



The European Parliament's

Intergroup on LGBTI Rights

President of the Romanian Chamber of Deputies, **Ion-Marcel Ciolacu**,
Prime Minister of Romania and President of the PNL party, **Nicolae-Ionel Ciucă**,
Vice-President of the Chamber, **Vasile-Daniel Suci**,
Vice-President of the Chamber, **Ciprian-Constantin Șerban**,
Vice-President of the Chamber, **Florin-Claudiu Roman**,
Vice-President of the Chamber, **Ilie Dan Barna**,
Leader of the Social Democratic Party (PSD) Parliamentary Group, **Alfred-Robert Simonis**,
Leader of the National Liberal Party (PNL) Parliamentary Group, **Gabriel Andronache**,
Leader of the USR PLUS Parliamentary Group, **Liviu-Ionuț Moșteanu**,
Interim President of the USR Party, **Cătălin Drulă**,
Leader of the Democratic Alliance of Hungarians in Romania (UDMR) Parliamentary Group, **Botond Csoma**,
President of the Democratic Alliance of Hungarians in Romania (UDMR), **Kelemen Hunor**,
Leader of the National Minorities Parliamentary Group, **Varujan Pambuccian**,

Cc:

President of Romania, **Klaus Iohannis**,
Minister of Foreign Affairs, **Bogdan Aurescu**,
Romanian Ambassador to the EU, **Iulia Matei**,

Brussels, 16 June 2022

Subject: Urging the Chamber of Deputies to strike down Hungarian-style propaganda law tacitly adopted by the Romanian Senate

Dear President of Romania,
Dear President of the Chamber of Deputies,
Dear Vice-Presidents,
Dear Leaders of the Parliamentary Groups,

We address you today as Members of the LGBTI Intergroup in the European Parliament, a cross-party grouping of elected Members working on equality for LGBTIQ people, to convey our concerns over the bill tacitly approved in the Romanian Senate. The majority vote last week in the Human Rights Committee of the Chamber of Deputies has raised our concern.

We were made aware that the bill tabled by the UDMR party amending the *Law no. 272/2004 on the protection and promotion of the rights of the child* was moved to the Chamber of Deputies. This bill aims at banning dissemination of information on homosexual orientation and gender diversity among minors, as well as freezing the legal gender of children until they reach 18 years of age.

We view this bill as a particularly worrying development, given its resemblance to the Hungarian bill (subject to infringement procedures opened by the European Commission last year) and to the Russian 'anti-LGBTIQ' propaganda law. Through this letter today, we seek to lay out arguments that question the human rights compliance of this bill, which we strongly oppose, and secure your support in not allowing this bill to become law.

1. Resemblance to Hungarian law subject to infringement procedures and reply by the European Parliament

In June 2021, the Hungarian Parliament adopted a bill which, at its origin, was intended to protect children against paedophile offenders, an objective shared and pursued by all EU institutions and Member States. Nevertheless, the provisions of the law were deliberately vague and carried the aim of causing a chilling effect on awareness and information on LGBTIQ persons. The law prohibited, similarly to the bill proposed in the Romanian Senate, the *'portrayal and promotion of gender identity different from sex assigned at birth, the change of sex and homosexuality'* in schools, in television programmes and in publicly available advertisements on any platforms for persons aged under 18, even for educational purposes.

This law led to a condemning response by the European Parliament, which adopted a resolution noting the law's lack of compliance with the EU's *acquis*. Equally, it called on the Commission to take legal action in the form of infringement procedures, including expedited procedures, to protect the EU's legal order and the respect for fundamental rights.¹

2. Infringement procedures initiated by the Commission, following up on Parliament's request

On 15 July 2021, making use of its role as *Guardian of the Treaties*, the European Commission started legal action against Hungary concerning the violation of the fundamental rights of LGBTIQ people.² In the meanwhile, the Commission has requested for further information from the government in the form of a reasoned opinion in December 2021.³ The government has replied to this letter and the Commission is assessing the reply before bringing the case formally to the Court of Justice of the EU.

3. The bill is incompliant with the Constitution of Romania

Article 16 of the Constitutions stipulates the conditions for equality of rights, prescribing that *"citizens are equal before the law and before public authorities, with no privileges and no discrimination"*. Equally, Article 31 prescribes that *"a person's right of access to any information of public interest shall not be restricted"* and that *"public authorities, according to their competence, shall be bound to provide correct information to the citizens in public affairs and matters of personal interest"*. At present, the bill proposed by the Senate seeks to protect *"the child against the dissemination by any means of content regarding the deviation from the sex established at birth or the popularisation of sex change or homosexuality"*, but carries no legal justification as to why dissemination of material concerning the diversity of sexual orientation or gender identity would be detrimental to children. Conversely, European human rights standards already address how a human-rights compliant approach is inclusive of portraying sexual orientation and gender identity.

