Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 5 June 2025 [1]

Case C-769/22

European Commission
v

Hungary

(Failure of a Member State to fulfil obligations – National legislation introducing stricter measures against 'paedophile offenders' and amending certain laws to protect children – Legislation primarily targeting content portraying or promoting gender identities that do not correspond to the sex assigned at birth, sex reassignment or homosexuality – Article 56 TFEU – Directive 2000/31/EC – Directive 2006/123 – Directive 2010/13/EU – Restriction of provision of services – Charter of fundamental rights – Article 21 – Non-discrimination – Article 7 – Right to private and family life – Article 11 – Freedom of expression – Article 1 – Human Dignity – Article 2 TEU – Values of the European Union – Justiciability – Criterion for finding an infringement of Article 2 TEU)

Table of contents

I. Introduction and background to the proceedings . . . 3
A. The pre-litigation procedure and the procedure before the Court . . . 4
B. Legal framework and outline of the present case . . . 5
1. European Union Law . . . 5
2. Hungarian Law . . . 6
3. Overview of the case . . . 8
II. Analysis – Part One: Breach of fundamental rights and values . . . 9
A. The crux of the dispute . . . 10

[1] Original language: English.

B. The Commission's fifth plea – Infringement of the Charter rights 11
1. Applicability of the Charter 12
2. Infringement of Article 21 of the Charter 13
3. Infringement of Article 11 of the Charter 17
4. Infringement of Article 7 of the Charter 18
5. Can interference with fundamental rights be justified? 19
6. Infringement of Article 1 of the Charter 23
C. The Commission's sixth plea – Infringement of Article 2 TEU 24
1. Justiciability of Article 2 TEU 25
(a) The role of Article 2 TEU in the European Union legal order 26
(1) The constitutional identity of the European Union 26
(2) Condition for the functioning of the European Union legal order 27
(b) Article 2 TEU as a legally binding provision 27
(1) Text, context and history 28
(2) The importance of Article 49 TEU 29
(c) Reasons for and against the justiciability of Article 2 TEU 31
(1) Reasons for justiciability 31
(2) Discussing the reasons against justiciability 32
(i) Article 7 TEU 32
(ii) The general nature of values in Article 2 TEU 33
(iii) National constitutional identity 36
(iv) The purpose of a self-standing finding of infringement of Article 2 TEU 36
2. How to assess whether 'red lines' have been crossed? 38
(a) Negation of values as the criterion for finding an infringement of Article 2 TEU . . 38
(b) Infringement of Charter rights and constitutional dialogue 39
3. Infringement of Article 2 TEU in the present case 40
(a) Rules at issue negate the values of Article 2 TEU 41

(b) Which values were breached? . . . 42

III. Analysis – Part Two: Breach of primary and secondary law relating to the free movement of services and the GDPR . . . 43

A. The Commission's first plea . . . 43

1. Rule 4 . . . 43

2. Rule 6 . . . 44

3. Rule 3 . . . 45

4. Rule 5 . . . 46

B. The Commission's second plea . . . 47

1. Rules 1 and 3 are covered by coordinated fields within the meaning of the Directive on electronic commerce . . . 47

2. Rule 1 falls within the scope of the Directive on electronic commerce . . . 48

3. Rules 1 and 3 restrict information society services . . . 49

C. The Commission's third plea . . . 49

1. Rules 1 and 3 . . . 49

2. Rule 7 . . . 50

D. The Commission's fourth plea . . . 50

IV. Costs . . . 53

V. Conclusion . . . 53

I. Introduction and background to the proceedings

1. By the present action, the Commission asks the Court to declare that Hungary has infringed EU law through amendments to various instruments of domestic legislation that were introduced by 'Law LXXIX of 2021 adopting stricter measures against persons convicted of paedophilia and amending certain laws for the protection of children' ('the Amending Law'). [2]

[2] A pedofil bűnelkövetőkkel szembeni szigorúbb fellépésről, valamint a gyermekek védelme érdekében egyes törvények módosításáról szóló 2021. évi LXXIX. törvény.

2. Several of those amendments, which were, according to Hungary, introduced with the aim of protecting minors, prohibit or restrict access to content that portrays or promotes 'gender identities that do not correspond to the sex assigned at birth, sex reassignment or homosexuality' (for the sake of brevity, I will occasionally refer to such content as 'LGBTI content' [3]).

3. According to the Commission, the amendments at issue infringe EU law on three levels: first, they infringe several instruments of secondary law relating to the provision of services and Article 56 TFEU; second, the amendments contravene rights guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter'); [4] finally, the amendments also infringe Article 2 TEU, which sets out the fundamental values on which the European Union is founded.

4. This last claim that Hungary has breached Article 2 TEU as a self-standing plea for a finding of an infringement of EU law is novel. It raises important questions, such as whether that provision is justiciable in infringement proceedings and when precisely the Court should declare that there has been an infringement of Article 2 TEU, in addition to breaches of the rules on the internal market and of the Charter. The Court, therefore, has decided to hear this case in its plenary formation.

A. The pre-litigation procedure and the procedure before the Court

5. On 25 May 2021, two members of the Hungarian Parliament submitted a bill to that Parliament entitled 'adopting stricter measures against persons convicted of paedophilia and amending certain laws for the protection of children'.

6. On 10 June 2021, the Parliament's legislative committee proposed amendments to that bill, which concerned homosexuality and gender identities.

7. On 15 June 2021, the Hungarian legislature adopted the Amending Law. It took effect on 8 July 2021.

8. On 15 July 2021, the Commission sent a letter of formal notice to Hungary stating its view that, as a result of the adoption of the Amending Law, Hungary had failed to meet its obligations under various provisions of EU law.

9. In a letter dated 15 September 2021, Hungary contested that any breach of EU law had occurred.

10. On 2 December 2021, the Commission issued a reasoned opinion in which it maintained that the Amending Law infringed EU law. The Commission therefore invited Hungary to take the necessary measures to comply with the reasoned opinion within two months of its receipt.

[3] LGBTI is the abbreviation for Lesbian, Gay, Bisexual, Trans and Intersex people, recognised by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). See https://www.ilga-europe.org/about-us/who-we-are/glossary/ (accessed on 18 February 2025). That abbreviation is used by the European Court of Human Rights (ECtHR) when it adjudicates on similar issues. See, for instance, ECtHR, judgment of 23 January 23 2023, *Macatė v. Lithuania*, (CE:ECHR:2023:0123JUD006143519). The abbreviation has also been used in the case-law of the Court. See, for instance, judgment of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI* (C-507/18, EU:C:2020:289). See also Opinion of Advocate General Medina in *Asociación Estatal de Entidades de Servicios de Atención a Domicilio (ASADE)* (C-436/20, EU:C:2022:77, point 2).

[4] The Commission relies on Articles 1, 7, 11 and 21 of the Charter.

11. In a letter dated 2 February 2022, Hungary replied to the reasoned opinion, reiterating that the Amending Law was in compliance with EU law.

12. On 19 December 2022, the Commission brought the present action before the Court under Article 258 TFEU.

13. Hungary lodged its defence on 8 March 2023.

14. The Commission and Hungary, respectively, lodged a reply and a rejoinder on 20 April 2023 and 31 May 2023.

15. By decisions of 20 March, 4 May and 29 June 2023, the President of the Court granted sixteen Member States, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Hellenic Republic, the Kingdom of Spain, the Republic of Estonia, the French Republic, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Republic of Finland, the Kingdom of Sweden, as well as the European Parliament, leave to intervene in the present case in support of the form of order sought by the Commission.

16. Hungary submitted a response to those interventions on 18 January 2024.

17. A hearing was held on 19 November 2024, at which the Commission and Hungary, as well as the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Hellenic Republic, the Kingdom of Spain, the Republic of Estonia, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Finland, the Kingdom of Sweden, as well as the European Parliament, presented oral argument.

B. Legal framework and outline of the present case

1. European Union Law

18. Article 2 TEU states:

‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.’

19. The present case also concerns Article 56 TFEU, Articles 1, 7, 11 and 21 of the Charter, and the following instruments of secondary EU law: the Directive on electronic commerce,[5] the Services Directive,[6] the AVMS Directive,[7] and the GDPR.[8]

2. Hungarian Law

20. Eight amendments ('the Rules') contained in the Amending Law are relevant for the present case as they introduced changes into the following six pieces of national legislation:

– Law XXXI of 1997 on the protection of children and guardianship administration (1997. évi XXXI. törvény a gyermekek védelméről és a gyámügyi igazgatásról; 'the Child Protection Law') (*Rule 1*);[9]

– Law CVIII of 2001 on certain issues regarding electronic commerce services and information society services (2001. évi CVIII. törvény az elektronikus kereskedelmi szolgáltatások; 'the Electronic Commerce Law') (*Rule 2*);[10]

– Law XLVIII of 2008 on the basic conditions for and certain restrictions on economic advertising activities (2008. évi XLVIII. törvény a gazdasági reklámtevékenység alapvető feltételeiről és egyes korlátairól; 'the Advertising Law') (*Rule 3*);[11]

5 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

6 Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36) ('the Services Directive').

7 Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95 p. 1), as amended by Directive 2018/1808 ('the AVMS Directive').

8 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1) ('the GDPR').

9 Paragraph 1(2) of the Amending Law resulted in Paragraph6/A of the Child Protection Law, which now reads: 'To ensure the fulfilment of the objectives set out in this Law and the implementation of the rights of the child, it is forbidden to make accessible to persons who have not attained the age of [18] years content that is pornographic or that depicts sexuality in a gratuitous manner or that promotes or portrays gender identities that do not correspond to sex assigned at birth, sex reassignment or homosexuality.'

10 Paragraph 2(2) of the Amending Law resulted in a new Paragraph 4/D of the Electronic Commerce Law. Rule 2 empowers and mandates a body called the Internet Roundtable for the Protection of Children to take certain measures with regard to providers of electronic services. That body can assess individual cases and make recommendations to service providers to persuade them to cease illicit activities and, should they refuse to follow that recommendation, it may refer the matter to the National Media and Telecommunications Authority. The body at issue is also empowered to maintain a register of the types of content that are considered harmful for the physical, mental and moral development of minors.

11 Paragraph 3 of the Amending Law resulted in a new Paragraph 8(1a) of the Advertising Law, which now reads: 'It shall be forbidden to make accessible to persons who have not attained the age of [18] years advertisement that depicts sexuality in a gratuitous manner or that promotes or portrays gender identities that do not correspond corresponding to sex assigned at birth, sex reassignment or homosexuality.'

– Law CLXXXV of 2010 on media services and mass communication (2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról; 'the Media Law') (*Rules 4,* [12] *5* [13] *and 6* [14]);

– Law CXC of 2011 on national public education (2011. évi CXC. törvény. a nemzeti köznevelésről; 'the National Public Education Law') (*Rule 7*); [15]

– Law XLVII of 2009 on the criminal records system, the registry of judgments against Hungarian citizens handed down by courts of Member States of the European Union, and the recording of criminal and police biometric data (2009. évi XLVII. törvény a bűnügyi nyilvántartási rendszerről, az Európai Unió tagállamainak bíróságai által magyar állampolgárokkal szemben hozott ítéletek nyilvántartásáról, valamint a bűnügyi és rendészeti biometrikus adatok nyilvántartásáról; 'the Law on the criminal records system') (*Rule 8*). [16]

21. Of those eight Rules, the Commission considers seven to be in breach of EU law, whereas Rule 2 was presented by the Commission only for the purpose of context. [17]

22. Rules 1, 3, 4, 6 and 7 are worded very similarly. They prohibit (Rules 1, 3, 6 and 7) or restrict (Rule 4) access of minors to content portraying or promoting gender identities that do not correspond to the sex assigned at birth, sex reassignment or homosexuality. Rule 7 prohibits only the promotion, but not the portrayal, of LGBTI content.

23. Rule 5 imposes the obligation on the Media Council, where problems are identified in connection with the provisions on classification or Law CIV of 2010 on freedom of the press ('2010. évi CIV. törvény a sajtószabadságról és a médiatartalmak alapvető szabályairól', the 'Freedom of Press Law'), to request the Member State, under the jurisdiction of which the media service provider specified in Rule 4 operates, to implement effective measures and to eliminate any violations identified by the Media Council.

24. Rule 8 requires bodies with access to registered data to provide 'authorised persons' with direct access to those data, to transmit data upon request, to certify data and to share information about individuals convicted of sexual offences against children.

12 Paragraph 9(2) of the Amending Law resulted in a new Paragraph 9(6) of the Media Law, which now reads: 'Programmes shall be classified into category V if they are capable of exerting negative influence on the physical, mental or moral development of minors, in particular as a result of their focus on violence or the promotion or portrayal gender identities that do not correspond to sex assigned at birth, sex reassignment or homosexuality or the direct, naturalistic or gratuitous depiction of sexuality. These programmes shall be rated as follows: inappropriate for audiences under the age of [18] years.' The consequence of that classification is that, under Paragraph 10 of the Media Law (not amended by the Amending Law), such programmes, classified as category V, may only be broadcast between 10.00 p.m. and 5.00 a.m.

13 Paragraph 9(5) of the Amending Law resulted in a new Paragraph 179(2) of the Media Law.

14 Paragraph 9(3) of the Amending Law resulted in a new Paragraph 32(4a) of the Media Law, which now reads: 'Programmes shall not qualify as public service announcements or community facility advertisements if they are capable of exerting negative influence on the physical, mental or moral development of minors, in particular as a result of their focus on the gratuitous depiction of sexuality, pornography, the promotion or portrayal of divergence gender identities that do not correspond to sex assigned at birth, sex reassignment or homosexuality.'

15 Paragraph 11 of the Amending Law resulted in a new Paragraph 9(12) of the National Public Education Law, which now reads: 'In the conduct of activities concerning sexual culture, sexual life, sexual orientation and sexual development, special attention shall be paid to the provisions of Article XVI(1) of the Fundamental Law [of Hungary (Magyarország alaptörvénye)]. Such activities cannot be aimed at the promotion of gender identities that do not correspond to sex assigned at birth, sex reassignment or homosexuality.'

16 Paragraph 4(1) of the Amending Law resulted in a new Paragraph 67(1)(a) to (d) of the Law on the criminal records system.

17 According to paragraph 8 of the Commission's application, Rule 2 reinforces infringements committed by Rules 1, and 3 to 7. The Commission does not request that the Court declare Rule 2 contrary to EU law and explains that it included Rule 2 in its action simply because it reinforces the other rules that form the object of the infringement proceedings.

3. Overview of the case

25. By the present action, the Commission is targeting these seven Rules. In relation to Rules 1, 3, 4, 6 and 7, it alleges that they infringe several provisions of primary or secondary EU law (Pleas 1 to 3), the Charter (Plea 5) and Article 2 TEU (Plea 6). In relation to Rules 5 and 8, the Commission does not allege a breach of Article 2 TEU, but only of secondary EU law in relation to Rule 5 (Plea 1) and of secondary EU law and the Charter, in respect of Rule 8 (Plea 4).

26. To facilitate the comprehension of this complex action, the Commission's pleas as they relate to various national Rules and various provisions of EU law are presented schematically in the table below.

<table>
<tr><th>National Rules</th><th colspan="3">Provisions of EU law allegedly infringed and the relevant Commission Pleas</th></tr>
<tr><td>Rule 1
(in the Child Protection Law)</td><td>Article 3(2) of the Directive on electronic commerce (Plea 2);
Articles 16 and 19 of the Services Directive and Article 56 TFEU (Plea 3)</td><td rowspan="5">Articles 1, 7, 11 and 21 of the Charter (Plea 5)</td><td rowspan="5">Article 2 TEU (Plea 6)</td></tr>
<tr><td>Rule 3
(in the Advertising Law)</td><td>Article 9(1)(c)(ii) of the AVMS Directive (Plea 1);
Article 3(2) of the Directive on electronic commerce (Plea 2);
Articles 16 and 19 of the Services Directive and Article 56 TFEU (Plea 3)</td></tr>
<tr><td>Rules 4 and 6
(in the Media Law)</td><td>Article 6a(1) of the AVMS Directive (Plea 1)</td></tr>
<tr><td>Rule 7
(in the National Public Education Law)</td><td>Articles 16 and 19 of the Services Directive and Article 56 TFEU (Plea 3)</td></tr>
<tr><td>Rule 5
(in the Media Law)</td><td>Articles 2 and 3(1) of the AVMS Directive (Plea 1)</td><td></td><td></td></tr>
<tr><td>Rule 8
(in the Law on the criminal records system)</td><td>Article 10 GDPR and Article 8(2) of the Charter (Plea 4)</td><td></td><td></td></tr>
</table>

27. The Commission asks the Court to declare that the Rules infringe the provisions of EU law as presented in the table. Hungary considers that the Court should dismiss the Commission's action in its entirety as unfounded.

II. Analysis – Part One: Breach of fundamental rights and values

28. The present infringement proceedings concern multiple violations of the rules for the internal market as they relate to the freedom to provide services and several rights contained in the Charter. Importantly, they also raise, for the first time, a separate plea of infringement of Article 2 TEU.

29. The primary importance of the questions regarding the infringement of Article 2 TEU has prompted me not to follow the order of the pleas of infringement as brought by the Commission. As many of the issues relating to the first layer of pleas set out in the Commission's application are technical legal issues, and as some pleas of infringement relate only to EU secondary law and not to the Charter and Article 2 TEU, I will deal with that first layer of pleas in the Part Two of my analysis. [18]

30. However, to the extent that this first layer of pleas is important to introduce the Charter into the present case, [19] I should explain at the outset that, in my view, all the amendments at issue come within the scope of application of the directives relied on by the Commission and/or of Article 56 TFEU. [20] Therefore, any derogation from the freedom to provide services introduced by those amendments must not only be justified by reasons of public interest, attained in a proportionate manner, but also cannot violate any of the rights guaranteed by the Charter. [21]

31. Notwithstanding my decision to change the order in which I will address the Commission's pleas, it is important to emphasise that, in its application, the Commission requested that the Court declare that there has been an infringement of Article 2 TEU in connection with other infringements of EU law relating to the freedom to provide services and of the Charter. Therefore, the plea regarding the breach of Article 2 TEU is raised within the scope of EU law.

