

LEGAL OPINION

BULGARIA'S 2024 LAW BANNING THE DEPICTION OF LGBTQI+ LOVE IN SCHOOLS



Legal Opinion

On the compatibility of the Bulgarian Law on amending the Pre-school and School Education Act (Decree No. 199 of 15 August 2024)

with EU primary and secondary law

[January 2025]

This document is the second version of the Legal Opinion first published in September 2024. This version includes:

- A more detailed legal argumentation on the law's breaches of the Common Provisions Regulation.
- Updates on the implementation of the law and more detailed information of LGBTIQ+ children harassment in Bulgaria.
- Minor editorial changes.

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Executive summary and recommendations

This executive summary distils the key findings of our comprehensive legal opinion regarding the Bulgarian Law on amending the Pre-school and School Education Act (Decree No. 199 of 15 August 2024) (the 'Don't Say Gay law'¹ or 'the Law').

The law bans any reference to LGBTIQ+ people in the education system and is similar to the Hungarian 2021 anti-LGBTIQ+ law, which the European Commission, the European Parliament, and 16 EU Member States challenged before the CJEU – recognizing that it marginalized LGBTIQ+ people and violated Article 2 of the TEU. A ruling on that case is expected by mid-2025. EUR 700 million in EU cohesion funding were also temporarily blocked pending its repeal.

The EU must respond with the same robust opposition, ensuring that the political affiliation of those responsible for adopting the Law does not weaken its response. The need for strong, coherent action is underscored by the spread of similar bills in Member States like Slovakia² or candidate countries like Georgia.³

Specifically, this legal opinion:

- Provides a short overview of the situation of LGBTIQ+ rights in Bulgaria, a country that defies ECtHR and CJEU LGBTIQ+ rights case-law (Section [INTRO](#))
- Explains how the Don't Say Gay law breaches the EU internal market freedoms and EU Charter of Fundamental Rights. In particular, the Law...
 - Hampers the cross-border provision of educational goods and services with LGBTIQ+ content (Section [1.2](#))
 - Introduces a discrimination on the basis of sexual orientation against LGBTIQ+ educators that breaches the Employment Equality Directive (Section [1.3](#))
 - Introduces a discrimination on the basis of gender reassignment against trans educators that breaches the Gender Equality in Employment and Occupation Directive (Section [1.4](#))
 - Blatantly breaches several fundamental rights, notably:
 - The rights to private and family life, children's rights and human dignity of LGBTIQ+ children in Bulgaria, whose personality will be censored and who will grow in an environment of state-sponsored stigmatisation (Section [1.5.1](#))
 - The rights to education read in light of the prohibition against discrimination, since the Bulgarian education system promotes discrimination against LGBTIQ+ people (Section [1.5.2](#))

¹ Terminology used by Bulgarian civil society.

² Natália Silenská, 'Slovak National Party Pushes Anti-LGBTI+ School Bill, Echoing Hungarian Controversy' *Euractiv* (6 September 2024).

³

- The right to freedom of expression and academic freedom of children and educators, denying access to scientific truth (Section 1.5.3)
 - Causes such an irreparable damage that, when challenged by the European Commission before the CJEU, it should be suspended through interim measures (Section 1.6)
- Explains how the Law breaches the conditionality regime of cohesion funding, in particular the conditions related to compliance with CFREU (Section 2)
- Identifies the quantities that should be blocked for the country as a result of the breach of the rules on funding conditionality (Annex I)

In light of the above, RECLAIM urges the European Commission to:

- Initiate an infringement procedure against the Law as well as against Bulgaria's systematic non implementation of the CJEU's case law on the rights of LGBTIQ+ families.
- Request interim measures to suspend the application of the Don't Say Gay law, to avoid the irreparable damage that these laws have caused in other Member States.
- Block the EUR 656,027,797.27 of ERDF and ESF+ funding identified in [Annex I](#) until the law is repealed.

Additionally, Member States are encouraged to:

- Back a Commission action –as they already did with the Hungarian anti-LGBTIQ+ law– or lodge their own for Bulgaria's breach of EU law pursuant to Article 259 TFEU.

The situation of LGBTIQ+ people in Bulgaria

- Bulgaria is the Member State with the highest rate of LGBTIQ+ discrimination in the EU, according to the European Union Agency for Fundamental Rights (FRA). 50% of LGBTIQ+ individuals surveyed by FRA reported suffering discrimination in 2023, while 39% of the surveyed by Bilitis reported having had difficulty finding a job.⁴
- Children are bearing the brunt. Prior to the law's entry into force, 70% of Bulgarian LGBTIQ+ students experienced verbal harassment, one-third faced physical harassment, and one-fifth had been assaulted at school.⁵ The introduction of this law is expected to aggravate the situation and reduce the availability of help, as seen in Russia and other countries where similar legislation has been implemented.
- The LGBTIQ+ community is the target of frequent smear campaigns and prosecution. That includes campaigns from political parties, notably the Bulgarian Socialist Party and the Revival party,⁶ or investigations by the prosecutor's office or the Ministry of Interior.⁷
- Bulgaria does not recognise any type of same sex union, either in the form of marriage or civil unions, contrary to ECtHR and CJEU case-law.⁸
- Bulgaria's Supreme Court has openly defied CJEU ruling, denying citizenship to the child of a same-sex couple. In *Pancharevo*⁹ (also known as the 'Baby Sara' case), a CJEU judgment on a Bulgarian case, the Court ruled that Member States must recognise the birth certificates that designate a same sex couple as the parents of the child. Nonetheless, the Bulgarian Supreme Court has refused such recognition and denied citizenship to Baby Sara, condemning her to statelessness – in violation of her EU rights as well as those of her mums.¹⁰
- Bulgaria's constitutional court has barred legal gender recognition, violating the case-law of the European Court of Human Rights¹¹ and the right to data rectification of Article 16 GDPR.

Despite the systematic non-implementation of ECtHR and CJEU judgements by Bulgaria and the deterioration of the country's track record on LGBTIQ rights, the European Commission has not initiated infringement procedures against the country.

⁴ European Union Agency for Fundamental Rights, 'LGBTIQ Equality at Crossroads: Progress and Challenges' (2024), pp 33 and 38; ILGA Europe, 'Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People 2023' (2024), Bulgaria review.

⁵ Single Step Foundation, Bilitis Resource Center Foundation (2020), Attitudes towards LGBTI Students in Bulgarian schools.

⁶ ILGA Europe (n 4), Bulgaria review; Katerina Vasileva, 'Bulgarian Teachers Say They Face Threats For Opposing Anti-LGBT "Propaganda In School" Law' *RadioFreeEurope* (24 August 2024).

⁷ 'Sofia Pride: Investigation at Request of People Close to Bulgarian Socialist Party Is Harassment' *The Sofia Globe* (11 August 2023).

⁸ ECtHR *Fedotova and others v Russia*, Applications no. 40792/10 and 2 others [2023] ECLI:CE:ECHR:2023:0117JUD004079210 Case C-673/16 *Coman* [2018] ECLI:EU:C:2018:385.

⁹ Case C-490/20 *Pancharevo* [2021] ECLI:EU:C:2021:1008.

¹⁰ 'Bulgaria's Supreme Court Rejects Baby Sara's Bulgarian Citizenship' (*ILGA Europe*, 2 March 2023) <<https://www.ilga-europe.org/news/bulgarias-supreme-court-rejects-baby-saras-bulgarian-citizenship/>>

¹¹ Teodora Petrova, 'Value Judgments: The Dangers of the "Traditionalist" Rhetoric of the Bulgarian Constitutional Court' (*VerfBlog*, 5 November 2021) <<https://verfassungsblog.de/value-judgments/>>; ECtHR *P.H. v Bulgaria*, Application no. 46509/20 [2022] ECLI:CE:ECHR:2022:0927JUD004650920; ECtHR *Y.T. v Bulgaria*, Application no. 41701/16 [2024] ECLI:CE:ECHR:2024:0704JUD004170116.

