

## LGBTI rights in the EU, recent developments following the Hungarian law

On 15 June 2021, the Hungarian Parliament adopted a law originally intended to fight paedophilia, which, following amendments proposed by Members from the ruling Fidesz party, contains clauses prohibiting the portrayal of homosexuality and gender-reassignment to minors. Additionally, the law prohibits homosexuality and gender reassignment from being featured in sex education classes, and stipulates that such classes can now only be taught by registered organisations. Furthermore, changes to the Business Advertising Law and to the Media Law require that adverts and content featuring LGBTI people must be rated as Category V (i.e. not recommended for minors). The law is due to come into force on 8 July and has generated widespread criticism at EU level. The law is due to be discussed during the European Parliament's July 2021 plenary session, following statements from the European Commission and the Council.

### Background

On 15 June 2021, the Hungarian Parliament adopted [Act LXXIX of 2021](#) on 'tougher action against paedophile offenders and amending certain laws to protect children'. On 8 June, Members (MPs) from the ruling Fidesz party had proposed [amendments](#), which were eventually included in the final version of the law. As adopted, the law now contains some clauses prohibiting content portraying homosexuality and gender-reassignment from being made available to minors. Additionally, the law amended existing legislation on national public education, prohibiting homosexuality and gender-reassignment from being 'promoted' in sex education classes, and stipulating that such classes can now only be taught by organisations listed in an official register. Furthermore, the law amended the Business Advertising Law and the Media Law, requiring that advertising and content featuring LGBTI people must be rated as Category V (not recommended for minors), which means that they can only be shown after 23h00. Most sections of the law should come into force on 8 July 2021.

### EU reactions

On 16 June, the European Commission President, Ursula von der Leyen, expressed her [concern](#), and the Commissioner for Equality, Helena Dalli, [launched an inquiry](#) into the new law. Moreover, the Commissioners for Justice, Didier Reynders, and for the Internal Market, Thierry Bretton, sent a joint [letter](#) to the Hungarian Minister for Justice, Judith Varga, on 15 June, in which they consider that the law departs from the values enshrined in Article 2 of the Treaty on European Union (TEU). They consider that the law directly violates the principle of non-discrimination on the basis of sex and sexual orientation set out in Article 21 of the Charter of Fundamental Rights of the EU. They also consider that the law would violate the free movement of goods (Articles 34 to 36 TFEU) and services (Article 56 TFEU), the [Audiovisual Media Services](#) Directive and the [e-Commerce](#) Directive.

On 22 June 2021, in a [letter](#) signed by 18 EU Member States, the signatories directly criticised the Hungarian law, stating that they expressed their 'grave concern about the adoption by the Hungarian Parliament of amendments which discriminate against LGBTIQ persons and violate the right to freedom of expression under the pretext of protecting children'. At the 24 June European Council meeting, the Hungarian Prime Minister, Viktor Orbán, was [confronted](#) over the law by his fellow EU leaders. Leaders of 17 EU Member States signed a further [letter](#) that same day, in which they reaffirmed their commitment to defending LGBTI rights. This letter did not mention the Hungarian law directly.

### European Court of Human Rights case law on similar legislation

Previously, the European Court of Human Rights (ECtHR) considered similar provisions in Russia a violation of freedom of expression, and discrimination on the basis of sexual orientation. In fact, in the case [Bayev](#)

[and Others v. Russia](#) the ECtHR considered that a law banning the promotion of homosexuality to minors violated the European Convention on Human Rights. In its ruling, the ECtHR stated that it:

*has consistently declined to endorse policies and decisions which embodied a predisposed bias on the part of a heterosexual majority against a homosexual minority ... It held that these negative attitudes, references to traditions or general assumptions in a particular country cannot of themselves be considered by the Court to amount to sufficient justification for the differential treatment, any more than similar negative attitudes towards those of a different race, origin or colour.*

The Court considered that a law like the 'homosexual propaganda law' is an example of such predisposed bias. The ECtHR considered in particular 'the attempts to draw parallels between homosexuality and paedophilia' unacceptable (para. 69). The Court concluded that:

*the legal provisions in question do not serve to advance the legitimate aim of the protection of morals, and that such measures are likely to be counterproductive in achieving the declared legitimate aims of the protection of health and the protection of rights of others. Given the vagueness of the terminology used and the potentially unlimited scope of their application, these provisions are open to abuse in individual cases ... Above all, by adopting such laws the authorities reinforce stigma and prejudice and encourage homophobia, which is incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society.*

## European Parliament position

Concerning the similar Russian provisions, the European Parliament stated in its [resolution](#) of 13 June 2013 that it was deeply concerned at the negative consequences of the adoption of the Russian federal law on 'homosexual propaganda'. In its [resolution](#) of 12 September 2018, Parliament determined, in accordance with Article 7(1) TEU, that there is a clear risk of a serious breach by Hungary of the values referred to in Article 2 TEU. In the annex to this resolution, intolerance against LGBTI was specifically noted.

In its [resolution](#) of 11 March 2021 declaring the Union an LGBTIQ Freedom Zone, Parliament considered that 'LGBTIQ persons everywhere in the European Union should enjoy the freedom to live and publicly show their sexual orientation, gender identity, gender expression and sex characteristics without fear of intolerance, discrimination or persecution on those grounds'. In the same resolution, Parliament took note of the deterioration of rights of LGBTIQ people in some EU Member States, including Hungary. In this resolution, Parliament considered specifically that the 'legal developments in Hungary have severely hindered the fundamental rights of LGBTIQ people'. Parliament referred to the adoption of Article 33 of the Hungarian Omnibus Bill T/9934, which de facto prevented legal gender recognition for trans and intersex persons. Parliament considered that such an article would generate discrimination and also infringe the right to privacy. Parliament also took note of the fact that, at the end of 2020, constitutional amendments were adopted in Hungary which resulted in limitations of the rights of LGBTIQ people. In the words of Parliament, such amendments 'neglect the existence of transgender and non-binary persons and restrict their right to family life, and a law that will strip non-married couples of the right to adoption'.

On 22 June 2021, at the initiative of Parliament's [LGBTI Intergroup](#), 61 MEPs co-signed and tabled an [oral question](#) to the European Commission concerning potential breaches of EU legislation. Liesje Schreinemacher (Renew Europe), vice-president of the Intergroup stated that, 'The Hungarian government frames sexual orientation and gender realignment with paedophilia and "attacks on children's rights". Equality and diversity are part of our European identity – therefore we cannot accept these legislative attacks. When you are a member of the European Union, you sign up to our values. It is not an "a la carte" menu.' Maria Walsh (EPP), also a vice-president of the Intergroup, stated that 'remaining silent in the face of such attacks is being complacent.' and that 'only with unity can we counter the backtracking on the rights of LGBTIQ persons in Hungary.'

The Hungarian law is due to be discussed in [plenary](#) in July 2021. In a debate with the Council and the European Commission on 7 July, MEPs will assess whether EU laws are being breached, and what action is envisaged to protect the rights of children and LGBTIQ persons. MEPs will also ask the Council and Commission about the two hearings held by the Council on the rule of law in Hungary and Poland on 24 June, the outcome of which has not been disclosed. The Parliament is expected to vote on a resolution following the debate.

