

# POLICY BRIEF SERIES

## HOMOPHOBIC POLICIES IN EUROPE: TRENDS & SOLUTIONS



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# EXECUTIVE SUMMARY

Over the past decade, populist governments have adopted increasingly repressive measures targeting LGBTQI groups and advocates and have grown more sophisticated in their practices to curb civic space. Such measures include both informal and legislative practices, such as the adoption of repressive legislation targeting LGBTQI activists and groups vocally criticising the governments and asking for equal respect of fundamental rights. Other measures comprise State-sponsored smear campaigns, abusive judicial proceedings (SLAPPs), and politically controlled access to public funds.

This policy briefing aims at providing an overview of the latest developments concerning the shrinking civic space for LGBTQI rights defenders in the EU. It forms part of a broader project led by RECLAIM and the Böll Foundation on strengthening LGBTQI rights in the EU.

**Section I** analyses the general anti-LGBT trends in the EU as affecting the LGBTQI community as a whole. In doing so, it focuses particularly on legislative measures aimed at limiting LGBTQI people's freedom of expression and right to self-determination (sub-section 1), some Member States' practices of opposing EU wide initiatives aimed at promoting equality for LGBTQI people (sub-section 2), and abuses of loopholes in the legal framework as to the protection and non-discrimination of the LGBTQI community.

**Section II** then addresses the specific case of LGBTQI groups and rights defenders. It analyses the impact of smear campaigns as a tool to discourage citizens' support towards LGBTQI groups and to diminish the latter's ability to raise funds (sub-section 1), the abuses of criminal and civil laws to bring abusive lawsuits against LGBTQI rights defenders (sub-section 2), some Member States' failure to protect LGBTQI groups' fundamental rights and freedoms (sub-section 3), and legislative and non-legislative measures aimed at limiting LGBTQI groups' access to public and private fundings.

Finally, **Section III** provides targeted recommendations for EU institutions and Member States' authorities, addressing, in particular, the political opportunity to develop a joint EU-wide legal strategy to tackle violations of LGBTQI people's fundamental rights in light of the lack of an effective legal protection environment for LGBTQI people and rights defenders.

# SECTION I – GENERAL TRENDS

## 1. Adoption of anti-LGBTQI laws and criminalisation of LGBTQI people and activism

A first identifiable trend in Europe is the adoption of repressive anti-LGBTQI laws. The adoption of these laws is often based on the fight against *“gender ideology”*,<sup>1</sup> which serves as a common denominator for campaigns against women's equality, sex education and the rights of LGBTQI people, such as same-sex marriage. The following sub-sections will provide some examples of these repressive laws.

### 1.1. Banning gender studies

Some States are limiting or prohibiting the provision of gender studies courses in universities, thus posing a significant restriction to academic freedom.

For example, in 2018, the *Hungarian government*<sup>2</sup> banned gender studies from the country's list of accredited university study programmes, arguing that there was no need for graduates in this field in Hungary. Because of the ban, Hungary's only two gender study programmes, offered at the Eötvös Loránd University – the largest state University in the country - and the prestigious private Central European University, were shut down. The *Romanian government*<sup>3</sup> also tried to pass a similar law in 2020. The proposed law prohibited any discussion in educational institutions of the "gender identity theory," which is described as any "theory or opinion that [suggests] gender [as] a concept that is different from the biological sex". However, the *Constitutional Court*<sup>4</sup> declared the law unconstitutional. *Polish authorities*<sup>5</sup> have also declared their intention to table legislation prohibiting the teaching of gender studies at universities. However, no legislative proposals have been put forward yet.

The field of gender studies is an obvious target of illiberal States. In fact, gender studies analyse the construction of gender across historical and cultural contexts and recognise that one's gender can be different from the one assigned to them at birth. In any event, the fight against gender studies for ideological purposes is a false pretext. In many cases, such as the Hungarian one, the gender discourse is depicted as an aberration which endangers children and the youth in general. By building their narrative against the so-called 'gender ideology', repressive governments appeal to the emotions of some sectors

of the society, thus ensuring their political support while promising to act against what is falsely presented as a common enemy.

## 1.2. Banning or criminalising inclusive sex-education

Governments also target the provision of comprehensive sex education courses in schools by adopting anti “LGBT-propaganda laws”. In practice, with these laws, governments prohibit the provision of inclusive sex-education courses or awareness-raising activities, frequently when children or people under 18 are involved.