32. The Commission asks the Court, as it underlined at the hearing, to find that a breach of Article 2 TEU has occurred in these particular circumstances only. I will refer to such a situation as the use of Article 2 TEU as a *self-standing* ground of infringement, as opposed to its use as an *autonomous* ground of infringement. The latter would exist if a breach of Article 2 TEU could be found even outside of the scope of application of EU law or independently of other breaches of EU law.

18 That means that I will address Commission's first to fourth pleas in detail in the second part of the present Opinion. In the first part of the present Opinion, I will address the fifth and sixth pleas put forward by the Commission.

19 According to Article 51(1), the Charter is applicable to the Member States only when they 'are implementing Union law'. The Court interpreted that concept as encompassing all situations which enter within the scope of EU law [see, to that effect, judgment of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraphs 19 and 21)], including those in which Member States rely on derogations from the internal market freedoms permitted by European Union law [see, to that effect, judgment of 18 June 1991, *ERT* (C-260/89, EU:C:1991:254, paragraph 43)].

20 A more detailed discussion of that position will follow in the second part of my Opinion.

21 See, to that effect, judgments of 18 June 1991, *ERT* (C-260/89, EU:C:1991:254, paragraphs 42 to 44); of 14 October 2004, *Omega* (C-36/02, EU:C:2004:614, paragraphs 37 and 38 and the case-law cited); and of 4 October 2024, *Mirin* (C-4/23, EU:C:2024:845, paragraph 62).

33. The question of the possible autonomous application of Article 2 TEU in order to assess the validity of Member States' legislation or actions taken outside of the scope of EU law does not arise in the present case.[22] Even though that question was discussed to a certain degree at the hearing, it is not before the Court in the present case, and I am of the opinion that the Court should defer any such discussion to an appropriate case arising in the future.

34. With these introductory remarks in mind, I will proceed with my Opinion as follows. In Part One under A, I will explain why the present case is, at its core, about values. Under B, I will offer arguments as to why the Hungarian legislation represents a violation of fundamental rights protected under Articles 21, 11 and 7 of the Charter, and, importantly, why those violations cannot be justified. I will further explain why that amounts to a violation of human dignity, as enshrined in Article 1 of the Charter. Under C, I will turn to the question as to whether the Commission's claim regarding a self-standing infringement of Article 2 TEU can be accepted. In Part Two of the present Opinion, I will return to the Commission's arguments and to Hungary's counterarguments about the infringement of concrete provisions of the FEU Treaty and of EU secondary law.

A. The crux of the dispute

35. When questioned at the hearing about its reasons for introducing a self-standing ground alleging an infringement of Article 2 TEU, the Commission explained that, when examining the individual infringements of various EU secondary instruments and the Charter, it came to the conclusion that there is 'something more' in the present case.

36. This 'something more' is, in my view, triggered by the underlying divergence in values between the position of the Hungarian Government and that of the Commission as they relate to the reasons offered by Hungary as motivating and justifying the contentious amendments.

37. Hungary claims that the amendments aim and are necessary for the protection of minors, as their exposure to 'LGBTI content' can have a negative influence on their physical, mental or moral development. That Member State also explains that the decision of when to present potentially harmful 'LGBTI content' to a minor should be left to their parents or legal guardians.

38. The Commission, supported by the European Parliament and the 16 intervening Member States, is of the opinion that exposing minors to content portraying LGBTI lives cannot, in itself, harm their development.

39. At this point, it is necessary to explain that the Hungarian legislation does not prohibit or restrict the portrayal of erotic or pornographic LGBTI content; rather, it prohibits the depiction of the ordinary lives of LGBTI persons. That is to say that the Rules at issue prohibit or restrict 'LGBTI content' *in addition to* pornographic content, or content that depicts sexuality in a gratuitous manner, or violence.[23] To protect children from openly sexual content, it was not

[22] Even if it is difficult to imagine breaches of Article 2 TEU that would have no impact on any other provision of EU law, such a scenario could, however, be imagined. In that respect, see Rossi, L.S., '"Concretised," "Flanked", or "Standalone"? Some Reflections on the Application of Article 2 TEU', *European Papers*, 2025, p. 23.

[23] In that respect, 'LGBTI content' is prohibited by Rules 1 and 3 alongside pornographic content and content depicting sexuality in gratuitous manner; by Rule 4 alongside the prohibition of content having as its central element violence or gratuitous depiction of sexuality; and by Rule 6 alongside the prohibition on the portrayal of pornography and gratuitous depiction of sexuality. Rule 7, however, prohibits only the promotion of LGBTI content.

necessary to amend the legislation by adding the prohibition of 'LGBTI content'. Such content had already been captured by the rules protecting minors before the contested amendments were adopted.

40. Thus, one may only conclude that the additional prohibition of 'LGBTI content', as introduced by contentious amendments, applies to the ordinary, everyday lives of LGBTI persons. It is in that sense that I will use the expression 'LGBTI content'.

41. Hungary's decision to protect minors from 'LGBTI content' is not based on any scientific proof of its potential harmfulness for the physical, mental or moral development of children. It is, therefore, based on a value judgement, or, as the European Parliament referred to it, on a prejudice that homosexual and non-cisgender life is not of equal value or status as heterosexual and cisgender life. That is why Hungary believes that 'access of minors to such content might be susceptible to negatively affect their image of themselves or of the world.' [24]

42. The value judgement on which the Hungarian legislation at issue is based is in stark discrepancy with the values of human dignity, equality, and respect for human rights as understood in the European Union and in the wider European order of human rights, as framed by the European Convention of Human Rights (ECHR). [25]

43. Therefore, the disagreement between the Commission and Hungary in the present case is a disagreement about *values*. Nevertheless, the question remains as to whether such a disagreement could and should trigger the application of Article 2 TEU.

44. Before I enter into a discussion about the applicability of Article 2 TEU in the present case, I will first demonstrate that the contested rules violate a number of fundamental rights protected by the Charter, and that the violation of those rights cannot be justified by the reasons that Hungary puts forward.

B. The Commission's fifth plea – Infringement of the Charter rights

45. The Commission claims that Rules 1, 3, 4, 6 and 7 violate the prohibition of discrimination on grounds of sex and sexual orientation as contained in Article 21 of the Charter (2), freedom of expression and information as guaranteed by Article 11 of the Charter (3), and respect for private and family life as provided for in Article 7 of the Charter (4). Hungary denies all these allegations, contending that its Rules serve the protection of the minors. I will analyse whether the Rules at issue constitute an interference with those rights, after I first explain that the Charter is applicable to the Rules at issue (1). As I will demonstrate, the interference that indeed exists cannot be justified (5), which is why I consider that the Commission's claim about the violation of human dignity should also be accepted (6).

[24] In its application, the Commission cited this statement from the Hungarian response to the letter of formal notice. See paragraph 250 of the Commission's application.

[25] See, for example, ECtHR, judgment of 21 October 2010, *Alekseyev v. Russia*, (CE:ECHR:2010:1021JUD000491607, § 86), in which that court explained that there is no 'scientific evidence or sociological data … suggesting that the mere mention of homosexuality, or open public debate about sexual minorities' social status, would adversely affect children'. See also ECtHR, judgment 20 June 2017, *Bayev and others v. Russia*, (CE:ECHR:2017:0620JUD006766709, § 82), in which the ECtHR found that, to the extent that the minors who witnessed the campaign in favour of the LGBTI were exposed to the ideas of diversity, equality and tolerance, the adoption of these views could only be conducive to social cohesion, which was also confirmed in the recent ECtHR judgment of 23 January 2023, *Macatė v. Lithuania*, (CE:ECHR:2023:0123JUD006143519, § 211).

1. Applicability of the Charter

46. In accordance with Article 51(1) of the Charter, Member States are bound by the Charter only when they implement Union law. As explained by the Court, that means that the fundamental rights guaranteed therein must be complied with whenever national legislation falls within the scope of EU law.[26] In other words, Hungary can only infringe the Charter if the contested Rules fall within the scope of Article 56 TFEU and/or the instruments of secondary law which are, according to the Commission, infringed by those Rules. Before assessing the grounds alleging a breach of fundamental rights, I should therefore first determine whether the five Rules at issue fall within the scope of EU law.

47. Hungary does not dispute that Rules 3, 4 and 6 fall within the scope of at least one directive. However, it considers Rule 1 and Rule 7 to be outside of the ambit of EU law.

48. Rule 1 prohibits the portrayal and promotion of 'LGBTI content' to minors in the context of the Child Protection Law. Hungary contends that that Law is addressed to the State, local authorities and natural and legal persons mandated by the public authorities to perform a narrow range of services as they relate to the care and protection of children. Such services are not offered for remuneration, and do not, therefore, fall under the concept of services under Article 56 TFEU. Furthermore, such services are not likely to be provided cross-border.

49. However, the Commission contends, first, that the scope of the Child Protection Law is not as narrow, and that it also applies to institutions providing care to children for remuneration, such as day care centres,[27] or private foster care facilities. They may fall under the concept of a service provider within the meaning of EU law if they provide their services in exchange for remuneration.

50. Furthermore, even if the addressees of the Child Protection Law do not provide services to children in exchange for remuneration, they are discouraged from purchasing services, including those offered by providers in other Member States, which contain 'LGBTI content'. As they are prohibited from using that content in the course of their care for children, they have no reason to become recipients of services with 'LGBTI content'.[28]

51. Article 56 TFEU and the Services Directive prohibit restrictions on both the provision and reception of cross-border services.[29] In addition, the Directive on electronic commerce, which is, according to the Commission, infringed by Rule 1, also prohibits restrictions on both the provision and reception of information society services.[30]

52. As argued by the Commission, it is possible that the Child Protection Law makes less attractive the provision of cross-border services, such as, for example, a theatre show telling the story of a LGBTI family and which offers its services to children's day care centres around the

26 Judgment of 26 February 2013, *Åkerberg Fransson* (C-617/10, EU:C:2013:105, paragraph 21).

27 See, in that respect, Article 41 of the Child Protection Law.

28 See, by analogy, cases relating to the use of products in which the Court considered rules restricting the use of a product to be measures of equivalent effect to quantitative restrictions prohibited by Article 34 TFEU. See, in that respect, judgments of 10 February 2009, *Commission* v *Italy (trailers)* (C-110/05, EU:C:2009:66), and of 4 June 2009, *Mickelsson and Roos* (C-142/05, EU:C:2009:336, especially paragraphs 26 to 28).

29 See, to that effect, judgments of 6 October 2009, *Commission* v *Spain* (C-153/08, EU:C:2009:618, paragraph 29 and the case-law cited), and of 2 March 2023, *Recreatieprojecten Zeeland and Others* (C-695/21, EU:C:2023:144, paragraph 13 and the case-law cited).

30 See, to that effect, the concept of recipient of services in Article 2(d) of the Directive on electronic commerce: 'any natural or legal person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible'.

European Union. Equally, a foster care facility in Hungary has no reason to buy a cartoon that provides educational material adapted for teenagers about gender identity, offered on demand from the website of a service provider situated in Croatia. Rule 1 therefore restricts the cross-border provision of information society services.

53. Thus, I consider that Rule 1, as contained in the Child Protection Law, may apply to services within the meaning of EU law.

54. Rule 7, contained in the National Public Education Law, prohibits the promotion of 'LGBTI content' in sexual education.

55. Hungary claims that this Rule falls outside the scope of EU law on services, as public education is not considered to be a service offered for remuneration within the meaning EU law.

56. It is true that the case-law generally considers that education in the public sector does not amount to a provision of services.[31] However, in various judgments, the Court has found that educational activities can be classified as services under EU law when they are provided for remuneration and operate outside the strictly public, state-funded education system.[32] That can also be the case for any service provided by an external guest speaker or expert who could intervene in educational establishments.[33]

57. Therefore, I consider that Rule 7 can also apply to situations covered by EU law.

58. In conclusion, all five Rules contested by the Commission fall within the scope of EU law and must, therefore, be in conformity with the Charter.

59. The Charter being applicable, I will now turn to assess the compatibility of those Rules with the Charter rights invoked by the Commission.

60. To recall, the five Rules to which this plea applies are worded similarly. They all restrict or preclude access to content that promotes or portrays gender identities that do not correspond to sex assigned at birth, sex reassignment or homosexuality to minors under the age of 18 years, without any distinction between age groups. Access to such content is restricted or prohibited either generally (Rule 1), when featured in programmes on linear audiovisual media (AVM) (Rule 4), as awareness raising messages on AVM (Rule 6) or as advertising in any type of media (Rule 3). Rule 7 prohibits the promotion only – and not also the portrayal – of 'LGBTI content' in the context of sexual education.

2. Infringement of Article 21 of the Charter

61. Article 21 of the Charter prohibits discrimination, among other grounds, on the basis of sex and sexual orientation.

[31] See, to that effect, judgments of 27 September 1988, *Humbel and Edel* (263/86, EU:C:1988:451, paragraphs 17 to 19), and of 7 December 1993, *Wirth* (C-109/92, EU:C:1993:916, paragraphs 15 and 16).

[32] See, to that effect, judgments of 7 December 1993, *Wirth* (C-109/92, EU:C:1993:916, paragraphs 17); of 11 September 2007, *Commission* v *Germany* (C-318/05, EU:C:2007:495, paragraph 69); and of 20 May 2010, *Zanotti* (C-56/09, EU:C:2010:288, paragraph 32).

[33] See, to that effect, judgment of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania* (C-74/16, EU:C:2017:496, paragraphs 41 et seq.).

62. According to an established line of case-law, less favourable treatment of persons because of gender reassignment ('transsexualism')[34] represents discrimination on the ground of sex.[35] The recent judgment in *Mousse* confirms that the prohibition on sex discrimination also extends to discrimination on the ground of gender identities that do not correspond to the sex assigned at birth and which do not include a physical change of gender ('transgender identity').[36]

63. On the other hand, homosexuality, also targeted by the Rules at issue, falls within the concept of 'sexual orientation'.[37]

64. The Commission claims that the discrimination in the present case consists of the difference in treatment of heterosexual and cisgender persons in comparison to LGBTI persons. While the Rules at issue affect the representation of content that depicts homosexual and non-cisgender lives to minors, they do not restrict the representation of content depicting the lives of heterosexual and cisgender persons. Furthermore, the amendments at issue aim, in the Commission's view, to marginalise LGBTI persons in Hungarian society.

65. Hungary counter-argues that the Rules at issue do not have as their object LGBTI persons, but rather aim at the protection of minors in a limited number of situations in which their exposure to 'LGBTI content' cannot be controlled by their parents or guardians.

66. According to the case-law of the Court, discrimination occurs not only when a person is treated less favourably than another person in a comparable situation, but also when an action or law differentiates on the basis of a prohibited criterion. That is so regardless of the identity of the victims affected by reliance on such prohibited criterion, that is, whether it is a person belonging to a minority group that the prohibition protects or a person not belonging to the group concerned.[38]

67. Applying that case-law to the present case, the Rules at issue that are based explicitly on the criterion of sex (transsexual or transgender identity) and sexual orientation (homosexual orientation) are indeed discriminatory.

68. Despite the Hungarian claim that those Rules do not target that minority group, they are nevertheless clearly founded on a differentiation based on sex and sexual orientation. As explained earlier (see point 39 of the present Opinion), the access of minors to content portraying ordinary LGBTI lives, and not only to openly sexual or pornographic representations of LGBTI lives, is prohibited. Access to content portraying the ordinary lives of heterosexual and cisgender people is, however, not prohibited by any of Rules 1, 3, 4, 6 or 7.

[34] The difference between sex reassignment ('transsexualism') and gender identity different from the one at birth ('transgender identity') differ in that the former implies medical or physical interventions, whilst the term 'transgender' relates more to identity than physical or medical aspects.

[35] Judgments of 30 April 1996, *P.* v *S.* (C-13/94, EU:C:1996:170, paragraph 20); of 7 January 2004, *K. B.* (C-117/01, EU:C:2004:7, paragraph 34); of 27 April 2006, *Richards* (C-423/04, EU:C:2006:256, paragraph 24); and of 26 June 2018, *MB (Change of gender and retirement pension)* (C-451/16, EU:C:2018:492, paragraph 35).

[36] Judgment of 9 January 2025, *Mousse* (C-394/23, EU:C:2025:2, paragraphs 61 and 62).

[37] For an illustration of a case of discrimination based on sexual orientation see, for example, judgment of 12 January 2023, *TP (Audiovisual editor for public television)* (C-356/21, EU:C:2023:9, paragraph 66).

[38] See, in that respect, in relation to ethnic discrimination, judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria* (C-83/14, EU:C:2015:480, paragraph 56). See also my Opinion in *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge* (C-417/23, EU:C:2025:98, points 105 to 120).

69. In relation to Rule 7, Hungary states that it prohibits only the promotion of 'LGBTI content' and only in the context of sexual education. However, that is not a defence against the claim of discrimination. I can agree that promotion of any type of life should not be part of education, which should be as impartial as possible and enable children to develop their own views on various issues. [39] However, Rule 7 prohibits only the promotion of 'LGBTI content', but not of heterosexual or cisgender content. It is, therefore, discriminatory on the grounds of sex and sexual orientation.

70. Hungary further claims that the Commission did not adduce any examples of concrete violations of the anti-discrimination rules.

71. In that respect, it is important to take into consideration that infringement proceedings are an exercise of abstract judicial review. The Commission often directs such proceedings at Member State's legislation *as such*, and the claim is necessarily about the *potential* of such legislation to breach EU law. In such situations of abstract judicial review, the Court, just as national constitutional courts when they assess the constitutionality of legislation, does not decide on concrete violations of individual human rights, but rather makes a finding on the potential of such rules to breach the fundamental rights of individuals or groups.

72. The Commission adduced sufficient arguments to show that the contested legislation has the potential to disadvantage various individuals or groups because that legislation is predicated on the prohibited criterion. Any service provider or service recipient is disadvantaged by the prohibition on the provision of or access to LGBTI content. That limitation does not affect only LGBTI persons, but natural and legal persons in general.

73. Furthermore, the amendments at issue have stigmatising effects for LGBTI persons. Stigmatisation is a situation in which members of one minority group, such as LGBTI persons, are attributed socially reproachable characteristics solely on the basis of their membership or perceived membership of that group.

