

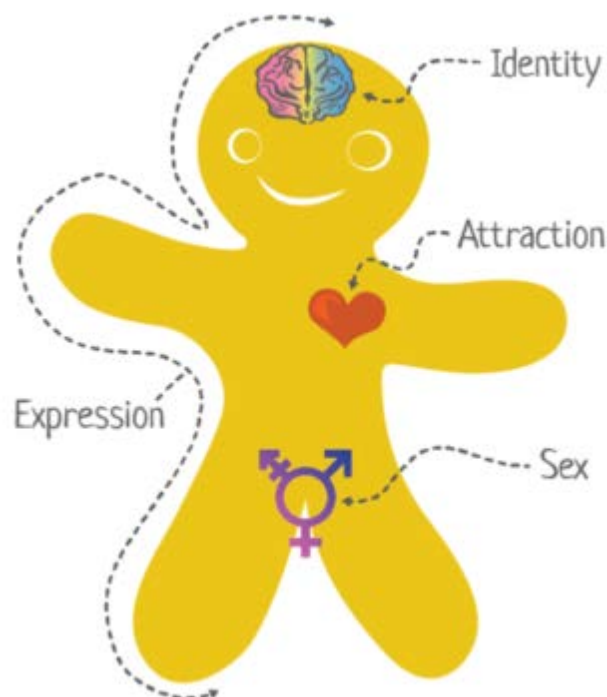


# The third option: diverse

## The Third Sex Option in the Civil Status Register: Consequences and Guidance for Everyday Work

*The term "third gender" is a colloquial designation of the possibility, which has existed since 2019, to select the third option "diverse" in the civil status register in addition to the gender options "male" and "female". **Divers is not a concrete gender designation, it is merely a category that gives a positive counterpart to the fact that there are persons who are neither male nor female.***

*The following text should help to understand the background of the change in the Personal Status Act and serve as a guide for everyday work, but also for general interaction with each other.*



<https://www.genderbread.org/>

## **Gender: concepts and terms**

The English term "gender" is often used to refer to things that are related to gender in the broadest sense. For example, the use of gender-appropriate language is called "gendering" or the integration of equality measures is called "gender mainstreaming". The English term is used because in English a distinction is made between sex (*anatomical gender*) and gender (*gender identity*). However, even when "gender" is mentioned, different things may or may not be meant. In order to provide more clarity, the different dimensions of gender/sexuality are explained below: *gender identity, gender expression, sexual attraction, romantic attraction, anatomical sex*. The Genderbread person is a good help to illustrate and better understand this complex topic.

In English, there are more ways to talk about gender and sexuality. Moreover, Englishspeaking science is often one step ahead of German science in this area. The related scientific discipline, "gender studies", also emerged in the Englishspeaking world.

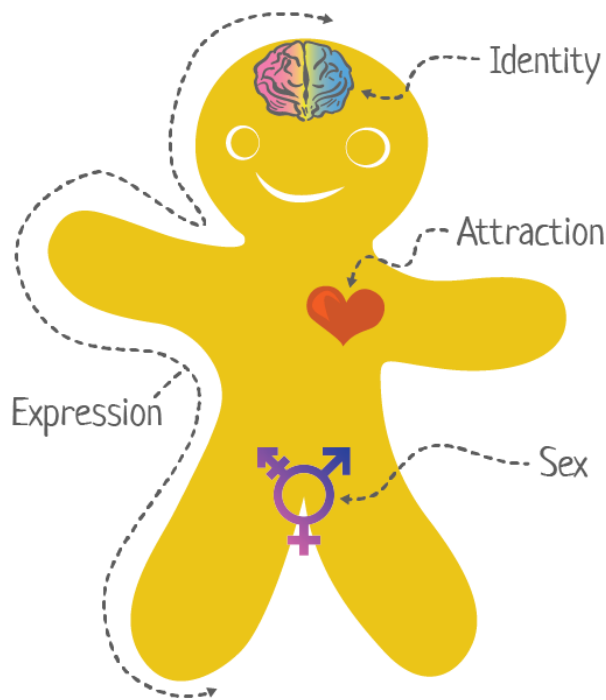
### **IMPORTANT**

***Gender/sexuality has many dimensions!***

### **FOR EVERYDAY WORK**

**The various dimensions of gender/sexuality can only be understood in context. Not all dimensions covered by the genderbread person are relevant e.g. for personnel matters (e.g. *sexual and romantic desire*). However, knowledge of this promotes non-discriminatory interaction and ensures mutual understanding, empathy and security in dealing with each other.**

