as and when relevant, depending on the age and level of maturity of the applicant. You also need to adjust accordingly the weighting of **credibility** indicators in your credibility analysis.

Stick to the terms used by the applicant rather than introducing new words in the interview to avoid the risk of labelling their experience. For guidance on what to do when the applicant uses offensive or derogatory terms to refer to themselves, see [Adapt your communication style](#) in Section 2.3.





Related EUAA-IGC publication

For guidance on interpretation in asylum interviews, consult the EUAA-IGC, [Practical Guide on Interpretation in the Asylum Procedure](#), February 2024.

Your communication style should express **neutrality, empathy and help build trust** with the applicant.

Enabling the applicant in the initial stages of the interview to share their reasons for seeking international protection through a **free narrative** ⁽⁴³⁾ will allow you to have an initial understanding of the applicant's profile and experiences. You will also gather an idea of their ability to verbalise, describe, narrate and organise their thoughts. This is essential for you to build the rest of the interview taking into consideration what the applicant has already mentioned.

Different approaches can be implemented to structure your interview in its **exploration phase** and to choose the interviewing lines.

The **themes** or **dimensions** to explore will depend on the specificities of each individual case. The applicant's ability to elaborate on one or the other dimension may also differ depending on the person. The most effective way to explore them during the interview will also depend on the applicant's profile and circumstances. This is why you need to be flexible when approaching an interview for a case with a SOGIESC-based claim (see Section [4.3.2. Dimensions potentially relevant to explore](#)).

An approach that follows the **applicant's life course** as they present it in the free narrative can be a good option in cases where the applicant manages to present their narrative in a chronological flow of events. You could explore the experiences claimed by the applicant by following the order of the events presented in relation to the applicant's life course.

The focus here is not necessarily on the chronology of the events and their exact dates. The advantage of this method is that it can enable you to grasp the interrelation of different elements and phases of the applicant's life, including how events and experiences possibly had an impact on one another, on the applicant's self-perception or expression of their SOGIESC or the perception others had of them over time.

Be aware that the applicant may not necessarily provide a linear sequence in the narrative of their life. SOGIESC can be fluid and evolve. The relations between the applicant and their family or community and other aspects relevant to SOGIECS can also evolve in a way that may not be linear.

In other cases, some applicants may struggle to provide information in an orderly manner. In such cases, you may prefer to structure your interview and organise your questions **topic by topic**.

⁽⁴³⁾ EASO, [Practical Guide: Personal interview](#), December 2014, pp. 11-12.



Remember that the rights guaranteed by the Charter, such as the rights to human dignity, privacy and family, must be respected. Applicants should not be submitted to detailed questioning as to their sexual practices ⁽⁴⁴⁾.



CJEU, 2014, A., B. C. ⁽⁴⁵⁾

The Court ruled that questions pertaining to the details of the applicant's sexual practices are contrary to the respect for private and family life enshrined in the Charter. The Court also noted that the submission of tests or evidence to demonstrate homosexuality has no probative value and would infringe Article 1 of the Charter (human dignity).

4.3.2. Dimensions potentially relevant to explore

There are themes that are usually relevant to explore in SOGIESC-based claims. However, as already mentioned, you need to identify which dimensions are significant and suitable to explore depending on the applicant's narrative and circumstances of the individual case.

The list of dimensions presented in this section is not exhaustive and not all dimensions are relevant for all cases. When exploring these areas, collect as much concrete information as possible including the places, times and people involved. It could be relevant to explore these themes in relation to the country of origin, transit or asylum.

Explore, as relevant to the case at stake, also other aspects that are not SOGIESC-specific and may be relevant for any application, including nationality, background, education, circumstances of departure and the journey to the country of asylum.

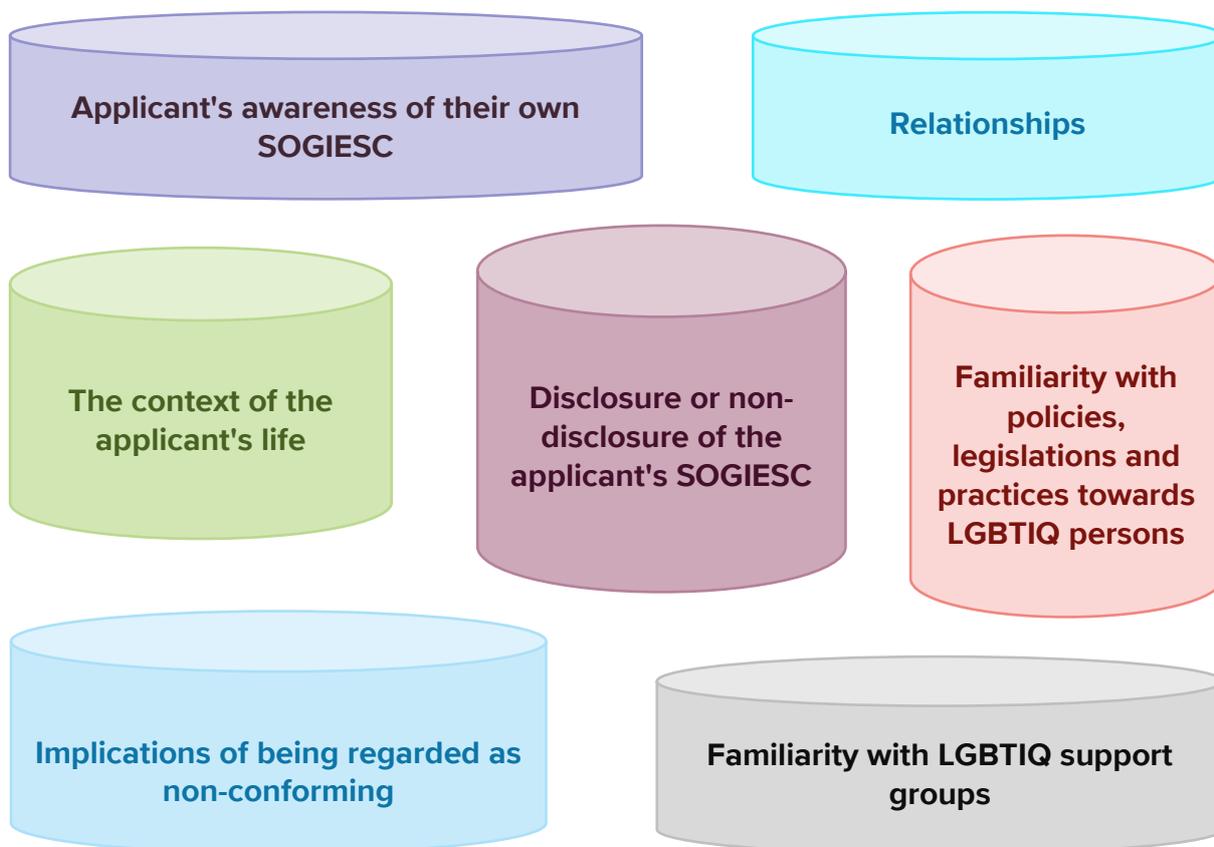
⁽⁴⁴⁾ See also recital 42 QR.

⁽⁴⁵⁾ CJEU, 2014, [A., B., C.](#), *op. cit.*, fn. 19, paragraph 72. Summary available in the [EUAA Case Law Database](#).





Figure 8. Dimensions potentially relevant to explore



a) The context of the applicant's life

Key factors to consider

It is important to explore the context in which the applicant lived in their country of origin in order to fully understand the course of their life and experiences as an LGBTIQ person, a person perceived as LGBTIQ, or a person who has engaged in same-sex relations.

Clarifying the context of the applicant's life and experiences will enable you to understand the framework in which their life unfolded and the various facts relevant to their claim took place.

What to explore

Depending on the claim, it may be relevant to explore the **environment** in which the applicant grew up and lived, including their family, its composition, the houses and locations where they lived, their schooling, their (various) work environment(s), social life, etc.

Ask questions on factual elements, concrete contexts and the dimensions relevant to the **applicant's life**. For instance, depending on the specificities of the case, it can be important to ask the applicant about the composition of their household over time, the relationships the applicant had with various family members or other significant people in their life. It can also be relevant to ask about the neighbourhood(s) and society or community contexts in which the applicant lived throughout their life.

Understanding the applicant's **educational pathway** and the **work environments** they encountered could be useful if some of their claimed experiences relate to those contexts. The applicant's **socioeconomic status**, their habits and life within the society at large or their inner circles over the years may also be relevant. The applicant's **relations with their closest network** (be it family, friends, colleagues or others) can be particularly relevant to explore, for example to understand how the applicant felt when these persons behave(d) in a certain way towards them or when considering disclosing their SOGIESC to them.

Exploring the **experiences** relevant to the claim brought forward by the applicant will then be important.

Relevance

This dimension can be potentially relevant for any kind of claim relating to SOGIESC, notwithstanding if the claim relates to sexual orientation, gender identity or gender expression and sex characteristics.

b) Applicant's awareness of their own SOGIESC

Key factors to consider

Self-awareness is acknowledgment of one's SOGIESC.

Self-awareness can have **two dimensions**: an internal dimension, meaning the inner self-acknowledgement, and an external one, which encompasses the way in which the awareness of one's SOGIESC relates to the person's surroundings.

You should be conscious that self-awareness of one's SOGIESC is something **very personal** and may be experienced very differently depending on the person. For example, the applicant might bring forward that they have been aware of their SOGIESC for as long as they can remember. Or they may have lived a large part of their life completely unaware and only started to realise their SOGIESC later in life. Difficulties in understanding or self-accepting their SOGIESC, or doubts about it that the applicant had over time, might have made their self-awareness challenging and unsettling. Other applicants might have associated the realisation of their SOGIESC primarily with positive feelings (for example of love, lust, self-expression, authenticity, etc.) and therefore do not see it or describe it as a struggle. Some applicants feel they always knew about their SOGIESC and therefore did not



undergo a conscious process of self-awareness, while for others there may have been a process that took a variable amount of time. There might have been a pivotal moment in time that was crucial for the applicant in realising and understanding their sexual orientation, gender identity or sex characteristics. In other cases, such realisation and understanding might have been a gradual process with turns, setbacks and progress. Self-awareness may emerge in the country of origin, but also while in transit or in the country of asylum. In addition, a person's SOGIESC can be fluid.

Be mindful that each inner experience is unique. Self-awareness can unfold **in very different ways** and through different steps varying from one person to the other.

When dealing with personal experiences and perceptions related to the applicant's SOGIESC, you should remember that **people might not use specific terminology** to describe their SOGIESC or might not associate themselves with these terms. Instead, they might just describe feelings of realising they were 'different'.

What to explore

While **prejudices linked to the age** the applicant became self-aware or to the applicant's feelings throughout the process of becoming self-aware should be avoided, there are several aspects of the applicant's self-awareness that can be explored.

Potentially relevant aspects can include **situations** in which the applicant questioned or discovered their SOGIESC and related aspects, such as the circumstances or triggers of such situations, the applicant's reactions, etc.

Keep in mind that some applicants cannot identify specific times or situations when they questioned their SOGIESC or became aware of it (e.g. because they have always been self-aware). In these cases, they may or may not be able to elaborate in detail about moments or situations in which they reflected on or realised their SOGIESC.

Relevance

This dimension can potentially be relevant for claims relating to any SOGIESC, with some specificities depending on the claimed SOGIESC. In particular, be aware that for intersex people the way they discover that their sexual characteristics were non-conformant may be relevant to explore, bearing in mind that intersex traits may be already apparent at birth, become visible only during puberty, or not be apparent at all.

Be aware that some SOGIESC-based claims do not relate to the applicant's own SOGIESC but rather to their SOGIESC as perceived by others. In the latter case, exploring the self-awareness of the applicant's actual SOGIESC may not be relevant.

c) Relationships, attractions, interactions or others

Key factors to consider

In most cases, it would be pertinent to explore the relevant relationships the applicant might have or have had, including long or short-term relationships, attractions, interactions or other.

The term 'relationship' is used here with a **comprehensive meaning** that can take different shapes and involve different spheres: it can include a romantic or emotional component, a more physical or sexual one, or both.

You need to always **be aware of the assumptions and stereotypical notions** you may have about relationships: you might be expecting a narrative that the applicant will not provide simply because they have not lived their relationship(s) in the way you or others assume they would or should have. Assumptions include, for example, notions relating to the existence of both a romantic and a sexual component in a relationship or the importance that each of these components should have or 'normally' has.

Not only can it be the case that some people can attribute more **significance to one or the other components in their relationships**, but also that the same person can live different relationships with a variable level of romantic, emotional or sexual attraction. This can be particularly important to remember when dealing with claims of asexual persons, i.e. persons who may experience romantic or emotional attraction but who generally do not experience sexual attraction (see more in Section [1.4. The impact of stereotypes, assumptions and prejudices](#)).

Be aware that applicants who claim to be lesbian or gay or who claim attraction to people of the same sex may have had throughout their lives or still have **relationships with people of the opposite sex**. They may be (or have been) married to them and have children. They might have already ended the relationship, might want to end it, or they might want to stay.