In 2021 Hungary adopted [\*Act LXXIX\*](#)<sup>6</sup> *on stricter action against paedophile offenders and amendments to certain laws to protect children*. The law prohibits the provision of courses on sex education, biology, natural sciences, or health that mention other than the 'traditional' heterosexual image of the family and introduces criminal penalties for all persons that do otherwise. Moreover, a system of registration and accreditation for NGOs willing to provide sex education courses to minors is introduced, hindering the provision of comprehensive, science-based, and inclusive courses, especially for LGBTQI-led organisations.

The adoption of a similar bill named “*Stop Paedophilia*” was also discussed in [\*Poland\*](#)<sup>7</sup> between 2019 and 2020, but ultimately did not pass. Beyond the false pretext of criminalising paedophilia, the bill, which the [\*European Parliament\*](#)<sup>8</sup> harshly criticised envisaged the introduction of severe penalties, including imprisonment for up to three years, for anyone providing comprehensive and non-discriminatory information on sexuality and sexual orientation to minors. The [\*Croatian\*](#)<sup>9</sup> and [\*Romania\*](#)'s parliaments are also debating whether to adopt a “*ban on exposing children to LGBT propaganda*”.

The adoption of anti “LGBT-propaganda laws” is often based on the false assumption that exposure to comprehensive sex education courses will be detrimental to children’s mental and physical health, particularly by exposing them to a higher risk of becoming victims of paedophilic acts. However, these claims do not find any support in the scientific literature. On the contrary, according to numerous international studies, a truly comprehensive and science-based understanding of sexuality is a positive and fundamental factor for the proper sexual development of children.<sup>10</sup>

### 1.3. Restricting adverts and media content featuring LGBTQI people

Several European governments are also prohibiting or strictly limiting positive and inclusive representations of LGBTQI people and families in advertisements and media content.

Examples of this trend may be found in Hungary. In 2019, Hungary's consumer protection authority **fined**<sup>11</sup> Coca-Cola for featuring a same-sex couple in an advertisement campaign. The proceeding built upon the broadly framed **legislation on advertisement**,<sup>12</sup> which prohibits advertising "*that may harm the physical, mental, emotional or moral development of children and minors*". Proceedings against Coca-Cola have been opened for its **poster campaign #loveislove**,<sup>13</sup> while politicians called for a boycott of the companies, and a citizens' group launched an anti-LGBTQI petition to remove the adverts.

In early 2021, the Hungarian National Media Authority equally **fined RTL Hungary**<sup>14</sup> for broadcasting advertising encouraging recognition of LGBTQI families. The advert came after the late 2020 **anti-LGBTQI reforms**<sup>15</sup> to the Hungarian Constitution and the widespread climate of hostility against LGBTQI people. As in the Coca-Cola case, the Media Authority justified its decision on the false pretext of protecting children.

These two cases are examples of abuses of vague **media legislation**<sup>16</sup> to discourage and, eventually, prohibit featuring LGBTQI material in the media. Actual and threatened restrictions to advertising and media content are a **major strategy to deter media outlets from featuring inclusive content**.<sup>17</sup> For instance, the Hungarian **controversial**<sup>18</sup> media law adopted in 2011 was not enforced against LGBTQI-friendly content until 2020 due to broadcasters' self-censorship of their own content. The goal of such oppressive control over media content thus appears to be to promote a pro-government narrative about sensitive topics and increase the public's perception of a widespread consensus in favour of such discriminatory policies.

Similar approaches can be found in Russia, where the government repeatedly put into action a **strategy of manipulating public opinion**<sup>19</sup> to create a perception of generalised support for its actions.

#### **INFOBOX: MEDIA CAPTURE IN HUNGARY**

The Hungarian media landscape is largely captured<sup>1</sup> and under the control of businesspeople close to Prime Minister Orbán.

This '*circle of friends*' allows the majority party Fidesz to strategically use disinformation and fearmongering campaigns when most relevant to their political agenda. Often before elections and when public support diminishes.

In addition, the Hungarian government monopolised the narrative on LGBTQI rights by abusing the broadly drafted media law: it prohibited and severely fined any featuring of LGBTQI-friendly content while flooding media outlets with hatemongering campaigns against the LGBTQI community accused of promoting deviations and paedophilia against children.

### **1.4. Restricting the rights to marriage and adoption of rainbow families**

The right to marry and adopt of rainbow families is also being restricted. To do so, populist governments rely on the narrative that a family can only be comprised of a man and a woman and that exposing children to other types of families would be detrimental to their wellbeing and personal development. In so doing, they aim to attract the more conservative sectors of the electorate while presenting themselves as protectors of traditional values.

At present, six Member States do not recognise same-sex union, either in the form of marriage or civil unions: Lithuania, Latvia, Poland, Romania, Bulgaria and Slovakia. Moreover, one Member State, Hungary, bans same-sex marriage.

