Joint Statement: Why Portugal's Self-Determination Act Must Stay

article, statement & call to action, legal gender recognition, health & depathologisation, intersex, self-determination

TGEU, IGLYO, OII Europe and ILGA-Europe have submitted joint comments to the Portuguese Parliament on two Bills that would repeal Law 38/2018, the Self-Determination Act, and reinstate the medicalised regime of Law 7/2011: Bill 391/XVII/1, tabled by Chega, and Bill 486/XVII/1, tabled by the PSD. Both parties sit in the ruling government, so together they command the majority needed to pass these Bills into law. We ask Parliament to withdraw both Bills or vote against them in their entirety.

There is no problem to solve. The Self-Determination Act works. Between 2018 and 2022, 1,595 people changed their gender marker, more than triple the previous period, and the competent authority, the CIG, reported in 2022 and again in 2026 that it knows of no refusals, no fraud and no misuse. Twelve European countries have self-determination models, some for over a decade; none has repealed them. Where rare problems arose, courts solved them. Legal initiatives that strip people of acquired rights need a demonstrated need, and none exists.

What these Bills would do

- **Bring back pathologisation and clinical gatekeeping.** Trans adults would once again have to prove their identity to two multidisciplinary medical teams, undergo years of psychological monitoring and, as drafted, in practice show proof of surgery before the State recognises who they are. The European Court of Human Rights has ruled that no one should have to accept surgery or sterilising treatment to be recognised, and the Parliamentary Assembly of the Council of Europe has called for procedures based on self-determination. Worse still, Portugal already struggles with a shortage of professionals in trans-specific healthcare: a procedure requiring two teams, years of monitoring and a surgical pathway would make legal gender recognition effectively inaccessible in practice, squandering scarce medical resources on certifying instead of treating or meeting actual health needs. These Bills would put doctors, not trans people, in charge of trans people's identities.

- **Exclude 16 and 17 year olds from legal gender recognition**, despite the existing safeguards (legal representatives, a personal hearing and a capacity report) and no recorded refusals, fraud or abuse. The UN Convention on the Rights of the Child requires capacity-based assessment, not fixed age limits. The reality for those affected: every exam, train ride, job application or school registration becomes a forced outing, in a country where nearly three in four LGBTQI students report bullying or insults at school.

- **Weaken protection of intersex children.** Portugal made history in 2018 as the second European country to ban non-consensual medical interventions on intersex children. Bill 391 repeals that ban without an adequate replacement; Bill 486's weakly defined "health exception" could still permit medically unnecessary "normalising" surgeries. Both Bills regress on Recommendation CM/Rec(2025)7, which Portugal helped adopt only very recently in October 2025.

- **Roll back healthcare and education rights.** Bill 391 would ban all gender-affirming care for under-18s by statute, overriding the judgment of doctors, parents and the young people themselves, and restrict teaching on gender diversity in schools, an approach the EU Court of Justice has already rejected in its judgment against Hungary. Bill 486 removes the protected ground of gender expression, restricts sports participation

by “biological sex”, risks excluding trans and intersex children from youth and school sport, and deletes the right to a social name, which migrants, minors and non-binary people rely on to live as themselves in schools, workplaces and public services.

- **Rely on outdated, pathologising and stigmatising terminology** (“gender identity disorder”, “transsexuality”, “hermaphrodites”) that contradicts ICD-11, which Portugal supported, and the human-rights based language that all 46 Council of Europe member States have adopted with CM/Rec(2025)7. Words matter: law that frames people as disorders invites treating them as such.

Not in line with international human rights law

Restricting fundamental rights requires a pressing social need under Article 8(2) ECHR and the Portuguese Constitution. These Bills offer conceptual or hypothetical worries, thinly sourced on Portuguese practice, not demonstrated problems. Rolling back rights people already hold requires full justification and consideration of all alternatives; these Bills provide neither. They would therefore amount to a prohibited regression, in direct conflict with the ECHR, EU law, the CRC and the Council of Europe’s Recommendation on equal rights for intersex persons. They also leave thousands of people in limbo: both Bills say nothing about pending applications or registry changes already made, including those of 16 and 17 year olds.

Our asks

We call on the Assembly to withdraw or reject both Bills in their entirety. Should any reform proceed, Parliament must first hear trans and intersex people and the organisations working with them, with their safety, anonymity and wellbeing fully guaranteed, and carry out a child rights impact assessment.

Link to submission to CHEGA-Proposal

Link to submission to PSD-Proposal

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