

Survey on Sexual Orientation and Gender Identity

Key Findings Report



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June 2022

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About the report

This report captures national guidance and practices related to the asylum procedure for claims based on sexual orientation, gender identity and expression, and sex characteristics (SOGIESC)⁽¹⁾. It focuses in particular on the examination of the claim.

The report is built on the main findings of a survey conducted within the Asylum Process Network in view of the thematic webinars ‘Applicants with diverse sexual orientation and gender identity, including gender expression and sex characteristics’, organised in February 2021. The report has been complemented with the responses provided by the Vulnerability Experts Network (VEN) in a similar survey, shared in the same webinar. The responses were collected between December 2020 and January 2021.

The surveys built further on data collected in 2017⁽²⁾. On one hand, they update the practices and guidance applied in the responding EU+ countries and, on the other hand, they collect more information on national guidance and practice related to the examination of applications based on SOGIESC.

The determining authorities from 20 EU+ countries responded to the 2 update surveys, while 1 country agreed to use the responses provided to the 2017 survey. As a consequence, its practices are reflected in this report only where appropriate. Moreover, 6 members of the VEN Advisory Group⁽³⁾ participated in the survey.

This report is part of a wider action conducted by the EUAA in the framework of the Asylum Process Network, the Vulnerability Experts Network and the Reception Network to support authorities in EU+ countries working with applicants with diverse SOGIESC. The action includes the development of practical guidance for the identification and assessment of applicants’ special needs and provision of adequate response in terms of assistance, reception and examination of their claim for international protection.

(1) The terms ‘sexual orientation, gender identity and expression, and sex characteristics (SOGIESC)’ and ‘lesbian, gay, bisexual, transgender, intersex (LGBTI)’ have been used in this report in line with the terminology used in the webinars and the surveys.

(2) EASO survey on ‘Applications for international protection with SOGIESC considerations’, 2017.

(3) Composed of civil society organisations (CSOs), international organisations, and academia in the EU+ area.



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List of abbreviations

Term	Definition
CSO	civil society organisation
EASO	European Asylum Support Office
EUAA	European Union Agency for Asylum
EU	European Union
EU+ countries	Member States of the European Union and associated countries
LGBTI	lesbian, gay, bisexual, transgender and intersex (person)
Member States	Member States of the European Union
SOGIESC	sexual orientation, gender identity and expression, and sex characteristics
UNHCR	United Nations High Commissioner for Refugees





1. Guidance or established practice on the examination of SOGIESC claims

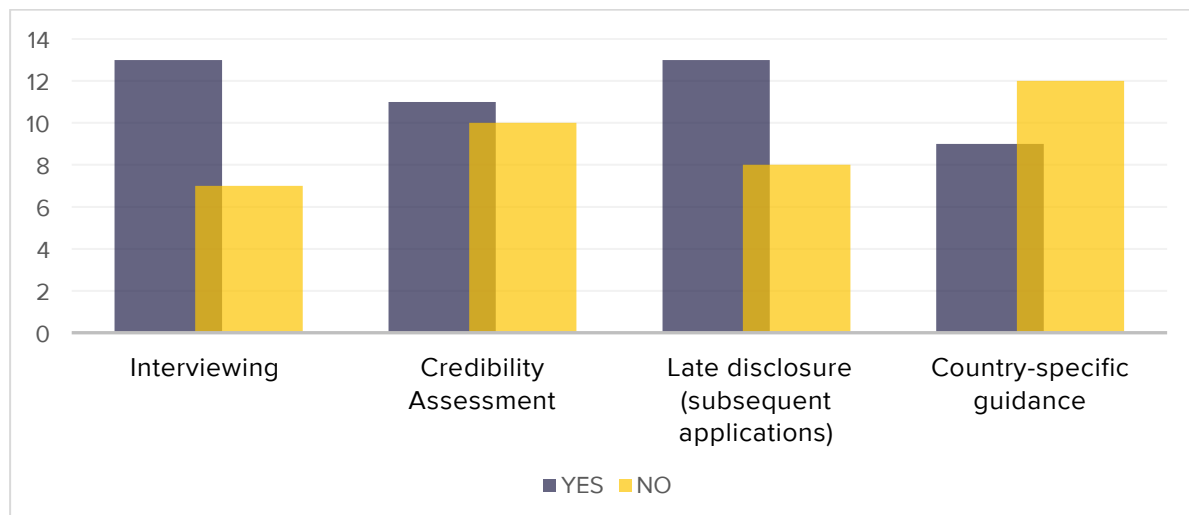
The survey's findings show that the majority of the responding countries have specific guidance on **interviewing applicants** with SOGIESC claims. Half of the responding countries have specific guidance for **assessing the credibility** of SOGIESC.