Gay and lesbian people might engage in, and sometimes want to maintain, relationships with persons of the opposite sex for various reasons and due to a variety of situations. It would be important to explore these reasons and situations during the interview. For example, an applicant's sexual orientation may have evolved and developed over time; or the societal pressure to marry a person of the opposite sex may have been so pervasive in the applicant's life that, despite being gay or lesbian, they engage(d) in opposite-sex relationships. It may also happen that a person has been engaging in heterosexual relationships as a protection and self-preservation mechanism or as a means to hide their sexual orientation.

Some applicants may have worked as a **sex worker** or may have engaged in **survival sex** (exchanging in sex to meet immediate needs such as shelter or food). This may have included same-sex sexual interactions. The applicant might have also engaged in **situational sexual activities** with persons of the same sex, which can happen due to certain social circumstances (single-sex schools, army, imprisonment, etc.) where people may



choose to have same-sex sexual interactions (for a definition of situational sexual activities consult the [Practical Guide on Applicants with Diverse SOGIESC – Information note](#), Chapter 1. SOGIESC terms and concepts).

The fact that someone has engaged in same-sex sexual interactions or relationships does not in itself mean that they are gay or lesbian, however it could mean that they might be perceived as such. These activities or relationships, in and of themselves and irrespective of why they took place, might also bring about a risk of persecution upon return.

When exploring such events and situations, keep in mind that the applicant might be suffering from trauma as a result of their experiences. **Trauma** can seriously affect the functioning of memory, limiting the applicant's ability to recall and narrate events in a coherent, consistent and/or detailed manner. Introducing topics during the interview before you ask questions about them is a technique that may help the applicant's memory to focus and recall needed information. Consider also that the applicant might mistrust the authorities (see more in Section [1.3. The impact of stigma, shame, mistrust and fear](#)).

What to explore

If the applicant has had any **relationships**, it is relevant for you to explore them and ask questions about the **circumstances and the development** of (some of) these experiences. Keep in mind that you should always be flexible and adapt to each case. Where the applicant has had many relationships, you could focus on those most relevant to the case, depending on the elements raised by the applicant in their narrative. Short-term relationships could be just as relevant to the claim as long-term relationships (or interactions). You should be cautious not to depreciate short-term relationships in the way you phrase your questions.

It can be important to explore relationships that unfolded not only in the country of origin but also in the context of transit and in the country of asylum.

Always consider that the applicant **may not have had any relationships** in their life. In such cases, you could focus on attractions or brief interactions, if they have mentioned any.

While questions on details about sexual practices must be avoided, there are potentially several aspects of the applicant's relationships that can be explored. You might be able to gather enough information by asking the applicant open questions regarding their relationships and encourage free narrative. **Potentially relevant aspects** include information about the other person(s) in the relationship, how the applicant met them, how their relationship occurred or developed, how their relationship played out in their family or societal sphere and any implications this relationship had for the applicant in terms of security or disclosure of their SOGIESC.

When exploring relationships that applicants claiming to be gay or lesbian have/had **with persons of the opposite sex**, do it with an open mind, without assumptions or stereotypes, and in a non-judgemental manner (refer also to Section [1.4. The impact of stereotypes, assumptions and prejudices](#)). You could explore, for example and if relevant, how the

relationship came to be, why the applicant entered into a relationship that did not correspond with their sexual orientation (if they were already self-aware of the latter), the evolution of the relationship, what it was or is like for them (practically and emotionally) to be in this relationship, if their partner was aware of their sexual orientation and how the partner managed this knowledge and the relationship or how the applicant handles the relationship without the partner knowing their sexual orientation, and how the applicant was seen by their family, community or society.

No questions on sexual practices!

Out of respect for the dignity of the applicant and of the right to respect for private and family life, as ruled by the CJEU, no questions should be asked concerning details of sexual practices ⁽⁴⁶⁾.

When details on sexual practices are spontaneously brought up by the applicant, you should remain neutral in your non-verbal attitude and explain to the applicant that those details are not needed. You could then redirect the interview to other themes, or, if relevant, explore the circumstances of the encounters narrated by the applicant instead of the details on sexual practices themselves.

Relevance

This dimension can potentially be relevant for claims relating to any SOGIESC and not only for applicants claiming to be attracted to or having had relations with persons of the same sex. For example, statements on the relationships that trans or intersex applicants have had may constitute relevant information to establish the credibility of their claimed identity or sexual characteristics, as well as potentially to assess the risk upon return.

d) Disclosure or non-disclosure of the applicant's SOGIESC

Key factors to consider

It may be relevant to explore the disclosure or the non-disclosure of the applicant's SOGIESC to others.

Keep in mind that the applicant's SOGIESC may be known to others not only through a **voluntary and direct disclosure** by the applicant. It could also be known through **rumours or suspicions**, or **involuntarily** if the applicant is seen in a situation or a behaviour that is interpreted as revealing or suggesting their SOGIESC. It may also be **because someone else discloses** the applicant's SOGIESC against their will. Depending on how the disclosure occurs, you should adapt your line of questioning to cover most relevant aspects.

⁽⁴⁶⁾ CJEU, 2014, [A, B, C](#), *op. cit.*, fn. 19, paragraph 64. Summary available in the [EUAA Case Law Database](#); see also recital 42 QR.



Consider that disclosure has an internal dimension (how the applicant experienced the process of disclosure inwardly, potentially including the process of deciding to disclose this information and their reasons for doing so, or their reaction to the revelation if it was not their doing). It also has an external dimension (how the applicant experienced and managed it with their surroundings, including – depending on the case – family, friends, colleagues, community, the authorities, etc).

Remember that the disclosure may have occurred in the applicant's country of origin as well as in transit countries or in the asylum country, depending on the case.

In some cases, **disclosure may not have happened yet**, and the applicant may refer to their SOGIESC for the first time during the interview. There can be a variety of reasons and there is no right or wrong reason per se. Consider that in these situations it may be particularly challenging for the applicant to open up and answer your questions. These interviews need to be handled with considerable sensitivity. Give the applicant enough time and room to feel comfortable talking to you about their SOGIESC.

What to explore

If the applicant states that others came to know about their SOGIESC, it could be relevant for you to explore the **modality and context** of how they came to know and the consequences for the applicant.

You might be able to gather enough information by asking the applicant open questions regarding the disclosure of their SOGIESC to others. Potentially relevant aspects can include the decision **process** behind the disclosure of their SOGIESC, the **reasons** behind the timing of the disclosure, or the **circumstances** in which their SOGIESC was otherwise revealed or became known or when rumours about an imputed SOGIESC arose. The **implications and consequences** that the disclosure had as well as the **applicant's reaction** to this can also be relevant to explore.

If the applicant has not disclosed their SOGIESC yet, you could explore the reasons for this. Keep an open mind and attitude.

Relevance

This dimension could potentially be relevant for any claims relating to someone's SOGIESC. However, for claims based on the applicant's imputed SOGIESC, the issue of disclosure of one's SOGIESC would normally not be relevant. It might instead be relevant to explore the exposure of the imputed SOGIESC, for example how it happened that the applicant started to be perceived as having a given SOGIESC, by whom and whether this perception has been spread or shared to others.

e) Implications of being regarded as non-conforming

Key factors to consider

In all societies, there are **norms** that are prevalent or the most accepted by their members. These norms often do not accept, tolerate or are not inclusive of diverse SOGIESC. As a result, LGBTIQ applicants are often regarded as **non-conforming** to the norms regulating the societal, religious or political contexts they come from or live in. Persons with diverse SOGIESC and non-LGBTIQ persons that engage in same-sex relations can often be seen as non-conforming. This means that often the family, community or society does not tolerate the diverse SOGIESC that do not correspond to the prevalent or accepted norm.

Consequently, applicants may present **experiences of struggle** arising from a lack of acceptance, discrimination by their family, community and society or from the criminalisation by the authorities in the country of origin.

Being regarded as non-conforming can lead to a person becoming a victim of **harmful acts**, which can take various forms. These can include physical or psychological violence, derision, harassment, humiliation, stigmatisation, ostracism, discrimination, forced medical interventions or treatments, detention, etc. They can occur in many contexts including the family circle, the neighbourhood, at work, in public services, committed by state authorities, in religious communities or in medical institutions. The consequences of such behaviours are also diverse and can include physical harm, psychological trauma, social exclusion, economic hardship and health issues. They can have a concrete impact on the applicant's life such as forcing them to end their working activity, being forced to move out of their home or being excluded from their family or religious community.

During the interview, you should be careful when formulating questions on how the applicant's SOGIESC relate to the **moral, religious or societal codes** to which they adhere. Ensure that you formulate questions in a way that they cannot be perceived as challenging the moral, ethical or religious standing of the applicant's SOGIESC. This is particularly relevant when approaching the applicant's religious beliefs; depending on the formulation of the question, questions enquiring about the disapproval of the applicant's SOGIESC by their religious community may give the impression that the case officer agrees with said religious disapproval.

Pay particular attention when phrasing questions concerning disapproval. Consider introducing them with a disclaimer that your questions do not intend to pass any judgement. Consider also that while it might be interesting to understand how the applicant personally perceives the interplay between their SOGIESC and the religion they practice, how they experience(d) and deal(t) with it, this aspect may be relevant in some cases but not in others.



What to explore

The treatment by others, or the simple knowledge and understanding that one's SOGIESC is not or would not be accepted by others, can have an **impact on the person's emotions and behaviours**. It may be relevant for you to explore what it meant or means for the applicant to be regarded as non-conforming and the impact this had on them and their behaviours, actions or decisions.

It could also be relevant to explore the **applicant's considerations and thoughts** on what living in or returning to this environment would mean to them, their relationships (if any) and the possibility to live their lives authentically.

The **struggles or experiences of harm** that the applicant faced would be relevant to explore, not only to establish the credibility of their claim but also to gather useful information for the risk assessment you will need to conduct. Potentially relevant aspects include the circumstances and details of the event(s) or incidents, the actors involved, the consequences for the applicant and their reactions, other possible implications that occurred, possible support obtained by the applicant, etc. If the applicant became aware of their SOGIESC before leaving their country of origin, you might explore how they adapted to avoid disclosure and/or prevent problems, if this is relevant in their case.

If the **religious aspect** is relevant to the case, for example because the applicant or a relative is a religious figure, or because they claim that their SOGIESC had implications in the way their religious community behaved towards them, you should not deal with it by challenging the possibility to practise or believe in a religion and to be LGBTIQ at the same time. Instead, you could explore, as relevant to the specific case, the social aspect of the religious affiliation in terms of the applicant's engagement in religious practices or duties within the community, possible constraints linked to the applicant's SOGIESC when doing so and their effects on the applicant. You could also explore the applicant's relations with coreligionists, the personal visibility and standing of the applicant within the community, and their potential efforts to maintain a positive standing irrespective of their SOGIESC.

Relevance

This dimension can potentially be relevant for claims relating to any SOGIESC. If the applicant has not disclosed their SOGIESC or was not perceived as LGBTIQ, you may still try to explore if the applicant has developed thoughts on how the society, community, family or others would react if they became aware.

f) Familiarity with LGBTIQ local community, associations or groups**Key factors to consider**

Many applicants are not familiar with LGBTIQ networks. This can be the case for several reasons, including that there were none at their local level, that they operated underground or the applicant was not aware of them or could not access them. It can also be that they decided not to access them, for example because they were not interested to approach or learn about them, due to fear or other reasons.

As with many other dimensions, it could be pertinent to explore this in relation to the country of origin and the country (or countries) of transit or asylum, depending on the specific case.

What to explore

If the applicant was not familiar with LGBTIQ networks, it could be relevant for you to explore the reasons for this.

If the applicant has some level of familiarity with the existing LGBTIQ communities, associations or support groups in their local context, it may be relevant to explore why and how they became familiar with them, any involvement they had and how this affected them and their lives.

Relevance

This dimension can potentially be relevant for claims relating to any SOGIESC.

g) Familiarity with policies, legislation and practices towards LGBTIQ persons and groups**Key factors to consider**

Not all applicants are necessarily familiar with policies, legislations or practices with respect to SOGIESC. Even if they are, the level of knowledge and understanding may vary greatly or the information they have may not be fully correct. This could be true for various reasons, including the applicant's level of education, the extent to which they are exposed to LGBTIQ support groups, their age and their self-awareness about their SOGIESC.

What to explore

If the applicant does have at least some knowledge of policies, legislations or practices relating to SOGIESC, you can explore them during the interview. Information such as how they became aware of a given policy, legislation or practice would be relevant.



In this case, it could be relevant to explore this dimension in relation to the country of origin and the country (or countries) of transit or asylum, depending on the specificities of the case.

Relevance

This dimension can potentially be relevant for claims relating to any SOGIESC.

4.4. Closing the interview

Figure 9. Stages of the personal interview: closing the interview



When closing the interview of a SOGIESC-based case, you should follow the same standards and steps that apply to any personal interview.