# The Genderbread Person v4 by its pronounced METROsexual.com



⊖ means a lack of what's on the right side

## Gender Identity

- Woman-ness
- Man-ness

## Gender Expression

- Femininity
- Masculinity

## Anatomical Sex

- Female-ness
- Male-ness

Identity ≠ Expression ≠ Sex  
Gender ≠ Sexual Orientation

Sex Assigned At Birth  
 Female  Intersex  Male

## Sexually Attracted to... and/or (a/o)

- Women a/o Feminine a/o Female People
- Men a/o Masculine a/o Male People

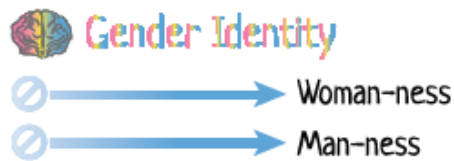
## Romantically Attracted to...

- Women a/o Feminine a/o Female People
- Men a/o Masculine a/o Male People

Genderbread Person Version 4 created and uncopyrighted 2017 by Sam Killermann

For a bigger bite, read more at [www.genderbread.org](http://www.genderbread.org)

## Gender Identity:



*Gender identity* is about the gender with which a person self-identifies. It is not decisive with which gender characteristics a person was born (*anatomical sex*) and how he or she is classified from the outside, but how the person feels and how he or she classifies himself or herself. Persons whose *gender identity is the same* as their *anatomical sex* are called *cis persons*. This distinguishes *cis persons* from *trans persons*, i.e. persons who do not identify with their biological sex and who may decide to change their appearance so that they are recognized by others as a person of the sex with which they identify themselves. However, there are also *trans people who do not* choose to undergo outward gender reassignment and yet do not identify with the gender they have been assigned and to which they are assigned.

Furthermore, there are people who cannot or do not want to deal with binary gender – i.e. "male" and "female" as the only categories – and do not identify with either. This is often referred to as *non-binary*. Others, however, do not reject the categories "male" and "female" for themselves, but also do not commit themselves to a fixed position between the two poles "male" or "female". This is often referred to as *gender-fluid (fluid gender)*. In the genderbread person, therefore, woman-ness (femininity) and man-ness (masculinity) are represented independently of each other.

### ***IMPORTANT***

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***You cannot see gender identity! The same way I cannot see what nationality someone has or whether a person is healthy or sick. Only by giving people the opportunity to classify themselves and sharing this knowledge with me can I be certain about a person's gender identity. Especially when the gender identity differs from the anatomical sex, people suffer from being misclassified again and again. So trans people have not "changed their gender" either, but have adapted their outward characteristics to their gender identity.***

## FOR EVERYDAY WORK

The free choice for salutation in forms creates the possibility to classify oneself. So there could be a free field next to "female", "male", "*diverse*" or "Mrs.", "Mr.", "Dear + name" as a form of address. Furthermore, a category can be created, in which the pronoun is queried (he / she / none/ they / ...). This opens up the possibility of choosing a form of address that does not correspond to the information on the identity documents. These can be queried separately if the purpose requires it.

### Gender Expression



The term *Gender Expression* is often also associated with the term Performance/Performance. This refers to the fact that there is a whole range of gender-specific behaviour and movement patterns that we have learned socially. The way we sit (legs crossed or wide-legged), the way we walk, the way we slick our hair back, the way we dress and style ourselves (skirt, pants, high heels, suit or costume, long hair, short hair, braids) and so on. There are countless behaviour patterns that underline a certain gender and can be interpreted by those around us as more "masculine" or more "feminine". The signs we set with it can (and should) be read by others - that's why we also speak of *persons read as male and female*. With this formulation one does not assign persons, but remains on the level of what is visible and perceived from the outside.<sup>1</sup>

*Gender expression* can be imitated. This makes it particularly clear that gender expression does not have to be related to anatomical sex. Drag, for example, is an art form that imitates typical male or typical female behavior (partly exaggerated) and thus irritates and generates attention for gendered behavior. This can be related to one's own sexual identity and orientation, but it does not have to be.

