

HUNGARY: BROADCASTING ASSOCIATIONS ACROSS EUROPE EXPRESS DISMAY AT ANTI-LGBTIQ BILL & URGE EUROPEAN COMMISSION TO OPEN INFRINGEMENT PROCEEDINGS

BRUSSELS, 29 JUNE 2021. Broadcasters across Europe are extremely concerned about the effects and potential precedence of the recently Bill¹ adopted by the Hungarian National Assembly amending the national Acts on Media Services & Mass Media and Advertising. The Bill openly discriminate against LGBTIQ communities and contravenes fundamental rights enshrined in articles 7,9 11, 16 and 21 of the Charter of Fundamental Rights of the European Union (CFR) by way of seeking to ban or limit exposure to LGBTIQ communities and issues in programming and advertising content.

The bill depicts the promotion and representation of “deviation from identity corresponding to the gender assigned at birth, gender reassignment and homosexuality” as harmful to minors. We do not agree with this interpretation. Article 6a of the Audio-visual Media Services Directive (AVMSD) emphasises the need for proportionality of measures intended to protect the development of minors, the legal ground used for Hungary in its bill, need to be proportionate to the potential harm of the content. Proportionality implies a balancing exercise taking into account fundamental rights protected by the CFR. Such a test was clearly not carried out as these measures would severely discriminate against LGBTIQ communities protected by article 21 of the CFR and impede the freedom to receive and impart information protected by article 11 CFR.

Furthermore, by jointly amending section 8(1a) of the advertising act and section 9(1) of the act on Media Services and on the Mass Media, the proposals circumvent EU harmonization with regards to the protection of minors. Converting advertising rules in the national media regime (transposed from Article 9 AVMSD) into general measures on advertising will undeniably restrict freedom of reception and retransmission, which is forbidden under article 3 of the AVMSD. Beyond the ethical and value based issues at hand, this would set a very negative legal precedent.

Failing a withdrawal of the text, we urge the European Commission to launch infringement proceedings on the basis of Articles 3, 6a and 9 of the Audio-visual Media Services Directive and Articles 34 and 56² of the Treaty on the Functioning of the European Union.

¹ Bill on “Taking more severe action against paedophile offenders and amending certain Acts for the protection of children” (15/6/21) and subsequent amendments to Acts XXXI (section 6a) of 1997 and CLXXXV (new section 9(6)) of 2010

² Directive 2010/13/EU on Audiovisual Media Services amended by Directive (EU) 2018/1808 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010L0013-20181218> and Treaty on the Functioning of the European Union <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>