Related EUAA publication

For detailed guidance on closing the interview, consult the EASO, [Practical Guide: Personal interview](#), December 2014.

You should ensure that **all relevant aspects** of the application have been covered and ask the applicant if there is any information they wish to add.

In the case of SOGIESC-related claims, it might be necessary to reassure the applicant about the **confidentiality** of the interview in its closing phases as well. Furthermore, applicants with a SOGIESC-based claim may be hesitant to disclose it during the interview. If you have had any indications throughout the interview or from earlier stages of the procedure that the applicant may have a SOGIESC-based claim that they have not disclosed, reiterating the confidentiality of the interview may help facilitating disclosure. It is key that this information is provided in a non-mechanical way, by clearly and openly explaining to the applicant what confidentiality means.

Depending on the case at hand, it is important that the applicant is given information on medical, psychological or other **support services**, including LGBTIQ associations. Depending on your national practice, you could directly provide this information to the applicant as part of the standard information provision and/or upon request. Another option is to communicate



with the reception or other competent authorities or organisations so that they provide the relevant information to the applicant or refer them to the competent services for assistance. Communicate any specific needs you detect to the relevant stakeholders, if necessary and only with the applicant's informed consent, as per national practice. These stakeholders could include the actors responsible for the reception and accommodation of the applicant as well as other actors responsible for assessing and acting upon their needs, for example the responsible healthcare staff and social workers.

Always **record the applicant's special needs** in the relevant databases or otherwise communicate them to the determining authority so that they can be taken into consideration in the examination of the application, particularly in the evidence assessment and decision-making steps of the asylum procedure.

In the case of non-binary, trans and intersex applicants, provide **information about the gender that will be used in the decision** on their application for international protection in accordance with the laws or regulations in force in the country of asylum.





Key points to remember

- Prepare your interview by familiarising yourself with the information available in the case file as well as COI.
- During the opening phase, try to establish an atmosphere of trust. Provide all the necessary information in a clear manner regarding international protection, the applicant's rights and responsibilities and the purpose and structure of the interview.
- Use the funnel approach: give room to the applicant to express their claim through a free narrative before starting the probing phase.
- Identify and use an interview line that is suitable for the individual case during the probing phase, following the applicant's life course or a topic-by-topic technique.
- Use a flexible approach as follows.
 - Remember that some applicants may experience difficulties in elaborating their SOGIESC or to verbalise feelings and emotions.
 - Make sure that your verbal and non-verbal communication expresses neutrality, empathy and helps building trust.
 - Stick to the terms used by the applicants, to avoid labelling them and their experiences.
 - Adapt your questions to the narratives and the experiences that the applicant brings forward.
- The following are dimensions or themes that, depending on the specificities of each case, could be relevant to explore.
 - The context of the applicant's life, for example family, residence, schooling, work environment, social life, etc.
 - The applicant's awareness of their own SOGIESC. How and when someone becomes self-aware of their own SOGIESC may not be linear and it varies greatly from person to person. SOGIESC can be fluid.
 - The relationships the applicant (might have) had or has. There may have been many or none, they could include an emotional or a sexual component, lesbian and gay applicants may have (had) relationships with persons of the opposite sex and applicants may have (had) same-sex relations notwithstanding their sexual orientation, for example in situational sexual activities.
 - You cannot ask questions on sexual practices.
 - The possible disclosure of the applicant's SOGIESC to others or by others. The applicant might not yet have disclosed their SOGIESC to others and in some cases the applicant's perceived SOGIESC might be relevant.
 - The implications of being regarded as non-conforming to the prevailing norms in the society or context of reference.
 - The familiarity with LGBTIQ community, associations or groups. Many applicants are not familiar with such organisations.



- The familiarity with policies, legislation and practices concerning LGBTIQ persons. Different applicants have a different level of knowledge and awareness.
- During the closing phase, ensure that all relevant aspects of the claim have been covered, reiterate the confidentiality principle to the applicant if needed and record any special needs. In the case of a non-binary, trans or intersex applicant, inform them of the personal data (name, gender/sex) that will be used in the decision.





5. Evidence assessment



Evidence assessment can be defined as the primary method of establishing or accepting the relevant facts of an individual case through the process of examining and comparing available pieces of evidence ⁽⁴⁷⁾.

In the asylum procedure, applicants are often not in the position to submit much evidence to substantiate their claim other than their statements. This is particularly true for applicants with SOGIESC-related claims, which by their nature touch upon the private sphere of a person's life and, thus, can hardly be established through documentary evidence.

In light of this, adopting a structured approach to the evidence assessment is important to reduce the risk of a subjective and biased assessment and to facilitate reaching a reasoned, sound and consistent decision.



Related EUAA publication

For more information on how to conduct evidence assessment in asylum claims, consult the EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 'Key elements of evidence assessment'.

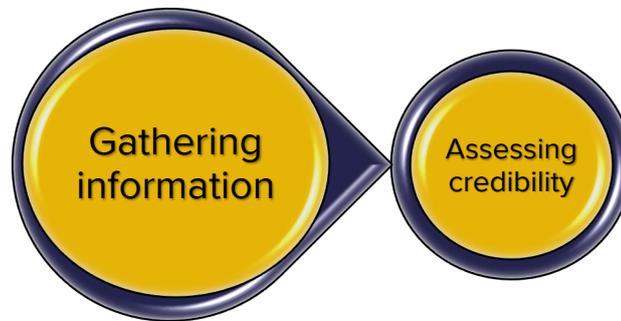
This chapter provides information on how the case officer can:

- collect evidence in SOGIESC cases, including collecting statements in a SOGIESC-sensitive way and collecting documentary and other types of evidence in a SOGIESC-based claim;
- identify and formulate material facts in SOGIESC cases:
 - understand why it is important in SOGIESC-based claims not to consider the identification of material facts too narrowly;
 - how and why the personal circumstances of the applicant need to be taken into account;
 - why, when formulating material facts, it is important to mirror the way the applicant presented them;
- assess credibility of the applicant's statements, documentary evidence and COI in SOGIESC cases.

⁽⁴⁷⁾ EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 'Key elements of evidence assessment'.

5.1. Gathering information

Figure 10. Main steps of evidence assessment: gathering information



Evidence assessment starts with gathering information. The process of gathering information is completed through different stages: collecting evidence, identifying material facts and linking each piece of evidence to one or more material facts.

5.1.1. Collecting evidence

During the examination of a claim, the applicant and the asylum authority have the **duty to cooperate**: the applicant by **presenting all elements** needed to substantiate their application as soon as possible and the authority by **investigating** and assessing the relevant elements of the application.

In SOGIESC-based claims, as part of your duty to investigate, it is particularly important that you promptly identify any specific needs for special procedural guarantees arising from the applicant's SOGIESC or from other intersecting needs and that you adequately respond to those needs.

For more information on specific needs, see Sections [2.1. SOGIESC and special needs](#) and [2.2. Identification of special needs](#).



Related EUAA publication

For more information on the duty to cooperate, consult the EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 1.1. 'Collect evidence'.

a) Collecting statements

Statements are usually the primary, if not the only, source of evidence in SOGIESC cases. When preparing and conducting the personal interview, in order to collect the applicant's statements, follow the guidance included in Chapter [4. Personal interview](#). It is particularly



important that you are aware of the challenges that can derive from the applicant's difficulty in sharing information on certain sensitive topics. For more details on how to create a conducive atmosphere, see Section [1.1. The importance of trust](#). Be aware of possible biases, assumptions or stereotypes and other factors of distortion that may impact you and the interview (see more in Section [5.2.4. Factors of distortion](#) and in Section [1.4. The impact of stereotypes, assumptions and prejudices](#)). For more guidance on how to use communication techniques to create an inclusive environment, consult the [Practical Guide on Applicants with Diverse SOGIESC – Cross-cutting elements](#), Chapter 3. Inclusive communication and creating safe spaces.

The duty to submit all elements as soon as possible lies with the applicant ⁽⁴⁸⁾. That said, the extent to which applicants with SOGIESC-based claims should be expected to fulfil this duty when it comes to disclosing information on their SOGIESC and related experiences should be considered with due regard to their personal circumstances and the sensitivity of the subject.

Furthermore, as in any examination of claims for international protection, you, as the case officer collecting the evidence, should make sure that the applicant has been given sufficient opportunity to clarify any apparent inconsistencies, plausibility issues or the lack of sufficient information. Finally, focus on identifying the cause(s) of any remaining inconsistencies or lack of detail to determine the extent to which the latter should be seen as a negative credibility indicator. This should be done with due regard for the applicant's personal circumstances or any other factors that may affect the applicant's ability to substantiate their claim so as to be able to properly assess their impact on the credibility assessment.

b) Collecting documentary and other types of evidence

For SOGIESC-based claims, it is important to take into account that (in most cases) applicants cannot provide conclusive documentary or other evidence regarding their SOGIESC.

When an applicant presents documents or other pieces of evidence to substantiate their SOGIESC, there are specific considerations as to **what kind of documentary evidence should be accepted and assessed** and what weight can be given to different types of documentary evidence.

- **Medical examinations or test results** aimed at establishing one's sexual orientation, cannot be requested nor accepted by you (or anyone else in the asylum authority) as evidence; **psychological reports** providing an indication of the applicant's sexual orientation cannot be used to assess the credibility of a person's sexual orientation either ⁽⁴⁹⁾.

⁽⁴⁸⁾ Article 4(1) QD (recast); Article 4(1) QR and Article 28(6) APR.

⁽⁴⁹⁾ In CJEU, 2014, [A., B., C.](#), *op. cit.*, fn. 19, paragraphs 59-66, the Court clarified that evidence on sexual activities and tests aiming at establishing one's sexual orientation are not to be used by the authorities. In the CJEU, judgment of 25 January 2018, [F v Bevándorlási és Menekültügyi Hivatal \(formerly Bevándorlási és Állampolgársági Hivatal\)](#), C-473/16, EU:C:2018:36, paragraphs 71-72, the CJEU likewise precluded the use of a psychological report to assess the credibility of an applicant's stated sexual orientation. Summary available in the [EUAA Case Law Database](#). In both rulings, the CJEU refers to the ECHR and the EU Charter of fundamental rights (*op. cit.*, fn. 33), and specifically to articles such as the right to respect for human dignity (Article 1 ECHR;

In the case of trans applicants claiming to have started or completed their transition, medical evidence of a gender affirming medical intervention or of hormonal treatment may corroborate their narrative. In these cases, you can accept such documents or inquire if the applicant has them. If presented, you can use these documents as evidence. The same applies to medical evidence of congenital conditions or biological characteristics or medical interventions for intersex applicants. However, the absence of such medical evidence cannot, in and of itself, have a negative impact on the credibility assessment.

- **Documentary evidence such as photographs or videos of intimate acts or nudity** (whether explicit or not) cannot be requested nor accepted by you and cannot be used to assess the credibility of a person's sexual orientation. This would constitute an infringement of personal dignity. Note that 'the effect of authorising or accepting such types of evidence would be to incite other applicants to offer the same and would lead, de facto, to requiring applicants to provide such evidence' ⁽⁵⁰⁾.
- **Other types of photographs or videos** (i.e. images not showing sexual or intimate acts) that are presented in support of the applicant's sexual orientation or gender identity can be accepted but not requested. If presented, this material should be considered in the credibility assessment.
- **Posts or articles** (e.g. online or newspaper articles) can be also submitted by the applicant in support of any material facts, including, for example, their SOGIESC or events that could elicit a risk upon return.
- **Open-source** research might help you find information that was not presented by the applicant, for example regarding the applicant's marital/relationship status or history, past problems or LGBTIQ-related activities in which the applicant engaged. It might also help you verify or find more context on information or evidence that has been presented by the applicant.

5.1.2. Identifying and formulating material facts

Material facts are (alleged) facts and circumstances that are linked to one or more of the constitutive elements of the definition of a refugee ⁽⁵¹⁾ or a person eligible for subsidiary protection ⁽⁵²⁾ and go to the core of the application ⁽⁵³⁾.

Article 1 EU Charter), the right to respect for private and family life (Article 8 ECHR; 7 EU Charter), and the general and absolute prohibition of torture and inhuman or degrading treatment (Article 3 ECHR; Articles 3 and 4 EU Charter). To note also CJEU, judgment of 7 November 2013, [Minister voor Immigratie en Asiel v X, Y, and Z v Minister voor Immigratie en Asiel](#), Joined Cases C199/12 to C201/12, EU:C:2013:720, paragraph 76 and ruling point 3. Summary available in the [EUAA Case Law Database](#). Recital 42 QR states that '[...] Specifically as regards sexual orientation and gender identity, applicants should not be submitted to detailed questioning or tests as to their sexual practices'.

⁽⁵⁰⁾ CJEU, 2014, [A., B., C.](#), *op. cit.*, fn. 19, paragraph 66. Summary available in the [EUAA Case Law Database](#).

⁽⁵¹⁾ In accordance with Article 1A(2) Refugee Convention; Article 2, point (d) QD (recast); Article 3(5) QR.

