CJEU: Member states cannot introduce blanket prohibitions on LGBTI+ content under the guise of child protection

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On 21 April 2026, the Court of Justice of the European Union (CJEU) delivered its judgment in Case C-769/22 (*European Commission v. Hungary*), ruling that various national legislative amendments enacted by Hungary in June 2021 – commonly referred to as part of its "child protection" package – violated several foundational EU values, internal market rules, and fundamental rights. Crucially, the judgment established for the first time a separate, standalone infringement of Article 2 of the Treaty on the European Union (TEU).

The case originated from an omnibus legislative package enacted by the Hungarian Parliament in June 2021. While initially drafted to increase penalties against child sexual abuse, last-minute amendments introduced strict limitations on the display, broadcast, publication, and distribution of content to minors. Specifically, the provisions prohibited or restricted the promotion or portrayal of gender identities that differ from the sex assigned at birth, sex reassignment, or homosexuality in audiovisual media, advertising, and school curricula.

In response, the European Commission initiated infringement proceedings against Hungary, arguing that the restrictive measures went beyond child protection and systematically targeted, stigmatised, and marginalised a minority group. Following an exchange of formal notices and a reasoned opinion, the Commission brought an action for failure to fulfil obligations before the CJEU in late 2022.

The case brought an unprecedented level of alignment across the Union: 15 member states and the European Parliament formally intervened in support of the Commission. It also marked a definitive milestone as the first time the European Commission sought to hold a member state accountable by relying directly on Article 2 TEU as a standalone ground in an infringement procedure, shifting the focus from narrow technical compliance to whether a national law is compatible with the foundational values upon which the European Union is built.

According to the Court's judgment, the Commission's action was "well founded in respect of all the pleas in law".

The Court found that the Hungarian law constituted a "coordinated package of discriminatory measures" which "manifestly and particularly seriously violates

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every single core value of the EU laid down in Article 2 TEU." While Article 2 TEU enumerates fundamental values – such as respect for human dignity, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities – it does not explicitly detail a mechanism for direct enforcement outside the political scope of Article 7 TEU. The CJEU resolved this by confirming that these values constitute legally binding obligations enforceable under Article 258 TFEU. The judges emphasised that by linking non-heterosexual and non-cisgender identities en bloc with paedophilia and sexual crimes within the text and title of the legislation, the law was inherently suited to stigmatise these groups and incite hatred.

The Court held that the provisions restricted the cross-border freedom to provide and receive services. The CJEU recognised that under Article 24 of the Charter, member states retain a margin of appreciation to implement measures protecting the well-being of minors, which may justify restricting internal market freedoms. However, the Hungarian law went disproportionately further by introducing a blanket premise that any portrayal of homosexuality or gender reassignment is inherently harmful. This exclusion constituted direct discrimination, unlawfully restricting media service providers from developing and broadcasting diverse thematic content. Furthermore, the Court found a violation of the General Data Protection Regulation (GDPR), ruling that while expanding access to criminal registries for child protection purposes can be legitimate, the Hungarian legislation failed to define with sufficient precision who was authorised to access the data and on what exact grounds.

Consequently, the CJEU declared that Hungary had failed to fulfil its obligations under both primary and secondary EU law. Under Article 260 TFEU, Hungary is required to take the necessary measures to comply with the Court's judgment and bring its national legislation into conformity with EU law. While a judgment under Article 258 TFEU does not carry an automatic financial penalty, it legally obligates the member state under Article 260 TFEU to take immediate measures to comply. Should the government fail to comply swiftly, the Commission may initiate secondary proceedings under Article 260(2) TFEU to request the Court to impose lump-sum and daily penalty payments.

The broader implications of the ruling extend far beyond Hungary. The judgment reorganises the EU's fundamental rights architecture and its relationship with national constitutions. The CJEU has drawn a definitive legal boundary: member states must respect the core values and principles of the EU not only when implementing Union law, but also when enacting independent, purely domestic legislation. No member state may pass laws that undermine social pluralism or target specific social groups for exclusion.

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CJEU, Commission v. Hungary, No. C-769/22, provisional text, 21 April 2026

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CJ0769

Act LXXIX of 2021 on taking more severe action against paedophile offenders and amending certain Acts for the protection of children, Nemzeti Jogszabálytár, 8 july 2021

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