In plain language, a person read as male (read because we cannot infer their gender identity from what we see) who performs in women's clothes and with female behavior, for example in the context of a drag show, does not mean that this person does not feel comfortable in their "male" body (*anatomical sex*) or is attracted to men because of it (*sexual orientation*).

This clearly distinguishes drag from trans people. Trans people also change their gender expression, but in this case to be recognized and read as the gender they identify with.

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<sup>1</sup> The formulation is also used, for example, when people are assigned a nationality or religion from the outside. For example, people may be read as Asian or Muslim. Again, the wording emphasizes that appearance does not provide information about whether the person is actually Asian or Muslim. Nevertheless, the way people are read determines whether or not they experience discrimination based on their appearance.

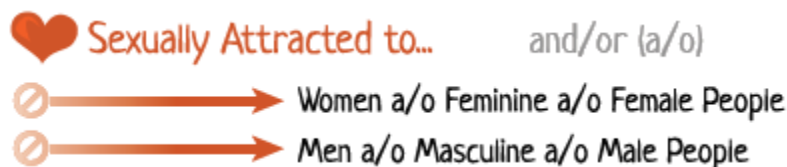
## IMPORTANT

Drag is play, art and irritation. Trans people, on the other hand, are not concerned with making a statement or causing a stir with their appearance, but with being assigned to the group to which they feel they belong, even from the outside. In this case, it is not a game, but essential for survival.

## FOR EVERYDAY WORK

Appearance and expression of gender (e.g., clothing and hairstyle) lead to presumptions. Where knowledge of personal data exists and individuals must be categorized based on necessary processes (e.g., hiring), it is especially important to be sensitive when the outward impression and the data provided "don't match."

Sexual orientation



*Sexual orientation* refers to the people with whom a person desires to have sexual relations and whether a person desires to engage in sexual interactions with other people at all. There are many different characteristics that can trigger sexual desire in a person. These characteristics may be related to a person's gender (e.g., *heterosexuality*, *homosexuality*, or *bisexuality*), but they may also be completely unrelated (e.g., *pansexuality*). There is also the possibility that persons feel no sexual interest at all and this plays no role in their relationships (*asexuality*). No one is fixed to a certain desire at birth, but this is something that one discovers over and over again in the course of one's life. However, it is also not a personal decision whom or what a person wants to desire - he simply does it or he does not do it.

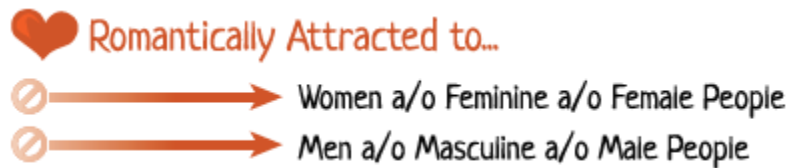
No one is fixed to a certain desire at birth, but this is something that one discovers again and again in the course of one's life. However, it is also not a personal decision who or what a person wants to desire - they simply do it or they do not.

## FOR EVERYDAY WORK

**Sexual orientation is not something that can be recognized at first glance and is basically a private matter for employees. Institutions and procedures, however, are often oriented towards the heterosexual norm, so that homosexual persons are constantly confronted with their supposed otherness even in everyday work. People spend a lot of time at their workplace and a lot of social interaction takes place there. It is an important aspect of anti-discrimination to be sensitive to the (possible) sexual orientation of employees in all situations. This of course includes refraining from making and condemning jokes, comments and phrases, but also**

questioning assumptions, e.g. when you ignorantly ask a lesbian colleague: "What does your husband do?"

Romantic Attraction



*Romantic orientation* describes the level of love relationships. Gender can play a role when it comes to the choice of (love) relationship partners, but there are also other factors that influence the design of a (love) relationship. In the case of the genderbread person, *sexual orientation* and *romantic orientation* are separated from each other, as they can go hand in hand, but do not have to.

Romantic love relationships are subject to a social norm: Two people, usually one male and one female, have an exclusive relationship sexually and romantically (exclusive means parallel romantic and/or sexual relationships are excluded). This structure and everything related to it is called *heteronormativity*. For example, this is also the socially accepted framework for starting a family. Regardless of the fact that this framework does not correspond to reality for many (e.g. patchwork families), there are also people who cannot or do not want to identify with this framework.