74. Stigmatisation places LGBTI persons in a disadvantaged position on the labour market and in social life. [40]

75. I agree with the Commission that prohibiting access to the presentation of the ordinary lives of LGBTI persons because they are considered harmful is in itself stigmatising, not only to minors, but also to adults.

76. Furthermore, the negative perception of the LGBTI community is also worsened by placing the depiction of ordinary LGBTI lives alongside gratuitous representations of sexuality and pornography, as well as violence.

[39] Interpreting the second sentence of Article 2 of the First Protocol of the ECHR, dealing with the right to education, the ECtHR considered that it implies 'that the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner. The State is forbidden to pursue an aim of indoctrination that might be considered as not respecting parents' religious and philosophical convictions.' See ECtHR, judgments of 7 December 1976, *Kjeldsen, Busk Madsen and Pedersen v. Denmark*, (CE:ECHR:1976:1207JUD000509571, § 53), and of 18 March 2011, *Lautsi and Others v. Italy*, (CE:ECHR:2011:0318JUD003081406, § 62).

[40] See, in that respect, the survey conducted by the Fundamental Rights Agency, 'LGBTIQ equality at a crossroads: progress and challenges', 11 May 2024, available at https://fra.europa.eu/en/publication/2024/lgbtiq-equality-crossroads-progress-and-challenges

77. Finally, the merging in the Amending Law of the rules on the protection of children from paedophilia with the rules enacted to protect children from LGBTI content further enhances the stigmatising effect that the Rules produce in and of themselves.

78. Hungary defends itself against the latter argument by explaining that it is a usual legislative technique in that Member State to amend several Laws with a single piece of legislation, and that the Laws thus amended have nothing to do with paedophilia.

79. Even if that might be true as a matter of law, given the societal effect that such a technique could have in this particular situation, Hungary could have decided to separate the two amending Laws and avoid any stigmatising side-effects. On the contrary, that Member State decided to merge those different legislative amendments.

80. I should add that a number of reports of EU institutions [41] or international organisations that monitor the respect of human rights, [42] have also recognised that the Rules at issue have a stigmatising effect, as alleged by the Commission.

81. To my mind, active contribution to the stigmatisation of a minority group by a State, whether it be intentional or unintentional, constitutes direct discrimination, because it runs contrary to the very nature of the principle of equality. [43] Stigmatisation enhances pre-existing social prejudices in society, directing social development away instead of towards equality. That undermines the purpose of the rules prohibiting discrimination, which is the attainment of equality in any given society. [44]

82. The European Union's constitution, which includes the Treaties and the Charter, expresses the choice that people are to be treated equally notwithstanding their sex or sexual orientation. That choice is expressed in Article 21 of the Charter, enumerating sex and sexual orientation as prohibited grounds of discrimination, and in Article 19 TFEU, which is a legal basis for Union measures combating this type of discrimination.

83. Even if it might be true that, in some European societies, the rights to equality of LGBTI persons are not yet fully internalised, a Member State that adopts rules that steer the societal acceptance of equality of that minority group away from that goal is in breach of Article 21 of the Charter.

41 European Parliament resolution of 8 July 2021 on 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)).

42 Venice Commission, *Opinion on the compatibility with international human rights standards of Act LXXIX [of 2021] amending certain acts for the protection of children, adopted by the Venice Commission at its 129th plenary session* (Venice and online, 10-11 December 2021), paragraphs 24 and 25. See also, Amnesty International, *From freedom to censorship; the consequences of Hungarian Propaganda Law*, Amnesty international, Budapest, 2024; Háttér Society, *The Anti-LGBTQI Law of Hungary in Action: A Combination of State- and Self-Enforcement*, November 2024; available at: https://en.hatter.hu/sites/default/files/dokumentum/kiadvany/hatter-anti-lgbtqi-law-2024-november.pdf. At the hearing, Hungary contested some of the specific findings in that report.

43 See in that respect, judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria* (C-83/14, EU:C:2015:480, paragraphs 84 and 87). See also my Opinion in *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge* (C-417/23, EU:C:2025:98), points 147 to 158.

44 Thus, Article 19(1) TFEU provides a legal basis to *combat* discrimination. Several instruments adopted on the basis of that provision explain that their aim is to implement the principle of equal treatment. See the title of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22), and Article 1 thereof stating: 'the purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.' Similar wording is used by Article 1 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

3. Infringement of Article 11 of the Charter

84. Article 11 of the Charter guarantees the freedom of expression and information. That right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority. Article 11(2) of the Charter specifies that the freedom and pluralism of the media shall also be protected.

85. According to the Explanations relating to the Charter, [45] the rights guaranteed in Article 11 of the Charter correspond to those guaranteed by Article 10 ECHR. From that perspective, the findings of the ECtHR have been a valuable source of inspiration for the case-law of the Court.

86. In that regard, the Court has explained that the freedom of expression covers speech conveyed by any means of communication, including the Internet (by use of information society services). [46] It also confirmed that Article 11 applies to all kinds of speech, including commercial speech, which may be in the form of advertising. [47]

87. That freedom does not protect only the sharing of 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also of those that offend, shock or disturb; such are the demands of the pluralism, tolerance and broadmindedness without which there is no 'democratic society'. [48]

88. In that light, the Commission contends that the Rules at issue interfere not only with the freedom of the LGBTI community to convey the information and ideas that concern that community, but also the right of the general public to impart and receive information about the LGBTI community. Even if the Rules target minors, and therefore necessarily restrict their right to receive information, 'LGBTI content' in the form of advertising, or public service announcements or awareness raising messages can neither reach nor be imparted by anyone.

89. I agree with the Commission that the classification of audiovisual programmes as category V, as required by Rule 4 if they feature LGBTI content, restricts not only minors but also anyone who might wish to see such a programme because it may be broadcast only late at night. It also restricts authors and providers of audiovisual services that present such programmes. If the author of a cartoon, which depicts the life of a LGBTI family or the problems of two teenagers as they come to terms with their sexuality or gender identities, can only broadcast such content during limited hours and if such a cartoon cannot be shown in a school or in other public spaces, both the right of that person to convey their idea and the right of everyone to receive it is curtailed. [49]

90. Finally, Rule 3 of the Advertising Law clearly interferes with commercial speech.

45 OJ 2007 C 303, p. 17.

46 See, to that effect, judgment of 9 March 2021, *VG Bild-Kunst* (C-392/19, EU:C:2021:181, paragraph 49 and the case-law cited).

47 See, to that effect, judgments of 17 December 2015, *Neptune Distribution* (C-157/14, EU:C:2015:823, paragraph 64 and the relevant case-law of the ECtHR cited), and of 3 February 2021, *Fussl Modestraße Mayr* (C-555/19, EU:C:2021:89, paragraph 81).

48 See, to that effect, judgments of 6 March 2001, *Connolly v Commission* (C-274/99 P, EU:C:2001:127, paragraph 39 and the relevant case-law of the ECtHR cited), and of 12 January 2023, *Migracijos departamentas (Reasons for persecution on the ground of political opinion)* (C-280/21, EU:C:2023:13, paragraph 30).

49 In its judgment of 23 January 2023, *Macatė v. Lithuania*, (CE:ECHR:2023:0123JUD006143519, § 181), the ECtHR explained that 'the marking of the book as being harmful to the age group for which it was intended affected the applicant's ability to freely impart her ideas.'

91. In its defence against the claims of interference with the freedom of expression, Hungary submits that the restriction applies only to certain ways of sharing information. While that may be relevant for the justification of such actions, it does not alter a possible finding of an interference with that right.

92. Another argument that Hungary raises in defence of its interference is that the right of LGBTI persons either to impart or receive information is not directly affected as the Rules do not prevent LGBTI persons from receiving or imparting information, but relate only to certain content that might be harmful to minors. That argument is not relevant. Article 11 of the Charter is aimed at preventing censorship and applies to rules that prohibit or restrict certain content.

93. Therefore, I consider that, even if limited to certain means and modes of expressing and receiving information, the contested Rules interfere with the freedom of expression and information.

4. Infringement of Article 7 of the Charter

94. Article 7 of the Charter guarantees the right to respect for private and family life.

95. According to the Explanations relating to the Charter, the rights guaranteed in Article 7 of the Charter correspond to those guaranteed by Article 8 ECHR. Therefore, just as in relation to freedom of expression, the case-law of the ECtHR is relevant for the interpretation of the right to respect of private and family life. [50]

96. As the Commission submits in its application, the ECtHR has recognised the concept of 'private life' as a broad concept that encompasses a person's physical and psychological integrity, including sexual life. It also includes aspects of physical and social identity, such as gender identification, name, sexual orientation and personal relationships. [51] Article 8 ECHR also guarantees the right to a 'private social life', [52] which is the right to personal development and the ability to form relationships with others and the outside world. [53]

97. Stigmatisation resulting from the Hungarian legislation at issue affects all these aspects of the right to private and family life. The ECtHR considered that States have a positive obligation to ensure the respect of individuals' private lives. [54] The Court of Justice has also recognised the existence of such positive obligations as it pertains to the protection of the private lives of transgender persons. [55]

98. The Commission indicates that the situation in the cases decided by the ECtHR differ from that of the present case, as the stigmatising actions were the actions of other individuals or groups, and that court found the violation of the right to private life resided in the failure of the State to prevent or address such actions.

50 See, in that respect, judgment of 4 October 2024, *Mirin* (C-4/23, EU:C:2024:845, paragraphs 62 to 65).

51 ECtHR, judgment of 14 January 2020, *Beizaras and Levickas v. Lithuania*, (CE:ECHR:2020:0114JUD004128815, § 109 and the case-law cited). See also the earlier judgment of 22 October 1981, *Dudgeon v. the United Kingdom*, (CE:ECHR:1981:1022JUD000752576, § 41).

52 ECtHR, judgments of 29 April 2002, *Pretty v. the United Kingdom*, (CE:ECHR:2002:0429JUD000234602, § 61), and of 5 September 2017, *Bărbulescu v. Romania*, (CE:ECHR:2017:0905JUD006149608. § 77).

53 ECtHR, judgment of 5 June 2009, *Schlumpf v. Switzerland*, (CE:ECHR:2009:0108JUD002900206, § 77).

54 ECtHR, judgment of 16 February 2021, *Budinova and Chaprazov v. Bulgaria*, (CE:ECHR:2021:0216JUD001256713, § 87).

55 Judgment of 4 October 2024, *Mirin* (C-4/23, EU:C:2024:845, paragraph 65). See also, to that effect, judgments of 9 January 2025, *Mousse* (C-394/23, EU:C:2025:2), and of 13 March 2025, *Deldits* (C-247/23, EU:C:2025:172, paragraph 47).

99. I agree with the Commission that, in the present situation, the violation of the right to private life is even more aggravated as the stigmatisation of LGBTI persons results from the Member State's legislative action. The stigmatising effects of the Hungarian legislation, which creates a climate of hostility towards LGBTI persons, may affect the feelings of identity, self-esteem and self-confidence of LGBTI persons. They affect minors, but also adults. Minors who belong to the LGBTI community are especially affected, as the removal of information about LGBTI lives from the public sphere prevents them from realising that their life is not abnormal. It also affects their acceptance by their peers, in school or other environments and thus affects their right to a 'private social life' as well. Therefore, rather than protecting minors from harm, the contested legislation expands such harm.

100. In relation to the Commission's allegation regarding the infringement of Article 7 of the Charter, Hungary contends that the Commission has not demonstrated any stigmatising effect resulting from the legislation at issue.

101. However, in the process of abstract judicial review, as I have already explained, it is sufficient to adduce arguments that the legislation at issue has the *potential* to produce stigmatising effects. The Commission has adduced sufficient arguments as to why the content of the Hungarian legislation, its structure and the procedure by which it was adopted contribute to installing a negative climate towards LGBTI people in Hungary.

102. In conclusion, I agree with the Commission that the Hungarian legislation interferes with the private lives of LGBTI persons.

5. Can interference with fundamental rights be justified?

103. According to Article 52(1) of the Charter, the rights expressed therein may be limited. Any limitation must be provided for by law and must respect the essence of the right at issue. For the limiting rules to be justified, first, they must aim at protecting a general interest recognised by the Union or the rights and freedoms of others. Second, the restriction must be proportionate to the aim it pursues.

104. In that light, Hungary states that the interference with fundamental rights is justified by the aims of the contested legislation – the protection of the healthy development of minors and of the rights of parents to raise their children according to their personal convictions. [56]

105. By pursuing such aims, Hungary contends that it in fact protects the fundamental rights of children and parents, as contained in the Charter. It relies on Article 24(2) of the Charter, which requires the protection of the best interests of the child, and Article 14(3) thereof, which mentions the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions.

106. In relation to the first justification invoked by Hungary, the Commission asserts that Hungary did not provide any type of evidence that the healthy development of minors could in any way be harmed if they are faced with content that portrays the ordinary lives of homosexual or

[56] Hungary already relies on and explains those justifications in the preliminary remarks to its written defence, and then in relation to the Commission's allegations about the breach or restriction of the rules relating to the freedom to provide services. It adduces most of its arguments in response to the Commission's first plea, relating to the infringement of Article 6a of the AVMS Directive. However, Hungary relies on similar arguments to justify its Rules in the context of other pleas, including those alleging breaches of fundamental rights, often simply referring back to its arguments adduced in relation to the first plea.

non-cisgender people. Quite the contrary, the Commission, supported by the intervening Member States and the Parliament, not only considers that 'LGBTI content' cannot be harmful for children, but that shielding minors from 'LGBTI content' can in fact be harmful for the development and socialisation of young people.

107. Hungary responds to that argument by invoking, in the first place, the precautionary principle and, in the second place, the margin of discretion that Member States enjoy in determining what is harmful to children, in conformity with their moral, religious or cultural traditions.

108. Regarding the precautionary principle, Hungary contends that *a risk of harm* for minors' development exists if they are exposed to 'LGBTI content' without adult guidance. That Member State considers that, within its margin of discretion, it may take protective measures 'without having to wait for the reality and the seriousness of the possible risks to be fully demonstrated'. [57]

109. I can agree that in so far as the protection of the physical, mental and moral development of minors is a health issue, the precautionary principle might be relied on to justify regulatory measures. [58]

110. However, if that concept is indeed indissociable from a certain measure of scientific uncertainty, the Court has found that the assessment of the risk cannot be based on a 'purely hypothetical approach to risk, founded on mere suppositions which are not yet scientifically verified'. [59] Member States relying on such arguments must therefore adduce at least some prima facie scientific evidence that the risk at issue is probable. Otherwise, as the Commission considers, the contested Hungarian legislation would be purely arbitrary.

111. Even when explicitly asked by the Court to provide some evidence that would corroborate its claims that mere exposure to 'LGBTI content' can harm minors' development, Hungary has merely reiterated that such a potential risk exists, relying on very generalised statements.

112. Thus, that State explained that the risk originates in the power of the media to persuade, whereas children and young adults are prone to experimentation and are not yet capable of critical assessment of what is good for them. At the same time, if 'LGBTI content' is accessible to minors, parents may lose the opportunity to decide when their children, whom they know the best, are ready to be exposed to such content or to dispel their possible confusion.

113. Whereas one can easily accept that being confused is a part of growing up, apart from such a general statement, Hungary has never explained why the exposure to 'LGBTI content' may be any more confusing to children than any other content that might be new to them, and why specifically 'LGBTI content' is considered to be potentially harmful.

57 See, to that effect, judgment of 19 November 2020, *B S and C A (Marketing of cannabidiol (CBD))* (C-663/18, EU:C:2020:938, paragraph 90 and the case-law cited).

58 In the context of justification of EU measures, the Court confirmed that the precautionary principle is applicable to the regulation of human health. See, to that effect, judgments of 5 May 1998, *National Farmers' Union and Others* (C-157/96, EU:C:1998:191, paragraph 64), and of 12 July 2005, *Alliance for Natural Health and Others* (C-154/04 and C-155/04, EU:C:2005:449, paragraph 68).

59 See, to that effect, judgment of 9 September 2003, *Monsanto Agricoltura Italia and Others* (C-236/01, EU:C:2003:431, paragraph 106), repeated in the subsequent case-law, for example in the judgment of 19 November 2020, *B S and C A (Marketing of cannabidiol (CBD))* (C-663/18, EU:C:2020:938, paragraph 90).

114. I can agree with the Commission that the protection of the healthy development of minors could indeed, *in abstracto*, be a reason of general interest that could justify the restrictions of certain rights. However, as Hungary has not offered any proof of possible harm that could result from the exposure of minors to 'LGBTI content', it cannot rely on such a justification.

115. Translated into legal language of proportionality, two conclusions are possible. First, it can be stated that Hungary lacks an acceptable reason of general interest which it can offer as a justification for its interference with the three Charter rights invoked by the Commission. If that is the case, then it is unnecessary to apply subsequent steps of proportionality review as no justification is possible. Alternatively, we can accept the need to protect healthy development of children as a more abstract reason of general interest. However, in that case, the Rules at issue fail the proportionality test, as they are neither adequate nor necessary for the protection of children from possible harm to their physical, mental or moral development.

116. In either case, Hungary cannot justify its interference with anti-discrimination rules, freedom of expression or right to private life by the reason of the necessity to protect minors from harm.

117. Therefore, lacking any proof of even the potential risk of harm to the healthy development of minors, Hungary's justification cannot be accepted as viable.

118. For the same reason, the contested Hungarian legislation cannot be understood as being adopted in order to secure the best interests of the child, one of the fundamental rights envisaged by the Charter, which could, in principle, be balanced against other rights, such as non-discrimination, the right to private life and freedom of expression. Hungary did not provide any evidence that shielding children from LGBTI content is in the best interests of the child.

119. Furthermore, in order to assert that it is entitled to consider that minors necessitate protection from LGBTI content, Hungary relies on the judgment in *Omega*.[60] On the basis of that judgment, it claims that Member States enjoy a wide margin of discretion in deciding the public policy on which they can rely for the justification of their measures. That State stresses that the Court has, in that judgment, adopted the point of view that the conception of how fundamental rights or other interests are to be protected does not have to be the same in every Member State, but can differ depending on the moral, religious or cultural considerations operating in that State.