The lack of recognition of same-sex unions negatively affects the possibility of same-sex couples adopting children. This possibility is impossible for couples whose partnership has not been formally, either through marriage or civil union. For instance, in December 2020, the Hungarian Parliament enacted a law that deprives people of the right to adoption unless they are married, which is impossible for same-sex couples. It also made constitutional amendments<sup>20</sup> restricting children's gender identity to their sex assigned at birth, requiring an upbringing based on Hungary's "Christian culture", and institutionalising a heteronormative definition of the family.

While EU law does not oblige<sup>21</sup> Member States to recognise the right to marry or adopt for rainbow families; in some cases, it provides some level of protection.<sup>22</sup> For instance,

Member States must recognise the same-sex spouse of a Union citizen having moved to a Member State other than that of his/her nationality in the exercise of his/her free movement rights<sup>23</sup> irrespective of whether their national legislation recognises same-sex marriage to ensure the right to family reunification (see Infobox on *Coman* case below). Moreover, Member States are obliged to guarantee that registered couples in another Member State enjoy the same level of recognition elsewhere in the EU. This was recently reiterated by the Court of Justice of the European Union in the case *VMA v Stolichna Obsthina*, where the Court held that Member States are required to recognise, for the purposes of EU free movement law, the familial ties established in another EU Member State between a child and her parents who are a same-sex couple. Despite the Court's ruling, some Member States still fail to comply with the judgment. For instance, the **Czech Senate**<sup>24</sup> failed to amend the current legislation that prohibits recognising same-sex joint parental rights acquired via adoption under foreign law.

Once again, depriving rainbow families of their right to equal treatment aims to stigmatise the LGBTQI community and increase the public perception of LGBTQI people as criminals and a threat to children. Consequently, rainbow families feel increasingly threatened and at-risk and may eventually decide to emigrate to a different country.

In addition, such criminalisation and stigmatisation are frequently accompanied by disinformation campaigns against foreign countries which recognise a larger set of rights for the LGBTQI community. In so doing, populist governments manipulate public opinions by presenting themselves as the only protectors of traditional values against degenerative trends taking place elsewhere.

### **INFOBOX: The *Coman* case**

In the *Coman*<sup>7</sup> case of 2018, the Court of Justice of the European Union recognised for the first time that the term 'spouse' is gender-neutral and that, as a consequence, the same-sex spouse of a Union citizen who has moved between Member States should be recognised as 'spouse' to grant family reunification rights under EU law.

The case concerned a Romanian national, Mr Coman, who had married a US national, Mr Hamilton, with whom he lived in Brussels. Upon return to his home country Romania, Mr Coman applied for a residence permit for his husband. However, Romanian authorities rejected his application on the ground that the Romanian civil code described marriage as a union between a man and a woman.

However, the Court of Justice held that the denial was against EU law insofar as it would discourage Union citizens like Mr Coman from exercising their free movement rights for fear that, upon return to their Member State of origin, they could not continue their family life created or strengthened with a third-country national in another Member State.

Therefore, the Court concluded that all Member States are obligated to recognise same-sex marriages celebrated according to the law of another Member State, irrespective of whether they have opened marriage to same-sex couples in their territory. However, such an obligation applies *'for the sole purpose of granting a residence right to a third country national'* who is the spouse of a Union citizen having exercised his/her free movement rights. In other words, Member States remain free to establish in their national law whether or not they intend to recognise the institution of marriage between persons of the same sex, but they are obliged to recognise same-sex spouses when exercising free movement rights.

*Romania, Bulgaria, Hungary*, among other countries continue to refuse to comply with the judgement.

## 1.5. Precluding legal gender recognition of trans, non-binary, intersex identities

An increasing number of Member States do not provide the legal recognition<sup>25</sup> of gender confirmation procedures or impose disproportionate limits and abusive bureaucratic hurdles for people undergoing such procedures. Such burdening procedures are frequently accompanied by campaigns stigmatising the LGBTQI community, particularly trans and non-binary people.

In some Member States (Bulgaria, Cyprus, Lithuania, Latvia and Romania), legal gender confirmation procedures are not laid down in law, and national courts tend to exercise a high degree of discretion in allowing such cases to proceed.

Other Member States regulate the procedure, but they introduce restrictive criteria that make it in practice lengthy, unclear, and less easily accessible. Under some national legislation,<sup>26</sup> individuals must undergo medical treatments to modify their sexual characteristics. For instance, Cyprus requires undergoing surgery and sterilisation and a mental health diagnosis, while Romania also adds hormone treatments as a requirement. The Czech Republic and Slovakia are the most negative examples: both require undergoing surgery, sterilisation, hormone treatments and other medical tests, in addition to receiving a mental health diagnosis.