⁽⁵²⁾ In accordance with Article 2(f) and Article 15 QD (recast); Article 3(6) and Article 15 QR.

⁽⁵³⁾ Article 4(3) QD (recast) and Article 34(2) APR.



a) Identifying material facts

While material facts must be linked to the constitutive elements of the definition of a refugee or a person eligible for subsidiary protection, in SOGIESC-based claims it is important not to consider the identification of material facts too narrowly. In other words, make **sure you do not overlook facts** that might appear irrelevant for international protection at first glance, while upon closer assessment they may be revealed as material facts. For instance, if a trans applicant states that they left their country because they could not make a living, be careful not to dismiss this fact too easily as not being material to the claim simply because it does not seem to be related to the eligibility criteria at first glance. It could be the case that the applicant has no job opportunities or access to healthcare and housing because they are trans. In this case, both the trans identity and the discrimination experienced would constitute material facts ⁽⁵⁴⁾. Similarly, past same-sex sexual relationship(s) may equally constitute material facts despite the applicant not being or identifying as gay, lesbian or bisexual. The fact that same-sex sexual activities took place could in itself generate a risk upon return.

Make sure to **look critically at all evidence available** – statements and documents – to correctly identify a material fact and avoid inferring facts without fully exploring them. For example, if an applicant submits a medical report attesting that they underwent gender affirming procedures, this does not always mean that the applicant is trans or identifies as such. In some contexts, applicants may have been coerced to undergo treatment or medical procedures as ‘corrective measures’ (e.g. corrective transition for gay men or intersex persons).

Moreover, any fact that could or has resulted in a given SOGIESC being imputed to the applicant would need to be identified as a material fact relevant to the claim.

Furthermore, when identifying the material facts, take into account the applicant’s **personal circumstances** ⁽⁵⁵⁾. Where personal circumstances have the potential to heighten the risk of persecution or serious harm, they must be identified and made explicit in the formulation of the material fact, to indicate their relevance and form the object of a credibility assessment.



Related EUAA publication

For more detailed guidance on personal circumstances in the evidence assessment, consult the EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 1.2.1(d) ‘Consider the applicant’s personal circumstances surrounding the material facts’.

Finally, be aware that material facts might arise after departure from the country of origin (which might make the applicant a **refugee sur place**) ⁽⁵⁶⁾. New material facts might even come to light while the asylum claim is being processed and/or assessed. For example, the applicant

⁽⁵⁴⁾ Remember that the identification of material facts does not entail the legal assessment as such. Hence, whether the discrimination is so severe that it amounts to persecution is to be assessed at a later stage of the decision-making process.

⁽⁵⁵⁾ Article 4(3), point (c) QD (recast); Article 34(2), point (d) APR.

⁽⁵⁶⁾ Article 5 QD (recast); Article 5 QR.



might undergo a gender-affirming intervention or start a same-sex relationship during their asylum procedure. Hence, as long as the assessment has not been finalised, new material facts might be identified and added to the claim and included in the assessment.

In SOGIESC-based claims, it is also particularly important to ensure that all (potential) material facts of the claim have been explored during the personal interview.

b) Formulating material facts

When **formulating material facts**, it is important to mirror the way in which the applicant presented them to you. In other words, you should adhere to the situation or event as described by the applicant.

In SOGIESC cases, this is particularly important as sexual orientations, gender identities, gender expressions and sex characteristics may be felt and lived in different ways and have many nuances. Therefore, the way an applicant defines themselves and their SOGIESC may not fall into specific or 'pre-defined' categories. An applicant might also not explicitly identify themselves using the terminology that is encompassed in the LGBTIQ acronym. This should be reflected in the way the material facts are formulated to set the necessary basis for a correct credibility assessment.

Example

Below is an example of an erroneous formulation that does not adhere to the way the applicant presented the material fact, followed by a correct formulation.

Summary of the applicant's statements

A young woman from country X told the case officer that she has been in a sexual relationship with another woman. This is the only relationship she has ever had. The applicant did not define herself in terms of sexual orientation at any point in the interview.

Formulation of material fact

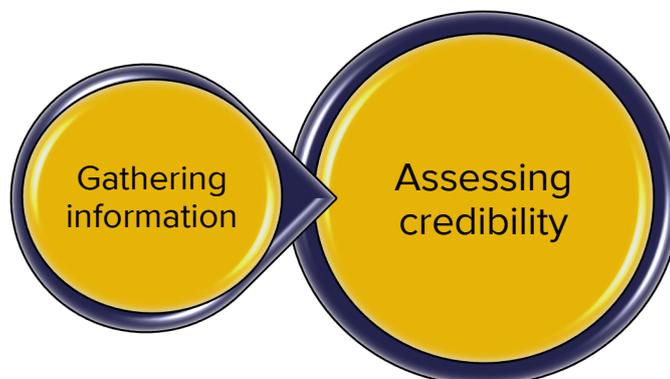
- The applicant is lesbian.
- The applicant is a woman that has been in a sexual relationship with another woman.





5.2. Assessing credibility

Figure 11. Main steps of evidence assessment: assessing credibility



Credibility assessment is the process of **analysing all relevant evidence** through the use of specific criteria and indicators in order to establish in an individual, impartial and objective manner which material facts can be accepted in a claim for international protection. Relevant evidence is mainly constituted by the applicant's statements, documentary evidence and COI.



Related EUAA publication

For more information on credibility assessment in general, consult the EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 2. 'Step 2. Credibility assessment'.

5.2.1. Assessing the applicant's statements

The credibility assessment of the applicant's statements for SOGIESC-based cases is conducted using the same **credibility indicators** as for any other claim: the level of details and specificity of the applicant's statements, their internal coherence, consistency and plausibility, as well as the consistency of these statements with all other evidence linked to that material fact under consideration (internal credibility) as well as their consistency with COI (external credibility).

Plausibility may also apply as a criterion but it should be applied with caution and within the boundaries of its definition. Plausibility refers to what is possible or possible to believe in relation to generally accepted information, such as the laws of physics or the feasible course of events. Plausibility considerations should not be based on speculation and subjective assumptions or preconceptions. For example, the fact that the applicant had a same-sex encounter in their family house cannot be considered implausible merely because this behaviour appears irrational because it might have exposed the applicant to risks if their family caught them in the act.

When applying the credibility indicators, all **individual and circumstantial factors** that may lead to distortions must be considered in relation to their possible impact on the applicant's ability to substantiate their claim. They must also be considered regarding the case officer's ability to assess the claim in an impartial and objective manner. Be mindful of your own assumptions and make sure that they do not shape your expectations in terms of the sufficiency of details the applicant provides or their plausibility. See also Section [5.2.4 Factors of distortion](#).



Related EUAA publication

For more detailed guidance, consult EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 2.2. 'Assess the statements of the applicant against credibility indicators'.

With this in mind, SOGIESC-based asylum claims however can raise specific **challenges in the credibility assessment**. Below are some points that you may need to factor in in your credibility analysis.

Self-identification

Self-identification is an indication of the applicant's SOGIESC. However, applicants who self-identify as LGBTIQ will – just as in other types of applications – still need to substantiate their claim with detailed, coherent and plausible statements related to their SOGIESC and other evidence that is available to them ⁽⁵⁷⁾.

Conversely, the **lack of self-identification** should not necessarily be taken as an indicator that the applicant does not have or will not be imputed with a given SOGIESC. There might be various reasons an applicant has not reached a point of self-identification or may not identify themselves with the terms that are commonly used to talk about diverse SOGIESC or may not self-identify as an LGBTIQ person as such.

Diversity of experiences and the variety of personal circumstances

For SOGIESC-based claims, in a similar way to the structuring of the personal interview (see Section [4.3.1. A flexible approach](#)), consider the **diversity of experiences** applicants may have and the **variety of personal circumstances** in the case at hand when assessing the credibility of the applicant's statements. Every individual perceives, experiences and lives their SOGIESC in a personal way, which can be different for everyone. Events or situations related to a person's SOGIESC may be given varying significance by each individual and affect them on different levels. Applicants with a similar background may still identify themselves in diverse ways, may have had different experiences and may focus their claim and narrative on different dimensions.

⁽⁵⁷⁾ CJEU, 2014, [A., B., C.](#), *op. cit.*, fn. 19, paragraph 49. Summary available in the [EUAA Case Law Database](#).



In SOGIESC cases, the **applicant's age** can affect their degree of self-awareness and their ability to express thoughts and feelings about their own SOGIESC. The way in which gender and sexuality are – or are not – discussed and conceptualised in a specific culture is likely to influence how a person understands their own sexuality or gender identity. Furthermore, do not make any assumptions regarding the age at which someone should or should not have had romantic or sexual relationships, have become aware of their SOGIESC or have disclosed it. Although adolescence is the time of life that is (in many cultures) usually considered associated with the discovery and awakening of sexuality and identity, processes and developments related to this can take place earlier on as well as much later in life. Older applicants may also have difficulties in disclosing their SOGIESC, for example due to longer exposure to discrimination, stigma, etc. Individuals who realise/accept their SOGIESC later in life may also fear that they will not be found credible. Consider the above when conducting your credibility assessment.

The **material facts** you identify and for which you will conduct a credibility analysis will be different for different cases. You might assume a certain dimension is relevant to the case at hand based on the profile of the applicant before you. However, if it is not relevant to the applicant's case and they do not bring it forward to substantiate their claim, this is not per se a negative credibility indicator. For example, if a gay applicant states to never have had a gay relationship, this is not per se a negative indicator of credibility of his sexual orientation. To assess the credibility of the fact that he is gay, you will need to analyse other relevant statements based on the usual credibility criteria of internal and external credibility and plausibility, as relevant. To identify the relevant statements on a material fact, refer to the dimensions that emerged during the interview, such as the discovery or the disclosure of their SOGIESC. For more details on possibly relevant dimensions, see Section [4.3.2. Dimensions potentially relevant to explore](#).

Assessment of credibility in an individualised and sensitive way

As already noted, to substantiate their asylum claim based on SOGIESC, the applicant is often required to disclose and discuss some of their most intimate private experiences. Keep this in mind when conducting the credibility assessment and applying credibility indicators. In SOGIESC cases, it is especially important to stress that the assessment of credibility needs to be undertaken in an '**individualized and sensitive way**' ⁽⁵⁸⁾.

Late disclosure

Late disclosure in SOGIESC cases should not in itself negatively affect the findings on the credibility of the sexual orientation declared by the applicant.

⁽⁵⁸⁾ UNHCR, [Guidelines on International Protection No. 9](#), 2012, *op. cit.*, fn. 33, paragraph 62.

**CJEU, 2014, A., B. C. ⁽⁵⁹⁾**

... having regard to the sensitive nature of questions relating to a person's personal identity and, in particular, his sexuality, it cannot be concluded that the declared sexuality lacks credibility simply because, due to his reticence in revealing intimate aspects of his life, that person did not declare his homosexuality at the outset'

The QR also addresses the issue of late disclosure of the applicant's sexual orientation and related conclusions on credibility.

**Recital 28 QR**

The determining authority should not conclude that the applicant lacks credibility merely because the applicant did not rely on his or her declared sexual orientation on the first occasion he or she was given to set out the ground for persecution, unless it is evident that the applicant merely intends to delay or frustrate the enforcement of a decision resulting in his or her return.

LGBTIQ applicants, who do not conform to the cis-normative or heteronormative standards of their societies, often have a long-standing experience of marginalisation, discrimination, stigma, violence or living in constant fear of being 'found out' or continuously repressing certain parts of their identity.

The applicant's awareness and discovery of their SOGIESC

How an applicant has experienced the awareness or discovery of their SOGIESC might be different to another's experience, even if they share a similar background (see Section [4.3.2. Dimensions potentially relevant to explore](#)). The absence of an internal struggle, or the failure to identify one specific moment or situation where the applicant became aware of their SOGIESC, are not indicative of lack of credibility.

Knowledge of the situation for others with the same SOGIESC, legal provisions and LGBTIQ support networks

The applicants' level of knowledge on the situation of people with their (or other diverse) SOGIESC, of the related legal provisions and of the existing LGBTIQ support networks may vary. To define the level of information you could expect, consider the specificities of the individual case. For example, some applicants may know about the situation of persons with diverse SOGIESC in their community only, while others may also know the situation country-

⁽⁵⁹⁾ CJEU, 2014, [A., B., C.](#), *op. cit.*, fn. [19](#), paragraph 69. Summary available in the [EUAA Case Law Database](#).



wide. In another example, applicants that are LGBTIQ activists would probably have more knowledge than applicants who have never reached out to an LGBTIQ organisation. The personal circumstances of the applicant, such as their level of education, may also have an impact on their knowledge and understanding of the above elements.

The applicant's lack or limited familiarity or involvement with LGBTIQ networks or groups or knowledge of (criminal) legal provisions, should not necessarily be regarded as a negative credibility indicator, unless the profile and experience of the applicant would make it reasonable that they have a given level of knowledge of one or the other (e.g. experienced and well-educated LGBTIQ activist that presents this as one of the elements of their claim). You should assess the applicant's statements against the credibility indicators.

