
EXPERT ASSESSMENT

To whom it may concern,

By this document, the European human rights organisation EQUAL PostOst sets out the legal basis on which applicants from the Russian Federation whose asylum claims are based on sexual orientation or gender identity should be recognised, under the EU asylum law, as 'applicants in need of special procedural guarantees'.

The application of the accelerated procedure and the border procedure to applicants in this category is incompatible with the provisions and guiding principles of the Preamble to the new EU Asylum Procedures Regulation (Regulation (EU) 2024/1348, hereinafter: APR).

Grounds for Excluding Accelerated and Border Procedures

Russian nationals may formally be made subject to the accelerated procedure owing to the low overall recognition rate for their country of origin (20% or below). Applying this procedure to LGBTIQ applicants, however, is contrary to both the letter and the spirit of the APR.

1. Exclusion from the '20% Rule' Owing to the Specific Nature of the Persecution

The 20% threshold is not applied automatically; the Regulation itself sets out an exception. Recital 56 of the APR states that examination of an application should not be accelerated where the applicant belongs to a specific category of persons for whom the low recognition rate cannot be considered representative of their protection needs on account of a specific ground of persecution. This exception is given operative effect in Article 42(1)(j) of the APR.

LGBTIQ nationals of the Russian Federation form a group subjected to systematic and institutionalised persecution, the risks of which differ fundamentally from those faced by the average Russian national. Applying the general 20% rule to them, and automatically placing them in the accelerated procedure, is therefore inconsistent with the APR; applying the 20% rule to a persecuted minority undermines the rationale of the EU asylum law.

2. The Need to Protect Vulnerable Groups (Sexual Orientation and Gender Identity)

The Regulation devotes considerable attention to the protection of vulnerable persons.

Recital 17 of the APR expressly includes sexual orientation and gender identity among the factors giving rise to a need for special procedural guarantees.

Recital 21 of the APR requires that examination procedures be gender-sensitive and allow applicants to speak freely about persecution on grounds of sexual orientation or gender identity. These principles are given effect through Article 20 of the APR, which requires Member States to identify such persons and to provide them with specialised support.

3. Incompatibility of Vulnerability with the Conditions of Border Procedures

Where the need for special guarantees is established, the Regulation expressly prohibits holding such persons at the border.

Recital 20 of the APR provides that, where adequate support cannot be provided under an accelerated or border procedure, an applicant in need of special procedural guarantees must be exempted from those procedures. Recital 62 of the APR emphasises that the border procedure must not be applied where the necessary support cannot be provided, or where this is warranted by the applicant's state of mental health.

These principles are given operative effect in Article 21(2) of the APR, which prohibits applying the border procedure to persons who cannot be provided with the necessary support, and in Article 53(2) of the APR, which requires the border procedure to be discontinued where such support cannot be provided to persons with special needs (points (b) and (c)).

Holding LGBTIQ applicants in closed facilities, alongside the general migrant population (which often includes persons from regions with high levels of institutional and cultural homophobia), exposes them to a direct risk of physical violence, persecution, and re-traumatisation. For this reason, Article 24 of Directive (EU) 2024/1346 identifies lesbian, gay, bisexual, transgender, and intersex persons as a group whose special reception needs Member States must take into account.

The EU law requires Member States to take appropriate measures to prevent sexual and gender-based violence when providing accommodation to applicants (Article 20(4) and Recital 37 of Directive (EU) 2024/1346). Such safety, and protection from a hostile majority, cannot realistically be ensured within a closed border facility. Holding LGBTIQ applicants in such conditions, under constant threat to their safety,

is liable to amount to treatment contrary to Article 3 of the European Convention on Human Rights (ECHR).

Situation in the Russian Federation

LGBTIQ applicants leave Russia owing to a serious risk of criminal prosecution, state violence, and the loss of all civil rights, as members of a 'particular social group' within the meaning of the 1951 Geneva Convention. The situation in Russia has changed significantly in recent years:

Designation of the LGBT movement as 'extremist'. On 30 November 2023, the Supreme Court of the Russian Federation designated the 'international LGBT movement' as an extremist organisation. Any associated activity, including running social media accounts or volunteering, is punishable under Article 282.2 of the Criminal Code by up to ten years' imprisonment.

Criminal liability for identity. Public expression of identity (treated as 'extremist symbols') leads to administrative arrest (Article 20.3 of the Code of Administrative Offences), and a repeat offence gives rise to criminal proceedings (up to four years' imprisonment).

Ban on gender transition. For transgender people, both medical and legal gender transition are entirely banned.

No internal alternative. Law-enforcement agencies (the FSB and Centre 'E') exploit the vulnerability of LGBTIQ people to fabricate cases and to blackmail them. Internal relocation offers no safety, since the repressive apparatus operates uniformly across the entire territory of the Russian Federation.

Where these procedures end in rejection and the applicant is returned to the Russian Federation, that return would expose the person to a real risk to their life and liberty, in breach of the principle of non-refoulement, which prohibits returning a person to a territory where they face such a risk.

Guided by both the letter and the spirit of Regulation (EU) 2024/1348 (Recitals 17, 20, 21, 56, and 62, and Articles 20, 21(2), 42(1)(j), and 53(2)(c)), we urge the competent authorities to:

1. recognise that applicants from the Russian Federation who face persecution, or a risk of persecution, on grounds of sexual orientation or gender identity form a vulnerable, specific category whose protection needs are not captured by the general country-of-origin rejection statistics used to trigger the accelerated procedure (the exception under Article 42(1)(j) of the APR);

2. exclude this category of applicants from the accelerated and border procedures, since the specific nature of their vulnerability (their sexual orientation or gender identity and the associated risks) gives rise to special reception needs and special procedural guarantees that cannot be ensured in conditions of isolation at the border;

3. transfer the examination of their cases to the regular procedure, admitting the applicants to the territory so that adequate material reception conditions and a full examination of the asylum claim can be ensured.

EQUAL PostOst confirms the accuracy of the information set out above concerning the situation in the country of origin, and stands ready to act as an expert in any asylum case involving LGBTIQ people from Russia.

Yours faithfully,
EQUAL PostOst expert team