1. The Don't Say Gay law is incompatible with the EU internal market freedoms and the EU Charter of Fundamental Rights

1.1. CONTENT OF THE LAW

1. The Bulgarian Parliament adopted on August 7, 2024, the Law on amending the Pre-school and School Education Act, signed by the Bulgarian president by Decree No. 199 and published in the Official Gazette on 16 August of the same year.
2. The law bans “[c]onducting propaganda, promotion or incitement in any way, directly or indirectly, of ideas and views related to non-traditional sexual orientation and/or determination of gender identity other than the biological” in the pre-school and school education systems.¹² Those systems are made up of the participants in the education process (children, teachers, headmasters, educationalists and parents) and the institutions (kindergartens, schools, personality development support centres and specialised auxiliary units).¹³ The Don't Say Gay law later defines non-traditional sexual orientation as “a different from the generally accepted and enshrined in the Bulgarian legal tradition concept of emotional, romantic, sexual or sensual attraction between persons of opposite sexes”.
3. According to the motives of the Law, it seeks to combat the “unacceptable model of normalization of non-traditional sexual orientation, especially considering the severe demographic crisis in Bulgaria” and bans LGBTIQ+ “propaganda” in schools since adolescents are more susceptible to it “due to the inability to form an independent and objective judgment about the information they receive”. The motives also argue that the Don't Say Gay law will have “a positive impact and in the direction of strengthening the traditional basic Christian family values, love and respect in the family, kinship and relations between generations”.
4. The prohibition uses broad and unclear terms. It does not define what *propaganda*, *promotion* nor *incitement* of non-heterosexual orientation or gender identity is, neither in its *direct* nor in its *indirect* form. The formulation is akin to that of the Hungarian anti-LGBTIQ+ law, whose vague terms were criticised by the Venice Commission¹⁴ and whose application has indeed resulted in widespread self-censorship in schools.¹⁵ According to the leading Hungarian LGTBIQ+ NGO, Háttér Society:

“The vague formulation of the provisions, the fact that even government officials cannot define what constitutes propagation results in extensive caution and self-censorship from those who come within the scope of the ban. [...] The amendment to the National Public Education Act practically made every discussion on sexuality, sexual orientation and gender diversity disappear from schools: it is unclear for teachers, school psychologist and other professionals working with

¹² Translation by the Bulgarian Helsinki Committee of the Don't Say Gay Law (the full document can be accessed [here](#)).

¹³ Pre-school and School Education Act (State Gazette No. 79 of 13 October 2015).

¹⁴ Council of Europe Venice Commission, ‘Opinion No.1059 / 2021 on the Compatibility with International Human Rights Standards of Act LXXIX Amending Certain Acts for the Protection of Children’ (2021).

¹⁵ Amnesty International, ‘From Freedom to Censorship: The Consequences of the Hungarian Propaganda Law’ (2024).

children what they can openly share, teach or discuss in schools, and thus they rather refrain from touching upon anything that could potentially [fall] within the scope of the anti-LGBTQI law.”¹⁶

5. In a similar fashion, the broadness and ambiguity of the Bulgarian Don't Say Gay law means, in practice, a total ban on any content related to LGBTIQ+ sexual and romantic orientation and gender identity and expression in Bulgarian schools. And, like the Hungarian anti-LGBTIQ+ law—challenged by the European Commission before the CJEU¹⁷—the Bulgarian Don't Say Gay law is incompatible with EU law.

1.2. THE LAW HINDERS ACCESS TO THE BULGARIAN EDUCATIONAL MARKET OF GOODS AND SERVICES

6. The TFEU prohibits Member States from introducing restrictions to the intra-European movement of goods (as per Articles 34 and 35 TFEU), services (Article 56 TFEU) and workers (Article 45 TFEU).
7. According to settled case-law of the Court, the abovementioned provisions mean that Member States cannot discriminate the goods, services and persons coming from other Member States. That includes both direct and indirect discrimination – that is, those measures that are apparently neutral but that, in practice, essentially affect the goods, services and persons of other Member States.¹⁸ Furthermore, the internal market freedoms do not allow the Member States to introduce measures which dissuade their exercise or that hinder access to their markets to the nationals of other Member States.¹⁹ As clarified in *Italian trailers*, a ban on the use of a product can dissuade from the exercise of internal market freedoms, insofar as there will not be demand for those products.²⁰
8. In the absence of harmonisation, Member States may justify restrictions to the free movements but only insofar as (i) they pursue overriding reasons of general interest and given that (ii) the measures are suitable for attaining such objective and (iii) do not go beyond what is necessary to achieve it.²¹ The Court also clarified in *Carpenter* that derogations from the freedoms can be justified only as long as they respect fundamental rights.²² The Court has also recognised that any derogation from the internal market freedoms need to use objective and specific criteria that are known in advance to all persons concerned, to prevent national authorities from exercising their discretion arbitrarily.²³ Hence, a restriction of the

¹⁶ Hättér Society, 'Report on Act LXXIX of 2021 Amending Certain Acts for the Protection of Children and Its Implementation' (2023) <https://en.hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-anti-lgbtqi-law-november-2023_1.pdf>, pp 26-27.

¹⁷ Case C-769/22 Commission v Hungary (anti-LGBTIQ+ law) [Pending].

¹⁸ Case C-437/17 Gemeinsamer Betriebsrat EurothermenResort Bad Schallerbach [2019] ECLI:EU:C:2019:193, paras 18-19; Case C-591/17 Austria v Germany [2019] ECLI:EU:C:2019:504, paras 40-42.

¹⁹ Case C-341/05 Laval [2007] ECLI:EU:C:2007:809, paras 98-99; Case C-110/05 Commission v Italy (trailers) [2009] ECLI:EU:C:2009:66, paras 56-57; Case C-78/18 Commission v Hungary (transparency of associations) [2020] ECLI:EU:C:2020:476, paras 52-53.

²⁰ Case C-110/05 Commission v Italy (trailers) [2009] ECLI:EU:C:2009:66, para 57.

²¹ *ibid*, para 59.

²² Case C-60/00 Carpenter [2002] ECLI:EU:C:2002:434, paras 40-41.

²³ Case C-777/18 Megyei Kormányhivatal [2020] ECLI:EU:C:2020:745, para 62.

internal market freedoms that is legally uncertain is also incompatible with free movement rights.

9. In the case at hand, the Don't Say Gay law restricts the abovementioned internal market freedoms, in particular goods, services and workers:
 - **Goods:** The ban imposed by the Law hinders access to the Bulgarian market to textbooks and other educational materials aimed at individuals under 18 which contain LGBTIQ+ content. Similar to the *Italian trailers* case, the ban on such content in the education system – the primary and essential market for these materials – severely undermines any potential demand for these books, even if they remained available for purchase.
 - **Services:** the ban impedes the provision of inclusive sex-education related courses in the country, also prohibiting providers established in a Member State other than Bulgaria from exercising such activity in Bulgaria.
 - **Workers:** as we will address in Sections 1.3 and 1.4 below, the Law breaches both the Employment Equality Directive and the Gender Equality in Employment and Occupation Directive.
10. For goods and services, there is no harmonisation in the field of educational programmes and materials at EU level. Hence, Bulgaria could derogate from those internal market freedoms but only if its measures pursued an overriding reason of general interest, were suitable to attain such interest and did not go beyond what is necessary to attain it. However, the Don't Say Gay law does not meet any of the three criteria.
11. First and foremost, because the Law does not pursue an overriding reason of general interest. According to the motives of the Don't Say Gay law, it seeks to prevent the social acceptance of LGBTIQ+ sexual orientation and gender identity by censoring any mention to their existence in schools since adolescents cannot "*form an independent and objective judgment about the information they receive*".
12. Fighting the social acceptance of LGBTIQ+ people cannot be legitimate in a Member State that is bound to respect, as enshrined in Article 2 TEU, the values of human dignity, equality, non-discrimination and respect for the rights of persons belonging to minorities. In fact, guaranteeing the full integration and respect of LGBTIQ+ people is what states *should* do in a Union that combats discrimination on the basis of sexual orientation or gender identity as mandated by Article 10 TFEU. In fact, the European Court of Human Rights (hereafter 'ECtHR') has explicitly stated that restrictions on children's access to information about same-sex relationships that are merely based on sexual orientation—without any other reasons to consider that information harmful to their growth—do not serve a legitimate aim.²⁴

²⁴ ECtHR *Macaté v Lithuania*, Application no. 61435/19 [2023] ECLI:CE:ECHR:2023:0123JUD006143519, para 216.