4. European human rights standards on education and objective information on sexual orientation and gender identity (SOGI) are clear

The European Parliament has recently called on Member States to combat the spread of discriminatory and unsafe misinformation on sexual and reproductive health and rights (SRHR) and to develop age-appropriate comprehensive sexuality and relationship education curricula, taking into account that the

¹ European Parliament resolution, (8 July 2021), *"Breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament (2021/2780(RSP))"*, accessible at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0362_EN.html.

² European Commission (17 July 2021), *"EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people"*, accessible at https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668.

³ European Commission (2 December 2021), *"December infringement package: Key decisions"*, accessible at https://ec.europa.eu/commission/presscorner/detail/en/inf_21_6201.

imparting of information should reflect the diversity of sexual orientations, gender identities, expressions and sex characteristics.⁴

Furthermore, human rights standards in Europe have in effect been clear for long. The 2010 Recommendation from the Council of Europe's Committee of Ministers on measures to address sexual orientation and gender identity (SOGI)⁵ clearly outlined measures to outlaw discriminatory practices and to promote equality, such as providing objective information with regards to SOGI, for instance in school curricula and educational materials, and providing students with the necessary information, protection and support to enable them to live in accordance with their SOGI (¶32). It adds that "*Member states should take appropriate measures to guarantee the full legal recognition of a person's gender reassignment in all areas of life, in particular by making possible the change of name and gender in official documents in a quick, transparent and accessible way*" (¶21). Romania is not only a member of the Council of Europe, and is accordingly a party to this Recommendation, but is also a signatory of the European Convention on Human Rights, as all other EU Member States. The European Court of Human Rights has been key in enforcing the ECHR and clarifying its application.

5. The ECtHR has clarified that Member States have an obligation to ensure Legal Gender Recognition procedures

The Parliamentary Assembly of the Council of Europe has adopted in 2015 a resolution on transgender rights in Europe, where it called on Member States to develop quick, transparent and accessible procedures, based on self-determination, for the recognition of trans persons. In fact, the European Court of Human Rights has already clarified in 2019 in *X v. the former Yugoslav Republic of North Macedonia*⁶ that North Macedonia was required to adopt a legislative framework for the legal recognition of trans persons. The case-law of the ECtHR is clear in ensuring that there is a positive obligation on Member States to ensure the existence of legal mechanisms for '*quick, transparent and accessible procedures*' for changing on birth certificates the registered sex of transgender people, making it so that reversing or creating barriers to this obligation (i.e. what this bill proposes) would infringe on human rights standards. Furthermore, in 2021, the ECtHR ruled in *X and Y v. Romania*⁷ that the refusal of the national authorities to recognise the applicants' identity in the absence of gender reassignment surgery had resulted in a violation of the applicant's rights.

6. The Romanian Constitutional case-law is a reference to uphold

Should the former arguments not be sufficient, a law adopted in 2020 by the Romanian Chamber of Deputies was deemed unconstitutional in Decision 907/2020. The law sought to ban discussions around themes such as gender, gender equality and gender identity in schools, universities and within professional development. The Court was categorical in stating the infringement of the right to freedom of expression, freedom of thought, right to information and, last but not least, the non-discrimination principle and the principle of equality before the law, while representing a violation of transgender people

⁴ European Parliament resolution, (24 June 2021), "*Situation of sexual and reproductive health and rights in the EU, in the frame of women's health (2020/2215(INI))*", accessible at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0314_EN.html.

⁵ Committee of Ministers of the Council of Europe (31 March 2010), "*Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity*", accessible at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cf40a.

⁶ European Court of Human Rights in case of *X v. the Former Yugoslav Republic of Macedonia* (17 January 2019), Application no. 29683/16, accessible at <https://hudoc.echr.coe.int/eng?i=001-189096>.

⁷ European Court of Human Rights in case of *X and Y. v. Romania* (1 January 2021), Application no. 2145/16, accessible at <https://hudoc.echr.coe.int/eng?i=002-13101>.

and women's human dignity. Already at the time, the LGBTI Intergroup had addressed a letter to the Romanian President recalling why such a law would be fundamentally detrimental to LGBTI persons in Romania.⁸ We restate some of these reasons below.

