

The LGBTQI-related amendments envisaged by Law T/16365

Section 1 of Law T/16365 will insert the following provisions into Act XXXI of 1997 on Child Protection

Section 3/A: In the child protection system, the State protects children's right to [gender]identity aligning with their sex at birth.

Section 6/A: In order to achieve the objectives of this Act and safeguard the rights of the child, it is prohibited to make available to children under the age of eighteen any pornographic content or content that depicts sexuality for its own sake, or promotes or portrays deviation from [gender]identity aligning with sex at birth, gender reassignment, or homosexuality.

Section 3 of Law T/16365 will insert the following provision into Act XLVIII of 2008 on the Basic Conditions and Certain Restrictions of Commercial Advertising Activities

Section 8(1a): It shall be prohibited to make any advertisement available for children under the age of eighteen that depicts sexuality for its own sake, or promotes or portrays deviation from [gender]identity aligning with sex at birth, gender reassignment, or homosexuality.

Section 9 of Law T/16365 will insert the following provisions into Act CLXXXV of 2010 on Media Services and Mass Communication

Section 9(1): Media service providers providing linear media services shall assign a rating to each and every program they intend to broadcast in accordance with the categories under paragraph (2)-(7) prior to broadcasting, with the exception of news programs, political magazines, sports programs, previews and advertisements, political advertisements, teleshopping, social responsibility advertisements and public service announcements."

Section 9(6): A program which is capable of adversely affecting the physical, mental or moral development of minors, in particular because its dominant element is violence or content promoting or portraying deviation from [gender]identity aligning with sex at birth, gender reassignment, or homosexuality, or the direct, natural or autotelic depiction of sexuality, shall be classified as falling into Category V. Rating of such programs shall be: not recommended for those under the age of eighteen.

Section 32(4a): A program which is capable of adversely affecting the physical, mental or moral development of minors, in particular because its dominant element is sex depicted for its own sake, pornography, or the promotion or portraying of deviation from [gender]identity aligning with sex at birth, gender reassignment, or homosexuality, shall not be qualified as a public service announcement or a social responsibility advertisement.

Section 179(2): In case of problems identified in connection with paragraph (1),¹ as well as when the relevant provisions of this Act and of [Act no. CIV of 2010 on Media Freedom

¹ Paragraph (1) states the following: "The provisions of this Act and Sections 13-20 of Act CIV of 2010 on Media Freedom and the Fundamental Rules of Media Contents shall pertain in accordance with Paragraphs (2)-(6) [of this Section] to audiovisual media services provided by a media service provider established in another Member State, provided that the media service provider established

and the Fundamental Rules of Media Contents] have been violated, the Media Council shall request effective action by the Member State having jurisdiction over the media service provider referred to in paragraph (1). In this context, the Media Council shall call on the Member State to take action to put an end to the infringements identified by the Media Council.

Section 10 of Law T/16365 will insert the following provisions into Act CCXI of 2011 on Family Protection

Section 1(1): The State shall protect – due to the dignity and value that they have in themselves – the institutions of family and marriage, with special regard to the parent-child relationship serving as the basis of the family, where the mother is a woman and the father is a man.

Section 1(2): The protection of well-ordered family relations and the enforcement of children’s right to their [gender]identity aligning with their sex at birth shall have special significance with a view to protecting physical, intellectual and psychological health.

Section 5/A: For the objectives outlined in this Act and for the protection of children it is prohibited to make available to children under the age of eighteen any pornographic content or content that depicts sexuality for its own sake, or promotes or portrays deviation from [gender]identity aligning with sex at birth, gender reassignment, or homosexuality.”

Section 11 of Law T/16365 will insert the following provisions into Act CXC of 2011 on National Public Education

Section 9(12): In conducting sessions on sexual culture, sexual life, sexual orientation and sexual development, special attention shall be paid in particular to Article XVI(1)² of the Fundamental Law. These sessions shall not be aimed at promoting deviation from the child’s [gender]identity aligning with sex at birth, gender reassignment, or homosexuality.

Section 9/A: “(1) Apart from the educational institution’s own employee employed as a teacher, the [health care] professional providing health care services in the school, and any state body that has an agreement of cooperation with the educational institution, only a person or organisation registered by the body designated by law shall be allowed to hold, in the framework of the regular curriculum or other activities organised for the students, a session on sexual culture, sexual life, sexual orientation, sexual development, the harmful effects of drug use, the dangers of the Internet, and other issues related to physical and mental health development (hereinafter: program).

(2) The data contained in the register set up pursuant to paragraph (1) is qualified as data that is public out of public interest, and shall be published on the website of the body designated by the law to maintain the register set up pursuant to paragraph (1).