13. Even in a misguided scenario where the Law was considered as seeking the protection of children, the Don't Say Gay law would be unsuitable to attain it. There is no reliable scientific evidence that exposure to non-heterosexual content harms children; rather to the contrary, comprehensive sex education supports their healthy sexual development and can help to fight "*harassment, stigmatisation, discrimination and harm*" of LGBTIQ+ children.²⁵ Comprehensive and inclusive sexuality education has been found to lead to increased rates of condom and contraception use and lower rates of sexually transmitted diseases, sexual and dating violence and mental health problems, like depression and suicide.²⁶ Sexuality education is particularly relevant for LGBTIQ+ individuals, who face significantly larger risks of suicide, anxiety, depression and substance abuse, as well as higher infection rates of sexually transmitted diseases compared to heterosexual individuals.²⁷
14. Therefore, the Law is likely to damage the children's sexual development by depriving them of a truly comprehensive and science-based understanding of sexuality which is, according to numerous international studies, a positive and fundamental factor for the proper sexual development of children, as well as for their physical and mental wellbeing.²⁸ Therefore, the Law does the exact opposite of protecting children: it seriously threatens children's physical and mental health. In fact, anti-LGBTIQ+ laws similar to the Bulgarian Don't Say Gay law have been criticised by paediatricians.²⁹
15. Last, as we will analyse in Section 1.5 below, the Law causes a disproportionate impact on the other interests at stake, namely the fundamental rights of children and educators.
16. Therefore, since the Don't Say Gay law derogates from the internal market free movement of goods and services without pursuing an overriding reason of general interest, it breaches Articles 34, 56 and 45 TFEU.

²⁵ Nicole Haberland and Deborah Rogow, 'Sexuality Education: Emerging Trends in Evidence and Practice' (2015) 56 *Journal of Adolescent Health*; UNESCO, 'International Technical Guidance on Sexuality Education: An Evidence-Informed Approach' (2018); United Nations Population Fund, 'Out-Of-School Comprehensive Sexuality Education: An Evidence-Informed Approach' (2020).

²⁶ UNESCO (n 25), pp 28-30; Rebekah Rollston, 'Comprehensive Sex Education as Violence Prevention' (29 May 2020) <<https://info.primarycare.hms.harvard.edu/perspectives/articles/sexual-education-violence-prevention>>.

²⁷ Victor and Madrigal-Borloz, 'Report of the Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity' (Human Rights Council 2022), pp 11 and 12.

²⁸ Nicole Haberland and Deborah Rogow (n 25); UNESCO (n 25); United Nations Population Fund (n 25).

²⁹ Daniel E. Shumer, Lisa H. Harris, and Valerie P. Opiari, 'The Effect of Lesbian, Gay, Bisexual, and Transgender-Related Legislation on Children' (2016) 178 *The Journal of Pediatrics*.

1.3. THE LAW VIOLATES THE EMPLOYMENT EQUALITY DIRECTIVE

17. The Don't Say Gay law introduces a discrimination in employment for LGBTIQ+ educators which is prohibited by the Employment Equality Directive.³⁰
18. Pursuant to Articles 2 and 3 of the said directive, discrimination on the basis of sexual orientation in employment and occupation in both the public and private sectors is prohibited. Such prohibition includes indirect discrimination, whereby *"an apparently neutral provision, criterion or practice would put persons having a particular [...] sexual orientation at a particular disadvantage compared with other persons"*, unless the measure is objectively justified by a legitimate aim and is proportional. That prohibition covers from the conditions for access to employment to working conditions or membership to a workers' organisation. The Court has recognised the Employment Equality Directive as a specific expression of the general prohibition against discrimination enshrined in Article 21 CFREU.³¹
19. The CJEU clarified in *Associazione Avvocatura per i diritti LGBTI* that statements made by a person other than the employer can cause an indirect discrimination in access to employment.³² To evaluate if discrimination existed, it examined whether the person making the statements could exert an influence on the recruitment process as well as the context, nature and publicity of the statements.³³
20. The Don't Say Gay law indirectly discriminates on the basis of sexual orientation. Even though, apparently, it does not affect the employment of LGBTIQ+ persons, the lack of legal certainty on the Law's terms and enforcement is very likely to impact the recruitment policy of headmasters.
21. In the case at hand, the discrimination is not caused simply by statements, but rather by a measure binding in the entire education system and aimed at stopping the social inclusion of LGBTIQ+ identities. It does so by preventing the children's exposure *"in any way, directly or indirectly"* to *"ideas and views related to nontraditional sexual orientation and/or gender identity other than the biological one"*. In fact, a member of the Bulgarian party who introduced the bill said he would provide the prosecutor's office with a list of 800 teachers on the claim that they were criminals who wanted to *"push homosexual propaganda"*.³⁴
22. The ambiguous provisions of the Law, read in light of its recitals and its context, will make headmasters fear prosecution for exposing children to anything related to LGBTIQ+ people – including, notably, LGBTIQ+ educators themselves. This will inevitably influence their recruitment policies and employment conditions. Faced with the legal uncertainty and potential for arbitrary enforcement of the Don't Say Gay law, the safest choice for headmasters will be not to employ LGBTIQ+ educators – or, if they are already on staff, minimise the lectures they can impart.

³⁰ Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L 303 (Employment Equality Directive).

³¹ Case C-507/18 *Associazione Avvocatura per i diritti LGBTI* [2020] ECLI:EU:C:2020:289, para 38.

³² *ibid*, paras 40-46.

³³ *ibid*, paras 44-46.

³⁴ Katerina Vasileva (n 6).

23. Such a serious discrimination on the basis of sexual orientation is not objectively justified by a legitimate aim (see paragraphs 12 to 15 above) and, hence, blatantly violates Article 2 of the Employment Equality Directive.

1.4. THE LAW VIOLATES THE GENDER EQUALITY IN EMPLOYMENT AND OCCUPATION DIRECTIVE

24. The Don't Say Gay law discriminates against educators who underwent gender reassignment, hence violating the Gender Equality in Employment and Occupation Directive.³⁵

25. Pursuant to Article 1 of the said directive, women and men must receive equal opportunities and treatment in matters of employment and occupation. The directive prohibits both direct and indirect discrimination based on sex in a range of areas from hiring and promotions to working conditions and occupational social security schemes.³⁶

26. The CJEU clarified in *Richards* that the directive that (then) precluded discrimination between men and women in matters of social security also barred discrimination on the grounds of the person having undergone gender reassignment.³⁷ That case law, which was also present in matters related to employment and pay,³⁸ was made explicit in Recital 3 of the Gender Equality in Employment and Occupation Directive.

27. As argued in Section 1.3 above, the lack of legal certainty regarding the Don't Say Gay Law's terms and its potential for arbitrary enforcement will result in a less favourable treatment in access to employment and working conditions for educators who have undergone gender reassignment.

28. Such discrimination on the basis of gender reassignment violates the Gender Equality in Employment and Occupation Directive.

1.5. THE LAW VIOLATES THE EU CHARTER OF FUNDAMENTAL RIGHTS

29. As explained in Sections 1.2 and 1.3 above, the Law violates internal market freedoms, the Employment Equality Directive and the Gender Equality in Employment and Occupation Directive, hence falling under the scope of EU law and making the EU Charter of Fundamental Rights ('CFREU' or the 'Charter') applicable.³⁹

30. According to Article 52(1) of the Charter, the rights provided for by the Charter can be limited given that those limitations are (i) provided by law, (ii) genuinely meet an objective of general interest recognised by the Union or the need to protect the

³⁵ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L 204/23 (Gender Equality in Employment and Occupation Directive).

³⁶ Articles 4, 5 and 14 Gender Equality in Employment and Occupation Directive,

³⁷ Case C-423/04 *Richards* [2006] ECLI:EU:C:2006:256, para 30.

³⁸ Case C-117/01 *K.B.* [2004] ECLI:EU:C:2004:7, paras 33 and 34.

³⁹ As recalled by the Court in *Pfleger*, when Member States adopt measures that restrict the internal market freedoms, those measures must be regarded as implementing Union law within the meaning of Article 51(1) CFREU. See Case C-390/12 *Pfleger* [2014] ECLI:EU:C:2014:281, para 35.

rights and freedoms of others, (iii) are necessary and proportionate to meet those objectives and (iv) respect the essence of the right.