Relationships with persons of the opposite sex

Applicants who are gay or lesbian may have (had) relationships with persons of the opposite sex. This can be the case for a variety of reasons (see more in Section [4.3.2. Dimensions potentially relevant to explore](#)). Being or having been in opposite-sex relationships, marriage(s), or having children, while being lesbian or gay should not be considered an inconsistency in itself. However, the statements regarding such relationships are usually relevant in the credibility assessment and should be assessed in the light of the statements regarding the sexual orientation. Therefore, you might need to assess if there are any incoherencies or inconsistencies in the applicant's account on these topics and the related material facts.

Detailed statements on sexual activities and practices

Detailed statements on sexual activities and practices should not be taken into account in the credibility assessment. It may be that the applicant themselves focus more or exclusively on sexual aspects of their relationships or the sexual sphere of their SOGIESC, or that they rather focus more or exclusively on the romantic sphere. In any case, explanation as to why they are not or feel less interested in one or the other sphere, why and in what way sexual practices or emotions are important to them, whether this has been different in the past and their vision for their future when it comes to relationships, can be relevant in the credibility assessment.

Practicing a religion

Religions or religious authorities may adopt a position on specific SOGIESC. You can gather information on this through COI. Be aware of your own assumptions regarding the respective religion, its teachings and norms regarding diverse SOGIESC.

Note that if the applicant declares to believe in or practice a religion that is generally not supportive or tolerant of the applicant's SOGIESC, this should not be considered to be an inconsistency as such. You would need to assess if there are any incoherencies or inconsistencies in the applicant's account of the relevant material facts considering the general principles of credibility analysis.



Be aware also that the official position a religion holds towards some SOGIESC may not necessarily be (fully) acted upon in practice by a particular community. You should assess available information on the topic as relevant for the individual case.

Ability to express thoughts and feelings

When conducting the credibility assessment, consider that some applicants might be more comfortable and better able to recount their experiences and express thoughts and feelings on intimate and personal matters than other applicants. When determining the level of detail, clarity, consistency and depth that could reasonably be expected from the applicant's statements, it is important to be aware of the applicant's personal and contextual circumstances and other factors that can determine a distortion. (See Section [5.2.4 Factors of distortion](#) and Section [1.2 The impact of cultural, social and linguistic background](#)). Note that when looking at the applicant's personal and contextual circumstances, factors such as educational background and or social status are not necessarily indicative of the applicant's ability to talk about (romantic) feelings and emotions. For example, not everyone with a university background is necessarily good at expressing their emotions.

5.2.2. Assessing documentary evidence

The primary source of evidence in SOGIESC cases is the applicant's statements (see more in Section [5.2.1. Assessing the applicant's statements](#)). However, an applicant may submit documentary evidence such as pictures, membership cards of LGBTIQ support organisations or written statements by third parties.

All documentary evidence submitted will need to be examined with respect to their **probative value**, i.e. how much that evidence is able to support the material fact(s) it relates to, based on a set of criteria. Note that in any case, a piece of documentary evidence, on its own, will not be conclusive of the credibility of a material fact but will need to be analysed in connection with the other evidence (including the applicant's statements and COI).

You can make findings on the probative value of documentary evidence by assessing several elements in the document at hand, including:

- **relevance** (whether and how strongly it relates to a material fact);
- **existence** (possibility that the document has been issued by the stated author);
- **content** (e.g. contradictions within the document, contradictions with the applicant's statements, precision, covering essential or peripheral elements, source);
- **nature** (e.g. original/copy, condition);
- **author** (e.g. who, in which capacity, objectivity);
- **form** (e.g. formal components and how these are structured).





Related EUAA publication

For more information on the assessment of documentary and other evidence, consult the EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 2.1. ‘Assess documentary and other evidence’ .

The following paragraphs focus on issues regarding the assessment of documentary and other evidence that are specifically relevant in SOGIESC cases.

a) Third party testimonies

Sometimes third parties, including family members, partners, interest groups, witnesses, civil society organisations and professionals, such as social workers, may submit statements in support of the applicant’s application. As with statements by the applicant themselves (and all other evidence relevant to the material facts), third party statements have to be explicitly and duly taken into consideration. The conclusion needs to be drawn on the probative value of each of these documents on the basis of the abovementioned criteria.

It is particularly important to assess **in which capacity** the author is providing their testimony and assess their objectivity. Therefore, the author of the third party statement, the motive(s) behind the issuance of a statement and the content of the document should be considered. The considerations below may be relevant in this respect.

- Statements (positive or negative) made by **unknown or anonymous sources** would normally bear limited weight because the author (and therefore their reliability, objectivity, motive, etc.) cannot be established.
- Testimonies providing **first-hand information** should be given more weight than statements based on second-hand information.

For example, if a member of an LGBTIQ support group states they have seen the applicant attend various events organised by this LGBTIQ support group, such a statement would generally bear more weight than if someone states they were told (by the applicant or someone else) that the applicant attended the events. In any case, the evidence will bear no conclusive weight and should be analysed together with all other available and relevant evidence that can be linked to a material fact.

- Third party statements that are **merely an expression of support or assertion of the applicant’s SOGIESC**, without any factual information, would generally bear little to no weight.

However, if the testimonies contain additional or new factual information, these elements will need to be further investigated and would still need to be assessed together with the applicant’s statements.

Third party statements, even if extensive and from a reliable and independent source, do not release the applicant of their duty to substantiate the application by means of (oral) statements.

b) Social-media content

Be aware that content gathered by you or presented by the applicant through **social media** presents specific challenges. Social media can include social networking platforms, online dating apps, blogs and video sharing platforms. Content available on social media accounts is usually not developed following the same research rigour and editorial processes as other media. Such content is also often user-generated. Keep in mind that the identity of the author of the post and private social media accounts can be easily stolen. Information on social media can be subject to fast amendments, including to its content and privacy settings, i.e. whether it is public or private.

Be aware that applicants may conceal or not disclose their SOGIESC on social media and may even use social media profiles to portray a ‘conforming’ SOGIESC. Therefore, the risk may be higher than in other sources of information that content is inaccurate, biased, intentionally misleading or dubious. Consider this when assessing the probative value of such material and using it in your credibility assessment. As for all cases, if any inconsistencies appear between the information gathered through social media or through open-source research, the applicant needs to be given the opportunity to clarify their statements.



Related EUAA publication

For more information see EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 2.1.4.(c) ‘Content gathered through social media’.

c) Medical reports

As mentioned above in Section [5.1.1.b\) Collecting documentary and other types of evidence](#), applicants may present medical reports attesting treatments or medical procedures they have undergone, including, for example, gender affirmative surgeries.

Such medical reports can be taken into account in the credibility assessment of the material fact to which they are linked in the case at hand. (See Section [5.1.2.a\) Identifying material facts](#)). The material fact to which this evidence can be linked would be different, depending on how the applicant self-identifies or depending on the claim in support of which they have presented such documents. For example, in a case where the applicant claims they are gay and has been coerced to undergo ‘corrective’ surgery, a medical report attesting a gender affirmative surgery could be considered in the credibility assessment of the fact that they underwent such surgery. In another case, a medical report attesting to a gender affirmative surgery could support the applicant’s claim that they are a trans woman. Remember that medical examinations or test results aimed at establishing one’s sexual orientation, including psychological assessments, cannot be used to assess the credibility of a person’s sexual orientation ⁽⁶⁰⁾.

⁽⁶⁰⁾ CJEU, 2014, [A., B., C.](#), *op. cit.*, fn. 19, paragraphs 59-66; CJEU, judgment of 25 January 2018, [F v Bevándorlási és Menekültügyi Hivatal \(formerly Bevándorlási és Állampolgársági Hivatal\)](#), C-473/16, EU:C:2018:36.



Be aware that trans applicants may not have undergone (or initiated) treatment or a procedure to affirm their gender. This may be out of personal choice or for other reasons. It can therefore be the case that they do not present any medical reports. This is not to be considered as a negative credibility indicator regarding their gender identity.

d) Lack of documentary evidence

In general, the **absence of documentary evidence** regarding one's SOGIESC should not necessarily lead to negative credibility findings ⁽⁶¹⁾. As mentioned in the beginning of this chapter, applicants in the asylum procedure are often not in the position to submit much evidence, other than their statements, to substantiate their claim. This is particularly true for applicants with SOGIESC-related claims.

Nevertheless, the case officer should assess whether the applicant has fulfilled their duty to substantiate their application. For more information, see Section [5.1.1. Collecting evidence](#).

5.2.3. Assessing country of origin information

Although COI is often crucial for the assessment of the credibility of the material facts of an application for international protection, the extent to which it may support the assessment of an individual case depends on a variety of factors, including the extent to which the claim is based on personal circumstances and events strictly related to the personal sphere, or how well information on a particular topic is documented in a particular country of origin. Restrictions or difficulties in reporting in the country of origin may **limit the availability** of information about a particular subject and thus should always be taken into consideration.

In SOGIESC cases, note that the marginalisation of LGBTIQ persons in countries of origin can lead to **underreporting**, as detailed in Section [4.1. Preparing the interview](#). The extent to which international and other organisations and groups are able to monitor and document abuse against LGBTIQ individuals remains limited in many countries. COI may therefore not be available at all or may be limited in scope, for example if it reports on the situation of only some groups under the LGBTIQ umbrella or of some regions of the country (normally the capital city) but not of others.

Hence, for the purpose of credibility assessment, it is important to keep in mind that a **lack of COI** does not necessarily mean that an event, issue or persons mentioned by the applicant did not or does not occur or exist. Therefore, a lack of COI should not in itself lead to negative credibility findings or necessarily be considered a negative credibility indicator. Before drawing any conclusions, you should consider how likely it is that relevant COI would be available on the elements you are researching.

⁽⁶¹⁾ Article 4(5) QD (recast) Article 4(5) QR.



Related EUAA publication

For general information on the use of COI, consult the EASO, [Practical guide on the use of country of origin information by case officers for the examination of asylum applications](#), December 2020.

5.2.4. Factors of distortion

As a case officer, you need to be aware that various factors can affect the capacity of the applicant to deliver statements or the way in which they do so. Some factors can also affect the way you, as an officer, produce, receive and interpret messages.

Factors of distortion can be related to the **applicant** themselves, to the **interpretation and the interview situation**, as well as to you, the **case officer**. Factors that may lead to distortions will always exist and it is not possible to avoid them completely. However, it is necessary to be aware of them during the various steps of the evidence assessment process to be able to minimise their impact on the outcome of the procedure ⁽⁶²⁾.

Many factors of distortion can apply at the same time and be interlinked. For SOGIESC cases, there are certain factors of distortion that are specifically relevant. They include the social, cultural and linguistic background (see Section [1.2. The impact of cultural, social and linguistic background](#)), shame, mistrust and fear on the part of the applicant (see Section [1.3. The impact of stigma, shame, mistrust and fear](#)), stereotypes, assumptions and prejudices (see Section [1.4. The impact of stereotypes, assumptions and prejudices](#)).

As a case officer you also need to be aware that the fact that you have heard and read about stories with similar narratives many times may cause you '**credibility fatigue**' or '**case hardening**'. This can make you more inclined to avoid going deeper into statements during the interview in order to avoid hearing once more about traumatic experiences. It can also make you unreasonably raise the threshold for credibility that you apply. You will instead need to analyse each case individually on its own merits without preconceptions.



Related EUAA publication

To know more on factors of distortion, consult the EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 2.3. 'Consider individual and circumstantial factors that may lead to distortions'.

⁽⁶²⁾ Article 10(3), point (a) and Article 15(3), point (a) APD (recast); Article 13(7), point (a) and Article 34(2) APR.



Key points to remember

- Often, the only available evidence will be the applicant's statements.
- Some types of documents cannot be used as evidence in SOGIESC cases, such as medical examinations or test results – including psychological assessments – aimed at establishing one's sexual orientation as well as evidence of intimate acts or nudity in the form of photographs and videos.
- When identifying the material facts, do not overlook relevant elements, consider the applicant's personal circumstances, remember that the applicant being perceived as having a given SOGIESC would be a relevant material fact and consider facts that occurred *sur place*.
- When formulating the material facts, adhere to the situation or events as described by the applicant.
- When assessing the credibility of the applicant's statements, in addition to general criteria, you need to consider the following:
 - Be aware of possible assumptions and stereotypes and avoid (as much as possible) them affecting your assessment.
 - Applicants with SOGIESC-based claims are not a homogeneous group. Take into account the diversity of their experiences and their personal circumstances.
 - The material facts for which you will conduct a credibility analysis will differ. Refer to the dimensions that emerged during the interview to identify the relevant statements. If you would have assumed a certain dimension to be relevant, based on the applicant's profile, but it is not in fact relevant in the specific case, this is not per se a negative credibility indicator.
 - Carry out the credibility assessment in an 'individualised and sensitive way' ⁽⁶³⁾.
 - The lack of self-identification is not in itself a negative credibility indicator.
 - Late disclosure of one's SOGIESC should not in itself be held against the credibility.
 - The level of knowledge of legal provisions affecting LGBTIQ persons or the familiarity with LGBTIQ support groups may vary and therefore the information you can expect from the applicant also varies.
 - Persons who are gay or lesbian might have (had) relationships with persons of the opposite sex. This is not a negative credibility indicator per se. At the same time, assess if there are any inconsistencies in the applicant's account on these topics and the related material facts.
 - If the applicant declares to believe in or practice a religion that is generally not supportive or tolerant of the applicant's SOGIESC, this is not an inconsistency as such. Assess if there are any inconsistencies in the applicant's account in light of the general principles of credibility analysis.
 - Do not take into account detailed statements on sexual activities and practices.