Almost two thirds of the responding countries have specific guidance or established practice on **late disclosure** of SOGIESC issues in the asylum procedure, in particular on **subsequent applications** involving a SOGIESC claim not disclosed at an earlier stage. National guidance generally gives due consideration to the reasons for late disclosure. It often includes the following directions (non-exhaustive list).

- Avoid considering late disclosure in itself as a reason to reject an application or to adversely assess the credibility of a claim ⁽⁴⁾.
- Consider trauma as well as psychological, social and cultural aspects as issues that may lead to late disclosure of diverse SOGIESC.

The guidance often includes references to national and EU jurisprudence on late disclosure related to diverse SOGIESC or sexual and gender-based violence.

Figure 1. Guidance / established practice on SOGIESC-related claims



⁽⁴⁾ On this point, a CSO observed as a good practice that SOGIESC claims disclosed for the first time in subsequent applications are considered admissible for the examination on the basis that SOGIESC is a new element.



2. Personal Interview

2.1. Ensuring the possibility to self-identify during the personal interview

The information provided by the determining authorities and CSOs show that in almost all countries specific measures are in place to give applicants with SOGIESC-related claims the possibility to self-identify.

The most common measures include the following.

- Creating a climate of confidence and a relationship of trust so the applicant feels safe to self-identify. In some cases, this is reached by ensuring the assistance of a support person such as a social worker or a healthcare professional.
- Respecting the wishes of the applicant on how to be addressed. On this regard, some CSOs recommended replacing the use of the officially documented name and/or gender marker with the name and/or gender marker preferred by applicant. This facilitates an atmosphere of trust for applicants with diverse gender identities.
- Taking into account the preferences of the applicant regarding the gender of the case officer and/or interpreter.
- Ensuring sufficient breaks or sufficient time for the interview.

A few respondents also mentioned the following measures.

- Informing the applicant, including by using LGBTI visibility material (e.g. posters, leaflets etc.) that diverse sexual orientations and gender identities are respected in the host country.
- Further stressing the principle of confidentiality
- Reminding the applicant of the importance of bringing up all facts related to possible risks in the country of origin, to make sure that the authority can duly consider them.
- Raising awareness among case officers and interpreters, delivering specialised trainings for case officers and interpreters, or having specialised staff conducting the interview or available for consultation by case officers
- Avoiding expectations on the use of LGBTI terminology or cues of SOGIESC considerations by applicants, and assisting them to express a SOGIESC-related claim in their own words and with their preferred terminology.
- Facilitating self-identification by using appropriate questions if indications of potential SOGIESC-related protection needs arise during the interview.
- Avoiding use stereotypical terminology and focusing on the personal identity-experience of the applicant.
- Always asking the applicant at the end of the interview whether any other issue, fear or risk in the home country may exist and have not been mentioned.



- Using the Difference, Stigma, Shame, and Harm (DSSH) model, or a model build on it, during the interview if applicable.
- Using tools and/or guidance such as the EUAA IPSN tool ⁽⁵⁾, UNHCR guidelines, EUAA training modules, or cooperating with non-governmental organisations that assist or advocate for LGBTI issues

2.2. Provision of information on matters related to SOGIESC during the personal interview

Specific information on SOGIESC-related matters, including on SOGIESC as a ground for international protection, is not provided systematically to **all** applicants at the beginning of the personal interview in any of the responding countries. However, 1 country mentioned that all applicants are informed that belonging to a vulnerable group (including LGBTI) can be relevant to the decision-making.