7. What statistics show about Romania in comparison with other EU Member States on LGBTIQ persons

The situation in Romania is concerning regarding the (lack of) protection of LGBTIQ persons:

- It is, together with Poland, the EU country registering the highest rate of physical or sexual assaults of LGBTI persons in the last five years (15%);
- it is equally among the 5 countries in Europe where the majority of the LGBTI population is almost or never open about being LGBTI;
- in particular, trans persons in the EU experience the most harassment due to being LGBTI: 1 in every 2 trans persons has claimed to have been harassed due to being LGBTI. Romania counts on the second largest percentage in the EU of persons in this situation (43%).⁹

Dear President, dear Vice-Presidents, dear Leaders of the Parliamentary Groups:

The letter we address to you today seeks to raise your awareness about the need to unequivocally strike down this law. It is not compliant with European human rights standards, does not seek to further extend protection, but rather to roll-back on already secured rights, and further seeks to ostracise LGBTIQ people by seeking to relegate them to the shadows: no information on what it means to be LGBTIQ means further invisibility; no visibility means no awareness; no awareness means no public policies to ensure protection; and this in turn means further hatred and violence. Should all the previous reasons not be enough, adopting this bill as such would force the Commission to also open infringement procedures against Romania, for the same reasons similar action was taken against Hungary.

We thank you for your consideration and deliberation of the reasons laid out and encourage your support in not allowing this shameful bill to make it through the Chamber of Deputies.

We look positively forward to a reply on your behalf.

Yours sincerely,

Marc ANGEL, *Co-Chair, LGBTI Intergroup (S&D, Luxembourg)*
Terry REINTKE, *Co-Chair, LGBTI Intergroup (Greens-EFA Vice-President, Germany)*
Fabio Massimo CASTALDO, *Vice-President, LGBTI Intergroup (Non-attached, Italy)*
Pierre KARLESKIND, *Vice-President, LGBTI Intergroup (Renew Europe, France)*
Malin BJÖRK, *Vice-President, LGBTI Intergroup (The Left, Sweden)*
Maria WALSH, *Vice-President, LGBTI Intergroup (EPP, Ireland)*

Michal ŠIMEČKA (Slovakia), *EP Vice-President*

Malik AZMANI (Netherlands), *Renew Europe First Vice-President*
Alice KUHNKE (Sweden), *Greens/European Free Alliance Vice-President*
Sira REGO (Spain), *The Left Vice-President*
Marisa MATIAS (Portugal), *The Left Vice-President*

⁸ LGBTI Intergroup (24 June 2020), "MEPs urge Romanian President not to promulgate law forbidding discussions on gender and gender identity", accessible at <http://lgbti-ep.eu/2020/06/24/meps-urge-romanian-president-not-to-promulgate-law-forbidding-discussions-on-gender-and-gender-identity/>.

⁹ Fundamental Rights Agency (May 2020), "A long way to LGBTI equality", accessible on https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-lgbti-equality_en.pdf.

Andreas SCHIEDER (S&D, Austria)
Bart GROOTHUIS (Renew Europe, Netherlands)
Caroline NAGTEGAAL (Renew Europe, Netherlands)
Catharina RINZEMA (Renew Europe, Netherlands)
Cyrus ENGERER (S&D, Malta)
Daniel FREUND (Greens-EFA, Germany)
Diana RIBA I GINER (Greens-EFA, Spain)
Dietmar KÖSTER (S&D, Germany)
Evin INCIR (S&D, Sweden)
Gwendoline DELBOS-CORFIELD (Greens-EFA, France)
Hilde VAUTMANS (Renew Europe, Belgium)
Jan HUITEMA (Renew Europe, Netherlands)
José GUSMÃO (The Left, Portugal)
Karen MELCHIOR (Renew Europe, Denmark)
Kim VAN SPARRENTAK (Greens-EFA, Netherlands)
Malte GALLÉE (G-EFA, Germany)

Martin HOJSÍK (Renew Europe, Slovakia)
Matjaž NEMEC (S&D, Slovenia)
Monika VANA (Greens-EFA, Austria)
Moritz KÖRNER (Renew Europe, Germany)
Nicolae ȘTEFĂNUȚĂ (Renew Europe, Romania)
Niklas NIENASS (Greens-EFA, Germany)
Olivier CHASTEL (Renew Europe, Belgium)
Radka MAXOVÁ (S&D, Czechia)
Ramona STRUGARIU (Renew Europe, Romania)
Rasmus ANDRESEN (Greens-EFA, Germany)
René REPASI (S&D, Germany)
Rosa D'AMATO (Greens-EFA, Italy)
Sara MATTHIEU (Greens-EFA, Belgium)
Saskia BRICMONT (Greens-EFA, Belgium)
Sirpa PIETIKÄINEN (EPP, Finland)
Sophie IN'T VELD (Renew Europe, Netherlands)
Tilly METZ (G-EFA, Luxembourg)