⁽⁶³⁾ UNHCR, [Guidelines on International Protection No. 9](#), 2012, *op. cit.*, fn. 33, paragraph 62.



- Always be aware of possible factors that have an impact on the applicant's ability to present facts, including their ability to express thoughts and feelings
- When assessing documentary evidence:
 - pay particular attention to the source/author of third party testimonies;
 - consider the specificities of social media content;
 - be particularly attentive when assessing medical reports, link them to the correct material fact and remember that some reports cannot be used to assess credibility;
 - remember that the lack of documentary evidence in SOGIESC cases should not necessarily lead to negative conclusion on credibility.
- When assessing COI, remember that for some countries or profiles they might be limited due to several reasons including underreporting. Keep in mind that a lack of COI does not necessarily mean that an event, issue or persons mentioned by the applicant did not or does not occur or exist.
- Be mindful that the factors of distortion can affect the evidence assessment process and try to minimise their impact.





6. Risk assessment



This chapter focuses on:

- detailing the elements and considerations to take into account when assessing the risk upon return in cases;
- clarifying the role that statements and documentary evidence can play, together with the COI and personal circumstances;
- highlighting considerations in relation to past persecution and the various possible SOGIESC claims, with a particular focus on *sur place* claims and claims of applicants from countries with laws criminalising specific SOGIESC or same-sex sexual activities;
- providing guidance on the ‘discretion’ concept;
- presenting considerations in relation to actors of persecution in claims based on SOGIESC and national laws criminalising SOGIESC.



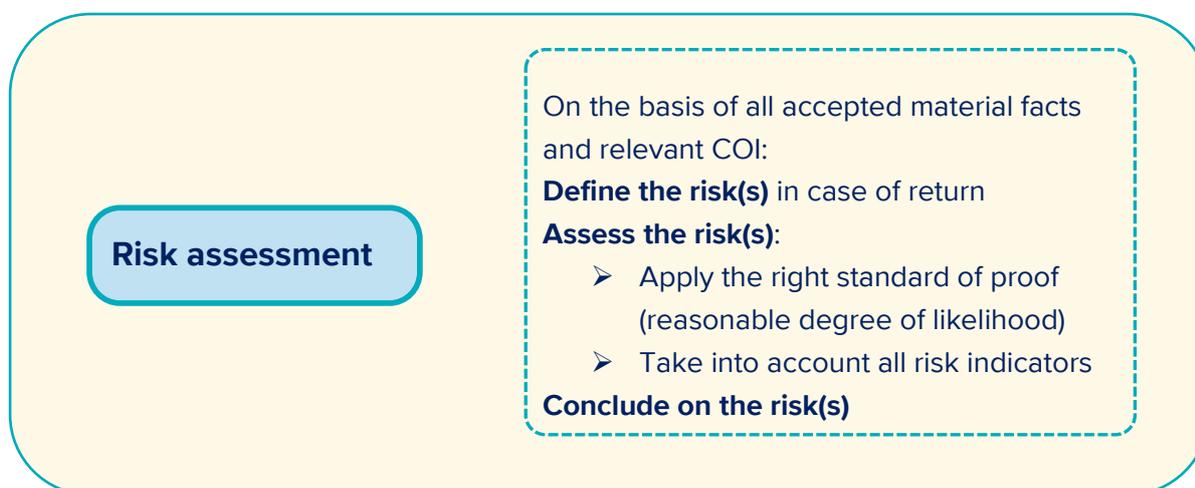
Related EUAA publication

For information on the other elements of risk assessment, consult the EUAA, [Practical Guide on Evidence and Risk Assessment](#), Chapter 3. ‘Risk assessment’.

6.1. Elements to consider

Risk assessment is the factual and forward-looking analysis to assess the likelihood that the applicant will be persecuted if they return to their home country. This analysis takes into account the accepted material facts and the available COI at the time of the decision.

Figure 12. Risk assessment



The risk assessment in respect of a SOGIESC-based claim, as for all other applications, should be carried out on an individual basis. When conducting the risk assessment for SOGIESC cases in particular, you should take the following points into consideration.

- **Accepted material facts.** The risk assessment will be based, among others, on the relevant statements and documentation on accepted material facts presented by the applicant, if any and as long and as far as they are relevant to the substantiation of possible future risk.

Even if only some material facts have been accepted, and not all, you still need to conduct a risk assessment based on them. For example, if the applicant's sexual orientation has been established but their past experiences in the country of origin have not, you will still analyse the risk of return in respect to the accepted fact.

- **Relevant COI.** Available COI may not be extensive – as stated in Section [5.2.3. Assessing country of origin information](#). Where no reliable COI on SOGIESC exists, this should not immediately lead to the conclusion that the situation is safe. While this might be the case in some instances, the lack of information should be looked at in a broader context as it could, on the contrary, potentially indicate the seriousness of the situation in the country of origin for SOGIESC communities.

Depending on the claim, you would need to look into information on the existence of laws and regulations related to SOGIESC, possibly including the criminalisation of certain SOGIESC and/or same-sex sexual activities. Look into information on the application of these laws in practice, which may differ in different parts of country or may have changed over time. Information on the social climate and the attitudes by different actors of the society towards relevant SOGIESC is also important.

- **Personal circumstances of the applicant.** Personal circumstances including factors such as background, gender, sex, age, economic and social status and place of residence can contribute to either heightening or minimising the risk for the specific applicant. For example, the situation for people with diverse SOGIESC can – in some countries – be different if they are in a city or the countryside.
- **Future risk of persecution.** While past persecution should be taken into account when assessing the risk upon return, be aware that many LGBTIQ people or those engaging in same-sex sexual activities do not disclose this out of fear of possible persecution in their country of origin. They therefore might not have been victims (of threats) of persecution in the past. However, this does not mean that they would not be at risk in the future; to determine future risk, an appropriate analysis needs to be conducted ⁽⁶⁴⁾. This does not mean either that they could be expected to (continue) being discreet about their SOGIESC (see Section [6.4. The issue of discretion](#)).

Based on the information gathered and the abovementioned elements, identify the harm the applicant may face upon return and determine the likelihood of that harm (re)occurring.

⁽⁶⁴⁾ EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 3.3.2(a) 'Risk indicators – The events which the applicant has experienced in the past'.



6.2. Claims based on same-sex sexual activities

As already highlighted, there is no single standard profile or claim based on SOGIESC, but rather a variety of claims. Some claims are based on the fact that the person, without identifying as LGBTIQ, engaged or engages in same-sex sexual activities.

The fact that sexual relations between men and women are not permitted because of societal, 'moral' or religious norms (honour, adultery, etc.) or not possible because of circumstances (single-sex school, army, incarceration, etc.), may lead to same-sex sexual interactions out of 'necessity', as mere sexual gratification and/or as a substitute for heterosexual relations. In such situations, sexual practice is distinct from personhood and identity. **Situational sexual activities** are transient in nature and often occur in specific contexts. It can also be the case that same-sex relationships are a choice based on other factors, for example in the case of sex work. In all such circumstances, these sexual acts do not correspond to a sexual orientation.

It has to be considered whether the person could give up situational sexual activities or not repeat such activities in the future. It is important to keep in mind that even in cases of same-sex relationships that are the result of a choice led by other factors other than sexual orientation, being LGBTIQ may be nevertheless imputed to the applicant. Therefore, you should consider the perception of the actor(s) of persecution or serious harm. Men who have sex with men and women who have sex with women may be at risk of harm if returned to their country. You, as the case officer, need to conduct a risk assessment analysis.

6.3. *Sur place* claims

Remember that the situation or facts leading to the risk of persecution may have arisen or occurred **after the applicant left their country of origin**. These cases are often referred to as *sur place* claims ⁽⁶⁵⁾.

For SOGIESC-based claims, this would be the case where the applicant became self-aware of their SOGIESC after departure from the country of origin, for example. Other examples include where the same-sex sexual acts in which they engaged took place after their departure or where the applicant transitioned to a different gender after departure.

This could be understood due to the fact that the applicant had been raised or has been living in a hostile and restrictive environment, for example. Bear in mind that SOGIESC can be fluid and may change over time. Although the applicant's diverse SOGIESC may have only become apparent or acted upon after the applicant's departure from their country of origin, the fear of persecution may be well-founded in the future.

It may be that the applicant was aware of their SOGIESC in the country of origin and left the country without intention of applying for international protection but their SOGIESC has become known to the family, community, or other actors in the country of origin. It may also

⁽⁶⁵⁾ Article 5 QD (recast); Article 5 QR.

happen that social hostility against SOGIESC communities may increase or legislation against SOGIESC communities may be introduced during the applicant's absence from the country of origin. This may lead to a risk of persecution.

6.4. The issue of discretion

Applicants with SOGIESC-based claims frequently (try to) keep aspects and sometimes large parts of their lives secret. Many suppress their SOGIESC to avoid the severe consequences of discovery. Many will not have lived openly as LGBTIQ persons in their country of origin or even in the countries of transit and the country of asylum. Some may not have had any intimate relationships.

It is of utmost importance that you remember that **it cannot be expected for a person to hide or to be discreet about their SOGIESC to avoid the risk** of persecution in the event of return to their country. The inappropriateness of the 'discretion' reasoning also applies to bisexual individuals, in relation to whom there should be no expectation that they only engage in opposite-sex relationships.



CJEU, 2013, X, Y and Z ⁽⁶⁶⁾

When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.



Article 10(3) QR

When assessing if an applicant has a well-founded fear of being persecuted, the determining authority cannot reasonably expect that applicant to adapt or change his or her behaviour, convictions or identity, or to abstain from certain practices, where such behaviour, convictions or practices are inherent to his or her identity, to avoid the risk of persecution in his or her country of origin.

⁽⁶⁶⁾ CJEU, judgment of 7 November 2013, [Minister voor Immigratie en Asiel v X, Y, and Z v Minister voor Immigratie en Asiel](#), Joined Cases C199/12 to C201/12, EU:C:2013:720, paragraph 76 and ruling point 3. Summary available in the [EUAA Case Law Database](#).



Note on UNHCR's approach

UNHCR presents further important considerations that need to be taken into account. 32. [...] *The question is not, could the applicant, by being discreet, live in that country without attracting adverse consequences. It is important to note that even if applicants may so far have managed to avoid harm through concealment, their circumstances may change over time and secrecy may not be an option for the entirety of their lifetime. The risk of discovery may also not necessarily be confined to their own conduct. There is almost always the possibility of discovery against the person's will, for example, by accident, rumours or growing suspicion. It is also important to recognise that even if LGBTI individuals conceal their sexual orientation or gender identity they may still be at risk of exposure and related harm for not following expected social norms (for example, getting married and having children, for example). The absence of certain expected activities and behaviour identifies a difference between them and other people and may place them at risk of harm* ⁽⁶⁷⁾.

6.5. Laws criminalising SOGIESC

Many applicants with SOGIESC-based claims come from countries that have **laws that criminalise** their SOGIESC or certain behaviours or acts related to SOGIESC or where the implementation of certain other laws is used to prosecute persons with diverse SOGIESC, i.e. morality laws.

It is possible that these laws are always applied, or rarely applied, or have not been applied in a long time, or that these laws are never applied.

When conducting your risk assessment, as for any other risk of harm, you will need to apply the standard of proof in assessing the well-founded character of the feared persecution, the threshold for which is the 'reasonable degree of likelihood'. The applicable standard is therefore lower than 'beyond reasonable doubt' ⁽⁶⁸⁾.

The existence of a law criminalising given SOGIESC or related acts and behaviours is a **serious indication of risk**. When it is reported in the COI that the law is not fully or always applied, you will need to check the scope of implementation of the law in practice (in the whole country or only in some regions, to all groups or some specific profiles, if still applied,

⁽⁶⁷⁾ UNHCR, [Guidelines on International Protection No. 9](#), 2012, *op. cit.*, fn. 33, paragraph 32 with reference UK Supreme Court, 7 July 2010, [HJ \(Iran\) and HT \(Cameroon\) v Secretary of State for the Home Department](#), UKSC 31, paragraph 53:

The underlying rationale of the Convention is ... that people should be able to live freely, without fearing that they may suffer harm of the requisite intensity or duration because they are, say, black, or the descendants of some former dictator, or gay. In the absence of any indication to the contrary, the implication is that they must be free to live openly in this way without fear of persecution. By allowing them to live openly and free from that fear, the receiving state affords them protection which is a surrogate for the protection which their home state should have afforded them.