Additionally, many Member States impose mandatory reflection periods, during which people must wait for a specific amount of time before changing their gender. Such reflection periods make the procedure longer and represent an additional obstacle to respecting LGBTQI people's dignity and right to self-determination.

Another factor of relevance for gender reassignment procedures is the gatekeeping role played by parents or legal guardians throughout the procedure. Poland is unusual in this respect: parents must continue their role as gatekeepers even for those aged over 18. Individuals who wish to change their legal gender marker must sue their parents to 'prove' that they assigned them the wrong gender at birth, with their parents acting as 'defendants'. By imposing a gatekeeper on people aged over 18, Poland deprives LGBTQI people of their legal capability – meaning that they do not recognise LGBTQI people as being mentally fit to understand the nature and consequences of the procedure.

Hungary<sup>27</sup> is by far the worst country in Europe: in 2020, the Parliament passed a law banning people from changing the gender they were assigned at birth on official documents.

## 2. Vetoing or torpedoing EU-wide initiatives aimed at closing LGBTQI rights and gender equality protection gaps

An increasingly emerging trend consists in adopting a no-gender narrative approach at the EU level, fighting against any references to gender equality and sexual minorities in EU's strategies. The EU 27-bloc adopted its *EU Gender Action Plan III*<sup>28</sup> in November 2020. The strategy includes a commitment to mainstream gender issues in all EU policies, particularly in the EU's external relations. This promise sparked *major reactions*<sup>29</sup> from Poland and Hungary during the negotiations, with the two countries stressing their commitment only towards equality between men and women.

Poland and Hungary's attempts to water down the EU's commitment to protecting the fundamental rights of LGBTQI people did not stop there.

In May 2021, *Hungary and Poland's strenuous lobby*<sup>30</sup> led to the EU's removing references to 'gender equality' from an EU's statement on advancing social cohesion in light of the Covid-19 pandemic. The two countries argued that 'gender' is an excessively politicised word. Poland particularly stressed that fighting the need to eliminate the pay gap between men and women should be the EU's priority instead of ensuring respect of fundamental rights for everybody, regardless of their sexual orientation and gender identity.

Similarly, in October 2021, the two countries vetoed the adoption of an EU strategy paper on children's rights. Hungary and Poland firmly opposed and eventually did not sign the document due to a reference to LGBTQI children as being particularly vulnerable. Hungary's justified its opposition in light of its fight against what it calls the 'LGBTQI lobby'. While Hungary and Poland were the only Member States to veto the proposal, *Slovenia*<sup>31</sup> (then holding the EU Presidency) congratulated Hungary.

What may seem a battle over the right word to use is part of a broader and well-known strategy to undermine the LGBTQI community's equality and public perception achievements. Stigmatising the term 'gender' is a widely applied tactic used by anti-LGBT actors. In *Russia*<sup>32</sup> for instance, the battle against LGBTQI rights focused, among other methods, on referring to LGBTQI rights as 'gay propaganda'. Similarly, *Poland*<sup>33</sup> and *Hungary*<sup>34</sup> refer to 'LGBT ideology' or 'LGBT lobby'. The idea behind the use of such terminology is to detach the debate from the sphere of individuals' fundamental rights, thus de-personalising the issue. This "ideology" has been compared to a virus dehumanising both society and young people and accused of fostering and promoting

paedophilia. LGBTQI people have also been portrayed as extremists, hooligans, and violent rebels.

The objective is again that of creating a new enemy against whom a large electorate can converge: it is with no surprise that, in Hungary, the ruling party Fidesz strengthened its anti-LGBT rhetoric during the 2021-2022 election campaign, first by tabling a law **banning comprehensive sex education in schools**<sup>35</sup> and then by proposing an **anti-LGBT referendum**<sup>36</sup> on the same day as the general elections.

### **3. Abusing the lack of LGBTQI rights protections at national level to bring about discriminatory policies**

In a growing number of Member States, arguments against LGBTQI rights are strategically focused on areas of public policies that present legal gaps in the protection of LGBTQI rights. In practical terms, this leads to the adoption of both non-legislative measures (such as public declarations or statements) and laws that indirectly affects the daily life of LGBTQI people. Examples of this kind are found in relation to the work environment, access to the job market and right to education. They aim to discourage LGBTQI people from manifesting their sexual orientation.

