

EU vs VIKTOR ORBÁN'S ANTI-LGBTIQ+ LAW

EXPLAINER #2

In June 2021, Hungary was the first country to import Russia's 2013 anti-LGBTIQ+ propaganda law into the European Union. The "Act on stricter actions against paedophile offenders", named to discredit LGBTIQ+ people as paedophiles, outlaws sharing information seen as promoting homosexuality and trans identities with minors in advertising, media, schools, bookshops and in family interactions. In 2023, 16 Member States, the European Parliament and the European Commission joined forces to bring this law to the EU Court of Justice. A ruling is expected in 2024.

CONTENT OF THE LAW

Hungary's propaganda law is an omnibus law that bans access to content that (sic) "depicts or propagates divergence from self-identity corresponding to sex at birth, sex change or homosexuality" to people under the age of 18 via amendments to already existing laws and policies on child protection; family protection; advertisement; broadcasting; and public education.

In practice:

Ban on the broadcasting of LGBTIQ+ content before 10 pm and after 5 am.

Ban on non-targeted advertising (e.g. billboards) featuring LGBTIQ+ content

Ban on public display of children and teenagers' books depicting LGBTIQ+ characters in shopping windows

Ban on selling LGBTIQ+-themed goods within 200m of schools, and churches.

Ban on inclusive sex-education

Penalties



Media

Right to broadcast can be restricted for up to 7 days and withdrawn altogether, in case of repetitive offences. A corporate fine of up to EUR 488,000, depending on the broadcasting company's media revenue, can also be imposed; and also separately, on relevant individual media managers (approx 5000 EUR)



Advertisers

Sanctions include the immediate removal of the ads (online and offline) and a corporate fine of up to EUR 1.21 million if the advertising company's revenue is 250.000 EUR or higher



Retailers (bookshops)

Local governments can suspend certain commercial activities or close the shop for a maximum of 90 days - or altogether if the shop refuses to comply with previous issued (labelling and packaging) instructions.



School staff & parents

Headmasters allowing unauthorised sex-ed and LGBTIQ+ content at school risk school inspections, personal fines of up to 4800 EUR and the termination of their contracts. Criminal prosecution over the crime of "endangering children" can also be initiated.

Ban on the broadcasting of LGBT content between 5am and 10pm.

Service providers registered in Hungary: Hungary's Media Council marked the 2023 Budapest Pride TV commercial as unsuitable/harmful for minors and prohibited a TV station, RTL, from broadcasting it between 5 AM and 10 PM [1]

Services providers registered outside Hungary: Media Council contacted EU Member States 24 times to take action against service providers registered outside Hungary

Ban on public display of children and teenagers' books depicting LGBTIQ+ characters in shopping windows

The largest bookshop retail chain, Libri, which holds a 50% market share in the country, instructed its bookstores to wrap books depicting LGBTIQ+ content in foil and moved them from the youth section to the adult section after receiving a fine of 2,700 EUR [2]. Libri could be removing books with LGBTIQ+ content from 30 out of the 56 bookshops they operate, due to some of their shops' proximity to schools and religious establishments. [3].

Ban on selling LGBTIQ+-themed goods within 200m of schools, and churches.

A bookshop of the second largest bookshop retail chain Lira (25% country market shares) was fined 32,000 EUR for displaying the award-winning young adult graphic novel 'Heartstopper' among literature accessible to youth (+14). [4]. Lira is appealing the decision

Ban on non-targeted advertising (e.g. billboards) featuring LGBTIQ+ content

Partial data available for 1/20 of counties (specifically, Budapest) - 14 procedures recognized, but details on the targets and content withheld. Hungary's remaining 19 counties refused to disclose data. Hátter is appealing the decision to withhold this data.

Ban on inclusive sex-education

Comprehensive sex and relationship education is entirely absent in public education, as the government has not adopted the decree that would authorize external experts to provide this service in schools. Regardless, it is unclear whether under the current legal framework LGBTIQ+ inclusive education programs can be authorised at all.

DID YOU KNOW ...

that Libri, Hungary's largest bookstore chain, changed its policy towards books containing LGBTIQ+ content after being acquired by a private foundation with close ties to the party of PM Orbán?

Libri experienced a significant ownership change in June 2023 when it was taken over by the Mathias Corvinus Collegium (MCC). MCC is a private interest trust chaired by Balázs Orbán, the political director, and strategic adviser to Prime Minister Orbán. It's important to note that the MCC, to which the government endowed more than 1.5 billion EUR, entirely bypassing the general rules for the alienation of state property, is, like all private interest trusts in the country, currently sanctioned under the conditionality regulation. Since 2021, MCC Press, the college's publishing arm, has been actively releasing books from US and UK authors who vehemently oppose the rights of LGBTIQ+ people, reproductive rights, gender equality policies and feminism. Meanwhile, MCC Brussels has organized events on the same topics, rapidly becoming one of Brussels' main disinformation superspreaders on gender equality issues.