And the UK Upper Tribunal (Immigration and Asylum Chamber), 24 June 2011, [SW \(lesbians - HJ and HT applied\) Jamaica v Secretary of State for the Home Department](#), UK, CG [2011] UKUT 00251(IAC).

⁽⁶⁸⁾ EUAA, [Practical Guide on Evidence and Risk Assessment](#), January 2024, Section 3.3.1. Standard of likelihood for well-founded fear and real risk (standard of proof).

rarely or not applied taking into account the stability of (non)implementation over time), with a forward-looking perspective.

However, you should be aware that for SOGIESC cases it would be important to look into **further risks associated with the existence of a criminalising law** and into a broader dimension. A law that is rarely or never applied can still lend support to or be used to justify persecutory, harmful or discriminatory acts by law enforcement entities, administrations and institutions, as well as by non-state actors and could prevent a person from finding meaningful protection.

It is also important to look into the **individual profile and personal circumstances** of the applicant as the law may not be applied in the same way to all persons in the country. Therefore, you should also look into how personal circumstances (e.g. ethnic or religious background, social status, profession, etc.) could affect the implementation of a law on a specific individual.

6.6. Actors of persecution

When identifying the possible risks and conducting the risk assessment, you will need to look also into the actor(s) of the feared harm. Keep in mind that both state and non-state actors can be perpetrators of SOGIESC-based persecution ⁽⁶⁹⁾.

The role of the **state** as an actor of SOGIESC-based persecution can take different forms. States can actively prosecute or criminalise certain SOGIESC-related acts, such as same-sex sexual activities or gender transition or cross-dressing (the act of wearing clothes that are associated with a different gender). They can also impose laws that discriminate directly or indirectly against people with diverse SOGIESC, both in terms of identity and behaviour. They can also incite or tolerate persecution by society.

Non-state actors can include family members, neighbours, clans and tribes, non-state armed groups or the broader community. They may be either directly or indirectly involved in harmful acts, including intimidation, harassment, domestic violence or other forms of physical, psychological or sexual violence.

In situations where the threat of harm comes from non-state actors, also consider whether the state is able and willing to provide protection against such harm (see Section [7.3.1. Actors of protection](#)).



Related EUAA publication

For further guidance, see EASO, [Practical Guide: Qualification for international protection](#), April 2018, Section 'Actors of persecution or serious harm'.

⁽⁶⁹⁾ Article 6 QD (recast); Article 6 QR.



Key points to remember

- Applicants may face risks upon return because they have engaged in same-sex sexual activities, notwithstanding their sexual orientation.
- Applicants may be at risk because of their perceived SOGIESC.
- The risk upon return can derive from facts that occurred after the applicant left their country.
- Be aware that it cannot be expected for a person to hide or be discreet about their SOGIESC to avoid the risk of persecution in the event of return to their country
- In SOGIESC-cases, the actor of persecution can be the state but it can also be non-state actors including family, members, neighbours, clans and tribes, non-state armed groups or the broader community.
- The existence of laws criminalising a given SOGIESC or certain behaviours or acts related to SOGIESC, is a serious indication of risk. The same is true for the existence of other laws, such as morality laws, used to prosecute persons with diverse SOGIESC. Even if the laws are rarely applied, they can be used to justify persecutory acts or preventing the applicant to find protection.

7. Legal analysis



Following the evidence and risk assessment phase, the decision-making process continues with the legal appraisal of whether the substantive conditions for granting international protection ⁽⁷⁰⁾ are met.

In this analysis, you, as case officer, first need to consider if **the identified risk(s) amount to persecution**. If that is the case, you then need to consider the **existence of a nexus** with at least one of the five grounds for persecution set in the Refugee Convention ⁽⁷¹⁾ and in the QD (recast)/ QR. If a nexus with one of the five grounds is substantiated, then the next step would be to assess the **availability of protection** and the **internal protection alternative (IPA)** ⁽⁷²⁾.

The outcome of the legal analysis will establish whether an applicant qualifies for international protection.

This chapter includes elements to consider regarding:

- treatment amounting to persecution;
- the nexus with one (or more) of the reasons for persecution;
- possible actors of protection; and
- the application of the internal protection alternative.

7.1. Treatments amounting to persecution

It is impossible to enumerate all forms of ill-treatment and harm that constitute persecution and that might therefore legitimately entitle a person to benefit from international protection based on their SOGIESC.

⁽⁷⁰⁾ The conditions are laid down in the QD (recast) and the QR.

⁽⁷¹⁾ UN General Assembly, [Convention relating to the status of refugees](#), 1951, *op. cit.*, fn. 15.

⁽⁷²⁾ The assessment of IPA in accordance with the provisions of the QD (recast) depends on the national legislation and practice. However, the assessment of IPA is a requirement under the QR.



Article 9 QD (recast)

1. In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

(a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights [...]; or

(b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).



Article 9 QR

1. An act shall be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention where it is:

(a) sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, [...]; or

(b) an accumulation of various measures, including violations of human rights, which is sufficiently severe as to affect an individual in a similar manner to an act referred to in point (a).

You will therefore need to consider that an act can be serious within the meaning of this provision simply because of its nature, even if it does not occur more than once. If an act is repetitive or an accumulation of different acts (or omissions) occur, they may become sufficiently serious to constitute persecution. In other words, **seriousness is defined** either by the **nature of the acts** or by the **recurrent nature of the acts against the applicant**.



CJEU, 2013, X, Y and Z ⁽⁷³⁾

2. Article 9(1) of Directive 2004/83, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.

⁽⁷³⁾ CJEU, 2013, [X, Y and Z](#), *op. cit.*, fn. 66, ruling point 2. Summary available in the [EUAA Case Law Database](#).

Whereas acts of physical or mental violence, including acts of sexual violence, may be the most commonly recognised acts of persecution (also) in SOGIESC cases, it is also important to realise that other acts may also apply, which can take a variety of different forms.

Below you can find a non-exhaustive list of treatments that could in themselves amount to persecution with examples of treatments common in SOGIESC cases.

- **Acts of physical or mental violence.**

For example, acts of sexual violence such as a lesbian woman who is subjected to a ‘corrective’ rape; a trans man who is, on the sole basis of his gender identity, forcibly hospitalised in a psychiatric facility.

- **Legal, administrative, police, and/or judicial measures**, which are in themselves discriminatory or which are implemented in a discriminatory manner.

Examples of such measures include national laws and/or practices of providing worse prison conditions for LGBTIQ persons compared to other inmates (e.g. isolation / solitary confinement) or not protecting them from violence within the prison; police applying a law to target specifically SOGIESC (e.g. LGBTIQ persons prosecuted for prostitution); denial of healthcare in life-threatening situations to LGBTIQ persons.

- **Disproportionate or discriminatory prosecution or denial of judicial redress resulting in a disproportionate or discriminatory punishment.**

For example, the death penalty, severe corporal punishments, including flogging, being sentenced to a heavier punishment because of the person’s SOGIESC.

- **Acts of a gender-specific nature.**

For example, a lesbian woman victim of honour-based violence because of her sexual orientation, forcing a gay man to marry a woman; forcing an individual to undergo gender-reassignment surgeries or interventions or to undertake hormonal treatment.

Restrictions on the exercise of certain rights of a less severe nature or (solely) discriminatory measures may amount to persecution due to the severity and/or repetitiveness of such acts or because they occur as an accumulation of various measures. While **discriminatory treatment** does not in itself constitute persecution within the meaning of the QD (recast)/QR, it may nevertheless be of such a nature that the problems feared are so severe as to affect basic human rights⁽⁷⁴⁾.

For example, (imputed) LGBTIQ individuals may face ostracism by various components of their community or the society and encounter difficulties in accessing means to ensure their basic subsistence and basic services such as work, housing and shelter, education, healthcare.

⁽⁷⁴⁾ See also UNHCR, [Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees](#), paragraphs 54–55, UNHCR, [Guidelines on International Protection No. 9](#), 2012, *op. cit.*, fn. 33, paragraphs 17 and 20-25; International Commission of Jurists, [Refugee Status Claims Based on Sexual Orientation and Gender Identity – A Practitioners' Guide](#), No 11, February 2016, pp. 159–170.



A cumulation or repetition of these kinds of discriminations or acts due to someone's SOGIESC may amount to persecution. Assessing whether the cumulative effect of such discrimination rises to the level of persecution relies on relevant and up-to-date COI ⁽⁷⁵⁾.

In general, it is not uncommon that these various forms of discrimination will accumulate, one flowing from another and placing the applicant in a situation that amounts to persecution.

7.2. Nexus with a reason for persecution

Acts of persecution as such do not qualify a person as a refugee unless they are committed for one (or more) of the five reasons mentioned in Article 10 QD (recast)/ Article 10 QR. There must be a causal link between the **reason and the persecution** or the **absence of protection** against such persecution.

As in other types of claims, the persecution in SOGIESC-based claims may be linked to one or more of the reasons for persecution.

You should be mindful that the applicant themselves may not be able to say whether they were persecuted on account of their membership of a particular social group or another of the possible five grounds for persecution. It is your task to determine which reasons for persecution are relevant. There may be only one ground or multiple grounds of persecution can overlap in one single case.

Remember that individuals may be subjected to persecution due to their **actual** or **imputed** SOGIESC.

Some examples of imputed SOGIESC ⁽⁷⁶⁾ can include:

- women and men who do not conform to the stereotypical appearances of their gender and the roles associated with it;
- the sexual orientation of trans people;
- the partners of trans people because they are perceived as gay or lesbian or simply as not conforming to accepted gender roles and behaviours;
- men who have sex with men or women who have sex with women;
- persons who have engaged in situational sex with persons of the same sex;
- pro-LGBTIQ activists.

7.2.1. Membership of a particular social group

While the Refugee Convention ⁽⁷⁷⁾ mentions 'membership of a particular social group' as a ground on the basis of which a refugee may fear persecution, without any further explanation

⁽⁷⁵⁾ UNHCR, *Guidelines on International Protection No. 9*, 2012, *op. cit.*, fn. 33, paragraph 17.

⁽⁷⁶⁾ International Commission of Jurists, *Refugee Status Claims Based on Sexual Orientation and Gender Identity – A Practitioners' Guide*, No 11, February 2016, pp. 19-20.

⁽⁷⁷⁾ Article 1A(2) Refugee Convention.

on the term ‘particular social group’, the QD (recast)/QR ⁽⁷⁸⁾ explicitly lists **sexual orientation and gender-related aspects** including gender identity as characteristics that may constitute a basis for identifying a particular social group.



Article 10(1), point (d) QD (recast) – Reasons for persecution

1. Member States shall take the following elements into account when assessing the reasons for persecution:

[...]

(d) a group shall be considered to form a particular social group where in particular:

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.

Depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States. Gender-related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group;



Article 10(1), point (d) QR – Reasons for persecution

1. The following elements shall be taken into account when assessing the reasons for persecution:

[...]

(d) the concept of membership of a particular social group shall include, in particular, membership of a group:

- i. whose members share or are perceived to share an innate characteristic or a common background that cannot be changed, or a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it; and
- ii. which has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

[...]

Depending on the circumstances in the country of origin, the concept of membership of a particular social group as referred to in point (d) of the first subparagraph shall include membership of a group based on a common characteristic of sexual orientation. Gender related aspects, including gender identity and gender expression, shall be given due

⁽⁷⁸⁾ Article 10(1), point (d) QD (recast); Article 10(1), point (d) QR.



consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.



CJEU, 2013, X, Y and Z ⁽⁷⁹⁾

Article 10(1)(d) of the Directive [2004/83/EC] must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.

In SOGIESC-based cases, the membership of a particular social group criterion would often be met. The members of the group share a characteristic or belief that is so fundamental to their identity that they should not be forced to renounce it. In addition, they are perceived as being different by the surrounding society based on their distinct identity in the country of origin ⁽⁸⁰⁾. Even if applicants do not themselves identify as LGBTIQ, the circumstances of their claims may nonetheless demonstrate that their fear of being persecuted arises from the persecutors attributing or imputing to them a particular SOGIESC. **Imputed membership of a particular social group** is sufficient to demonstrate a causal link.



Related EUAA publication

For information on the examination of asylum claims based on membership of a particular social group, consult the EASO, [Guidance on Membership of a Particular Social Group](#), March 2020.

7.2.2. Other reasons for persecution in SOGIESC-based claims

While membership of a particular social group is the reason for persecution that most commonly comes to mind when dealing with SOGIESC-based claims, other grounds for persecution can also be relevant, as listed below.