31. As per Article 52(3) CFREU, when the rights of the Charter correspond to those of the European Convention of Human Rights ('ECHR'), the meaning and scope of those rights shall be the same. Therefore, the case-law of the ECtHR also provides guidance to interpret the Charter.
32. Through the coming sections we will examine whether the Law, when restricting the rights provided for by Union law, also interferes with fundamental rights.

1.5.1. The Law violates the rights to private and family life, the rights of the child, and human dignity

33. Article 7 CFREU, which corresponds to Article 8 ECHR,⁴⁰ enshrines the right to private and family life. That concept covers the person's physical and moral integrity, including their sexual life and orientation as well as their gender identity.⁴¹ The right also protects the "*development, without outside interference, of the personality of each individual in his relations with other human beings*".⁴²
34. The ECtHR recognised in *Budinova and Chaprazov v Bulgaria* that statements or campaigns against a particular social group – in that case, discriminatory speech against the Roma community – can affect the private life of the members of such group when, among other things, that group is vulnerable and the statements portray negative stereotypes, taking into account their context, reach, the position of the author and the extent to which the attack affects core aspects of the group's identity and dignity.⁴³ In *Macaté v Lithuania* the ECtHR highlighted that measures that restrict information to children on LGBTIQ+ matters demonstrate that the authorities see LGBTIQ+ families and relationships as less socially acceptable, thereby contributing to their stigmatisation.⁴⁴ Similarly, in *Bayev and others v Russia*, the ECtHR argued that anti-LGBTIQ+ propaganda laws reinforce stigma encourage homophobia, thus being "*incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society*".⁴⁵
35. Pursuant to Article 1 CFREU, human dignity is inviolable and shall be protected and respected. Article 24 CFREU – which is based on the UN Convention of the Rights of the Child (CRC)⁴⁶ – enshrines the rights of the child, who shall be protected and

⁴⁰ Case C-78/18 Commission v Hungary (transparency of associations) [2020] ECLI:EU:C:2020:476, para 122.

⁴¹ ECtHR X and Y v The Netherlands, Application no. 8978/80 [1985] ECLI:CE:ECHR:1985:0326JUD000897880, para 22; ECtHR Sousa Goucha v Portugal, Application no. 70434/12 [2016] ECLI:CE:ECHR:2016:0322JUD007043412, paras 23 and 27.

⁴² ECtHR Von Hannover v Germany, Application no. 59320/00 [2004] ECLI:CE:ECHR:2004:0624JUD005932000, para 50.

⁴³ ECtHR Budinova and Chaprazov v Bulgaria, Application no. 12567/13 [2021] ECLI:CE:ECHR:2021:0216JUD001256713, paras 60 and 63.

⁴⁴ ECtHR Macaté v Lithuania, Application no. 61435/19 [2023] ECLI:CE:ECHR:2023:0123JUD006143519, para 215.

⁴⁵ ECtHR Bayev and others v Russia, Applications nos. 67667/09 and 2 others [2017] ECLI:CE:ECHR:2017:0620JUD006766709, para 83.

⁴⁶ Explanations relating to the Charter of Fundamental Rights [2007] OJ C303/17, Explanation to Article 24.

their best interests taken as a primary consideration. According to the UN Committee of the Rights of the Child, one of the elements to consider when assessing the best interests of the child includes the preservation of their identity as protected by Article 8 CRC, which covers their sexual orientation and personality.⁴⁷ In that regard, the said committee has argued that the country's cultural identity does not justify the perpetuation of traditions or values that undermine children's rights.⁴⁸

36. The adoption of the Don't Say Gay law is a frontal attack against the rights of the Bulgarian LGBTIQ+ community's private and family life and dignity and was adopted in an encroachment of the rights of the child.
37. The case at hand is not about mere discriminatory speech, but rather about a legislative measure that considers the LGBTIQ+ persons as unnatural, perverted and deserving censorship at schools. It is about the national parliament, with the authority of the state, perpetuating negative stereotypes of LGBTIQ+ adolescents which, as the UN Committee on the Rights of the Child recognises,⁴⁹ are a vulnerable community due to their very own identity as non-heterosexual and non-cisgender. The Don't Say Gay law is such a serious assault against the free development of the personality of the members of the LGBTIQ+ community that is incompatible with their human dignity.
38. The law affects particularly LGBTIQ+ children, who see one of the traits of their identity socially rejected and repressed. The Law was adopted, precisely, against those children's best interests, who will be deprived from growing in a safe environment, free from stigmatisation.
39. As a result, the Don't Say Gay law breaches Articles 1, 7 and 24 CFREU, read in light of Article 8 ECHR and the CRC.

1.5.2. The Law breaches the right to education and the prohibition of discrimination

40. Pursuant to Article 14 CFREU – which corresponds with Article 2 of Protocol 1 ECHR⁵⁰ – everyone has the right to education, whereas Article 21 CFREU – aligned with Article 14 ECHR – bans any discrimination on the basis sexual orientation.
41. The ECtHR has interpreted the right to education in light of the right to non-discrimination, arguing that *"democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position"*⁵¹ and

⁴⁷ UN Committee on the Rights of the Child, 'General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (Art. 3, Para. 1), CRC /C/GC/14' (2013), p 13.

⁴⁸ *ibid*, p 14.

⁴⁹ United Nations Committee on the Rights of the Child, 'General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence' (2016) CRC/C/GC/20, pp 9-10.

⁵⁰ Explanations relating to the Charter of Fundamental Rights [2007] OJ C303/17, Explanations on Article 14.

⁵¹ ECtHR *Folgerø and others v Norway*, Application no. 15472/02 [2007] ECLI:CE:ECHR:2007:0629JUD001547202, para 84.

considered “*inclusive education as the most appropriate means of guaranteeing the aforementioned fundamental principles*”.⁵²

42. The ECtHR has recognised that there can be several conflicting interests in the field of education and, in particular, in that of sex education. However, as the court recognised in *Bayev and others v Russia*, “*where parental views, educational policies and the right of third parties to freedom of expression must be balanced, the authorities have no choice but to resort to the criteria of objectivity, pluralism, scientific accuracy and, ultimately, the usefulness of a particular type of information to the young audience*”. This jurisprudence was recently reinforced in *Macaté v Lithuania* (2023).⁵³
43. The ECtHR has also made clear that the parent’s rights to have their children educated in line of their convictions is not violated by the provision of sexual education aimed at providing children with “*knowledge of biological, ethical, social and cultural aspects of sexuality according to their age and maturity*”. The court argued that such sexual education shall “*encourage tolerance between human beings irrespective of their sexual orientation and identity*”.⁵⁴
44. Furthermore, Member States should not incur in discriminations prohibited by Articles 21 CFREU and 14 ECHR in the drafting of their educational policies. Rather to the contrary, the ECtHR recognised that children should be protected from homophobia and have the right to be educated in an environment “*free from violence, bullying, social exclusion or other forms of discriminatory and degrading treatment related to sexual orientation or gender identity*”.⁵⁵ The ECtHR also recalled in *Vallianatos and others v Greece* in that any differences in treatment based on sexual orientation are subject to a strengthened scrutiny under the Convention and require “*particularly convincing and weighty reasons*” – as well as the measures being necessary and proportional – to be compatible with Art. 14 ECHR.⁵⁶
45. By imposing the Don’t Say Gay ban, the Bulgarian law infringes the right to education without discrimination as provided for in the abovementioned provisions. The situation in Bulgaria regarding comprehensive sexuality education and the integration of LGBTIQ+ children was already problematic prior to the Law – and has become critical after its entry into force.
46. According to the UN Committee on the Rights of the Child, even before the Don’t Say Gay law Bulgaria needed to include in its educational curricula “*comprehensive, age-appropriate and evidence-based education on sexual and reproductive health [...] education on sexual and reproductive health rights, sexual diversity, responsible sexual behaviour and prevention of early pregnancy and sexually transmitted*

⁵² ECtHR *Çam v Turkey*, Application no. 51500/08 [2016] ECLI:CE:ECHR:2016:0223JUD005150008, para 64.

⁵³ ECtHR *Macaté v Lithuania*, Application no. 61435/19 [2023] ECLI:CE:ECHR:2023:0123JUD006143519.