The separation of *romantic* and *sexual orientation* can also mean that - although all needs are met in the romantic relationship - sexual relationships are entered into with additional people. This is often referred to as an *open relationship*. Likewise, there are individuals who maintain romantic relationships with more than one person. This relationship management is then called *polyamory* (somewhat outdated sometimes called *polygamy*<sup>2</sup>). The fact that *romantic* and *sexual orientation* do not have to coincide is also evident in people who lead very binding friendly relationships and, among other things, also choose these relationships in order to raise children together. Here neither romantic nor sexual desire plays a role.

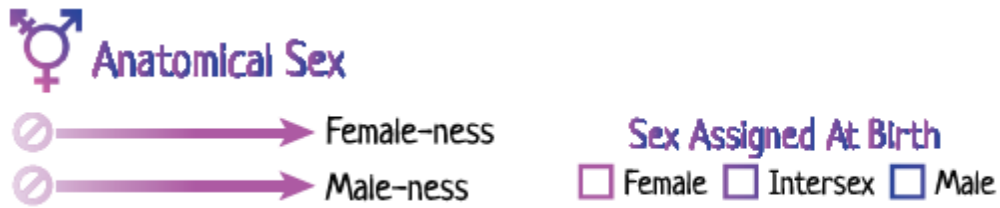
### FOR EVERYDAY WORK

**Even if many issues are formalities, personnel matters are close to the realities of life. Through the Family Support Office, the UFZ already represents an open concept of family, which includes not only spouses and direct relatives, but also the entire caring environment. Wherever work is done close to people and their realities, it is important to be able to think of many different ways in which (family) relationships can be desired and organized.**

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<sup>2</sup> Polygamy is an accepted form of relationship in many parts of the world. However, polygamy is often considered a male privilege: men have many wives, women only one husband.

## Anatomical Sex



The anatomical sex is derived from the external genitals, i.e. penis and vulva. For the assignment at birth, there are characteristic values for the size from which a penis is considered as such or is classified as a clitoris. Hormone levels also play a role. These measurements and values are a continuum. By medically determined characteristic values, the actual continuum is divided into two fixed categories: "male" and "female". Even on a continuum, the assignment of "male" or "female" can be difficult and controversial. However, there are also people who have both "male" and "female" sex characteristics at birth, meaning that internal and external sex organs, chromosomes, and hormone levels do not fit into the established categories of "male" and "female." These people are *intersexual*. Until the amendment of the Personal Status Act on January 01.2019, there was only the possibility to choose the gender entries "male" or "female" or to leave the entry open. However, since 01.01.2019, intersex people have the option to choose the entry "*diverse*".<sup>3</sup>

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<sup>3</sup> "*Divers*" does not name a gender identity, but is considered to indicate that the identity is *different* from the identities "male" and "female."



## The third option: diverse

### Backgrounds

The option "*diverse*" in the civil status register - sometimes colloquially misleadingly "third gender" - refers to the dimension of *anatomical sex*. Until 2013, persons showing variation in sex development<sup>4</sup> at birth were assigned to the categories "male" or "female." The practice of assigning a sex to individuals at birth despite ambiguous sex characteristics often involved (and still involves) surgeries to match the external genitalia to the registered sex - without knowledge of the actual gender *identity*. Such operations, which do not await a child's development and decision-making capacity, are still permitted in Germany. In 2013, the possibility was created to leave the gender entry open at birth. This regulation was challenged before the Federal Constitutional Court on the grounds that a positive gender entry was necessary, not just an omission of the entry. In 2017, the Federal Constitutional Court ruled that a third option must be created in the Civil Status Act for persons whose gender can be permanently assigned to neither the male nor the female sex (*intersexuality*). The legislature was tasked with implementing this decision and formulating a corresponding regulation. The result is the creation of the option "*diverse*"<sup>5</sup> in the civil status register, which came into force on 01 January 2019 through an amendment to the Civil Status Act.