In some countries specific information on SOGIESC is provided when deemed relevant for the specific case, or in the context of provision of general information on the asylum procedure. In some countries the information is provided or complemented by legal representatives and/or CSOs.

2.3. Main challenges related to the personal interview

Identifying LGBTI applicants and probing their statements are the main challenges faced during the personal interview by the greatest majority of the responding countries.

Some countries and CSOs further elaborated on the challenges encountered and mentioned, among others, the following.

- Gaining and maintaining the applicant's trust and putting the applicant at ease so that they feel comfortable to disclose their experience.
- Eliciting all necessary information while the applicant's disclosure may be inhibited by stigma, shame or fear, especially in the absence of adequate social and legal support.
- Ensuring appropriate questioning during the interview. Some CSOs noted that inappropriate questions about sexual habits may be asked during the personal interview.
- Raising awareness among case officers on the difficulties that applicants may have with using the internationally recognised LGBTI terminology (some may know only derogatory terms used by the perpetrators), distinguishing between sexual orientation and gender identity, and identifying themselves as LGBTI persons (for instance, intersex persons or men having sex with men may not label themselves as LGBTI).

⁽⁵⁾ EUAA, [Tool For Identification Of Persons With Special Needs](#).





- Preparing and conducting the personal interview when SOGIESC-related aspects are raised for the first time in the course of the interview.
- Personal interviews may be very lengthy when SOGIESC grounds are involved.
- Insufficient female interpreters for certain languages.
- Lack of specific skills requested for interviewing LGBTI applicants.
- Lack of training for interpreters.





3. Credibility assessment

3.1. Elements taken into account in the context of the credibility assessment

The elements taken into account in the credibility assessment of claims based on SOGIESC are mostly similar in all responding countries.

Based on a list provided in the survey⁽⁶⁾, all or almost all responding countries mentioned the following elements.

- Experiences of being different from other members of the society in the country of origin.
- Recognition of how the applicant's orientation and/or identity is perceived by close family members, friends and wider society in the country of origin.
- Recognition of potential risks faced by LGBTI persons or knowledge of ostracism faced by LGBTI persons in the country of origin.
- Individual discovery of orientation and/or identity.
- Self-perception of the orientation and/or identity.
- Disclosure of the orientation and/or identity or knowledge of ways to express the orientation and/or identity in the country of origin.
- Self-realisation process or process of developing orientation and/or identity.
- Knowledge of LGBTI organisations in the country of refuge.