⁵⁴ ECtHR (Decision) *Dojan v Germany*, Application no. 319/08 [2011] ECLI:CE:ECHR:2011:0913DEC000031908, section B.

⁵⁵ ECtHR *Bayev and others v Russia*, Applications nos. 67667/09 and 2 others [2017] ECLI:CE:ECHR:2017:0620JUD006766709, para 82.

⁵⁶ ECtHR *Vallianatos and others v Greece*, Applications nos. 29381/09 and 32684/09 [2013] ECLI:CE:ECHR:2013:1107JUD002938109, para 77.

infections” because of the existing shortcomings.⁵⁷ Furthermore, the committee also recommended the country to take urgent measures against non-discrimination of vulnerable LGBTIQ+ children, as it was seriously concerned about the prevalence of bullying.⁵⁸

47. The ban brings the flaws in the Bulgarian educational system to a whole new level. As referred to in paragraph 13, it is not based on scientific nor objective information, rather to the contrary, it contradicts the scientific recommendations on children’s physical and mental health and safety. Furthermore, by actively opposing social acceptance of LGBTIQ+ people, it is likely to perpetuate stereotypes and expose LGBTIQ+ students to increased levels of bullying and discriminatory treatment in schools.
48. In countries where similar legislation was introduced, harassment and crimes against LGBTIQ+ children rose sharply. Once Russia introduced its anti-LGBTIQ+ law, hate crimes against LGBTIQ+ tripled.⁵⁹ Similarly, school hate crimes quadrupled in those US states that adopted laws censoring LGBTIQ+ people.⁶⁰

1.5.3. The Law breaches the right to freedom of expression and information and the academic freedom

49. Article 11 of the Charter – which corresponds to Article 10 ECHR⁶¹ – enshrines the right to freedom of expression, which covers the “*freedom to hold opinions and to receive and impart information and ideas without interference by public authority*”. Article 13 CFREU is built upon the former right and guarantees the freedom of academics to distribute knowledge and truth without restriction.⁶² The academic freedom applies at all levels of the education system.⁶³
50. The ECtHR ruled that provisions akin to the Bulgarian anti-LGBTQ law violate human rights. In *Bayev and others v Russia*, the court ruled on the compatibility of a “*a legislative ban on promotion of homosexuality or non-traditional sexual relations among minors*” and considered it incompatible with the freedom of expression.⁶⁴ The court argued that the Russian government could not justify its measures on the protection of morals and followed its case law rejecting “*policies and decisions*

⁵⁷ United Nations Committee on the Rights of the Child, ‘Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Bulgaria’ (2024) CRC/C/BGR/CO/6-7, p 11.

⁵⁸ *ibid*, pp 2, 12, 13.

⁵⁹ Sergey Katsuba, ‘The Decade of Violence: A Comprehensive Analysis of HateCrimes Against LGBTQ in Russia in the Era of the “GayPropaganda Law” (2010–2020)’ (2024) 19 Victims and Offenders, p 1.

⁶⁰ Jared Todd, ‘ICYMI: In States with Anti-LGBTIQ+ Laws, School Hate Crimes Quadrupled, Washington Post Reports; Corresponding Surge in Youth Crisis Hotline Calls’ (*Human Rights Campaign Press Release*, 12 March 2024).

⁶¹ Explanations relating to the Charter of Fundamental Rights [2007] OJ C303/17, explanation on Article 11.

⁶² Case C-66/18 Commission v Hungary (Central European University) [2020] ECLI:EU:C:2020:792, para 224.

⁶³ Farida Shaheed, ‘Report of the Special Rapporteur on the Right to Education’ (Human Rights Council 2024) A/HRC/56/58, paras 6 and 21.

⁶⁴ ECtHR *Bayev and others v Russia*, Applications nos. 67667/09 and 2 others [2017] ECLI:CE:ECHR:2017:0620JUD006766709.

*which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority”.*⁶⁵

51. It refused also the Russian government’s alleged justifications of its anti-LGBTIQ+ ban on health arguments and claimed that “[s]uppression of information about same-sex relationships is not a method by which a negative demographic trend may be reversed” – another argument exposed in the motives of the Bulgarian Don’t Say Gay law. Furthermore, it also concluded that the Russian government was “unable to provide any explanation of the mechanism by which a minor could be enticed into “[a] homosexual lifestyle”, let alone science-based evidence that one’s sexual orientation or identity is susceptible to change under external influence”.⁶⁶
52. Similarly, the Venice Commission, when analysing the Hungarian anti-LGBTIQ+ law, recalled that while Art. 10 ECHR does not mandate states to provide information to children about sexuality or gender, if states decide to do so voluntarily, they shall ensure that it is non-discriminatory and shall not lead to disrespecting LGBTIQ+ people.⁶⁷
53. The said arguments are perfectly applicable to the case at hand and prove that the Bulgarian ban on the education system on the transmission of ideas, views and scientifically backed information related to LGBTIQ+ people are incompatible with the educators’ freedom of expression and academic freedom protected by Articles 11 and 13 CFREU and 10 ECHR.

1.5.4. The Law restricts fundamental rights in an unjustified manner

54. The restrictions to the fundamental rights analysed above do not meet the requirements of being provided by law, seeking a legitimate aim and being necessary and proportionate, hence violating the Charter.
55. First, according to the CJEU and the ECtHR, for a restriction of fundamental rights to be “provided for by law” within the meaning of the CFREU and ECHR, such law has to be accessible to the interested parties and foreseeable as to its effects.⁶⁸ That means that the law has to be formulated with sufficient precision to enable the individual – if need be, with appropriate advice – to regulate their conduct.⁶⁹
56. However, the Don’t Say Gay law uses incredibly broad and undefined terms that do not allow citizens to regulate their conduct. Bulgarian teachers have repeatedly voiced concerns about its ambiguity and uncertainty.⁷⁰ One of them articulated it very clearly:⁷¹

⁶⁵ *ibid*, para 68.

⁶⁶ *ibid*, paras 73 and 78.

⁶⁷ Council of Europe Venice Commission (n 14)

⁶⁸ ECtHR N.F. v. Italy, no. 37119/97 [2001] ECLI:CE:ECHR:2001:0802JUD003711997, para 26; Case T-786/14 Bourdouvali and Others v Council and Others [2018] ECLI:EU:T:2018:487, para 271.

⁶⁹ ECtHR N.F. v. Italy, no. 37119/97 [2001] ECLI:CE:ECHR:2001:0802JUD003711997 paras 26 and 29.

⁷⁰ Katerina Vasileva (n 6).

⁷¹ Damyana Veleva, ‘In Bulgaria, A Gay Teacher Worries About An Anti-Gay Law’ *RadioFreeEurope* (Sofia, 16 August 2024).

"What will happen from now on when they ask me [about my private life]? Do I have the right to tell the truth that I have a husband? Or do I have to lie?" he asked.

Or, he wonders, "If a child says in school that he has two mothers or two fathers, is that a violation of the law? If a principal wants to hire a teacher who is openly gay, is that a violation?"

After the initial shock of the parliamentary vote, Ivan is now preoccupied by such questions. That is partly, he says, due to the ambiguous wording of the law, which has been criticized by lawyers and experts.

"[The amendment] is so general that everything can fall into the category of 'propaganda,'" Ivan says.

57. In addition, as discussed in paragraphs 12 to 15 above, the Law does not seek a legitimate aim and, even if it was considered as seeking the protection of children, it would be unsuitable to achieve it.
58. For the sake of completion, the Don't Say Gay law is also disproportionate. The impact the Law has on children and educators' rights is so exorbitant that the law even threatens their human dignity, one of the founding values of the Union and the bedrock over which the rest of CFREU rights are built.
59. As a result, the Law is incompatible with the fundamental rights to human dignity, private and family life, the rights of the child, the right to education, the prohibition of discrimination and the freedom of expression and academic freedom (Articles 1, 7, 11, 13, 14, 21, 24 CFREU).