120. Hungary therefore claims that the choice of how to protect the physical, mental and moral development of minors, or how to safeguard parental rights is, therefore, a matter for each Member State.

121. To argue that the *Omega* case-law also applies in relation to the protection of the healthy development of minors, Hungary relies on the Court's recent judgment in *Booky.fi*,[61] in which the dispute was similar to the one in the present case, as it concerned the classification and labelling of audiovisual programmes with the aim of the protection of children. In that judgment, the Court repeated its findings from *Omega*, and considered that the Member States have a margin of discretion in their assessment of the need for measures for the protection of children, and confirmed that such assessments may vary from one Member State to another.

60 Judgment of 14 October 2004, *Omega* (C-36/02, EU:C:2004:614; '*Omega*'). Hungary relied on paragraphs 31, 37 and 38 of that judgment.

61 Judgment of 23 March 2023, *Booky.fi* (C-662/21, EU:C:2023:239, paragraphs 56 and 57).

122. However, as argued by the Government of Finland, the State from which the *Booky.fi* case originated, such a margin of discretion is not unlimited; the Member State's choice must respect fundamental rights, such as the prohibition of discriminatory measures.[62] The Rules at issue, as indicated above, breach fundamental rights, which is the main reason that the judgments in *Omega* or *Booky.fi* cannot be relied on to justify those Rules.

123. Finally, Hungary seems to claim, by invoking the results of the referendum about the amendments, that its population supports those amendments.[63] Even if that were true,[64] such 'fact' could not be accepted as the justification for a breach of internal market provisions and even less of fundamental rights. In constitutional democracies, such as in the European Union, the rights of minorities are protected from the unjustified decisions of the majority.[65]

124. The second justification that Hungary offers in relation to its Rules is the necessity to safeguard the right of parents to raise their children in accordance with their convictions. There is, in principle, no reason to reject such a reason of public policy as a possible ground of justification. However, just as in relation to the justification of protection from harm, Hungary does not explain how the legislation at issue promotes or protects such parental rights.

125. Parents are, as contended by several intervening Member States, at liberty to discuss with and explain to their children questions related to homosexual orientation or gender identities, even if children encounter such content in the media.[66] Therefore, the Rules at issue are not appropriate or necessary for achieving the legitimate aim that Hungary relies on.[67]

126. Hungary further contends that the rights of parents to raise their children in accordance with their convictions is not only their cultural and policy choice but one of the fundamental rights set out in Article 14(3) of the Charter.

127. However, that right, which the Charter bestows on parents, is narrower than the right which Hungary claims to safeguard by the Rules. It is part of the Charter provision that relates to the right to education. As the Explanations to the Charter state, Article 14 is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR. The ECtHR held that the right of parents mentioned in the second sentence of Article 2 of the

62 See, ex multis, judgment of 4 October 2024, *Mirin* (C-4/23, EU:C:2024:845, paragraph 62).

63 A referendum was held on 3 April 2022. A majority backed the amendments introduced by the Amending Law. However, less than 50 % of registered voters participated, so that the results could not be confirmed.

64 Surveys in Hungary rather seem to indicate a strong support of LGBTI matters. See, in that respect, Rutai, L, 'From Censorship To Solidarity: The Surprising Consequences Of Hungary's LGBT Law, *Radio Free Europe, Radio Liberty, 31 January 2024* https://www.rferl.org/a/hungary-lgbt-law-censorship-solidarity/32800032.html; Háttér Society, 'Social attitudes towards LGBTQI issues in Hungary. November 2023', May 2024, https://en.hatter.hu/publications/social-attitudes-towards-lgbtqi-issues-in-hungary-november-2023?_gl=1*1n8bpx0*_gcl_au*NzM0OTcwNzI4LjE3Mzk4MDg1NTk.*_ga*NzQxNjkyMDM0LjE3Mzk4MDg1NTg.*_ga_GZEK8GB25Y*MTc0MzUxMTU5MC40LjEuMTc0MzUxMTc3OC42MC4wLjUyMjk5NTQ.

65 See, in that respect, the speech of Frans Timmermans, then First Vice-President of the Commission, reported in the Editorial, *CMLRev*, 2015 at pp. 627-628, in which he, rejecting the possibility of 'illiberal democracy' stated, among other: 'You cannot use a two-thirds or even more of a political majority through democratic votes to weaken human rights in a Member State.'

66 In the context of the teaching of Islam as part of compulsory religion classes in Turkey, the ECtHR explained that 'parents may always enlighten and advise their children, exercise with regard to their children natural parental functions as educators, or guide their children on a path in line with the parents' own religious or philosophical convictions', ECtHR, judgment of 16 September 2014, *Mansur Yalçin and Others v. Turkey*, (CE:ECHR:2014:0916JUD002116311, § 75). See also, ECtHR, judgment 20 June 2017, *Bayev and others v. Russia*, (CE:ECHR:2017:0620JUD006766709, § 81 and 82).

67 The Commission considers that the Rules at issue, in fact, restrict those rights of parents, as they deprive them of certain materials they may need for the upbringing of their children.

Protocol to ECHR is merely 'an adjunct of the fundamental right to education'.[68] Therefore, the right of parents, as contained in Article 14(3) of the Charter, also only enables parents to ensure the education and instruction of their children in conformity with their religious, philosophical and pedagogical convictions in the context of the freedom to establish educational establishments of different traditions. Hungary cannot therefore rely on that Charter right to justify a violation of fundamental rights to non-discrimination, private life and freedom of information in different areas of the provision of services covered by the Rules.

128. It follows that Hungary cannot rely on the rights of parents to raise their children in accordance with their personal convictions either as a reason of public interest or as a fundamental right of parents protected by the Charter.

129. Hungary has also put forward an additional argument in relation to the Commission's allegation of the breach of Article 21 of the Charter. It invokes the judgment in *WABE*[69] in order to assert that the right of parents to ensure the education of their children in conformity with their religious, philosophical or pedagogical convictions can justify the difference in treatment.

130. Even if it is true that, in that judgment, the Court accepted the justification of discrimination based on religion, the discrimination in that case resulted from a neutral rule, which, however, affected some religions more than others. The Court, therefore, considered that the situation in that case constituted indirect discrimination. On the other hand, as the Commission argues, the discrimination resulting from the Rules at issue does not result from a neutral measure, but is directly based on the prohibited grounds of sex and sexual orientation.

131. Therefore, in addition to my view that the Rules at issue do not protect parental rights, Hungary cannot rely on the judgment in *WABE* to justify the discrimination on which its Rules are based.

132. In conclusion, the protection of minors or the protection of parental rights cannot be relied on as justification for the interference with the fundamental right not to be discriminated against on the grounds of sex or sexual orientation, the freedom to give and to receive information, and the right to private life caused by the Amending Law and the resulting Rules.

133. Accordingly, Rules 1, 3, 4, 6 and 7 violate Articles 21, 11 and 7 of the Charter.

6. Infringement of Article 1 of the Charter

134. According to the Explanations of the Charter relating to Article 1, human dignity is not only a fundamental right in itself, but constitutes the real basis of other fundamental rights. Protection from discrimination, freedom of expression and the right to private life are the more concrete expressions of human dignity as expressed in the Charter.[70]

68 ECtHR, judgment 25 February 1982, *Campbell and Cosans v The United Kingdom*, (CE:ECLI:CE:ECHR:1982:0225JUD000751176, § 40).

69 Judgment of 15 July 2021, *WABE and MH Müller Handel* (C-804/18 and C-341/19, EU:C:2021:594).

70 Thus, the Court considered that tolerating discrimination arising from sexual orientation or gender identities would be tantamount to a failure to respect the dignity and freedom to which any person is entitled. See judgment of 30 April 1996, *P.* v *S.* (C-13/94, EU:C:1996:170, paragraph 22).

135. The Explanations also state that the dignity of the human person is part of the substance of other rights laid down in the Charter and it must therefore be respected, even when those other rights are restricted.

136. To my mind, it follows from those Explanations that human dignity is violated when the restrictions of other rights that are its more concrete expression cannot be justified.

137. The Court has recognised that human dignity is violated when absolute rights, such as the prohibition of inhuman and degrading treatment and torture, whose violation can never be justified, are violated.[71] To my mind, by analogy, when non-absolute fundamental rights, which are closely connected to human dignity, such as the rights at issue in the present case, are violated because the interference could not be justified, this also must result in a finding of a violation of human dignity.

138. Therefore, as Hungary could not offer acceptable reasons to justify the discrimination, the restrictions on the freedom of expression and interference with the right to private life resulting from its legislation, that legislation also amounts to a violation of human dignity. It violates the dignity of LGBTI persons and all other persons who are prevented from treating those LGBTI persons on an equal footing with the rest of society.

139. I therefore consider that because Hungary has failed to provide justification for interfering with the fundamental rights that are an expression of human dignity, Rules 1, 3, 4, 6 and 7 violate Article 1 of the Charter.

140. In conclusion, by adopting Rules 1, 3, 4, 6 and 7, Hungary has violated Articles 1, 7, 11 and 21 of the Charter.

141. This brings me to the still unresolved issue as to whether and under what conditions findings of the infringement of several provisions of EU primary and secondary law, as well as of Charter-based rights, could lead to a self-standing finding of an infringement of Article 2 TEU.

C. The Commission's sixth plea – Infringement of Article 2 TEU

142. By its sixth plea, the Commission asks the Court to declare that, by adopting the Amending Law, which resulted in Rules 1, 3, 4, 6 and 7, Hungary, in addition to breaching specific provisions of EU primary and secondary law and several provisions of the Charter, has infringed Article 2 TEU.

143. Hungary denies the possibility that an infringement of Article 2 TEU can be found separately from that of other EU rules. In its view, it is 'inconceivable that a State would be condemned by the Court of Justice solely on the basis of Article 2 TEU, without that Court declaring a violation of some other specific obligation envisaged by Union law.'[72]

[71] See, to that effect, judgments of 5 April 2016, *Aranyosi and Căldăraru* (C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 85); of 19 March 2019, *Jawo* (C-163/17, EU:C:2019:218, paragraph 78); and of 17 October 2024, *Ararat* (C-156/23, EU:C:2024:892, paragraph 36).

[72] Paragraph 293 of the Hungary's written submission in defence. In that respect, Hungary cites points 132 and 133 of the Opinion of Advocate General Pikamäe in *Slovenia* v *Croatia* (C-457/18, EU:C:2019:1067).

144. Inasmuch as this argument opposes an autonomous reliance on Article 2 TEU, it is irrelevant. As I have stated at the beginning of my analysis, in the present case, it is not necessary to engage with the possibility of reliance on Article 2 TEU outside of the scope of EU law. The Commission raised the plea of infringement of Article 2 TEU within the scope of EU law, after requesting that the Court find that infringements of the Treaty, of several instruments of EU secondary law, as well as of the Charter had occurred.

145. Hungary further submits that Article 2 TEU cannot be used as a self-standing legal plea for an infringement action within the scope of EU law. That Member State contends that the very fact that the Commission links the infringement of Article 2 TEU to the infringement of concrete provisions of EU law and of the Charter is an argument that Article 2 TEU cannot be used as a self-standing ground of infringement. It offers a number of other arguments, which I will address in the rest of this section of the Opinion.

146. Those arguments present the Court with the first important question: is Article 2 TEU a type of provision on which one could rely in infringement proceedings? More generally, the question is whether a claim alleging a breach of values is justiciable; can such a claim be decided by courts at all, or is that a matter to be decided by the political process?

147. If Article 2 TEU is justiciable, the next question that arises is about the criteria that should guide the Court in deciding whether a self-standing breach of Article 2 TEU has occurred. The participants to these proceedings agree that the application of Article 2 TEU can be triggered only exceptionally, when the breach is of a certain level of seriousness. In the context of the case at hand, it is important to distinguish the situations in which violations of fundamental rights also lead to an infringement of Article 2 TEU from those in which, despite the finding of violations of the Charter or of other fundamental principles of EU law, the Court should refrain from declaring that an infringement of Article 2 TEU has occurred.

148. Scholars have paid a lot of attention to Article 2 TEU, examining it from different angles. In the present Opinion, I cannot reflect on all the issues that have been raised by those academic contributions. Answering the two key questions mentioned above, as raised by the parties and interveners to the present case, should be sufficient to enable the Court to decide whether, by adopting the contested legislation, Hungary has infringed Article 2 TEU in addition to other alleged infringements.

149. I will therefore first discuss the justiciability of Article 2 TEU. After finding no obstacles for the Court to hear an infringement claim based on Article 2 TEU in circumstances such as those of the present case, I will ask whether the Court should accept the Commission's sixth plea. I will first assess that issue in general terms before applying those findings to the case at hand.

1. Justiciability of Article 2 TEU

150. The term 'justiciability' can have different meanings. I will use it to denote that a legal provision, such as Article 2 TEU, can be used by courts to adjudicate a case.

151. Legal rules can be used by courts for different purposes: as an interpretative tool to give meaning to other legal rules, as sources of rights for individual legal subjects, or as a yardstick for the assessment of the legality of another rule.

152. The present case only raises the question as to whether Article 2 TEU can be used by the Court of Justice in the last of the three above-enumerated uses, that is, for the judicial review of a Member State's legislation in the context of an infringement procedure.

153. Therefore, this case does not raise the question of either the direct or interpretive effect of Article 2 TEU.[73]

154. The first condition for using a rule for judicial review is that that rule contains obligations of a legal nature. Before asking whether Article 2 TEU is such a legal rule, I will explain what are, in my view, the two most important roles that that provision has in the EU legal order, as they influence the answer to the question about the legal nature of that provision.

(a) The role of Article 2 TEU in the European Union legal order

(1) The constitutional identity of the European Union

155. Article 2 TEU expresses *the choice* of the founders of the European Union as to the type of society that the Member States have pledged to create together within the framework of the European Union.

156. One can imagine different societies: autocracies not based on the separation of powers; societies in which the elected majority is not limited by the requirement to respect human rights; societies which are ruled by men, and not by law; societies that do not treat minorities equally and reserve human dignity only for the majority; or societies that do not recognise that women are equal to men. Such societies do indeed exist, and are emerging, throughout the world.

157. The vision of what *a good society* is in the EU constitution is different. That vision is expressed in Article 2 TEU. The values enumerated in that provision: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, read together, paint a picture of *a constitutional democracy that respects human rights*.[74]

158. That choice is expressed in the opening provision of the Treaties, and, therefore, as explained by the Court, represents the *very identity* of the European Union.[75] In short, without those values, the European Union would cease to be the Union as envisaged by the Treaties.

[73] I should, nevertheless, state that should the Court accept the self-standing invocability of Article 2 TEU, this would most likely reopen the discussion on the difference between the invocability of substitution and the invocability of exclusion of EU rules on which parties rely before national courts.

[74] In its second sentence, Article 2 TEU also mentions pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. Those additionally-mentioned values could be understood as being necessary for the achievement of the values expressed in the first sentence. Thus, for instance, pluralism is a precondition for a democratic society; tolerance, non-discrimination and equality between women and men are preconditions for equality; whereas justice and solidarity could be understood as a condition for the respect of human dignity. Some scholars consider that no distinction should be made between the values enumerated in the first and second sentences. For example, Wouters, J., 'Revisiting Art. 2 TEU: A True Union of Values?', *European Papers*, 2020, p. 255, at pp. 258-259. It is not necessary in the present Opinion to enter into a discussion of the possible reasons for and differences between the two sentences comprising Article 2 TEU. For such a discussion, see Rossi, L.S., footnote 22, op. cit., pp. 1-24, from p. 11.

[75] Judgments of 16 February 2022, *Hungary* v *Parliament and Council* (C-156/21, EU:C:2022:97, paragraph 127), and of 16 February 2022, *Poland* v *Parliament and Council* (C-157/21, EU:C:2022:98, paragraph 145). Hereinafter I will refer to these judgments as 'the *conditionality judgments*'.

(2) Condition for the functioning of the European Union legal order

159. Article 2 TEU is not only important for defining the European Union's identity. It also has significant practical importance, as it enables the functioning of the EU legal order.

160. The EU legal order is a composite order, consisting of rules enacted at EU and at Member State level. The EU-level rules are dependent on the national-level rules and on the proper functioning of the Member States' legal orders. For such a composite legal order to exist, it is indispensable that common values are respected at both at EU and national levels. [76]

161. The Court has consistently held since *Opinion 2/13* that that EU 'legal structure is based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that they share with it, a set of common values on which the EU is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the EU that implements them will be respected.' [77]

162. If the Member States are unable to trust each other with regard to the respect for the founding values, the EU legal order that is largely based on the principle of mutual recognition could not be put into practice. It is precisely that principle that, ever since the judgment in *Cassis de Dijon*, [78] allows for the maintenance of diversity between the legal solutions adopted by Member States, while nevertheless allowing for the free movement of goods, services, people, capital and judicial decisions from one Member State to another.

163. Therefore, respect for the values enshrined in Article 2 TEU is the political and practical condition for the existence of the EU legal order.

(b) Article 2 TEU as a legally binding provision

164. In the *conditionality judgments*, the Court held that 'Article 2 TEU is *not merely a statement of policy guidelines or intentions*, but contains values which are an integral part of the very identity of the European Union as a common legal order, values which are *given concrete expression in principles containing legally binding obligations* for the Member States.' [79]

165. That statement could be read in at least two different ways. It could be claimed, which seems to be the position of the Commission, the Parliament and the intervening Member States, that Article 2 TEU, not being a mere political statement, is a provision that contains legal obligations for the Member States. On the other hand, because of the last part of the sentence, it could be

[76] In Opinion 1/17 *(EU-Canada CET Agreement)* of 30 April 2019 (EU:C:2019:341, paragraph 110), the Court held that the Union possesses a constitutional framework that is unique to it, which includes the values enumerated in Article 2 TEU.

[77] Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014 (EU:C:2014:2454, paragraph 168); judgments of 6 March 2018, *Achmea* (C-284/16, EU:C:2018:158, paragraph 34); of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586, paragraph 35); and of 29 July 2024, *Alchaster* (C-202/24, EU:C:2024:649, paragraph 62).

[78] Judgment of 20 February 1979, *Rewe-Zentral* (120/78, EU:C:1979:42).