- **Religion**

Religion can be a ground of persecution in cases of applicants coming from countries or contexts where their SOGIESC is condemned or not tolerated by the predominant religion or the religion of the actors of persecution. Persons not identifying as LGBTIQ but who are

⁽⁷⁹⁾ CJEU, 2013, *X, Y and Z*, *op. cit.*, fn. 66, paragraph 49 and ruling point 1. Summary available in the [EUAA Case Law Database](#). The case refers to Article 10(1), point (d) of the original 2004 qualification directive: [Council Directive 2004/83/EC of 29 April 2004](#) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L 304, 30.9.2004).

⁽⁸⁰⁾ Article 10(1), point (d) QD (recast); Article 10(1), point (d) QR.

perceived as such or who engage in same-sex activities can also face persecution based on religious grounds. The same goes for activists of LGBTIQ support organisations.



Related EUAA publication

For information on examining asylum claims based on political opinion, consult the EUAA, [Practical guide on interviewing applicants with religion-based asylum claims](#), November 2022.

- **Political opinion**

Political opinion can be a ground for persecution in SOGIESC cases. This applies where the SOGIESC at stake and non-conforming behaviours are criminalised or are not tolerated or they are otherwise challenged by the state authorities or seen as opposing the values on which the state is built. In addition, activists of LGBTIQ support groups can face persecution for this reason.



Related EUAA publication

For information on examining asylum claims based on political opinion, consult the EUAA, [Practical Guide on Political Opinion](#), December 2022.

7.3. Protection in the country of origin

The next step to take in the legal analysis is to examine the availability of protection in the country of origin. If protection cannot be provided by the actors of protection in the area of persecution, the possibility of an IPA is examined.



7.3.1. Actors of protection



Recital 27 QD (recast)

... Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant.



Recital 35 QR

Where the State or agents of the State are the actors of persecution or serious harm, there should be a presumption that effective protection is not available to the applicant and the determining authority need not examine whether an internal protection alternative exists ...

In cases where the persecution is due to the application of laws criminalising SOGIESC, the actor of persecution is usually found to be the **state**. In these cases, protection will not, in principle, be available.

Where **non-state actors**, such as family members, neighbours, clans and tribes, non-state armed groups or the broader community are the actors of persecution, the willingness and the ability of the state or other relevant parties or organisations to provide effective, non-temporary and accessible protection to the applicant have to be assessed ⁽⁸¹⁾.

In this respect, the capacity and responsiveness of the law enforcement system as well as the capacity and independence of the judiciary to detect, prosecute and punish such acts by non-state actors is an important factor in the assessment as to whether the state or other relevant parties or organisations qualify as actors of protection meeting the requirements of Article 7 QD (recast) / Article 7 QR.

Keep in mind that the mere existence of laws to protect SOGIESC would not in itself be sufficient to conclude that protection is available. It is possible that these laws are rarely or never applied in practice. Possible reported discriminatory practices against SOGIESC persons with regard to the accessibility of protection should also be taken into account. For example, LGBTIQ applicants can face particular difficulties accessing justice in their country of origin due to the discriminatory attitudes of police and government officials towards them. They may also be prevented or harassed when reporting incidents of violence against them or the state authorities may not generally respond to incidents of violence against LGBTIQ persons.

⁽⁸¹⁾ Article 7 QD (recast); Article 7 QR.

In some cases, the capacity of the state to provide protection may be limited or even not available in certain parts of the country, in particular in areas affected by violence, conflict and by particularly high levels of general criminality.



Related EUAA publication

For information on actors of protection see EASO, [Practical Guide: Qualification for international protection](#), April 2018.

7.3.2. Internal protection alternative

The next step is to assess if the applicant can avoid persecution on the basis of SOGIESC by settling in another part of the country of origin ⁽⁸²⁾. Remember that all IPA criteria as mentioned in Article 8 QD (recast) / Article 8 QR need to be assessed.



Related EUAA publication

For information on the application of the IPA, see EASO, [Practical Guide on the Application of the Internal Protection Alternative](#), May 2021.

Where the actor of persecution is the state, there is a presumption that the IPA will also not be available as states generally control the entire territory. Where it is concluded that the reach of the state actor is clearly limited to a particular geographic area, or the persecutor is a private actor, the IPA may be applicable.

As detailed in Section [6.4. The issue of discretion](#), SOGIESC are so fundamental to the identity or conscience that a person should not be forced to renounce them. Nor should they be expected to conceal or exercise reserve in their expression. Thus, when assessing an IPA, remember that an applicant cannot be expected to conceal their SOGIESC to avoid persecution or serious harm in the IPA location either.

There might be cases where applicants have not fled their country and place of origin due to their SOGIESC but in the proposed IPA location they might face **marginalisation** due to their SOGIESC. This could place such a heavy burden on the applicant that they could not reasonably be asked to settle there ⁽⁸³⁾.

You should pay attention to assessing the situation in the IPA location beyond the official state position, based on available COI and corresponding with the relevant **legal framework and its application** in practice. If the country in question criminalises SOGIESC or same-sex relations and such laws are applicable across the entire territory, a consideration of IPA would not be relevant.

⁽⁸²⁾ Article 8 QD (recast); Article 8 QR.

⁽⁸³⁾ EASO, [Practical Guide on the Application of the Internal Protection Alternative](#), May 2021, p 32.



Laws that do not allow a trans or intersex person to access and receive appropriate medical treatment if sought, or to change the gender markers on their documents, would normally be applicable in the entire territory of the country. They should be taken into account when considering the proposed place of relocation ⁽⁸⁴⁾.

Case officers should also examine aspects such as the **social attitudes**, the current situation and the persecution of violators of the relevant legal framework in practice ⁽⁸⁵⁾.

Moreover, **intolerance towards people with diverse SOGIESC** tends to exist nationwide in many countries and in such cases an IPA will often not be available. However, some countries have seen **social and political progress**, which is sometimes localised to urban areas. These locations may, in certain circumstances, constitute a relocation alternative ⁽⁸⁶⁾. In some countries, the social norms and attitudes existing in big cities may be different from the ones existing in the countryside. Therefore, an applicant from a village or small town where they faced persecution may be able to find safety and reasonably settle in a big city ⁽⁸⁷⁾.

When examining the application of an IPA, pay attention to the general situation in the IPA location to assess that the applicant will not suffer **undue hardship** there because of their SOGIESC.

⁽⁸⁴⁾ Refer also to UNHCR, [Guidelines on International Protection No. 9](#), 2012, *op. cit.*, fn. 33, paragraph 53.

⁽⁸⁵⁾ EASO, [Practical Guide on the Application of the Internal Protection Alternative](#), May 2021, p.32.

⁽⁸⁶⁾ UNHCR, [Guidelines on International Protection No. 9](#), 2012, *op. cit.*, fn. 33.

⁽⁸⁷⁾ EASO, [Practical Guide on the Application of the Internal Protection Alternative](#), May 2021, p.32.



Key points to remember

- During the legal analysis, assess whether the treatment the applicant would be at risk of would amount to persecution, whether there is a nexus with one of the five grounds, if protection is available and whether an IPA is applicable.
- Acts of persecution in SOGIESC-based claims can be of a variety of different forms. They can include acts of physical or mental violence; legal, administrative, police, and/or judicial measures, which are in themselves discriminatory or which are implemented in a discriminatory manner; disproportionate or discriminatory prosecution or denial of judicial redress resulting in a disproportionate or discriminatory punishment; or acts of a gender-specific nature.
- A cumulation or repetition of discriminatory measures or acts due to someone's SOGIESC may amount to persecution.
- In SOGIESC-based cases, the membership of a particular social group criterion would often be met.
- Even if applicants do not themselves identify as LGBTIQ, the circumstances of their claims may nonetheless demonstrate that their fear of being persecuted arises from the persecutors imputing to them a particular SOGIESC, which is sufficient to demonstrate a causal link.
- Other reasons for persecution may overlap with membership of a particular social group, such as religion or political opinion.
- The mere existence of laws to protect SOGIESC would not in itself be sufficient to conclude that protection is available.
- When assessing the applicability of IPA, remember that an applicant cannot be expected to conceal their SOGIESC to avoid persecution or serious harm in the IPA location.
- Pay attention to the general situation in the IPA location to assess that the applicant will not suffer undue hardship there because of their SOGIESC



8. Subsequent applications



It is not uncommon for SOGIESC-based claims to be made in a subsequent application⁽⁸⁸⁾. In this case, a preliminary examination⁽⁸⁹⁾ is needed to decide on its admissibility⁽⁹⁰⁾. Whether the elements submitted by the applicant in the subsequent application are new and whether they significantly add to the likelihood that the applicant may qualify for international protection are to be examined during this phase.

In this chapter, elements that may be relevant for the assessment of the admissibility of SOGIESC-based subsequent applications are included and specifically in case:

- SOGIESC is a new claim presented in the subsequent application; or
- SOGIESC was the basis of the previous application and new elements are submitted in the subsequent application.



Related EUAA publication

For further guidance on the examination of subsequent applications see EASO, [Practical Guide on Subsequent Applications](#), December 2021.

8.1. A new claim presented in the subsequent application based on SOGIESC

In this case, the applicant has not based their previous application(s) on their (imputed) SOGIESC and it has not been considered or assessed before. This may be the case **when new facts emerge** after the final decision on the previous application. For example, the applicant may not have been aware of their SOGIESC before and became aware after the final decision on their previous application. In another example, the applicant may have attended an LGBTIQ pride event in the host country, of which images that include the applicant were posted online. These images were then brought to the attention of the applicant's country of origin authorities, resulting in the applicant being perceived as gay in their country of origin. New elements can also be related to elements that existed before but were neither presented by the applicant in the previous procedure nor considered by the asylum authority. For example, the applicant may have already been aware of their SOGIESC during their previous application(s) but they did not disclose it. There can be various reasons for this. For example, the applicant may not have been aware that SOGIESC could be a ground for international protection or they feared disclosing it in the previous application.

⁽⁸⁸⁾ Article 2(q) APD (recast); Article 3(19) APR.

⁽⁸⁹⁾ Article 40 APD (recast); Article 55 APR.

⁽⁹⁰⁾ Article 33(2), point (d) APD (recast); Article 38(2) APR.



As detailed in this practical guide, SOGIESC-based claims touch upon very intimate issues for the applicant. Negative perceptions and treatment of persons with diverse SOGIESC in the applicant's country of origin, transit and/or asylum and/or feelings of shame, fear, stigma and trauma can prevent the applicant from disclosing their SOGIESC from the beginning of the asylum procedure. A subsequent application should not be deemed inadmissible due to the applicant's late disclosure, if the requirements of Article 40(4) APD (recast) / Article 55(5) APR, regarding which elements presented by the applicant can be considered new, are met (for more information on late disclosure see also [CJEU, 2014, A., B C.](#) and [Recital 28 QR.](#))

8.2. SOGIESC as the basis of a previous application resubmitted with new elements

In this instance, the applicant has previously lodged an application based on their fear of persecution due to their (perceived) SOGIESC. Their application has been rejected, possibly due to lack of credibility, but the applicant comes forward with new elements on which the subsequent application is based. Such **new elements can relate to previously assessed material facts**. For example, the applicant now submitted medical documentation showing that their ability to orally substantiate their SOGIESC claim was compromised during the previous application(s) due to Post Traumatic Stress Disorder or other medical and/or psychological issues. In another example, the applicant states that at the time of the previous application their ability to orally substantiate their SOGIESC claim was limited because of their young age (they were a child or young adult). In another case, the applicant states that they are now in a same-sex relationship for the very first time.

In other cases, the new elements may relate with new material facts. For example, during the previous application the applicant claimed that they are gay and now they claim they are also trans. New elements may also have to do with the risk assessment. For example, new COI indicates that new legislation criminalising same-sex relations has been introduced in the country of origin.

Even in cases where the applicant's SOGIESC was assessed in the previous application, the **preliminary examination** of a subsequent application should be made with due caution. It should be taken into account that there is the possibility that there was a further development in the applicant's self-awareness of their SOGIESC (for further details on self-awareness see Section [4.3.2.b\) Applicant's awareness of their own SOGIESC](#)) or other developments.

Some elements to be taken into account in the preliminary assessment could include:

- the time that has elapsed since the previous personal interview that covered the topic of the applicant's SOGIESC and its content;
- the applicant's age at the time of the previous application;
- the applicant's mental health during the examination of the previous application;
- their involvement in a (romantic or sexual) relationship since the previous application;



- their participation in LGBTIQ support groups' activities and the visibility of those activities in their country of origin.



Related EUAA publication

For general guidance on the examination of subsequent applications, consult the EASO, [*Practical Guide on Subsequent Applications*](#), December 2021.



Key points to remember

- In SOGIESC-based subsequent applications, it is possible that SOGIESC is a new claim presented in the subsequent application, or that SOGIESC was the basis of the previous application and new elements are submitted in the subsequent application.
- A subsequent application should not be deemed inadmissible due to the applicant's late disclosure, if the requirements of Article 40(4) APD (recast) / Article 55(5) APR are met.
- In cases where the applicant's SOGIESC was assessed in the previous application, the preliminary examination of a subsequent application should take into account any developments presented by the applicant, including any further development of the applicant's self-awareness.



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