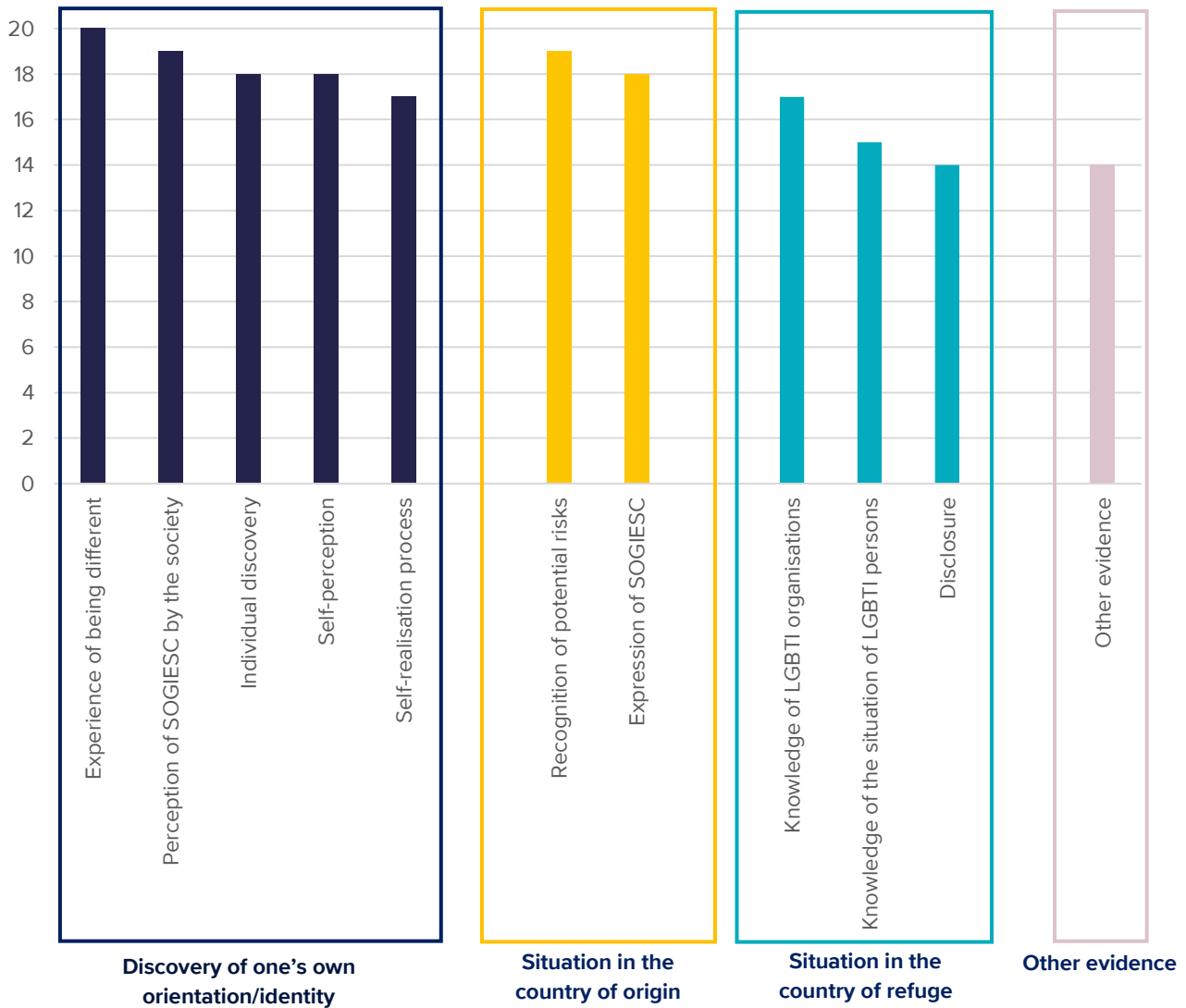
Most of the responding countries mentioned the following elements too.

- Knowledge of legal and factual situation of LGBTI persons in the country of refuge.
- Disclosure or acknowledgement of the orientation and/or identity in the country of refuge
- Other evidence, such as certificates from CSOs or hearing of a spouse as witness.

⁽⁶⁾ The list was built based on the credibility elements identified in national judgements of 14 EU Member States. For more information, see *Uwe Berlit, Harald Doering & Hogo Storey, [Credibility Assessment in Claims based on Persecution for Reasons of Religious Conversion and Homosexuality: A Practitioners Approach](#), International Journal of Refugee Law, 2015, Vol. 27., No. 4, 646–666.* .



Figure 2. Elements taken into account in the context of credibility assessment by the 20 responding determining authorities



Less than one third of the responding countries indicated the following as additional specific elements that are considered in the credibility assessment:

- knowledge of the legal and factual situation of LGBTI persons in the country of origin;
- knowledge of LGBTI organisations or groups that advocate for LGBTI rights in the country of origin;
- relationships of the applicant in the country of refuge;
- membership of LGBTI organisations in the country of refuge;
- potential fears related to the way of living in the country of refuge.

Two responding countries additionally mentioned that the credibility assessment takes into consideration feelings of difference, stigma, shame and harm (DSSH) suffered by the applicant, or a personal struggle related to the acceptance of one's sexual identity or



orientation. These countries nevertheless acknowledge that applicants may go through different processes which may not always entail a linear self-realisation process, struggle or conflictual feelings or emotions. Such expectation for all SOGIESC claims may rather be a western-constructed indicator.

3.2. Challenges related to the credibility assessment

The information collected through the survey show that the majority of the responding countries face some challenges in the credibility assessment of claims based on SOGIESC. The following is a non-exhaustive list of the most common challenges mentioned by responding countries and CSOs.