[79] Judgments of 16 February 2022, *Hungary* v *Parliament and Council* (C-156/21, EU:C:2022:97, paragraph 232), and of 16 February 2022, *Poland* v *Parliament and Council* (C-157/21, EU:C:2022:98, paragraph 264) (emphasis added). This paragraph was repeated by the Court in subsequent judgments. See, for instance, judgments of 29 July 2024, *Valančius* (C-119/23, EU:C:2024:653, paragraph 47); of 10 September 2024, *KS and Others* v *Council and Others* (C-29/22 P and C-44/22 P, EU:C:2024:725, paragraph 68); and of 19 November 2024, *Commission* v *Poland (Ability to stand for election and membership of a political party)* (C-814/21, EU:C:2024:963, paragraph 157).

argued, as Hungary does, that the obligations are not created by Article 2 TEU itself, but need to be concretised by legal principles in order to create a yardstick for control in the infringement proceedings before the Court.

166. I agree with the position advanced by the Commission, as supported by the 16 intervening Member States and the Parliament. In my opinion, certain obligations are indeed imposed on the Member States directly on the basis of Article 2 TEU. I suggest that the Court use the opportunity offered by the present case in order to confirm such a reading of the quoted paragraph of its *conditionality judgments*. I will propose several arguments for such interpretation.

(1) Text, context and history

167. Legally binding force may be attributed to Article 2 TEU on the basis of its place in the Treaties. It is part of the normative body of the TEU, and not of its Preamble. It could be claimed that if the Treaty drafters wanted to deprive Article 2 TEU of legal force, they would have expressed the commitment to these values in the Preamble instead.[80] Thus, the Court's recognition that that provision is 'not merely a statement of policy guidelines or intentions' should be understood as stating that Article 2 values have the force of a legal obligation.[81]

168. The wording, which relies on the term 'values', does not exclude that Article 2 TEU is legally binding.

169. The previous versions of the Treaty on European Union referred in Article 6(1) thereof to principles, instead of values: 'The Union is founded on *the principles* of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.'[82] The term 'values' has only been used since the Lisbon Treaty, which adopted the same wording as that proposed by the Convention on the Constitution for Europe.[83] That change of wording could not be interpreted as an intention to negate or reduce the legal nature of the values in the present-day Article 2 TEU. Quite to the contrary; records from the work of the Convention for the Constitution for Europe suggest that the intention was, in fact, to introduce a number of legal obligations for the Member States. When proposing the provision on values, the Praesidium stressed the need for a short list of fundamental values that have 'a clear non-controversial legal basis so that the Member States can discern the obligations resulting therefrom'.[84]

[80] In that respect see, for instance, Petit, Y., 'Article L', in Constantinesco, V., Kovar, R., Simon, S. (eds.), *Traité sur l'Union européenne, Commentaire article par article*, Economica, Paris, 1995, p. 866.

[81] See, in that respect, Spieker, L., *EU Values before the Court of Justice*, OUP, Oxford, 2023, p. 35; Hillion, C., 'Overseeing the Rule of Law in the EU, Legal Mandate and Means', in Closa, C. and Kochenov, D. (eds), *Reinforcing Rule of Law Oversight in the European Union*, Cambridge University Press, Cambridge, 2016, pp. 59-81; Rossi, L.S., 'La valeur juridique des valeurs', *Revue trimestrielle de droit européen*, 2020, p. 639; Tridimas, T., 'Wreaking the Wrongs: Balancing Rights and the Public Interest the EU Way', The Columbia Journal of European Law, 2023, pp. 185-213; Dupont, P., *Les dispositions liminaires du traité sur l'Union européenne devant la Cour de justice de l'Union européenne*, doctoral thesis defended at the Université Paris, Panthéon-Assas, November 2024, Chapter 1 (on file with the author).

[82] The Treaty on European Union in its version after the amendments introduced by the Treaty of Amsterdam. See Treaty on European Union (consolidated version 1997) (OJ 1997 C 340, p. 145); see also Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community (OJ 2006 C 321E, p. 1).

[83] In its current wording, Article 2 TEU replicates exactly Article I-2 of the Treaty establishing a Constitution for Europe.

[84] Secretariat of the European Convention, *Draft of Articles 1 to 16 of the Constitutional Treaty*, CONV 528/03, p. 11, available at https://www.europarl.europa.eu/meetdocs/committees/empl/20030219/conv528en.pdf. For a detailed account, see Spieker, L., footnote 81, op. cit., pp. 43-47. See also von Bogdandy, A., 'Founding Principles', in von Bogdandy, A. and Bast, J. (eds), *Principles of European Constitutional Law*, 2nd edition, Hart, Oxford, 2009, 11, at 22.

170. Furthermore, the Treaties themselves use the terms values and principles interchangeably, [85] as does the Court. [86]

171. The reference to Article 2 TEU in other provisions of the Treaties also militates in favour of interpreting that respect for values is a legal obligation. The first paragraph of Article 3 TEU thus states generally that the Union aims to promote peace and its values, and paragraph 5 of that provision provides that the Union shall uphold and promote its values in its relations with the wider world. The importance of values in the development of the relations with the Union's neighbours is repeated in Article 8 TEU, and the obligation for the European Union to safeguard its values in its external relations is developed further in Article 21(2)(a) TEU, Article 32 and Article 42(5) thereof. The opening provision on the EU institutions, Article 13 TEU, provides that the Union shall have an institutional framework which shall aim to promote the Union's values.

172. Those provisions allow for the conclusion that upholding and promoting the values of Article 2 TEU is an obligation for the EU institutions when they legislate internally or act externally. Is such an obligation also imposed on the Member States?

173. Article 7 TEU, which introduces a special procedure which may result in the suspension of the voting rights of a Member State that seriously and persistently breaches the values of Article 2 TEU, is an important argument in favour of the conclusion that the respect of those values is an obligation placed by the Treaties on the Member States.

174. In that respect, the Preamble to the FEU Treaty reiterates that the Member States must respect the values of Article 2 TEU by referring to Article 49 and Article 7 TEU.

175. To my mind, the most important provision that leads to a conclusion that Article 2 TEU creates legal obligations for the Member States is Article 49 TEU.

(2) The importance of Article 49 TEU

176. Article 49 TEU opens the doors of the European Union to any European State that respects the values referred to in Article 2 TEU and is committed to promoting them.

177. Therefore, when acceding to the European Union, new Member States also accede to the constitutional choice of a good society as expressed in Article 2 TEU.

[85] After referring to 'the universal *values* of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law', the Preamble to the Treaty on European Union then confirms the attachment to 'the *principles* of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law' (emphasis added).

[86] Thus, for instance in paragraph 69 of its judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586), the Court refers to 'values referred to in Article 2 TEU', only to change the wording into 'principles set out in Article 2 TEU' in the following paragraphs 70 to 71 (found in Spieker, L., footnote 81, op. cit., p. 41).

178. Article 49 TEU has two important implications. First, it is based on the premiss that a State chooses to join the European Union because the values of Article 2 TEU are also that State's constitutional choice. Indeed, as was recognised by the Court,[87] before being admitted to the European Union, a candidate State has to satisfy the other Member States that it fulfils the 'political Copenhagen criteria', which reflect the Article 2 values.[88]

179. That aspect of Article 49 TEU enabled the Court to conclude that 'the European Union is composed of States which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU, which respect those values and which undertake to promote them'.[89]

180. The commitment to Article 2 values continues to exist during a Member State's entire membership of the European Union. In the words of the Court, 'compliance with those values cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after its accession.'[90]

181. In *Repubblika*, the Court additionally held that 'compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State'.[91]

182. Article 49 TEU refers to the commitment of Member States to *promote* Article 2 values. Two types of obligations for the Member States flow from this: the obligation of non-regression and the obligation to take measures to realise the values of Article 2 TEU. Both of these obligations are obligations as to result imposed on the Member States, as the Court has already confirmed in relation to the value of the rule of law.[92]

183. The first aspect of this obligation as to result is that the Member States should maintain at least the level of protection of values which existed when they entered the European Union. In that respect, the Court recognised that the Member States have an obligation of non-regression. In other words, Member States are prohibited from amending their legislation in such a way as to bring about a reduction in the protection of EU values.[93] Even though the Court had the

87 See, for instance, judgment of 29 March 2022, *Getin Noble Bank* (C-132/20, EU:C:2022:235, paragraph 104).

88 The European Council in Copenhagen on 21 and 22 June 1993 established the criteria which candidate States must fulfil to be admitted to the European Union. Part of these criteria, usually referred to as political Copenhagen criteria, require that a State must ensure the 'stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities'. When assessing whether a candidate State respects those values, the Commission takes into consideration all aspects of that State's society, including those that are not in the regulatory competence of the European Union, such as the organisation of the judiciary and state administration, or the respect of NGOs and of the pluralism of the media. European Council, 'Presidency Conclusions', Copenhagen European Council – 21–22 June 1993; available at: http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf.

89 See, in that respect, judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)* (C-619/18, EU:C:2019:531, paragraph 42).

90 Judgment of 16 February 2022, *Hungary* v *Parliament and Council* (C-156/21, EU:C:2022:97, paragraph 126). See also judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442, paragraph 68).

91 Judgment of 20 April 2021, *Repubblika* (C-896/19, EU:C:2021:311, paragraph 63).

92 See the *conditionality judgments*, [judgments of 16 February 2022, *Hungary* v *Parliament and Council* (C-156/21, EU:C:2022:9, paragraph 231) and of 16 February 2022, *Poland* v *Parliament and Council* (C-157/21, EU:C:2022:98, paragraph 263)] in which the Court recalls that the obligation to respect the rule of law contained in the Conditionality Regulation is a specific expression of the requirements resulting, for the Member States, from their membership of the European Union, pursuant to Article 2 TEU. It then goes on to explain that the obligation as to result which that provision of the Conditionality Regulation contains flows directly from the commitments undertaken by the Member States vis-à-vis each other and with regard to the European Union.

93 Judgment of 20 April 2021, *Repubblika* (C-896/19, EU:C:2021:311, paragraph 63).

opportunity to establish and confirm the principle of non-regression only in cases that related to the value of the rule of law,[94] there is no reason to consider that the same principle of non-regression does not apply to all the values set out in Article 2 TEU.

184. The rule of law crisis, resulting in a number of judgments of the Court, taught us that values should not be taken for granted. Member States must actively work not only at maintaining the level of existing protection at the point of entry into the European Union, but must also take the necessary measures to remove any existing obstacles impeding the full respect of those values in their societies.

185. Even if the Court has not yet had the opportunity to directly express such a positive obligation, I am of the view that the word 'promote' in Article 49 TEU also requires a positive effort to achieve Article 2 values within the societies of each of the Member States. That is important in relation to restoring the separation of powers and an independent judiciary. It is equally important in relation to other values, such as, for instance, equality. If there is a structural inequality in a society, such as it seems is present in respect of the LGBTI minority in Hungary, the Member State should actively work on solving such a structural problem, and must, *a fortiori*, refrain from aggravating it.

186. The Court should therefore explain that, by its statement reproduced in point 164 of the present Opinion, it did not mean to deny the capacity of Article 2 TEU to impose self-standing obligations on Member States. To the contrary, Member States have the obligation to maintain and to promote actively the values enumerated in Article 2 TEU, on the basis of that provision, read in conjunction with Article 49 TEU.

187. The statement cited in point 164 of the present Opinion could thus be restated in the following way: 'Article 2 TEU is not merely a statement of policy guidelines or intentions, but contains values, which are an integral part of the very identity of the European Union as a common legal order, and requires the Member States to maintain and promote them. Those values are given concrete expression in principles containing more precise legally binding obligations for the Member States.'

188. A finding that Article 2 TEU contains legal obligations of result for Member States does not yet mean that such obligations are judicially cognisable and enforceable. I will now turn to that issue.

(c) Reasons for and against the justiciability of Article 2 TEU

(1) Reasons for justiciability

189. The first subparagraph of Article 19(1) TEU defines the task of the Court of Justice as one of ensuring that, in the interpretation and application of the Treaties, the law is observed.

[94] For example, judgments of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others* (C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 162); of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)* (C-791/19, EU:C:2021:596, paragraph 51); of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442, paragraph 74); and of 7 September 2023, *Asociația 'Forumul Judecătorilor din România'* (C-216/21, EU:C:2023:628, paragraph 69).

190. When performing that task, the Court is certainly expected to ensure that EU law of a constitutional nature is observed. Article 2 TEU is, as explained, such a provision; it is of the utmost importance for the EU legal order, as it defines its identity and enables its functioning.

191. The Court performs its constitutional role within the procedures organised by the Treaties. Among these procedures are the infringement proceedings, governed by Articles 258 to 260 TFEU.

192. Under Article 258 TFEU, the Court is competent to find that a Member State has failed to fulfil *an obligation under the Treaties*.[95]

193. Given that, as was explained earlier, Article 2 TEU creates legal obligations for the Member States, enforcement of those obligations through a declaration of infringement in proceedings brought pursuant to Article 258 TFEU is part of the ordinary competences of the Court of Justice under the Treaties.

194. As the Commission indicated, proceedings under Article 258 TFEU are of an objective nature,[96] and the Court needs only to establish whether a legal provision has or has not been infringed. Therefore, as Article 2 TEU is a legal provision, unless its jurisdiction is excluded in relation to that provision, the Court can decide whether it has been infringed.

195. When the masters of the Treaties wanted to exclude the Court's jurisdiction over certain provisions of EU law, this was expressly provided for in the Treaties.[97] In that respect, unlike the previous versions of the Treaties,[98] the Court's jurisdiction over Article 2 TEU is not excluded or limited.

(2) Discussing the reasons against justiciability

(i) Article 7 TEU

196. One of the arguments which Hungary presented to oppose the jurisdiction of the Court of Justice to find a self-standing breach of Article 2 TEU was with regard to Article 7 TEU.

95 From early on, the Court considered that this expression means that the rule which a Member State is claimed to have infringed must contain legal obligations for that State. See judgment of 10 July 1980, *Commission* v *United Kingdom* (32/79, EU:C:1980:189, paragraph 11).

96 See, ex multis, judgments of 10 November 2020, *Commission* v *Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895, paragraph 70 and the case-law cited), or of 28 January 2020, *Commission* v *Italy (Directive combating late payment)* (C-122/18, EU:C:2020:41, paragraph 64 and the case-law cited). The objective nature of the infringement proceedings was stressed by the Court to explain that the Commission's motives for initiating particular proceedings are irrelevant and cannot be used as a defence by a defendant State. Once the Commission makes the claim that a particular legal provision has been infringed, the Court must verify whether that was so, in law and in fact, notwithstanding the grounds relied on by the Commission. See, in that respect, judgment of 6 October 2020, *Commission* v *Hungary (Higher education)* (C-66/18, EU:C:2020:792, paragraph 56).

97 On the basis of Article 24 TEU and 275 TFEU, the Court's jurisdiction is excluded with respect to the provisions of common foreign and security policy. However, the Court has interpreted this exclusion narrowly. See judgment of 10 September 2024, *KS and Others* v *Council and Others* (C-29/22 P and C-44/22 P, EU:C:2024:725). The Court's jurisdiction is limited also in relation to the excessive government deficit procedure, on the basis of Article 126(10) TFEU. Finally, Article 269 TFEU limits the Court's jurisdiction to control the legality of acts adopted on the basis of Article 7 TEU. Such control may be initiated only by the Member State concerned by such a decision, and only in relation to procedural aspects of Article 7 TEU.

98 Under Article 46(d) TEU, in the version consequent on the Nice Treaty, the Court had jurisdiction only over the-then Article 6(2) TEU but not over the 'principles' in Article 6(1), which were later renamed as 'values'.

197. The argument is that the question of the breach of values in Article 2 TEU, even if not expressly removed from the Court's jurisdiction by any provision of the Treaties, does not come within the Court's jurisdiction because Article 7 TEU grants exclusive jurisdiction over that question to political institutions. [99]

198. Hungary has already used similar arguments in the cases leading to the *conditionality judgments*, claiming that Article 7 TEU is the only procedure that enables the EU institutions to assess the existence of and impose penalties for breaches of Article 2 TEU. [100] In its judgments in those cases, the Court rejected such arguments. It held that 'contrary to Hungary's submission, supported by the Republic of Poland, in addition to the procedure laid down in Article 7 TEU, numerous provisions of the Treaties, frequently implemented by various pieces of secondary legislation, grant the EU institutions the power to examine, determine the existence of and, where appropriate, to impose penalties for breaches of the values contained in Article 2 TEU committed in a Member State.' [101]

199. In those judgments, the Court already held that Article 7 TEU could not be interpreted as a constitutional choice to submit the control and sanction of breaches of Article 2 TEU exclusively to the procedure set out in Article 7 TEU.

200. That provision, therefore, cannot be construed as excluding the jurisdiction of the Court of Justice. [102]

(ii) The general nature of values in Article 2 TEU

201. The second argument, which Hungary presented to contest the jurisdiction of the Court of Justice to find a self-standing breach of Article 2 TEU, is the general nature and undetermined content of the values which it enumerates.

202. Indeed, even if Article 2 TEU imposes on Member States obligations as to result – not to regress in respect of the level of the protection of values and to promote them within their societies – the concrete content of each of the values is not determined by that provision.

203. Yet, values are deliberately abstract. [103] Their open content leaves room for constitutional dialogue between Member States and the parallel existence of different 'concretisations' of values. [104]

99 This sort of argument was used in US constitutional practice under the name of the 'political question doctrine'. One of the reasons, as they were summarised in *Baker v Carr*, 369 U.S. 186, 217 (1962), why the US Federal Courts could consider an issue inappropriate for judicial resolution is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department'.

100 Judgments of 16 February 2022, *Hungary* v *Parliament and Council* (C-156/21, EU:C:2022:97, paragraph 155), and of 16 February 2022, *Poland* v *Parliament and Council* (C-157/21, EU:C:2022:98, paragraph 195).

101 Judgments of 16 February 2022, *Hungary* v *Parliament and Council* (C-156/21, EU:C:2022:97, paragraph 159), and of 16 February 2022, *Poland* v *Parliament and Council* (C-157/21, EU:C:2022:98, paragraph 328).