For instance, between 2019 and 2020, Polish municipalities adopted **resolutions**<sup>37</sup> against the so-called 'LGBT ideology' portraying LGBTQI individuals as a 'foreign ideology' promoting paedophilia and deviations. Defamatory statements have also been made about **judges**<sup>38</sup> accused of defending LGBTQI people.<sup>39</sup> In Poland, **regional courts**<sup>40</sup> argued that LGBTQI-free resolutions go beyond mere assertions and express the direction taken by the authority which adopted them. In practice, this means that LGBTQI-free resolutions are recognised as official acts of the public authority in the eyes of both public and private employers, which may consider them binding. Moreover, Polish authorities have encouraged homophobia and LGBTQI discrimination in employment on several occasions. For instance, in May 2020, Prosecutor general Zbigniew Ziobro ordered public prosecutors in Warsaw to bring criminal charges against a **human resources manager at IKEA Poland**<sup>41</sup> over the manager's decision to fire an employee who had shared homophobic messages<sup>42</sup>. He also publicly described the "*case [as one] of legal and economic violence against those who do not want to share the values of the pro-LGBTQI activists*".

Similarly, in June 2021, Hungary **restricted LGBTQI rights by law**<sup>43</sup> with the adoption of adopted **Act LXXIX**<sup>44</sup> mentioned in section 1.2 above. The government justified the law

by linking its anti-gay discriminatory and homophobic propaganda to the fight against paedophilia, in practice, equalling LGBTQI people to paedophiles. The Hungarian law impacts both workers and students: both groups may feel discouraged from manifesting their sexual orientation due to the increased stigmatisation and criminalisation of the LGBTQI community.

In some countries, the anti-gay governmental narrative was upheld by courts. For instance, in Hungary, [\*a Budapest court\*](#)<sup>45</sup> endorsed the government narrative by holding that a pro-government newspaper comparing the activities of a pro-LGBTQI-rights NGO to paedophilia did not damage the organisation's reputation.

While Member States that rely on these practices frequently do so for electoral purposes, both cases referred to above directly impact the daily life of LGBTQI workers. LGBTQI-free resolutions and public authorities' statements asking to ban the 'LGBT ideology' from schools and public institutions amount to asking to ban LGBTQI people from said places.

Such powerful statements have the potential not only to intimidate LGBTQI people themselves but also to discourage employers from hiring LGBTQI people due to the fear of possible repercussions and reputational damages. Similarly, the Hungarian law introduces new criminal offences against teachers and headmasters, presenting comprehensive and non-discriminatory views on sexuality and gender to minors. Because of the broad and unclear wording of the law, the mere fact of hiring openly LGBTQI people may lead to criminal proceedings. As in the case of the Polish LGBT-free zones, this law has the potential to intimidate employers, thus making it more and more difficult for LGBTQI people to have access to the job market.

### **INFOBOX: The capture of the judiciary in Eastern Europe**

The increased capture of the judiciary in Eastern Europe exacerbates the problems brought by the abuses of legal loopholes, the adoption of anti-LGBT legislation, and the constant use of discriminatory public statements.

As concerns Poland, the Court of Justice of the European Union has repeatedly held that the Polish judiciary cannot be considered independent anymore due to the different reforms that affected the Constitutional Tribunal,<sup>1</sup> the Supreme Court<sup>1</sup> and its Disciplinary Chamber,<sup>1</sup> the National Council of the Judiciary<sup>1</sup> and some ordinary courts.<sup>1</sup> In essence, the different reforms were all aimed at bringing the judiciary under the control of the government, either by subjecting independent judges to unfair and repeated disciplinary proceedings<sup>1</sup> or simply by substituting undesired judges with pro-government ones. In essence, the different reforms lead to a situation where individuals do not have access to impartial judges anymore, with the emblematic example of constitutional review, which is not guaranteed anymore following the 2015 reform of the Constitutional Tribunal.

In Hungary, the assault against the independence of the judiciary started in 2012 with the reform of the National Judiciary Office (NJO).<sup>1</sup> The reform granted extended and unbalanced powers to the NJO President, elected by the Parliament (where Fidesz has had a solid majority), who has discretion over judges' disciplinary regime, appointments, and cases allocation. However, the Hungarian government's plan to curb judicial independence did not stop there: since 2012, it has been increasingly undermining the independence and legitimacy of the Supreme Court,<sup>1</sup> it has attempted to create a separate judicial system,<sup>1</sup> totally controlled by Fidesz, managed to secure the appointment of a Fidesz-loyal personality<sup>1</sup> as Chief of the Supreme Court, and captured the Constitutional Court,<sup>1</sup> by increasing its dimension and appointing Fidesz-loyal judges.

Undermining judicial independence is a number one priority for authoritarian governments to strengthen their legitimacy vis-à-vis the general public: by controlling courts and rulings, governments secure ruling that benefit their interests while undermining opponents.