- The credibility assessment of SOGIESC claims focuses mainly on the applicant's internal experiences. The availability of external evidence such as documentary evidence and comprehensive, detailed and reliable country of origin information is often limited.
- Distortion factors such as social and cultural background, age, religion, education, family, and socio-economic status, the acceptance of one's own orientation or identity, stigma, shame or trauma, as well as the private nature of SOGIESC claims may affect the applicant's ability to substantiate their claim. This may create difficulties at the time of defining whether inconsistencies or lack of details are due to personal circumstances or to the inauthenticity of the accounts, thus ultimately impacting the internal credibility of the applicant's statements. In light of this, respondents also stressed the importance of ensuring that the applicant's personal circumstances are duly taken into consideration in the credibility assessment.
- Growing mistrust among case officers due to the number of fraudulent claims, or new or different SOGIESC grounds claimed at different stages of the asylum procedure.
- Late disclosure of claims based on SOGIESC (3 countries). On this regard, some CSOs highlighted that late disclosure is often due to the challenges applicants face in expressing their emotions and in the self-identification process, contrary to describing persecution incidents and factual events.
- Being aware of and avoiding stereotypical ideas, being subjective or superficial, having erroneous or inappropriate perceptions and assumptions. On this point, CSOs mentioned that the credibility assessment should not be based on western stereotypes and assumptions on SOGIESC. Case officers may have expectations that self-identification as an LGBTI person necessarily entails negative or harmful experiences and emotions, and that applicants would have gone through "an emotional journey" of self-realisation, with feelings of difference, stigma and shame.



4. Qualification

4.1. Reasons for persecution

All responding EU+ countries confirmed that according to their national guidance or established practice, LGBTI applicants may qualify for refugee status for the reason of membership of a particular social group. Additionally, in one third of the responding countries, applicants with SOGIESC-related claims may also qualify on grounds of political opinion and, in a few countries, they may qualify on religious grounds. Only 2 countries reported that qualification may be based on the ground of race.

4.2. Subsidiary protection

More than half of the responding EU+ countries indicated that subsidiary protection would not be relevant in SOGIESC-based claims. Certain countries specified that applicants with credible SOGIESC claims are considered members of a particular social group and thus qualify for refugee status.

Claims based on SOGIESC may qualify for subsidiary protection in the remaining countries. Two thirds of them further specified that subsidiary protection can be relevant particularly if LGBTI persons are not considered to form a particular social group due to the specific circumstances prevailing in the country of origin. Nevertheless, these respondents added that this would not be the case for most of the countries from where LGBTI applicants originate.

4.3. Internal protection alternative

More than one third of the responding countries specified that the internal protection alternative is assessed in claims based on SOGIESC according to the same principles applied to other claims for international protection. However, some of them noted that the specific circumstances relating to LGBTI applicants are considered carefully when assessing the application of the internal protection alternative. National guidance or established practice on the application of the internal protection alternative in SOGIESC claims is not available in almost any of the responding EU+ countries.

4.4. Challenges related to qualification

The information collected through the survey show that the greatest majority of the responding countries face some challenges in the qualification for international protection of claims based on SOGIESC.



The following are the most common challenges mentioned by responding countries and CSOs.

- Limited country of origin information, particularly for some countries or relating to the specific circumstances and treatment of persons of diverse sexual orientations and gender identities.
- The assessment of the availability and effective access to protection, or of the nature of the acts in situations where country of origin information reports of harassment targeting LGBTI persons, although LGBTI rights are recognised in national law and an LGBTI community exists in the country.
- The assessment of the availability of protection in the country of origin and the application of the internal protection alternative.



5. Special procedural guarantees

Based on a list of special procedural guarantees that may be triggered by the identification of an LGBTI applicant with special needs during the asylum procedure, the findings show that different special procedural guarantees are offered in the responding EU+ countries.

5.1. Special procedural guarantees during the examination process

All responding countries reported that during the **personal interview**, questions are to be formulated in a **non-stereotypical way** so that the applicant can describe their SOGIESC with their own words. Similarly, all countries allow LGBTI applicants to express a preference with regards to the **sex of the interviewer and of the interpreter** present during the interview. However, some countries may not always be able to accommodate the applicant's request without delaying the interview.