1.6. THE IRREPARABILITY OF THE DAMAGE CAUSED BY THE LAW JUSTIFIES ITS SUSPENSION VIA INTERIM MEASURES

60. When lodging an infringement procedure against the Don't Say Gay law for its breaches of EU law, the Commission should request interim measures to suspend it – and the Court should grant them in light of the irreparability of the damage it causes.
61. Article 160 of the Rules of Procedure of the Court of Justice allows the Commission to request interim measures when bringing an infringement action under Article 258 TFEU. The Court may grant the measures only insofar as (i) they are justified *prima facie* in facts and law, (ii) they should be adopted urgently *"to avoid serious and irreparable harm to the applicant's interests"* and (iii) where appropriate, the weighing up of the interests at stake favour their adoption.⁷² The aim of the interim measures is to guarantee that the time elapsed between the initiation of the proceedings and the delivery of the judgement does not hamper the effectiveness of judicial protection.⁷³ The Court has the power to request states to suspend provisions of national law.⁷⁴

⁷² Case C-441/17 R Commission v Poland (Białowieża Forest) [2017] ECLI:EU:C:2017:877, para 29.

⁷³ Koen Lenaerts, Kathleen Gutman, and Janek Tomasz Nowak, *EU Procedural Law* (Oxford University Press 2023), point 13.01.

⁷⁴ See Case C-791/19 R Commission v Poland (Régime disciplinaire des juges) [2020] ECLI:EU:C:2020:277.

62. The effectiveness of judicial protection in the case at hand requires the Court to grant interim measures suspending the application of the Don't Say Gay law. As stated in the sections above, the Law infringes several provisions of both EU primary and secondary law. Therefore, there exists, *prima facie*, a more than solid case regarding the Law's incompatibility with EU law.
63. In addition, the criterion of urgency is also met in the case at hand. The irreparability of the damage that the Don't Say Gay law will cause is perfectly exemplified by the case of Hungary's anti-LGBTIQ+ law. The Hungarian law was challenged by the Commission before the CJEU, with 16 Member States and the European Parliament intervening to support the Commission (ongoing Case C-769/22). However, the Commission did not request the suspension of that law, which has been applied for three years. According to Amnesty International, such law has:⁷⁵
- “strengthened negative attitudes, stereotypes, and discriminatory attitudes against LGBTI people. NGOs and human rights defenders have faced increased risks and challenges since the enactment of the law. Civil society organizations like the Labrisz Lesbian Association have been subjected to smear campaigns and attacks, and many organizations have had to adjust their strategies and content to avoid being penalized under the Propaganda Law”*
64. Similarly, Háttér Society has reported that the Hungarian law normalised *“homophobia and transphobia in the public discourse, while it left LGBTQI children, who are often subject to bullying, stigmatization and even violence, on their own”*.⁷⁶ According to a study carried out in the UK, adolescents who reported homophobia, biphobia and transphobia in schools were a 20% more likely to report attempted suicide.⁷⁷ Similarly, suffering bullying at school increases the risk of suffering anxiety, depression, and self-harm during both childhood and adulthood.⁷⁸
65. **In Bulgaria, even before the entry into force of the law, 1 in 2 LGBTIQ+ high school students had seriously considered suicide, and 68% felt unsafe at school because of their sexual orientation.**⁷⁹ The Law will only worsen this extremely alarming rate and can have devastating effects.
66. That damage cannot be simply repaired by the derogation of the Law in four- or five-years' time, only once the Court dictates a judgment declaring it contrary to EU law. During that period, a generation of LGBTIQ+ adolescents will have grown in a hostile environment, suffering from increased stigmatisation, with the impact this has on their physical and mental health (see paragraphs 13 and 14).

⁷⁵ Amnesty International (n 15), p 48.

⁷⁶ Háttér Society (n 16), p 27.

⁷⁷ V. Jadva and others, 'Predictors of Self-Harm and Suicide in LGBT Youth: The Role of Gender, Socio-Economic Status, Bullying and School Experience' (2021) 45 Journal of Public Health 102, p 105.

⁷⁸ William E. Copeland and others, 'Adult Psychiatric and Suicide Outcomes of Bullying and Being Bullied by Peers in Childhood and Adolescence' (2013) 70 JAMA Psychiatry 419.

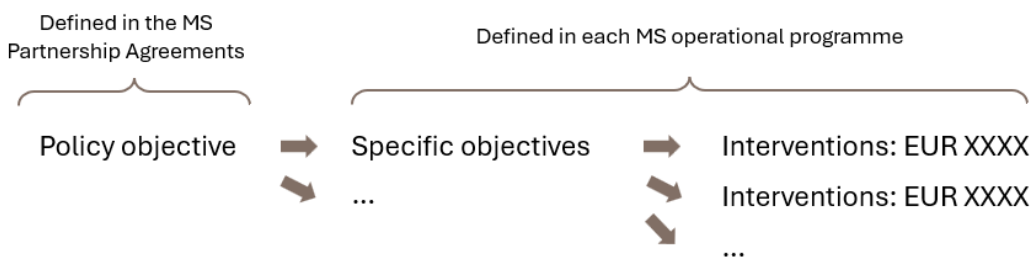
⁷⁹ Single Step, 'Second National Survey "Attitudes Towards LGBTI Students in Bulgarian High Schools"' (2024), p 74 and 78.

67. No derogation nor remedial measure will ever repair the cases of bullying, the suicides, the self-hate. It will not remedy the increase in sexually transmitted diseases or substance abuse. A day lost to stigma, is a day that cannot be recovered. Furthermore, the Law's effects will be suffered by children and adults even far beyond its possible derogation. When (state-sponsored) homophobia and transphobia creep into a society, it takes years of education and campaigning to revert the harm done and increase the levels of social acceptance of LGBTIQ+ people. Hence, it is evident that the law is likely to cause an irreparable damage if it is not suspended at the initial stage of the proceedings.
68. Any weighing up of interests is favourable to the suspension of the Don't Say Gay law, simply because the law does not pursue a legitimate interest in the first place (paragraphs 12 to 14).
69. As a result of the above, the suspension of the Don't Say Gay law should be requested by the Commission and ordered by the Court.

2. The adoption of the Don't Say Gay law violates the conditions Bulgaria shall comply with to receive CPR funds

2.1. THE CPR FUNDAMENTAL RIGHTS CONDITIONALITY REGIME

70. Since the Bulgarian Don't Say Gay law breaches the conditions laid down in the Common Provisions Regulation⁸⁰ ('CPR') that Member States must meet to access CPR funds, the Bulgarian funds impacted by the Law should be frozen.
71. Pursuant to Article 22 CPR, the implementation of the funds covered by the regulation is designed through operational programmes which contain broad policy objectives that are broken down into specific objectives. The specific objectives are, in turn, achieved through interventions: categories of actions that will benefit from the funding. When drafting the operational programmes, the Member States shall specify the amount of funding allocated to each type of intervention (Article 22 CPR).



72. Under Article 15 CPR, Member States must respect a list of horizontal enabling conditions before accessing and during the implementation of the funds. In particular, the horizontal enabling condition no. 3 ('HEC 3') mandates Member States to ensure that the CFREU is respected when implementing the CPR funds. If the Commission finds that a Member State is not abiding by the horizontal enabling conditions it will, following the established procedure, deny reimbursements for the CPR funds whose implementation breaches these conditions.⁸¹
73. According to the Commission's internal checklist on the fulfilment of the horizontal enabling condition on the effective application and implementation of the Charter of Fundamental Rights (Ares(2022)1180131),⁸² HEC 3 mechanisms and arrangements cannot be considered as able to effectively ensure Charter compliance in the Funds' implementation where the national entities involved in the implementation of the Funds and/or designated to ensure Charter compliance apply national legislation that infringes the Charter and directly affects the relevant specific objective and the relevant programme. According to the said checklist, the

⁸⁰ Regulation (EU) 2021/1060 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy [2021] OJ L231/159.

⁸¹ Ibid, Article 15(3) to (6).

⁸² Available [here](#).

deficiencies need to be programme-specific and have a direct link to the management and implementation of CPR funds.⁸³

74. In addition to horizontal enabling conditions, Article 15 CPR also requires Member States to comply with thematic enabling conditions, which are particular to certain policy objectives of the ERDF, ESF+ and the Cohesion Fund.
75. The policy objective 4 (“[a] *more social and inclusive Europe implementing the European Pillar of Social Rights*”) has six thematic enabling conditions attached. One of them (n° 4.3 or ‘TEC 4.3’) relates to the policy framework for the education and training at all levels and is applicable to ERDF and ESF+ funds. That condition is fulfilled when, among other things, Member States ensure equal access to and participation in inclusive and non-segregated education “*in particular for disadvantaged groups*”.⁸⁴
76. Bulgaria receives funding covered by the CPR and implements it through different operational programmes in its educational system. Hence, Bulgaria should ensure effective arrangements to guarantee that those programmes do not violate fundamental rights (HEC 3) and provide equal access and participation in education for all groups in society (TEC 4.3). However, the Education Act Amendment breaches the two enabling conditions.