102 In addition, Article 269 TFEU, which provides that in an annulment action brought against a decision adopted within the framework of the Article 7 TEU procedure by a Member State to which that decision is addressed, the Court has jurisdiction to assess only whether the procedural stipulations of Article 7 TEU have been breached, does not affect the Court's jurisdiction in infringement proceedings brought against a Member State alleging infringement of Article 2 TEU.

103 In that respect, see Dubout, E., 'Peut-on défendre les valeurs de l'Union européenne par le droit ?', *RDLF*, 2024 chron. n°80.

104 This is nicely demonstrated by the circumstances giving rise to the judgment of 14 October 2004, *Omega* (C-36/02, EU:C:2004:614). The game that involved the simulation of shooting and killing people in a laserdrome was understood as violating human dignity under the German Constitution, whereas it did not seem that the same game was seen as problematic in terms of human dignity in other Member States.

204. Does this open content of the values of Article 2 TEU prevent its use by the Court of Justice for the purposes of judicial review?

205. First, the Court has already held that the general nature of EU principles is not necessarily an obstacle for their use for the purposes of judicial review. [105]

206. Second, the interpretation of indeterminate notions is an ordinary activity for courts, and, given the indeterminacy often present in norms of a constitutional nature, it is one of the core tasks of constitutional courts.

207. That does not mean that the Court is adding flesh on the bones arbitrarily and in a vacuum. As already explained, the values are given fuller expression in a number of more concrete principles contained in the Treaties, in the Charter and in the provisions of EU secondary law, which is a result of the legislative process, and which involves all Member States. [106] Concretisation of values is thus the result of a dialogue about the meaning of values either at the level of primary or secondary law.

208. In a series of judgments, beginning with the *Portuguese judges*, [107] the Court considered that the value of the rule of law is concretised by the second subparagraph of Article 19(1) TEU. In the cases that followed, the Court developed a more detailed understanding of the requirement of independence of judges as concretising, through Article 19 TEU and Article 47 of the Charter, the value of the rule of law. [108] Similarly, the Court interpreted Article 10(1) TEU, which provides that the Union functions on the basis of representative democracy, in the light of democracy as a value expressed in Article 2 TEU. [109] Similarly, the value of equality is concretised in Article 19 TFEU and instruments of secondary law adopted on its basis.

209. That does not mean that judicial review must be based on the concretising norm and not directly on Article 2 TEU itself, nor that such review is possible only if a value is concretised. However, if that is the case, the Court must take into consideration such concretisation of a value, and should not construe a value contrary to that provision.

210. Third, the level of precision of a legal rule that is used as a yardstick in judicial review does not need to be as high as the precision and clarity required for direct effect. [110]

105 Thus, for instance, in the judgment of 15 July 2021, *Germany* v *Poland* (C-848/19 P, EU:C:2021:598), which concerned the judicial review of an EU act, Germany claimed that the principle of energy solidarity, mentioned in Article 194(1) TFEU, is an abstract, purely political notion, and therefore cannot be a legal criterion for the assessment of the validity of an act of an EU institution (see paragraph 27 of that judgment). The Court did not accept that argument. It considered that the abstract nature of the principle of solidarity does not prevent it from creating obligations for the Member States and the European Union. It can therefore serve as a yardstick for the assessment of legality of measures of the Member States and of the European Union (paragraphs 42 to 45).

106 In that respect, Boeckestein offered a table which correlates the individual values of Article 2 TEU with various concretising provisions of the Treaties and of the Charter. See Boeckestein, T.L., 'Making Do with What We Have: On the Interpretation and Enforcement of the EU's Founding Values', *German Law Journal*, 2022, pp. 431-451.

107 Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117, paragraph 32).

108 That case-law originated in the judgment of 5 November 2019, *Commission* v *Poland (Independence of ordinary courts)* (C-192/18, EU:C:2019:924, paragraph 98). The most recent in a series of those cases is the judgment of 6 March 2025, *D. K. and Others (Withdrawal of cases from a judge)* (C-647/21 and C-648/21, EU:C:2025:143, paragraph 66).

109 Judgments of 19 December 2019, *Junqueras Vies* (C-502/19, EU:C:2019:1115, paragraph 63); of 19 December 2019, *Puppinck and Others v Commission* (C-418/18 P, EU:C:2019:1113, paragraph 64); and of 19 November 2024, *Commission* v *Poland (Ability to stand for election and membership of a political party)* (C-814/21, EU:C:2024:963, paragraph 112).

110 The question of the possible direct effect of Article 2 TEU does not arise in the infringement procedure before the Court of Justice. It is, therefore, not necessary to engage in exploring whether the obligations incumbent on Member States under Article 2 TEU are owed to individuals. Direct creation of rights for individuals requires that the EU norm is sufficiently clear and precise about the content of the right an individual enjoys.

211. In infringement proceedings, the Court is asked to declare that certain legislation is incompatible with EU law. In the present case, when deciding on the Commission's sixth plea, the Court is not asked to determine, nor can it determine, what Hungary should do to satisfy its Article 2 TEU obligations. It must only decide whether Article 2 TEU precludes the national legislation at issue.

212. On the basis of Article 2 TEU itself, the Court is able to determine what cannot be tolerated; it can conclude whether a Member State has crossed 'red lines'. [111] In those circumstances, the Court does not need to fill in the content of the values involved any further.

213. In any case, in the circumstances of the present case, the Court is asked to find a breach of Article 2 TEU after it establishes that the contentious Rules also breach EU legislation and certain fundamental rights of the Charter. These rules give more concrete expression to the values of Article 2 TEU that are at issue in the present case: human dignity, equality and the respect for human rights. Therefore, the substantive content of the values involved is already largely concretised.

214. Finally, it was suggested that engaging Article 2 TEU as a self-standing ground of infringement could adversely influence the Court's legitimacy, as the Court might be perceived as politicised, given the open content of the values. [112]

215. The Court of Justice is a constitutional court, and basic constitutional principles are often, at the same time, political and legal. Inasmuch as Article 2 TEU expresses the choice for a constitutional democracy which respects human rights, the Court of Justice's defence of those values is not its political choice, but its constitutional task.

216. In its *conditionality judgments*, the Court found that the European Union must be able to defend the EU values within the limits of its powers as laid down by the Treaties. [113] The power that the Treaties bestow on the Court of Justice is the power of interpretation of their legal provisions and, under the infringement procedure, of judicial review of, among other things, national legislation for its conformity with those legal provisions.

217. Infringement actions are tools for achieving aims of a legal nature: detecting legal breaches with a view of putting an end to them. That includes breaches of Article 2 TEU. In the cases of socially sensitive and contested issues, such as LGBTI rights, the judgment of the Court is only part of the solution for achieving equality and human dignity for LGBTI persons. Legal alignment will also necessitate a certain alignment of social values. That, however, does not mean that the Court should refrain from declaring an infringement of those values where it occurs.

218. In conclusion, the general nature of the values in Article 2 TEU is not an obstacle for reliance on them before the Court for the purpose of the judicial review of national legislation in infringement proceedings.

111 See, in that respect, von Bogdandy, A., 'Towards a Tyranny of values', in von Bogdandy, A., et al. (eds), *Defending Checks and Balances in EU Member States*, Springer, Berlin, 2021, p. 92.

112 Bonnelli, M., 'Infringement Actions 2.0: How to Protect EU Values before the Court of Justice', *European Constitutional Law Review*, 2022, from p. 49.

113 Judgments of 16 February 2022, *Hungary* v *Parliament and Council* (C-156/21, EU:C:2022:97, paragraph 127) and of 16 February 2022, *Poland* v *Parliament and Council* (C-157/21, EU:C:2022:98, paragraph 145).

(iii) National constitutional identity

219. In its defence, Hungary also relies on its national constitutional identity, which must be respected as a matter of EU constitutional law on the basis of Article 4(2) TEU.

220. In that respect, it must first be stated that, as the Court already explained, the values of Article 2 TEU do not preclude constitutional diversity.[114] They only establish the framework within which different national constitutional solutions can be accommodated.

221. However, national constitutional choices cannot trespass beyond that common framework. In that respect, as I have already proposed, Article 2 TEU could be understood as imposing 'red lines', which, if reached, call for a reaction in order to defend the EU constitutional model.

222. That is not in contravention with the respect for national constitutional identities.[115] As already explained, when acceding to the European Union, each Member State has accepted to respect that framework of common values. In fact, that was deemed to also be the internal constitutional choice of that State at the time of accession.

223. As I have already pointed out (see point 211 of this Opinion), in the infringement procedure, the Court can only declare that a deviation from EU values has occurred. Such a finding creates an obligation for the State to cease the disrespect of the values of Article 2 TEU, as their respect continues to be a condition for EU membership. The method of complying with the Court's decision is left to the choice of the Member State in question in accordance with its constitutional identity.

224. Therefore, the Union's commitment to respect national constitutional identities does not prevent the Court from finding that, by adopting certain legislation, a Member State has crossed the 'red lines' imposed by Article 2 TEU.

(iv) The purpose of a self-standing finding of infringement of Article 2 TEU

225. In its submissions, Hungary denies that a self-standing finding of a violation of Article 2 TEU, in addition to a finding of a violation of fundamental rights or of other rules of EU law, can have any meaningful purpose.

226. It clearly follows from the case-law that the purpose of infringement proceedings is to decide a dispute between the Commission and the Member State as to whether a breach of EU law exists, and, if it is established, to incentivise the State to terminate that breach.[116]

114 Judgments of 21 December 2021, *Euro Box Promotion and Others* (C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, EU:C:2021:1034, paragraph 229), and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)* (C-430/21, EU:C:2022:99, paragraph 43). See also Opinion of Advocate General Spielmann in *Commission* v *Poland* (Ultra vires review of the Court's case-law *Primacy of EU law)* (C-448/23, EU:C:2025:165, points 90 and 93).

115 See, in that respect, thejudgments of 16 February 2022, *Hungary* v *Parliament and Council* (C-156/21, EU:C:2022:97, paragraph 233) and of 16 February 2022, *Poland* v *Parliament and Council* (C-157/21, EU:C:2022:98, paragraph 265). See also judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442, paragraph 72).

116 See, for example, judgment of 8 March 2022, *Commission* v *United Kingdom (Action to counter undervaluation fraud)* (C-213/19, EU:C:2022:167, paragraph 180). The Court considered that even the procedure under Article 260 TFEU does not have the purpose of punishing the State, but rather of inducing a defaulting Member State to comply with a judgment, and with that to eliminate the breach of an EU law-based obligation. See, also, judgment of 12 July 2005, *Commission* v *France* (C-304/02, EU:C:2005:444, paragraph 80).

227. It is therefore legitimate to ask how a finding of an infringement of Article 2 TEU, in addition to a finding of an infringement of particular provisions of EU legislation and of the Charter, contributes to the identification and termination of the failure of a Member State to fulfil its obligations under EU law.

228. Similar questions have already been asked in relation to the purpose of finding a breach of the Charter in cases in which the infringement of a Treaty rule or of EU secondary law is already established. In that respect, in her Opinion in *Commission* v *Hungary (Higher education)*, Advocate General Kokott offered the following explanation: 'the finding of a separate breach of a fundamental right has no particular repercussions in this case, as the action for failure to fulfil obligations is already well founded on account of the infringements of the Services Directive and Article 49 TFEU. The separate examination of fundamental rights nevertheless reflects the particular significance and nature of the infringement more clearly.' [117]

229. Similar reasoning could be applied also to justify why the Commission could ask for a self-standing finding of an infringement of Article 2 TEU, even if the finding of a breach of other EU law provisions and of the Charter would suffice to establish the failure of a Member State to fulfil its EU law-based obligations.

230. Such a finding would not only have a symbolic function, by demonstrating the particular significance of the breach, but would also serve a diagnostic purpose. [118] It would disclose the real cause of other infringements.

231. That would be important for the choices of the defaulting Member State as to how to terminate the failure, and for the Commission's monitoring of whether the Member State at issue has terminated the infringement that was declared by the judgment. [119]

232. In addition to such a reason, establishing a self-standing breach of Article 2 TEU would influence the calculation of sanctions under Article 260 TFEU if the failure was not terminated after the Court's judgment. [120]

233. In conclusion, the purpose of the self-standing finding of an infringement of Article 2 TEU lies in identifying and declaring that, by adopting certain legislation, a Member State has crossed 'red lines' enshrined in that provision. This then reveals that the cause of other breaches of EU law involved in the same proceedings resides in the deviation of the Member State from EU constitutional values.

117 C-66/18, EU:C:2020:172, point 180.

118 In that respect, see Scheppele, K.L., Kochenov, D. and Grabowska-Moroz, B., 'EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union', *Yearbook of European Law*, 2020, pp. 3-121. Scholars criticised some earlier infringement proceedings, such as the one relating to the change of the age limit for the retirement of judges in Hungary in the judgment of 6 November 2012, *Commission* v *Hungary* (C-286/12, EU:C:2012:687), for hiding the real causes of infringement. To recall, the Commission brought this infringement action on the basis of a breach of Directive 2000/78 prohibiting discrimination on the basis of age, which hid the underlying problem of disrespect of the principles of the rule of law.

119 It is in that light that I understand the Commission's answer provided at the hearing that it would be satisfied that infringement of Article 2 TEU was terminated if 'Hungary eliminates discrimination in relation to that minority; all relevant elements; if we are satisfied that, at a more deep level, all was supressed, and when I say all, that means all forms of discrimination were eliminated.'

120 See, in that respect, judgment of 13 June 2024, *Commission* v *Hungary (Reception of applicants for international protection II)* (C-123/22, EU:C:2024:493).

234. That leads me to the last question that is raised by this case: how should the Court assess whether 'red lines' have been crossed and conclude whether a self-standing infringement of Article 2 TEU has occurred?

2. How to assess whether 'red lines' have been crossed?

235. According to the Commission, a self-standing breach of Article 2 TEU has occurred in the present case because the infringements committed by Hungary are 'particularly serious, numerous and blatant and constitute a generalised and coordinated violation of the fundamental rights in question'. [121] A number of intervening Member States also consider that a self-standing reliance on Article 2 TEU requires a high level of seriousness of the infringements.

236. Hungary did not express its view about the possible criteria for the finding of a breach of Article 2 TEU, since its position is that such a breach cannot be established at all in the present proceedings before the Court.

(a) Negation of values as the criterion for finding an infringement of Article 2 TEU

237. In my view, the criterion that triggers the finding of an infringement of Article 2 TEU is not the quantity or seriousness of the breaches of fundamental rights or other fundamental principles of EU law, but rather the negation of the values of Article 2 TEU by a Member State.

238. In effect, in order to assess whether the legislation of a Member State can be tolerated within the EU system of values, the right question to ask is whether, by adopting the legislation, a Member State negates one or more of the values enshrined in Article 2 TEU.

239. The criterion of seriousness might have been emphasised by the participants in these proceedings because this is one of the two criteria used in Article 7 TEU, which provides that only the existence of a serious and persistent breach of values in Article 2 TEU may trigger that procedure. [122]

240. However, a serious breach required by Article 7 TEU refers to the seriousness of the breach of Article 2 TEU itself, and not to the seriousness of the other alleged breaches, which, in the present case, concern a number of EU rules implementing the freedom of provision of services and a number of fundamental rights.

241. To my mind, an infringement of Article 2 TEU does not occur merely because the other breaches are serious. [123] It is rather the reverse: because the root cause of those breaches is a negation of the values enshrined in Article 2 TEU, they themselves become both serious and systemic.

[121] Paragraph 247 of the Commission's application.

[122] The insistence on the seriousness and persistence in the breach of values in Article 7 TEU can be explained by the severity of the sanctions that can follow if such criteria are satisfied. Under Article 7 TEU, a Member State may be excluded from decision-making at the EU level. On the contrary, a finding of a breach of Article 2 TEU in infringement proceedings cannot lead to such a consequence. It rather aims at avoiding such a consequence, by inducing a Member State to eliminate the breach.

[123] I would also like to add that we lack the criterion by which to decide which breach of a fundamental right is serious and which is not.

242. The effect of deviation from values is not internal to a Member State, but affects the functioning of the EU legal order. It reduces that Member State's ability to comply with other obligations under EU law.[124] The present case demonstrates that the deviation from values affects Hungary's ability to comply with the rules regulating free movement of services. This justifies the Court's intervention through infringement proceedings.[125]

243. To determine whether a Member State negates a value expressed in Article 2 TEU, the Court must look into the specific circumstances of each case.

244. The Court should therefore assess whether the violation of fundamental rights, as protected by the Charter, results from a Member State's negation of a value enshrined in Article 2 TEU.

245. Other than the negation of values as the criterion, I do not consider that a more precise formula can be developed *in abstracto* as a tool that can be used by the Court.

246. However, the number of the breaches of EU primary and secondary rules, and of the Charter, as well as the way in which those breaches were committed, may serve as indicators that the root of those violations may lie in the negation of values.

247. Therefore, the criterion for finding a breach of Article 2 TEU is the negation of a value which is the root cause of other breaches of EU law. The seriousness and/or quantity of these other breaches may not in itself, decisively and automatically, serve as a criterion for finding a breach of Article 2 TEU, even though such elements might be an important indication of the negation of values enshrined in Article 2 TEU.

(b) Infringement of Charter rights and constitutional dialogue

248. Individual infringements, especially if they concern fundamental rights or other fundamental principles of EU law, could thus be an important indication that the cause of disrespect of EU law lies in the negation of values. That is particularly so, if such breaches are numerous, blatant and generalised. However, even that in itself, in my opinion, does not necessarily suffice for finding a breach of Article 2 TEU, as the violations of Charter rights might be a part of the EU constitutional dialogue, and not of the negation of values.

249. The EU legal order is developed through such a dialogue. This means that there might be different visions about how common values should be concretised.

250. In that respect, infringements of fundamental rights might result, first, from the difference in how two fundamental rights have been balanced at EU and national levels, or, second, from the different content that EU law and national law attribute to a particular fundamental right. In both situations, the cause of those infringements would, therefore, be in the domain of the dialogue within the limits set by values, without negating the values themselves.

251. In the first situation, in which two fundamental rights have to be balanced, giving more weight to one or the another might make an important difference in legislation that concretises those rights. For example, the right to (intellectual) property may come into conflict with the

[124] See, in that respect, Poiares Maduro, M. and Menezes Queiroz, B.,'A Hard Law Approach to States Systemic Violations of Article 2 of the Treaty of the European Union: Reasons and Means', in Fisher, E., King, J. and Young, A. (eds), *The Foundations and Future of Public Law: Essays in Honour of Paul Craig*, OUP, Oxford, 2020, p. 363-380.