Other procedural guarantees are applied during the personal interview in about two thirds of the responding countries, including the following.

- Briefing the interpreter on the case ahead of the interview.
- Ensuring that an appropriate setting is in place during the interview.
- Offering additional time during the interview.
- Allowing the presence of persons supporting the applicant during the interview.

Providing the authorities with relevant material (guidance on SOGIESC claims, jurisprudence, etc.) prior to the interview and when deemed useful has been mentioned by a CSO as a good practice when representing applicants with SOGIESC claims.

In a smaller number of countries, the following additional procedural guarantees are in place during the personal interview.

- Specialised experts are available to provide support to case officers during the interview.
- The applicant may attend the interview accompanied by their own interpreter, yet at the condition that the applicant covers the cost and that the chosen interpreter is present alongside the officially appointed one.

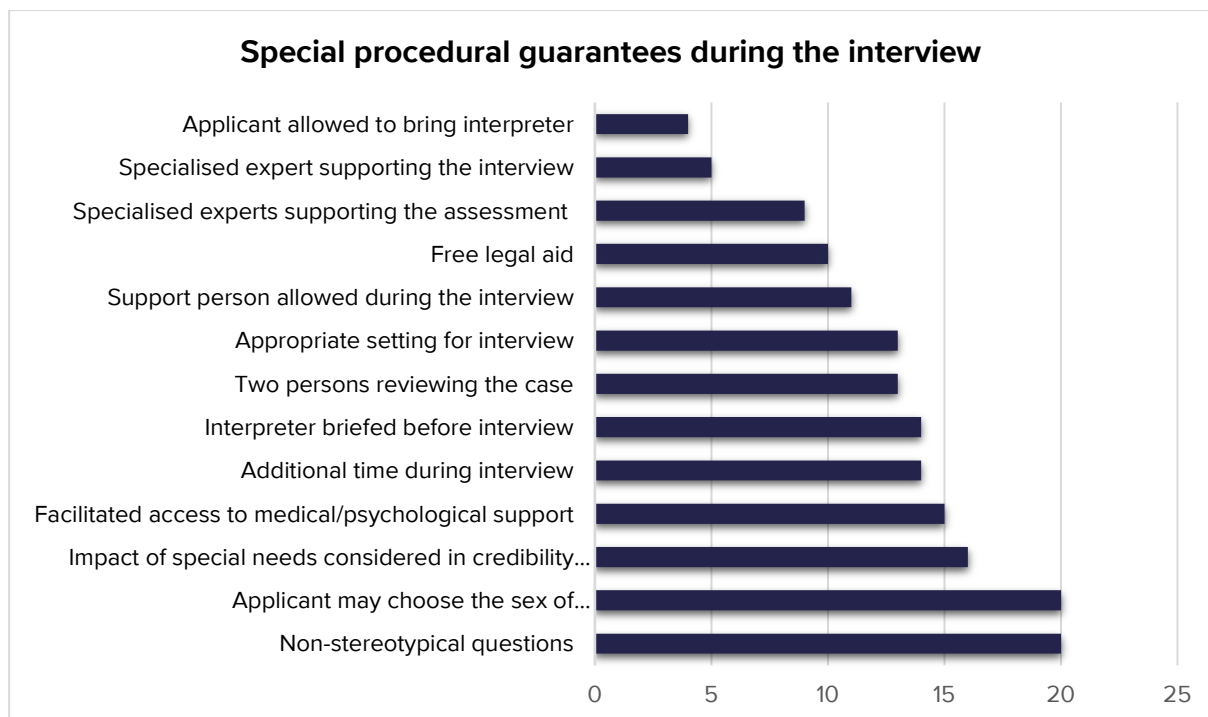
During the **decision-making process**, the majority of the responding countries ensures objectivity by having two persons reviewing the case and considering the potential impact of special needs in the conduction of the credibility assessment. Less than half of the responding countries have specialised experts available to support the case officer in the assessment.