2.2. THE LAW’S HEC 3 AND TEC 4.3 VIOLATIONS

77. Throughout the following section we will explore how the Law breaches the aforementioned enabling conditions by, (i) violating fundamental rights, (ii) lacking effective mechanisms to protect individuals against those violations and (iii) having a direct impact on the implementation of CPR funds.

2.2.1. The breach of fundamental rights

78. As established in Section 1.5 above, the “Don’t Say Gay” Law violates several fundamental rights which Bulgarian implementing authorities or monitoring committees cannot but abide to. Furthermore, the Law imposes a silence on LGBTIQ+ matters in the education system. Rather than inclusive, as stated in Sections 1.3 and 1.5.2 above, the education system in Bulgaria has become outrageously discriminatory against LGBTIQ+ educators and children. Thus, the “Don’t Say Gay” law breaches HEC 3 and TEC 4.3. In addition, there two of Commission’s internal checklist on HEC 3 that point at a breach of the condition:

European Commission response to analogous anti-LGBTIQ+ propaganda laws

79. The Commission’s internal checklist on HEC 3 also refers to the existence of infringement procedures as a relevant source to identify breaches of the said enabling condition. In the case at hand, the European Commission has already brought Hungary before the CJEU because of its anti-LGBTIQ+ propaganda law (case [C-769/22](#)), which is the Hungarian equivalent of the Bulgarian Education Act

⁸³ Commission's internal checklist on the fulfilment of the horizontal enabling condition on the effective application and implementation of the Charter of Fundamental Rights (Ares(2022)1180131), p 2.

⁸⁴ Annex IV, thematic enabling condition number 4.3 CPR.

Amendment. Furthermore, the European Commission has already suspended EUR 700 million in funding to Hungary under the CPR until the said law is repealed.⁸⁵

ECtHR case-law on anti-LGBTIQ+ propaganda laws

80. Similarly, the internal checklist also points at ECtHR case law as another relevant indicator of HEC 3 breaches, and the ECtHR has already ruled on the incompatibility of anti-LGBTIQ+ propaganda laws with the ECHR in cases like *Bayev and others v Russia*⁸⁶ or *Macaté v Lithuania*.⁸⁷
81. It follows from the above that Bulgaria lacks effective mechanisms to ensure CFREU compliance for the programmes implemented within the context of its pre-school and school educational system, as the CFREU violations stem from the educational legislation itself. Such system, which infringes Articles 1, 7, 11, 13, 14, 21, and 24 CFREU, does not provide for inclusive education particularly for disadvantaged groups, but rather establishes discriminatory education towards a vulnerable minority: LGBTIQ+ people. Thus, Bulgaria breaches HEC 3 and TEC 4.3. Those violations are widespread and systemic – affecting all the participants in the education system.

2.2.2. The lack of effective mechanisms to ensure Charter compliance

82. The law makes any arrangement to ensure compliance with CFREU through the operation of the programmes related to the pre-school and school education system ineffective. As recalled in the Commission's internal checklist on HEC 3, those mechanisms cannot do anything but abide by a national law, even if incompatible with fundamental rights.
83. Although it is not the main aim of the present legal opinion, it is worth noting that there exist generalised deficiencies in the system of complaints of CFREU violations to the monitoring committees in Bulgaria. Those deficiencies emphasize the Law's breaches of HEC 3.
84. In fact, according to the report "*The Role of National Human Rights Institutions in Ensuring Respect for Fundamental Rights in the Use of EU Funds*" developed in the context of a FRA project, the effectiveness of the Bulgarian monitoring committees in ensuring CFREU compliance is "questionable", for several reasons:⁸⁸
85. *The composition of the committees*: civil servants form an absolute majority of those committees, making it "*impossible to vote on a decision that is not supported by the state*".⁸⁹

⁸⁵ European Commission, "Questions and Answers on Hungary: Rule of Law and EU funding" (13 December 2023) (available [here](#)); Hungarian Helsinki Committee, "Missed Opportunities: Suspended EU Funds for Hungary" (available [here](#)).

⁸⁶ ECtHR *Bayev and others v Russia*, Applications nos. 67667/09 and 2 others [2017] ECLI:CE:ECHR:2017:0620JUD006766709.

⁸⁷ ECtHR *Macaté v Lithuania*, Application no. 61435/19 [2023] ECLI:CE:ECHR:2023:0123JUD006143519.

⁸⁸ Maria Doichinova, "The Role of National Human Rights Institutions in Ensuring Respect for Fundamental Rights in the Use of EU Funds" (2024) (available [here](#)), p 16.

⁸⁹ *Ibid*, p 19.

86. *The frequency of the review*: the frequency of the review of the complaints to the monitoring committees is very low (only once a year), which is clearly insufficient to address and remedy breaches of fundamental rights in a timely manner.⁹⁰
87. *The lack of clear procedures and contact points*: The generalised deficiencies identified in the report can be observed, for instance, in the Bulgarian Guidelines on the application of the CFREU on the CPR programmes.⁹¹ These guidelines include a list of authorities to whom citizens should submit complaints when reporting violations of fundamental rights, most of which direct them to the “competent judicial authorities”. Neither the guidelines nor the rules of procedure of the monitoring committees nominate a contact point nor a clear procedure for submitting complaints to those committees. Citizens should not be forced to rely on costly judicial procedures to flag CFREU violations in the implementation of CPR funds –particularly when it is the task of the monitoring committees to carry out that task.
88. *The absence of complaints*: as of early 2024, there were no reported complaints to the mechanism.⁹² The complaint handling system was even considered in the report as purely “formal”, lacking any real usage.

2.2.3. The direct impact on the operational programmes and specific objectives

89. The Education Act Amendment directly impacts three of Bulgaria’s operational programmes: Education, Human Resources Development and Development of Regions. The first two programmes are financed through the ESF+, while the Development of Regions programme is financed through ERDF.

ESF+

90. There are four specific objectives within the ESF+ that are directly affected by the Education Act Amendment:
- (i) **Specific objective n° 5** (Art. 4(1)(e) ESF+ Regulation): improving the quality, inclusiveness, effectiveness and labour market relevance of education and training systems including through validation of non-formal and informal learning, to support acquisition of key competences including entrepreneurial and digital skills, and by promoting the introduction of dual-training systems and apprenticeships.

Impact of the Law: the Education Act Amendment directly affects this objective by hampering the quality –banning the teaching of scientifically based information regarding comprehensive sexuality education and LGBTIQ+

⁹⁰ Ibid, p 20.

⁹¹ Guidelines on the application of the EU Charter of Fundamental Rights by the management, control and audit of programmes co-financed by European Regional Development Fund (ERDF), European Social Fund+ (ESF+), Cohesion Fund (CF), Just Transition Fund (JTF), the European Maritime and Fisheries and Aquaculture Fund (EMFAF), Asylum and Migration (AMF), Internal Security Fund (ISF) and Instrument on financial support for border management and visa policy (BMVI) for the 2021-2027 programming period (available in Bulgarian [here](#)).

⁹² Ibid, pp 13 and 20.

people— and inclusiveness –by discriminating against LGBTIQ+ students and teachers and promoting their stigmatisation– of Bulgarian education.

- (ii) **Specific objective n° 6** (Art. 4(1)(f) ESF+ Regulation): promoting equal access to and completion of quality and inclusive education and training, in particular for disadvantaged groups, from early childhood education and care through general and vocational education and training, to tertiary level, as well as adult education and learning, including facilitating learning mobility for all and accessibility for persons with disabilities;

Impact of the Law: the Law impacts this objective by undermining the equal access to education and making that education discriminatory for the vulnerable group of LGBTIQ+ people in Bulgaria. According to FRA, 70% of LGBTIQ+ people reported having suffered bullying because of being LGBTIQ+ by other students and 12% by teachers during their education, and 16% of LGBTIQ+ people having considered dropping out or changing schools because of being LGBTIQ+.⁹³ In addition, one third of Bulgarian LGBTIQ+ students experienced physical harassment, and one-fifth had even been assaulted at school.⁹⁴

- (iii) **Specific objective n° 10** (Art. 4(1)(j) ESF+ Regulation): promoting the socio-economic integration of marginalised communities.