# SECTION II – LGTBQI ACTIVISM

## 1. Smear campaigns to discourage citizen support to LGBTQI groups and damage their ability to operate locally

Populist governments stoke anti-LGBTQI sentiments in the name of family values to distract from their anti-democratic power grabs.

These governments often resort to ferocious smear campaigns, depicting LGBTQI human rights defenders and CSOs covering LGBTQI issues as traitors and enemies of the nation who destroy national values and families. As reported by the *European Parliament*,<sup>46</sup> other narratives used to spread disinformation on LGBTQI issues include the depiction of LGBTQI people as a threat to child safety, the use of negative labels (i.e. negative othering), the portrayal of LGBTI+ inclusion as ‘colonialism’ by the liberal West, the opposition to a ‘gender ideology’, ‘heteroactivism’ and the idea that fighting against LGBTQI inclusion is fighting for the re-establishment of the “natural order” as ordained by God.

Smear campaigns originating from governments are often spread with the involvement of government-sponsored media. For instance, in Poland, the state broadcaster participated in the campaign leading to the adoption of the LGBT-free zones by planting moles in Poland's leading LGBTQI group and later airing a *documentary*<sup>47</sup> titled “LGBT Invasion”. In June 2021, the Polish Minister of Education *declared*<sup>48</sup> on state-run news channel TVP Info that the Warsaw Equality Parade was an “outrage against morals” and that “someone who corrupts, promotes deviation does not have the same public rights as someone who doesn’t do it”. Anti-LGBTQI rhetoric was also largely spread during the Polish elections when, as part of his presidential re-election campaign, Poland's President, Andrzej Duda, *vowed*<sup>49</sup> to ban “LGBT ideology”, which he described as being “worse than communism”. Additionally, a privately-owned weekly outlet concluded *a project with the Ministry of Justice*<sup>50</sup> to produce and publish explicitly anti-LGBT content.

Smear campaigns may also stem from private non-State actors, such as religious leaders, ultra-conservative and “anti-gender” organisations or far-right groups. Examples of these types of smear campaigns have occurred in *Latvia*,<sup>51</sup> where a well-known priest and author, Algirdas Toliatas, urged his followers to oppose same-sex partnerships and the Istanbul Convention. In *Bulgaria*,<sup>52</sup> the ratification of the Convention also sparked a smear campaign against women's rights defenders, NGOs working with victims of violence

against women, and LGBTQI individuals and organisations. Similar episodes also occurred during the [Sofia pride of 2021](#),<sup>53</sup> when anti-LGBT leaflets and stickers were distributed, rainbow flags were burnt, and protesters attacked.

**INFOBOX: Foreign influence campaigns**

Disinformation about LGBTQI issues is often spread by foreign actors seeking to interfere with EU politics. As reported in a recent [study](#)<sup>1</sup> commissioned by the European Parliament, identifying divisive social issues such as equal rights for LGBTQI people is a core strategy used by foreign actors to stir friction and disunity between EU Member States. To do so, foreign actors feed the public or a section of the public untrue, deceptive or biased information about LGBTQI people or policies concerning them, which may, in turn, fuel and incite hatred against LGBTQI individuals or the activists and groups defending their rights. The [Russian government](#)<sup>1</sup> is one of the most active actors engaged in this strategy, although it is not alone on the scene: ideologically motivated international actors and/or conservative local actors with similar interests to the Russian government also engage in similar practices to secure their political survival through the monopoly of public discourses.

**INFOBOX on 'Doxing' – leaks in personal data to threaten LGBTI activists**

Doxing is the practice of revealing personal details about activists, such as their names, telephone numbers, photos and home addresses, to the public, usually on the Internet, without their permission. According to the [Venice Commission](#),<sup>1</sup> this dangerous practice is spreading and is aimed at scaring defenders by threatening their safety. For instance, in Russia, a list of names, photos and identifying data about LGBTQI people and prominent LGBTQI human rights defenders was published on a website, together with a call to hunt and kill all those on the list. Following the publication of the list, an activist who appeared on it was [brutally stabbed](#).<sup>1</sup> Although the website has now been closed, it appears no formal investigation on the matter was formally opened.

EU Member States are not immune from such trends. In 2020, women activists engaged in the protests against the Polish abortion ban reported [death threats and hate messages](#)<sup>1</sup> after a [far-right group](#)<sup>1</sup> leaked their personal data online. Following repeated violent episodes, some of them eventually decided not to return to their home and provisionally change residence.