Other procedural guarantees include free legal assistance offered during the asylum procedure in half of the responding countries and facilitated access to medical and psychological support offered in the greatest majority of the responding countries when the need is identified during the procedure. Several countries also mentioned checking the claimants' name and confirming how they would like to be addressed during the interview.

The following chart provides an overview of the procedural guarantees mostly applied during the examination of claims of LGBTI applicants with special needs in the 20 responding EU+ national administrations.

Figure 3. Special procedural guarantees mostly applied during the examination of SOGIESC claims



Other special procedural guarantees mentioned by some of the responding EU+ countries include the following.

- Establishing a climate of confidence and respect during the interview.
- Providing specialised social experts to support the case officers during the interview, to identify indicators of special needs and to suggest a plan for psycho-social support.
- Postponing or scheduling a second interview or offering extended deadlines for the purpose of gathering evidence.
- Requesting interpreters with SOGIESC specific professional experience.



5.2. Prioritisation and exemptions from accelerated and border procedures

According to the findings, the responding EU+ countries have developed differing practices regarding the exemption of applicants with SOGIESC claims from **accelerated and/or border procedures**.

In less than one third of the responding countries, no exemptions are envisaged. In less than half of them an exemption may be granted on a case-by-case basis, following an individual assessment. An exemption is always granted in 2 responding countries, while in other 2 countries the exemptions are accorded only if the applicants do not fall under specific categories. It is to be noted that a few responding countries only apply one of the two procedures or none of them.

Different practices have also been reported in the **prioritisation of the examination of SOGIESC claims**. Half of the responding countries do not prioritise SOGIESC claims, while prioritisation may be applied following on a case-by-case assessment in less than half of the responding countries.



6. Specialisation and training of staff

The findings indicate that all responding EU+ countries provide some kind of **training** on international protection related to SOGIESC. In particular, two thirds of the responding countries offer training on SOGIESC claims to all or part of their case officers. About one third offers such training to specific staff. In a fewer number of countries, SOGIESC is one of the aspects covered by the general training offered to case officers.

With regard to the **specialisation of staff for the examination of applications**, in the majority of the responding countries SOGIESC claims are assigned to general case officers. In some cases, it is envisaged additional support from specialised officers, units or services, or from an experienced staff member helping with any SOGIESC-related questions during the interview. In a few countries, SOGIESC claims are assigned to specialised officers or units focusing on SOGIESC or more generally on vulnerability matters. In 1 country, case officers with extensive experience in SOGIESC matters often handle the cases or provide guidance to less experienced officers.

A CSO pointed out that the high turnover of case officers risks to lead to a lack of specific expertise over diverse SOGIESC.



7. Referral mechanisms

According to the findings of the survey, half of the responding countries has referral mechanisms for applicants of international protection identified as LGBTI persons with special needs during the examination procedure. Depending on their needs, applicants may be referred to reception authorities, CSOs working with asylum seekers and/or LGBTI persons, or other specialised service providers. In 2 responding countries the determining authorities do not make a direct referral but provide the applicants with the necessary information and contact details.

In the remaining responding countries the determining authorities do not have specific mechanisms or established practices for the referral of LGBTI applicants with special needs identified during the examination procedure. However, some may have mechanisms for the referral of vulnerable people to reception authorities, while in a few countries the referral system to assistance and specialised services is coordinated by the reception authorities.

Some countries provided further information on their practices, which include the following.

- The availability of specialised advisory services to which case officers can refer LGBTI applicants.
- Regular cooperation between the determining authority and CSOs working on SOGIESC matters and with LGBTI persons, for referral purposes.
- The establishment of channels allowing the referral of vulnerable LGBTI applicants from CSOs, bodies or entities, to the determining authority, to flag special needs or to consider prioritisation of the examination of a claim.
- The regular provision of information to LGBTI applicants during the personal interview regarding rights in the country of refuge and available CSOs assisting LGBTI migrants and asylum seekers.
- The practice of enquiring regularly during the personal interview about the applicant's safety and integration in the reception centre. Referral to the reception authority as needed, including for possible transfers.