### Legal framework: Personal Status Act

In the fall of 2017, it was decided by the Federal Constitutional Court that the Personal Status Act must be amended in favor of intersexual people and in the future must include the options "female", "male" and "*diverse*", as well as continuing to allow the option of leaving the entry open. The corresponding amendment to the law came into force on 01 January 2019. Section 22(3) of the Personal Status Act specifies that if a child cannot be permanently assigned to either the male or female gender at birth, it can also be entered in the birth register with the gender entry "*diverse*". With the gender entry "*diverse*", people now have the option to make the gender assignment themselves at some point in their lives or to remain with the assignment "*diverse*".

In addition, under Section 45b of the Civil Status Act, persons who were previously unable to make use of this provision also have simplified options for having their civil status and related data - e.g. their first name - changed.

To apply the law, a medically ascertainable, attested so-called "variation in gender development" is required. The law thus explicitly refers to the *anatomical sex* and explicitly not to the "subjective gender perception" - i.e. *gender identity* - even if the Federal Constitutional Court has acknowledged in its reasoning that the affiliation of a person to a certain gender is not exclusively due to the physical prerequisites.

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<sup>4</sup> This means that the physical sex characteristics (chromosomes, internal and external sex characteristics, hormone levels) lie between the common categories of "male" and "female".

<sup>5</sup> The designation "*diverse*" takes into account the wishes of stakeholder associations that were consulted during the legislative process. Unlike other options such as "inter", the designation "*diverse*" is not a concrete attribution of a gender. Thus, it is theoretically open to individuals who are not considered *intersex* and yet do not define themselves with the male or female gender. However, the current law does not include these individuals.

Legal framework: General Equal Treatment Act (AGG)

The *gender identity of trans* and inter persons was already protected by the General Equal Treatment Act before the amendment of the Personal Status Act. However, with these amendments, the third option must be explicitly addressed, e.g. in job advertisements, in order to comply with the General Equal Treatment Act. But also in their further communication institutions and companies can be obliged to address non-binary persons. Incorrectly dressing a person as a man or a woman can be considered discrimination. (→ [eg. ruling against Deutsche Bahn in June 2022 \(de\)](#))

In addition: Third gender for all

The third option for sex entry is based on anatomical requirements (*anatomical sex*). According to the intention of the legislator, it applies explicitly only to persons who have a medically certified so-called "variation in gender development" and consequently wish to choose or change their gender entry (and first name) accordingly. Beyond that, however, there are numerous people who cannot or do not want to assign themselves to the genders "male" or "female" for various reasons - for example, people who identify as *non-binary*. Thus, various associations, e.g. the Bundesverband Trans\*, sharply criticized the necessity of a medical certificate and demanded an opening of the option for all people who locate themselves beyond the two-gender norm.

If there is an option to select "*diverse*" in forms, it is also used by people who cannot or can only difficultly change gender and first names in birth certificates and identification documents.

### **Addition:**

The Personal Status Act is currently being revised. A new "Self-Determination Act" should enable free choice of gender entry without a medical attestation. [First key points \(de\)](#) have been published in July 2022, with the act scheduled to come into effect in 2023.

### **FOR EVERYDAY WORK**

People who locate themselves beyond the categories of "male" and "female" but are not *intersex* according to medical definition are currently still barred from changing their gender registration (and first name) without much trouble. This does not mean, however, that the gender *identity* - the perceived sex - of these individuals is any less real.

In personnel matters, it is sometimes necessary to state the registered gender of a person. Wherever this is not necessary, however, the relevant identity is the one that a person has chosen for him or herself. For orientation purposes, it helps to distinguish clearly between what is legally required and what is necessary for respectful interaction. For forms/surveys/etc., this means: Ask yourself whether it is necessary to record gender, and if so, make it transparent whether gender identity or registered gender is being asked.

## Summary

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**The possibility of the gender entry "*diverse*" was made on the basis of *anatomical sex*. In other words, based on what can be determined by medical methods and recognized anatomically. However, gender does not result from anatomy alone (see *gender identity*). Therefore, the option "*diverse*" is also used by people who want to express that they locate themselves beyond the categories "male" and "female".**

## Tips and good examples for everyday work

What needs to be considered in the daily work routine?