## 2. Using defamation and anti-blasphemy laws to bring criminal charges against LGBT human rights defenders (SLAPPs).

Defamation and anti-blasphemy laws are being strategically misused to bring lawsuits – often referred to as strategic lawsuits against public participation (SLAPPs) - against LGBTQI human rights defenders and LGBTQI CSOs. These lawsuits aim at silencing these entities and dissuading them from their activism by diverting their time and resources to the litigation in court.

For example, in Poland, LGBTQI human rights defenders who drew attention to the anti-LGBT declarations and family charters adopted by some local governments faced defamation lawsuits by ultra-conservative groups. In particular, the authors of the Atlas of Hate, an online map launched tracking which municipalities have adopted anti-LGBT resolutions, are facing seven court cases,<sup>54</sup> launched by the far-right organisation Ordo Iuris.

## 3. Failure to protect LGBTQI right to freedom of assembly

There are multiple threats to the fundamental right to freedom of assembly for LGBTQI activists and people in Europe. Incidents, including physical violence against LGBTQI human rights defenders, are becoming more and more frequent. Such incidents often occur during community events, such as conferences, meet-ups or film projections.

Pride marches are also often targeted. Authorities are trying to ban them in some countries (e.g. Lithuania<sup>55</sup>), arguing that they offend the majority of the population or that the police cannot grant the safety of their participants. Legislative proposals aimed at banning Pride marches are also under discussion. For instance, the Polish Parliament<sup>56</sup> is currently considering adopting the “stop LGBT bill”,<sup>57</sup> which proposes to ban the holding of Pride marches. Yet, the Strasbourg Court has already established in its consistent caselaw that Pride bans constitute a violation of the freedom of assembly.<sup>58</sup>

Police authorities are often unwilling to protect LGBTQI protesters’ right to freedom of assembly. For instance, in Bulgaria, during the Burgas Pride<sup>59</sup> of 2021, the police were present and cordoned off the march but allowed counter-demonstrators to deviate from their planned route, thus failing to protect the Pride participants. In Poland, numerous episodes of arbitrary arrest<sup>60</sup> of pro-LGBTQI rights protesters have occurred, with the police using excessive force.<sup>61</sup> In the Polish city of Legionowo, a police handbook<sup>62</sup>

containing anti-LGBTQI remarks, including the listing of LGBTQI people alongside drug additions, was found.

As reported by the *[Human Rights Commissioner of the Council of Europe](#)*,<sup>63</sup> these episodes lead to a loss of trust in the police, with LGBTI activists no longer reporting threats and violence against them because they do not think it will yield results or for fear of facing prejudice and re-victimisation.

## 4. Limiting access to funding

Access to funds is a particularly critical aspect of the daily activities of LGBTQI-led organisations. Unfortunately, in an increasing number of Member States, CSOs' access to public funding is being restricted.

For instance, *[several NGOs](#)*<sup>64</sup> reported that access to public funds in Hungary is particularly unfair and lacks transparency. CSOs – particularly LGBTQI-led ones – are not directly or explicitly prevented from applying for public funds. However, given the continuous smear campaign and legislative measures against the LGBTQI community and the lack of impartiality in resources allocation, they rarely have a chance to secure grants. In addition, public authorities draft calls for proposals in such a way as to make it nearly impossible for LGBTQI organisations to receive funds, notably by prioritising other policy issues. Even when LGBTQI organisations are successful, they have experienced unlawful rejections and a lack of possibility to challenge the decision.<sup>65</sup>

Lack of transparency in accessing funds is a widespread practice in the EU. Together with restrictive eligibility criteria and discrimination because of the addressed topic, it represents one of the many issues faced by CSOs working on sensitive issues, particularly LGBTQI rights.<sup>66</sup>

In addition, some Member States are increasing control over the disbursement of public and EU funds to CSOs by centralising the allocation system. For instance, in 2017, Poland secured its control over CSOs' access to funds by setting up the *[National Institute of Freedom - Center for Civil Society Development](#)*.<sup>67</sup> The Director and President of the institute, appointed by the Parliament, *[retain major powers](#)*<sup>68</sup> to attribute funds to specific CSOs discretionally.

Such limits to access to public funds shall be considered together with the broader landscape of access to funding for LGBTQI-led organisations.<sup>69</sup> For example, most CSOs

in Europe rely on a limited budget to support their activities, with 68% having an annual budget under 50'000€. In addition, access to core support and multi-year funding (which would allow to develop capacity-building strategies and multi-year planning) are still lacking.

Access to funds is vital to ensure NGOs may exercise their role as democracy watchdogs. By discretionally attributing funds, introducing bureaucratic hurdles or entrusting pro-government agencies with the allocation of funds, government ensure control over which CSOs manage to conduct their activities and shape the civic space to their liking.