The Commission has taken action against Hungary (Case C-769/22) for violating the rights of LGBTIQ+ people. The case rests, in part, on the violation of Article 2 of the Treaty on European Union (TEU). This case provides a unique opportunity for each Member States to articulate their position with regard to Article 2 TEU as a yardstick in infringement procedures before the Court of Justice of the EU (CJEU). The following table summarizes the Commission's main pleadings. In their written and oral interventions, Member States can choose to support European Commission pleadings in whole or just in part.

To maximise the Court case impact to protect the rights of LGBTIQ+ people across Europe, RECLAIM, Forbidden Colours and Háttér Society are calling on Member States to coordinate their interventions and to focus on pleas 3, 5 and 6.

First Plea In Law:	Breach of the Audiovisual Media Services Directive	Fourth Plea In Law:	Breach of the Union rules on data protection
Second Plea In Law:	Breach of The E-Commerce Directive	Fifth Plea In Law:	Violation of the Charter of Fundamental Rights of the European Union (CFR)
Third Plea In Law:	Infringement of Services Directive and Article 56 TFEU	Sixth Pleah In Law:	Breach of Article 2 TEU

TAKE ACTION - NOW

AS A MEMBER OF THE PARLIAMENT

- Urge your Ministry of Foreign Affairs to:
 - Back the European Commission in its most influential pleas for increased legal protections for LGBTIQ+ people. In case c-769/22, these include pleading #6 on Article 2 TEU, pleading #5 on the violation of the Charter, and pleading #3 on the right to impart comprehensive relationships and sex-ed.
 - Call upon the European Commission to, firstly, seek interim measures concerning the ongoing case, and secondly, to initiate a distinct infringement procedure against the enforcement of the anti-gay propaganda law by the Hungarian Consumer Protection Authority in the retail sector (including bookstores).
- Partner with MPs from other parties to co-organise parliamentary hearings, draft op-eds on national media and pass cross-party resolutions on the deteriorating situation of LGBTIQ+ people in Hungary.
- Subscribe to RECLAIM and Forbidden Colours' newsletters to keep up to date on important developments affecting the rights of LGBTIQ+ people. A preliminary ruling proceeding will soon reach Luxemburg on Hungary's ban on legal gender recognition.

Háttér Society, "Assessment and Overview of the Law Content" (January 2023).

Háttér Society, "Overview of the Law Implementation 2021-2023" (Update July 2023)

RECLAIM, "Legal Opinion focusing on the education aspects and EU law" (Update, July 2022)

Luke D. Spieker, "Briefing: How to use Article 2 TEU in infringement procedures and in c-769/22"

**STILL QUESTIONS?
REQUEST AN ONLINE
BRIEFING!**



To maximise EU's sanctioning power & likelihood of the law's repeal

Only a confirmed violation of Article 2 TEU can result in the CJEU imposing the highest level of fines if Hungary does not comply with Court orders. This becomes crucial as Orbán's government persists in refusing to repeal the law, despite other EU measures, such as the freezing of 1.5 Billion EUR in funds pending its repeal.

To depoliticize future Commission and Member State action in Hungary

The CJEU is likely to offer an authoritative confirmation of the Commission's assessment that Hungary is violating Article 2 of the TEU. This, in turn, strengthens the legitimacy of Commission enforcement action under EU conditionality rules and alleviates Member States from the burden of having to make that determination in the context of Article 7 proceedings themselves.

To stop the far-right anti-LGBTIQ+ agenda on its tracks

In recent years, the CJEU has consistently emphasized Article 2 TEU's justiciability. In response, The Commission is now pursuing influential infringement cases to establish stronger human rights and rule of law standards in the EU. By endorsing the Commission's Article 2 TEU pleading, Member States can help the CJEU develop critical redlines to safeguard the rights of LGBTQI+ people in the EU. They would then help counter the propagation of anti-LGBTIQ+ narratives that are being currently disseminated by far-right and conservative movements.

✘ Myth

Article 2 TEU is a merely a statement of moral values, not legal obligations.

✔ Reality

Article 2 TEU contains legal principles that Member States must comply with, according to the CJEU

✘ Myth

Article 2 TEU can only be enforced by the Council through Article 7 proceedings.

✔ Reality

The Court of Justice has jurisdiction to review compliance with Article 2 TEU.

✘ Myth

The CJEU does not have jurisdiction over areas of exclusive Member States competence.

✔ Reality

CJEU's jurisdiction extends to all situations impacted by EU law regardless of the allocation of competences.

*** The information provided in this leaflet is for illustrative purposes only. In case of any doubts, please consult authoritative legal opinions. If you are an EP of an MS decision-maker or official, you can reach us directly with your questions and/or request a legal briefing. Our team will be happy to assist you. Polgari.eszter@hatter.hu Remy@forbidden-colours.com Esther.martinez@reclaiming.eu