[125] See, in that respect, Opinion of Advocate General Poiares Maduro in *Centro Europa 7* (C-380/05, EU:C:2007:505, point 20).

freedom of expression. A Member State might, thus, decide to prohibit the use of copyright-protected work for expressing political opinions without permission of the author. In adopting such a solution, that Member State has given more weight to the right of intellectual property than to the freedom of expression. That solution, in itself, does not mean that the Member State negates the importance of the freedom of expression for the value of democracy. Nevertheless, if the EU legislator would later strike a different balance, giving more weight to the freedom of expression, the Member State at issue would have to comply with such a choice in the areas falling within the scope of EU law. [126]

252. An example of the second situation – concerning a difference in how the content of a fundamental right is understood without such difference representing a negation of values – can be taken from *Max-Planck*. [127] In that case, the Court found that national legislation depriving the worker of the right to an allowance in lieu of annual leave not taken upon termination of the employment relationship breached the essential content of the fundamental right to annual paid leave. Does that mean that Germany, whose legislation was at issue, infringed Article 2 TEU? [128] To my mind, and even if what was at stake was the breach of the essence of a fundamental right, the answer is no. Once Germany changes its legislation, the infringement would be remedied. By having a different understanding of the right to annual leave than its EU interpretation in that particular situation, Germany did not negate the importance of the right to paid annual leave for safeguarding the values of Article 2 TEU.

253. Therefore, disagreements about the content of fundamental rights or divergences in balancing two or more fundamental rights should not result in the finding of an infringement of Article 2 TEU. They are part of the constitutional dialogue in the EU legal system, which allows for differing concretisations of rights. [129] Such disagreements do not, however, negate the values themselves.

254. A finding of an infringement of Article 2 TEU should be made only if the Court concludes that a Member State has breached a Charter right because it has negated the value which that right concretises.

3. Infringement of Article 2 TEU in the present case

255. Taking into account the abovementioned considerations, has the Commission demonstrated that the infringement committed by Hungary by the adoption of the Amending Law, which resulted in the contested Rules, is such as to justify the finding of an infringement of Article 2 TEU?

256. In my opinion, that question should be answered in the affirmative in the circumstances of the present case.

126 For an example of the balancing of those two rights at the EU level for the purpose of interpreting the notion of parody as embodied in the Copyright Directive (Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10), see judgment of 3 September 2014, *Deckmyn and Vrijheidsfonds* (C-201/13, EU:C:2014:2132).

127 Judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften* (C-684/16, EU:C:2018:874).

128 That was, of course, not the question asked in that case. I raise it for the sake of discussion only.

129 However, once the balancing is done at the EU level, or EU legislator fills in the content of a right more precisely, the Member States can no longer maintain different solutions within the areas covered by the EU law. In that respect, see, for instance, judgment of 26 February 2013, *Melloni* (C-399/11, EU:C:2013:107).

(a) Rules at issue negate the values of Article 2 TEU

257. The finding that the contested legislation restricts the free movement of services in multiple ways, and even more significantly, the finding that four rights guaranteed by the Charter have been violated by those same Rules, are indeed a strong indication of a possible infringement of Article 2 TEU.

258. Importantly, the infringements of these multiple EU law provisions in the present case have one and the same reason: Hungary's intention to shield minors from 'LGBTI content', which that Member State considers harmful. This reflects the Hungarian legislature's position that LGBTI persons are an unwanted part of society, who do not deserve to be treated equally.

259. LGBTI rights, especially the questions linked to gender identities, are still a socially sensitive matter.[130] Should that be a reason to treat the Hungarian legislation at issue as part of the EU constitutional dialogue, and not as a breach of Article 2 TEU?

260. To my mind, the breach in the present case differs from the examples of constitutional dialogue given above in one significant way. In those examples, neither the different outcome of balancing, nor the different understanding of the content of the fundamental rights, were caused by the negation of the values involved. By comparison, in the present case, the Hungarian legislation at issue negates the values enshrined in Article 2 TEU.

261. The negation of equality of LGBTI persons, which is behind the contested legislation, is the root cause of all the infringements in the present case. The other infringements would not occur if Hungary did not consider that LGBTI content is harmful for the development of minors.

262. I am of the view that LGBTI persons deserving equal respect in Member States is not open to contestation through dialogue. Disrespect and marginalisation of a group in a society are the 'red lines' imposed by the values of equality, human dignity and respect for human rights.

263. How equality of LGBTI persons is to be implemented may differ and be discussed, but the principled choice to prohibit discrimination on the ground of sex or sexual orientation is firmly rooted in the EU constitutional framework. That is so, even if LGBTI issues are socially sensitive. If the protected ground was replaced by a less socially contested ground, such as skin colour or religion, the negation of equality by legislation such as that at issue in the present case would be obvious.

264. Therefore, despite the sensitivity of the issue, I am of the view that the contested Hungarian legislation satisfies the criterion of negation of values for finding an infringement of Article 2 TEU.

[130] For that reason, it was considered, in Bonelli, M. and Claes, M., 'Crossing the Rubicon? The Commission's use of Article 2 TEU in the infringement action on LGBTIQ+ rights in Hungary', *Maastricht Journal of European and Comparative Law*, 2023, pp. 3-14, that the present case was not a good case for the purpose of deciding whether Article 2 TEU could be used as a self-standing ground of infringement.

(b) Which values were breached?

265. When the cause of the infringments of EU law is in the negation of values, this necessarily results in the deviation from the model of society as set out in Article 2 TEU. Those values are interrelated, and the finding of the breach of one of them is an indication about the negation of the model of a constitutional democracy that is based on the respect of human rights by the Member State at issue.

266. In the present case, the Commission contended that the values that were breached by the contested legislation are equality, human dignity and respect for human rights.

267. On that account, the finding of breaches of fundamental rights may be indicative of which values have been negated by those breaches. All fundamental rights which I consider have been violated in the present case are the expression and concretisation of the values enshrined in Article 2 TEU, which were invoked by the Commission.

268. First, the breach of Article 21 of the Charter, consisting in discrimination of members of a minority LGBTI group and their stigmatisation and marginalisation, is in sharp contradiction with the values of equality and tolerance, as well as human dignity.

269. Second, the breach of the freedom of expression and information, guaranteed by Article 11 of the Charter, contravenes an essential foundation of a pluralist, democratic society, as envisaged in Article 2 TEU [131], which is the necessary prerequisite for equality and human dignity.

270. Third, the breach of the right to private and family life, protected by Article 7 of the Charter, stands in stark contrast to the value of human dignity.

271. Human dignity, which is negated by the Rules at issue, is not only a fundamental right, but is a core value expressed in Article 2 TEU. To quote a fellow Advocate General, 'the value of human dignity constitutes the actual *Grundnorm* (basic norm) of post-World War Two European constitutionalism against the horrors of totalitarianism which denied any value of the human person.' [132]

272. More than ever, in the light of current developments in the world, it is important to not lose sight of why the European Union has declared the values enshrined in Article 2 TEU and why it is vital to reaffirm and protect those values.

273. In conclusion, I am of the opinion that those breaches of fundamental rights demonstrate the important deviation of the Rules at issue from the model of a constitutional democracy which respects human rights, reflected in Article 2 TEU.

274. This negation of values enshrined in Article 2 TEU is the impalpable 'something more', which prompted the Commission to introduce the sixth plea.

275. For the foregoing reasons, I am of the view that the Court should find that, by adopting the Amending Law that resulted in Rules 1, 3, 4, 6 and 7, Hungary has infringed Article 2 TEU.

[131] See, to that effect, judgments of 6 September 2011, *Patriciello* (C-163/10, EU:C:2011:543, paragraph 31), and of 23 April 2020, *Associazione Avvocatura per i diritti LGBTI* (C-507/18, EU:C:2020:289, paragraph 48).

[132] Opinion of Advocate General Pitruzzella in *X (Lack of reasons for termination)* (C-715/20, EU:C:2023:281, point 76).

III. Analysis – Part Two: Breach of primary and secondary law relating to the free movement of services and the GDPR

276. In this part of the present Opinion, I will address the remaining arguments relating to the Commission's claims that Hungary has infringed particular rules of EU primary and secondary law relating to free movement of services and the GDPR (the Commission's first to fourth pleas).

A. The Commission's first plea

277. The Commission claims that, by adopting Rules 3, 4, 5 and 6, Hungary has infringed the AVMS Directive.

278. Like other instruments that govern free movement of services in the internal market, the AVMS Directive is based on the principle of mutual recognition, expressed as the 'home country' or 'country of origin' principle. That principle, enshrined in Article 2(1) of the AVMS Directive, means that AVMS providers operate in accordance with the legislation of the Member State in which they are established.

279. In the application of that principle, Article 3(1) of the AVMS Directive obliges the host State (in receipt of the AVM service) to ensure freedom of reception by not restricting transmission by providers from other Member States for any of the reasons which fall within the fields coordinated by the Directive.

1. Rule 4

280. Article 6a of the AVMS Directive requires Member States to take appropriate measures in order to protect the physical, mental or moral development of minors. Those measures may consist in limiting the time of broadcast, and must be proportionate to the potential harm of the programme. If the programme respects the rules aimed at the protection of minors in the home State, it should be freely transmitted to the territory of any other Member State.

281. With that legislative framework in mind, the Commission first submits that Rule 4, which requires the classification of programmes featuring 'LGBTI content' as category V, meaning that they can only be broadcast between 22.00 and 5.00, cannot be understood as an implementation of Article 6a of the AVMS Directive, and therefore represents a restriction on the free movement of AVM services.

282. In its defence, Hungary claims, first, that Rule 4 was enacted as part of the implementation of Article 6a of the AVMS Directive. The directive does not harmonise the types of programmes that are considered to be harmful for minors, apart from requiring that content displaying gratuitous violence and pornography should be subject to the strictest measures. Given such minimal harmonisation, Hungary contends that it falls to the autonomy of the Member States, based on their own cultural and moral values, to determine which programmes are harmful for children.

283. However, as submitted by the Commission, a decision about content that is potentially harmful to children has to be based on some scientific evidence of the potential harmfulness of certain content.

284. As explained earlier (point 111 of the present Opinion), Hungary has not adduced any such evidence that programmes containing 'LGBTI content' are harmful for the development of minors. Additionally, it was established (see the part of the present Opinion responding to the Commission's fifth plea) that such a restriction interferes with the freedom of expression and information and the right to private life, as well as being discriminatory and running contrary to the human dignity of LGBTI persons. Since any restrictions on free movement of services,[133] including AVMS,[134] must respect fundamental rights, it cannot be accepted that Rule 4 serves the protection of minors.

285. Rule 4 cannot therefore be interpreted as an implementation of Article 6a of the AVMS Directive.

286. Hungary further claims that the classification requirement relates only to programmes the central element of which is 'LGBTI content', whereas programmes in which such content is not determinative, but merely sporadic, do not have to be classified as category V. That would mean that a film that has as its theme the life of a LGBTI family, or a documentary discussing a change of sex must be classified as category V in Hungary. However, programmes containing only sporadic scenes portraying 'LGBTI content', such as a homosexual couple holding hands, need not be classified as category V.

287. Hungary's view does not counter the claim that there is a restriction on the freedom to broadcast programmes the main focus of which is 'LGBTI content'. According to the case-law, a restriction on the provision of services exists not only when a national measure prohibits the provision of services, but also when it otherwise impedes the activities of a provider of services established in another Member State or makes them less attractive.[135] Such a restriction is, as previously explained, not coherently justified either by the protection of the physical, mental or moral development of minors or by the right of parents to raise their children in accordance with their personal convictions.

288. Rule 4 therefore represents an unjustified restriction on the provision of AVM services.

2. Rule 6

289. Hungarian law provides for an exception from the classification obligation for public interest announcements and awareness raising messages.[136] However, Rule 6 provides that an announcement containing 'LGBTI content' cannot be treated as such. Media announcements featuring 'LGBTI content', for instance information about the organisation of a pride parade, must undergo classification and may (likely) be classified as category V, that is, amenable for transmission only during the aforementioned limited hours.

133 See references in footnote 21 of the present Opinion.

134 See, to that effect, judgment of 22 September 2011, *Mesopotamia Broadcast and Roj TV* (C-244/10 and C-245/10, EU:C:2011:607, paragraph 33), in which the Court explained that any measures restricting the transmission from other Member States must be compatible with fundamental rights of the Charter. That is reiterated in recital 16 of the AVMS Directive.

135 See, to that effect, judgments of 25 July 1991, *Säger* (C-76/90, EU:C:1991:331, paragraph 12), and of 13 December 2007, *Commission v Italy* (C-465/05, EU:C:2007:781, paragraph 17).

136 Hungary explained that a public interest announcement is a communication of information which aims at attracting the attention of the public about an issue of public interest, whereas an awareness raising message aims not only at attracting attention but also at influencing the public.

290. With regard to Rule 6, the Commission submits that Hungary has infringed Article 6a of the AVMS Directive.

291. In its defence, Hungary justifies its actions with a view to protecting minors and safeguarding the rights of parents.

292. However, for the same reason as Rule 4, Rule 6 cannot be justified by that need. Together with the Rule 4, it is also contrary to the freedom of expression and information and the right to private life of LGBTI persons, and is discriminatory on the grounds of sex and sexual orientation, as it only subjects public interest announcements containing LGBTI content, and not announcements that concern the lives of heterosexual and cisgender persons, to the classification obligation. [137]

293. Therefore, Rule 6 represents an unjustified restriction on the provision of AVM services, which is contrary to Article 6a of the AVMS Directive.

3. Rule 3

294. Whereas Rule 6 concerns non-commercial announcements, Rule 3, contained in the Advertising Law, concerns commercial communications. It prohibits commercials that feature 'LGBTI content' from being made available or accessible to minors.

295. The Commission claims that Rule 3 is in breach of Article 9(1)(c)(ii) of the AVMS Directive, which provides that Member States must ensure that audiovisual commercial communications provided by media service providers comply with the prohibition of discrimination on the basis of, among other things, sex and sexual orientation. That provision of the AVMS Directive is the expression of the general principle that prohibits discrimination.

296. The AVMS Directive covers only those commercial communications that accompany or are included in an AVMS. [138] That is still a large number of communications, such as those listed in Article 1(h) of the AVMS Directive, namely television advertising, sponsorship, teleshopping and product placement. Such communications fall within the scope of the AVMS Directive.

297. However, in its written defence and rejoinder, Hungary claims that the Advertisement Law must be read in conjunction with the Freedom of Press Law and the Media Law, and that broadcast of commercial on AV media is not covered by the Advertisement Act.

298. Paragraph 1(3) of the Advertisement Law, in which Rule 3 is inserted, indicates that the Act CIV of 2010 (Freedom of Press Law) and the Act CLXXXV of 2010 (Media Law) must be applied to advertisements in audiovisual and radio media services. Yet, it does not demonstrate that the Advertisement Act does not apply. If the Hungarian legislator's intentions were to state that only these two Laws regulate advertisements in TV and radio, the text would likely use a restrictive formulation (such as 'exclusively' or 'only these laws apply'). Since it does not, the Advertisement Law remains applicable alongside them.

[137] For this, I refer back to the part of the present Opinion analysing the Commission's fifth plea.

[138] See, to that effect, judgment of 21 February 2018, *Peugeot Deutschland* (C-132/17, EU:C:2018:85, paragraphs 27 and 28).

299. Therefore, the Advertisement Law is within the scope of the AVMS Directive, and by prohibiting LGBTI content, it restricts the provision of services which the latter regulates. By the same manner as previously indicated for Rules 4 and 6, Rule 3 represents an unjustified restriction on the provision of AVM services, which is contrary to Article 9(1)(c)(ii) of the AVMS Directive.

4. Rule 5

300. Rule 5 obliges the Media Council to request another Member State to act on violations committed by an AVMS provider under the jurisdiction of that State that broadcasts in Hungary and that has contravened the Hungarian classification rules concerning LGBTI content.

301. The Commission claims that Rule 5 infringes the country of origin principle, expressed in Articles 2 and 3(1) of the AVMS Directive, in that it establishes a mechanism whereby the Member State of reception seeks to oblige the Member State of origin to ensure compliance with its rules under conditions other than those provided for in the directive.

302. Article 3(2) of the AVMS Directive provides for the possibility of a temporary derogation from the obligation of the Member State of reception to enable reception of AVM services broadcast from other Member States. That is possible only if a provider in the other Member State manifestly, seriously and gravely infringes Article 6(1)(a) or Article 6a(1) of the AVMS Directive.

303. However, in the Commission's view, with which I agree, Article 3(2) cannot be interpreted in such a way as to allow a Member State to create a specific parallel provision in its national law in order to extend its rules to service providers under the jurisdiction of another Member State and to apply a threshold for intervention below that set by said Article 3(2).

304. Hungary, however, argues that Rule 5 was not intended to implement Article 3(2) of the AVMS Directive, but Article 4(2) thereof.

305. Pursuant to that provision, Member States that have exercised their freedom to impose more detailed or stricter rules on media service providers in accordance with Article 4(1) may, exceptionally, request the Member State of origin to ask service providers under their jurisdiction to comply with those rules, and this only where their media services are wholly or mostly directed towards the territory of the Member State of reception. [139]

306. That provision thus applies only if a Member State has made use of the possibility available to it to enact stricter rules in coordinated fields.

307. The protection of minors against possibly harmful AVM services is indeed an area coordinated by Article 6a(1) of the AVMS Directive.

308. However, the Rules on classification of the AVMS programmes (Rules 4 and 6) cannot be interpreted as stricter rules under Article 4(1) of the AVMS Directive, as such rules, according to the wording of that same provision, must be in compliance with Union law.

[139] These two criteria are imposed by Article 4(2)(a) and 4(2)(b) of the AVMS Directive, respectively.