# RECOMMENDATIONS

As illustrated in this policy brief, illiberal governments implement various strategies to repress LGBTQI rights and activism. Against this background, significant efforts must be put in place to tackle these trends.

## 1. Implement a joint EU level litigation strategy to protect LGBTQI+ rights

The EU institutions have not fully exploited the mechanisms at their disposal to ensure the actual protection of LGBTQI rights. Although the recent European Parliament resolution<sup>70</sup> declaring the EU as an LGBTIQ Freedom Zone and the European Commission's strategy<sup>71</sup> for equal treatment of LGBTIQ are significant steps forward, they are not enough. Concrete steps and advancements in the safeguard of LGBTQI rights in the EU must be taken, for instance, by developing a joint EU level litigation strategy to protect LGBTQI rights. The diplomatic statement adopted by 14 Member States in May 2021 on the protection of LGBTQI persons in the European Union represents a good starting point in this direction,<sup>72</sup> which should be quickly followed by concrete actions.

**INFOBOX:**

[RECLAIM's legal opinions on Polish LGBT-free zones](#)

**LEGAL OPINION**

POLAND'S 2019-2022 LGBTQ+ FREEZONES



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**INFOBOX:**

[RECLAIM's legal opinion on Hungary 2021 law](#)

**LEGAL OPINION**

HUNGARY'S 2021 GAY "PROPAGANDA" LAW



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[ILGA complaint on Coman case in Hungary](#)

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## **2. Hold Member States accountable for violations of LGBTQI rights through the launch of infringement proceedings and enforce the rule of Law Conditionality Regulation to prevent misuse of EU funds**

The European Commission should hold Member States that violate LGBTQI rights accountable by promptly launching infringement proceedings. In this respect, the European Commission should proceed further in the ***infringement action***<sup>73</sup> it launched against Poland and Hungary in July 2021 for failure to fully and appropriately respond to its inquiry regarding the “LGBT free zones” and for adopting Act LXXIX posing restrictions to media pluralism, respectively.

Moreover, the Commission should quickly implement the recently adopted ***Rule of Law Conditionality Regulation***<sup>74</sup> to ensure that EU funds do not support projects that violate LGBTQI rights.

### **CASE STUDY BOX: EU FUNDS TO THE EDUCATION SECTOR IN HUNGARY**

Under the ***2014-2020***<sup>1</sup> EU funding programme, Hungary received more than €27 billion from the European Social Fund (ESF). Hungary will benefit again from such resources in the 2021-2027 funding period. The ESF supports initiatives aimed at, among others, strengthening social inclusion and improving education. In light of Hungary's 2021 anti-LGBT law banning inclusive sex education and health courses in schools, the EU should consider suspending funds regarding those projects where respect for LGBTQI rights is not guaranteed and proactively protected.

## **3. Close existing legal loopholes at EU level to foster the creation of an enabling space for LGBTQI advocates and NGOs**

EU institutions should create an **enabling space for LGBTQI people and advocates** by creating an EU-wide regulatory environment and an overarching policy framework to protect and promote the right to freedom of association. To do so, existing legal loopholes must be readily addressed.

First, EU institutions should urgently pass **the Horizontal Discrimination Directive**, which has been blocked in the Council for over ten years. Indeed, as EU legislation currently stands, discrimination on the grounds of sexual orientation is only protected in the context of employment, thus leaving LGBTQI people particularly vulnerable in the fields

of social protection, including social security and healthcare, education and access to goods and services, including housing.

Second, the promised *anti-SLAPP EU Directive*<sup>75</sup> should be quickly adopted to prevent aspiring authoritarian governments and authoritarian groups succeed in silencing LGBTQI advocates. This is imperative, given that at present, no EU Member State has enacted rules to provide protection against SLAPPS. For the purposes of the development of such a Directive, useful insights can be found in the *Model Anti-SLAPP Directive*,<sup>76</sup> which more than 80 NGOs have endorsed.

Third, the Commission should speed up the procedure for the adoption of its proposal for a *Regulation on the recognition of parenthood between Member States*.<sup>77</sup> The Parliament should put pressure on the Council to ensure that the final Regulation includes rainbow families to guarantee that the right to private and family life and the child's best interests are preserved.

Finally, EU institutions should take the lead in protecting human rights activists' right to protest and create an **EU-wide standard of police accountability** for individual police officers and enforcement agencies. In particular, the European Commission should table a proposal for a Council Recommendation on human rights standards for law enforcement and police authorities. It should build upon *international standards*<sup>78</sup> for law enforcement authorities to uphold *the right to protest*,<sup>79</sup> e.g., by suggesting the development of proper police training and effective accountability for police forces.

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