(3) The register set up pursuant to paragraph (1) shall contain

in another Member State broadcasts the concerned audiovisual media services fully or mainly to Hungary.” Sections 13-20 of Act CIV of 2010 on Media Freedom and the Fundamental Rules of Media Contents contain basic principles such as the requirement to respect human dignity, the requirement to provide information in a balanced, unbiased manner, and the requirement that content that can have an adverse impact of the intellectual, moral, psychological or physical development of minors shall be made available in a way that makes it inaccessible for minors.

² Article XVI(1) of the Fundamental Law stipulates that “every child has the right to the protection and care necessary for their adequate physical, intellectual and moral development. Hungary shall protect the right of children to their [gender]identity in line with their sex at birth, and shall ensure an upbringing in accordance with the values based on our homeland’s constitutional identity and Christian culture.”

- a) the title of the program,
 - b) the program owner
 - ba) - in the case of a natural person - the name and contact details of the person or
 - bb) - in the case of an organization - the name, registered office, contact details,
 - c) indication of what type of public educational institution the program is intended to be implemented in,
 - d) the date of registration and the period of use of the registered program in the public educational institution (indicating the academic year), and
 - e) the issues addressed in the program.
- (4) The body designated by law to maintain the register set up pursuant to paragraph (1) shall [be entitled to] handle the data contained in the register set up pursuant to paragraph (1) until [the data are] deleted from the register.”

Section 79(8): If the authority supervising public education reveals during an official inspection that the educational institution has violated the rules set forth in Section 9/A(1), it initiates a petty offence procedure against the head of the institution and the person or the member of the organization who/that performs the activities listed in Section 9/A(1) while not being included in the register set up pursuant to that same provision.

Section 94(1)(j): (The Minister responsible for education is authorized to) designate, pursuant to Section 9/A(1), in a decree the body authorized to keep the register, as well as set the detailed conditions for registration, the detailed rules for keeping and publishing the register.

Section 13 of Law T/16365 will insert the following provisions into Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry (Petty Offences Act)

Section 248(3)(d): (Any person who) violates the provisions concerning the teaching of sessions that can be held in institutions of public education or breaches the provisions on the supervision of the lawfulness thereof, (shall be liable for committing a petty offence.)

Relevant parts of the explanatory memorandum of document no. T/16365/15 proposing amendments to Bill T/16365

It is the State's obligation deriving from the Fundamental Law to establish rules that create a legal environment and institutional system which guarantees the protection that is necessary for the physical, mental and moral development of children and the preservation and protection of their inalienable [gender]identity aligning with their birth sex. In order for the legislator to comply with this requirement, it is necessary to adopt, in addition to the general rules set out in the Fundamental Law, concrete provisions that can be applied in practice, and through which the protection of the referred values can be realized. It is reasonable that some content should only be made available to children at an appropriate time adjusted to their age in order to ensure their healthy moral and intellectual development. There are contents that a child may misunderstand at a certain age, or that may adversely affect his or her development at that age, or that the child simply does not know what to do with, thus confusing their developing ethical and moral values or the image they have of themselves and the world.

Consequently, the amendment defines – in the spirit of the Fundamental Law and in order to protect the healthy physical and mental development of children – the range of contents that children should be protected from coming across on different platforms (i.e. in media, advertising).

In order to achieve the above goal, the proposal amends Act XLVIII of 2008 Act [...] in a way that it will be prohibited to make available to persons under the age of eighteen any

advertisement that depicts sexuality for its own sake, or promotes or portrays deviation from [gender]identity aligning with sex at birth, gender reassignment, or homosexuality. The amendment of the Media Act ensures that a program which has as its dominant element violence or content promoting or portraying deviation from [gender]identity aligning with sex at birth, gender reassignment, or homosexuality, or the direct, natural or autotelic depiction of sexuality, shall be classified as falling into Category V. According to the proposal, advertisements shall also be classified according to the categories set up by the law. The Media Council will be required to seek effective action by the Member State having jurisdiction over the foreign media service provider that has breached the pertaining rules.

[...]

The proposal envisages the introduction of rules for school sessions/activities – including sex education sessions – held by organizations with questionable professional credibility whose objective in many cases is to represent specific sexual orientations. Representatives of certain organizations in these sessions seek to influence the sexual development of children through activities called sensitizing programs provided in the framework of anti-discrimination awareness-raising activities, which can cause serious damage to children's physical, intellectual and moral development. The purpose of the amendment is to ensure that such sessions could only be held for children by persons or organizations that are included in an official, constantly updated register. The detailed regulations are published in a decree of the Minister of Human Capacities. The proposal creates the petty offence liability for both the head of the educational institution and the person teaching such sessions [without the required registration].