309. As it was explained earlier, those rules are not in compliance with Union law, as they restrict the provision of AVM services and infringe several fundamental rights guaranteed by the Charter without any acceptable justification.[140] That is to say, a national provision that infringes Article 6a(1) of the AVMS Directive cannot constitute such a 'more detailed or stricter' rule within the meaning of Article 4(2) thereof, since a rule based on an infringement of that directive cannot constitute a legitimate implementation of the Article 4 exception.

310. For that reason, Hungary cannot rely on Article 4(2) of the AVMS Directive in order to justify the restrictive character of Rule 5.

311. For the above reasons, Rule 5 is in breach of Article 2 and Article 3(1) of the AVMS Directive.

B. The Commission's second plea

312. The Commission claims that Rules 1 and 3 restrict the provision of information society services and thus infringe the Directive on electronic commerce.

313. Rule 1 prohibits the addressees of the Child Protection Law[141] from making 'LGBTI content' available to minors. As previously explained, Rule 3 prohibits making 'LGBTI content' available to minors in commercial communications. The Commission considers that both rules restrict the provision of information society services, contrary to Article 3(2) of the Directive on electronic commerce, which, similarly to Articles 2 and 3(1) of the AVMS Directive, prohibits Member States of reception from imposing restrictions in coordinated fields on information society service providers from other Member States.

1. Rules 1 and 3 are covered by coordinated fields within the meaning of the Directive on electronic commerce

314. Hungary's main defence in the framework of this plea is that those two Rules are not covered by Article 3(2) of the Directive on electronic commerce, which only relates to coordinated fields, and the two rules at issue do not concern such fields.

315. According to Hungary, Rule 1 does not apply to information society services. It is addressed only to institutions that provide childcare and protection that cannot be provided by families, and concerns the obligations of those institutions towards the children to whom they provide care. As Rule 1 does not lay down requirements for providers of information society services, Hungary claims that Article 3(2) of the Directive on electronic commerce does not apply to that Rule.

316. Similarly, Hungary submits that Rule 3 is not within the coordinated fields of the directive, because the Advertising Law does not specifically regulate information society services.

140 See B.5 of Part Two of the present Opinion.

141 Pursuant to its Article 1(1), that includes the State, local authorities, individuals, and legal entities responsible for child protection, as well as other organisations without legal personality.

317. According to Article 2(a) of the Directive on electronic commerce, read in conjunction with Article1(1)(b) of Directive (EU) 2015/1535,[142] 'information society services' are 'any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services'.[143]

318. Under Article 2(h) of the Directive on electronic commerce, coordinated fields of that directive are to be understood as 'requirements laid down in Member States' legal systems applicable to information society service providers *or information society services*, *regardless of* whether they are of a *general nature* or specifically designed for them'.[144]

319. Therefore, according to that provision, the coordinated fields are also the requirements that Member States impose on information society services themselves. The same provision further explains that those requirements do not have to be imposed specifically on information society services, but can be imposed generally. The imposition of a restriction on the content of a service that may be provided as an information society service therefore falls within the coordinated fields, even if the national Law at issue is not aimed specifically at regulating information society services.

320. This is confirmed by the second indent of Article 2(h)(i) of the Directive on Electronic Commerce, which specifically states that the coordinated fields concern requirements that the service provider has to fulfil in relation to, among other things, 'requirements regarding the quality or content of the service including those applicable to advertising …'.

321. Both Rule 1 and Rule 3 exclude the possibility of presenting certain content to children that may be offered by information society service providers. They therefore fall within the coordinated fields.

2. Rule 1 falls within the scope of the Directive on electronic commerce

322. In relation to Rule 1, Hungary contends that its addressees do not provide information society services, or any services in the sense of how EU law defines that concept, as their activities are, in principle, not offered for remuneration. It therefore submits that Rule 1 does not fall within the scope of the Directive on electronic commerce.

323. In that respect, it should be recalled that, according to settled case-law, 'the freedom to provide services is for the benefit of both providers and recipients of services.'[145]

324. Therefore, even if the addressees of Rule 1 do not provide information society services, they are nevertheless discouraged from using such services. For example, a children's day care centre has no reason to use movies or cartoons available on a digital platform in other Member States if they contain 'LGBTI content'. That, or any other institution targeted by Rule 1, would also have no reason to use online shopping to buy a book or any other material with LGBTI content, given that

142 Directive of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ 2015 L 241, p. 1).

143 Pursuant to Article 1(1)(b)(ii) of Directive 2015/1535, 'by electronic means' means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means'.

144 Emphasis added. See, in that respect, judgment of 1 October 2020, *A (Advertising and sale of medicinal products online)* (C-649/18, EU:C:2020:764, paragraphs 87 and 88).

145 See references in footnote 29 of the present Opinion.

they could not use that material in their activities under Rule 1. This restriction on the use of certain services by potential recipients represents a restriction on the provision of such services from one Member State to another. [146]

325. Therefore, situations governed by Rule 1 may fall in within the scope of the Directive on electronic commerce.

3. Rules 1 and 3 restrict information society services

326. Both Rule 1 and Rule 3 restrict the provision of information society services, if only by making reception of such services less attractive to the subjects of those rules (as in the case of Rule 1).

327. Such restrictions cannot be justified because they lack viable justifications on grounds of public interest and violate several rights protected by the Charter, as demonstrated earlier. [147]

328. Therefore, both Rule 1 and Rule 3 infringe Article 3(2) of the Directive on electronic commerce.

C. The Commission's third plea

329. The Commission claims that Rules 1, 3 and 7 also restrict the provision of services other than audiovisual or information society services. Such restrictions would be contrary to Articles 16 and 19 of the Services Directive, as well as Article 56 TFEU.

330. Together with Article 56 TFEU, the Services Directive imposes general rules that enable the application of mutual recognition in the area of services other than audiovisual or information society services. [148] Articles 16 and 19 of the Services Directive prohibit Member States from imposing on service providers or service recipients, respectively, restrictions which are not justified by reasons of general public interest and are not proportionate to those reasons.

1. Rules 1 and 3

331. It is indeed possible to imagine that Rule 1 restricts the provision of types of services other than audiovisual or information society services in the same way as it restricts the latter. One example suffices to prove that point. Childcare providers under Rule 1 would be discouraged from hiring a puppet theatre show which portrays the life of LGBTI people, as they are precluded from showing it to the children in their care. [149]

332. As the addressees of Rule 1 are caught by the EU rules as service recipients and not as service providers, the social services exemption, provided for in Article 2(2)(j) of the Services Directive, is irrelevant.

146 See references in footnote 28 of the present Opinion.

147 See Part One, B of the present Opinion relating to the Commission's fifth plea.

148 Certain types of services are, however, excluded from the scope of the Services Directive by Article 2(2) thereof.

149 They would be categorised as potential recipients of those services by the Services Directive, or, if the service at issue is outside of the scope of the Services Directive by virtue Article 2(2) thereof (such as, for instance, a healthcare service), directly by Article 56 TFEU. See, in that respect, judgment of 14 July 2016, *Promoimpresa and Others* (C-458/14 and C-67/15, EU:C:2016:558, paragraph 62).

333. Equally, concerning Rule 3, advertising carried out other than via AVMS media or electronically, such as on posters, if including LGBTI content, could not be displayed in Hungary in places where children could see them, which means at least all public areas.

334. Therefore, Rule 1 and Rule 3 clearly contravene in an unjustified manner general rules on the prohibition of restrictions on freedom to provide services contained in Articles 16 and 19 of the Services Directive and Article 56 TFEU.

2. Rule 7

335. That leaves Rule 7. That rule is part of the National Public Education Law and precludes the promotion (but not portrayal) of 'LGBTI content' in the context of sexual education.

336. Hungary contests that EU law can apply to educational activities, and argues that Rule 7 cannot therefore be in breach of either the Services Directive or of Article 56 TFEU.

337. I have already explained in point 56 of the present Opinion that educational services, when provided for remuneration, are within the scope of EU law. In that light, Rule 7 can indeed restrict services of educating or informing young people about sexuality when they are provided outside of the public education system, or within that system, but by external service providers.

338. Given that Rule 7 prohibits only the promotion and not also the portrayal of 'LGBTI content', a restriction on the provision of services could potentially be justified by the need for 'impartiality' in education. Nevertheless, as already explained, that rule is not neutral, but directly discriminatory, as it does not prohibit the promotion of any type of sexual life or behaviour, but only prohibits the promotion of the sexual life or behaviour of LGBTI persons.

339. For identical reasons to those provided in respect of Rules 1, 3, 4, 5 and 6, Rule 7 contravenes fundamental rights, notably Article 21 of the Charter, and cannot therefore be justified.

340. Therefore, Rule 1, Rule 3 and Rule 7 all infringe the Services Directive and Article 56 TFEU.

D. The Commission's fourth plea

341. The Commission claims that Rule 8, contained in the Law on the criminal records system, infringes Article 10 of the GDPR in conjunction with Article 8(2) of the Charter.

342. Rule 8 mandates bodies with access to registered data to provide direct access to the criminal records of individuals convicted of sexual offences against children to 'authorised persons'. With regard to the categorisation of 'authorised persons', Paragraph 75/B(3) of the Law on the criminal records system states that the making available of registered data shall only be allowed if the person requesting those data is an adult who is either a relative of, or educates, supervises or cares for, a person who has not attained 18 years of age.

343. According to the Commission, an infringement has occurred because Rule 8 fails to specify with sufficient clarity who is authorised to submit a data request and thus does not provide sufficient guarantees for the rights and freedoms of data subjects regarding the conditions of access to their personal data.

344. In its defence, Hungary submits that Rule 8 must be read in conjunction with Paragraph 8:1 (1) of the Hungarian Civil Code (Polgári törvénykönyv), which defines the concept of a 'close relative' as including spouses, direct-line parents, children (including adopted children, step-children and foster children), siblings, partners, in-laws and other persons with whom familial relations exist. That Member State further indicates that, in accordance with various provisions of the Civil Code, individuals responsible for the custody or maintenance of minors – such as parents with parental authority, guardians, adoptive parents and those supporting a parent while living in the same household – are also entitled to request access to data under the Law on the criminal records system. For those reasons, Hungary argues that the list of authorised persons is adequately defined and is, in fact, further safeguarded by the criteria for access, namely that (a) the authorised person must consider the relevant data to be 'probably necessary' for the purposes of the proceedings, and (b) 'it would be disproportionately difficult to gain knowledge of the relevant data in another way'.

345. As a preliminary point, the objective pursued by the GDPR, as provided for in Article 1 and in recitals 1 and 10 thereof, consists, inter alia, in ensuring a high level of protection of the fundamental rights and freedoms of natural persons, in particular their right to privacy with respect to the processing of personal data, as enshrined in Article 8(1) of the Charter and Article 16(1) TFEU, which, similarly, grant all individuals the right to protection of their personal data. Specifically for this purpose, the GDPR provides that any processing of personal data must comply with the principles relating to the processing of data established in Article 5 of the GDPR. In order for the processing to be lawful, one of the conditions listed in Article 6 of that regulation must be satisfied. [150]

346. In that vein, the processing of data shall be lawful under Article 6(1)(e) of the GDPR if it is necessary 'for the performance of a task carried out in the public interest or in the exercise of official authority'. Article 10 imposes additional restrictions on the processing of criminal record data, requiring control by an official authority or authorisation by law with appropriate safeguards.

347. The Court has clarified that the GDPR does not impose an absolute ban on public authorities disclosing personal data, as long as the disclosure serves a legitimate public interest and includes adequate protection for data subjects' rights and freedoms. [151] In the same vein, Article 8(2) of the Charter states that personal data must, inter alia, be processed 'for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law'.

348. The protection of minors from those who might cause them harm is undoubtedly a public interest of the utmost importance, which might therefore justify the disclosure of personal data. At the same time, criminal record data is highly sensitive and could lead to stigma. Its disclosure may seriously impact an individual's private and professional life, requiring strict justification and clear legal safeguards. [152]

349. Therefore, in balancing these two interests, the national measures designed to attain the goal of the protection of minors must be assessed in terms of the requirements of proportionality.

150 See, to that effect, judgment of 9 January 2025, *Mousse* (C-394/23, EU:C:2025:2, paragraphs 21 to 25 and the case-law cited).

151 See, to that effect, judgment of 7 March 2024, *Endemol Shine Finland* (C-740/22, EU:C:2024:216, paragraphs 46 to 49 and the case-law cited).

152 See, to that effect, judgment of 7 March 2024, *Endemol Shine Finland* (C-740/22, EU:C:2024:216, paragraphs 52 to 54 and the case-law cited).

350. In that respect, Hungary submits that the data regime established by Rule 8 is justified and proportionate in view of its aim.

351. I do not agree. In my view, Rule 8 goes beyond what is necessary for the attainment of the protection of minors.

352. First, the category of persons authorised to access personal data about criminal convictions related to sexual offences against children under Rule 8 is too imprecise and broad to comply with Article 10 of the GDPR. In the context of allowing access to personal data to competent national authorities, the Court has held that, in order to satisfy the requirement of proportionality, national law that allows for such access 'must lay down clear and precise rules governing the scope and application of the measure in question and imposing minimum safeguards, so that the persons whose personal data are affected have sufficient guarantees that data will be effectively protected against the risk of abuse.' [153] This should apply equally in relation to the access of private persons to personal data. Furthermore, the principle of transparency, as enshrined in Article 5(1) of the GDPR, requires that any information and communication relating to the processing of those personal data be 'easily accessible'.

353. In that light, I do not consider that the category of 'authorised persons' permitted to make a data request under Rule 8 is sufficiently defined and limited by the various provisions spread across both the Law on the criminal records system and the Hungarian Civil Code.

354. It should be transparent to natural persons that personal data concerning them are collected, processed and disclosed in a manner consistent with the principles of data protection. This will not be the case if a data subject is required to navigate a complex and disjointed array of national legal provisions, none of which clearly indicate their interrelationship, thereby creating unnecessary confusion and procedural inefficiency.

355. Second, the substantive conditions for access are not defined precisely enough by national law so as to enable the competent authority to check that such access is justified and necessary.

356. In particular, I refer to Paragraph 75/B(3)(b) of the Law on the criminal records system, which states that access shall be granted to the authorised person who believes that access to the data is necessary for specific purposes, and who would face overt difficulty in trying to obtain them by other means.

357. Decisively then, Rule 8, combined with Paragraph 75/B(3)(b) of the Law on the criminal records system, is governed by a mere self-declaration, and effectively places the assessment of necessity and proportionality in the hands of the requesting individual rather than the competent authority responsible for overseeing access to criminal records.

358. In my view, a self-declaration of necessity is incompatible with Article 10 of the GDPR and Article 8 of the Charter, and lends itself to a discretionary application.

359. Therefore, the conditions set by Rule 8 and other provisions of the Law on the criminal records system do not constitute sufficient safeguards for the purposes of the provisions of the GDPR and of Article 8 of the Charter.

[153] Judgments of 2 March 2021, *H. K.* (C-746/18, EU:C:2021:152, paragraph 48) and of 24 February 2022, *Valsts ieņēmumu dienests (Processing of personal data for tax purposes)* (C-175/20, EU:C:2022:124, paragraph 55).

360. Therefore, Rule 8 infringes Article 10 of the GDPR and Article 8(2) of the Charter, as claimed by the Commission.

IV. Costs

361. The Commission has claimed that Hungary should be ordered to pay the costs. Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since Hungary has been unsuccessful, it must be ordered to pay the costs.

362. In accordance with Article 140(1) of those rules, the intervening Member States as well as the European Parliament are to bear their own costs.

V. Conclusion

363. In the light of the foregoing considerations, I propose that the Court:

(1) Declare that, by adopting a pedofil bűnelkövetőkkel szembeni szigorúbb fellépésről, valamint a gyermekek védelme érdekében egyes törvények módosításáról szóló 2021. évi LXXIX. törvény (Law LXXIX of 2021 adopting stricter measures against persons convicted of paedophilia and amending certain laws for the protection of children), Hungary has failed to fulfil its obligations under EU law in the following ways:

– by prohibiting, by the Child Protection Law, minors from accessing content which promotes or portrays gender identities that do not correspond to sex assigned at birth, sex reassignment or homosexuality, Hungary has infringed Article 3(2) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Articles 16 and 19 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, Article 56 TFEU, Articles 1, 7, 11 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 2 TEU;

– by prohibiting, by the Advertising Law, minors from accessing advertising which promotes or portrays gender identities that do not correspond to the sex assigned at birth, sex reassignment or homosexuality, Hungary has infringed Article 9(1)(c)(ii) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), Article 3(2) of Directive 2000/31, Articles 16 and 19 of Directive 2006/123, Article 56 TFEU, Articles 1, 7, 11 and 21 of the Charter and Article 2 TEU;

– by imposing, by the Media Law, an obligation on media service providers which offer linear media services to classify all programmes the main focus of which is the promotion or portrayal of gender identities that do not correspond to sex assigned at birth, sex reassignment or homosexuality as category V, and thus to broadcast those programmes only between 22.00 and 5.00, and by excluding such programmes from classification as public interest media or as socially beneficial advertising, Hungary has infringed Article 6a(1) of Directive 2010/13, Articles 1, 7, 11 and 21 of the Charter and Article 2 TEU;

– by imposing, by the Media Law, on the Media Council an obligation to request that the Member State under the jurisdiction of which the media service provider operates to implement effective measures to eliminate any violation identified by the Media Council, Hungary has infringed Articles 2 and 3(1) of Directive 2010/13;

– by prohibiting, by the National Public Education Law, the promotion of gender identities that do not correspond to the sex at birth, sex reassignment or homosexuality, in education related to sexual culture, sexual life, sexual orientation and sexual development, Hungary has infringed Articles 16 and 19 of Directive 2006/123, Article 56 TFEU, Articles 1, 7, 11 and 21 of the Charter and Article 2 TEU;

– by imposing an obligation, by the Law on the criminal records system, on the body with direct access to the registered data to make available, to authorised persons, the registered data of persons who have committed sexual offences against children, Hungary has infringed Article 10 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), as well as Article 8(2) of the Charter;

(2) Order Hungary to bear its own costs and to pay those incurred by the European Commission;

(3) Order the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, Ireland, the Hellenic Republic, the Kingdom of Spain, the Republic of Estonia, the French Republic, the Grand Duchy of Luxembourg, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Republic of Finland, the Kingdom of Sweden as well as the European Parliament to bear their own costs.