- **Job advertisements:** In accordance with the General Equal Treatment Act, job advertisements must be formulated in a gender-neutral manner or explicitly address persons with the gender entry "*diverse*". This means:
    - The abbreviations (m / w / d) must be added to the job title: *Electrician wanted (m / w / d)* OR
    - the job title is to be neutral: *Support in the field of electrical maintenance work (m / w / d) wanted* OR
    - the spelling is to be changed to the opposite gender: *Electrician\* wanted*.
    - This should be considered for the entire RFP text, not just the title.
- ⇒ **At the UFZ, a neutral spelling is preferred, alternatively a counter-gendered form.**
- **Gender-neutral wording:** In other areas of public service communication, too, communication must be such that persons who locate themselves beyond the categories of "male" and "female" are included. Gender-neutral or counter-gendered formulations are suitable for this purpose.
  - **Master data sheet:** In the master data sheet, personal data is requested that is congruent with the entry in the ID card. Here it is necessary that options that may be on the birth certificate are also selectable in the master data sheet.
- ⇒ **Only here it is necessary to specify the "official gender".**

What can be considered in the daily work routine?

- **Other forms:** Forms that do not necessarily need to reflect official identity should additionally ask which salutation and pronoun a person chooses (e.g., registrations for events, internal forms/applications, etc.).
  - **Events:** Name tags or sticky labels can read, "Hello, my name is.... and my pronoun is...."
  - **E-mail addresses/communication:** E-mail addresses can be chosen so that they are not gender ambiguous. To facilitate communication, a note of salutation and pronoun can be included in the signature. Also pay attention to the signature/note in the vita etc. of others. (see Communication)
  - **Restrooms:** Gender-neutral restrooms or all-gender restrooms are not (yet) required by law. Nevertheless, employers should strive to provide appropriate sanitary facilities for all employees.
- ⇒ **At the UFZ, the restrooms in building 6 (in the "tower") are gender-neutral single restrooms. An expansion to other buildings is worth striving for.**

## Communication

Not only in terms of legislation, but also in general in terms of respectful communication, it is imperative to respect the marital status and gender of the other person and not to draw any hasty conclusions if you are unaware of this. In the following, some hints are listed on what to pay attention to.

### **If salutation and first name are unknown/unclear:**

In this case, you can send an e-mail in advance or formulate an initial paragraph containing a specific demand. You can also ask questions sensitively during the conversation.

*"Good day,*

*I am writing to you in advance as I am not sure which salutation and pronoun I should use / you would like to be addressed with.*

*I appreciate a brief note so that I can take this into account in further communications."*

*"Please excuse me, but I am unsure of the form of address and pronoun you are using. Can you help me? "*

### **When the name is known but the salutation is unclear:**

- In a letterhead you can simply omit the salutation (Mrs./Mr.)
- You can choose a gender-neutral form of address:
  - Hello Kim Petersen, Hello Kim Petersen
  - Dear\* Kim Petersen, Dear\* Kim Petersen
  - English: Dear Kim Petersen
  - Dear Kim, Dear Kim
- Use the full name if people do not want to be addressed by a specific pronoun: "Kim Petersen will answer questions following the presentation."
- Use neutral forms of address here as well: "Dear attendees", "Dear team", etc.

## Important

**The (unintentional) use of an old name or a previous form of address is an involuntary disclosure of a person's gender adjustment. In addition, this leads to unnecessary irritation in the presence of colleagues/customers. This can happen out of habit, but it should be actively and consciously counteracted.**

## FOR EVERYDAY WORK

**An interested, polite and reserved inquiry will in most cases be perceived by the persons concerned as an honest effort and not in a negative way. BUT: Only address general inquiries, information and recommendations for action to affected persons if they have given their consent and an appropriate relationship of trust exists. On the other hand, there may be resentment at having to provide information again and again without being asked.**

## Examples

Signatures and, where applicable, information about the person on the Internet are a good way of informing people about one's own form of address and pronoun. To create more normality and clarity, this can also be done by people who also identify with the gender

assigned to them. (Thus, for example, being read as a woman and also feeling as such *cis*).  
The following examples show different ways to refer to one's own gender in the signature:

### Example 1

#### Dr. Ines Thronicker

Anrede: Frau, Pronomen: sie / title: Ms, pronoun: she  
Personal & Unternehmenskultur / People & Culture  
Teamleitung Vielfalt und Inklusion / Head of Team Diversity and Inclusion  
Gleichstellungsbeauftragte / Equal Opportunities Officer