Impact of the Law: the Law hinders the integration of LGBTIQ+ people, which are a marginalised community (according to FRA, 50% of LGBTIQ+ people in Bulgaria reported suffering discrimination in at least one area of their lives in the last year).

- (iv) **Specific objective n° 11** (Art. 4(1)(k) ESF+ Regulation): enhancing equal and timely access to quality, sustainable and affordable services, including services that promote the access to housing and person-centred care including healthcare; modernising social protection systems, including promoting access to social protection, with a particular focus on children and disadvantaged groups; improving accessibility including for persons with disabilities, effectiveness and resilience of healthcare systems and long-term care services.

Impact of the Law: the Law hampers the access of children, and particularly LGBTIQ+ children, to comprehensive sexuality education.

91. It is worth noting that, due to the adoption of the Hungarian anti-LGBTIQ+ propaganda law, the European Commission triggered the suspension of funds, precisely, under specific objectives 5, 6 and 11.

92. Of all the interventions aimed at achieving the specific objectives referred to above, there are certain interventions that are more heavily impacted by the Law than others. For that purpose, we have identified and listed the categories of interventions most clearly affected by the law in [Annex I](#).

⁹³ FRA, “EU LGBTIQ Survey III” (available [here](#)).

⁹⁴ Single Step Foundation, Bilitis Resource Center Foundation (2020), Attitudes towards LGBTI Students in Bulgarian schools.

ERDF

93. The “Development of the Regions” programme in Bulgaria, financed under the ERDF pursues, essentially, two specific objectives:
94. **Specific objective n° 5.1:** fostering the integrated and inclusive social, economic and environmental development, culture, natural heritage, sustainable tourism and security in urban areas.
95. **Specific objective n° 5.2:** fostering the integrated and inclusive social, economic and environmental local development, culture, natural heritage, sustainable tourism and security in areas other than urban areas.
96. The objectives use very broad terminology, which means that they can potentially fund a wide variety of interventions. The ERDF Regulation⁹⁵ acknowledges this when under Article 3(2) it allows Member States to use the funding for specific objectives 5.1 and 5.2 to support operations under other (more concrete) specific objectives.
97. Hence, while in the abstract it the impact of the Law over Specific Objectives n° 5.1 and 5.2 may be looser, such impact becomes clearer when looking at the specific interventions of the operational programme. In the case at hand, there are certain interventions of the Development of the Regions Programme –like those related to the development of infrastructure for education– which relate to funds employed for the promotion of a discriminatory, stigmatising educational system. As for the ESF+, those interventions have been listed in [Annex I](#).

2.2.4. Conclusion

98. As a result of the above, the Don't Say Gay Law breaches HEC 3 and TEC 4.3, and precludes the disbursement of ERDF and ESF+ funds for those interventions that are or will be direct and systematically impacted by the Law. [Annex I](#) outlines the interventions that should be subject to fund freezing due to the adoption of the Don't Say Gay law.
99. **Accordingly, the European Commission should block reimbursement for EUR 656,027,797.27 to Bulgaria for the country's breaches of HEC 3 and TEC 4.3**

⁹⁵ Regulation (EU) 2021/1058 on the European Regional Development Fund and on the Cohesion Fund.

Annex I: Breakdown of the CPR funding affected by the Don't Say Gay law

RECLAIM has identified within three of Bulgaria's Operational Programmes (Development of the Regions, Human Resources Development Programme and Education Programme) those interventions that are or will be direct and systematically impacted by the Don't Say Gay law. You can find the summatory of the interventions impacted for the three combined operational programmes below, and a breakdown of each of the interventions to be blocked per operational programme in the following sub-sections.

Operational Programme	Sum of the funding interventions to be blocked per programme
Development of Regions	131,876,065.27 €
Human Resources Development Programme	105,143,215.00 €
Education Programme	419,008,517.00 €
Total	656,027,797.27 €

OPERATIONAL PROGRAMME 'DEVELOPMENT OF REGIONS'

Priority	Specific objective	Fund	Category of region	Code	Amount (EUR)
1	RSO5.1	ERDF	Transition	121. Infrastructure for early childhood education and care	2,880,000.00
1	RSO5.1	ERDF	Transition	122. Infrastructure for primary and sectoral education	2,520,000.00
1	RSO5.1	ERDF	Transition	124. Infrastructure for vocational education and training and adult learning	2,160,000.00
1	RSO5.1	ERDF	Less developed	121. Infrastructure for early childhood education and care	6,818,657.20
1	RSO5.1	ERDF	Less developed	122. Infrastructure for primary and sectoral education	6,818,657.20
1	RSO5.1	ERDF	Less developed	124. Infrastructure for vocational education and training and adult learning	7,159,590.06
2	RSO5.2	ERDF	Transition	121. Infrastructure for early childhood education and care	3,997,000.00
2	RSO5.2	ERDF	Transition	122. Infrastructure for primary and sectoral education	4,156,880.00
2	RSO5.2	ERDF	Transition	124. Infrastructure for vocational education and training and adult learning	3,677,240.00
2	RSO5.2	ERDF	Less developed	121. Infrastructure for early childhood education and care	31,836,125.28
2	RSO5.2	ERDF	Less developed	122. Infrastructure for primary and sectoral education	33,109,570.29
2	RSO5.2	ERDF	Less developed	124. Infrastructure for vocational education and training and adult learning	26,742,345.24
Total					131,876,065.27 €

OPERATIONAL PROGRAMME 'HUMAN RESOURCES DEVELOPMENT'

Priority	Specific objective	Fund	Category of region	Code	Amount (EUR)
4	2	ESF+	Less developed	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	73,777,962.00
4	2	ESF+	Transition	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	5,223,389.00
2	3	ESF+	Less developed	148. Support for early childhood education and care (excluding infrastructure)	24,413,424.00
2	3	ESF+	Transition	148. Support for early childhood education and care (excluding infrastructure)	1,728,440.00
Total					105,143,215.00 €

OPERATIONAL PROGRAMME 'EDUCATION'

Priority	Specific objective	Fund	Category of region	Code	Amount (EUR)
1	ESO4.6	ESF+	Transition	148. Support for early childhood education and care (excl. infrastructure)	7,371,475.00
1	ESO4.6	ESF+	Transition	149. Support for primary to secondary education (excl. infrastructure)	13,004,880.00
1	ESO4.6	ESF+	Transition	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	7,198,129.00
1	ESO4.6	ESF+	Less developed	148. Support for early childhood education and care (excl. infrastructure)	36,857,375.00
1	ESO4.6	ESF+	Less developed	149. Support for primary to secondary education (excl. infrastructure)	65,024,395.00
1	ESO4.6	ESF+	Less developed	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	35,990,646.00
1	ESO4.10	ESF+	Transition	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	6,060,189.00
1	ESO4.10	ESF+	Less developed	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	37,128,586.00
2	ESO4.5	ESF+	Transition	149. Support for primary to secondary education (excl. infrastructure)	15,818,933.00
2	ESO4.5	ESF+	Transition	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	2,390,390.00
2	ESO4.5	ESF+	Less developed	149. Support for primary to secondary education (excl. infrastructure)	79,094,667.00
2	ESO4.5	ESF+	Less developed	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	11,951,952.00
3	ESO4.5	ESF+	Transition	149. Support for primary to secondary education (excl. infrastructure)	13,507,206.00
3	ESO4.5	ESF+	Transition	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	2,234,241.00
3	ESO4.5	ESF+	Less developed	149. Support for primary to secondary education (excluding infrastructure)	73,546,514.00
3	ESO4.5	ESF+	Less developed	154. Measures to improve the access of marginalised groups such as Roma to education, employment and to promote their social inclusion	11,828,939.00
Total					419,008,517.00 €

LEGAL OPINION

This document is part of RECLAIM's Legal Opinion Series.

RECLAIM's legal opinions offer a detailed examination of national laws that raise issues under the EU law perspective. They contain recommendations and suggestions for EU Institutions and Member States' authorities on how to address EU law breaches.



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