



Commission refers HUNGARY to the Court of Justice of the EU over violation of LGBTIQ rights

Brussels, 15 July 2022

The European Commission today decided to refer **Hungary** to the Court of Justice of the EU over a Hungarian law which discriminates against people on the basis of their sexual orientation and gender identity. The Commission considers that the law violates the internal market rules, the fundamental rights of individuals (in particular LGBTIQ people) as well as - with regard to those fundamental rights - the EU values. The Hungarian law, in particular, singles out and targets content that 'promotes or portrays' what it refers to as 'divergence from self-identity corresponding to sex at birth, sex change or homosexuality' for individuals under 18.

This referral to Court is the next step of the infringement procedure [launched](#) by the Commission on 15 July 2021 against Hungary with a letter of formal notice. As the Hungarian authorities did not sufficiently respond to the concerns of the Commission in relation to equality and the protection of fundamental rights, and did not include any commitment to remedy the incompatibility, the Commission sent a reasoned opinion to Hungary on [2 December 2021](#).

The protection of children is an absolute priority for the EU and its Member States. However, the Hungarian law contains provisions which are not justified on the basis of promoting this fundamental interest or are disproportionate to achieve the stated objective. It violates the following EU rules:

- The [Audiovisual Media Services Directive](#), which the law breaches as regards standards for audio-visual content and the free provision of cross-border audiovisual media services. Hungary put in place unjustified and disproportionate restrictions which discriminate against people based on their sexual orientation and gender identity.
- The [e-commerce Directive](#) and its country of origin provision. The law restricts the provision of services displaying content portraying different sexual orientations to minors, including when these services originate from other Member States, and Hungary failed to justify these restrictions.
- The Treaty principle of freedom to provide services ([Article 56 TFEU](#)) and the [Services Directive](#). The addressees of parts of the law fall under the definition of a service under EU rules. The freedom to provide services can only be limited if the restrictions imposed by the law are duly justified, non-discriminatory, and proportionate, which Hungary has failed to demonstrate.
- The right to data protection, in particular because the national provisions do not define precisely who can be authorised to access sensitive personal data stored in the Criminal Records System and whose data can be targeted by such access. Furthermore, the national provisions do not establish objective criteria to justify the necessity of the access to the data.
- The [Single Market Transparency Directive](#), as Hungary failed to notify the Commission in advance of the adoption of some of the contested provisions despite the obligation to do so laid down in the Directive.
- In the context of implementation of EU law, the Hungarian law also violates in a systematic manner several fundamental rights enshrined in the [EU Charter of Fundamental Rights](#). This includes the inviolability of human dignity, the right to freedom of expression and information, the right to private and family life, as well as the right to non-discrimination. Due to the gravity of these violations, the contested provisions also violate the common values laid down in Article 2 TEU.

Background

On 15 June 2021, the Hungarian Law purportedly aiming at taking stricter action against paedophile offenders and amending certain laws to protect children was adopted. Some of the new provisions target and limit the access of minors to content and advertisements that "promotes or portrays" the so-called "divergence from self-identity corresponding to sex at birth, sex change or homosexuality".

By relying on those categories, the Law lays down restrictive rules affecting specifically electronic commerce services and information society services, educational activities, classification of audiovisual content and audiovisual advertising; it also lacks the necessary precision as regards the definition of who can be authorised to access sensitive personal data stored in the Criminal Records System and the definition of the individuals whose data can be subject to such access. These amendments violate several provisions of EU secondary legislation, the Treaty of the Functioning of the European Union (TFEU), the Treaty of the European Union (TEU) and the EU Charter of Fundamental Rights.

Immediately after the adoption of the law, on 23 June 2021, Commissioners Thierry **Breton** and Didier **Reynders** wrote to Hungary putting forward issues related to the compatibility of certain provisions of the then-legislative proposal with several provisions of EU law and asked for clarifications.

As the Hungarian reply did not address the Commission's concerns, the Commission launched an infringement procedure against Hungary on 15 July 2021.

Equality and the respect for dignity and human rights are core values of the EU, enshrined in the Treaty of the European Union and specified in the Charter of Fundamental Rights of the EU. The Commission will use all the instruments at its disposal to defend these values.

For more information

[LGBTIQ Equality Strategy 2020-2025](#)

[Audiovisual Media Services Directive](#)

[e-Commerce directive](#)

[Single Market Transparency Directive](#)

[Infringements procedure](#)

On the key decisions in the July 2022 infringements package, see full [MEMO](#)

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