### Example 2

pronoun: they

(If you refer to me, please use my full name without a form of address or/and the pronoun 'they' as in 'They is a researcher I met after their talk at the EGU'.  
Please do not use 'Mrs', 'Miss' or 'Mr' or other gendered terms to address me or to refer to me.  
If you want to help normalize the usage of different pronouns and help people feel safer about stating theirs, please consider to add your pronouns to your bio/signature)

### Example 3

Liebe\_r Empfänger\_in dieser Mail, ich vororte mich jenseits  
der zweigeschlechtlichen Norm und möchte Sie daher bitten,  
auf vergeschlechtlichende Anreden zu verzichten. Willkommen sind  
"Guten Tag", "Hallo", "Lieb\*", "Dear" zusammen mit meinem Vor- und Zunamen.  
Herzlichen Dank!

### Example 4

mein Pronomen ist er-sie abwechselnd  
my pronoun is they/them

The alternating he-she is often used here out of a pragmatic sense, since both pronouns are experienced as inappropriate and at the same time no alternative is available and at the same time no alternative is available.

## Glossary

**Anatomical sex:** medically determined at the level of physical sexual characteristics (sex organs, hormone levels, chromosomes). The transition between male and female is anatomically fluid, but nevertheless only two genders ("male", "female") are recognized, as well as the possibility of not corresponding to them (→ "*diverse*").

**Asexuality:** People who basically do not feel the desire to enter into sexual relationships. However, romantic relationships are independent of this. (→ *romantic orientation*)

**Bisexuality:** Persons who are not determined as to whether they desire male or female persons. They are therefore neither → *heterosexual* nor → *homosexual*.

**Cis:** People who identify with the gender they were assigned at birth. Cisgender (Latin *cis*- "this side" and English gender "sex") differs from transgender (Latin *trans*- "beyond", "beyond").

**Diverse:** designation of the third option in the gender entry. Expresses that these individuals identify as neither male nor female. As the registered gender, only people who have a medically ascertainable "variation in sex development" can use this option. (Independent of → *gender identity*).

**Gender:** English term for sex. In English, however, a general distinction is made between sex (gender) and anatomical sex (sex). English is much used because different dimensions of gender can be better distinguished in English.

**Gender Expression:** Describes the way in which we make outwardly visible signs that can be interpreted in terms of gender. For example, our style of dress, hairstyle, or the way we sit. However, this does not allow any definite conclusions to be drawn about → *gender identity*.

**Gender fluid / fluid gender:** persons who constantly re-locate themselves on a spectrum between male and female, i.e. who are not permanently fixed to one position.

**Gender Identity:** The perceived sex, gender or sexuality with which people identify themselves. This is not visible from the outside. There is a whole range of gender categories with which people identify themselves, male and female being two of them.

**Heterosexuality:** people who desire people of a different sex.

**Homosexuality:** people who desire people of the same sex.

**Intersexuality:** Persons whose physical sexual characteristics (→ *anatomical sex*) cannot be clearly assigned to the categories "male" and "female". In other words, they have a so-called variation in gender development.

**Non-binary:** Persons who do not locate themselves within the two-gender norm (male/female) (→ *gender identity*). Some people identify with a different category, but it can also be a case of actively renouncing categories.

**Open relationship:** A relationship in which other sexual (sometimes romantic) relationships are (may be) conducted in parallel.

**Pansexuality:** individuals for whom gender is irrelevant to sexual desire.

**Polyamory:** Form of relationship in which several love relationships are conducted simultaneously. In contrast to the → *open relationship* (in everyday understanding), the focus here is less on sexual relationships.

**Romantic Attraction / Romantic Desire:** Romantic desire determines the group of people with whom people can imagine romantic relationships. Gender can play a role in this.

**Sexual Attraction / Sexual Desire:** Sexual desire determines the group of people with whom people can imagine having sexual relationships. Gender can play a role (→ *homosexuality, heterosexuality, bisexuality*), but not necessarily (→ *pansexuality*).

**Trans:** Trans people are people who do not identify with the gender they were assigned at birth. This may result in them having gender reassignment surgery, but this is not necessarily the case.



## Sources

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